



Product Security and Telecommunications Infrastructure Act 2022

2022 CHAPTER 46

PART 1

PRODUCT SECURITY

CHAPTER 3

ENFORCEMENT

Monetary penalties

PROSPECTIVE

36 Monetary penalties

- (1) If the Secretary of State is satisfied on the balance of probabilities that a person has failed to comply with a relevant duty, the Secretary of State may give a penalty notice to the person.
- (2) A penalty notice is a notice under this section requiring the person to pay a penalty of a specified amount to the Secretary of State within a specified period.
- (3) A person may not be given more than one penalty notice in respect of a single relevant breach.
- (4) A penalty notice may not require a person to pay a penalty of an amount greater than the relevant maximum in respect of a single relevant breach.

For the relevant maximum, see section 38.

Status: This version of this cross heading contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Product Security and Telecommunications Infrastructure Act 2022, Cross Heading: Monetary penalties. (See end of Document for details)

- (5) A penalty notice given in respect of a relevant breach may, in addition to requiring the person to pay a penalty of a specified amount (“the fixed penalty”), require the person to pay to the Secretary of State within a specified period a further daily penalty, of a specified amount not exceeding £20,000, for each day for which the relevant breach continues after the end of the period specified for payment of the fixed penalty.
- (6) The amount of each such daily penalty is to be disregarded for the purposes of subsection (4).
- (7) A penalty notice may not specify a period for paying a penalty that is less than 28 days beginning with the day on which the notice is given.
- (8) A penalty notice may be given to a person in respect of a relevant breach whether or not the person has been given an enforcement notice in respect of the relevant breach.
- (9) Any penalty received by the Secretary of State in accordance with this section is to be paid into the Consolidated Fund.
- (10) In this section—
 - “relevant breach” means a failure to comply with a relevant duty;
 - “relevant duty” means a duty imposed by or under Chapter 2;
 - “specified” means specified in the penalty notice.

Commencement Information

II S. 36 not in force at Royal Assent, see [s. 79](#)

PROSPECTIVE

37 Determining the amount of a penalty

- (1) A penalty imposed by a penalty notice must be of an amount that the Secretary of State considers to be—
 - (a) appropriate, and
 - (b) proportionate to the relevant breach in respect of which it is imposed.
- (2) In determining the amount of a penalty to be imposed by a penalty notice on a person, the Secretary of State must take into account the following matters (among others)—
 - (a) the effects of the relevant breach in respect of which the penalty is imposed;
 - (b) any action taken by the person to remedy the relevant breach or mitigate its effects.
- (3) In this section “relevant breach” has the same meaning as in section 36.

Commencement Information

I2 S. 37 not in force at Royal Assent, see [s. 79](#)

Status: This version of this cross heading contains provisions that are prospective.

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38 The relevant maximum

- (1) For the purposes of section 36 the relevant maximum, in relation to a person, is the greater of—
- (a) £10 million, and
 - (b) 4% of the person’s qualifying worldwide revenue for the person’s most recent complete accounting period.

This is subject to subsections (2) to (6).

- (2) Where the Secretary of State is deciding the amount of the penalty to be imposed on a person at a time when the person’s first accounting period has not yet ended, the reference in subsection (1)(b) to the person’s qualifying worldwide revenue for the person’s most recent complete accounting period is a reference to the amount that the Secretary of State estimates is likely to be the person’s qualifying worldwide revenue for that period.
- (3) For the purposes of this section, the amount of a person’s qualifying worldwide revenue for an accounting period is, in the event of a disagreement between the person and the Secretary of State, the amount determined by the Secretary of State.
- (4) In the case of an accounting period that is not a period of 12 months, the amount of the person’s qualifying worldwide revenue (or estimated qualifying worldwide revenue) for the period is to be adjusted as follows—
- (a) if the accounting period is less than 12 months, the amount is to be proportionately increased;
 - (b) if the accounting period is more than 12 months, the amount is to be proportionately reduced.
- (5) If the person does not have an accounting period, the relevant maximum is £10 million.
- (6) The Secretary of State may by regulations provide that, where the person is a member of one or more groups, the relevant maximum is to be calculated by reference to a specified percentage of the total qualifying worldwide revenue of those groups, or of members of those groups that are of a specified description, for a specified period.
- “Specified” means specified in the regulations.
- (7) The Secretary of State may by regulations make provision about how the qualifying worldwide revenue of a person or persons for a period is to be determined for the purposes of this section.
- (8) Regulations under this section are subject to the affirmative resolution procedure.
- (9) In this section—

“accounting period”, in relation to a person, means a period in respect of which accounts are prepared in relation to that person or, where that person is an individual, in relation to that person’s relevant business;

“group” means a parent undertaking and its subsidiary undertakings;

“parent undertaking” and “subsidiary undertaking” have the same meaning as they have for the purposes of the Companies Act 2006 (see section 1162 of, and Schedule 7 to, that Act);

“relevant business” means—

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- (a) in the case of a relevant person, the business of being a manufacturer, importer or distributor (as the case may be) of relevant connectable products;
- (b) in the case of a person who is an authorised representative, the business of acting as an authorised representative or as part of which the person is an authorised representative.

Commencement Information

I3 S. 38 in force at Royal Assent for specified purposes, see [s. 79\(1\)\(c\)](#)

PROSPECTIVE

39 Penalty notices: further provision

- (1) Before giving a penalty notice to a person, the Secretary of State must—
 - (a) notify the person of the Secretary of State’s intention to give a penalty notice to the person, and
 - (b) give the person an opportunity to make representations about the giving of the notice.
- (2) The Secretary of State may not give a penalty notice to the person before the end of the period of 28 days beginning with the day on which notification under subsection (1) (a) is given.
- (3) A penalty notice must contain the following information—
 - (a) the reasons for giving the penalty notice;
 - (b) the amount of the penalty;
 - (c) how payment may be made;
 - (d) the period within which payment must be made;
 - (e) how the person to whom the notice is given may appeal against the imposition of the penalty;
 - (f) the consequences of failing to pay the penalty.
- (4) The Secretary of State may vary or revoke a penalty notice.
- (5) But the Secretary of State may not vary a penalty notice in order to make it more onerous.

Commencement Information

I4 S. 39 not in force at Royal Assent, see [s. 79](#)

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PROSPECTIVE

40 Enforcement of penalty notices

- (1) In England and Wales, a penalty is recoverable as if it were payable under an order of the High Court.
- (2) In Scotland, a penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (3) In Northern Ireland, a penalty is recoverable as if it were payable under an order of the High Court.
- (4) Where action is taken under this section for the recovery of a penalty, the penalty—
 - (a) in relation to England and Wales, is to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc) as if it were a judgment entered in the High Court;
 - (b) in relation to Northern Ireland, is to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)) (register of judgments) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.
- (5) In this section “penalty” means a penalty imposed by a penalty notice under section 36.

Commencement Information

- I5** S. 40 not in force at Royal Assent, see [s. 79](#)

PROSPECTIVE

41 Appeals against penalty notices

- (1) A person who is given a penalty notice may appeal to the First-tier Tribunal (“the Tribunal”) against—
 - (a) the imposition of a penalty imposed by the penalty notice;
 - (b) the amount of such a penalty;
 - (c) the period within which such a penalty, or any part of it, is required to be paid.
- (2) An appeal under this section is to be brought before the end of the period of 28 days beginning with—
 - (a) the day on which the penalty notice was given, or
 - (b) if the appeal is in respect of the variation of a notice under section 39(4), the day on which the notice was varied.
- (3) On an appeal under this section, the Tribunal—
 - (a) if it is satisfied that any of the grounds in subsection (4) applies, may—
 - (i) vary the amount of a penalty imposed by the penalty notice or the period within which such a penalty, or any part of it, is required to be paid, or

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- (ii) cancel any penalty imposed by the penalty notice;
 - (b) if it is not so satisfied, must confirm the penalty notice.
- (4) The grounds referred to in subsection (3)(a) are—
 - (a) that the decision appealed against was based, wholly or partly, on an error of fact;
 - (b) that the decision appealed against was wrong in law;
 - (c) that the decision appealed against was unfair or unreasonable for any other reason.
- (5) If the Tribunal cancels a penalty imposed by a penalty notice, it may refer the matter back to the person that gave the notice with a direction to reconsider and make a new decision in accordance with its ruling.
- (6) But the Tribunal may not direct the person that gave the notice to take any action which the person would not otherwise have the power to take.
- (7) In determining an appeal under this section, the Tribunal may—
 - (a) review any determination of fact on which the decision appealed against was based;
 - (b) take into account evidence which was not available to the person that gave the notice.
- (8) Where an appeal in respect of a penalty notice, or the variation of a penalty notice, is made under this section, the notice or variation (as the case may be) is of no effect until the appeal is determined or withdrawn.
- (9) Where an appeal is or may be made to the Upper Tribunal in relation to a decision of the Tribunal under this section, the Upper Tribunal may suspend the notice to which the appeal relates until the appeal is determined or withdrawn.

Commencement Information

I6 S. 41 not in force at Royal Assent, see [s. 79](#)

Status:

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