



# National Security and Investment Act 2021

## 2021 CHAPTER 25

### PART 1

#### CALL-IN FOR NATIONAL SECURITY

### CHAPTER 4

#### PROCEDURE

##### *Procedure in respect of notifiable acquisition*

#### **14 Mandatory notification procedure**

- (1) Subject to subsection (2), a person must give notice to the Secretary of State before the person, pursuant to a notifiable acquisition, gains control in circumstances falling within section 6(2).
- (2) Subsection (1) does not apply if the Secretary of State has already given a call-in notice, which has not been revoked, in relation to the proposed notifiable acquisition.
- (3) A notice under subsection (1) is referred to in this Act as a mandatory notice.
- (4) The Secretary of State may by regulations prescribe the form and content of a mandatory notice.
- (5) As soon as reasonably practicable after receiving a mandatory notice, the Secretary of State must decide whether to reject or accept the notice.
- (6) The Secretary of State may reject the mandatory notice on one or more of the following grounds—
  - (a) it does not meet the requirements of this section,

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- (b) it does not meet the requirements prescribed by the regulations,
  - (c) it does not contain sufficient information to allow the Secretary of State to decide whether to give a call-in notice in relation to the proposed notifiable acquisition.
- (7) If the mandatory notice is rejected, the Secretary of State must, as soon as practicable, provide reasons in writing for that decision to the person who gave the notice.
- (8) If the mandatory notice is accepted, the Secretary of State must—
- (a) as soon as practicable, notify each relevant person, and
  - (b) before the end of the review period—
    - (i) give a call-in notice in relation to the proposed notifiable acquisition, or
    - (ii) notify each relevant person that no further action will be taken under this Act in relation to the proposed notifiable acquisition.
- (9) The “review period” is the period of 30 working days beginning with the day on which the notification under subsection (8)(a) is given to the person who gave the mandatory notice.
- (10) In this section “relevant person” means the person who gave the mandatory notice and such other persons as the Secretary of State considers appropriate.

## **15 Requirement to consider retrospective validation without application**

- (1) This section and section 16 apply to a notifiable acquisition that is completed without the approval of the Secretary of State and, accordingly, is void (see section 13(1)).
- (2) The Secretary of State must, before the end of the period of 6 months beginning with the day on which the Secretary of State becomes aware of the notifiable acquisition—
- (a) give a call-in notice in relation to the acquisition, or
  - (b) give a validation notice in relation to the acquisition to each relevant person and notify those persons that no further action will be taken under this Act in relation to the acquisition.
- (3) The effect of a validation notice given under this section or section 16 or 17, is that the notifiable acquisition to which it relates is to be treated as having been completed with the approval of the Secretary of State (and, accordingly, is not void).
- (4) In this section “relevant person” means—
- (a) the person who was required to give a mandatory notice to the Secretary of State in relation to the acquisition (see section 14(1)), and
  - (b) such other persons as the Secretary of State considers appropriate.

## **16 Application for retrospective validation of notifiable acquisition**

- (1) Any person materially affected by the fact that a notifiable acquisition to which this section applies (see section 15(1)) is void, may apply to the Secretary of State for a validation notice in relation to the acquisition.
- (2) An application under subsection (1) is referred to in this Act as a validation application.
- (3) The Secretary of State may by regulations prescribe the form and content of a validation application.

- (4) Subject to subsection (8), as soon as reasonably practicable after receiving a validation application, the Secretary of State must decide whether to reject or accept the application.
- (5) The Secretary of State may reject the application on one or more of the following grounds—
  - (a) it does not meet the requirements of this section,
  - (b) it does not meet the requirements prescribed by the regulations,
  - (c) it does not contain sufficient information to allow the Secretary of State to decide whether to give a call-in notice in relation to the acquisition.
- (6) If the application is rejected, the Secretary of State must, as soon as practicable, provide reasons in writing for that decision to the person who made the application.
- (7) If the application is accepted, the Secretary of State must—
  - (a) as soon as practicable, notify each relevant person, and
  - (b) before the end of the review period—
    - (i) give a call-in notice in relation to the acquisition, or
    - (ii) give a validation notice in relation to the acquisition to each relevant person and notify those persons that no further action will be taken under this Act in relation to the acquisition.
- (8) The Secretary of State is not required to consider a validation application in relation to an acquisition if, in the opinion of the Secretary of State, there has been no material change in circumstances since a previous validation application in relation to the acquisition was made.
- (9) In this section—

“relevant person” means the person who made the validation application and such other persons as the Secretary of State considers appropriate;

the “review period” is the period of 30 working days beginning with the day on which the notification under subsection (7)(a) is given to the person who made the validation application.

## **17 Retrospective validation of notifiable acquisition following call-in**

- (1) This section applies where the Secretary of State has given a call-in notice pursuant to—
  - (a) subsection (2)(a) of section 15, or
  - (b) subsection (7)(b)(i) of section 16,(and, accordingly, the trigger event to which the call-in notice relates is, or includes, a notifiable acquisition to which those sections apply.)
- (2) If the Secretary of State gives a final notification in relation to the call-in notice, the Secretary of State must also give a validation notice in relation to the acquisition.
- (3) A validation notice under this section must be given to—
  - (a) each person to whom the final notification is given,
  - (b) the person (if any) who made an application in relation to the acquisition under section 16, and
  - (c) such other persons as the Secretary of State considers appropriate.

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- (4) Subsection (5) applies if the Secretary of State makes a final order in relation to the call-in notice.
- (5) So much of the notifiable acquisition as would, had it been completed after the making of the final order, have been completed in accordance with the order is to be treated as having been completed with the approval of the Secretary of State (and, accordingly, is not void).

*Voluntary notification of trigger event*

**18 Voluntary notification procedure**

- (1) This section does not apply in relation to—
  - (a) arrangements which would result in a notifiable acquisition,
  - (b) a trigger event that is, or includes, a notifiable acquisition.
- (2) A seller, acquirer or the qualifying entity concerned may give a notice to the Secretary of State stating that —
  - (a) a trigger event has taken place in relation to a qualifying entity or a qualifying asset, or
  - (b) arrangements are in progress or contemplation which, if carried into effect, will result in a trigger event taking place in relation to a qualifying entity or a qualifying asset.
- (3) A notice under subsection (2) is referred to in this Act as a voluntary notice.
- (4) The Secretary of State may by regulations prescribe the form and content of a voluntary notice.
- (5) As soon as reasonably practicable after receiving the voluntary notice, the Secretary of State must decide whether to reject or accept the notice.
- (6) The Secretary of State may reject the voluntary notice on one or more of the following grounds—
  - (a) it does not meet the requirements of this section,
  - (b) it does not meet the requirements prescribed by the regulations,
  - (c) it does not contain sufficient information to allow the Secretary of State to decide whether to give a call-in notice,
  - (d) there is no reasonable prospect of being able to give a call-in notice due to the operation of the time-limits in subsection (2) or (4) of section 2.
- (7) If the voluntary notice is rejected, the Secretary of State must, as soon as practicable, provide reasons in writing for that decision to each relevant person.
- (8) If the voluntary notice is accepted, the Secretary of State must—
  - (a) as soon as practicable, notify each relevant person, and
  - (b) before the end of the review period—
    - (i) give a call-in notice in relation to the trigger event, or
    - (ii) notify each relevant person that no further action will be taken under this Act in relation to the trigger event.

- (9) The “review period” is the period of 30 working days beginning with the day on which the notification under subsection (8)(a) is given to the person who gave the voluntary notice; but this does not affect the operation of the time-limits in subsections (2) and (4) of section 2.
- (10) In this section—
- “relevant person” means the person who gave the voluntary notice and such other persons as the Secretary of State considers appropriate,
- “seller”, in relation to a trigger event, means a person who has ceded control of the qualifying entity or a qualifying asset (or in relation to a trigger event that has not yet taken place, would cede that control).

### *Information, etc*

## **19 Power to require information**

- (1) The Secretary of State may give a notice to a person (subject to section 21) to require the person to provide any information in relation to the exercise of the Secretary of State’s functions under this Act which—
- is specified or described in the notice, or falls within a category of information specified or described in the notice, and
  - is within that person’s possession or power.
- (2) The Secretary of State is not to require the provision of information under this section except where the requirement to provide information is proportionate to the use to which the information is to be put in the carrying out of the Secretary of State’s functions under this Act.
- (3) A notice under subsection (1) is referred to in this Act as an information notice.
- (4) An information notice may—
- specify the manner in which the information is to be provided,
  - specify a time limit for—
    - providing the information,
    - notifying the Secretary of State that the information is not in the person’s possession or power, or
  - require the person to provide any information within their possession or power which would enable the Secretary of State to find the information required by the notice.
- (5) An information notice must—
- specify the purpose for which the notice is given, and
  - state the possible consequences of not complying with the notice.
- (6) A person is not required under this section to provide any information which that person could not be compelled to provide in evidence in civil proceedings before the court.
- (7) A reference in this section to the provision of information includes a reference to the provision of a legible and intelligible copy of information recorded otherwise than in legible form.

- (8) A person to whom information is provided under this section may copy the information.
- (9) In this section “the court” means—
- (a) in relation to England and Wales or Northern Ireland, the High Court,
  - (b) in relation to Scotland, the Court of Session, and
  - (c) in relation to a person outside the United Kingdom, the High Court of England and Wales.

## **20 Attendance of witnesses**

- (1) The Secretary of State may give a notice to a person (subject to section 21) to require the person—
- (a) to attend at a time and place specified in the notice, and
  - (b) to give evidence to the Secretary of State in relation to the exercise of the Secretary of State’s functions under this Act.
- (2) The Secretary of State is not to require the giving of evidence under this section except where the requirement to give evidence is proportionate to the use to which the evidence is to be put in the carrying out of the Secretary of State’s functions under this Act.
- (3) A notice under subsection (1) is referred to in this Act as an attendance notice.
- (4) An attendance notice must—
- (a) specify the purpose for which the notice is given, and
  - (b) state the possible consequences of not complying with the notice.
- (5) A person is not required under this section to give any evidence which that person could not be compelled to give in civil proceedings before the court.
- (6) A person is not required, in compliance with an attendance notice, to go more than 10 miles from their place of residence unless necessary travelling expenses are paid or offered to that person.
- (7) In this section “the court” means—
- (a) in relation to evidence given in England and Wales or Northern Ireland, the High Court,
  - (b) in relation to evidence given in Scotland, the Court of Session, and
  - (c) in relation to evidence given outside the United Kingdom, the High Court of England and Wales.

## **21 Information notices and attendance notices: persons outside the UK**

- (1) The Secretary of State may give an information notice or an attendance notice to a person outside the United Kingdom only if the person falls within subsection (2), (3) or (4) of this section.
- (2) A person falls within this subsection if the person is—
- (a) a United Kingdom national,
  - (b) an individual ordinarily resident in the United Kingdom,

- (c) a body incorporated or constituted under the law of any part of the United Kingdom, or
  - (d) carrying on business in the United Kingdom.
- (3) A person falls within this subsection if—
- (a) a trigger event has taken place in relation to a qualifying entity which is formed or recognised under the law of any part of the United Kingdom, or
  - (b) arrangements are in progress or contemplation which, if carried into effect, will result in a trigger event taking place in relation to a qualifying entity of that description,
- and the person is the acquirer.
- (4) A person falls within this subsection if—
- (a) a trigger event has taken place in relation to a qualifying asset which —
    - (i) is within section 7(4)(a) or (b) and is situated in the United Kingdom or the territorial sea, or
    - (ii) is within section 7(4)(c) and is used in connection with activities carried on in the United Kingdom, or
  - (b) arrangements are in progress or contemplation which, if carried into effect, will result in a trigger event taking place in relation to a qualifying asset within paragraph (a),
- and the person is the acquirer.

## 22 False or misleading information

- (1) This section applies where false or misleading information is provided to the Secretary of State—
- (a) in a mandatory notice,
  - (b) in a validation application,
  - (c) in a voluntary notice,
  - (d) in response to an information notice, or
  - (e) in response to an attendance notice.
- (2) Where a decision made by the Secretary of State under this Act is materially affected by the false or misleading information, the Secretary of State may reconsider the decision and may affirm, vary or revoke it.
- (3) Where a decision is varied or revoked under this section, the Secretary of State must give notice to that effect to such persons as the Secretary of State considers appropriate.
- (4) If a revoked decision was—
- (a) a decision to give a call-in notice,
  - (b) a decision to make or revoke a final order, or
  - (c) a decision to give a final notification,
- the Secretary of State may give a further call-in notice and section 2(1) does not apply.
- (5) Where a decision is revoked under this section, the time limits in section 2(2) and (4) do not apply to the case concerned, but a call-in notice (or a further call-in notice) may not be given after the end of the period of 6 months beginning with the day on which the information was discovered to be false or misleading.