



National Security and Investment Act 2021

2021 CHAPTER 25

PART 3

ENFORCEMENT AND APPEALS

Civil sanctions

40 Power to impose monetary penalties

- (1) Subject to section 43(1), the Secretary of State may give a notice imposing a monetary penalty on a person if the Secretary of State is satisfied, beyond reasonable doubt, that the person has committed an offence under—
 - (a) section 32 (completing notifiable acquisition without approval),
 - (b) section 33 (failing to comply with interim or final order), or
 - (c) section 34 (offences in relation to supplying information and attendance of witnesses),(including where the person is liable to be proceeded against by virtue of section 36).
- (2) A notice under this section is referred to in this Act as a penalty notice.
- (3) In this Act “monetary penalty” means a requirement to pay to the Secretary of State a penalty of an amount determined by the Secretary of State.
- (4) For an offence under section 33 or 34(1)(a), a monetary penalty may be—
 - (a) a fixed amount (“a fixed penalty”),
 - (b) an amount calculated by reference to a daily rate (“a daily rate penalty”), or
 - (c) a combination of a fixed penalty and a daily rate penalty.
- (5) For an offence under section 32 or for any other offence under section 34, the monetary penalty may be a fixed penalty only.

Changes to legislation: There are currently no known outstanding effects for the National Security and Investment Act 2021, Section 40. (See end of Document for details)

- (6) The amount of the monetary penalty is to be such amount as the Secretary of State considers appropriate but it may not exceed the permitted maximum, as set out in section 41.
- (7) When determining a monetary penalty under this section, the Secretary of State must have regard, in particular, to—
- (a) the seriousness of the offence,
 - (b) the desirability of deterring both the person on whom the penalty is imposed and others from committing the offence to which the penalty relates,
 - (c) the possibility, and desirability, of rectifying any failure to which the offence relates,
 - (d) any steps taken by the person on whom the penalty is imposed towards rectifying any failure to which the offence relates, and
 - (e) the ability of the person on whom the penalty is imposed to pay the penalty.
- (8) A penalty notice must include information as to—
- (a) the grounds for imposing the monetary penalty,
 - (b) whether the penalty is a fixed penalty, a daily rate penalty or a combination of both and how it is calculated,
 - (c) in the case of a fixed penalty, the amount of the penalty,
 - (d) in the case of a daily rate penalty, the amount of the daily rate, the day on which the amount first starts to accumulate and the day on which, or the circumstances in which, it ceases to accumulate,
 - (e) how the amount of the penalty was determined,
 - (f) how payment may be made,
 - (g) the period within which payment is to be made (which must be at least 28 days),
 - (h) rights of appeal,
 - (i) the consequences of non-payment.
- (9) For the purposes of a daily rate penalty—
- (a) the first day on which the amount may start to accumulate is the day after the day on which the penalty notice is given,
 - (b) unless the Secretary of State determines an earlier date, the daily rate ceases to accumulate at the beginning of the earliest of—
 - (i) the day on which the requirement to comply to which the offence relates is satisfied,
 - (ii) the day on which that requirement no longer applies.
- (10) A monetary penalty imposed under this section is to be paid out of—
- (a) the partnership assets where imposed on a partnership, and
 - (b) the funds of the association where imposed on an unincorporated association other than a partnership.

Commencement Information

II S. 40 in force at 4.1.2022 by S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)

Changes to legislation:

There are currently no known outstanding effects for the National Security and Investment Act 2021, Section 40.