



Telecommunications (Security) Act 2021

2021 CHAPTER 31

Monitoring and enforcement

20 Power of Secretary of State to enforce compliance with designated vendor directions etc

After section [105Z17](#) of the Communications Act 2003 insert—

“105Z18 Notification of contravention

- (1) Where the Secretary of State determines that there are reasonable grounds for believing that a public communications provider is contravening, or has contravened—
 - (a) a requirement imposed by a designated vendor direction, or
 - (b) a requirement under section [105Z7](#),the Secretary of State may give the provider a notification under this section.
- (2) A notification under this section is one which—
 - (a) sets out the Secretary of State’s determination;
 - (b) specifies the requirement and contravention in respect of which the determination is made;
 - (c) specifies the period during which the provider has an opportunity to make representations;
 - (d) specifies the steps that the Secretary of State thinks should be taken by the provider in order to—
 - (i) comply with the requirement;
 - (ii) remedy the consequences of the contravention;
 - (e) specifies the penalty which the Secretary of State is minded to impose.
- (3) A notification under this section may be given in respect of more than one contravention.

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- (4) If a notification under this section relates to more than one contravention, a separate penalty may be specified under subsection (2)(e) in respect of each contravention.
- (5) If a notification under this section is given in respect of a continuing contravention, it may be given in respect of any period during which the contravention has continued.
- (6) If a notification under this section relates to a continuing contravention, no more than one penalty may be specified under subsection (2)(e) in respect of the period of contravention specified in the notification.
- (7) Notwithstanding subsection (6), in relation to a continuing contravention, a penalty may be specified in respect of each day on which the contravention continues after—
 - (a) the giving of a confirmation decision under section 105Z20 which requires immediate action in respect of that contravention (see section 105Z20(6)(a)); or
 - (b) the expiry of any period specified in the confirmation decision for complying with the requirement being contravened.
- (8) Where a notification under this section has been given to a public communications provider in respect of a contravention of a requirement, the Secretary of State may give a further notification in respect of the same contravention of that requirement if, and only if—
 - (a) the contravention is one occurring after the time of the giving of the earlier notification;
 - (b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or
 - (c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

105Z19 Amount of penalty

- (1) The amount of a penalty that may be specified in a notification under section 105Z18 is such amount as the Secretary of State determines to be—
 - (a) appropriate; and
 - (b) proportionate to the contravention in respect of which it is imposed.
- (2) The amount may not exceed 10 per cent of the turnover of the public communications provider's relevant business for the relevant period, subject to subsection (3).
- (3) In the case of a penalty specified under section 105Z18(7), the amount may not exceed £100,000 per day.
- (4) Where the notification relates to a contravention of a requirement under section 105Z7—
 - (a) subsection (2) has effect as if the maximum amount specified were £10 million; and
 - (b) subsection (3) has effect as if the maximum amount specified were £50,000 per day.

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- (5) The Secretary of State may by regulations amend this section so as to substitute a different maximum penalty for the maximum penalty for the time being specified in subsection (3) or (4)(a) or (b).
- (6) No regulations are to be made containing provision authorised by subsection (5) unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.
- (7) For the purposes of this section—
- (a) the turnover of a person’s relevant business for a period is to be calculated in accordance with such rules as may be set out in an order under section 97(3)(a); and
 - (b) what is to be treated as the network, service, facility or business by reference to which the calculation of that turnover falls to be made is to be determined in accordance with such provision as may be made by an order under section 97(3)(a).
- (8) In this section—
- “relevant business”, in relation to a person, means (subject to the provisions of an order under section 97(3)(a)) so much of any business carried on by the person as consists in any one or more of the following—
- (a) the provision of a public electronic communications network;
 - (b) the provision of a public electronic communications service;
 - (c) the making available of facilities that are associated facilities by reference to such a network or service;
- “relevant period”, in relation to a contravention by a person of a requirement imposed by a designated vendor direction, means—
- (a) except in a case falling within paragraph (b) or (c), the period of one year ending with the 31st March next before the time when notification of the contravention was given under section 105Z18;
 - (b) in the case of a person who at that time has been carrying on that business for a period of less than a year, the period, ending with that time, during which the person has been carrying it on; and
 - (c) in the case of a person who at that time has ceased to carry on that business, the period of one year ending with the time when the person ceased to carry it on.

105Z20 Enforcement of notification

- (1) This section applies where—
- (a) a public communications provider has been given a notification under section 105Z18;
 - (b) the Secretary of State has allowed the provider an opportunity to make representations about the matters notified; and
 - (c) the period allowed for the making of representations has expired.
- (2) The Secretary of State may—
- (a) give the provider a decision (“a confirmation decision”) confirming the imposition of requirements on the provider in accordance with the notification under section 105Z18; or

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- (b) inform the provider that no further action will be taken.
- (3) The Secretary of State may not give the provider a confirmation decision unless, after considering any representations, the Secretary of State is satisfied that the provider has, in one or more of the ways specified in the notification under section 105Z18, contravened—
 - (a) a requirement imposed by a designated vendor direction, or
 - (b) a requirement imposed under section 105Z7, specified in the notification under section 105Z18.
- (4) A confirmation decision must be given to the provider without delay.
- (5) A confirmation decision must include reasons for the decision.
- (6) A confirmation decision may—
 - (a) require immediate action by the provider—
 - (i) to comply with the requirement specified in the notification under section 105Z18, and
 - (ii) to remedy the consequences of the contravention, or
 - (b) specify a period within which the provider must comply with that requirement and remedy those consequences, and may specify the steps to be taken by the provider in order to comply with that requirement or remedy those consequences.
- (7) A confirmation decision may require the provider to pay—
 - (a) the penalty specified in the notification under section 105Z18, or
 - (b) such lesser penalty as the Secretary of State considers appropriate in the light of—
 - (i) any representations made by the provider, and
 - (ii) any steps taken by the provider to comply with the requirement specified in the notification under section 105Z18 or to remedy the consequences of the contravention,
 and may specify the period within which the penalty is to be paid.
- (8) It is the duty of the provider to comply with any requirement imposed by a confirmation decision.
- (9) The Secretary of State may enforce the provider’s duty in civil proceedings—
 - (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
 - (c) for any other appropriate remedy or relief.

105Z21 Enforcement of penalty

- (1) This section applies where a sum is payable to the Secretary of State as a penalty under section 105Z20.
- (2) In England and Wales, the penalty is recoverable as if it were payable under an order of the county court.

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- (3) In Scotland, the 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.
- (4) In Northern Ireland, the penalty is recoverable as if it were payable under an order of a county court in Northern Ireland.
- (5) Where action is taken under this section for the recovery of a sum payable as a penalty under section 105Z20, the penalty is—
 - (a) in relation to England and Wales, 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 county court;
 - (b) in relation to Northern Ireland, 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.”

Commencement Information

II S. 20 in force at Royal Assent, see [s. 28\(1\)\(c\)](#)

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