

2021 No. 1465 (C. 81)

NATIONAL SECURITY

**The National Security and Investment Act 2021
(Commencement No. 2 and Transitional and Saving Provision)
Regulations 2021**

Made - - - - *15th December 2021*

The Secretary of State, in exercise of the powers conferred by section 66(3) and (4) of the National Security and Investment Act 2021(a), makes the following Regulations.

Citation

1. These Regulations may be cited as the National Security and Investment Act 2021 (Commencement No. 2 and Transitional and Saving Provision) Regulations 2021.

Interpretation

2. In these Regulations—

“the 2002 Act” means the Enterprise Act 2002(b);

“the 2021 Act” means the National Security and Investment Act 2021;

“commencement day” means 4th January 2022.

Provisions coming into force on the commencement day

3. The provisions of the 2021 Act, in so far as they are not already in force, come into force on the commencement day.

Transitional and saving provision in relation to the 2002 Act - intervention notices

4.—(1) Paragraph (2) applies where—

(a) before the commencement day, the Secretary of State has given—

(i) an intervention notice under section 42(2)(c) of the 2002 Act;

(ii) a special intervention notice under section 59(2)(d) of that Act; or

(iii) a European intervention notice under section 67(2)(e) of that Act;

(a) 2021 c. 25.

(b) 2002 c. 40.

(c) Section 42(2) was amended by paragraph 82 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c. 24) (“the 2013 Act”).

(d) Section 59(2) was amended by paragraph 101 of Schedule 5 to the 2013 Act.

(e) Section 67(2) was repealed by S.I. 2019/93 subject to the saving and transitional provisions set out in regulation 64 and Schedule 4.

- (b) that notice states that the Secretary of State has reasonable grounds for suspecting that it is, or may be, the case that arrangements are in progress or in contemplation which if carried into effect, will result in the creation of a relevant merger situation or a special merger situation (as the case may be); and
- (c) that notice states that the Secretary of State believes that it is or may be the case that the interests of national security, being a public interest consideration specified in section 58(1) of the 2002 Act, are relevant to the consideration of the merger situation referred to in sub-paragraph (b).

(2) Nothing in the 2021 Act has effect in relation to the proposed merger set out in the notice described in paragraph (1), and, accordingly, the 2002 Act continues to have effect in relation to the proposed merger, disregarding the effect of any amendment made to the 2002 Act by the 2021 Act.

Transitional and saving provision in relation to the 2002 Act – relevant merger situations

5.—(1) Paragraph (2) applies where immediately before the commencement day the Competition and Markets Authority—

- (a) is carrying out its function of deciding whether to make a reference under section 22 or 33 of the 2002 Act in relation to a relevant merger situation in a case where the initial period as defined in section 34ZA(3)(a) of that Act has begun; or
- (b) has made a reference under section 22 or 33(b) of that Act in relation to a relevant merger situation.

(2) The 2002 Act continues to have effect in relation to the relevant merger situation concerned, disregarding the effect of any amendment made to the 2002 Act by the 2021 Act.

15th December 2021

Callanan
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the second commencement regulations made under the National Security and Investment Act 2021 (c. 25) (“the 2021 Act”) and commence the remaining provisions of the Act and make transitional and saving provision.

Regulation 3 brings into force the provisions in the 2021 Act that are not already in force.

Regulation 4 provides that the 2021 Act does not apply to a proposed merger where the Secretary of State has given an intervention notice under sections 42(2), 59(2) or 67(2) of the Enterprise Act 2002 (c. 40) (“the 2002 Act”) in relation to the proposed merger before 4th January 2022 citing national security as the public interest consideration and that the provisions of the 2002 Act continue to apply.

Regulation 5 provides that where, immediately before the commencement date, the Competition and Markets Authority has made a reference under sections 22 or 33 of the 2002 Act or is considering whether to make a such a reference and the initial period as defined in section 34ZA

(a) Section 34ZA(3) was inserted by paragraph 4 of Schedule 8 to the 2013 Act and amended by S.I. 2019/93.

(b) Section 22 was amended by paragraph 67 of Schedule 5 to the 2013 Act and section 33 was amended by paragraph 72 of that Schedule.

of the 2002 Act has commenced, the provisions of the 2002 Act shall apply as if unamended by the 2021 Act.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

The following provisions of the National Security and Investment Act 2021 have been brought into force by commencement regulations made before the date of these Regulations.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Sections 3 and 4	1st July 2021	2021/788
Section 6(2) to (8)	1st July 2021	2021/788
Section 41(9)	1st July 2021	2021/788
Section 53(2) and (3)	1st July 2021	2021/788
Section 59	1st July 2021	2021/788

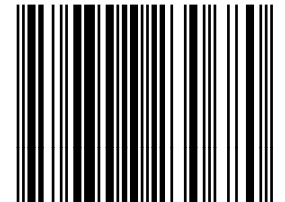
© Crown copyright 2021

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£4.90

<http://www.legislation.gov.uk/id/uksi/2021/1465>

ISBN 978-0-34-823068-0



9 780348 230680