

MEMO# 33729

August 16, 2021

UK Government Announces Effective Date for National Security and Investment Act

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TO: ICI Global Members SUBJECTS: International/Global RE: UK Government Announces Effective Date for National Security and Investment Act

Introduction

On July 20, 2021, the UK Government announced^[1] that the National Security and Investment Act 2021 (NSI Act) will come into force on January 4, 2022.^[2] The NSI Act comprehensively reforms the United Kingdom's foreign investment rules by creating a new self-standing investment review regime that allows the government to scrutinize and intervene in certain acquisitions made by businesses and investors that could harm the UK's national security. The new UK regime is very broad in its scope and powers and is one of the most wide-ranging in the world.^[3]

Key Features

The principal features of the new regime are as follows:

- Transactions in 17 defined sectors will require mandatory notification to, and pre-closing approval from, a new Investment Security Unit (ISU) upon the occurrence of a "trigger event," which will be deemed to give rise to an acquisition of control.^[4] It will be possible to voluntarily submit notifications outside of these sectors (to avoid the risk of "call in").
- Mandatory notification applies to, among other things, acquisitions of more than 25% of shares or voting rights in an entity active in the United Kingdom in an identified relevant sector, or sufficient voting rights to "secure or prevent the passage of any class of resolution governing the affairs of the entity."
- Transactions subject to mandatory notification will be deemed "void" if the required clearance is not obtained. Sanctions for non-compliance include fines of up to five percent of the acquirer's worldwide group turnover and imprisonment for directors.
- The UK Government will also be able to "call in" transactions that are not subject to mandatory notification for in-depth review where it reasonably suspects that they give

rise to a national security risk (including with respect to transactions that have closed since November 12, 2020). The UK Government will have five years to "call in" transactions, reduced to six months if the Government is aware of the transaction. At the conclusion of such an assessment, the UK Government will either clear, impose conditions on, or unwind or block an acquisition.[\[5\]](#)

- The regime has a very broad nexus test - non-UK based entities may be in scope where they (i) carry on activities in the United Kingdom, or (ii) supply goods or services to persons in the United Kingdom.
- There is no "safe harbor" or de minimis threshold for certain types of investors.
- The new regime will operate in parallel to other UK regulatory requirements, including the Takeover Code, export control, and merger control under the Enterprise Act 2002.

Further Guidance

To help investors and businesses prepare for the commencement of the regime, the UK Government published a series of guidance notes and materials:[\[6\]](#)

- Draft notifiable acquisition statutory instrument, which refines further the 17 sectors of the economy in which qualifying investments will be subject to mandatory notification requirements. The Government expects to introduce these regulations to Parliament later this year, followed by further guidance regarding the mandatory sectors.
- Draft statement on the use of the "call in" power, which sets out how the UK Government expects to exercise its "call in" power. The Government is seeking feedback on the draft statement until August 30, 2021.
- General guidance regarding the new regime, setting out how parties should prepare for the commencement of the NSI Act, including what types of acquisitions are covered, in what circumstances parties will need to inform the Government about an acquisition, and how the Government will scrutinize an acquisition.
- Guidance on how the NSI Act could affect people or acquisitions outside the United Kingdom, setting out what type of acquirers outside the United Kingdom are covered by the NSI Act and what would put an acquisition in the scope of the Act.
- Guidance on the NSI Act alongside other regulatory requirements, providing further information regarding how the Act will interact with the following regulations:
 - Enterprise Act
 - Competition and Markets Authority
 - Export Control Joint Unit
 - Takeover Code
 - Financial Conduct Authority; and
 - Prudential Regulation Authority
- Guidance for the higher education and research-intensive sectors on how to prepare for the new rules.

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endnotes

[\[1\]](#) See press release:

<https://www.gov.uk/government/news/new-and-improved-national-security-and-investment-act-set-to-be-up-and-running>.

[2] The text of the NSI Act is available at <https://www.legislation.gov.uk/ukpga/2021/25/contents/enacted>.

[3] On January 7, 2021, ICI Global submitted a letter on the draft rules. See ICI Memorandum No. 33029, dated January 7, 2021, available at <https://www.ici.org/memo33029>, which provides information about our comment letter on the draft rules, and ICI Memorandum No. 33174, available at <https://www.ici.org/memo33174>, regarding the UK Government's response to the consultation on the NSI Act.

[4] The defined sectors are: Advanced Materials; Advanced Robotics; Artificial Intelligence; Civil Nuclear; Communications; Computing Hardware; Critical Suppliers to Government; Cryptographic Authentication; Data Infrastructure; Defence; Energy; Military and Dual-Use; Quantum Technologies; Satellite and Space Technologies; Suppliers to the Emergency Services; Synthetic Biology; and Transport.

[5] Acquisitions of assets, including intellectual property and land, can be called in for review, but are not subject to mandatory notification.

[6] The guidance notes are available at <https://www.gov.uk/government/collections/national-security-and-investment-bill>.