

Bird & Bird & the National Security and Investment Act 2021 (NSIA)

The new UK regime for regulating foreign investment in strategically sensitive UK businesses

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<https://www.legislation.gov.uk/ukpga/2021/25/contents/enacted>

Sectors in scope



The Regulations listing the in-scope sectors run to 44 pages – the list below is intended only as a summary and reference should be made to the full Regulations for a definitive view.

17 sectors are "in scope"

A trigger event is subject to mandatory notification where it involves an entity carrying on one of the following "in scope" activities in the UK:

-  **Advanced materials** – research, development and production of a range of materials, including advanced composites, certain metals and alloys, polymers, ceramics, technical textiles, metamaterials, semiconductors, photonics and optoelectronics, graphene, nanotechnology and various critical materials.
-  **Advanced robotics** – development and production of advanced robotic machines and their core components – autonomous action and/or collection/storage/communication of significant volumes of high-fidelity data.
-  **Artificial intelligence** – research into AI, or development of goods, software of technology using AI, for identifying or tracking objects, people or events, advanced robotics or cybersecurity.
-  **Civil nuclear** – holding various licences in respect of nuclear sites or material, or holding certain nuclear-related information.
-  **Communications** – provision of a public electronic communications network or services where UK group turnover > £50 million, operation of active network elements, certain domain name services, repair or maintenance of submarine cables/landing stations.
-  **Computing hardware** – creation, supply etc of IP relating to computer processing chips or their design or code, memory, or fabrication or packaging of computer processing chips or memory, management of roots of trust.
-  **Critical suppliers to government** – government supplier required to process or store SECRET/TOP SECRET material, hold List X accreditation or have Security Check cleared staff.
-  **Cryptographic authentication** – research, development or production of non-consumer focused cryptographic authentication.
-  **Data infrastructure** – owning, operating, managing, having access to data infrastructure used by designated critical public authorities.
-  **Defence** – government defence or national security contractor/sub-contractor, or holds classified material.
-  **Energy** – large-scale oil or gas production, import or processing, individual electricity generation asset > 100 MW, or combined generating capacity/load/supply/demand aggregation of target and acquirer > 1 GW.
-  **Military and dual-use** – restricted goods and technology - products and technology whose export or transfer is governed by export control legislation.
-  **Quantum technologies** – the development or production of quantum technology: quantum communication, connectivity, imaging, sensing, etc, information processing and quantum resistant cryptography.
-  **Satellite and space technology** – manufacture etc of satellites, launch vehicles and components, and provision of a range of space- and satellite-related infrastructure, services, eg. communications, surveillance, tracking etc.
-  **Suppliers to the emergency services** – provision of a wide range of products and services to police, ambulance and fire services.
-  **Synthetic biology** – research, development, production of goods, involving synthetic biology - the process of applying engineering principles to biology to design, redesign or make biological components or systems that do not exist in the natural world, for a very wide range of applications.
-  **Transport** – operating ports, harbours, airports, air traffic control.

The National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021 <https://www.legislation.gov.uk/uksi/2021/1264/schedule/16/made>

Out of scope of mandatory notification

Activity falling outside the 17 sectors.

Trigger events (NB include intra-group transactions)

Completion of transaction prior to 12 November 2020 – no action.

Trigger event between 12 November 2020 and 3 January 2022:

- if Secretary of State became aware of trigger event before 4 January 2022, call-in notice by 4 July 2022;
- if Secretary of State became aware of trigger event on or after 4 January 2022, call-in notice by 6 months after Secretary of State becoming aware of trigger event, up to max 5 years after trigger event.

Trigger event on or after 4 January 2022 - call-in notice by earlier of:

- 6 months after Secretary of State becoming aware of the trigger event; and
- (unless acquirer was required to submit mandatory notice, and failed to do so) 5 years after trigger event.

Section 2

Notification/investigation

Qualifying entity

Any entity that is not an individual, including a company, LLP, other body corporate, partnership, unincorporated association and trust.

An entity formed or recognised outside the UK is a qualifying entity if it carries on activities in the UK or supplies goods or services to persons in the UK.

Section 7(1) to (3)

Acquisition of control?

An increase in the percentage of shares or voting rights held by the acquirer in the entity:

- from 25% or less to more than 25%;
- from 50% or less to more than 50%; or
- from less than 75% to 75% or more.

Acquisition of the ability to pass or block any class of resolution governing the affairs of the entity.

Section 8(2), (5) and (6)

Acquisition of material influence?

Acquisition of ability to exercise material influence over the policy of the entity, where the acquirer does not already have that ability.

Section 8(8)

Acquisition of a qualifying asset

Acquisition (with minor exceptions) of any of the following types of assets, if located in the UK, or if located outside the UK and used in connection with activities carried on in the UK, or the supply of good or services to persons in the UK:

- land;
- tangible moveable property; and
- ideas, information or techniques which have industrial, commercial or other economic value, e.g. IP, databases, designs, software and formulae.

Section 7(4)-(6)

Mandatory notification

Acquirer must notify the Secretary of State before acquiring control.

Secretary of State must decide as soon as practicable whether the notice is complete.

Secretary of State must decide within 30 working days of notifying the acquirer that the notice is complete whether to:

- confirm that no further action will be taken; or
- issue a call-in notice.

Completion without the approval of the Secretary of State makes the transaction void (and criminal offence).

Sections 6, 14

Voluntary notification

Acquirer may notify the Secretary of State before or after acquiring control. Secretary of State must decide as soon as practicable whether the notice is complete.

Secretary of State must decide within 30 working days of notifying the acquirer that the notice is complete whether to:

- confirm that no further action will be taken; or
- issue a call-in notice.

Section 18

Call-in notice (in-depth review) – whether or not notified

Secretary of State may publish statement on factors relevant to the exercise of call-in, following consultation and parliamentary approval. Approved statement here: <https://bit.ly/3H4DNug>

Secretary of State may call in a completed or proposed acquisition following a mandatory or voluntary notification, or where it has not been notified. Secretary of State must have regard to the statement.

Secretary of State may require the production of information and attendance of witnesses.

Secretary of State may impose an interim order during the assessment, to prevent or reverse pre-emptive action.

Secretary of State must, within 30 working days of call-in (+ extension by 45 working days where the Secretary of State reasonably believes that there is a risk to national security), and/or additional period(s) agreed with the acquirer, decide whether to:

- confirm that no further action will be taken; or
- make an order prohibiting/requiring certain conduct, appointing a person to conduct or supervise activities and/or prohibiting disclosure of the contents of the order.

Clock stops during information requests/if witnesses requested.

Sections 1-4, 19-22, 23-29

No trigger event

No acquisition of control/material influence, or qualifying asset.

No action

No action under the NSIA.

Enforcement and appeal

Sections 32-51