

## UK Government Publishes Second Annual Report on National Security and Investment Regime

July 20, 2023

On 11 July 2023, the UK government published its [second annual report](#) on the operation of the UK's National Security and Investment (NSI) regime. The report covers the period from 1 April 2022 to 31 March 2023, making it the first report to cover a full year since the regime came into force on 4 January 2022. Overall, the second annual report reaffirms the general conclusions from the first report published in June 2022 ([see Cooley's client alert coverage](#)) indicating that the regime appears to be operating well, with the vast majority of clearances obtained within the statutory time frame. No penalties have been imposed for noncompliance, and there have been no criminal prosecutions or judicial reviews of decisions under the new regime.

Strikingly, however, over the past year, the government has intervened on 15 occasions, with the issue of final orders to block, unwind or impose conditions on acquisitions, which is higher than initially anticipated and higher than the intervention rate of other UK regulatory regimes, such as merger control.

Significant highlights from the report include:

- The government received 866 notifications during the period – 671 mandatory, 180 voluntary and 15 retrospective validation applications. This is fewer than the 1,000 to 1,830 notifications per year that the government had originally estimated.
- The majority of notifications (60%) related to investment from the UK, followed by investment from the US, France, Canada and Germany. Investment from China represented less than 5% of accepted notifications, confirming once again the buyer-agnostic approach of the UK regime. The defence sector represented the highest proportion of mandatory and voluntary notifications, which is perhaps unsurprising given the breadth of the “defence” sector definition under the NSI rules, which stretches beyond nonmilitary applications.
- Both mandatory and voluntary notifications were accepted as complete within four working days (median), with the vast majority (93%) of notifications cleared within a 30-working day review period.
- Of the 866 notifications received, 43 were rejected, with the principal reason being use of the wrong form (i.e., parties using a mandatory notification form for a voluntary notification).
- Sixty-five transactions were called in for further review, which again is slightly lower than the 70 to 95 call-ins originally estimated by the government.
- The majority (37) of the call-ins emanated from mandatory notifications, 17 were from voluntary notifications, one transaction was called in after being retrospectively notified and 10 were called in from non-notified transactions. The vast majority concerned targets active in the sectors of military and dual use (37%), defence (29%) and advanced materials (29%).
- More than 40% of deals called in for further assessment related to investment from China, followed by 32% from the UK and 20% from the US.
- Out of the 65 transactions called in, the government used the additional 45 working days to complete its assessment in more than 40% of transactions and an additional ‘voluntary period’ (i.e., a time period agreed between the Secretary of State and the acquirer) in at least 15% of cases. However, the reported time frame does not consider information notices and/or attendance notices that were issued during the assessment period, which will pause the clock, meaning that the actual time frame for assessing called-in transactions may be much longer in reality.
- The vast majority (nearly 80%) of called-in transactions were cleared via a final notification (i.e., without remedies).

- Fifteen final orders (remedies or prohibition decisions) were issued during the period, with five blocked and the remaining 10 subject to conditions (one of which was ultimately revoked). The main sectors affected were military and dual use, communications, energy, defence, computing hardware and advanced materials. More than half of the final orders (eight out of 15) related to investment from China – four clearances subject to conditions and four prohibitions. The fifth prohibition related to an investment from Russia. The majority of the prohibitions (three out of five) were made after Grant Shapps became Business Secretary in October 2022.

## What does this all show?

Reflective of our experience to date, the findings in the annual report show that the government is able to clear the vast majority of transactions within the initial 30-working day screening period and is not afraid to use its powers under the regime to call in non-notified transactions and/or to extend time periods.

Interestingly, in the last 12 months, 15 final orders were issued out of 866 notified transactions – i.e., less than 2% of cases. The NSI regime therefore casts a wide net to ultimately intervene in a small minority of transactions. This raises the question of whether the regime is correctly calibrated to achieve the government's stated objective of being as 'business-friendly and pro-investment as possible'.

Moreover, while the regime is country-agnostic and applies equally to UK and foreign investments, it is striking that notifications from Chinese investors represented less than 5% of total notifications yet the majority of call-ins and four out of the five prohibition decisions. This mismatch again raises the question of whether the regime effectively captures deals raising national security risks while otherwise preserving an open investment environment.

Finally, while the annual report provides some helpful additional information that goes beyond what is required under statute, it is noted that it does not discuss the government's approach to remedies, nor the substance of the NSI review process, including engagement with parties and third parties. While this is not totally unsurprising, it means that there is still a long way to go to ensuring transparency and predictability about the regime.

Please reach out to us if you have any questions about the UK NSI regime.

*Cooley trainees Athina Gaki and Arsalan Shamsuddin also contributed to this alert.*

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## Key Contacts

Christine Graham London	cgraham@cooley.com +44(0) 20 7556 4455
Anna Caro London	acar@cooley.com +44 20 7556 4329

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