

UK Government Publishes Response to Call for Evidence on National Security and Investment Regime

May 14, 2024

On 18 April 2024, the UK government published the [response to its call for evidence consultation](#) on the functioning, scope and performance of the UK National Security and Investment (NSI) Act. Please refer to [our November 2023 alert outlining the key topics under consultation](#), as well as [our February 2024 response](#) to the consultation.

While the initial consultation document emphasised the desire to be as pro-business and pro-investment as possible to minimise the burden placed on companies and investors, the response to the NSI call for evidence places a stronger emphasis on the UK government's ability to scrutinise and intervene in transactions that could harm the UK's national security. The focus is very much on fine-tuning the regime to ensure that it adapts to changing realities and keeps ahead of the national security risks facing the UK. As such, while the response to the call for evidence sets out five proposed actions that will be taken forward by the UK government, these are better characterised as 'tweaks', rather than fundamental changes to the NSI regime.

Below, we summarise the key themes from the response, along with next steps.

What are the key themes and proposed actions?

Based on the 110 full responses to the call for evidence, the UK government has set out five key actions that it will focus on in the next six months:

1. The UK government will publish revised guidance on the exercise of its 'call-in' powers as set out in its Section 3 statement.

- Under the NSI Act, the UK government has the power to 'call-in' a large number of transactions for review, even when the mandatory filing thresholds are not met.
- The responses to the call for evidence included requests for more transparency and clarity on how the UK government exercises this 'call-in' power – in particular, how it assesses the national security risks of a transaction and what areas of the economy it considers most sensitive. The UK government will publish updated guidance (an updated Section 3 statement) covering these aspects.
- Despite some respondents' requests, the UK government also clarified that it would not introduce a fast-track process for certain types of acquirers at this stage, noting that transactions need to be reviewed on a case-by-case basis even where, for example, an acquirer has already had a prior transaction cleared through the NSI system.
- The updated guidance should offer welcome insight into the current national security priorities of the UK government and provide businesses with more certainty on the risk of intervention on particular proposed transactions.

2. The UK government will publish updated market guidance in May 2024.

- In response to requests from respondents, the UK government expects to publish further guidance covering the application of the NSI Act to transactions involving academia and outward direct investment.
- This updated guidance is expected to be published in May 2024.

3. The UK government will launch a public consultation on the 17 sectors subject to mandatory notification by summer 2024.

- Under the NSI regime, certain transactions involving companies with activities in one or more of 17 specified sensitive sectors must be notified to and cleared by the UK government before closing.

- The call for evidence sought feedback from respondents on the addition of two further sectors, as well as on other changes to clarify the scope of the existing sectors.
- Sixty-three percent of respondents provided feedback on this point and requested clearer definitions and/or guidance in relation to a number of the 17 specified sectors. In particular, clearer explanations for the sector definitions of 'Artificial Intelligence' and 'Advanced Materials' were requested, and additional guidance for 'Defence' and 'Critical Suppliers to Government' was also invited.
- In response, the UK government will launch a formal public consultation on updating the mandatory sector definitions by summer 2024. This will include proposals for a stand-alone 'Semiconductor' sector and a 'Critical Minerals' area, and views also will be sought on the possibility of adding 'Water' as a sector subject to mandatory notification.

4. The UK government will consider 'technical' exemptions to the mandatory notification thresholds.

- Noting the current breadth of the regime, the UK government requested feedback on whether the appointment of liquidators, internal reorganisations, Scots law share pledges and investments by public bodies should be exempt from mandatory notification requirements.
- In response to the feedback received, the UK government intends to bring forward secondary legislation to exempt the appointment of liquidators, official receivers and special administrators from the scope of the mandatory regime in autumn 2024 (subject to parliamentary time).
- However, with regard to making targeted exemptions for certain internal reorganisations, Scots law share pledges and transactions by public bodies, the UK government has signalled that further work is required to understand the feasibility of exempting these from the ambit of the NSI regime. It is anticipated that the Investment Security Unit (the body responsible for administering the NSI regime) will undertake a national risk assessment to understand whether exemptions for these transactions are feasible, and whether they can be designed in such a way that they do not compromise the integrity of the NSI Act.

5. The UK government will consider further improvements to the operation of the NSI system.

- The call for evidence welcomed feedback on the operation of the NSI regime in practice – including operational processes and notification forms.
- With several respondents calling for greater transparency around the operation of the system, the UK government will consider whether it is able to implement improvements based on the feedback received.
- In addition, more than half of respondents opposed the UK government's proposal to request additional information through the notification forms, and the UK government has signalled that it will carefully consider this feedback before making any future changes to the forms.

What does this mean for businesses?

Despite symbolic nods to minimising the burden on businesses in the response to the call for evidence, we do not expect significant changes to the scope or operation of the NSI regime in practice.

While most transactions will likely continue to be cleared within the initial review period of 30 working days, the regime will remain broad in its application and capture a large number of transactions which do not raise UK national security concerns.

We also can expect the UK government to keep the scope of the regime under ongoing review, ensuring that it remains fit for purpose and taking into account developments in sensitive technologies, as well as potentially evolving threats to UK national security. With tougher investment rules across the US and the European Union, we can only expect the UK to follow and strengthen its screening processes.

If you require any further information on the UK government's proposals, or guidance on the UK NSI regime more generally, please contact a member of the Cooley team below.

Cooley trainee solicitor Mo Swart also contributed to this alert.

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Key Contacts

Anna Caro London	acar@cooley.com +44 20 7556 4329
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