

The Countdown Is On: UK National Security and Investment Act to Come Fully Into Force on January 4, 2022

July 28, 2021

On July 20, 2021, the UK government announced that the National Security and Investment Act 2021 (NSI Act) will come fully into force on January 4, 2022. From that date, certain investments or acquisitions of qualifying entities in 17 specified sectors will be subject to mandatory notification. The Secretary of State will also have the retrospective power to “call-in” certain transactions that closed on or after November 12, 2020. Businesses and investors are urged to get ready for what is regarded as the biggest shake-up of the UK’s national security regime in more than 20 years.

Key takeaways

Beginning January 4, 2022:

- Investors and businesses will have to notify acquisitions of qualifying entities active in one or more of the 17 defined sensitive sectors of the UK economy before they can complete it. Notification will be made to a dedicated government unit – the Investment Security Unit (ISU) – via a digital portal. The 17 sectors in scope are set out in a draft notifiable acquisition statutory instrument. The definitions remain broadly the same as the drafts in the UK government’s response to mandatory notification sectors consultation, but with more substantive changes to the sector definitions of communications and energy.
- The 17 specified sectors are advanced materials, advanced robotics, artificial intelligence, civil nuclear, communications, computing hardware, critical suppliers to government, cryptographic authentication, data infrastructure, defense, energy, military and dual-use, quantum technologies, satellite and space technologies, suppliers to the emergency services, synthetic biology and transport.
- The Secretary of State will have the power to “call-in” transactions across the wider economy that were not notified to the Government if they raise national security concerns. This power will apply retroactively to acquisitions that closed on or after November 12, 2020, as well as those in progress or being contemplated. It will catch both qualifying entities and qualifying assets. The UK government has issued a statement on how it expects to exercise the “call-in” option, underlining that it “may only be used in respect of the small number of acquisitions that give rise to or may give rise to a risk to national security,” and that “the NSI Act is not a system for screening all acquisitions in the economy.” A consultation on this statement has been launched, with a response deadline of August 30, 2021.
- Transactions involving non-UK entities (i.e., those formed under the law of a country outside the UK) may also be captured by the new rules, and the UK government has issued guidance explaining the circumstances in which this may be the case. A foreign entity may be relevant for the purposes of the NSI Act if it:
 - Supplies goods or services to the UK
 - Carries out research and development in the UK
 - Has an office in the UK from which it carries on activities
 - Oversees the activities of a subsidiary carrying on activities in the UK, unless it is independent from the parent entity being acquired
 - Supplies goods to a UK hub that sends the goods to other countries, unless the hub only places orders for goods to be sent to other countries

Additional UK government guidance

The UK Government is urging businesses and investors to get ready for the changes and has published

guidance to assist including the following:

- [Guidance on preparing for the new rules](#) provides an overview of the NSI Act and identifies the types of acquisitions covered by the new rules, whether a notification is triggered and how the UK government will scrutinise a transaction.
- [Guidance on the NSI Act alongside regulatory requirements](#) explains how the NSI Act interacts with other regulations, such as the Enterprise Act 2002, Export Control rules and the Takeover Code. In particular, under the Enterprise Act 2002, the UK government will maintain the power to intervene in mergers and acquisitions that raise public interest concerns in relation to the stability of the UK financial system, public health emergencies and media plurality. In relation to competition assessments, the Competition and Markets Authority (CMA) will remain the independent authority in charge of these evaluations. If there are grounds for an acquisition to be considered for both competition and national security reasons, the ISU is expected to work closely with the CMA to manage the case.
- [Guidance for the higher education and research-intensive sectors](#) covers the creation of research centers, the establishment of university spinout companies, and private funding to employees or students in the context of research programs. It also provides examples of transactions in these sectors that may be covered by the new regime, including:
 - Contract research agreements between a UK university and a foreign corporation where the foreign operator will be entitled to the IP generated
 - Certain types of acquisitions involving a UK university's subsidiary operating in one the 17 specified sectors
 - Collaborative agreements between academic institutions where one acquires the right to use the background IP of the other
 - Collaborative research contracts between UK academic institutions and private companies where the latter gain access, even by means of a nonexclusive license, to the generated IP

Further guidance is expected to follow later this year. For more details about the NSI Act, please refer to our [November 2020](#) and [May 2021](#) Cooley alerts. Please reach out to us if you would like to discuss the implications of the new regime for your business.

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