

UK Government Consulting on National Security and Investment Regime

November 30, 2023

Just shy of two years since the UK National Security and Investment (NSI) Act entered into force, on 13 November 2023, the UK government published a Call for Evidence on the functioning, scope and performance of the regime. While the UK government is not anticipating any changes to the primary legislation (such as the thresholds for mandatory notification), the government is keen to hear views on:

- Whether targeted exemptions to the mandatory filing thresholds may be appropriate.
- Whether there are activities within the 17 specified sectors that are unlikely to create national security risks.
- How it can improve the operation of the NSI Act, particularly regarding the transparency of the process and communications between affected parties and the Investment Security Unit, the body responsible for administering the NSI regime in the UK.

Interested parties also are encouraged to give NSI-related feedback beyond the areas specified in the Call for Evidence. There is a free text box within the survey designed to allow respondents to provide their additional views and suggestions.

The government's desire to further improve and refine the operation of the UK NSI regime is to be welcomed, particularly at a time when other governments are looking to strengthen their foreign direct investment regimes. It also shows that the UK government is taking a dynamic and forward-looking approach to managing national security risks in light of geopolitical and economic challenges.

All interested stakeholders have until 15 January 2024 to share their views.

Below, we summarise the main areas under consideration and how interested parties can make their views known.

Hundreds of deals reviewed but very few interventions – current mismatch explained

The NSI Act 2021 came into force on 4 January 2022 and allows the UK government to scrutinise and – if necessary – intervene in a very broad range of deals and investments on UK national security grounds. While the regime casts a very wide net, with more than 850 notifications reviewed between 1 April 2022 and 31 March 2023, the vast majority of notified transactions cleared within 30 working days, with only a handful subject to conditions or ultimately blocked.

The Call for Evidence is therefore an opportunity for the government to hear views on how the NSI regime could be more business-friendly, while maintaining and refining the essential sectors needed to protect UK national security. This is consistent with the government's approach to the consultation which advocates for a 'small garden, high fence' approach – with a view to capturing only a small number of deals which genuinely raise UK national security concerns.

The Call for Evidence also coincides with the publication of the Harrington Review of Foreign Direct Investment on 22 November 2023, which seeks greater clarity from the UK government on its foreign investment strategy and a firmer commitment to various strategic measures intended to boost investor confidence in the UK. Together, these initiatives illustrate how the UK is entering a critical period, as it tries to position itself as an attractive destination for foreign investment while at the same time managing potential threats to its national security.

Overview of the Call for Evidence

The Call for Evidence is divided into six sections. Importantly, respondents do not have to complete all sections of the survey in order to submit their views, and they also can start, save and resume their response as needed.

Key sections worth noting are:

- **Section 4:** This section asks respondents about the impact of the NSI regime on their investments and their approach to investments. In particular, the government is keen to hear from investors and businesses on whether they have changed their investment strategy as a result of the NSI Act.
- **Section 5:** This section seeks input on the scope of the NSI regime. In particular:
 - **Targeted exemptions:** The government is considering whether some targeted exemptions to the mandatory notification regime may be appropriate; for example, where the transaction tends to give either minimal levels of control or does not present any real change in control, such as **internal reorganisations**. Currently, internal reorganisations require mandatory notification even where there is no change in the ultimate beneficial owner. The government is considering whether to exclude low-risk internal reorganisations from the scope of the mandatory notification regime, whilst ensuring that it remains aware of certain higher-risk reorganisations that warrant government scrutiny. To this end, stakeholders are being asked to provide input on how different types of reorganisations influence control.
 - **Refining the sectors in scope:** The government has asked for feedback on whether there are aspects of the 17 mandatory sectors which are very unlikely to create national security risks – or where compliance with mandatory notification places substantial burdens on businesses and investors. Respondents are invited to provide feedback on the following mandatory sectors, amongst others:
 - Clarifying the scope of **Advanced Materials** and **Critical Suppliers to Government**.
 - Simplifying the definition of **Synthetic Biology**.
 - Refining the scope of **Artificial Intelligence (AI)** and moving certain AI activities which do not present national security risks out of scope. At the same time, the government is asking for views on whether to include new areas such as ‘generative AI’.
 - Expanding the scope of **Communications** to cover smaller networks with less than £50 million in UK turnover.
 - Clarifying and expanding the scope of **Data Infrastructure** to cover colocation data centres.
 - Refining and clarifying the scope of **Defence** to reduce the likelihood of capturing acquisitions that do not raise national security concerns and further increasing the understanding within the sector of what activities are captured.
 - Updating **Energy** to add multipurpose interconnectors in line with the Energy Act 2023.
 - Clarifying and expanding the scope of **Suppliers to the Emergency Services** – in particular, whether subcontractors providing sensitive services to the emergency services or requiring access to sensitive locations should be brought within scope of mandatory notification.
- **Additional sectors:** The government also is considering adding **Semiconductors** and **Critical Minerals** as new mandatory stand-alone sectors. Interestingly, both sectors are currently caught under the regime, but the government is considering whether stand-alone sectors would provide further clarity.
- **Section 6:** This section is focused on the operation of the NSI Act and how the government can improve transparency and communications with parties.

Next steps

The consultation closes on 15 January 2024. The government will assess the responses received and expects that – at least for certain proposals – a more detailed consultation will follow. This will likely entail sharing iterative drafts at the consultation stage and working with sector experts to ensure that any proposed changes are correct. In this context, the government also is looking to hold follow-up conversations with any respondents who are willing to be contacted to discuss their views, and respondents can leave their contact details in the survey for this purpose. Although no definitive timeline has been provided, we would expect any additional consultations in the second half of 2024, as the government will be working towards publishing its review of the 17 sectors before 4 January 2025.

Outlook

The responses to this Call for Evidence will be used to inform the government's review of the 17 mandatory sector definitions, with a view to refining and supplementing them as needed. The Call for Evidence also will assist the government in identifying opportunities to improve and streamline the NSI notification and assessment process to minimise burdens for businesses.

The terminology employed by the government in launching the consultation is notable and demonstrates how the government is well attuned to the activities in the US and European Union in this dynamic and evolving area. In particular, in the opening paragraph, there are three references to 'economic security', which is at the heart of the EU's new European Economic Security Strategy (see [our related October 2023 alert](#)). Also, similar to how US officials have described their method to outbound investment screening rules, the government referred to the UK's investment screening regime as a 'small garden, high fence' approach.

Whatever the motivation behind this timely consultation, now is a time to shape the future of the UK's NSI regime. It is vitally important that the government hear from as many different stakeholders and interested parties as possible. **The deadline for submitting responses to the [Call for Evidence](#) is 15 January 2024.** If you would like any assistance in responding, or on the application of the NSI regime more generally, please do not hesitate to contact any of the lawyers below.

Cooley trainee Olivia Anderson also contributed to this alert.

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