



Department for
Business, Energy
& Industrial Strategy

National Security and Investment Act 2021:

Draft statement for the purposes of section 3

Introduction

1. This statement is made under section 3 of the National Security and Investment Act 2021 (“the NSI Act”). It sets out how the Secretary of State expects to exercise the power to give a call-in notice. An acquisition can be called in for assessment if the Secretary of State reasonably suspects the acquisition has given, or may give, rise to a risk to national security; or arrangements are in progress or contemplation which, if carried into effect, will result in an acquisition that may give rise to a risk to national security. The acquisition must also meet certain criteria to be a qualifying acquisition under the NSI Act. The Government may then clear the acquisition, impose certain conditions or, if necessary, block it completely.
2. This statement gives as much detail as is possible on how the Secretary of State expects to use the call-in power, given the sensitivity of national security. This statement must be reviewed by the Secretary of State every five years and may be reviewed more frequently.
3. This statement refers to “qualifying acquisitions”, which means those acquisitions that the Act defines as “trigger events.” It is hoped that this will aid readability and general understanding. Separate guidance on the scope of qualifying acquisitions is [available here](#).

National Security and Investment Act 2021 and the call-in power

4. The Act intentionally does not set out the circumstances in which national security is, or may be, considered at risk. This reflects longstanding Government policy to ensure that national security powers are sufficiently flexible to protect the nation.
5. Each qualifying acquisition will be assessed on a case-by-case basis, taking account of all relevant considerations and with regard to the risk factors set out below. This applies to all qualifying acquisitions, whether they involve parties only within the UK or also involve parties overseas.
6. The call-in power will not be used to interfere arbitrarily with investment. The UK has a proud record as one of the most open economies in the world and the Secretary of State’s use of the call-in power will not change that. The UK remains firmly open to investment and the Government wants the UK to be the best place in the world to work and do business.

Areas of the economy in which qualifying acquisitions are most likely to give rise to a risk to national security and most likely to be called in

7. Qualifying acquisitions across the whole economy are in scope of the NSI Act but the call-in power 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. The NSI Act is not a system for screening all acquisitions in the economy.
8. Qualifying acquisitions in the 17 areas of the economy listed below are subject to mandatory notification because of their particular sensitivity. As a result, acquisitions

in these areas could be more likely to be called in as these are considered to be areas in which risks to national security could be more likely to arise.

9. The National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021 (“the Notifiable Acquisition Regulations”) describe the activities carried out by qualifying entities in the 17 areas of the economy, which must be notified to the Secretary of State.
10. List of 17 areas of the economy:
 - a. Advanced Materials
 - b. Advanced Robotics
 - c. Artificial Intelligence
 - d. Civil Nuclear
 - e. Communications
 - f. Computing Hardware
 - g. Critical Suppliers to Government
 - h. Cryptographic Authentication
 - i. Data Infrastructure
 - j. Defence
 - k. Energy
 - l. Military and Dual-Use
 - m. Quantum Technologies
 - n. Satellite and Space Technologies
 - o. Suppliers to the Emergency Services
 - p. Synthetic Biology
 - q. Transport
11. In addition, acquisitions in areas of the economy which are closely linked to these 17 areas but are not subject to mandatory notification (for example, they are related to transport but are not strictly within scope of the definition of transport given in the regulations) could be of interest to the Secretary of State and acquisitions in these areas could be more likely to be called in than other areas of the economy.
12. Qualifying acquisitions which occur outside the above areas of the economy subject to mandatory notification are unlikely to be called in as national security risks are expected to occur less frequently in these areas.
13. Qualifying acquisitions that do not fall within the Notifiable Acquisition Regulations are not required under the NSI Act to be notified to the Secretary of State and instead parties involved in the acquisition may choose to notify voluntarily. Parties may make a voluntary notification to the Secretary of State regarding an acquisition if they wish to be certain whether the acquisition may be called in.

Factors the Secretary of State will take into account when deciding whether or not to exercise the call-in power

Risk Factors

14. In order to assess the likelihood of a risk to national security being caused by a qualifying acquisition (and therefore whether to call in the acquisition), the Secretary of State expects to consider primarily three risk factors, explained below.
15. The risk factors will be considered together, but an acquisition may be called in if any one risk factor raises the possibility of a risk to national security.
16. The risk factors are:
 - a. Target risk
This concerns whether the target of the qualifying acquisition (the entity or asset being acquired) is being used, or could be used, in a way that poses a risk to national security.
 - b. Acquirer risk
This concerns whether the acquirer has characteristics that suggest there is, or may be, a risk to national security from the acquirer having control of the target.
 - c. Control risk
This concerns whether the amount of control that has been, or will be, acquired through the qualifying acquisition poses a risk to national security. A higher level of control may increase the level of national security risk.
17. The Secretary of State expects to exercise the call-in power where one or more of these risk factors has brought about, or is likely to bring about, one or more risks to national security.
18. For most qualifying acquisitions, the overall consideration of these risks is expected to indicate a low risk to national security.

Risk factors explained

Target risk

19. The target of a qualifying acquisition is the qualifying entity or qualifying asset that has been or will be acquired. In assessing the target risk, the Secretary of State will consider what the target does, is used for, or could be used for, and whether that has given rise to, or may give rise to, a risk to national security. Assessment of the target risk may also involve consideration of any national security risks arising from the target's proximity to sensitive sites.
20. The Secretary of State considers this to be most likely for certain acquisitions of qualifying entities within 17 areas of the economy (these acquisitions are set out in the notifiable acquisition regulations and are subject to mandatory notification) or in areas of the economy closely linked to those acquisitions.

Acquirer risk

21. The Secretary of State will consider whether the acquirer poses a risk to national security. Characteristics of the acquirer such as the sector(s) of activity, technological capabilities and links to entities which may seek to undermine or threaten the interests of the UK, including the integrity of the UK's democracy, the UK's public safety, the UK's military advantage and the UK's reputation or economic prosperity, are likely to be considered in order to understand the level of risk the acquirer may pose. Some characteristics, such as a history of passive or longer-term investments, may indicate low or no acquirer risk.
22. In assessing an acquirer, the Secretary of State may consider several factors, including:
 - a. the ultimate controller of an acquirer, or if the acquirer can be readily exploited;
 - b. whether the acquirer may pose a risk to national security in the light of their pre-existing holdings;
 - c. whether the acquirer, or their ultimate controller, has committed, or is linked to, criminal or illicit activities that are related to national security, or activities that have given rise to or may give rise to a risk to national security.
23. If an acquirer has links to entities which may seek to undermine or threaten the interests of the UK, this does not automatically mean that their acquisition(s) will be called in.

Control risk

24. The control risk refers to the amount of control the acquirer gains of an entity's operational business or future strategy. It also concerns the amount of control over an asset, which includes controlling or directing its use, as well as using it.
25. The Secretary of State will consider whether the amount of control acquired through a qualifying acquisition has given rise to, or may give rise to, a risk to national security. A large amount of control may increase the possibility of a target being used to harm national security. Additionally, a large amount of control may enable parties to reduce the diversity of a market, or influence the market's behaviour, in a way that may give rise to a risk to national security. In such cases, the acquisition is more likely to be called in. The Act does not set out percentage thresholds for determining whether the acquisition of an asset is a qualifying acquisition, unlike the acquisition of entities which have detailed thresholds set out in section 8 of the Act.
26. The control risk will be assessed alongside the target and acquirer risk. This is because when the target or acquirer risk is low, the Secretary of State is less likely to be concerned about the amount of control acquired.
27. The Secretary of State will not make assumptions based on an acquirer's country of origin. However, an acquirer's ties or allegiance to a state or organisation which is hostile to the UK will be considered when assessing whether their qualifying acquisition has given, or may give, rise to a risk to the UK's national security.

EXAMPLE 1: Acquisition of a qualifying entity that is likely to be called in

Company A is undertaking activities in the UK which include the development of AI technology for the purpose of people identification. Party B acquires shares in Company A that are below a 25% acquisition of shareholding stake or voting rights but which enable Party B to materially influence the policy of Company A. The UK Government has concerns that the activities of Party B may be linked to hostile activity.

The target risk is high. The activities of Company A are in an area of the economy likely to give rise to risks to national security, as the AI technology could be used for malicious purposes.

The control risk is medium as this acquisition enables Party B to materially influence how Company A's sensitive technology could be used or sold.

The acquirer risk is high as the activities of Party B may be linked to hostile activity and requires an assessment by the Government to identify possible national security risks.

Therefore, this acquisition is likely to be called in.

EXAMPLE 2: Acquisition of a qualifying entity that is unlikely to be called in

Investor C is a non-UK based entity that increases its vote share in Company D from 15% to 26%. Company D is a financial services company which holds public contracts with the UK Government, but the performance of the contracts does not require mandatory notification. Investor C is well-known to the UK Government and there is no existing activity that would give rise to concerns around national security.

The control risk is high as the acquisition increases investor C's influence over Company D's operations from 25% or less to more than 25%.

The target risk is medium as Company D undertakes activities that do not require mandatory notification, although these activities are in an area of the economy in which national security risks are more likely to arise.

The acquirer risk is low as investor C's activities are well known to the UK Government and there has been no history of activity that would give rise to national security concerns.

Therefore, this acquisition is unlikely to be called in.

Assets

28. Acquisitions of control over qualifying assets are also in scope of the call-in power. This is principally so that acquisitions may be called in if an asset is acquired instead of an entity that owns it, or in the event that an asset, such as land, is located near a sensitive site, which may give rise to a national security risk.
29. Asset acquisitions are not subject to the mandatory notification requirements and so no one is required to submit a notification in relation to a qualifying acquisition of an asset. Parties may make a voluntary notification to the Secretary of State regarding an acquisition if they wish to be certain whether the acquisition may be called in. The

Secretary of State may call in a qualifying acquisition of an asset if there is reasonable suspicion that it has given rise to or may give to a risk to national security.

30. When deciding whether to call in an asset acquisition, the same call-in test applies. The Secretary of State will consider what the asset could be used for and whether that use would give rise to a risk to national security.
31. The call-in power could be more likely to be used in relation to qualifying acquisitions of assets closely linked to the activities of the 17 areas of the economy set out in paragraph 10 or are in areas closely linked to those areas of the economy. This is because qualifying acquisitions in those areas of the economy could be more likely to pose a risk to national security.
32. The Secretary of State expects to call in rarely acquisitions of assets which are not in areas linked to the 17 areas of the economy.
33. Overall, the Secretary of State expects to call in acquisitions of assets rarely and significantly less frequently than acquisitions of entities.

EXAMPLE 3: Acquisition of a tangible asset that is unlikely to be called in

Company A has bought Building B located in the UK for residential use. Building B is a house adjacent to a sensitive military site. Company A is an overseas pharmaceutical company that is known to the UK Government with no evidence of ties to hostile activity in the UK.

The control risk is high as Company A has purchased the asset outright, enabling Company A to use or to control or direct Building B's use.

The target risk is medium, as there is a proximity risk as the target is adjacent to a sensitive site, but it is unlikely that owning the adjacent property for residential use could pose a risk to national security, given other security protections in place at the military site.

The acquirer risk is low, as there is no evidence to suggest that the acquirer, Company A, is linked to hostile activity, so the possibility of the target being used to threaten the UK's national security is low. Company A has also demonstrated that it intends to use the asset as a place of residence, which does not pose a national security risk in directing the asset for this use.

Therefore, this acquisition is unlikely to be called in.

EXAMPLE 4: Acquisition of a tangible asset that is likely to be called in

Company C seeks to acquire Machinery D. Company C is based in the UK but owned by an organisation based overseas and is of concern to UK security organisations. Machinery D is specialised and used in the manufacture of military hardware.

The target risk is high since this is specialised hardware with a military purpose.

The acquirer risk is also high because the acquirer is owned by an organisation with potentially concerning behaviour.

The control risk is high as this acquisition would enable Company C to use or to control or direct the use of Machinery D.

Therefore, this acquisition is likely to be called in.

EXAMPLE 5: Acquisition of an intangible asset that is likely to be called in

Asset F is the underlying source code used by Business E in its computer programmes used by UK air traffic control operators. Business E is approached by Party G who wishes to acquire the right to access and use Asset F. Party G is known by the Government to have existing ties to an organisation that is hostile to the UK.

The target risk is high. The source code may be used to identify vulnerabilities in the programmes used to monitor and communicate with aircraft in UK airspace.

The control risk is medium, as the acquisition of the right to access and use of Asset F means that Party G could use the asset for malicious purposes. However, Party G does not have full ownership over the asset and so does not have full control over the asset.

The acquirer risk is also high as the acquirer, Party G, has existing ties to an organisation that is of concern to the UK Government.

Therefore, this acquisition is likely to be called in.

Extraterritorial use of the call-in power

34. Acquisitions of qualifying entities and assets that are outside the UK are generally less likely to give rise to national security risks than those located within the UK and so these are generally less likely to be called in. Similarly, the risk to national security will generally be related to how strongly the entity or asset is connected to the UK. The Secretary of State will consider to what extent people in the UK rely on qualifying entities and assets located overseas and how this may affect national security risks.
35. There is [separate guidance](#) on the application of the NSI Act in relation to entities and assets outside the UK.

Retrospective use of the call-in power

36. The Secretary of State may call in qualifying acquisitions after they have taken place. This power is set out in section 2(2) of the Act.
37. When deciding whether to call in a qualifying acquisition that has already taken place, the same assessment of risk factors will be applied as for qualifying acquisitions that have not already taken place.

38. The decision whether to call in a qualifying acquisition after it has taken place will be made according to the risk to national security at the point of the decision rather than the risk to national security at the point that the qualifying acquisition took place.