



Department for
Business, Energy
& Industrial Strategy

National Security and Investment Act 2021: consultation on the statement for the purposes of section 3

Closing date: 30th August 2021



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General information

Why we are consulting

The National Security and Investment Act 2021 enables the Government to screen, and if necessary intervene in, acquisitions of control over qualifying entities and assets in or closely linked to the UK. Before the Secretary of State can use the power to call in acquisitions, the Act requires the Secretary of State to publish a statement which sets out how the power will be used.

The Government wants to ensure relevant parties have had an opportunity to comment on the statement before it is laid in Parliament and published.

This consultation seeks your views on the draft statement. Responses to this consultation will be used to refine the statement before it is laid in Parliament later this year.

Consultation details

Issued: 20th July 2021

Respond by: 11.59pm, 30th August 2021.

Enquiries to:

NSI Section 3 Statement Consultation
NSI Policy Team
Department for Business, Energy and Industrial Strategy
4th Floor, Orchard 3
1, Victoria Street
London
SW1H 0ET

Email: nsistatementconsultation@beis.gov.uk

Consultation reference: NSI Statement Consultation

Audiences:

We are in particular seeking views from parties involved in acquiring control of or selling qualifying entities and assets, including advisers to such parties, and anyone who may need to understand whether an acquisition is likely to be called in by the Secretary of State.

Territorial extent:

This statement will apply across the whole of the UK. National security is a reserved matter in Scotland and Wales and an excepted matter in Northern Ireland.

How to respond

Email to: nsistatementconsultation@beis.gov.uk

Write to:

NSI Section 3 Statement Consultation
NSI Policy Team
Department for Business, Energy and Industrial Strategy
4th Floor, Orchard 3
1, Victoria Street
London
SW1H 0ET

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, although further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

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National Security and Investment Act 2021

If you have any complaints about the way this consultation has been conducted, please email:
beis.bru@beis.gov.uk.

The proposals

The UK has an open economy and global interests: our future prosperity will be enhanced by deepening our economic connections with dynamic parts of the world.¹ In the past 10 years, \$750 billion has entered the UK's economy through foreign direct investment.² As part of this global engagement the UK must guarantee the safety and security of our citizens and interests.³ State and non-state actors are giving rise to threats to the UK and our allies and these threats are growing and diversifying. The National Security and Investment Act 2021 provides increased protection against hostile actors acquiring control over qualifying entities and assets that are important to the UK's national security.

The Act requires the Secretary of State to publish a statement explaining how the power to call in acquisitions for consideration will be used. This statement will enable parties to an acquisition to understand whether their acquisition is likely to be called in by the Secretary of State and to plan accordingly.

The Secretary of State is consulting on the content of the statement and whether it provides a clear indication of how the call-in power will be used.

In addition the Government will publish guidance that covers specific topics under the Act, including an overview of the Act, the extraterritorial application of the Act, how the Act works alongside other regulations and market practices and guidance for higher education institutions and research organisations. This consultation does not seek comments on these pieces of guidance. When answering the questions in this consultation, respondents should be aware that some points that are not covered in the statement may be covered in a separate guidance document.

¹ Global Britain in a Competitive Age: the Integrated Review of Security, Defence, Development, and Foreign Policy (2021), p.14

² National Security and Investment: Sectors in Scope of the Mandatory Regime. Consultation on secondary legislation to define sectors subject to mandatory notification in the National Security and Investment Bill 2020, p.9

³ Global Britain in a Competitive Age, p.14

Background

The National Security and Investment Act received Royal Assent on 29th April 2021.

The Act enables the Government to screen, and if necessary intervene in, acquisitions of control of qualifying entities and assets in order to address risks to national security.

The following types of entities are in scope of the Act (i.e. they are qualifying entities):

- entities that are formed or recognised under UK law
- entities that are formed or recognised under the law of a country or territory outside the United Kingdom that carry on activities in the UK or supply goods or services to people in the UK.

The following types of assets are in scope of the Act (i.e. they are qualifying assets):

- land or tangible moveable property that is situated in the UK or its territorial sea
- intellectual property or land or tangible moveable property situated outside the UK or its territorial sea that are used in connection with activities carried on in the UK or are used in connection with the supply of goods or services to people in the UK.

The Secretary of State may give a call-in notice where there is a reasonable suspicion that a qualifying acquisition has taken place and the acquisition has given rise, or may give rise, to a national security risk or where there are arrangements in progress or contemplation which, if carried into effect, will result in an acquisition which may give rise to a risk to national security. On being satisfied that the conditions for giving a call-in notice are met, the Secretary of State may give a notice to the acquirer, the entity (where the acquisition relates to an entity) and such other persons the Secretary of State considers appropriate. This is referred to as the “call-in power”.

The Act requires the Secretary of State to publish and lay in Parliament a statement on how the call-in power will be used, before the power can be used. The Act requires the Secretary of State to have regard to this statement when considering whether to exercise the power.

The Act also requires the Secretary of State to review the statement at least every five years.

A draft of this statement was first published in July 2018 alongside the National Security and Investment White Paper. An updated draft was published on Gov.uk when the Act was introduced to Parliament as a Bill in November 2020.

The statement has previously been referred to as the ‘Statement of Policy Intent’ or the ‘Statement on the use of the call-in power’. Following Royal Assent, it will now be referred to as the ‘Section 3 Statement’ which reflects its legislative origin.

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National Security and Investment Act 2021

This consultation is seeking views on an updated draft of the statement. Subject to making any changes as a result of this consultation, the Secretary of State intends to lay the statement before Parliament and to publish it, in accordance with section 4 of the Act.

Significant changes from the previous published version of the statement

A draft of this statement was published in November 2020, when the NSI Bill was introduced in Parliament. Several changes have since been made to the statement. This section highlights these key changes.

Areas of the economy

The areas of the economy in which acquisitions are considered more likely to be called in are described in the statutory instrument that will be made under section 6 of the Act. Whilst the regulations define areas of the economy in which qualifying acquisitions must be notified, this statement explains that these are also the areas in which qualifying acquisitions are more likely to be called in. The draft statement therefore refers to the section 6 regulations rather than repeating them. Additionally, the statement makes clear that qualifying acquisitions of entities or assets that are closely linked to those definitions are also likely to be called in.

This is different from the previous version of the statement which divided the economy into three broad areas, each with a different likelihood of being called in.

The statement makes clear that each acquisition will be treated on a case-by-case basis.

Risk factors

The risk factors have remained broadly the same as in the previous version of the statement but they are worded slightly differently.

The “target risk” remains the same – this concerns whether the target of the qualifying acquisition (the entity or asset being acquired) is being, or could be used, in a way that poses a risk to the UK’s national security.

The “trigger event risk” has been renamed the “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.

The “acquirer risk” remains the same – 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, or influence over, the target.

Assets

The draft statement makes clear that the same tests of risk factors will be applied to qualifying acquisitions of assets as to qualifying acquisitions of entities. The statement also says that qualifying acquisitions of assets related to the 17 areas of the economy (specified in the regulations made under section 6) are more likely to be called in.

Section 3 Statement

The text for this is in a separate document.

Consultation questions

1. Is the statement clear in its description of how the Secretary of State expects to use the call-in power provided by the NSI Act?
2. Does the statement help you to decide whether your acquisition is likely to be called in?
3. Are the risk factors that the Secretary of State will consider set out in an understandable way?

This consultation is available from: www.gov.uk/beis

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