



Department for  
Business, Energy  
& Industrial Strategy

# National Security and Investment: statement for the purposes of section 3

Government response to the  
consultation on the draft statement  
for the purposes of section 3 of the  
National Security and Investment Act 2021



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# Executive Summary

## Overview

1. In July and August 2021, the Government consulted on the draft statement that the Secretary of State intends to lay before Parliament for the purposes of section 3 of the National Security and Investment (NSI) Act 2021. Earlier versions of this statement had been subject to consultation as part of the NSI White Paper in 2018 and through publication alongside the NSI Act's introduction to Parliament as a Bill.
2. The statement is required by the Act to be laid before Parliament and published before the Secretary of State can use the call-in power provided by the Act. The statement is intended to help parties to acquisitions to determine whether their acquisition is likely to be called in. This should help parties to plan their acquisitions more easily and, for acquisitions outside the mandatory notification system, to decide whether to submit a notification.
3. The draft statement received considerable Parliamentary attention during the passage of the NSI Bill and stakeholders were engaged informally at the same time. This consultation has provided a formal way to respond to the draft statement.
4. The responses to this consultation have been used to improve the clarity and drafting of the statement. These changes are detailed in the response below. The final statement has been laid before Parliament and published, enabling the Secretary of State to use the call-in power provided for in the NSI Act. The statement must be reviewed at least every five years and is likely to be reviewed more frequently than that.

## Context

5. The NSI Act provides the Government with updated powers to scrutinise and intervene in investment to protect national security, as well as to provide businesses and investors with the certainty and transparency they need to do business in the UK. The system gives the Secretary of State powers to scrutinise comprehensively and, if necessary, intervene in qualifying acquisitions of control over qualifying entities or assets across the economy, if they give rise to national security risks.
6. The Secretary of State can begin an investigation into an acquisition by exercising the call-in power given by the Act. A call-in notice must be given to specified parties to an acquisition before the Secretary of State can use the other powers in the Act to address risks to national security. There are legal tests which must be met in order for the call-in power to be used.

7. The Secretary of State may not give a call-in notice unless a statement about the exercise of the call-in power has been laid before Parliament, published and not withdrawn. Both Houses of Parliament have forty sitting days from the day the statement is laid in which to resolve against the statement if they wish, otherwise the statement can continue to be applied. The Secretary of State must have regard to the statement when exercising the call-in power, but nothing in the statement limits the power to give a call-in notice.

## Next steps

8. The Government has carefully considered the responses to this consultation and laid the final statement before Parliament. This will enable the call-in power to be used once the NSI system commences on 4<sup>th</sup> January 2022.

# Background

## What was the background to the consultation?

9. The UK economy thrives as a result of foreign direct investment. Over the last 10 years, over 665,000 new jobs have been created as a result of over 18,000 foreign direct investment projects.<sup>1</sup> An open approach to investment must include appropriate safeguards to protect our national security. Our current powers in this area largely date from 2002. Technological, economic, and geopolitical changes mean that reforms to the Government's powers to scrutinise investment on national security grounds were required and these are delivered by the NSI Act. The Government welcomes foreign direct investment and is clear that the UK is open for business.
10. The National Security and Investment Act received Royal Assent on 29<sup>th</sup> April 2021. The Act makes provision for a mandatory notification requirement for certain acquisitions in key sectors of the economy, accompanied by a voluntary notification option for other types of acquisitions in all sectors of the economy and the power to "call in" qualifying acquisitions.
11. This call-in power can be exercised only once the Secretary of State has laid before Parliament, and published, a statement about how they expect to use the call-in power. Therefore, before the NSI system can be used, the Secretary of State must prepare such a statement. This consultation presented a draft of that statement.

## On what did we consult?

12. The Government's public consultation on the statement for the purposes of section 3 of the NSI Act sought responses on three questions, focussing on whether it clearly described how the Secretary of State expects to use the call-in power; whether it helped to decide whether an acquisition is likely to be called in; and whether the risk factors used to decide whether to use the call-in power were set out in an understandable way.
13. The consultation ran for six weeks from 20 July to 30 August. The consultation included a draft of the statement which the Secretary of State proposed to lay before Parliament.
14. The responses have been carefully considered. The Government is grateful for the contributions and the time and expertise put into them by respondents.

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<sup>1</sup> See Table 6.1 here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/999050/Department-for-International-Trade-Inward-Investment-results-tables-2020-to-2021.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999050/Department-for-International-Trade-Inward-Investment-results-tables-2020-to-2021.ods)

Latest figures available here: <https://www.gov.uk/government/statistics/department-for-international-trade-inward-investment-results-2020-to-2021>

## Who did we consult?

15. The consultation was published on Gov.uk and an e-mail address was provided for responses to the consultation. We also engaged with stakeholders to raise awareness of the consultation, including membership organisations, recipients of the BEIS Bulletin, the Companies House newsletter and separate public announcements.

## Who responded?

16. We received 18 written responses from legal firms and societies, accountants, and industry (including financial services, telephony and digital technology). The breakdown of responder type is shown in the table below:

Type of respondent	Legal and advisory firms	Finance firms and organisations	Government, academia, and research bodies	Industry and trade bodies	Advanced technology
Number of consultation respondents	9	2	2	2	3

# Summary of consultation responses and the Government response

## Summary of consultation responses

17. The draft statement was broadly well-received, with several respondents highlighting improvements on previous versions of the statement. Some respondents were sufficiently content with the statement as to not suggest any changes.
18. Responses tended to ask for additional detail on decision-making processes in the NSI system. For example, many respondents asked what the phrase “closely linked” meant in the context of acquisitions made in areas “closely linked” to the mandatory notification sectors.
19. Some responses also sought clarity on where the Government appears to have discretion in its decisions. Some respondents said that language such as “may be likely to...” did not give enough certainty to businesses about whether the Government would take action in some situations.
20. Several respondents thought that the statement went beyond national security by referring to “economic prosperity.” Although this language was taken from *Global Britain in a Competitive Age: the integrated review of security, defence, development and foreign policy (2021)*<sup>2</sup>, which links national security with enabling economic prosperity (page 6) and sets out the Government’s view that “prosperity and security are mutually reinforcing” (page 11), the Government is explicit that the NSI regime is solely for national security purposes and will not be used to further economic or competition objectives. This is now reflected in the Section 3 Statement.

## Government response

21. The Government is a champion for free trade, recognising that inward investment is economically highly beneficial. An open approach to international investment must also include appropriate safeguards to protect our national security and the safety of our citizens. The Government is committed to ensuring that it takes a robust but proportionate approach to investment in the UK.
22. Following the feedback from businesses, investors and others during the consultation, the Government has made changes to the statement although, as indicated through the

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<sup>2</sup> <https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy>



responses below, it has maintained the general direction and narrative of the statement as consulted upon.

## Responses to questions

### ***Question 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?***

23. Respondents generally found the statement helpful and clear. There were some suggestions to make the text more precise about what is more likely to be called in. There were several responses which queried the meaning of acquisitions being “closely linked” to the 17 mandatory sectors.

#### *Government response*

24. The Government welcomes the considered and helpful responses to this question.

25. The most common point made in responses to this question concerned the meaning of acquisitions in areas of the economy which are ‘closely linked’ to the 17 areas of the economy which are subject to mandatory notification, as described in the section 6 regulations. Some respondents considered this phrase required further clarification, or specific examples, to help determine whether certain acquisitions would be considered ‘closely linked’ to the 17 areas.

26. Having reflected on this, the phrase ‘closely linked’ is as precise as the Government can be, given the fast-moving development of the 17 sectors and related industries. That is to say, while only acquisitions falling into the regulations made under section 6 must be notified to the Government, acquisitions which are outside those definitions – but only just – are more likely to be of interest to the Secretary of State than acquisitions not at all related to the 17 sectors.

27. It is right that the Government should indicate that areas closely related to, but outside, the activities described in the section 6 regulations may be of greater interest to the Secretary of State than the wider economy. There will always be a border area to the section 6 regulations’ definitions and the phrase ‘closely linked’ is intended to demonstrate that.

28. It is not possible to provide a comprehensive list or examples of what is ‘closely linked’. As technology and businesses can evolve quickly, something is likely to appear that is ‘closely linked’ but is as yet unforeseen. It would therefore be misleading for the Government to give too precise a definition of ‘closely linked’ and in so doing give the impression that future developments are not of interest to the Secretary of State.

29. There were some suggestions that the drafting was too ambiguous. In particular, phrases such as “likely to be considered”, “may indicate” and “likely to bring about” were felt to be imprecise.

30. The Government aims to create as much certainty for businesses as possible. However, it is necessary to retain much of the drafting to which some respondents sought changes. This is because each acquisition will be treated on a case-by-case basis and it is not possible to explain all the situations that may result in an acquisition being called in. The Government therefore believes that the language of “likely” and “may” is most appropriate.
31. However, in the light of some responses, we have been able to reinsert some language from previous versions of the statement to reduce uncertainty, to make clear that state-owned entities are not considered inherently risky and to reassure parties that most loans and conditional acquisitions will not be called in.

***Question 2: Does the statement help you to decide whether your acquisition is likely to be called in?***

32. Respondents generally thought that the statement provided useful guidance on whether an acquisition would be called in and that the examples included were helpful, but that there would still be uncertainty in acquisitions.

*Government response*

33. The Government understands the need for parties to acquisitions to have as much predictability as possible about whether an acquisition will be called in. The Government also wishes to avoid giving false assurances that particular types of acquisition will never be of national security interest.
34. To achieve this balance in the statement, the Government does not intend to put qualifiers before words such as “rarely” (which some respondents suggested doing) except where they are fully merited.
35. It is worth emphasising that under the NSI Act there needs to be a reasonable suspicion of a possible risk to national security before the call-in power can be used. This is expected to be the case in a small minority of acquisitions and therefore the majority of acquisitions in the UK economy will not be able to be called in under the NSI system.
36. Some respondents were concerned about possible retrospective use of the call-in power and the timing of when the Secretary of State has ‘become aware’ of a qualifying acquisition.
37. Retrospective use of the call-in power is detailed in the Act. It is likely to be required on an infrequent basis as long as relevant acquisitions are notified to the Government before they take place. The Secretary of State must actually ‘become aware’ of an acquisition so that the time limit in which an acquisition can be called in begins. That

is, the Secretary of State must be provided with sufficient information so that it can properly be said that they have ‘become aware.’

***Question 3: Are the risk factors that the Secretary of State will consider set out in an understandable way?***

38. Respondents generally thought that the risk factors were explained in a clear, logical and straightforward way. Some respondents gave more detailed responses about the individual risk factors (target, acquirer and control) and the Government is grateful for this feedback.

*Government response*

39. There was some uncertainty amongst respondents about whether, using the text as presented, the three risk factors would be weighed together or whether concerns about one risk factor would be enough for an acquisition to be called in.

40. All decisions will be made on a case-by-case basis. The Secretary of State would generally expect all three risk factors to be present before calling in an acquisition but cannot rule out exercising the call-in power on the basis of fewer risk factors. The statement has been adjusted to reflect this.

41. Some respondents thought that the draft statement went beyond protecting national security. These concerns focussed on the inclusion of the words “economic prosperity” and “reputation” in the document.

42. The wording in the document was consistent with the Integrated Review and has been refined in light of this feedback, to provide greater clarity of how it applies in this context. The Government is clear that the NSI system is concerned only with national security and will not be used to further competition or economic objectives.

43. There were similar concerns that references to ‘market diversity’ seemed to be references to competition policy. However, there are circumstances in which the effect of an acquisition on market diversity could have an effect on national security, so these references have been retained in the statement.

44. Several respondents asked what a ‘sensitive site’ is, or what happens if a site becomes sensitive. The Government is not able to publish a list of sensitive sites, nor to give a precise definition of what a sensitive site is, as that may in itself create a risk to national security.

45. Some respondents were concerned about uncertainty created by parties not knowing whether an acquirer is hostile to the UK. The Government acknowledges that the acquirer risk is likely to be the risk factor which the Government is considerably better

placed to assess. As such, the ultimate decision about whether a party poses a national security risk is for the Secretary of State.

46. However, the Government considers that it is important for businesses to know that the Secretary of State will take into account the potential hostility of an acquirer to the UK, so it is important for this to be included in the statement. Although this may mean some parties to acquisitions are therefore unsure about what decision the Secretary of State is likely to make about an acquisition, since the Secretary of State may have greater knowledge than parties to an acquisition, the statement's primary purpose is to explain how the Secretary of State will make decisions. Therefore, this is an important inclusion in the statement.

### Conclusion

47. The Government is grateful for the considered responses it received to this consultation. There were requests for clarity on several areas of the statement as well as requests for additional information. The Government has changed the statement as far as it is appropriate to do but, for national security and other reasons set out in this consultation response, it has not been possible to meet every request for clarity or additional information.

48. Nonetheless, the Government considers that the statement has been significantly improved as a result of the consultation feedback and addresses many of the comments made by respondents.

49. The Government will keep the statement under review in accordance with the requirement in the Act to do so at least every five years and may do so more regularly where considered appropriate. The Government remains committed to helping businesses to understand the use of the call-in power as far as possible through the statement.

50. The Secretary of State has laid the revised statement before Parliament and it has been published on Gov.uk alongside this response document.

This publication is available from: [www.gov.uk/beis](http://www.gov.uk/beis)

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