National Security and Investment Bill Guide: How the Regime Functions

The diagrams below illustrate the process established by the National Security and Investment Regime. The diagrams assume a high degree of compliance from business, and therefore does not detail sanctions available nor explain every permutation of the exercise of the call-in power (such as in the case of false information being provided).

The Power to “call-in” a Transaction

The Secretary of State may give a notice if the Secretary of State reasonably suspects that:

- a trigger event has taken place, or is in progress, in relation to a qualifying entity or asset; and
- the event has given rise to or may give rise to a risk to national security.

The issuance of a “call-in” notice allows the Secretary of State to intervene in the transaction. Intervention can take several forms, including the issuing of “interim notices” requiring certain persons to do or not do specific things in relation to the transaction.

The Statement

The Statement is a statement prepared by the Secretary of State that sets out how the Secretary of State expects to exercise the power to give a call-in notice. It may include, among other things, details of sectors of the economy, or types of transactions, are more likely to give rise to a risk to national security concerns.

Trigger Events

A ‘Trigger Event’ is a transaction which falls within scope of the following:

- the acquisition of more than 25% of the votes or shares in a qualifying entity;
- the acquisition of more than 50% of the votes or shares in a qualifying entity;
- the acquisition of 75% or more of the votes or shares in a qualifying entity;
- the acquisition of voting rights that enable or prevent the passage of any class of resolution governing the affairs of the qualifying entity;
- the acquisition of material influence over a qualifying entity’s policy.

As well at the above, a Trigger Event includes the acquisition of a right or interest in, or in relation to, a qualifying asset providing the ability to:

- use the asset, or use it to a greater extent than prior to the acquisition; or
- direct or control how the asset is used, or direct or control how the asset is used to a greater extent than prior to the acquisition.

Notifiable Acquisitions

Are defined as the acquisition of 15% or more of the votes or shares in an entity

Key Sectors

Mandatory notification applies to entities in specific “Key Sectors”, established through regulation.

Notice to business: The NSI Regime between 12 November 2020 and commencement

Before the NSI regime takes legal effect, businesses may message BEIS for advice on their transactions. By contacting the team at investment.screening@beis.gov.uk, you may seek advice on what to expect with regards to your relevant Trigger Event. The Government will not use the “call-in power” before the NSI regime is commenced.
Part 1: Notification to Government

A transaction is in progress or in consideration. Transaction may be within scope of mandatory or voluntary regime.

(*FROM 12 NOVEMBER 2020*)
Parties are invited to share information about a relevant Trigger Event with the Government by messaging investment.screening@beis.gov.uk. An informal discussion with Government officials on the matter may help with business planning with regards to the Government potentially exercising the call-in power.

**General Regime (Entities or assets)**

A seller or acquirer considers whether the transaction qualifies as a ‘trigger event’

Transaction is a ‘trigger event’

A seller or acquirer considers whether the transaction may be subject to call-in for a national security assessment, using the Statement to inform their decision.

**Mandatory Regime (Entities)**

Acquirer must determine whether the target of the transaction includes a “key sector” entity.

Includes a Key sector entity

**Decision to notify**

Notification submitted.

Secretary of State receives notification

**Parties assess as to whether transaction is in scope of mandatory regime or general regime**

Does not include a “Key sector” entity

**Not a “notifiable acquisition”**

Acquirer must determine whether the transaction will be deemed a “notifiable acquisition”

Deemed a “notifiable acquisition”

**Acquirer must submit a notification about the acquisition to the Secretary of State, less it be legally void.**
Part 2: Government Assessment of notification

Notification submitted.

Secretary of State receives notification

Secretary of State reviews the notification form and decides to reject or accept the form.

Accept notice

A (maximum) 30-day screening period begins when the person is notified that the Secretary of State has accepted the notifiable transaction or trigger event notice.

Secretary of State completes screening and makes decision to call-in or not.

Decision to issue a call-in notice

Secretary of State issues call-in notice

NSI PROCESS COMPLETE

Notice redrafted

Reject notice

Secretary of State may reject a notification, citing reasons. Authors may choose to resubmit.

Clear transaction

Secretary of State notifies that a call-in notice will not be issued, clearing the transaction.