



Department for
Business, Energy
& Industrial Strategy

NATIONAL SECURITY AND INVESTMENT WHITE PAPER

Government response to its consultation on proposed
legislative reforms

November 2020

CP 323



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legislative reforms

Presented to Parliament by the Secretary of State for Business, Energy and
Industrial Strategy by Command of Her Majesty

November 2020
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Executive Summary

Overview

1. This document provides an overview of the responses to the policy proposals put forward by the Government in the National Security and Investment White Paper, published in July 2018. The document then goes on to detail the updated policy being pursued by the Government in this area and how the new regime will function.

Context

2. The UK economy thrives as a result of foreign direct investment (FDI). Since 2010/11, over 600,000¹ new jobs have been created thanks to over 16,000 FDI projects, such as new investment from overseas investors in UK businesses, expansions of existing investments by overseas investors, or mergers and acquisitions involving foreign acquirers. In the past 10 years, \$750 billion has flowed into the UK as a result of FDI.²
3. However, an open approach to international investment must include appropriate safeguards to protect our national security and the safety of our citizens. Our current powers in this area date from 2002 – technological, economic and geopolitical changes mean that reforms to the Government’s powers to scrutinise transactions on national security grounds are overdue.
4. A small number of investment activities, mergers and transactions in the economy pose a risk to our national security. In such cases, it is vital that the Government can intervene swiftly and efficiently to address these risks whilst providing clarity on timelines and process for businesses.
5. The proposed reforms will bring the UK’s powers in line with our allies and partners around the world, such as the United States, Australia and Japan. For example, as part of a broader programme of reform, earlier this year the United States brought in regulations to require mandatory notification for transactions concerning specified types of businesses. Australia also released draft legislation in July to require foreign investors to seek approval to start or acquire a direct interest in sensitive national security businesses. Similarly, as part of tighter regulations implemented in June this year, Japan expanded the scope of the designated business sectors that require pre-acquisition notification.

Policy changes from 2018

6. Sweeping technological, economic and geopolitical changes in recent years have prompted the Government to look again at the proposed legislative reforms we put

¹ Source: [Department for International Trade Inward Investment Results](#)

² Source: [OECD](#)

forward in 2018, and whether they were still sufficiently robust in their ability to tackle the myriad challenges the Government faces in this area.

7. The COVID-19 pandemic has only brought these issues into sharper relief. In June 2020, the Government acted to lower the threshold for intervention in transactions in three sectors crucial to national security, having made similar changes in 2018. However, as we rebuild from COVID-19 where sensitive British businesses may be vulnerable, we must go further and ensure that the Government can intervene in any deal across the economy that raises national security risks.
8. The Government has decided to make a number of changes to the proposals it put forward in 2018. We will now introduce a mandatory notification system for some transactions in specified areas of the economy. This will ensure that the Government is automatically informed of potential transactions in these crucial areas, and able to take action swiftly to investigate and address any national security risks.
9. Where transactions fall outside the requirements for mandatory notification but may nonetheless give rise to national security risks, the parties will be able to make a voluntary notification. They will be supported in doing this by a statutory statement outlining where the Government believes national security issues may arise in the wider economy.
10. The Government will have a power to “call in” transactions – whether they were notified or not – in order to carry out a full national security assessment and address national security risks. This is in line with existing regime under the Enterprise Act 2002.
11. The Government recognises that the policy being pursued has evolved from that put forward in 2018 and the rationale for the changes is set out in section 2. The Government welcomes investment in the UK which is genuinely focused on economic and commercial success and remains committed to the key principles set out in the White Paper, which have shaped policy development. These include providing certainty, transparency and predictability of the regime to businesses and investors and ensuring that the UK is a good place to invest in a business.
12. The overwhelming majority of transactions will be unaffected by these new powers, and the Government will never stand in the way of genuine overseas investment or stifle creativity. Rather, this new approach represents a proportionate response to the fraction of transactions that do raise national security concerns, and it is only right that the Government has the requisite powers to address them.
13. Full details of the changes from 2018 and how the Government expects the new regime to function are set out below.

Next Steps

14. An Impact Assessment has been published alongside this document to provide the Government’s assessment of the costs and benefits of the new regime.

15. The Government is bringing forward primary legislation to provide for the new regime alongside the publication of this document.

Section 1 – 2018 proposals

Chapter 1 – Background and consultation

What was the background to the consultation?

16. This Government will always enthusiastically champion free trade, recognising that the vast majority of inward investment is highly beneficial. However, the Government also recognised that in 2018 its powers to intervene in mergers and acquisitions that may raise national security concerns on public interest grounds were nearly two decades old. In a changing technological and geopolitical landscape, it was appropriate for the Government to update those powers. A number of our allies, including the United States, Australia and Japan, were also considering and making changes to their investment screening processes in recent years.
17. The Government's public consultation on reforms to legislative powers to scrutinise the national security implications of investments and other events ran for 12 weeks, from 24 July 2018 to 16 October 2018. This followed the Government's Green Paper Consultation *The National Security and Infrastructure and Investment Review*³ which was published on 17 October 2017.

What did we consult on?

18. The Government sought input on the detail of proposed legislative reforms, including:
- a voluntary notification system to encourage notifications from parties who consider that their transaction or other event may raise national security concerns;
 - a draft Statement of Policy Intent setting out how and when it expects national security concerns are likely to arise;
 - a call-in power that the Government may use to call in transactions or other events to undertake a national security assessment even if they were not notified to the Government;
 - a statutory process that would be used to scrutinise investments and other events;
 - details of remedies the Government proposes to address risks to national security, sanctions for non-compliance with the regime and the mechanism for judicial oversight; and
 - how the regime would interact with other regulatory regimes, including the Competition and Markets Authority and the Takeover Panel.

³ <https://www.gov.uk/government/consultations/national-security-and-infrastructure-investment-review>

19. The National Security and Investment White Paper,⁴ published on 24 July 2018, set out detailed plans for how the Government proposes to reform its powers to protect national security from hostile actors using ownership of, or influence over, businesses and assets to harm the country. The consultation included 11 questions and a number of additional areas where the Government welcomed views (see Annex B for the list of questions).
20. In reviewing its powers and developing proposals for reform, the Government has been committed to a number of key principles that underpinned its review and continue to shape policy development. These include:
- ensuring that the UK remains attractive to investment and making the UK the world's most innovative economy, as well as the best place to start and grow a business;
 - ensuring that where national security concerns arise, the Government can deliver its primary duty of protecting national security;
 - providing certainty and transparency in the process wherever possible;
 - ensuring targeted scope where possible; and
 - ensuring its powers are proportionate.

Who did we consult?

21. The consultation was published on [GOV.UK](https://www.gov.uk) and on the BEIS Citizen Space consultation hub.⁵ We drew the consultation to the attention of organisations and groups that we expected would have an interest in the proposals. This included investors into the UK, individual businesses, trade bodies, legal and advisory firms, academics and think tanks, regulators, the Devolved Administrations and international governments.

Who responded?

22. Feedback was obtained at events and meetings, via Citizen Space and formal written responses. The Government received 67 written responses from investors (the breakdown is shown in the table below), individual businesses, legal and advisory firms, trade associations and industry groups, academics and regulators. Feedback on the proposals was also obtained through 53 stakeholder meetings during the course of the consultation. The full list of respondents can be found in Annex A.

⁴ <https://www.gov.uk/government/consultations/national-security-and-investment-proposed-reforms>

⁵ <https://beisgovuk.citizenspace.com/>

| | Legal and advisory firms | Investors | Government, academia and research bodies | Advanced Technology | Infrastructure businesses (including trade associations) | Regulators |
|------------------------------------|--------------------------|-----------|--|---------------------|--|------------|
| Number of consultation respondents | 24 | 9 | 8 | 5 | 20 | 1 |

Summary of the feedback received

23. The responses to the consultation were well informed and constructive on the detail set out in the White Paper. We are grateful to all those who responded and took part in the stakeholder meetings.
24. Most respondents acknowledged that the Government should have powers in this area to enable the Government to fulfil one of its primary duties of protecting national security. There was broad consensus amongst respondents that the clarity, transparency and predictability of any UK regime are of the utmost importance if the UK is to fulfil its ambition is to remain the number one foreign direct investment (FDI) destination in Europe.
25. A number of respondents raised concerns about the broad scope of the regime and the potential for political interference in its operation, damaging the UK’s reputation as a place to invest and do business.
26. There was strong support for a properly resourced regime which could adhere to the statutory timetables, noting that this will be particularly important to maintaining business and investor confidence in the UK, particularly in the early days of the regime’s implementation.
27. There was also strong support from both investor and legal respondents for the Government setting out in legislation that certain transactions are outside the scope of the regime, otherwise known as safe harbours.
28. However, a minority of respondents advocated broadening the scope of the proposed regime. These suggestions included strengthening the Government’s powers by extending them to cover a wider range of acquisitions, and removing the time limit on retroactive intervention.
29. Most respondents welcomed the clarity of the proposed statutory timetables, but some were concerned about the overall length, reiterating how important speed and predictability can be in deal situations. Multiple respondents highlighted the importance of informal discussions ahead of any notification to smooth progress.

The Government's response to the feedback

30. The legislation the Government now proposes has evolved in some important ways from the proposals set out in the White Paper. However, in developing the policy, the Government has remained committed to the key principles of the White Paper. These include providing certainty, transparency and predictability of the regime and ensuring that the UK is a good place to invest in a business. We have also analysed and taken account of the views expressed in the consultation alongside changes in the wider security and economic context.
31. Some respondents raised concerns that this regime disproportionately expanded the Government's powers to intervene in the market. The Government reiterates that the new regime will only relate to national security.
32. Under the new regime, the Secretary of State for Business, Energy and Industrial Strategy will be the decision-maker and will undertake that role in a 'quasi-judicial' capacity where, given the nature of the decisions being taken, it is particularly important that the decision-maker acts independently and is not subject to any improper influence.
33. The legislation will establish a clear test that must be met for the Government to call in a trigger event for a national security assessment. The legislation will ensure that the Secretary of State must have a reasonable suspicion that a risk to national security may arise where the Secretary of State reasonably suspects that a trigger event has taken place, or is in progress or contemplation, in relation to a qualifying entity or asset.
34. In addition, under the legislation the Secretary of State will need to reasonably consider that it is necessary and proportionate to impose a final remedy. In making this decision, the Secretary of State will have the objective of preventing, remedying or mitigating, the risk to national security.
35. The new regime will be subject to judicial oversight, so parties will have the right to challenge decisions in the courts.
36. The Government has also revised its approach on the publication requirements of the regime, responding to the concerns raised during the consultation about the commercial and reputational implications of the publication of the Government's decision to call in a trigger event. Instead, the Government intends to only routinely publish information at the final decision stage and usually only in relation to trigger events where final remedies (including blocking orders) are imposed.
37. The Government fully recognises the importance of the regime operating effectively from the first day it comes into force. It is crucial for business and investors that the Government acts expeditiously to meet the statutory timescales for screening notifications and carrying out national security assessments. Work is currently ongoing across Government to develop the resourcing model for the regime. This will ensure that sufficient resources are in place to handle and process cases.

Section 2 – Updated 2020 proposals

Rationale for the Government's updated policy

38. The Government first published a Green Paper on national security and investment in October 2017, followed by a White Paper in July 2018. The context has changed significantly since those two publications.
39. Earlier this year, the Government launched the Integrated Review of Security, Defence and Foreign Policy to re-examine the UK's priorities and define a long-term vision for our place in the world. This Review goes beyond the parameters of a traditional defence and security review, and aims to set strategic aims for our national security and foreign policy that reflect trends to 2030. These include geopolitical shifts – such as intensifying great power competition; an increasingly complex global economy; and sweeping technological change that, among other things, increases the agency of non-state actors.
40. The Government has looked again specifically at whether the proposed legislative reforms we put forward on investment in 2018 were sufficiently robust in their ability to tackle the myriad challenges the Government and businesses now face.
41. As well as long-term trends, the onset of the COVID-19 pandemic in early 2020 has added to the challenges, destabilising a healthy economy and bringing hardship to otherwise successful, viable UK businesses. Though the Government has sought to support businesses through this period, some may still be in financial distress as a result of the economic circumstances and become more susceptible to rapid and potentially concerning takeovers. It has therefore become increasingly important that the Government can effectively identify, assess and address any risks from acquisitions in the most sensitive areas before they take place.
42. Many of our allies have also strengthened their screening regimes recently. Some, such as the United States and New Zealand, have introduced or broadened mandatory notification requirements for some investments. Other countries, including France and Spain, have tightened their investment screening powers as a result of the COVID-19 pandemic. Overall, stronger investment screening regimes have become more common and more expected by investors.
43. As an interim response to the changing situation, the Government amended its powers under the Enterprise Act 2002 in June 2020 to provide for a lower threshold for intervention in three sensitive sectors of the economy: artificial intelligence, cryptographic authentication technology and advanced materials. The Government made similar changes in 2018 in relation to three other sectors: military/dual-use technologies, quantum technology, and computing hardware. These changes were only

ever intended as short-term measures before more comprehensive reforms were brought forward via primary legislation.

44. While the proposals put forward in the 2018 White Paper would achieve longer-term reforms, they do not go far enough in addressing the national security risks arising from a small number of transactions in particularly sensitive sectors, nor reflect the full gravity of the current situation. In particular, they do not do enough to prevent the few determined hostile actors from evading scrutiny and acquiring critical businesses or assets under the radar.

45. The Government has therefore built on its original proposals and intends to introduce a comprehensive investment screening regime that will allow the Secretary of State to intervene in a range of transactions across the economy:

- The legislation will specify the types of transactions that the Government will be able to scrutinise, with specific 'trigger events' written into legislation, including the acquisition of control over entities and acquisition of control over assets, such as intellectual property;
- The legislation will introduce mandatory notification for some transactions in specified sectors, with voluntary notification and a call-in power for all other acquisitions, similar to the US screening regime;
- The Government will publish a Statutory Statement of Policy intent to demonstrate how the Secretary of State expects to use the call-in power;
- The legislation will provide the Government with powers to amend the types of transactions in scope of mandatory notification, including by amending the sectors subject to mandatory notification;
- The Government will legislate for a retrospective period for intervention of five years after a trigger event takes place when it has not been notified of a transaction that could raise national security concerns, this is in line with France, Italy and Germany who all have a five year retrospective period in their investment screening regimes;
- Clear, statutory timelines will be introduced so that affected parties can plan for any national security assessment as part of their transaction;
- The Secretary of State will be able to request a wide range of information from affected parties to make fully informed decisions at every stage of the process;
- The Secretary of State will have a range of remedies available to address national security risks associated with transactions, both while assessments take place and after their completion;

- The regime will be underpinned by both civil and criminal sanctions, creating effective deterrents for non-compliance with statutory obligations, in line with many of our allies' screening regimes;
- The regime will be subject to robust judicial oversight, with the Secretary of State's decisions challengeable through judicial review or subject to appeal.

46. The Government is confident that this updated policy will be a significant upgrade on its current powers, with the Secretary of State able to intervene in a broader range of transactions involving businesses of all sizes and it will bring us in line with many of our allies' screening regimes.

47. By the same token, the Government is clear that the new regime should be predictable and straightforward to navigate for affected parties with decisions made according to statutory tests and obligations. The vast majority of transactions across the economy will be unaffected by this new regime, but it will be a vital tool so that the Government can scrutinise those rare transactions that do pose risks.

48. The Government has carefully taken into account the feedback provided as part of the 2018 consultation while designing the new regime. The following chapters set out how it will function.

Chapter 2 – Trigger events

49. The White Paper explained that under the new regime, the Government would need to be able to review a broader range of transactions and other events than it can currently under the Enterprise Act 2002 or other legislation, where national security risks arise. Such transactions were designated as ‘trigger events’.

Updated policy

50. The Government has decided that the following acquisitions should constitute trigger events that the Secretary of State can examine, and form the basis of the regime. These give the Government the necessary flexibility but also provide greater clarity to businesses and investors than the proposals put forward in the White Paper. The legislation will include:

- **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;
- 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.

51. The Government considers that these trigger events achieve a balance between providing the Government with the necessary flexibility to act to protect national security and offering businesses, investors and their advisers greater clarity and certainty about the circumstances that constitute a trigger event.

52. Parties will be able to notify the Government if they believe a trigger event that has taken place, or is in progress or contemplation, could lead to national security risks, and for certain specified sectors that are particularly sensitive, it will be mandatory to notify Government of the trigger events in bold and receive clearance before they can take place. Further details on mandatory notification and the specified sectors are set out in Chapter 3.

Acquisition of ownership of more than 25% of the votes or shares in an entity, the acquisition of more than 50% of the votes or shares in an entity, and the acquisition of 75% or more of the votes or shares in an entity

53. The Government believes that the acquisition of over 25% of votes or shares represents an appropriate ownership threshold to constitute a trigger event. The acquisition of over 25% of votes or shares is the threshold at which, under the Companies Act 2006, a special resolution can be blocked. This can therefore provide a party with a significant amount of influence – if not outright control – over how an entity is run.
54. The Government believes that there is also a case for it to be able to intervene in further or additional acquisitions of control over an entity that may give rise to national security risks.
55. The legislation will also include the acquisition of over 50% of shares or votes in an entity as a trigger event is because, in accordance with the Companies Act 2006, holding a majority of voting rights in a company enables a party to pass an ordinary resolution. This can therefore provide a party with strategic and operational control over the running of a business.
56. Furthermore, the acquisition of 75% or more of shares or votes in an entity should constitute a trigger event because, under the Companies Act 2006, such a holding of voting rights in a company enables a party to pass a special resolution, thereby providing them with the ability to, without reference to others, take significant decisions for that company – such as amending its articles of association or winding it up.

The acquisition of voting rights that enable or prevent the passage of any class of resolution governing the affairs of the entity

57. The Government has also concluded that the legislation should also provide for entities other than companies, where the thresholds for passing or blocking resolutions may differ from those set out in the Companies Act 2006. As such, the acquisition of voting rights in an entity that enables securing or preventing the passage of any class of resolution governing the affairs of the entity will also constitute a trigger event.

Acquisition of material influence over an entity's policy

58. There may be some cases where parties acquire 'material influence' over the policy of an entity without necessarily having the amount of votes or shares to reflect this. It is important that the Government can intervene when this is the case.
59. The Government considers that it can adopt the existing 'material influence' concept referred to in the Enterprise Act 2002. This will provide parties with greater clarity as to whether particular circumstances constitute a trigger event within the regime and, therefore, allow them to make more informed decisions about whether to notify the Government about a particular investment or other event.

Acquisition of a right or interest in, or in relation to, an asset providing the ability to use the asset.

60. The Government believes it requires the power to intervene where control of an asset at any level could give rise to a national security risk. If the Government does not legislate to bring assets into the scope of the regime, parties could seek to acquire an interest in an entity's national security sensitive asset(s) rather than acquiring votes, shares or material influence in the entity itself. This would be a loophole that could be exploited.

61. As such, the legislation will introduce a trigger event that will cover acquisitions of a right or interest in an asset that provides the acquirer with the ability to use an asset. For example, a party may acquire a minority stake in a technology asset and, under the terms of the agreement, regularly use the asset.

62. The types of asset acquisition where Government may encourage a notification will be set out in the Statutory Statement of Policy Intent. The legislation will set out a list of the types of assets in scope of the regime, namely land, other physical property, and intellectual property.

63. This trigger event will not be subject to mandatory notification in the specified sectors.

Acquisition of a right or interest in, or in relation to, an asset providing the ability to control or direct how the asset is used.

64. The new powers must also cover instances whereby a party can control or direct the use of an asset. This would, for example, enable the Government to intervene whereby a party acquired decision-making rights over the provision of licences for others to use an asset.

65. This trigger event will not be subject to mandatory notification in the specified sectors.

Chapter 3 – Mandatory notification in specified sectors

66. The White Paper sought views about the proposed voluntary notification process.

Updated policy

67. The Government has decided to introduce mandatory notification of some transactions in specified sectors where risks are most likely to arise, referred to here as the ‘mandatory regime’. This means that the Government will be informed of proposed transactions in these crucial areas, and able to take action accordingly to investigate and address any national security risks.

68. Acquisitions covered by mandatory notification must be notified and receive clearance from the Secretary of State before they can take place.

Trigger events that require mandatory notification

69. As explained in Chapter 2, the Government wants to ensure that mandatory notification applies to objective situations where parties can reasonably self-assess that they meet the criteria.

70. The Government is therefore introducing mandatory notification within specified sectors (detailed below) for the following trigger events at the point at which they are in progress or contemplation in the specified sectors:

- the acquisition of more than 25% of the votes or shares in an entity;
- the acquisition of more than 50% of the votes or shares in an entity;
- the acquisition of 75% or more of the votes or shares in an entity;
- the acquisition of voting rights that enable or prevent the passage of any class of resolution governing the affairs of the entity.

71. The Government’s rationale for introducing mandatory notification for these trigger events is the same as for the trigger events themselves. That is to say that acquiring over 25%, over 50%, or 75% or more of votes or shares represent thresholds at which parties can respectively block a special resolution, pass an ordinary resolution, or pass a special resolution.

72. In the specified sectors, the Government believes that acquiring such control over an entity may raise sufficient risk that mandatory notification of such transactions is required to ensure that the Government can act where necessary to address any national security concerns.

Further ‘notifiable acquisition’

73. In addition, the Government has taken the decision to introduce mandatory notification in the specified high-risk sectors in one further situation. This is:

- the acquisition of 15% or more of the votes or shares in an entity;

74. It is important to emphasise that this is not a trigger event in its own right, but rather a 'notifiable acquisition' that requires notification so that the Secretary of State can decide whether they reasonably suspect that a trigger event (the acquisition of material influence over the policy of an entity) will take place. This situation will also be written into primary legislation. It does not apply outside of the specified sectors.

75. For example, if an acquirer wanted to take a 17% stake in an entity in a specified sector, this would be notifiable acquisition. The Secretary of State would then consider whether the notifiable acquisition meant that they reasonably suspected a trigger event (the acquisition of material influence over policy of the entity) would take place based on all the facts of the case.

76. The Government believes that the acquisition of 15% or more of the votes or shares in an entity represents an appropriate threshold to require notification. As the Competition and Markets Authority's merger guidance notes, although there is no presumption of material influence below 25%, shareholdings of 15% or more may be examined to see whether the holder might be able materially to influence the policy.

77. The Government therefore believes that introducing this further situation where mandatory notification is required is necessary and proportionate in making sure that it is informed of the potential national security risks in the specified sectors.

Specified sectors

78. It is essential that mandatory notification is targeted on the parts of the economy where risks are most likely to arise. These are highly likely to change over time, so the Government will be able to amend the list of sectors, which will be set out in secondary legislation, in the future.

79. There is a balance to be struck to ensure that the Government is automatically informed of transactions in sectors where national security risks may be particularly acute, while ensuring that businesses in such sectors are not overburdened by mandatory notification requirements.

80. The Government will therefore clearly and tightly define the sectors of the economy that will require mandatory notification and pre-approval. We will consult publicly during Bill passage on proposed definitions of the sectors that the Government intends to be subject to mandatory notification. We will keep these definitions under review to reflect any changes in the risks facing the UK.

81. On Bill introduction the Government will also publish a consultation on the sector definitions. The Government has proposed draft definitions to set out the parts of the economy, coming under 17 sectors, in which it will be mandatory to notify and gain approval for certain types of transactions. We expect during that consultation period to be able to refine them with consultees help. The consultation will run for 8 weeks.

Following that consultation, we will produce statutory instruments with the refined, robust and proportionate definitions.

Amendments and exemptions

82. The Government is determined that mandatory notification requirements should remain targeted on the areas where there is the most risk, and this is likely to change over time. To avoid imposing unnecessary burdens on businesses and investors, the legislation will include a power to allow the Government to vary the acquisitions that are subject to mandatory notification, and/or exempt certain types of acquisition.
83. As set out above, this includes the ability to define, amend, add, and remove sectors from the mandatory regime in response to changing risks. For example, certain technologies may become less sensitive, and so the Government would consider removing them from the mandatory list. Alternatively, new sectors may emerge or may find new uses that warrant addition to the list.
84. Similarly, the Government may identify over time that certain types of transaction not originally included in the mandatory regime often present national security risks. To protect national security, it may then be appropriate for Government to add these into the mandatory regime. For example, over time it may emerge that certain types of asset transactions, which are not currently included in the mandatory regime, are particularly likely to present risks – and so the Government would consider adding these types of transactions into the mandatory regime.
85. The Government is keen to precisely target the mandatory regime on areas of highest risk. If certain types of transaction that are currently caught by the mandatory regime over time do not present sufficient security concerns, for example because they routinely do not require remedies, the Government may judge it is appropriate to remove similar future transactions from the mandatory regime. This could, for example, be on the basis of characteristics of the investors involved or on the type of transaction.
86. The Government will therefore keep the mandatory regime under review and will make appropriate updates when needed.

Chapter 4 - The Statutory Statement of Policy Intent

87. In the White Paper, the Government stated its intention to publish a Statutory Statement of Policy Intent setting out the areas of the economy and the circumstances in which it expects national security risks are more likely to occur.

Updated policy

88. The Government believes it is important to set out how the Secretary of State expects to use the call-in power, especially in relation to the types of trigger events in the specified sectors that do not require mandatory notification.

89. The statutory document will provide additional clarity for business on how the new legislation will work, and the circumstances in which national security risks are considered most likely to arise.

Chapter 5 – How the Government will screen notifications

91. The White Paper sought views on the proposed process for screening notifications made under the regime.

Updated policy

Informal discussions

92. The Government recognises that there will be a desire for businesses to engage with Government prior to submitting both voluntary notifications and mandatory notifications. As such, the Government will create a process whereby parties can have informal discussions with the Government to inform parties' decisions.

93. It is recognised that this advice will be crucial in the early years of the regime, where there is limited industry experience.

94. Any advice provided by regime officials will, however, not be binding and call-in decisions will remain at the discretion of the Secretary of State. This is in keeping with the current system where informal discussions between officials and parties regarding potentially sensitive mergers and acquisitions are not binding on the CMA or the Secretary of State.

Mandatory notification

95. Acquisitions covered by mandatory notification must be notified by the acquirer and receive clearance from the Secretary of State before they can take place.

96. The Government recognises that mandatory notification of some transactions in specified sectors will impact on the progress of transactions. The Government is clear that the administrative process for screening notifications will be smooth and underpinned by a statutory timeframe of 30 working days by which the Government must come to a decision.

97. The Government believes that it is appropriate for the acquirer to be required to notify the Secretary of State of a notifiable acquisition because it is their acquisition of ownership or control which changes the status quo. The Government also recognises that extending such an obligation to sellers would not be workable in situations where there are multiple sellers who are unaware that the totality of the acquirer's activity amounts to a notifiable acquisition. For example, if an acquirer is purchasing 10% of shares in entity in a specified sector from four separate sellers, each seller may be unaware their transaction is part of a total acquisition of 40%. This requirement to notify will be written into primary legislation.

98. The acquirer must notify the Government prior to a notifiable acquisition taking place. This gives the Government sufficient time to screen notifications, while also not delaying the passage of the transaction longer than completely necessary. The full suite of

information required will be set out in secondary legislation, so that it can be updated where required.

99. Requested information is likely to include details of the entity affected, the transaction and the ownership/control being acquired, the rights this would bring, the identity of the acquirer, and their background and existing holdings.
100. The Government recognises that there may be specific concerns regarding auction processes and the specific challenge they present for mandatory notifications given that there would be multiple potential acquirers being considered at the auction stage. It is envisaged that a mandatory notification would be submitted at the point that a single acquirer has been selected, which is later in the process. The Government is aware of the tight timescales involved in auctions, and the importance of the certainty of a sale completing.
101. However, parties involved in an auction may be able to begin informal discussions with the Government early in the auction process. This will allow vendors to understand the likelihood of a notifiable event constituting a trigger event and, in turn, presenting national security concerns and therefore minimising any uncertainty. They would, though, still have to provide a notification if the transaction were subject to mandatory notification.
102. It will also allow the Government to better understand the nature of the target entity's business, the details of the notifiable event and the acquirer before the notification is submitted. This may reduce the time necessary to conduct any assessment and give clearance for a transaction to complete.

Non-notified notifiable acquisitions

103. If the acquirer involved in a transaction subject to mandatory notification in the specified sectors completes the transaction without first receiving clearance from the Secretary of State, the transaction will be legally void.
104. That is to say that a notifiable acquisition in a specified sector, which has taken place without receiving clearance, will not be recognised as a transaction under the law. This would apply to any transaction subject to mandatory notification including those that have been notified but go on to complete before receiving a clearance decision.
105. The Government is clear that this is necessary due to the nature of the national security risks potentially raised by some transactions in the specified sectors.
106. However, the Government also intends to legislate to provide a mechanism for the Secretary of State to be able to retrospectively validate non-approved notifiable acquisitions in certain circumstances.

Voluntary notification

107. The Government is also clear that the voluntary notification process should be straightforward and smooth for parties.
108. The Government recognises that there may be challenges that prevent parties from providing the information required as part of the notification process. The Government acknowledges that there may be cases in which the information needed by the Secretary of State to decide on whether to call in a trigger event will not in fact be available to the person giving the notification.
109. As a result, the Government accepts that there may be circumstances when it may be possible to accept an incomplete notification. Also, it is envisaged that information-gathering powers may be exercised to provide some of the missing information where, for example, it is held by third parties.
110. An incomplete notification may be accepted where it is deemed that the lack of information does not have a materially adverse effect on the Secretary of State's ability to determine whether the test for call-in has been met. Therefore, it will be at the Secretary of State's discretion to accept the notification in these circumstances.
111. The same concerns that apply to auction processes may equally apply to voluntary notification. Again, the Government envisages that a voluntary notification would be submitted once a single acquirer has been selected.

Screening period

112. The same screening process will apply to all notifications, regardless of whether they are submitted voluntarily or mandatorily.
113. The Government considers that the maximum allowable period for the screening assessment of 30 working days is appropriate. This offers certainty to businesses and will allow them to plan accordingly. The Government will always endeavour to screen a transaction as quickly as possible.
114. The 30-working day timeframe for reviewing the notification will commence on the date that the Secretary of State informs the notifier(s) that the notification is accepted. The Government must confirm whether the notification is accepted or rejected as soon as reasonably practicable after receiving it. This is intended to provide reassurance that the Government will progress the review in a timely manner.
115. If a transaction is subject to mandatory notification, then it **cannot** take place/proceed to completion until the Secretary of State gives explicit clearance that it can do so – either following the screening of the notification, or the full national security assessment process .
116. It is envisaged that informal discussions will assist the screening assessment process, potentially reducing the time needed to reach a decision. Parties may make

representations to the Government at any time explaining why they would like a decision sooner, which the Government will consider.

Chapter 6 - The Call-In Power

117. The White Paper made clear that the proposed legislation would relate only to protecting national security. The proposed legislation establishes a clear and circumscribed test that must be met for the Secretary of State to intervene by calling in a trigger event for scrutiny.

Updated policy

118. Following the receipt and (up to 30 working days) screening of a notification, the Secretary of State can either give the transaction clearance to proceed, or use the call-in power if appropriate to initiate a full national security assessment.

Test for use of the call-in power

119. The Government will proceed with the two-limb call-in test as this structure provides the Government with the necessary flexibility to examine trigger events before and after they occur. The two limbs of the test that must be met in order to call in a transaction are that the Secretary of State reasonably suspects that:

- a trigger event has occurred or is in progress or contemplation; and
- that trigger event has given rise to or may give rise to a national security risk.

120. In practice, the Secretary of State should consider what other powers or levers are available to them and would need to be consider whether their aim of protecting national security could not be achieved by other, less intrusive measures.

121. The legislation will not include a duty for the Secretary of State to act as soon as reasonably practicable as the Government considers that such a duty would limit the Secretary of State's flexibility to, for example, exercise information-gathering powers or otherwise liaise with parties. It may mean, in effect, that the call-in power was exercised as a matter of routine.

Retrospective period

122. The Government believes that if it is not notified of a trigger event that has given or may give rise to national security risks, then it should have the ability to step in retrospectively after completion to address those risks.

123. As such, the Government will legislate for a five-year retrospective period for intervention, in respect of trigger events that are not subject to mandatory notification.

124. The Government believes that the regime being established will give parties ample opportunity to notify Government of transactions that may raise national security concerns, through informal discussions, mandatory notification where relevant, and voluntary notification. The Government therefore feels that a five-year retrospective

period is appropriate if parties do not notify, and is crucial in addressing any national security concerns that arise from non-notified trigger events.

125. If the parties fail to notify a trigger event that is subject to mandatory notification, the Government can call it in whenever it is discovered. The five-year limit does not apply. This is because these are inherently higher risk acquisitions and it is important that hostile actors cannot evade scrutiny by choosing not to notify and hoping to avoid detection. This does not apply to events which take place prior to the commencement of the NSI Bill, as no mandatory notification requirement will apply until that point.

Call-in power available for pre-commencement trigger events

126. The Government believes that it is important for it to be able to, on an exceptional basis, scrutinise transactions which are brought forward or accelerated in order to take place prior to commencement of the Bill, which may nonetheless raise risks to national security.

127. As such, the Government will legislate to ensure that trigger events which take place after the date of the Bill's introduction to Parliament are within scope of the call-in power following the Bill's commencement.

False information

128. The five-year retrospective period would not apply to cases where information that is false or misleading in a material respect has been provided in a notification or in response to an information-gathering request.

129. The Government is clear that it should be given another opportunity to review a trigger event in these circumstances to correct a misinformed decision which could otherwise result in its inability to address a risk to national security posed by a trigger event.

130. The power would allow the Secretary of State to:

- reconsider a decision not to call in a trigger event and to exercise the call-in power in relation to that trigger event in order to assess it fully;
- reconsider a decision relating to the imposition of remedies for a trigger event previously called in; and
- exercise the call-in power in respect of a completed trigger event outside of the prescribed period where the original decision to call in or not call in the trigger event was taken within the prescribed period.

131. Where the Secretary of State chooses to reconsider a decision, a call-in notice may be given up to six months of the day on which the information was discovered to be false or misleading.

132. The Government believes it should be an offence for a person to supply information to the Secretary of State that is false or misleading in a material respect, if the person

knows, or is reckless as to whether, this is the case. Any party committing this offence will be at risk of criminal or, in the alternative, civil sanctions. A non-exhaustive list of factors will also be included in legislation to which the Secretary of State must have regard when determining the nature and amount of civil penalty to impose in any particular case.

The decision-maker

133. The Government has decided that the Secretary of State for Business, Energy and Industrial Strategy will carry out the role of decision-maker. The Secretary of State will be responsible for making decisions under the new regime having weighed up all the relevant evidence provided to them, which might include evidence provided by other Ministers, Departments and Agencies.

134. The Secretary of State for Business, Energy and Industrial Strategy is currently the decision-maker in relation to most national security cases under the Enterprise Act 2002 and the continuation of this reflects the Government's desire to balance national security with supporting businesses and FDI in the UK.

Nexus test

135. The Government believes it is important for the Secretary of State to be able to investigate transactions that raise national security concerns, even where acquirers and sellers do not have a direct link to the UK.

136. To intervene in cases of this nature, the Secretary of State must be satisfied that one of the following conditions is met:

- in respect of an entity that is formed or recognised under the law of a country or territory outside of the UK, the entity must carry on activities in the UK or supply goods or services to persons in the UK;
- in respect of an asset that is situated outside of the UK or intellectual property, the asset must be used in connection with activities taking place in the UK or the supply of goods or services to persons in the UK.

137. The Government emphasises that this is necessary in order to ensure that complex corporate structures cannot be used to circumvent the regime. For example, a business in one country acquiring a business in another may have national security consequences for the UK if the latter provides services to the UK upon which the country fundamentally relies.

138. This is also the case in relation to assets. For example, the supply of energy to the UK is provided, in part, by assets (such as deep-sea cables) located outside its geographical borders. Intellectual property may also arise outside the UK and yet be key to the provision of critical functions to the UK.

139. However, the Government recognises that applying this nexus test to transactions subject to mandatory notification would not be practical or proportionate. To that end, the Government will also legislate for a tighter nexus test for mandatory transactions. This does not preclude the Government from using the call-in power to intervene in transactions in the specified sectors where there is a less direct link to the UK.

Interim orders

140. The Government has decided that the Secretary of State should be able to impose 'interim orders' under the new regime, if necessary, while a full national security assessment takes place. Interim orders are mostly intended to prevent any national security risks being realised during the course of the assessment period.

141. The Secretary of State would have to meet a clear statutory test in order to apply interim orders to a transaction. They must reasonably consider that any order is necessary and proportionate in order to prevent or reverse action that could prejudice the Secretary of State's functions under the legislation.

142. The Secretary of State would decide whether to issue an order on a case-by-case basis and must keep such orders under review. Parties subject to such orders will be able to formally request that the Secretary of State varies or revokes such orders, and the Secretary of State will have to consider such requests as soon as practicable.

143. An interim order would no longer apply once a final notification is given, a final order is imposed, its specified length of application lapses or it is revoked.

Chapter 7 – The assessment process

144. The White Paper set out the process by which the Government would call in trigger events and the subsequent national security assessment process.

Updated policy

Overall process length and extension period

145. The Government has thought carefully on how the assessment period should function. It is committed to the principle of providing clear assessment timeframes so that clarity is provided to parties involved in transactions subject to national security assessments.

146. The Government will legislate for an initial assessment period of 30 working days. This period will begin on the day a formal call-in notice is given to the affected parties following initial screening of the notification.

147. We will, though, also legislate for an additional period of 45 working days where the initial assessment period is not sufficient to fully assess the risks involved with a transaction. The Secretary of State must issue a separate additional period notice for this to apply, and it would begin the first working day after the initial assessment period ends.

148. The Secretary of State will also be able to agree a voluntary period between the Government and the acquirer for further scrutiny after the additional period ends. Such an extension would have to be agreed in writing between the acquirer and the Secretary of State. Such a period could only be applied if the Secretary of State is satisfied that the transaction in question poses, or would pose, national security risks, and reasonably considers that further time is required to consider whether to make a final order or what it should contain.

149. As the acquirer would have to agree to this extension voluntarily with the Secretary of State, the Government does not consider it necessary to impose statutory time limits on the voluntary period.

150. At the end of the assessment period, the Secretary of State must either give a final notification clearing the transaction, or issue a final order if they are satisfied that the transaction poses, or would pose, national security risks. Full details on final orders can be found at Chapter 8.

151. The Government is satisfied that this process will strike a balance between the Government having sufficient time to consider the national security risks associated with transactions, and giving affected parties as much clarity as possible when it comes to the timing of transactions.

Interaction between the assessment period and information gathering requests

152. If at any point during the assessment process the Secretary of State formally issues an information notice or an attendance notice to a person, then the clock will stop at the point that such a notice is issued and will restart once the Secretary of State issues a notice specifying that they are satisfied that there has been compliance with the notice or the time given to comply has passed.
153. For example, if the Secretary of State issues an information notice on day 1 of the initial assessment period and parties provide the requisite information three days later, then day 2 would only begin at the point that the Secretary of State issues a notice that they are satisfied that all the information requested has been provided. This is to prevent parties deliberately delaying and elongating the process to the point that the Government is timed out of investigating. Full details on the information gathering process can be found at chapter 9.

Publication of a decision to call in

154. The Government does not intend to routinely publish call-in decisions and will instead only do so where it is appropriate – for example, where one or more of the parties involved are required to notify the market of price-sensitive information in line with their existing statutory obligations, or where the Secretary of State otherwise considers it is appropriate.
155. The Government will, however, publish information following the assessment process in relation to cases resulting in final remedies (including blocking orders) being imposed on the deal for national security reasons. Decisions on cases which are assessed and cleared without any final remedies being imposed will not routinely be published but, for the reasons explained in the paragraph above, the Government may do so where appropriate.
156. In addition, the Government will publish a report annually to Parliament providing information about the types of trigger events it has been notified about, and those it has called in, without naming the individual parties, to provide context, guidance and examples to business, investors and their advisers. This is intended to ensure that the national security scrutiny process itself does not unintentionally distort the market or disrupt potential transactions, while maintaining the Government's clear commitment to transparency.

Chapter 8 - The remedies available to protect national security

157. The White Paper set out the steps that the proposed legislation would permit the Senior Minister to take in the event that a trigger event (which had been called in for scrutiny) raises, or could raise, national security concerns.

Updated policy

158. The Government believes that for the regime to be effective, the Secretary of State must have the ability to impose remedies on transactions both during the assessment period and following the completion of a full national security assessment. The Secretary of State will have to meet clear statutory tests to impose any remedies, and persons subject to them will be able to request that they are varied or revoked. They will also be subject to robust judicial oversight.

159. The types of conditions the Government would consider applying to transactions were set out in the White Paper, focussing on access to sensitive sites, access to confidential information, supply chains, intellectual property transfer, compliance, monitoring, and personnel. The Government proposes to take the conditions set out in the White Paper forward.

160. In the majority of cases, it is expected that any conditions would be placed upon the acquirer of that interest and/or the entity being acquired. However, like the type of conditions themselves, it is important that the Government is afforded sufficient flexibility to deal with any scenario.

161. Parties will be encouraged to maintain a dialogue with the Government throughout the assessment process and it is anticipated that these conversations will assist in designing remedies. There will also be a formal opportunity for parties to make representations on remedies during the assessment process.

162. However, it is not intended that parties will be able, as under the Enterprise Act 2002, to offer undertakings (actions offered voluntarily by the parties). Any action proposed to address the national security risk, even if proposed by the parties, will be formalised in an order issued by the Secretary of State and enforceable through sanctions.

Final orders

163. Following the completion of a national security assessment, the Secretary of State may take the decision to impose a final order in relation to a trigger event. A statutory test must again be met to impose a final order. The Secretary of State will need to be satisfied, on the balance of probabilities, that the trigger event poses, or would pose, a national security risk. They will also need to reasonably consider that the provisions of the order are necessary and proportionate for the purpose of preventing, remedying or mitigating the risk.

164. The Secretary of State would set out when applying a final order how long the conditions would apply for. The Government cannot rule out situations where final orders would apply to trigger events indefinitely, nor can the Government rule out ultimately blocking a trigger event altogether or requiring it to be unwound. In some circumstances, these may be the only remedy that could appropriately address the national security risk. The Government emphasises that unwinding remains the option of last resort where all possible options for divestment have been explored and exhausted.
165. There may be very rare circumstances where the Government concludes financial assistance should be given to an entity in consequence of the making of a final order. The Government will therefore include a power to allow the Government to provide such financial assistance. This spending power will only be used as a last resort where necessary.
166. As with interim orders, the Secretary of State would decide whether to issue a final order on a case-by-case basis and must keep such orders under review. Persons subject to such orders will be able to formally request that the Secretary of State varies or revokes such orders, and the Secretary of State will have to consider such requests as soon as practicable (unless there has been no material change of circumstances since the order was made or any previous request).

Chapter 9 - Powers to gather information

167. The White Paper proposed that the Government should have powers to gather information in order to inform decision-making at each stage of the new regime.

Updated policy

168. The Government will legislate to give the Secretary of State the power to require relevant information along with attendance as a witness where this is proportionate.

169. When the Secretary of State issues an information notice, it must specify the type of information required, the time in which it must be provided, why it is required and the possible consequences of non-compliance. Recipients are not required to provide any information that they could not be compelled to provide in civil proceedings.

170. Similarly, an attendance notice must specify the time and place a witness is required to attend, why attendance is required and the possible consequences of non-compliance. Recipients are not required to provide any information that they could not be compelled to provide in civil proceedings.

171. Persons receiving information gathering requests will be required to inform the Government if they do not hold the required information within a specified timeframe. Further, if they hold any details which could enable finding this information, they could be required to provide the Secretary of State with those details.

172. Information gathering requests will be an important tool for the Secretary of State to use in order to be fully informed about all the details of a transaction. The Government will work constructively with parties when it comes to such requests.

173. The Government does not believe there is merit in a statutory time limit for information gathering requests as many are likely to be straightforward. The approach being taken forward will give flexibility to both the Government and affected parties.

174. As above, the Government will pause the clock during the assessment period while information gathering requests are fulfilled. It considers it important that the Secretary of State has sufficient time, with all necessary information, to complete a national security assessment. The Government emphasises that where third parties are uncooperative, the Secretary of State will (in addition to considering the sanctions available) seek to identify whether there are alternative sources for the relevant information in order to otherwise progress or conclude the assessment efficiently.

175. The Government believes that this approach will effectively address concerns that a third party who has no interest in a prospective acquisition (or, indeed, their interest is best served by it not proceeding – e.g. the target company's board in a hostile takeover situation) could derail or significantly delay the assessment process from taking place by failing to respond to an information-gathering request.

Chapter 10 - Sanctions

176. The White Paper sought views on the potential sanctions for non-compliance to incentivise compliance and punish breaches of the regime.

Updated policy

177. The sanctions available need to ensure compliance by signalling the threat of punishment for those that offend – acknowledging the fact that a breach of the regime may put national security at risk – whilst ensuring that the enforcement toolkit is flexible and proportionate. The Government has set out the full list of offences and sanctions at Annex C.

178. For breaches of interim and final orders, and breaches of information and attendance notices, the Government will introduce a daily rate penalty to ensure parties are brought into compliance as quickly as possible. Partly to ensure clarity in the treatment of non-businesses, the Government has also proposed fixed maximum penalties for these offences.

179. The Government recognises the importance and care that must be taken when handling any personal or commercially sensitive data parties provide under the regime and the Government therefore thinks it is appropriate that anyone who shares that information, other than for a purpose provided in the legislation, should be liable for that breach.

180. A non-exhaustive list of factors will also be included in legislation to which the Secretary of State must have regard when determining the nature and amount of civil penalty to impose in any particular case.

181. The Government recognises concerns regarding the proposed introduction of criminal sanctions. However, criminal sanctions will be retained to act as a suitable deterrent to breaching the regime, given that a breach of the regime may put national security at risk.

Chapter 11 - Judicial Oversight

182. The White Paper proposed that the Government's powers under the new regime would be subject to robust and transparent judicial oversight.

Updated policy

183. The Government has decided to apply a standard judicial review process to legal challenges to regime decisions, rather than opening up each decision to the possibility of a full appeal on the merits, except in respect of decisions relating to civil penalties, for which a full merits appeal will be available.

184. The proposed regime is strongly tied to the protection of national security and it is considered that the Secretary of State is best placed to assess the national security risk which decisions in this proposed regime are intended to address. It would not be appropriate for courts to remake the Secretary of State's decisions.

185. There will however be one modification to the standard judicial review process for challenges to certain decisions: a shortened time limit. Where applicable, claims will need to be brought not more than 28 days after the grounds to make the claim arose, unless the court gives permission for the claim to be brought after the expiry of this time limit.

186. It is important to strike a balance between the need for an open and independent review with the equally meritorious need to ensure sensitive material, relating to matters of national security, is not improperly disclosed. The Government has determined that the closed material procedure provisions in the Justice and Security Act 2013 is the most appropriate means of properly protecting such sensitive material. The Justice and Security Act makes provision for a closed material procedure in civil cases heard before the High Court, the Court of Session, the Court of Appeal or the Supreme Court. In such proceedings, the Act allows the Secretary of State to apply to the court to withhold disclosure of material whose disclosure would be damaging to the interests of national security.

187. All decisions by the Secretary of State under the regime will be subject to either judicial review or a bespoke appeal procedure.

188. The Government maintains its assessment that establishing a dedicated court for hearing challenges to decisions under the proposed legislation would not be appropriate. Given the low volume of cases and nature of the challenges it would be disproportionate to have a dedicated court or tribunal.

Chapter 12 - How the proposed reforms will interact with other regimes

189. The White Paper sets out how the new national security regime will interact with other statutory or regulatory regimes or processes.

Updated policy

190. The Government will not introduce an automatic stop that would require the Competition and Markets Authority (CMA) to pause its assessment while the national security assessment is underway. The Government believes that a more proportionate solution is to allow the CMA and the national security regime to run in parallel in order to avoid any delay to the CMA's assessment.

191. The Government will proceed with its duty on the CMA to share information which the Government reasonably requires to perform its functions under the legislation .

192. The Government will include a power in the legislation that would allow the Secretary of State to intervene where competition remedies run contrary to national security interests if this is considered to be necessary and proportionate. The Government is committed to retaining the CMA's independence. The intention, as far as possible, is that any national security remedies will be aligned with competition remedies and that we align the timetables to the extent possible within the statutory framework to achieve this.

193. The Government is clear that any conflict between competition remedies and risks posed to national security will be resolved after consultation with the CMA and that mutually beneficial remedies will be imposed wherever possible. Interaction between the two regimes will be covered in more detail in a Memorandum of Understanding with the CMA.

194. The Government believes it would not be reasonable for the Secretary of State to issue a direction overriding CMA remedies without any statutory assessment of a trigger event. The Secretary of State will only be able to overrule the CMA when a national security assessment has been carried out.

195. The Government is clear that the national security regime is solely focussed on national security, rather than other areas of public interest such as financial stability and media plurality. The Government therefore wishes to design and implement its reforms so that they interface effectively with the wider competition and public interest regime.

196. The Government will ensure that the interaction between the national security regime and other regulatory regimes (separate to the CMA regime) can be facilitated through comprehensive MOUs and the exchange of information between regulators and the Secretary of State. This will allow assessments to operate in parallel, ensuring that the independence of these regulators is maintained and any burden on them is minimised.

197. The Government will work closely with the Takeover Panel to ensure that the new regime interacts effectively and efficiently with the Takeover Code.

Chapter 13 - Information sharing

198. In the White Paper, the Government set out plans to allow the sharing of relevant information on transactions of interest with other relevant organisations.

Updated policy

199. The Government intends to legislate to allow it to share information with other departments, regulators and agencies. The ability to share information between the Government and these public bodies would allow for more effective interaction, better informed decision-making and will help to minimise delays.

200. The Government has concluded that there would be instances when disclosing information internationally would assist the decision-making process under the regime, or could assist our allies in making decisions under their corresponding systems. As such, the Government considers that these powers to disclose information to overseas partners are necessary.

201. In addition, the Government is proposing that it would have the power to disclose information to domestic or overseas public authorities for the purpose of any criminal investigation or proceedings, or for civil proceedings under the legislation, or for the purpose of protecting national security.

202. The Government will consider the disclosure of information to overseas public authorities on a case-by-case basis, and safeguards to ensure the protection of information will be included in the legislation. In addition, the Government is clear that any instances of information disclosure will need to be compliant with data protection legislation.

Chapter 14 - Impact Assessment

203. The Government provided some high-level numbers in the White Paper for the number of call-ins, notifications, and remedies under the regime.
204. The Government has now undertaken an impact assessment of the costs and benefits of the new regime. The improvements in methodology, alongside policy changes made since the White Paper, and an improved evidence base as a result of the consultation have significantly altered the figures that were originally set out in the White Paper. The impact assessment is published alongside this document.

Chapter 15 - Next steps

205. The Government is bringing forward primary legislation to provide for the new regime alongside the publication of this document

Annex A – List of respondents*

Legal and advisory firms

- Allen & Overy LLP
- Pinsent Masons LLP
- Slaughter & May
- White & Case
- Pinsent Masons
- Clifford Chance
- Covington & Burling LLP
- Kirkland & Ellis International LLP
- Orrick
- Herbert Smith Freehills LLP
- Bryan Cave Leighton Paisner LLP
- Freshfields
- GC100
- Linklaters LLP
- Baker McKenzie
- Norton Rose Fulbright LLP
- Fingleton Associates Ltd
- Financial Markets Law Committee
- Company Law Committees of the City of London Law Society and The Law Society of England and Wales
- Mergers Working Group of the Antitrust Committee of the International Bar Association
- City of London Law Society Financial Law Committee
- Law Society of Scotland
- City of London Law Society Competition Law Committee
- Institute of Chartered Accountants of England and Wales

Investors

- Association for Financial Markets Europe
- USS Investment Management Ltd
- Global Infrastructure Investment Association

- GIC Private Limited
- Macquarie
- Investment Association
- British Private Equity & Venture Capital Association
- IP Group
- Alternative Investment Management Association
- Loan Market Association

Government, academia and research bodies

- Professor Sir John Vickers, individual response
- Universities UK
- Dr Ashley Lenihan, individual response
- Dr Maqluba Santora, individual response
- Dr Stuart Calimport, individual response
- David Parsons, individual response
- Julien Burcher, individual response

Advanced technology

- NuGeneration Limited
- NCC Group plc
- Pencil
- Oxford University Innovation Ltd
- Oxford Sciences Innovation plc

Infrastructure businesses (including trade associations)

- Rolls-Royce
- ADS Group Limited
- ExxonMobil
- Centrica
- Essar Oil UK
- Philips 66 Ltd
- EDF Energy

- Greenergy
- Oil & Gas UK
- United Kingdom Petroleum Industry Association Ltd
- BT
- OneWeb
- Telefonica
- LHR Airports Limited
- UK Major Ports Group (UKMPG)
- UK Competitive Telecommunications Association (UKCTA)
- The Independent Game Developers' Association (TIGA)

Regulators

- Health and Safety Executive

*This list only includes respondents who agreed to be listed as a named respondent to the consultation.

Annex B – List of White Paper Consultation Questions

- I. What are your views about the proposed tests for trigger events that could be called in for scrutiny if they met the call-in test?
- II. What are your views about the proposed role of a statement of policy intent?
- III. What are your views about the content of the draft statement of policy intent published alongside this document?
- IV. Does the proposed notification process provide sufficient predictability and transparency? If not, what changes to the proposed regime would deliver this?
- V. What are your views about the proposed legal test for the exercise of the call-in power? Does it provide sufficient clarity about how it would operate?
- VI. What are your views about the proposed process for how trigger events, once called in, will be assessed?
- VII. What are your views about the proposed remedies available to the Senior Minister in order to protect national security risks raised by a trigger event?
- VIII. What are your views about the proposed powers within the regime for the Senior Minister to gather information to inform a decision whether to call in a trigger event, to inform their national security assessment, and to monitor compliance with remedies?
- IX. What are your views about the proposed range of sanctions that would be available in order to protect national security?
- X. What are your views about the proposed means of ensuring judicial oversight of the new regime?
- XI. What are your views about the proposed manner in which the new regime will interact with the UK competition regime, EU legislation and other statutory processes?

Annex C – List of Offences

| Offence | Maximum Civil Penalty | | | Maximum Criminal Penalty |
|---|------------------------------|---|----------------|--|
| | Type of penalty ⁶ | Businesses | Non-Businesses | |
| Completing, without reasonable excuse, an acquisition subject to mandatory notification before clearance is given | <u>Fixed</u> | 5% of total worldwide turnover (including of businesses owned or controlled by the penalised business), or £10 million, whichever is higher | £10 million | Summary: fine and/or imprisonment of up to 12 months (six months in Northern Ireland)* Indictment: fine and/or imprisonment up to five years. |
| Failing, without reasonable excuse, to comply with an interim or final order | <u>Fixed</u> | 5% of total worldwide turnover (including of businesses owned or controlled by the penalised business), or £10 million, whichever is higher | £10 million | Summary: fine and/or imprisonment of up to 12 months (six months in Northern Ireland)* Indictment: fine and/or imprisonment up to five years. |
| | <u>Daily rate</u> | 0.1% of total worldwide turnover (including of businesses owned or controlled by the penalised business), or £200,000, whichever is higher | £200,000 | |
| Failing, without reasonable excuse, to comply with an information or attendance notice | <u>Fixed</u> | £30,000 | | Summary: fine and/or imprisonment of up to 12 months (six months in Northern Ireland)* |

⁶ Where a daily rate penalty is applicable, it may be combined with a fixed penalty.

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| | <u>Daily rate</u> | £15,000 | Indictment: fine and/or imprisonment up to two years. |
| Supplying information that is false or misleading in a material respect to the Secretary of State (or to another person, knowing that the information is be used for the purpose of supplying information to the Secretary of State) in connection with any of the functions of the Secretary of State under the Act, that the person knows to be false or misleading in a material respect or is reckless as to whether this is the case. | <u>Fixed</u> | £30,000 | Summary: fine and/or imprisonment of up to 12 months (six months in Northern Ireland)* Indictment: fine and/or imprisonment up to two years. |
| | <u>Daily rate</u> | N/A | |
| Intentionally or recklessly altering, suppressing or destroying any information required by an information notice, or causing or permitting its alteration, suppression or destruction. | <u>Fixed</u> | £30,000 | Summary: fine and/or imprisonment of up to 12 months (six months in Northern Ireland)* Indictment: fine and/or imprisonment up to two years. |
| | <u>Daily rate</u> | N/A | |
| Intentionally obstructing or delaying the making of a copy of information provided in response to an information notice. | <u>Fixed</u> | £30,000 | Summary: fine and/or imprisonment of up to 12 months (six months in Northern Ireland)* Indictment: fine and/or imprisonment up to two years. |
| | <u>Daily rate</u> | N/A | |
| Unauthorised use or disclosure of regime information. | N/A | | Summary: fine and/or imprisonment of up to 12 months (six months in |

| | | |
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| | | Northern Ireland)* Indictment: fine and/or imprisonment up to two years |
|--|--|--|

* The maximum will be six months in England and Wales until section 154(1) of the Criminal Justice Act 2003 is brought into force.

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Consumer and Competition Policy

Department for Business, Energy & Industrial Strategy
First Floor, 1 Victoria Street, London, SW1H 0ET

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