

New UK National Security Regime To Come Into Force In January 2022

21 July 2021

On 20 July 2021, the UK Government [announced](#) that the National Security and Investment Act 2021, which was passed on 29 April 2021, will come into force on 4 January 2022.

This new regime for review of investments on national security grounds will be among the most wide-ranging in the world. It represents the most significant change in the UK regulatory environment since the Government ceded the power to approve or prohibit mergers on competition grounds to an independent agency in 2002.

The principal features of the new regime are as follows.

- Transactions in 17 defined sectors will require notification to, and pre-closing approval from, a new Investment Security Unit (ISU). The definitions of these sectors remain broad, though they have been revised in the [draft regulations](#) also published on 20 July 2021.
- The defined sectors are: Advanced Materials; Advanced Robotics; Artificial Intelligence; Civil Nuclear; Communications; Computing Hardware; Critical Suppliers to Government; Cryptographic Authentication; Data Infrastructure; Defence; Energy; Military and Dual-Use; Quantum Technologies; Satellite and Space Technologies; Suppliers to the Emergency Services; Synthetic Biology; and Transport.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

Nicholas Levy
+44 20 7614 2200
nlevy@cgsh.com

Maurits Dolmans
+44 20 7614 2343
mdolmans@cgsh.com

Jackie Holland
+44 20 7614 2233
jaholland@cgsh.com

Tihir Sarkar
+44 20 7614 2205
tsarkar@cgsh.com

Michael Preston
+44 20 7614 2255
mpreston@cgsh.com

Sam Bagot
+44 20 7614 2232
sbagot@cgsh.com

Gabriele Antonazzo
+44 20 7614 2353
gantonazzo@cgsh.com

Nallini Puri
+44 20 7614 2289
npuri@cgsh.com

Michael James
+44 20 7614 2219
mjames@cgsh.com

Paul Gilbert
+44 20 7614 2335
pgilbert@cgsh.com

John Messent
+44 20 7614 2377
jmessent@cgsh.com



- The Government will also be able to “call in” transactions that fall outside the mandatory regime if a risk to national security is suspected. The Government has published a [draft statement](#) on the use of its call in power, which will be subject to [consultation](#) until 30 August 2021. The assessment will take into account three primary risk factors:
 1. **Target risk:** “whether the target of the qualifying acquisition (the entity or asset being acquired) is being used, or could be used, in a way that poses a risk to national security”;
 2. **Acquirer risk:** “whether the acquirer has characteristics that suggest there is, or may be, a risk to national security from the acquirer having control of the target”;
 3. **Control risk:** “whether the amount of control that has been, or will be, acquired through the qualifying acquisition poses a risk to national security. A higher level of control may increase the level of national security risk.”
- The mandatory regime applies to acquisitions of more than 25% of shares or voting rights in an entity active in the UK in the relevant sectors, or sufficient voting rights to “secure or prevent the passage of any class of resolution governing the affairs of the entity.” Acquisitions of assets, including land and IP, could be called in for review but are not subject to mandatory notification. The Government has indicated that it would only “rarely” call in acquisitions of assets which are not linked to the 17 sectors covered by the mandatory regime.
- The regime could capture non-UK entities that carry on activities in the UK or supply goods and services in the UK, and non-UK assets that are used in connection with activities in the UK or with the supply of goods or services in the UK, as further explained in this new [guidance](#). There is no broad *de minimis* threshold or safe harbour for certain types of investor. Acquisitions by UK investors could also be caught.
- Decisions will be taken by the Secretary of State for Business, Energy and Industrial Strategy, who will assess the risk to national security and the need for, and scope of, any remedies.
- Transactions that close without clearance will be deemed “void.” Sanctions for non-compliance would include fines of up to 5% of the acquirer’s worldwide group turnover and imprisonment for directors.
- The Government will be able retrospectively to review transactions that closed on or after 12 November 2020 for a period of up to five years (or up to six months after becoming aware of the transaction).
- The initial screening period for notified transactions will be up to 30 working days. If a transaction is “called in” for full review, the period for review will be up to 30 working days, which can be extended by up to 45 working days, and can be extended further with the agreement of the acquirer.
- The ISU, which sits within the Department for Business, will provide informal advice as to whether transactions are likely to fall within the scope of the new mandatory regime or be called in for review on national security grounds, as it has done over the past few months since the Act was passed. The Government has also published guidance on the new rules [here](#), with specific [guidance](#) for “higher education and research-intensive sectors.”
- The new regime will operate in parallel to other UK regulatory requirements, including the Takeover Code, export control, and merger control under the Enterprise Act 2002. As explained in this [guidance](#), if there are grounds for a transaction to be considered for both competition and national security reasons, the ISU will work closely with the Competition and Markets Authority to

manage the case. Ultimately, though, any decision on national security grounds will take precedence over the CMA's competition assessment.

- The new regime is consistent with heightened scrutiny of foreign investment around the world, with many other jurisdictions introducing new rules or strengthening existing regimes in recent years. As with merger control, investments in companies with international activities will frequently be subject to parallel review under foreign investment rules in several jurisdictions. The Act includes the possibility for the Secretary of State to share information with non-UK public authorities for certain specified purposes, including for the exercise of functions under the Act or corresponding functions under non-UK rules.

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