

UK Government Considers Changes to National Security and Investment Regime

15 November 2023

On 13 November 2023, the UK Government [opened](#) a consultation on proposed changes to the National Security and Investment (*NSI*) regime, less than two years after the regime came into force.

Oliver Dowden MP, the Deputy Prime Minister and formal decision-maker under the regime in his role as Cabinet Secretary, describes the consultation as an opportunity for respondents to share views on how the NSI regime “*can be even more business friendly while maintaining and refining the essential protections*” needed to protect national security.

In addition to broader questions on stakeholders’ experience of the regime to date, the consultation seeks views on several possible changes.

The most significant questions from an investor perspective include:

- Whether certain types of transactions could be exempt from the mandatory notification regime, such as some internal reorganisations; and
- How the 17 sensitive areas of the economy in which a mandatory notification of investments can be required (*Mandatory Notification Sectors*) might be amended, including by narrowing the scope of the “artificial intelligence” definition and adding new categories for semiconductors and critical minerals (which are currently covered only in related sector definitions).

We summarise below the principal areas of focus for the consultation.

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Changes in the scope of the regime.

Respondents' input will be used to "*hone the scope*" of the NSI regime. Noting that 93% of notifications were cleared within 30 working days in FY 2022-2023, the Government is "*interested in whether there are additional ways it could reduce the potential burdens compliance with the NSI Act places on businesses and investors.*"

Three possible changes to the mandatory notification requirements merit particular mention.

First, the Government is considering **exemptions for certain internal reorganisations**. The Government recognises that some internal reorganisations, by their nature, "*may mean that the level of control held by a person over the target entity does not change or changes very little.*" The Government is requesting feedback on whether different types of internal reorganisations are more or less likely to change who controls or influences an entity and to what extent such transactions might be exempted from mandatory notification.

The consultation also refers to possible exemptions for (i) the appointment of liquidators, official receivers and special administrators, (ii) Scots law share pledges, (iii) acquisitions by public bodies, and (iv) automatic enforcement provisions in secured lending agreements (though the Government "*does not currently expect to exempt transfers of control under Automatic Enforcement Provisions from the NSI Act's mandatory notification system but would welcome further views from stakeholders on the effect of this.*"). The Government indicates that it is not currently considering exemptions for acquirers that could be considered to be "*lower risk, such as UK-based acquirers or acquirers that have previously had*

acquisitions investigated and cleared under the NSI Act."

Second, the Government has requested input on possible changes to the **scope of the existing 17 Mandatory Notification Sectors**.

Having received feedback that the definitions of [Advanced Materials](#), [Critical Suppliers to Government](#), [Defence](#), [Suppliers to the Emergency Services](#) and [Synthetic Biology](#) are too complex, difficult to understand or could be structured more clearly, the Government has requested views on how to improve clarity and simplicity in these areas.

The Government is considering narrowing the scope of the [Artificial Intelligence](#) sector (while also adding new activities such as "generative AI"), reducing the current UK turnover threshold in the [Communications](#) definition, adding to the [Data Infrastructure](#) definition entities that "*own, operate, manage, or provide services to, colocation data centres*", updating the [Energy](#) definition to include multi-purpose interconnectors, which will over time "*replace the individual terms for interconnectors and transmission*" and widening the definition of [Suppliers to the Emergency Services](#) to include sub-contractors.

The Government is also considering removing from the definition of [Data Infrastructure](#) entities that hold a (sub-) contract with a public sector authority, given the overlap with the [Critical Suppliers to Government](#) definition.

Third, the Government is considering whether to create **new Mandatory Notification Sectors** (without changing the overall scope of the activities covered by the NSI regime).

(i) **Semiconductors**. The Government is assessing whether a standalone Mandatory Notification Sector,

combining semiconductor-related activities that presently fall within either [Advanced Materials](#) or [Computing Hardware](#), would improve clarity. The consultation suggests updating the definition to reflect the UK's Semiconductors Strategy,¹ *“for example by further focusing on compound semiconductors, design and intellectual property.”*

- (ii) **Critical minerals.** The Government is considering separating into a standalone Mandatory Notification Sector the 18 minerals currently identified as critical (and covered within the scope of the [Advanced Materials](#) sector). The Government also anticipates updating the list of critical minerals to reflect the latest assessment by the British Geological Survey, which is due for publication early next year.

Changes to the operation of the regime.

Responses to the consultation will also be used to *“[i]mprove NSI notification and assessment processes to minimise business burdens as far as possible”*. The main operational change mentioned in the consultation concerns the notification forms. The Government is considering requesting additional information through the initial notification forms, as this *“may reduce the number of subsequent information and attendance notices issued and help the Government accept notifications more quickly”*. The Government recognises, however, that such a change would *“increase the length of the forms for all notifiers”* and seeks feedback accordingly.

The consultation will close on 15 January 2024. The Government anticipates that it

might be followed by more detailed consultation on specific issues.

For further information on enforcement of the NSI regime, please see our recent Alert Memorandum [here](#).

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¹ See Department for Science, Innovation & Technology, Policy Paper, National semiconductor strategy (19 May 2023), available at:

<https://www.gov.uk/government/publications/national-semiconductor-strategy/national-semiconductor-strategy>.