

# UK National Security Regime: Annual Report 2024 and Observations on Recent Practice

11 September 2024

On 10 September 2024, the UK Government published its third [Annual Report](#) (the “**Report**”) on the enforcement of the National Security and Investment Act 2021 (the “**NSI Act**”), covering the period from 1 April 2023 to 31 March 2024.

The NSI Act requires pre-closing notification of transactions where the buyer acquires more than 25% of shares or voting rights in a target that is active in the UK in one or more of 17 sensitive sectors.<sup>1</sup> The regime also enables the UK Government to review a wide range of non-reportable transactions that might affect UK national security. The regime came into force in January 2022.

The Report states that the “*UK continues to encourage investment, most acquisitions will not raise national security concerns,*” and the regime is “*effective but light-touch, helping businesses and investors to continue with certainty.*” This replicates the message under the prior Government that the enforcement would “*follow a ‘small garden, high fence’ approach: safeguarding the UK against the small number of deals that could be harmful to our security whilst leaving the vast majority of transactions unaffected.*”<sup>2</sup>

This message is consistent with our experience in practice. Most transactions have been cleared within around 7-8 weeks from notification, and only a small proportion of transactions have been called in for full review.

We summarise below the highlights from the Report and our observations on recent practice under the NSI Act.

<sup>1</sup> The Report does not refer to the possibility of a consultation on the scope of the 17 sensitive sectors subject to mandatory notification, which was envisaged prior to the change of Government in July 2024.

<sup>2</sup> [NSIA Call for Evidence](#), November 2023.

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## **2023-2024 Annual Report**

**Notifications.** 906 notifications were received by the Government between 1 April 2023 to 31 March 2024: 753 mandatory, 120 voluntary, and 33 retrospective (*i.e.*, after closing). This represents a slight increase from the previous reporting period, in which 865 notifications were made. As in the previous year, the Defence sector accounted for the highest proportion of notifications (around half of all filings).

**Call-in Notices.** Only around 4% of notified transactions reviewed were called in for full review after the initial screening period of 30 working days. In the previous year, around 7% were called in for full review.

Of the 41 transactions called in for full review, 22 were subject to mandatory notification, 15 were notified voluntarily, and four had not been notified. No call-in notices were issued in connection with a retrospective validation application (where a transaction should have been notified prior to closing but was not).

Chinese investment continued to attract the highest level of scrutiny: around 41% of transactions called in for full review involved acquirers associated with China, compared to less than 5% of all notifications. 39% of transactions called in for full review involved UK-associated acquirers, but these transactions may well also have involved investment from outside the UK.

The Defence sector was the most frequently affected by transactions called in for full review (relevant to 39% of such deals), followed by military and dual-use (29%), communications (24%), advanced materials (24%), and academic R&D (24%).

At a high level, the lower proportion of transactions called in for full review may

suggest that the Investment Security Unit (“ISU”) and other Government departments are becoming increasingly comfortable, with greater experience enforcing the new regime, in distinguishing between transactions that need further review and those that can be cleared after the initial screening period.

**Final Orders imposing remedies.** Five transactions were subject to Final Orders imposing remedies, representing around 13% of transactions that reached a final decision after full review. No acquisitions were blocked or unwound. The Government also varied two Final Orders during the reporting period.

The five Final Orders issued in the reporting period concerned the following transactions.

- The acquisition of assets belonging to the University of Southampton by Voyis Imaging Inc: [June 2023](#).
- The acquisition of GE Oil & Gas and GE Steam Power by EDF: [August 2023](#).
- Rights and interests conferred to Emirates Telecommunications Group under a Strategic Relationship Agreement with Vodafone Group PLC: [January 2024](#).
- The acquisition of CPI TMD by TransDigm Inc: [February 2024](#).
- Vishay’s acquisition of Newport Wafer Fab, which Nexperia was ordered to divest under the NSI Act in November 2022: [March 2024](#).

The number of Final Orders over the past year was significantly lower than the previous year, in which 10 transactions were subject to remedies and five transactions were prohibited or unwound.

For more information on recent decisions, see our recent Alert Memorandum [here](#).

Since the end of the reporting period, there have been six further Final Orders imposing remedies, including the first Final Orders issued by the new Labour Government:

- The merger between Hutchison 3G UK Holdings Limited and Vodafone Limited: [May 2024](#).
- The acquisition of FireAngel by Siterwell Electronics: [May 2024](#).
- A joint venture between the University of Liverpool and Pinggao Group Ltd to establish the Pinggao-Liverpool European Institute for Advanced Energy Technology: [June 2024](#).
- The acquisition of Centronic Limited by Exosens UK Limited: [July 2024](#).
- The acquisition of 46.5% of Harbour Energy plc by BASF: [July 2024](#).
- The acquisition of control over an 80 megawatt battery energy storage system by KXP Immingham Limited through the granting of an Ofgem electricity generation licence: [August 2024](#).

**Withdrawals.** In addition to the five Final Orders imposing remedies after full review, 10 transactions were withdrawn after being called in for full review. Guidance issued by the Government in April 2023 had clarified that “*if the government is satisfied that parties to an acquisition have withdrawn from it and no longer intend to complete an acquisition, no final order will be issued.*” It is unclear how many of these transactions were withdrawn because the acquirer feared an adverse NSI Act Final Order, as opposed to other reasons for a transaction to fall through. The Annual Report indicates, though, that 8 of the 10 transactions withdrawn involved acquirers associated with China.

**Sanctions.** As in the previous year, there were no penalties or criminal prosecutions for breaching the NSI Act, including for completing a notifiable transaction without approval. There were, however, 33 retrospective notifications, which are used to report transactions that should have been notified before closing but were not.

### **Observations on Recent Practice**

We have observed the following trends under the NSI Act since it came into force in January 2022.

First, the notification and review process has largely been smooth for acquisitions by investors from “friendly” jurisdictions of assets that are not highly sensitive. Filings can be prepared quickly (with significantly less information required than merger control filings) and, as borne out in the statistics, the ISU has accepted filings quickly and issued clearances within the 30-working-day screening period.

Secondly, the prohibitions and remedies to date have been consistent with recent trends in the approach to national security issues by FDI agencies (at least in western Europe and among fellow “Five Eyes” allies of the United States, Canada, Australia, and New Zealand). All five prohibitions under the regime relate to transactions involving investors with links to China or Russia (at least in the Government’s view), and most remedies have also been imposed on Chinese investments (*e.g.*, in energy sector assets).

Remedies imposed on investors from “friendly” countries have concerned sensitive targets (*e.g.*, suppliers to the Ministry of Defence) and have focused on behavioural remedies that include conditions:

- Restricting the sharing of sensitive information by the acquired entity with the buyer;
- Requiring Government approval for certain decisions made by the target;
- Governing the appointment of certain personnel in the acquired entity, such as board members or key staff members;
- Requiring that R&D capabilities remain in the UK;
- Imposing corporate governance requirements such as UK security vetting for certain board and executive committee members;
- Requiring a “National Security Committee” to be established to oversee the target’s sensitive work;
- Giving the UK Government the power to appoint a Board observer;
- Requiring provision of strategic capabilities to the UK Government to be maintained;
- Granting the UK Government a right of access to premises to audit compliance; and
- If a serious breach of Final Order jeopardizes fulfillment of Ministry of Defence programmes, enabling the UK Government to take operational control of the relevant activities.

Thirdly, the principal concerns with the regime relate to transparency and predictability. After submitting the filing, there is frequently no interaction with the ISU before the decision whether to call in a transaction for full review is made. Even after a transaction has been called in for full review, any insight into the ISU’s thinking is typically derived only from requests for information during the review

period. This lack of engagement is exacerbated by the reluctance of other Government departments to discuss transactions while formal NSI Act review is underway.

This means that the first clear indication of any concerns is the extension of the review period by 45 working days. This signals that remedies are being considered and is typically followed by the issuing of draft remedies and first insight into the substantive basis for any concerns. In at least one case, final remedies were imposed without any prior engagement with the acquirer.

The Government has been seeking to reassure investors that concerns regarding transparency and engagement will be addressed, though it maintains that there are limits to what is possible in relation to matters of national security.

The Annual Report follows on from the publication of updated [guidance](#) in May 2024. Please see [here](#) for our Alert Memorandum regarding this guidance and recent Final Orders.

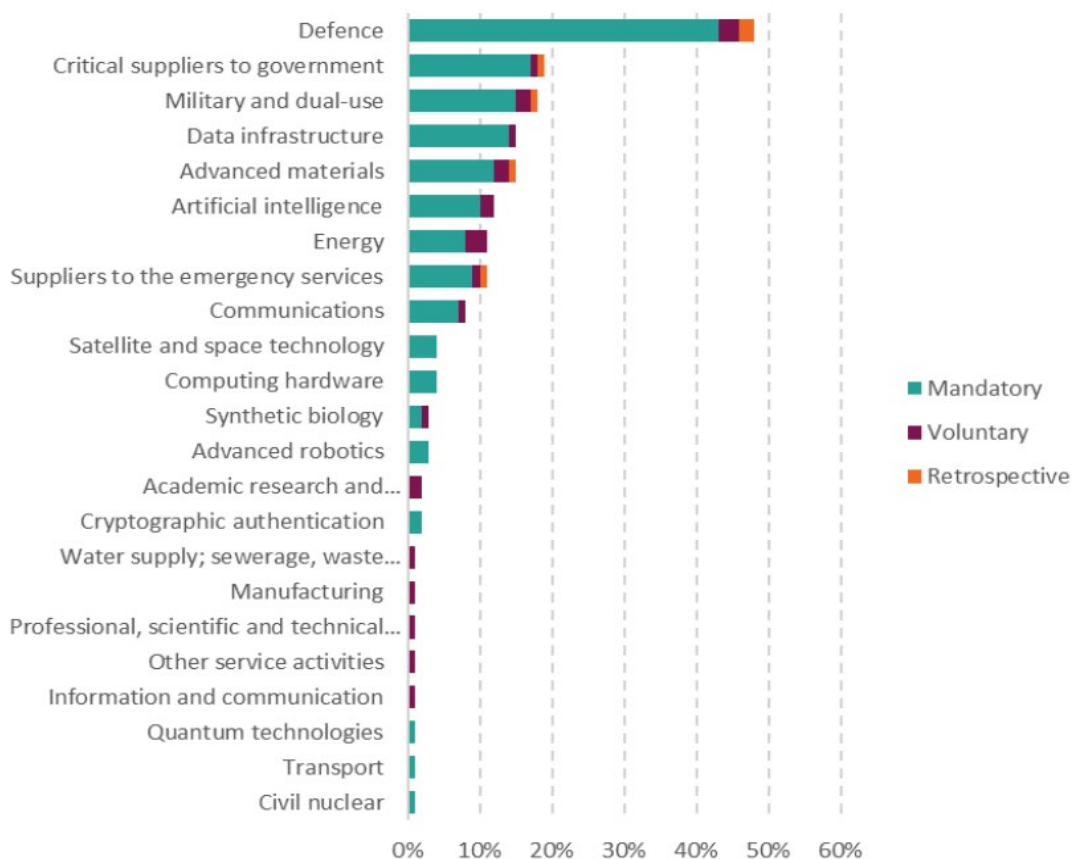
Charts extracted from the Annual Report illustrating the statistics above are set out in the following pages.

Cleary Gottlieb has secured NSI Act clearance for transactions valued at a total of more than £100 billion since the Act came into force in January 2022, including transactions subject to in-depth review by the ISU.

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**Figure 7 - Notifications accepted and rejected, by notification type and area of the economy**



**Figure 8 - Call-in notices, by area of the economy**



Figure 11 - Final Orders, by area of the economy

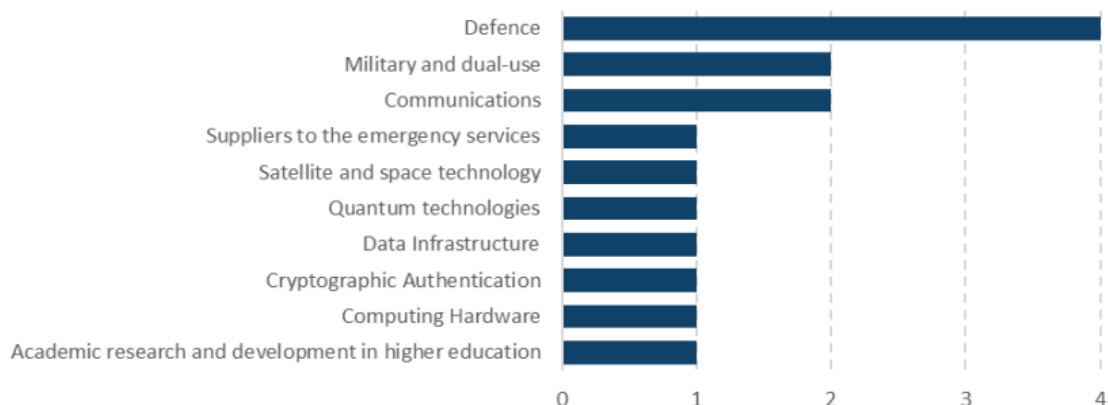


Figure 13 - Call-in notices, by origin of investment

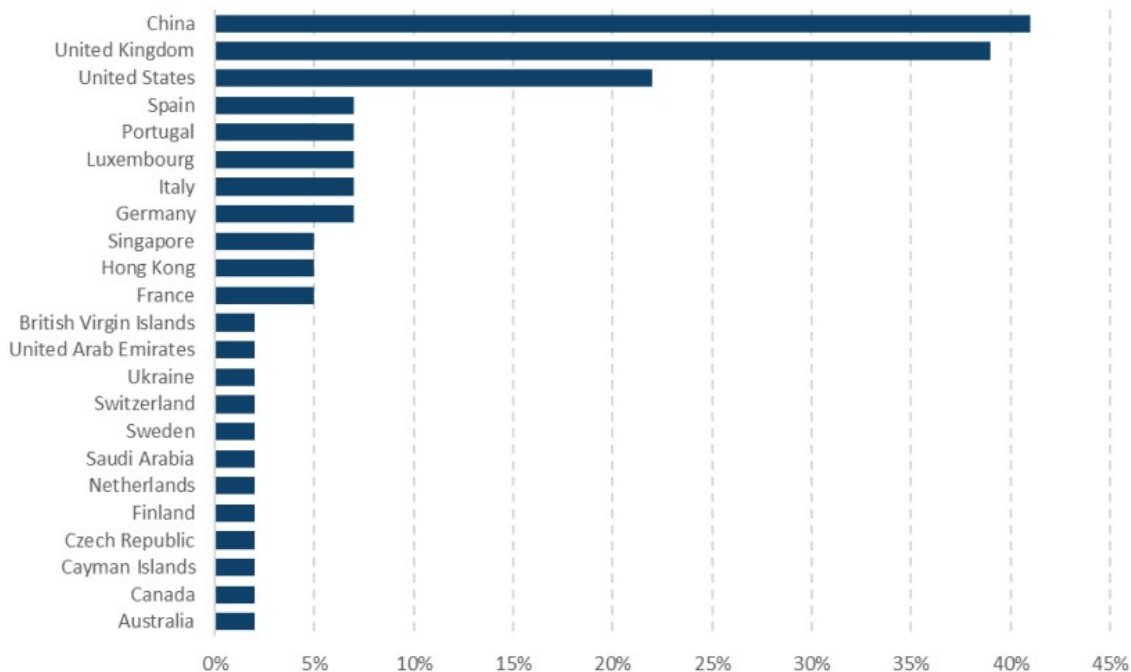


Figure 16 - Final orders, by origin of investment

