

UK National Security & Investment Act: compulsory filing regime to take effect from 4 January 2022

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Summary

The UK Government on 20 July 2021 published further details on the UK's new investment screening regime, the National Security & Investment Act - confirming that mandatory filings and pre-completion approvals will be required on qualifying acquisitions in 17 key sectors from 4 January 2022. Further guidance and draft secondary legislation on the precise operation of the regime have also been published.

In a further step towards the full implementation of the UK's new National Security & Investment screening regime, the UK Government today announced that mandatory notification obligations for qualifying acquisitions will take effect from 4 January 2022.

Any share acquisitions with a UK nexus entered into from that date in 17 Key Sectors, and which give rise to an increase in holdings or voting rights beyond thresholds of 25%, 50%, 75% or sole ownership, will be subject to prior review and approval by the new Investment Security Unit within the Department for Business, Energy & Industrial

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Strategy (BEIS). The mandatory filing regime is set to have broad application and will be triggered by deals of any value, and where the a target entity’s connection with the UK may be quite limited, for example, to supply relationships with UK customers.

Transactions which do not meet the criteria for a mandatory filing (for example, because they are asset acquisitions, or the above shareholding thresholds are not crossed, or the target activities fall outside the precise definitions of the 17 Key Sectors) may nevertheless be subject to **call-in** for review where the Secretary of State reasonably suspects a risk to national security. This call-in risk also applies retroactively to all transactions which are entered into (since 12 November 2020 and) prior to the 4 January 2022 mandatory filing commencement date.

The risk of call-in may be mitigated by making a voluntary filing to the ISU. For further information, see our earlier articles on the regime **here** and **here**.

In addition to announcing the 4 January 2022 date from which the regime will come into full effect, the Government has also today:

- Published draft secondary legislation for consultation containing the proposed final definitions of the 17 Key Sectors, within which mandatory filings will be required. *The 17 Key Sectors are below. We would be happy to provide further details on the precise definitions in your sector and the changes adopted since the previous consultation.*

1) Advanced Materials	2) Advanced Robotics	3) Artificial Intelligence
4) Civil Nuclear	5) Communications	6) Computing Hardware

7) Critical Suppliers to Government	8) Cryptographic authentication	9) Data infrastructure
10) Defence	11) Energy	12) Military and Dual Use
13) Quantum Technologies	14) Satellite and Space Technologies	15) Suppliers to emergency services
16) Synthetic biology	17) Transport	

- Published an updated draft “statement of purpose” setting out further detail on how the Secretary of State intends to exercise its call-in powers. *Most notably, the new draft guidance signals a more straightforward, although ostensibly more expansive, approach to “call-in” compared to the previous draft guidance – essentially, noting that call-in of non-notifiable transactions is most likely in in, or [simply] related to, the 17 Key Sectors*
Notwithstanding protestations from Government that the regime is about safeguarding national security, rather than “interfering arbitrarily with investment”, the UK’s economic prosperity and reputation are now ranked alongside military advantage and public safety as factors in determining the threat risk associated with particular acquirers or entities with which they may have links.
- *Published intended practical guidance papers relating to: preparation for the regime coming into full effect; application of the regime to people and acquisitions outside the UK; and relationships between the regime and other regulatory requirements.*
- *Published sector specific guidance for the higher education and research-intensive sectors.*

If you require any input in relation to the material potential impact of the National Security & Investment Act on your commercial activities, please don’t hesitate to get in touch.

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