CELIS Country Note

on

the United Kingdom, 2025

by

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Abstract

Foreign direct investment is firmly recognised as essential to the growth of the UK economy, and both the current and previous UK governments have emphasised that the UK is "open for business" and keen to attract international investment. However, despite a commitment to a pro-investment approach, the standalone investment screening regime introduced by the National Security and Investment Act 2021 has resulted in a sea-change in the regulatory environment in the UK. Certain transactions in 17 sensitive sectors are subject to mandatory notification obligations, and the Secretary of State also has broad powers to call in a wider range of transactions for review in any sector where s/he reasonably considers that a risk to national security may arise (broadly interpreted). Since the new regime entered into force on 4 January 2022 the Investment Security Unit has quickly established itself as one of the most active authorities globally, receiving around 900 notifications each year. Around 95% of notified transactions are cleared unconditionally within the initial 30-working day review period, but the risk of conditions being imposed on clearance – or even outright prohibition – needs to be taken seriously, and the notification and review process can be a considerable additional burden for investors.

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1. Political Background

1.1. Foreign investment policy

The UK is a leading destination for inward foreign direct investment (FDI), placing second in EY's 2024 ranking of European countries by its ability to attract FDI projects. In that report, it was the only country in the European top three to see FDI project numbers increase year-on-year,[1] with a recent resurgence in technology projects in particular.[2] FDI is firmly recognised as essential to the growth of the UK economy, and both the current and previous UK governments have emphasised that the UK is "open for business" and keen to attract international investment.

However, concerns about potential risks to national security associated with foreign investment are also high on the UK political agenda, in line with the global trend towards greater protectionism and against a backdrop of heightened geopolitical tensions and concerns around supply chain resilience.

From a policy perspective, the UK government seeks to strike a delicate balance between these competing considerations. The approach to foreign investment was summarised by the previous government in November 2023 as "*small garden, high fence*": safeguarding the UK against the small number of deals that could be harmful to national security whilst leaving the vast majority of transactions unaffected and ensuring that any screening regime remains as frictionless as possible.[3] The new government elected in July 2024 recently indicated that it intends to maintain a similar approach, stating in a paper on proposed industrial strategy that

[1] EY UK Attractiveness Survey 2024, available online at: https://www.ey.com/content/dam/ey-unified-site/ey-com/en-uk/newsroom/2024/07/ey-uk-attractiveness-survey-07-2024.pdf

[2] According to the EY UK Attractiveness Survey 2024, the UK secured over a quarter (27%) of all European technology projects in 2023 (available online at: : https://www.ey.com/content/dam/ey-unified-site/ey-com/en-uk/newsroom/2024/07/ey-uk-attractiveness-survey-07-2024.pdf).

[3] See the foreword to the Call for Evidence on the operation of the National Security and Investment Act, issued on 13 November 2023 (available online at: https://www.gov.uk/government/calls-for-evidence/call-for-evidence-national-security-and-investment-act/call-for-evidence-national-security-and-investment-act). This echoed the "*small yard, high fence*" description previously used by US President Biden in respect of the US approach to screening of foreign investment.

"*growth is the number one mission of this government*" and committing to an *"unreservedly pro-business approach*".[4]

This pro-investment approach is reflected in the fact that no sectors of the economy are entirely foreclosed to foreign investment in the UK. Nonetheless, the investment screening regime introduced by the National Security and Investment Act 2021 (NSIA) with effect from 4 January 2022 has significantly strengthened the regulatory framework.[5] The regime is "country agnostic" insofar as it applies equally – at least in principle – to all investors, irrespective of their country of origin (including UK investors). It represents an important new execution risk factor for dealmakers, with a similar risk profile to merger control rules.

There are two main elements to the NSIA regime. Qualifying transactions in 17 sensitive sectors are subject to mandatory notification obligations (and cannot be completed prior to clearance). In addition, the Secretary of State has very broad "call-in" powers to review other transactions - in any sector - where s/he reasonably considers that a risk to national security may arise. The Investment Security Unit (ISU) receives around 900 notifications a year (both mandatory and voluntary), which is significantly more than many other jurisdictions (including for example the USA, France and Germany).[6] While the vast majority of these transactions receive an unconditional clearance decision at the end of the initial review phase (over 95% in the most recent 2023-24 reporting period),[7] the notification and review process can be a considerable additional burden for investors.

1.2. Other relevant policies

The NSIA regime is solely concerned with screening of transactions that may give rise to a risk to UK national security. During the passage of the legislation through the Parliamentary approval process the government expressly rejected calls for the new regime to be used to

[4] See the foreword to Invest 2035: the UK's modern industrial strategy, issued for public consultation on 14 October 2024 (available online at: https://www.gov.uk/government/consultations/invest-2035-the-uks-modern-industrial-strategy)
[5] Prior to the entry into force of the NSIA, the UK government was only able to formally intervene in transactions on national security grounds via the public interest provisions of the UK merger control regime, pursuant to the Enterprise Act 2002. Until 4 January 2022, one of the public interest grounds for intervention was national security, but the power was very seldom used (13 interventions between 2003 and 2021).
[6] Looking at the most recent available data, in the 2023-24 annual reporting period, the ISU received 906 notifications. In comparison, in the 2023 calendar year the US FDI authority CFIUS received 342 notifications, the French FDI authority received 309 notifications and the German FDI authority received 257 notifications.
[7] NSIA Annual Report 2023-2024, covering the period 1 April 2023 – 31 March 2024, published on 10 September 2024. Available online at: https://www.gov.uk/government/publications/national-security-and-investment-act-2021-annual-report-2023-24.

justify intervention in transactions on broader "national interest" grounds concerning industrial policy or protection of jobs in the UK.

However, there is no formal definition of "national security" in the legislation, or detailed guidance on the circumstances in which national security is, or may be, considered at risk. This is a deliberate policy decision: the Statement of Policy Intent published by the Secretary of State (updated in May 2024 and referred to as the "Section 3 Statement") explains that the intention is to ensure that the NSIA regime is "*sufficiently flexible to protect the nation*".[8] The Section 3 Statement stresses that the regime will not be used arbitrarily, reflecting the UK's standing as an economy that is open to investment, but the lack of any formal definition or detailed guidance does leave the door open for the concept of national security to be expanded beyond the traditional scope of military or dual-use products and/or services.

This is reflected in practice by the broad range of sensitive sectors in which mandatory notification obligations can apply under the NSIA, including communications, AI, energy, transport, data infrastructure and synthetic biology (discussed further below). Conditions imposed on clearance of a transaction reviewed under the NSIA may also extend to measures designed to protect domestic supply chains and keep certain R&D or manufacturing capabilities within the UK, with some blurring of the lines between national security and broader industrial policy.

Where broader "public interest" concerns are anticipated in respect of a particular transaction, there may be scope to agree commitments to address these outside the scope of a formal NSIA review, either with the government or directly with the seller. However, in practice investors should be prepared for a formal NSIA review, which may result in the imposition of additional remedies. An interesting recent example is the proposed takeover of Royal Mail (the UK national postal services provider) by a company that is 90% owned by a Czech billionaire with links to Russia. It has been reported that contractual commitments were offered when submitting the takeover bid that are intended to address broader public interest concerns (including for example maintaining the "one-price-goes-anywhere" service for the entire UK and protection of workers' employment rights), in the context of pre-empting a formal review under the NSIA.

[8] National Security and Investment Act 2021: Statement for the purposes of section 3 (available online at: https://www.gov.uk/government/publications/national-security-and-investment-statement-about-exercise-of-the-call-in-power/national-security-and-investment-act-2021-statement-for-the-purposes-of-section-3--2). See paragraph 10.

1.2.1. Key features

As noted above, the NSIA regime combines mandatory notification requirements for qualifying transactions in 17 sensitive sectors with broad call-in powers that may apply in any sector (see below for further detail). The call-in power has the practical effect of encouraging voluntary notification of transactions falling outside the scope of the mandatory regime where the requisite degree of control is acquired and it is anticipated that national security concerns may potentially arise.

The review process is undertaken by the ISU, but the ultimate decision-maker is the Chancellor of the Duchy of Lancaster (referred to as Secretary of State in the legislation).[9] The ISU operates a hub-and-spoke model, coordinating with other departments across government that have an interest in the relevant transactions. For example, the Ministry of Defence may provide input in relation to a transaction in the defence area. The ISU is the direct point of contact for parties and handles all communications with deal parties.

There is inevitably a political aspect to investment screening under the NSIA, and the regime has come under criticism for lack of transparency and predictability for investors. Very little information is made available publicly in respect of individual transactions reviewed by the ISU: no detailed decisions are made public, and the government does not typically publish any announcements about individual reviews other than when a final order is imposed (i.e. a final decision imposing remedies or prohibiting a deal). In those cases, a brief summary of the final order is published by the government, including details of the parties, a very short description of the national security risks identified and (usually, but not always) a sentence or two describing the conditions imposed on clearance. As a general rule, no information is published in respect of unconditional clearance decisions or decisions to call-in a transaction for in-depth investigation.[10]

[9] When the NSIA originally entered into force, the responsible Secretary of State was the Secretary of State for Business, Energy and Industrial Strategy. However, as part of a restructuring of government departments announced on 8 February 2023, the ISU was moved to sit within the Cabinet Office, and the final decision-maker under the NSIA became the Chancellor of the Duchy of Lancaster (at the time also the Deputy Prime Minister), who was given the additional role of Secretary of State in the Cabinet Office. Following the general election held on 4 July 2024, the final decision-maker remains the Chancellor of the Duchy of Lancaster. It is unclear whether the current holder of that role has also been appointed as a Secretary of State in the Cabinet Office, but this terminology remains in the legislation. For the purposes of this Country Note, the final decision-maker under the NSIA is referred to as the Secretary of State.

[10] There have been a small number of exceptions to this general rule, where the government has issued a press release following an announcement by one of the parties to the transaction (for example, *Altice/BT plc* (2022) and *Vesa Equity Investment / Royal Mail plc* (2022)).

2. Overview of Domestic Screening Mechanisms

The NSIA was first tabled in Parliament on 11 November 2020. It received Royal Assent on 29 April 2021, and subsequently entered into force on 4 January 2022. It has retroactive effect and applies to any transaction entered into on or after 12 November 2020 (i.e. once the legislation was under consideration in Parliament).

This new screening regime introduced for the first time a standalone dedicated regime to review transactions on national security grounds, replacing the government's powers to intervene in transactions on national security grounds under the merger control regime set out in the Enterprise Act 2002. The NSIA has represented a sea-change in the regulatory framework for investment screening in the UK: the ISU now receives around 900 notifications a year under the NSIA, and as at 11 November 2024 the Secretary of State has issued 6 final orders prohibiting transactions or requiring divestment of completed transactions and 22 final orders imposing conditions to allow transactions to proceed. There are however signs that the risk of call-in may be decreasing as the government becomes more experienced in identifying those transactions that genuinely raise national security concerns: the proportion of reviewed transactions called in for in-depth investigation fell from around 7% in 2022-23 to around 4% in 2023-24.

2.1. Mandatory notification obligations in certain sectors

The NSIA imposes mandatory notification obligations in respect of qualifying acquisitions of control (known as "trigger events") of companies that carry out specified activities in one or more of 17 sensitive sectors of the economy in the UK, including communications, AI, energy, transport, data infrastructure and synthetic biology.

In broad terms, control will be acquired through obtaining more than 25% of shares or voting rights in the target company or increasing an existing shareholding or voting rights and crossing the 25%/50%/75% thresholds. Further detail on the definition of a qualifying transaction and the full list of specified sectors is set out in section 3 below.

2.2. Broad call-in powers applicable in any sector

Alongside the mandatory notification requirements, the NSIA grants the Secretary of State broad powers to call-in for review any qualifying transaction that s/he reasonably considers may give rise to a risk to UK national security.

The definition of a "qualifying transaction" is broader for this purpose than in the context of mandatory notification, in addition to the scenarios covered by the mandatory notification regime, it includes:

- any acquisition of “material influence” in a company (which may be deemed to exist in relation to a low shareholding, potentially even below 15%), including in the context of intra-group reorganisations; and
- the acquisition of control over qualifying assets (including land and intellectual property), which may be obtained through grant of a licence to use the asset.

As explained further below, the call-in power may also be used in respect of transactions involving wholly non-UK entities: the target must provide goods or services to customers located in the UK, but no physical presence in the UK is required.

3. Overview of Relevant Framework

3.1. NSI regime applicable in principle to all investors

The NSIA is not explicitly targeted at specific categories of investor or investment associated with specific jurisdictions. Indeed, unlike many FDI regimes it even applies to UK investors, and a significant proportion of both notifications and call-in notices so far have involved investment associated with the UK (61% of accepted notifications and 39% of call-in notices in 2023-24).[11] Not all of these transactions will have involved solely UK investment (transactions can be allocated to more than one country of origin of investment for the purposes of the Annual Report statistics), but wholly-UK transactions are caught and we have seen conditions imposed on a wholly-UK deal in *Epiris/Sepura*.[12]

The updated Section 3 Statement on the use of the call-in power makes clear that the government's focus when assessing the risk posed by a particular acquirer is on affiliation to hostile parties, rather than foreign ownership itself. State-owned enterprises, sovereign wealth funds and similar entities are not regarded as inherently more likely to pose a national security risk, particularly if it can be shown that the acquiring entity has a history of passive or long-term investments. The key question will be whether an acquiring entity has ties or allegiances to states or organisations hostile to the UK, including via linked parties such as

[11] See NSI Annual Report 2023-24, pages 4-5.
[12] Acquisition of Sepura Ltd by Epiris LLP: final order dated 14 July 2022, subsequently varied on 31 July 2023 and revoked on 27 June 2024 (available online at: https://www.gov.uk/government/publications/acquisition-of-sepura-ltd-by-epiris-llp-notice-of-final-order).

members of investment consortiums or fund managers (reflecting concerns that such linked parties could be used by actors with hostile intentions to obfuscate their identity).[13]

Nonetheless, in practice the UK has followed the global trend towards heightened scrutiny of investment from China and Russia. Of the six prohibition/divestment decisions issued so far (as at 11 November 2024), five have involved investment associated with China and the other involved investment associated with Russia. A similar picture emerges from final orders imposing conditions on clearance: 8 out of 22 have involved investment associated with China. However, conditions have also been imposed under the NSIA on transactions involving investors from "friendly" jurisdictions including the USA,[14] Canada,[15] UAE[16] and France.[17]

3.2. Mandatory notification requirements

Mandatory notification requirements currently apply to transactions involving the acquisition of "control" over a qualifying entity[18] (i.e. not asset acquisitions) that carries on specified activities in the UK in one or more of the 17 sensitive sectors specified in the Notifiable Acquisition Regulations 2021 (NARs).[19]

"Control" will be deemed to be acquired where a person:

- increase its percentage of shares or voting rights held in an entity engaged in specified activities:
    - from 25% or less to more than 25%;[20]
    - from 50% or less to more than 50%;

[13] See the Section 3 Statement, paragraphs 36 and 37.
[14] See for example *Transdigm / Iceman Holdco* (February 2024).
[15] See for example *Voyis Imaging Incorporated / Qualifying Asset of the University of Southampton* (June 2023).
[16] See for example *Tawazun / Reaction Engines* (September 2022).
[17] See for example *Exosens UK Ltd / Centronic* (July 2024).
[18] A qualifying entity is generally defined as any entity that is not an individual and (i) is formed or recognised within the UK, or (ii) is formed or recognised outside of the UK but either carries on activities in the UK or supplies goods or services to persons in the UK. In the context of the mandatory notification requirements, a greater UK-nexus is required: the acquisition of control over a qualifying entity will only be caught if the entity carries out specified activities in the UK.
[19] The NSIA includes provision for the scope of the mandatory notification requirements to be expanded in the future through the issue of notifiable acquisition regulations. Section 6(8) of the NSIA explicitly envisages that this could include expanding the scope of mandatory notification to include certain asset acquisitions. However, as at 11 November 2024, there have been no proposals to extend the scope of mandatory notification under the NSIA.
[20] The acquisition of exactly 25% of the shares or voting rights in an entity engaged in specified activities is not sufficient to trigger the mandatory notification obligation: the shareholding or voting rights acquired must exceed 25%. However, such an acquisition could amount to the acquisition of "material influence" and therefore potentially still be called in for review under the broader call-in power – see below.

- from less than 75% to 75% or more; or

- acquires voting rights in an entity engaged in specified activities that (alone or together with other voting rights held) enable to acquirer to secure or prevent the passage of any class of resolution governing the affairs of the entity.

The 17 sensitive sectors specified in the NARs 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 technology
- Suppliers to the emergency services
- Synthetic biology
- Transport

It is not the case that mandatory notification obligations will apply to the acquisition of a qualifying entity carrying out *any* activities within these sectors: the key question is whether the entity carries out *specified activities* in one or more of these sectors, with detailed definitions of the relevant activities set out in the NARs. The government has published guidance to assist parties in assessing whether a transaction will fall within scope.[21] If there is "significant uncertainty" as to whether a particular transaction will be notifiable, the parties may seek (non-binding) informal guidance from the ISU. In practice, determining whether a target undertakes specified activities in a particular sensitive sector generally requires active cooperation from the target. In cases where the target is not cooperative or the opportunity for pre-bid due diligence is limited this can result in a degree of uncertainty for acquirers.

As discussed further in section 4, the previous government indicated in April 2024 that it would undertake a public consultation in summer 2024 on possible amendments to the definitions of the specified activities in the 17 sectors. Expansion of the list of sensitive sectors to include water was also stated to be under consideration, as well as carving out separate sector definitions for Critical Minerals and Semiconductors (currently included within Advanced Materials). At the time of writing (11 November 2024), it is anticipated that the

[21] Guidance on notifiable acquisition in the 17 mandatory areas - available online at: https://www.gov.uk/government/publications/national-security-and-investment-act-guidance-on-notifiable-acquisitions/national-security-and-investment-act-guidance-on-notifiable-acquisitions

current government will launch a consultation in due course, but there has been no indication of either scope or timing.

3.3. Call-in powers / voluntary notification

Alongside the mandatory notification regime, the Secretary of State has broad powers to call-in a qualifying transaction for review in any sector. As noted above, the definition of "qualifying transaction" is broader for these purposes than for the mandatory regime in three important ways:

- The call-in power may be used in respect of acquisition of control of an asset (as well as acquisition of control of an entity). In this context, "control" means acquiring a right or interest in or in relation to the asset, as a result of which the person can use the asset or direct or control how it is used or use it or direct or control how it is used to a greater extent than prior to the acquisition. This can include acquiring the right to use an asset (including IP) via the grant of a licence.
- For acquisitions of control of an entity, in addition to the "trigger events" outlined above for mandatory notification the call-in power may be used where the acquisition results in a person acquiring "*material influence*" over the target entity. This has the same broad meaning as under the UK merger control regime and may capture an acquisition of as little as 5-10% of the shares.[22]
- There is no requirement for the target company to carry out its activities in the UK: it is sufficient that it supplies goods or services to persons in the UK, even if it is based outside the UK.

The call-in power may be exercised at any time up to six months after either completion of the transaction or the date on which the Secretary of State becomes aware of the transaction, whichever is the later, provided that this is also within five years of the relevant

[22] The government's guidance on the NSI regime expressly states that any assessment of an acquisition of material influence under the NSIA will be considered in light of the relevant section on material influence in the mergers guidance issued by the UK Competition and Markets Authority (CMA) (see: NSIA Guidance "Check if you need to tell the government about an acquisition that could harm the UK's national security" (available at: https://www.gov.uk/guidance/national-security-and-investment-act-guidance-on-acquisitions) and the CMA Guidance "Mergers - the CMA's jurisdiction and procedure: CMA2" (available at: https://www.gov.uk/government/publications/mergers-guidance-on-the-cmas-jurisdiction-and-procedure). In brief, material influence is a very broad concept that can be achieved in a variety of ways, including holding sufficient shares to block the passage of a special resolution (whether on a *de jure* or *de facto* basis, for example taking into account average turnout at shareholder meetings), board representation, or being an important supplier or customer to the target entity.

trigger event.[23] For transactions completed on or after 12 November 2020 but prior to 4 January 2022, these time periods are calculated from the date the regime entered into force i.e. 4 January 2022. This long "look-back" period means that it may be advisable to submit a voluntary notification in the interests of legal certainty if it is anticipated that a transaction could potentially give rise to national security concerns. In November 2024, a divestment order was imposed on a transaction almost three years after it had been completed.[24]

The ISU has extensive information gathering powers to enable it to request any information necessary to inform an assessment of potential national security risks, including in circumstances where no notification has been submitted. The ISU also actively monitors markets for non-notified transactions that may give rise to national security concerns and obtains information via cooperation arrangements with the UK Competition and Markets Authority (CMA)[25] and FDI regulators in other jurisdictions. In the 2023-24 reporting period, the ISU called-in four non-notified transactions for review (representing approximately 10 per cent of the total number of call-ins), one of which ultimately resulted in conditions being imposed on clearance.

The broad scope of the call-in power and the risk of a transaction being called in for review post-completion means that it may be advisable to submit a voluntary notification to the ISU where the requisite degree of control is acquired and it is anticipated that potential national security concerns may arise, even if there is no mandatory notification "trigger event". The update of the Section 3 Statement in May 2024 expanded the guidance on what the Secretary of State is seeking to protect by using the call-in power and added further examples of the potential national security risks that the Secretary of State may consider. However, in practice the likelihood of call-in can still be difficult to gauge in some cases. The decision whether to voluntarily notify will often depend on the parties' risk appetite and the commercial implications of a call-in notice being issued post-completion.

[23] This longstop deadline does not apply if the transaction fell within scope of the mandatory notification requirements and was not notified.
[24] See the final order imposed on 5 November 2024 in respect of the acquisition of 80.2% of shares in Future Technology Devices International Limited (a Scottish semiconductor company) by FTDI Holding Limited (ultimately Chinese-owned). This transaction was completed on 7 December 2021, but it appears that it did not come to the attention of the government until November 2023, when it came to light that the target company had continued selling semiconductors to Russia following the invasion of Ukraine.
[25] A formal memorandum of understanding was agreed with the CMA in December 2021, setting out a framework for cooperation, coordination and information sharing in the operation of the NSIA regime.

It is notable that the latest Annual Report on the operation of the NSI regime indicated that the proportion of notifications made on a voluntary basis has decreased recently (around 13% of notifications in 2023-24 compared to around 20% of notifications in 2022-23). This may indicate that investors are becoming more comfortable with assessing the risk of call-in. However, it remains too early to draw any longer-term conclusions from this decrease, and a significant number of voluntary notifications continue to be submitted (120 in 2023-24).

3.4. The review process

Where the mandatory notification regime is engaged, a notification must be submitted by the acquirer to the ISU before the relevant acquisition of control has taken place. Voluntary notifications may be submitted by any party to the transaction from the point at which arrangements are in progress or contemplation which, if carried into effect, would result in a trigger event taking place in relation to a qualifying entity or asset, but there is no requirement to submit prior to completion. No fees are payable for submitting a notification under the NSIA, whether mandatory or voluntary.

Notifications must be made on a specified form, with separate forms for mandatory and voluntary notifications. The government has issued guidance on completing and registering a notification form.[26] The relevant form must be completed and submitted via an online portal. In practice there can be technical issues associated with this that can cause delays, and sufficient time should be factored into account for this.

If a notification is submitted (whether mandatory or voluntary) the ISU will first review the notification to check that it is complete (usually within 6-8 working days).[27] Once it is accepted as complete, the statutory review timetable will start to run, and the Secretary of State must decide within 30 working days whether to issue a call-in notice. Any request for further information during this initial review period will not "stop the clock", but delays in obtaining additional information may make it more likely that a call-in notice will be issued to allow more time for the substantive assessment to be completed.

[26] Guidance on completing and registering a notification form (available online at: https://www.gov.uk/government/publications/national-security-and-investment-notification-service-mandatory-voluntary-and-retrospective-forms/guidance-on-completing-and-registering-a-notification-form).

[27] The ISU may reject notifications on certain grounds specified in section 18 of the NSIA. In practice a short period of informal pre-notification contact may be required in some cases to ensure that the notification is accepted. In 2023-24, 1.7% of mandatory notifications and 7.5% of voluntary notifications were rejected. The most common reason for rejection is because the acquisition was notified as a mandatory notification but should have been a voluntary notification, or vice versa. Other reasons include duplication of notifications and insufficient information being provided.

The vast majority of transactions (over 95% in 2023-24) are cleared at the end of the initial review period. However, if a call-in notice is issued, the Secretary of State then has a further 30 working days to review the transaction in more detail. This may be extended by a further 45 working days if required (known as the "additional period") and extended again for a further unspecified period with the consent of the parties (known as the "voluntary period").

In practice, review timeframes post call-in notice can be significantly longer than suggested by the above statutory deadlines. This is because the issue of a request for information or an attendance notice (i.e. a requirement to attend an interview) by the ISU during the in-depth investigation period post call-in will "stop the clock".

The data in the 2023-24 NSI Annual Report illustrates this by including a comparison of the average number of "statutory working days" taken to reach a decision (i.e. not including any time the review clock is stopped) with the average number of "calendar working days" (i.e. including time the review clock is stopped). For example, on average it took 26 statutory working days – but 48 calendar working days – to issue a final notification (unconditional clearance) from the point an acquisition was called in, and on average 34 statutory working days – but 53 calendar working days – to issue a final order. Nonetheless, there are signs that the speed of decision-making is improving in more complex cases that are subject to a call-in notice. The latest Annual Report cautions against drawing conclusions about the significant improvement in the time taken to issue a final order in 2023-24 (average 34 statutory working days vs 81 statutory working days in 2022-23) due to the small number of final orders issued in that reporting period (5 compared to 15 in the previous reporting period). However, there was also a substantial reduction in 2023-24 in the number of cases in which the 45-day "additional period" was used to extend the review timeframe (12 times, compared to 29 times in 2022-23), as well as the number of cases in which the further "voluntary period" was used (4 times, compared to 10 times in 2022-23).

Compared to merger control review, the NSIA review and decision-making process can often seem like a "black box" for investors, with very limited information made available publicly and limited interaction with the ISU case team even for the parties to the transaction. Calls for increased transparency were a key theme in feedback received from stakeholders in response to the November 2023 Call for Evidence on the operation of the NSI regime, and the previous government issued an updated Section 3 Statement and updated guidance for investors in May 2024. However, the lack of transparency and consequent unpredictability of the regime remains a key concern for investors.

3.5. Substantive assessment

The Section 3 Statement provides guidance for investors in broad terms regarding the factors taken into account by the Secretary of State when deciding whether to issue a call-in-notice, including guidance on assessment of:

- "Target risk" i.e. the nature of the target and whether it is being used, or could be used, in a way that poses a risk to national security (most likely to arise in transactions in or closely linked to the specified activities set out in the NARs);
- "acquirer risk" i.e. the characteristics of the acquirer, including technological capabilities and the extent of any links to entities that may seek to undermine or threaten the interests of the UK; and
- "control risk" i.e. the amount of control the acquirer gains of an entity's operational business or future strategy, or control or use of an asset.

However, there is no additional guidance on the substantive assessment of national security risks that is undertaken once the decision has been made to call in a transaction for in-depth investigation. This is perhaps inevitable, given the understandable secrecy around national security issues, but it means that it can sometimes be difficult for investors to confidently assess the likely outcome of an NSIA review. This is exacerbated by the lack of published reasoned decisions: as noted above, only brief summaries of final orders are made public, and the description of national security concerns identified is usually limited to one or two lines.

3.6. Sanctions for non-compliance

If a transaction which falls within scope of the mandatory notification regime is completed without being notified or without waiting for clearance prior to completion, the transaction will be automatically void. In certain circumstances it may be possible to apply for retrospective validation, but this is not guaranteed.[28]

For voluntary notifications, or transactions called-in without any notification being submitted, there is no prohibition on completion prior to clearance. However, an interim order prohibiting

[28] 33 such applications were received in 2023-24, a significant increase on the 15 applications received in 2022-23. Two applications were rejected (although no penalties appear to have been imposed in those cases, based on publicly available information).

further implementation of the transaction while the NSIA review is being conducted may be imposed.

Completion of a transaction in breach of the standstill obligation, or failure to comply with an interim or final order, can result in fines of up to five per cent of worldwide turnover or £10 million (whichever is the greater), imprisonment of individuals for up to five years, and/or disqualification of directors for up to 15 years.

3.7. Outcomes and remedies in practice

Following an NSIA review, the Secretary of State has the power to clear a transaction, prohibit it, or approve it subject to conditions.

As noted above, as at 11 November 2024 the Secretary of State has issued 28 final orders: 6 of these have been prohibition/ divestment decisions, with the remaining 22 being conditional clearance decisions. Where remedies have been imposed on clearance, there is usually (although not always) a very brief description in the published summary of the final order which offers some insights into the types of remedies that may be considered in future cases.

Typical remedies include:

- restrictions on information flows, often with a white list/black list approach;
- restrictions relating to the appointment of board members and key staff;
- the appointment of a government observer to the board;
- requirements relating to the notification of future transfers of assets;
- continuity of supply obligations; and
- requirements relating to the maintenance of R&D and manufacturing capabilities in the UK.

Upfront consideration of possible remedies is advisable for any qualifying transaction which could potentially be considered to give rise to national security concerns (broadly defined, as discussed above), alongside early engagement with the ISU. In practice, the process for discussing remedies is variable: there is much less scope for negotiation compared to, for example, during the merger control process, but depending on the case team it may be possible to engage with the ISU on matters such as the practicability of remedies proposed.

3.8. Challenging decisions taken under the NSIA

Final decisions issued by the Secretary of State under the NSIA may be appealed by way of judicial review. There are three main grounds of judicial review under English law: illegality, procedural unfairness and irrationality. An appeal by way of judicial review is not concerned with the merits of the decision as such: instead, the focus is on the process by which the decision was reached.

To date, two applications for judicial review have been made in respect of decisions under the NSIA, both in respect of divestment orders imposed on deals completed prior to the entry into force of the NSIA but called in for review under the Secretary of State's retrospective call-in powers: *Nexperia/Newport Wafer Fab* (November 2022) and *L1TFM Holdings / Upp Corporation* (December 2022).

The appeal in *L1TFM Holdings / Upp Corporation* was heard in July 2024, but as at 11 November 2024 judgment is still awaited. It is unclear whether the appeal lodged by Nexperia is still ongoing: the sale of Nexperia's 86% stake in Newport Wafer Fab to US-based Vishay Technology was completed in November 2023 (also reviewed under the NSIA and cleared subject to conditions in March 2024), and at that time it was reported that the legal challenge to the earlier divestment decision was ongoing. However, it is possible that it has since been withdrawn, given that the outcome would now be largely academic.

4. Developments to Follow

4.1. Proposals to "fine-tune" the NSI regime

Prior to the election of the new UK government on 4 July 2024, the previous government had embarked on a series of steps to fine-tune the NSIA regime. This was in response to concerns raised by investors and advisors that the regime captures too many transactions that do not raise any concerns, placing a disproportionate burden on companies and investors whilst also operating without sufficient transparency. Subject to the caveat that the new government may take a different approach, it is nonetheless worth noting the key features of the reform proposals made by the previous government.

The proposals were announced on 18 April 2024, following the Call for Evidence on the scope and implementation of the NSIA regime issued on 13 November 2023. The government emphasised its commitment to making the regime "*as pro-business and pro-investment as possible*", and stated that between April 2024 and Autumn 2024 it would:

- publish an updated Section 3 Statement in May 2024 to provide expanded and updated guidance on how the Secretary of State intends to use the call-in power, alongside updated Market Guidance Notes;
- undertake a formal public consultation in Summer 2024 on amendments to the definitions of the specified activities in the 17 specified sectors that can trigger mandatory notification obligations under the NSIA, as well as possible expansion of the list of sensitive sectors to include water and carving out of separate sector definitions for Critical Minerals and Semiconductors (currently included within Advanced Materials);
- introduce secondary legislation by Autumn 2024 to exempt the appointment of liquidators, official receivers and special administrators from the scope of mandatory notification requirements, and explore the feasibility and impact of additional targeted exemptions for certain transactions, including intra-group reorganisations; and
- consider further improvements to the NSIA review process and ways to improve the online NSI notification portal.

The government notably expressly rejected calls for a fast-track process for certain types of acquirer (for example, those who have already had a prior transaction cleared through the NSIA review process), reiterating that some targets are considered so sensitive that they will always warrant screening under the NSIA, irrespective of the identity of the acquirer.

The updated Section 3 Statement and updated Market Guidance notes were duly published on 21 May 2024, and these remain applicable under the new government. The updated Section 3 Statement expanded the previous guidance to provide further detail and hypothetical worked examples of potential national security risks that the Secretary of State may consider when deciding whether to exercise the call-in power. This included, for example, a new reference to supply chain risks and risks associated with the creation of dependencies that could lead to national security risks, and additional hypothetical examples involving AI technology as well as licencing agreements to transfer intellectual property, joint ventures involving sub-contractors to the government, and transactions involving fund structures. The updated statement also included a short section highlighting that there are certain situations where outward direct investment may constitute a qualifying transaction under the NSIA, including for example the transfer of technology, intellectual property and expertise as part of the investment or when forming joint ventures overseas.

The accompanying expansion of Market Guidance Notes involved various amendments and additions to the suite of guidance documents for investors, with the stated aim of aiding comprehension and compliance with the NSIA. Some of the most important changes included:

- new guidance (albeit still fairly limited) clarifying how the NSIA can apply to scenarios involving outward direct investment (see above);
- new and clarified practical "top tips" for completing notification forms correctly, comprehensively, and without sending any classified information;
- more detailed guidance on how long the NSI review process will take in practice, including how statutory timelines are calculated and the (rare) circumstances in which timeframes may be expedited where parties are suffering from material financial distress; and
- substantial amendments and additions to the guidance for the higher education and research-intensive sectors, including in respect of determining whether a particular transaction or collaboration will amount to a "qualifying acquisition", how to contact the Research Collaboration Advice Team, new guidance on the interaction between the NSIA and the UK's export controls system and some useful new and adapted examples of how the NSIA can apply to certain academic collaborations.

Whilst these clarifications were welcomed by investors, the government did not address all of the requests for clarification made in response to the Call for Evidence. For example, there is still a lack of detailed guidance on the application of the NSIA to fund structures and indirect investments, and the scope and intended application of provisions of the NSIA relating to the exercise of rights attached to shares by way of security. It remains to be seen whether further clarifications will be forthcoming in future updates to the guidance under the new government.

The other steps due to be taken to fine-tune the regime in Summer 2024 and Autum 2024 did not take place as planned due to the election of the new government on 4 July 2024. It is not anticipated that the new government will take a radically different approach to the enforcement of the NSIA regime and it is expected that a consultation on amendments to the mandatory notification sectors will still be launched in due course. However, as at 11 November 2024, there remains uncertainty as to scope and timing of any further reforms.

The new government has made clear its commitment to adopting a pro-investment approach to regulation of investment, and this was emphasised in the "Green Paper" published on 14 October 2024 launching a public consultation on proposals for future UK industrial policy.[29] The Green Paper focusses heavily on removing barriers to investment and championing growth of the UK economy. However, there are notably few references in the paper to the interface with the NSIA, despite the clear overlaps between the mandatory notification sectors under the NSIA and the 8 core sectors identified in the paper as being critical areas for driving investment in the UK: advanced manufacturing, clean energy, creative industries, defence, digital technologies, financial services, life sciences, and professional and business services. In a recent speech the UK Prime Minister vowed to "*rip out the bureaucracy that blocks investment and* […] *make sure that every regulator in this country takes growth* […] *seriously*".[30] However, the Green Paper confirms that the government intends that its "*approach to attracting international investors will be underpinned by the National Security and Investment Act and other protective tools, which will continue to protect national security while facilitating safe investment*."[31] It remains to be seen to what extent the new government's proposed industrial strategy may translate into significant reform of the NSIA regime, but this will be an area to watch closely in coming months.

4.2. Approach to investment associated with China

As noted above, the NSIA is country-agnostic, insofar as it applies equally – at least in principle - to investors from all jurisdictions. However, in line with the global trend towards heightened scrutiny of investment associated with China, five out of the six prohibition/divestment decisions under the NSIA to date have involved Chinese investment, as did 41% of transactions called in for in-depth investigation in 2023-24 (despite such transactions making up only around 3% of notifications). No transactions involving Chinese investment were prohibited or cleared only subject to conditions in 2023-24, but Chinese investment was associated with 8 out of 10 transactions abandoned following the issue of a call-in notice during that reporting period, and it seems likely that in at least some of these cases the anticipation of an adverse final order will have been an important factor.

[29] Invest 2035: the UK's modern industrial strategy (available online at: https://www.gov.uk/government/consultations/invest-2035-the-uks-modern-industrial-strategy).
[30] Speech delivered by UK Prime Minister Keir Starmer at the International Investment Summit 2024 (available online at: https://www.gov.uk/government/speeches/pm-international-investment-summit-speech-14-october-2024).
[31] Invest 2035: the UK's modern industrial strategy, page 42.

This close scrutiny of Chinese investment seems likely to continue under the new government given current geopolitical trends. However, this does not mean that such investment will always be prohibited: the latest NSI Annual Report for 2023-24 indicated that acquirers associated with China accounted for almost half of all final notifications (i.e. unconditional clearance decisions following an in-depth investigation): a recent example is *Shanghai Sierci Enterprise Management Partnership / Flusso* (January 2023), where the UK government unconditionally approved the acquisition by a Chinese-owned SPV of a British semiconductor company previously spun out of Cambridge University's Department of Engineering. Where potential national security concerns are identified, in most cases it will be possible to obtain clearance subject to conditions. In practice, it can be helpful to explore upfront how potential remedies can be "baked in" to the deal, for example agreeing restrictions on information flows or commitments to maintain supply or R&D in the jurisdiction of the target (this is also advisable in transactions without any connection with China, if potential national security concerns are anticipated).

4.3. Screening of outbound investment

The UK government has been closely following developments in other jurisdictions (in particular the US and EU) in relation to screening of outbound investment, in light of concerns around leakage of technology and the potential for export controls to be circumvented by means of research cooperation and the movement of specialised personnel to third countries without any financial investment. However, the government appears to have opted to clarify the circumstances in which the existing NSIA regime can apply to outbound investment (in updated guidance issued in May 2024, discussed above) rather than introducing a separate regime in the UK, although this may still be subject to further consideration by the Department of Business and Trade.

Annex 1: Relevant laws, ordinances, regulatory guidelines

- National Security and Investment Act 2021 (available at: https://www.legislation.gov.uk/ukpga/2021/25/contents)
- The National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021 (available at: https://www.legislation.gov.uk/uksi/2021/1264/contents)
- National Security and Investment: Statement about exercise of the call-in power (available at: https://www.gov.uk/government/publications/national-security-and-investment-statement-about-exercise-of-the-call-in-power)
- NSIA Guidance: Check if you need to tell the government about an acquisition that could harm the UK's national security (available at: https://www.gov.uk/guidance/national-security-and-investment-act-guidance-on-acquisitions)
- NSIA Guidance: Details of the 17 types of notifiable acquisitions (available at: https://www.gov.uk/government/publications/national-security-and-investment-act-guidance-on-notifiable-acquisitions/national-security-and-investment-act-guidance-on-notifiable-acquisitions)
- The above NSIA Guidance documents represent the core guidance documents available. Further guidance documents are available at: https://www.gov.uk/government/collections/national-security-and-investment-act

Annex 2: Relevant administrative and court cases

- There have been no court judgments on foreign investment screening under the NSIA.
- Full text decisions of the Secretary of State are not made publicly available. Brief summaries of the final orders imposed under the NSIA can be accessed here: https://www.gov.uk/government/collections/notice-of-final-orders-made-under-the-national-security-and-investment-act-2021

Annex 3: Relevant literature

- Global Competition Review Foreign Direct Investment Regulation Guide: https://globalcompetitionreview.com/guide/foreign-direct-investment-regulation-guide

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The CELIS Institute is an independent non-profit, non-partisan research enterprise dedicated to promoting better regulation of foreign investments in the context of security, public order, and competitiveness. It produces expert analysis and fosters a continuous trusting dialogue between policymakers, the investment community, and academics. The CELIS Institute is the leading forum for studying and debating investment screening policy. More about the Institute's activities under www.celis.insitute.

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CELIS Country Reports (hereafter "Report") are produced by leading experts for any European and select non-European jurisdiction following an elaborate model, allowing for comparison and evaluation across jurisdictions. The project's aim is to identify and suggest best practice and to propose a common European (model) law on investment screening.

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