

EXPLANATORY MEMORANDUM TO

THE NATIONAL SECURITY AND INVESTMENT ACT 2021 (PROCEDURE FOR SERVICE) REGULATIONS 2021

2021 No. 1267

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and the Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument is made under section 53(1) and (2) of the National Security and Investment Act 2021 (“the Act”). It specifies the procedure to be followed where the Act requires or allows a notice, order, notification or other document to be given by the Secretary of State to another person, or by persons to the Secretary of State. This is to enable documents to be given (or service to be effected) in a quick and effective manner and in a way that is operationally practical.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Act establishes a new statutory system for Government scrutiny of, and intervention in, acquisitions of control of entities or assets for the purposes of protecting national security.
- 6.2 The Act substantially increases the Secretary of State’s ability to identify, assess, and address national security concerns arising from investment in the UK. This includes giving the Secretary of State powers to ‘call in’ certain acquisitions of control that the Secretary of State judges appropriate to assess, to require information from persons involved, to require those persons to change the nature of their acquisitions, or even to prevent acquisitions from taking place. It also provides for civil and criminal penalties for breaching the Act.
- 6.3 The Act requires or allows the Secretary of State to issue notices, orders, notifications and other documents to other persons (who may be individuals or entities). This could include documents to require persons to take certain actions, such as pausing an

acquisition by serving an interim order, requesting further information by serving an information notice, or giving a penalty notice. It also requires or allows persons to give documents to the Secretary of State under the Act. The giving of documents under the Act needs to be done in a quick and effective way, so that the NSI system (meaning the rules provided for by the Act and by secondary legislation made under the Act) operates well.

- 6.4 These Regulations, which are made using the power in section 53(1) and (2) of the Act for the first time, make provision for the procedure which must be followed by the Secretary of State when giving documents to other persons under the Act. The Regulations also specify the procedure to be used when persons give documents to the Secretary of State under the Act.
- 6.5 Section 53(3) of the Act expressly provides that section 7 of the Interpretation Act 1978 has effect subject to any provision made by regulations under section 53. The provision made by these Regulations dispenses with the need for section 7 of the Interpretation Act 1978 to operate in circumstances covered by these Regulations.

7. Policy background

What is being done and why?

- 7.1 The UK economy thrives as a result of foreign direct investment. Over the last 10 years, over 665,000 new jobs have been created as a result of over 18,000 foreign direct investment projects¹. An open approach to investment must also include appropriate safeguards to protect our national security and the safety of our citizens. The UK and its allies face continued and broad-ranging hostile activity from foreign intelligence agencies and others, who seek to compromise our national security.
- 7.2 Until the full commencement of the Act, the powers in this area largely relied on the Enterprise Act 2002. Technological, economic and geopolitical changes mean that reforms to the Government's powers to scrutinise investment on national security grounds are required.
- 7.3 The Government announced its intention to update the investment screening powers in 2016 and consulted in a Green Paper in 2017. Further proposals were put forward in a White Paper in 2018.
- 7.4 The Act provides the Government with updated powers to scrutinise acquisitions and intervene through imposing orders on investments and other acquisitions of control to protect national security, as well as to provide businesses and investors with the certainty and transparency they need to do business in the UK.
- 7.5 The NSI system will likely involve the review of more than 1,000 acquisitions each year, and multiple notices, orders, notifications and other documents will need to be served under the Act as part of its day-to-day running.
- 7.6 It is therefore important that the procedure for giving documents is operationally practical, as action in response to many of these will be required in order to safeguard national security. In particular, the Secretary of State must be able to give and receive documents without delay, regardless of where persons receiving and giving documents under the Act are located. Section 52 of the Act covers extra-territorial

¹ <https://www.gov.uk/government/statistics/department-for-international-trade-inward-investment-results-2020-to-2021>

application and jurisdiction to try offences, meaning that documents required or allowed to be given under the Act may need to be given to persons based outside the UK.

- 7.7 The process for giving documents under the Act must also be easily accessible, including to small and medium sized enterprises and to persons that do not have professional legal support.
- 7.8 The Regulations specify that the Secretary of State may give documents under the Act by sending them by email or by post. In practice, the Secretary of State expects to send most documents by email.
- 7.9 The Regulations specify that mandatory notices, validation applications and voluntary notices given under sections 14(1), 16(1) and 18(2) of the Act respectively are required to be sent to the Secretary of State through an online portal (referred to as “the NSI electronic portal”).
- 7.10 Other documents required or allowed to be given to the Secretary of State under the Act must be sent by email to the email address specified for that purpose on the gov.uk website. Where a person considers that this is not possible or that there is a good reason not to comply with the requirements, the Secretary of State may agree to receive the document by alternative means, such as by post.
- 7.11 The Regulations specify when a document is to be treated as having been given. This is relevant for the purpose of calculating time limits provided for in the Act or in documents served under the Act.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 These are the first Regulations made under section 53 of the Act, so consolidation is not required.

10. Consultation outcome

- 10.1 No public consultation was undertaken in relation to this instrument.
- 10.2 The Government did however receive general feedback from businesses, other external stakeholders and Parliament, recommending that the processes within the NSI system should be efficient and easy to navigate for all persons involved. These Regulations aim to reflect that feedback.

11. Guidance

- 11.1 The Government is issuing guidance in relation to the NSI system as a whole. This will include practical support to persons on how they should submit information to the Secretary of State under the Act.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.

- 12.3 An Impact Assessment has not been prepared for this instrument because it sets out rules for the procedure to be followed when giving documents under the Act, which will have a low level of impact per business. Figures on the impact of the entire NSI system are set out in the Impact Assessment for the Act and already consider the impact on persons of the need to give documents under the Act. The content of this instrument is not expected to have a significant impact on those figures.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that the rules provided for in this instrument for serving documents are proportionate given national security risks.

14. Monitoring & review

- 14.1 This instrument will be reviewed in the normal course of business.
- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Lord Callanan has made the following statement:
- “The impacts of the National Security and Investment Act 2021 (Procedure for Service) Regulations 2021 are not expected to exceed £5m. The impacts and effectiveness of the instrument will be monitored in the ordinary course of business, and so it would be disproportionate to include a formal review clause.”

15. Contact

- 15.1 Ben Harris at the Department for Business, Energy and Industrial Strategy, email: benjamin.harris@beis.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Jacqui Ward, Director for National Security and International, at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.