

EXPLANATORY MEMORANDUM TO
THE NATIONAL SECURITY AND INVESTMENT ACT 2021 (PRESCRIBED FORM
AND CONTENT OF NOTICES AND VALIDATION APPLICATIONS)
REGULATIONS 2021

2021 No. 1272

1. Introduction

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

2. Purpose of the instrument

2.1 These regulations specify the form and content of the three types of notifications that may be received by the Secretary of State under the Act. These notifications are: mandatory notices, validation applications and voluntary notices.

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 provides that in certain circumstances persons can or must notify the Secretary of State of relevant acquisitions and that the Secretary of State may make regulations to prescribe the form and content of those notifications.

6.2 Notifications will enable the Secretary of State to assess acquisitions and decide whether to intervene where risks to national security are identified in order to mitigate those risks. There are three types of notification that may be required from commencement of the Act:

- Mandatory notice: acquirers must notify the Secretary of State of notifiable acquisitions prior to completion, as set out by regulations made under powers in section 6 of the National Security and Investment Act (2021).
- Application for retrospective validation of a notifiable acquisition: where a notifiable acquisition is void as a result of an acquirer failing to notify and receive clearance for that acquisition, any person materially affected by this can apply for that acquisition to be retrospectively validated.

- Voluntary notice: parties can voluntarily notify the Secretary of State of an acquisition that is not a notifiable acquisition.

6.3 These regulations are complemented by the National Security and Investment Act 2021 (Procedure for Service) Regulations 2021, which set out how the Secretary of State will send and receive documents under the Act.

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 projects.¹ 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 dated from 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. The Act also provides businesses and investors with the certainty and transparency they need to do business in the UK.
- 7.5 The Act makes provision that acquisitions in areas of the economy in which national security risks are particularly likely to arise (“notifiable acquisitions”) must be notified to and approved by the Secretary of State before they are completed. Notifiable acquisitions that are completed without being notified and approved are void in law.
- 7.6 Any person materially affected by the fact that a notifiable acquisition is void may apply to the Secretary of State for retrospective validation of the acquisition. The Secretary of State will then either call in the acquisition for scrutiny or clear and validate it.
- 7.7 The Act also gives the Secretary of State the power to call in non-notified acquisitions and gives persons the ability to voluntarily notify non-notifiable acquisitions.
- 7.8 Notifications will enable the Secretary of State to assess acquisitions and decide whether to call in and, if necessary, intervene where risks to national security are identified, in order to mitigate those risks.

¹ See Table 6.1 here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999050/Department-for-International-Trade-Inward-Investment-results-tables-2020-to-2021.ods

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

- 7.9 The Secretary of State may prescribe the form and content of the three notification forms in regulations in order to receive relevant information. As such, these regulations will set out the information required on the acquisitions of control covered by the Act.
- 7.10 These regulations specify the categories of information which parties must provide when submitting each of the relevant notifications to the Secretary of State.
- 7.11 These regulations include schedules that set out the categories of information that notifiers must provide when completing each of these forms.
- 7.12 During Parliamentary passage of the Act, the Government committed that these notification forms would be clear and simple to complete.
- 7.13 As set out in the National Security and Investment Act 2021 (Procedure for Service) Regulations 2021, these forms are usually required to be submitted through an online portal, which is set up to ensure the forms are clear and simple to complete.
- 7.14 Some categories of information will only be required in certain circumstances. For example, some categories of information will only be relevant if the notification relates to an asset acquisition and other categories will only be relevant if the notification relates to an entity acquisition. Similarly, if there is only one acquirer, any questions about additional acquirers would not be relevant. The online portal will reflect this.

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 sections 14(4), 16(3), and 18(4) of the Act, so consolidation is not required.

10. Consultation outcome

- 10.1 No formal public consultation was undertaken for the formulation of this instrument. The Government did however consult on the proposed content of the three notification forms with its Expert Panel (which was set up to advise on guidance and forms) and a specialist User Research Group. These groups included external lawyers, business advisers, trade associations, industry groups, individual businesses and research bodies.
- 10.2 Respondents demonstrated support for the principle and rationale of the forms. Many respondents commented that the forms were not arduous to complete but that guidance would be useful on what information would be needed. The changes to the structure of the forms since the original drafts were published in November 2020 were welcomed.

11. Guidance

- 11.1 The Government has issued and will continue to issue guidance for stakeholders across the whole NSI system (the Act and associated Regulations). This will be placed on the gov.uk once the instrument is commenced.
- 11.2 The guidance will include practical support to businesses on understanding how they must submit information to the Secretary of State under the NSI system, including

clear guidance on how to fill in the forms themselves. The guidance will be reviewed regularly to ensure it remains relevant and as useful as possible.

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 A full Impact Assessment has not been prepared for this instrument because these regulations set out a procedural issue that in and of itself will have a low level of impact per business. Figures on the impact of the entire NSI system are set out in the National Security and Investment Act Impact Assessment and already consider the impact on affected parties. Specifying precisely what notifiers will need to provide when submitting a notification 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 Government has concluded that the proposed measures are proportionate given the national security risks. To provide clarity and minimise impact for small business the Government will issue guidance across the NSI system.

14. Monitoring & review

- 14.1 This instrument will be reviewed in the normal course of business.
- 14.2 This regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State, Lord Callanan, has made the following statement:

“The impacts of the National Security and Investment Act 2021 (Form and Content of Notifications) Regulations 2021 are not expected to exceed £5m. The impacts and effectiveness of the SI 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 Benjamin 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.