

## **National Security and Investment Act 2021 Overview**

### **1. What is the National Security and Investment Act?**

The National Security and Investment Act 2021 (the **NSI Act**) came into force on 4 January 2022. The NSI Act established a stand-alone statutory regime for government scrutiny of, and intervention in, acquisitions and investments for the purposes of protecting national security.

### **2. Why does this affect the University?**

The rules cover qualifying acquisitions of certain entities and assets, which will affect some parts of the higher education and research sectors. UoS should have full awareness of the NSI Act and the legal duty to notify the government when collaborating with other parties to acquire, sell or develop qualifying entities or assets. The government has powers to block or unwind transactions and impose sanctions for non-compliance.

### **3. What are the elements of the NSI Regime?**

The NSI regime implements a legal requirement for proposed acquirers of shares or voting rights that meet certain thresholds, in companies or entities undertaking activities in sensitive sectors in the economy, to seek authorisation from the Secretary of State for Business, Energy and Industrial Strategy (**SoS**) before completing the acquisition. There is both a mandatory and a voluntary element to the notification regime. The proposed acquirer/investor is responsible for making the notification. In the absence of a voluntary or mandatory notification the SoS has powers to “call in” transactions for review, and has the power to block or impose conditions on the transaction, due to national security concerns.

#### **3.1 A *Qualifying Transaction* (trigger event) where all of the below apply:**

- Acquiring a right or interest in, or in relation to, a **Qualifying Asset or Qualifying Entity**
- The **Qualifying Asset or Qualifying Entity** is from, in, or has a connection to the UK
- The level of control acquired over the entity or asset passes a certain threshold (below)

#### **3.2 A *Qualifying acquisition* is one that meets any of the following:**

- The acquisition of votes or shares in a qualifying entity exceeding threshold of 25%, 50% or 75%.
- Acquisition of voting rights that allow acquirer to pass or block resolutions
- Acquirer will have the ability to “materially influence” the policy of the qualifying entity e.g. right to appoint members of the board
- Acquirer will have the ability to use a qualifying asset, or to direct or control its use.

#### **3.3 *Qualifying Entities* include:**

- A University which is a registered charity (i.e. the University of Sussex), a Trust, a University spin-out, a University subsidiary, a research organisation
- A private company or corporation doing contractual work with a higher education institution or research organisation.

#### **3.4 *Qualifying Assets* will include:**

- any tangible property (e.g. laboratory equipment), land, and intellectual property (e.g. designs, plans, software, trade secrets, algorithms etc).

### 3.5 The Mandatory Notification Requirement

The NSI Act defines 17 sensitive sectors (below) where there is a legal requirement to make an online notification regarding a qualifying acquisition.

Advanced Materials	Critical Suppliers to Government	Quantum Technologies
Advanced Robotics	Cryptographic Authentication	Satellite and Space Technologies
Artificial Intelligence	Data Infrastructure	Suppliers to the Emergency Services
Civil Nuclear	Defence	Synthetic Biology
Communications	Energy	Transport
Computing Hardware	Military and Dual-Use	

The precise definitions of these 17 mandatory sectors can be found [here](#).

The mandatory notification requirement only applies to the acquisition of qualifying entities and not assets (such as intellectual or tangible movable property).

Failure to submit a mandatory notification when required will render the relevant transaction void, as well as providing grounds for criminal penalties and significant fines. **Transactions falling within the mandatory regime will therefore require government clearance PRIOR to completion.**

### 3.6 Voluntary Notification

Acquisitions or investments which do not meet the thresholds for mandatory notification, but which could give rise to national security concerns, may be called in for review by the SoS. As such if clarity is wanted over whether the government is going to call in an acquisition, it is possible to make a voluntary notification. Once submitted the government has 30 working days to respond and provide clearance (but the deadlines can be extended). The government has published a statement designed to give clarity over what transactions may be called in ([statement](#)).

In the absence of a mandatory or voluntary notification, any transaction can be called in up to six months after the SoS becomes aware of the transaction, subject to a longstop of five years following completion.

## 4 Making a Notification

Notifications must be made through the online service provided by the Department for Business, Energy and Industrial Strategy: <https://nsi.beis.gov.uk/>

Guidance on submitting a mandatory, voluntary or retrospective notification:  
<https://www.gov.uk/government/publications/national-security-and-investment-notification-service-mandatory-voluntary-and-retrospective-forms>

The Export Controls Manager should be made aware of any submissions to the BEIS.

## 5 Examples of how this could affect the University?

Could include (but is not limited to):

- **Research & Enterprise** - private companies, governments and other organisations are frequently involved via agreements in University research which may be in one of the 17 sensitive sectors. If through these agreements, they gain control over the University's qualifying assets (tangible or intellectual property etc) where such assets are licensed out (exclusively or non-exclusively) then this is a qualifying acquisition requiring mandatory notification.
- **Developing spin out companies** - A university spin-out may be set up to develop research for commercial application, where the spin-out is a private company but shares or intellectual property are retained. If a spin-out company is acquired, or the spin out gains control of qualifying assets of a university (e.g. intellectual property) this could be a qualifying acquisition.

### **Example 1**

- A venture capital fund that is backed by multiple investors invests in an established university spin-out, in return for a 27% equity stake. The university spin out carries out research and produces goods in one of the 17 sensitive areas of the economy that are specified in the notifiable acquisition regulations.

The venture capital fund (the acquirer) will be legally required to notify the government of its planned acquisition and obtain approval before completing it, otherwise the acquisition will be void.

### **Example 2**

- A foreign corporation provides funding for a UK university to carry out a research project on the foreign corporation's behalf. The foreign corporation sits on the steering board for the research project. The foreign corporation will also be entitled to all intellectual and tangible moveable property generated from the research.

The government may be able to call in this contemplated acquisition for assessment if it reasonably suspects the acquisition may give rise to a risk to national security. There is no mandatory notification requirement.

## **5. What needs to be done?**

Important for those working within the 17 sensitive sectors to have an awareness of the NSI Act and be familiar with the government guidance (see below).

Build consideration of the NSI regimes mandatory or voluntary notification requirements into due diligence processes.

## **6. Research Collaboration Advice Team (RCAT)**

RCAT is a collaboration between the government and academia which provides research institutions with a first point of contact for official advice about national security risks linked to international research.

RCAT can be contacted for advice regarding the NSI notification requirements via the Export Controls Manager ([exportcontrols@sussex.ac.uk](mailto:exportcontrols@sussex.ac.uk)). Further information on RCAT can be found [here](#).

## 7. **Guidance**

The Department for Business, Energy & Industrial Strategy have published the following guidance:

- ***HEI specific guidance*** - [National Security and Investment Act: guidance for the higher education and research-intensive sectors](#)
- ***General guidance*** –  
[National Security and Investment Act: prepare for new rules about acquisitions which could harm the UK's national security](#)  
[How the National Security and Investment Act could affect people or acquisitions outside the UK](#)  
[The National Security and Investment Act alongside regulatory requirements](#)
- Market guidance notes have been published that draw on analysis of notifications received over time, as well as market monitoring intelligence, to help parties in deciding whether to voluntarily notify ([market guidance notes](#)).