

Legal update: The National Security and Investment Act 2021

How to check if you need to tell the government about an acquisition that could harm the UK's national security

What you need to know:

The National Security and Investment Act 2021 established a new statutory regime for government scrutiny of, and intervention in, acquisitions and investments for the purposes of protecting national security.

The regime falls into two parts:

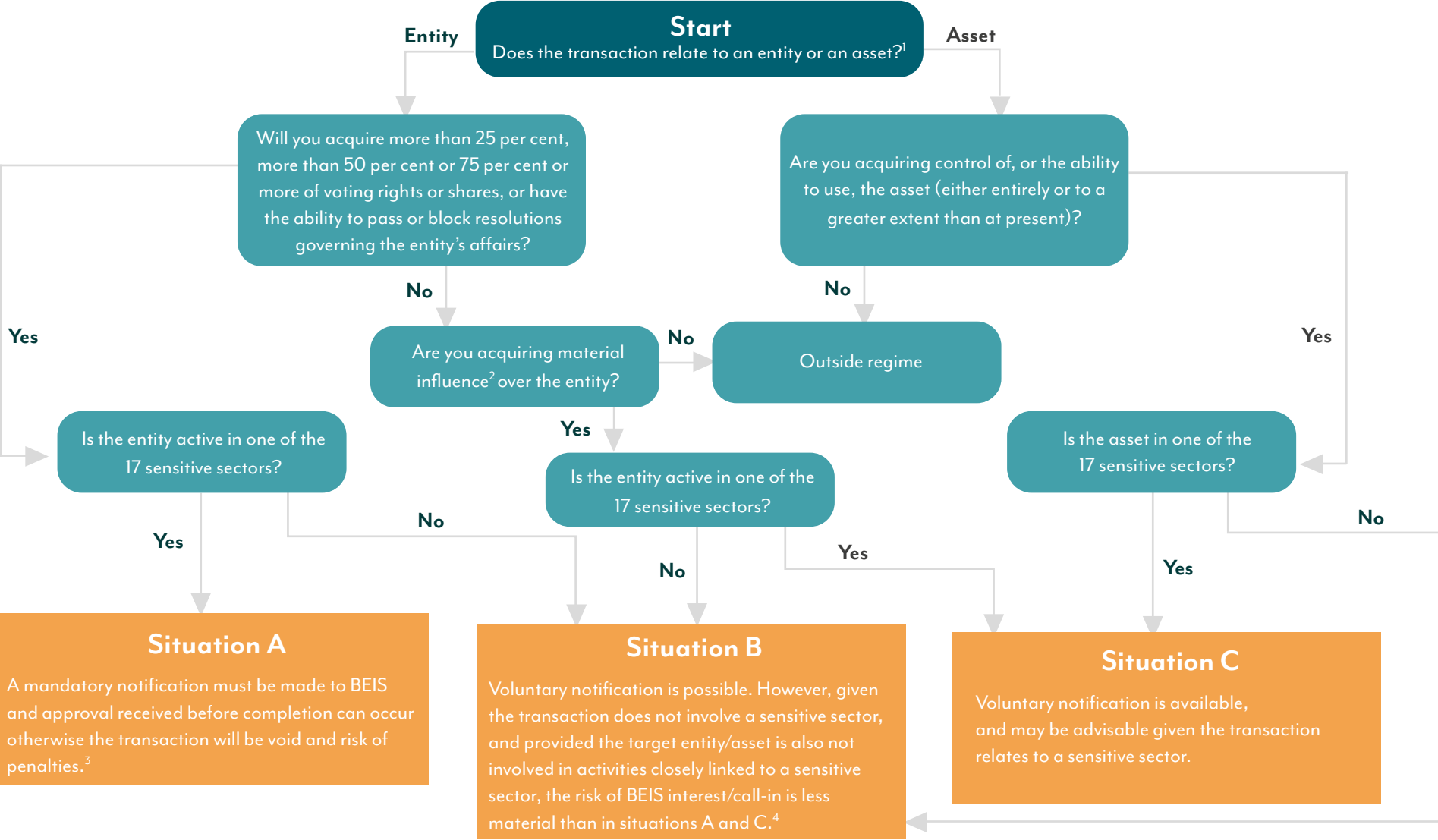
- Mandatory regime: qualifying transactions must be approved before they take place
- Voluntary regime: parties can voluntarily submit transactions for approval.

There are 17 areas of the economy that, if you're acquiring entities or assets within, you are legally required to tell the government about:

- 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 Technologies
- Suppliers to the Emergency Services
- Synthetic Biology
- Transport.

If you need guidance on these areas, you can find out more on the [Gov.uk website](#)

How to check if you need to tell the government about your acquisition



See footnotes on final page

What happens next?

The Investment Security Unit, within BEIS will deal with notifications. For mandatory notifications, clearance must be received before the transaction takes place. For voluntary notifications, the parties will have the option to notify, but the Secretary of State will be able to call-in a deal for up to six months after they become aware of it, any time up to five years after the deal takes place. If a deal requiring mandatory notification is not approved, the transaction will be legally void and there may be civil and criminal penalties.

Key points to look out for:

- Even if the asset or entity is outside the UK, it may fall under the new regime if there is a sufficient connection to the UK
- Be aware of intra-group transactions, e.g. if two companies share the same owner
- You may be subject to a retrospective call-in if your deal took place after 12 November 2020
- The Secretary of State has the power to impose remedies to address any national security concerns. They can block deals or have acquisitions that have taken place divested or unwound.

We can help:



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Footnotes

- 1 Assets can be: (a) land; (b) tangible or corporeal moveable property; or (c) ideas, information or techniques which have industrial, commercial or other economic value (e.g. trade marks, databases, source code, algorithms, formulae, designs, plans, drawings and specifications, and software). An asset outside the UK is only within scope if used in connection with activities carried on in the UK or the supply of goods or services to persons in the UK. Similarly, an overseas entity is only caught if it carries on activities in the UK or supplies goods or services to persons in the UK.
- 2 Material influence has the same meaning as under the UK merger control framework, i.e. the ability to materially influence the entity's policy. This can be derived from veto rights over strategic items such as budget, business plan or board composition or even lesser levels of influence (e.g. board representation alone could be sufficient, especially if combined with relevant sector expertise). Typically, a shareholding of at least 15 per cent is required (material influence below this level can occur but is rare).
- 3 After a mandatory or voluntary notification, the Business Secretary will be required either to issue a call-in notice for a full assessment or decide to take no further action (i.e. clear the deal) within 30 working days. For a full assessment, the Business Secretary will have 30 working days either to impose remedies or take no action (i.e. issue clearance), which can be extended by an additional 45 working days and any such voluntary period as agreed.
- 4 Nonetheless, it may be desirable to ensure BEIS is aware of the transaction - to reduce the window for "calling-in" from five years from when the trigger event takes place to six months from when the Business Secretary is aware of the trigger event.