

New powers to protect UK from malicious investment and strengthen economic resilience

- The National Security and Investment Bill will strengthen the UK's ability to investigate and intervene in mergers, acquisitions and other types of deals that could threaten our national security
- investors and businesses will have to tell the government about proposed deals in a limited number of sensitive sectors, such as defence and AI, and our screening powers will be extended to include assets and intellectual property as well as companies
- proportionate new laws will protect our national security from potential risk while ensuring the UK remains a global champion of free trade and an attractive place to invest: providing slicker clearance processes, and more certainty for business

A new Bill to modernise the government's powers to investigate and intervene in potentially hostile foreign direct investment that threatens UK national security will be introduced by ministers today (11 November 2020).

Under the National Security and Investment Bill, the government will be taking a targeted, proportionate approach to ensure it can scrutinise, impose conditions on or, as a last resort, block a deal in any sector where there is an unacceptable risk to national security.

The new regime will update the UK's current powers – which are almost 20 years old and do not reflect the threats we face today – and bring them in line with those of our closest allies, without hindering the UK's world-leading reputation as an attractive place to invest.

This will mean that no deal which could threaten the safety of the British people goes unchecked, and will ensure vulnerable businesses are not successfully targeted by potential investors seeking to cause them harm.

The new regime will apply to investors from any country, but will remain targeted and proportionate, so most transactions will be cleared without any intervention and foreign direct investment projects can continue to boost jobs and stimulate the economy across the UK, while ensuring the UK remains an attractive place to invest.

By bringing the UK's regime into the twenty-first century, the government will make the screening system slicker and quicker for investors, providing certainty and transparency by working to clear timelines for decisions and making administrative procedures smooth.

Under the Bill, investors and businesses will have to notify a dedicated government unit through a single digital portal about certain types of transactions in designated sensitive sectors, such as our defence, energy and

transport sectors, to ensure it can investigate and take action to address any national security risks.

The Bill will also extend our screening powers so we can interrogate the acquisition of sensitive assets and intellectual property, as well as the acquisition of companies.

Investments will be screened much more quickly than the current regime, assessing transactions within 30 working days – and often faster – with timelines set out in law rather than by the government on a case-by-case basis as is currently the case.

The vast majority of transactions will require no intervention and will be able to proceed quickly and with certainty in the knowledge that the government will not revisit a transaction once cleared unless inaccurate information was provided.

Business Secretary Alok Sharma said:

The UK remains one of the most attractive investment destinations in the world and we want to keep it that way.

But hostile actors should be in no doubt – there is no back door into the UK.

This Bill will mean that we can continue to welcome job-creating investment to our shores, while shutting out those who could threaten the safety of the British people.

Kevin Ellis, Chairman of PricewaterhouseCoopers said:

It's vital that the UK continues to be an attractive destination for foreign investment and these measures will help to give much needed certainty and transparency to investors and businesses.

While we shouldn't underestimate the UK's attractiveness for investment, competition for FDI is getting much fiercer. Across all industries and markets the bar is being raised and we can't rely on existing skills, historical relationships or legacy perceptions to drive future success.

Now more than ever we need to make it easier for that investment to materialise. FDI is crucial to fund build back better and for the economy, innovation, and most importantly, jobs.

The UK is consistently placed as one of the leading destinations for foreign investment in Europe and around the world, thanks to the strength of its workforce, innovation and lack of red tape.

We are in a unique position in terms of language, legal system, time zone,

and regulatory approach, which cannot be replicated anywhere else.

In what represents a major addition to the UK government's ability to attract foreign investment, earlier this week the Prime Minister Boris Johnson announced the creation of the Office for Investment (OFI), a new unit staffed by highly experienced individuals tasked to land high value investment opportunities in infrastructure, clean technologies and research and development.

The UK is not alone in making such changes to its regime, which means global investors will be familiar with our approach. Like us, earlier this year the United States introduced mandatory notification requirements for transactions concerning specified types of businesses as part of a broader programme for reform. The Australian Government introduced legislation to their Parliament requiring foreign investors to seek approval to acquire a direct interest in sensitive national security businesses. And, like us, several other major recipients of investment, including France and Italy, have regimes that make certain transactions which take place without prior approval legally void.

Overall, the National Security and Investment Bill will make interactions with government much slicker as we remain open for trade and continue our fight against COVID-19.

The Investment Security Unit will sit within the Department for Business, Energy and Industrial Strategy and provide a single point of contact for businesses wishing to understand the Bill and notify the government about transactions. The unit will also coordinate cross-government activity to identify, assess and respond to national security risks arising through market activity – providing certainty for businesses that they will not be targeted and exploited by hostile actors.

Notes to editors:

- Examples of possible conditions that could be put on deals posing a risk to national security include altering the amount of shares an investor is allowed to acquire, restricting access to commercial information, or controlling access to certain operational sites or works.
- There will also be sanctions for non-compliance with the regime, which include fines of up to 5% of worldwide turnover or £10 million – whichever is the greater – and imprisonment of up to 5 years. Transactions covered by mandatory notification which take place without clearance will be legally void.
- We are also taking a five-year retrospective power to call in transactions in the wider economy which were not notified to us but may raise national security concerns, both of which are similar to the powers under the French, German and Italian regimes. However, these powers will not apply to transactions which took place prior to the Bill's introduction to Parliament, so businesses and investors have certainty about historical deals.
- The government's existing national security powers under the Enterprise Act 2002 will continue to apply while the Bill completes its passage so only transactions that do not meet the thresholds of that legislation

are likely to be affected.

- The government has been considering these reforms for some time – publishing a Green Paper on national security and investment in October 2017, followed by a White Paper in July 2018. Since those publications, the government has further considered what powers are necessary.
- The government will clearly and tightly define what types of transaction will require mandatory notification.
- The government expects some transactions in the following sectors will face mandatory notification, and will consult on what parts of these sectors should be covered:
 1. Civil Nuclear
 2. Communications
 3. Data Infrastructure
 4. Defence
 5. Energy
 6. Transport
 7. Artificial Intelligence
 8. Autonomous Robotics
 9. Computing Hardware
 10. Cryptographic Authentication
 11. Advanced Materials
 12. Quantum Technologies
 13. Engineering Biology
 14. Critical Suppliers to Government
 15. Critical Suppliers to the Emergency Services
 16. Military or Dual-Use Technologies
 17. Satellite and Space Technologies
- The legislation will apply to the whole of the UK.
- The Bill will include a safeguarding mechanism for parties to appeal where necessary.
- These powers will be exclusively for use on national security grounds, and this stipulation will be written into law. The government will not be able to use these powers to intervene in business transactions for broader economic reasons.
- Inward investment stimulates economic growth in every part of the UK. In 2019/20, over 39,000 jobs were created in England thanks to foreign direct investment (FDI) projects, with over 26,000 coming outside London. Almost 3,000 were created in Scotland, and more than 2,500 in Wales and 2,000 in Northern Ireland respectively.
- FDI also promotes job creation across the economy. In 2019/20, 10,224 jobs were created in the software and computer services sector thanks to FDI projects, 4,750 jobs in the food and drink sector, 5,109 jobs in electronics and communication, 2,225 jobs in the advanced engineering and supply chain sector, 3,212 jobs in the automotive sector, and 1,522 jobs in the aerospace sector.
- There have been 12 public interest interventions on national security grounds since 2002.
- The amendment to section 243 (the ‘overseas disclosure gateway’) of Part 9 of the Enterprise Act 2002 will remove the restriction on UK public authorities, including the Competition and Markets Authority (CMA), disclosing to overseas public authorities information that comes to them

in the exercise of their merger functions. This will strengthen the CMA's ability to protect UK markets and consumers as it takes a more active role internationally.

- Barring narrow exceptions, the government's current powers are limited to mergers involving target enterprises with a turnover of £70 million or a combined share of supply of 25% or more. Unlike the Enterprise Act 2002, the National Security and Investment Bill does not include minimum turnover and share of supply thresholds.
- Assets in scope of the Bill are land, tangible moveable property, and (covering intellectual property) any idea, information, or technique with industrial, commercial or other economic value. Things that are not in scope:
 1. Transactions involving stakes of below 15% in entities unless such a holding (alone or in combination with other rights or interests) amounts to the acquisition of "material influence over the policy of the entity"
 2. Transactions involving an existing holding in an entity of over 25% moving to a new level of 26-50%
 3. Transactions involving an existing holding in an entity of over 50% moving to a new level of 51-74%
 4. Transactions involving an existing holding in an entity of 75% or more, moving to a new level of 76-100%
 5. Assets bought by consumers – e.g. personal computer software, mobile phones, GPS.