

The National Security and Investment Act

Guidance for universities

Contents

1. Introduction to the NSI Act	2
1.1 Overview of the NSI Act	2
1.2 Qualifying entities and assets	5
1.3 Qualifying acquisitions	7
1.4 Notifiable acquisitions	8
1.5 Higher education-specific scenarios	9
1.5.1 Involvement in university research	9
1.5.2 Developing or forming research centres	10
1.5.3 Developing university or research organisation spin-out companies	11
1.5.4 Funding employees or students in university programmes	12
1.6 Submitting a notification to government	13
2. Preparing for the National Security and Investment Act	15
2.1 Process and governance	15
2.2 Communication and training	15
2.3 Example decision tree from BEIS	16
2.4 Risk exposure and assurance	16
3. Examples and case studies	17
3.1 Checking if you need to tell the government about an acquisition that could harm the UK's national security	17
3.2 Involvement in university research	18
3.3 Example case studies of when you should contact the Investment Security Unit for advice	18
4. Further reading and resources	20

1. Introduction to the NSI Act

The National Security and Investment (NSI) Act came into force on 4 January 2022. The NSI Act has implications for higher education institutions. Our briefing outlines some considerations for universities. It is designed for university staff working in legal compliance or research roles.

This briefing note is based on the government's guidance, but does not constitute legal advice. We strongly recommend that universities read both the UK government's guidance and their sector specific guidance.

1.1 Overview of the NSI Act

The National Security and Investment (NSI) Act will come into force on 4 January 2022. The Act is administered by the Investment Security Unit within the Department for Business, Energy and Industrial Strategy (BEIS) and the decision maker will be the Secretary of State for BEIS.

The Act will grant the government the right to scrutinise and intervene in certain acquisitions made by anyone, including universities, businesses, and investors, that could harm the UK's national security. The government will be able to impose certain conditions on acquisitions. In rare instances, the government may unwind or block an acquisition completely.

The above applies to legal entities and assets that meet certain criteria. Entities and assets that meet the criteria are called **qualifying entities and qualifying assets** in the legislation. The difference between an entity and an asset is explained below. Acquisitions of qualifying entities or assets are called **qualifying acquisitions**.

The acquisition of a qualifying entity in one of 17 areas of the UK economy deemed to be critical to national security (cf. below) is called a **notifiable acquisition**. You will have to submit a **mandatory notification** of this to the government.

The acquisition of entities in other areas of the economy, and the acquisition of assets, does not fall under mandatory notification. However, the government reserves the right to call these into scrutiny if they are deemed sensitive to the UK economy. You may therefore wish to submit a **voluntary notification** of such acquisitions.

Completing a notifiable acquisition without approval will mean the acquisition is void and may mean that the acquirer is subject to civil or criminal penalties. A civil penalty could require you to pay up to 5% of your organisation's global turnover or £10 million, whichever is greater.

There are three kinds of notifications and applications universities can or must make to government:

- **Mandatory notifications:** you will be legally required to tell the government about acquiring entities (but not assets) in 17 sensitive areas of the economy (outlined below).
- **Voluntary notifications:** you can submit a voluntary notification if you are a party to a completed or planned qualifying acquisition that is not covered by mandatory notification.
- **Retrospective validation applications:** you can apply for retrospective validation if you have completed a notifiable acquisition without notifying.

The acquisition of qualifying entities (but not assets: cf. section 1.2 on the difference) in the 17 areas of the UK economy below require mandatory notification. These cover areas which are considered more likely to give rise to national security risks.

Areas of the economy deemed sensitive to national security

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

Qualifying acquisitions in one of the above fields are called notifiable acquisitions. Full details on notifiable acquisitions can be found in the BEIS' [National Security and Investment Act: guidance on notifiable acquisitions](#). You must notify government of these, whether the acquisition has been completed or is still in progress or contemplation.

However, this only applies to qualifying entities, not qualifying assets (cf. section 1.2).

The NSI Act confers retroactive powers on the UK Government to call in for review on national security grounds qualifying transactions completed between 12 November 2020 and the day before the NSI Regime commences. **If you have completed any qualifying transactions between 12 November 2020 and 4 January 2022, you must report them to the government.**

When completing, commencing, or contemplating an acquisition, institutions should:

- **Check if the rules will apply to your acquisition.** This will depend on what you are acquiring and how much control you have over it.
- **Check if you will need to tell the government** about your acquisition. You will be legally required to inform the government about certain acquisitions of entities if your acquisition is in a sensitive area of the UK economy.
- **Tell the government about your acquisition.** You can do this online by submitting a notification.
- **The government will review your acquisition.** It can either clear your acquisition, impose certain conditions, or block or unwind it.

[You can submit your notifications and find guidance on the different types of notification on the BEIS website.](#)

If you have any questions about whether you should notify the government of an acquisition, you can contact the relevant team at investment.screening@beis.gov.uk.

1.2 Qualifying entities and assets

A legal entity is a company or organisation that has legal rights and responsibilities, for example the right to make contracts and the responsibility to pay debts.

An asset is something that a person or company owns and can be used to pay a debt.

General examples of these include:

Examples of legal entities and assets

Legal entities

Company

Limited liability partnership

A partnership

Any other corporate body

An unincorporated association

A trust

Legal assets

Tangible moveable property (eg lab equipment, books, laptops, etc.)

Land

Intellectual property (ideas, information or techniques which have industrial, commercial or other economic value)

Examples of entities and assets in the higher education sector include but are not limited to:

Examples of legal entities and assets in higher education

Entities

University, which is registered as a charitable organisation

Private university

Trust

University spin-out

Assets

Designs

Software

Land

Trade secrets

Databases

Research organisation	Source code
Private company or corporation doing contractual work with a higher education institution or research organisation.	Algorithms and formulae Plans, drawings, and specifications
University subsidiary (for example a company that a university has incorporated and carries out specific activities that the university operates)	Land and tangible moveable property e.g. laboratory equipment.

BEIS guidance defines a qualifying entity (ie an entity that falls within the scope of the NSI Act) as any entity other than an individual. Examples they have given of qualifying assets are listed above.

If an entity is formed or recognised under the law of a country or territory outside the UK, it is a qualifying entity if it either:

- carries on activities in the UK, or
- supplies goods or services to people in the UK

For land or tangible moveable property situated outside the UK or its territorial sea, or for any intellectual property, it is a qualifying asset if it is either:

- used in connection with activities carried on in the UK, or
- used in connection with the supply of goods or services to people in the UK.

[Find out more in the BEIS' guidance on how the rules work for entities and assets outside or not from the UK.](#)

1.3 Qualifying acquisitions

Your acquisition is a qualifying acquisition if all the following apply:

- The acquisition is of a right or interest in, or in relation to, a qualifying asset or qualifying entity (explained above).
- The entity or asset you are acquiring is from, in, or has a connection to the UK.
- The level of control you acquire over the qualifying entity or qualifying asset meets or passes a certain threshold.

If the government reasonably suspects that an acquisition meets these criteria and that it has given rise to, or may give rise to, a risk to national security, it can be scrutinised by the government.

Please consult the government's guidance on the NSI for more detailed definitions of the above terms.

Your acquisition will only be a qualifying acquisition if you acquire a right or interest in, or in relation to, an asset and meets the following thresholds:

- **Your shareholding stake** or voting rights in a qualifying entity meets or crosses certain percentage thresholds:
 - from 25% or less to more than 25%
 - from 50% or less to more than 50%
 - from less than 75% to 75% or more
 - If the entity has a share capital, the thresholds describe holding shares comprised in the issued share capital of a nominal value (in aggregate) of that percentage of the share capital.
- **You acquire voting rights** in a qualifying entity that allow you to pass or block resolutions governing the affairs of the entity.
- **You are able to materially influence the policy of a qualifying entity**, for example acquiring the right to appoint members of the board of the entity that enables you to influence the strategic direction of the entity.
- **You are able to use a qualifying asset**, or direct or control its use, or you are able to do so more than you could prior to the acquisition.

Specific conditions also apply if the acquisition is part of a corporate restructure or reorganisation, and if you acquire certain new interests and rights.

Please note that this is a non-exhaustive list of conditions that make an acquisition a qualifying acquisition. You must check the NSI Act and its attendant guidance for the full details.

1.4 Notifiable acquisitions

Your acquisition is a 'notifiable acquisition' subject to 'mandatory notification,' ie you are legally required to notify the government of your acquisition, if it meets the following criteria:

1. You are acquiring a qualifying entity (not an asset) that carries out certain activities in the UK within one of 17 sensitive areas of the economy. Regulation specifying acquisitions in these areas which are subject to mandatory notification can be found in the Act itself.
2. And any of the following apply:
 - i) Your shareholding stake or voting rights increase:
 - from 25% or less to more than 25%
 - from 50% or less to more than 50%
 - from less than 75% to 75% or more
 - ii) Your acquisition is of voting rights, and this will enable you to secure or prevent the passage of any class of resolution governing the affairs of the entity.

Please note that acquiring assets does not fall under mandatory notification.

The BEIS has further guidance on the activities of qualifying entities in the 17 areas that is subject to mandatory notification.

1.5 Higher education-specific scenarios

This section (1.5) is taken directly from the [BEIS guidance on the NSI Act](#).

1.5.1 Involvement in university research

Private companies, governments and other organisations are frequently involved in research by universities and other organisations at early stages, often at a pre-commercial stage.

This can be done through a collaborative, or other, agreement involving:

- contract or sponsored research
- sponsoring a research position (for example, a chair)
- sponsoring a research theme.

If a person gains control over a university or research organisation's qualifying assets through these agreements, which can include both tangible moveable and intellectual property – for example, where such assets are licensed out (exclusively or non-exclusively) by a university – then this is a qualifying acquisition under the NSI Act.

It will also be a qualifying acquisition if a party gains control over a qualifying asset generated by the research it has funded. Any agreement that provides for this will also be in scope of the NSI Act as a contemplated qualifying acquisition.

Qualifying asset acquisitions do not have mandatory notification requirements and the government can only call in a completed or contemplated qualifying acquisition for assessment if it reasonably suspects the acquisition has given rise, or may give rise, to a national security risk.

Example 1

A company sponsors a professorship in a UK university. The company can influence the direction of the research the professor leads but has no agreed access to any assets.

This scenario is not a qualifying acquisition and not in scope of the NSI Act, as the company has not gained control over any qualifying entity or asset.

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. This is because this scenario is a contemplated qualifying asset acquisition, as the funding gives the corporation control over any intellectual or tangible moveable property generated through this project.

You are not legally required to notify the government in this scenario as the research project is not a qualifying entity and mandatory notification only applies to certain acquisitions of qualifying entities.

1.5.2 Developing or forming research centres

If, in the development or founding of a research centre, control over qualifying assets or entities is acquired, the government can call in such a qualifying acquisition for assessment if it reasonably suspects the acquisition has given rise, or may give rise, to a risk to national security.

Example 1

A foreign research centre, which is a collaboration of private and public partners, acquires 50% of the shares in a UK research organisation which will become part of the centre. The acquired research organisation conducts research in one of the 17 sensitive areas of the economy that are specified in the notifiable acquisition regulations.

The foreign research centre (the acquirer) is legally required to notify the government of its planned acquisition and obtain approval before proceeding, otherwise the acquisition will be void. This is because this acquisition is a notifiable acquisition of a qualifying entity which is specified in the notifiable acquisition regulations.

The foreign research centre and certain employees may also be liable to criminal or civil penalties if the acquisition is completed without prior approval.

1.5.3 Developing university or research organisation spin-out companies

If a spin-out company is acquired or the spin-out gains control of qualifying assets of a university or research organisation, this could be called in by the government for assessment if it reasonably suspects this has given rise, or may give rise, to a risk to national security.

If an established spin-out is subsequently acquired by another party, for example by trade sale, merger, or investment, this could also be in scope of the NSI Act. If the spin-out operates in one of the 17 sensitive areas of the economy specified in notifiable acquisition regulations, there may be a legal requirement to notify the government of the acquisition.

Example 1

A number of investors establish a university spin-out in the UK in order to commercialise a UK university's patented technology. The investors and the university receive equity stakes in the spin-out and the technology is licensed to the spin-out through the university's Technology Transfer Office.

The government may be able to call in this acquisition for assessment if it reasonably suspects the acquisition has given rise, or may give rise, to a risk to national security. This is because in this scenario there is a qualifying acquisition of a qualifying asset as the spin-out has gained control over the use of the technology as a licensee.

You are not legally required to notify the government of the grant of the licence as intellectual property is not a qualifying entity and mandatory notification only applies to certain acquisitions of qualifying entities.

1.5.4 Funding employees or students in university programmes

Funding for PhDs and other academic placements can come from various sources including industry, academic institutions and public and charitable funders. Companies fund employees or students to carry out research projects including PhDs at universities.

The ownership of the intellectual property generated in academic placements can vary depending on the agreement, and can include the following scenarios:

- the student has rights over the intellectual property generated
- the intellectual property rights reside with the university
- the intellectual property generated is assigned to the company who is funding an employee to do research at a university and the terms are stipulated through the employee's contract.

If a company or other person acquires control over intellectual property generated in the UK, for example the right to use the intellectual property, this is a qualifying acquisition under the NSI Act. Any agreement that provides for control to be acquired over any future intellectual property generated in the UK will also be in scope of the NSI Act as a contemplated qualifying acquisition. However, the government will only be able call in a completed or contemplated qualifying acquisition if it reasonably suspects the acquisition has given, or may give, rise to a national security risk.

Example 1

A private foreign company funds an employee through an academic placement which results in a PhD. As part of the employee's contract, all intellectual property generated is assigned to the company.

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. This is because this scenario is a contemplated acquisition of control over a qualifying asset because the private company has contractual rights over any intellectual property generated by the employee during their PhD.

You are not legally required to notify the government in this scenario as no party has acquired a qualifying entity and mandatory notification only applies to certain acquisitions of qualifying entities.

1.6 Submitting a notification to government

You can submit your notification forms and find guidance on the different forms on the BEIS website. There are three different forms that can be used to notify the government about an acquisition:

- [mandatory notification form](#)
- [voluntary notification form](#)
- [retrospective validation application form](#).

Within 30 working days of acceptance of the notification form the government will either:

- clear the acquisition and tell you it can go ahead
- call in the acquisition for a full national security assessment
- require further information, which you should provide as soon as possible, to help complete the assessment (known as an ‘information notice’)
- require you or people involved in the acquisition to attend a meeting (known as an ‘attendance notice’).

BEIS expects that most notifications will be cleared rather than called in, and you will be informed of the outcome of the government’s decision during the first 30 working day review period.

If the government wishes to call in the acquisition to investigate further, you will be informed by email on or before the final day of the review period. A called in acquisition may be cleared by the government at any time during the assessment period. You will be informed by email.

The rest of this section (1.6) is taken directly from the BEIS guidance on acquisitions. If the government determines there are national security risks raised by your acquisition, representatives of the parties may be contacted at any stage during the assessment period to be informed of conditions the government may put in place through a final order. The purpose of these conditions is to mitigate risk (as determined by the government) and allow the acquisition to proceed.

You will be issued a ‘final order’ if the government imposes conditions on your acquisition, or if your acquisition is blocked. Relevant parties will be provided with information about the decision, including details of any conditions imposed and the consequence of any breach of these conditions, once a national security assessment has been concluded.

Before making a final order, the government must consider any representations made. Representations should be made to the government by contacting the Investment Screening Unit (ISU) at investment.screening@beis.gov.uk.

2. Preparing for the National Security and Investment Act

To properly prepare for different scenarios covered by the NSI Act, institutions need to first familiarise themselves with [the NSI Act](#) as well as the [relevant guidance produced by BEIS](#) on the issue.

We've discussed the upcoming National Security and Investment Act with a group of member universities and the Centre for the Protection of National Infrastructure (CPNI)'s trusted research engagement lead.

2.1 Process and governance

Our member universities are now reviewing or 'triaging' their research portfolio to identify which projects may need to be notified under the National Security and Investment Act.

Many of our member universities are drawing on and adapting existing processes and mechanisms, such as ethics committees and approval committees which consider new collaboration proposals, to identify and escalate those which present a higher national security risk.

Our member universities have agreed on the importance of focusing scrutiny and risk management on the highest risk proposals.

Some of our member universities are drawing NSI preparation into their wider organisational strategy and policy for international engagement and collaboration.

2.2 Communication and training

Our members highlighted the importance of clear and impactful communications about NSI to academics and practitioners, to ensure that the national security issues are clearly understood, and are not seen as just another administrative burden.

Some of our members are working on an online tool for academics, which helps them to identify which projects may be higher risk. It then directs them to the offices at the university they will need to deal with, based on the risk profile of their project.

This manages expectations about the length of the processes required in the lead-in to the project. It also helps educate the academics in how to identify higher risk collaborations.

2.3 Example decision tree from BEIS

Many UUK members are developing 'decision trees' to help identify which collaborations may need to be notified under NSI. In some cases, these will be aligned with or include reference to the organisation's internal policy or process.

If any organisations are producing an NSI decision tree, it may be useful to refer to the BEIS National security and Investment Team's [decision flow diagram](#).

2.4 Risk exposure and assurance

In many cases, universities may participate in collaborations which are in scope of the National Security and Investment Act, but where the university is not the 'acquirer'. In this scenario, the university would still be exposed to financial and reputational risk if the acquirer failed to make a necessary notification under NSI.

3. Examples and case studies

We've pulled out some hypothetical examples from the BEIS' guidance to illustrate how the NSI Act will be applied (section 3.1).

We've also included some anonymous case studies that the CPNI has provided us about scenarios where you would be well-placed to contact the Investment Security Unit for advice on how to proceed (section 3.2) at investment.screening@beis.gov.uk.

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

In the [BEIS guidance](#), institutions can view cases studies on the following scenarios:

- If your shareholding stake or voting rights meet or cross certain percentage thresholds.
- If you acquire voting rights that allow you to pass or block resolutions governing the affairs of the entity.
- If you acquire a right or interest in, or in relation to, a qualifying entity which provides you with 'material influence' over the entity's policy.
- If you acquire a right or interest in, or in relation to, a qualifying asset and as a result you are able to use, or to direct or control how the asset is used, or can do so to a greater extent than before the acquisition.
- If your qualifying acquisition is part of a corporate restructure or reorganisation.
- If you are planning a qualifying acquisition but it has not yet taken place.
- If your acquisition is a notifiable acquisition when the entity is outside the UK.

3.2 Involvement in university research

BEIS' dedicated guidance for the higher education and research intensive sectors includes hypothetical examples on qualifying acquisitions which the government will be able to call in for assessment if it reasonably suspects the acquisition has given rise, or may give rise, to a national security risk. These hypothetical scenarios include examples of:

- involvement in university research
- developing or forming research centres
- developing university or research organisation spin-out companies
- funding employees or students in university programmes
- donating to an academic institution.

3.3 Example case studies of when you should contact the Investment Security Unit for advice

The following theoretical case studies were submitted by our members. These are examples of collaborations where our members might seek further advice from the BEIS NSI Team to determine whether a notification was required or if call in under NSI was likely.

We have shared these as an additional resource for our members who are reviewing their collaboration portfolios and processes in preparation for the NSI Act. **Please note that these scenarios are not definitive or exhaustive and do not constitute legal advice on the NSI Act.**

Organisations can contact the Investment Security Unit for general enquiries or advice about the Act on investment.screening@beis.gov.uk.

Scenario 1

A foreign company approaches a UK university about acquiring an algorithm to detect whether or not an image has been digitally altered or manipulated. Potential applications may fall into the Military and Dual Use or Artificial Intelligence Sectors of the NSI Act.

Scenario 2

A UK university is negotiating a research agreement with a multinational technology company whose headquarters are located abroad. The agreement relates to a collaborative project that will involve the university delivering technology, in the form of technical reports and code, to researchers at the company.

Scenario 3

Two academics commercialise research activities through creating a spin-out through their university's technology transfer office. The university will non-exclusively license the IP into the spin-out on formation.

Following the creation of the spin-out, a foreign national (the father of one of the spin-out's founders) invests 20% in the spin-out. Following this, the academics will jointly own 32% and the university will own 16% of the spin-out. The spin-out enters into a foreign accelerator program. To join this programme, the UK spin-out must create a 100% owned subsidiary based in the foreign country. The subsidiary will have a license from the UK spin-out.

Foreign investors wish to create a joint venture to exploit the technology with exclusive access to the university's IP. As the investors are not UK based, they wish to invest in the subsidiary not the UK spin-out. As a condition of their investment, they want an exclusive license from the UK spin-out to the subsidiary for their geographic region. Following the investment, the investor will own 50% of the subsidiary with the UK spin-out owning the remaining 50%.

Scenario 4

The university has set-up a research centre containing labs overseas, funded by the local provincial government. The centre is a legal entity registered in the overseas country, wholly owned by a UK-based subsidiary which is itself wholly owned by the university. The funder has no ownership stake of either entity.

Projects are separate from those in UK-based university labs, but may benefit from access to background IP or results from the UK-based labs, and research teams based in the UK and overseas can collaborate. The legal entity of the centre owns all IP generated, with the funder having a claim to 50% of any revenues (but no rights to the IP itself).

With the focus on research towards application, licensing of IP to companies in the overseas country and the forming of spin-outs in the overseas country is a likely outcome. The centre runs a programme for research staff and students at the UK university to visit the centre for short collaborative projects.

4. Further reading and resources

- [The National Security and Investment Act 2021 in full](#)
- [National Security and Investment Act: prepare for new rules about acquisitions](#)
- [National Security and Investment Act: guidance for the higher education and research-intensive sectors](#)
- [National Security and Investment Act: guidance on notifiable acquisitions](#)
- [Further guidance to help businesses understand their obligations under new laws to strengthen national security](#)
- [UUK Guidance: Managing risks in Internationalisation - Security related issues](#)
- [CPNI Trusted Research Guidance for Academia](#)
- [CPNI Informed Investment Guidance](#)
- [CPNI and NCSC Secure Innovation Guidance](#)

You can contact Investment Security Unit for advice on whether your acquisition falls under the scope of the NSI Act at investment.screening@beis.gov.uk.

Universities UK is the collective voice of 140 universities in England, Scotland, Wales and Northern Ireland.

Our mission is to create the conditions for UK universities to be the best in the world; maximising their positive impact locally, nationally and globally.

Universities UK acts on behalf of universities, represented by their heads of institution.



Woburn House
20 Tavistock Square
London, WC1H 9HQ

+44 (0)20 7419 4111
info@universitiesuk.ac.uk
universitiesuk.ac.uk
@UniversitiesUK



February 2022

ISBN: 978-1-84036-482-8