



House of Commons  
Business, Energy and Industrial  
Strategy Committee

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# Memorandum of Understanding on scrutiny of the Investment Security Unit

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**Eighth Report of Session 2022–23**

*Report, together with formal minutes relating  
to the report*

*Ordered by the House of Commons  
to be printed 21 March 2023*

## Business, Energy and Industrial Strategy Committee

The Business, Energy and Industrial Strategy Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Business, Energy and Industrial Strategy.

### Current membership

[Darren Jones MP](#) (*Labour, Bristol North West*) (Chair)

[Bim Afolami MP](#) (*Conservative, Hitchin and Harpenden*)

[Alan Brown MP](#) (*Scottish National Party, Kilmarnock and Loudoun*)

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### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

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### Committee staff

The current staff of the Committee are Matthew Chappell (Committee Operations Manager), Jonathan Edwards (Committee Specialist, International Affairs Unit), Kenneth Fox (Clerk), Ashlee Godwin (Team Lead, International Affairs Unit), Catherine Kisanji (Committee Specialist), Catherine Meredith (Second Clerk), Jacob Moreton (Media Officer), Ashleigh Morris (Senior Committee Specialist), Lewis Pickett (Committee Specialist), Delfina Raka (Committee Support Apprentice), Tim West (Senior Media Officer), Louise Whitley (Senior Committee Specialist) and Sue Wrightman (Committee Operations Officer).

### Contacts

All correspondence should be addressed to the Clerk of the Business, Energy and Industrial Strategy Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 8586; the Committee's email address is [beiscom@parliament.uk](mailto:beiscom@parliament.uk).

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# Report

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1. The National Security and Investment Act 2021 establishes a statutory regime for Government scrutiny of, and intervention in, investments for the purposes of protecting national security.<sup>1</sup> The Act:

- Sets up a mandatory system under which proposed acquisitions of control (for example through the purchase of certain shares or voting rights) in qualifying entities or assets in sensitive sectors are subject to clearance from the Secretary of State before they take place;<sup>2</sup>
- Sets up a voluntary notification system to encourage parties who consider that their proposed acquisition may raise national security concerns to notify the Secretary of State of the transaction; and
- Gives the Secretary of State the power to “call in” acquisitions of control over qualifying entities or assets in order to undertake a national security assessment.

Unlike similar regimes in other countries, these provisions cover all transactions, not just those involving foreign investment.

2. Following the exercise of “call in” powers, the Secretary of State may take remedial action, such as imposing conditions on an acquisition, or blocking it altogether. Administrative and policy support for the exercise of these powers is provided by the Investment Security Unit.<sup>3</sup> The Unit was initially located in the Department for Business, Energy and Industrial Strategy, but the Government announced on 7 February that it would move to the Cabinet Office in line with machinery of government changes.<sup>4</sup> The powers under the Act are now exercised by the Secretary of State in the Cabinet Office.

3. Decisions by the Secretary of State under the Act may have far-reaching implications for business, with powers to assess acquisitions up to five years after they have taken place. During proceedings of the National Security and Investment Bill Committee, the Minister recognised that businesses needed clarity and predictability in how the Act would be applied.<sup>5</sup> But the process for reaching decisions under the Act is internal and inevitably opaque, given the need for sensitivity in discussing national security considerations. External scrutiny would give business stakeholders some confidence that there was independent oversight of the process, increased transparency and accountability, and a driver for learning lessons within the system. One witness told us that “the accountability of the ISU [Investment Security Unit] to Parliament is ... really fundamental”.<sup>6</sup> A clear model exists in the United States, where Congress provides formal oversight of the investment-screening regime led by the Committee on Foreign Investment in the United

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1 [Explanatory Notes to the Act](#), paragraph 1

2 [The Government has designated 17 areas in which mandatory notification applies](#)

3 On 6 July 2022, there were 94 full time equivalent posts in the Investment Security Unit. See HC Written Answer [31898](#) on Investment Security Unit: Staff, 13 July 2022

4 The Government announced on 7 February 2023 that the Investment Security Unit would move to the Cabinet Office. See [Making Government Deliver for the British People](#), p5

5 See for instance proceedings of the Public Bill Committee, [sixth sitting, 1 December 2020](#), columns 165, 166 and 180

6 Evidence from Nicole Kar, Global Head of Antitrust & Foreign Investment, Linklaters, [21 June 2022](#), Q36

States (CFIUS).<sup>7</sup> The Chair of the Committee undertook a short study visit to Washington DC from 20 to 23 September 2022 to understand how congressional oversight of CFIUS operated.

4. The Government has recognised that Parliament must play its role in providing that scrutiny, and it has taken the view that scrutiny should be led by this Committee. The then Secretary of State, the Rt Hon. Kwasi Kwarteng MP, told us on 13 April 2021 that

As a principle, given that the NSI Bill sits within BEIS and the powers described in the Bill are essentially Secretary of State for BEIS powers, it makes sense that the BEIS Committee should be the ultimate scrutiniser of those provisions.<sup>8</sup>

5. Mr Kwarteng wrote to us shortly afterwards to say that he would ensure that the Committee had access to the material it needed to conduct scrutiny of the Investment Security Unit, and that he would be willing to set this out in more detail in either a Memorandum of Understanding or a further exchange of letters.<sup>9</sup> This offer from the Government was discussed at length in the House of Lords and in the House of Commons.<sup>10</sup>

6. The National Security and Investment Bill gained Royal Assent on 29 April 2021, and the relevant provisions of the Act came into force on 4 January 2022.<sup>11</sup>

7. The Committee and the Government then entered a period of negotiation on the terms of the Memorandum of Understanding. A succession of ministerial changes prolonged this period. Meanwhile, on 28 June 2022, we established a Sub-Committee on National Security and Investment, as the main vehicle for scrutiny. We have since appointed a number of expert advisers, to assist the Committee in understanding relevant geopolitical and national security trends. Subject specialists with relevant levels of security clearance have been appointed from the permanent House staff to support the Sub-committee.

8. The Committee sought clarity from the Government in February 2023, following the machinery of government changes, and was informed that it remained the Government's policy that this Committee should provide oversight of the Act, even though the Unit now sits within the Cabinet Office.

9. Agreement between the Government and the Committee was finally reached in March 2023, and the Committee Chair and the Minister of State at the Department for Business and Trade and at the Cabinet Office, Nusrat Ghani MP, signed a Memorandum of Understanding on 14 March 2023. The text of the Memorandum is attached as an Appendix to this Report.

10. The Memorandum sets out how the Committee will conduct scrutiny of the Unit and the effectiveness with which it supports the exercise by the Government of its powers in the Act. It explains how information will be shared between the Government and the Committee—including in respect of individual cases—and how, in exceptional

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7 United States House of Representatives, [United States Code 4565 \(b\)\(3\)\(C\)\(iii\)](#), accessed 16 March 2023; United States House of Representatives, [United States Code 4565 \(m\)\(2\)](#), accessed 16 March 2023

8 [Evidence given on 13 April 2021](#), Q 196

9 [Letter from the Secretary of State to the Chair of the Committee](#), 21 April 2021

10 HC Deb, 26 April 2021, cols 152–53; HL Deb, 28 April 2021, [col 2260](#)

11 [The National Security and Investment Act 2021 \(Commencement No. 2 and Transitional and Saving Provision\) Regulations 2021](#)

circumstances, sensitive information will be provided. It notes that access to sensitive documents may take place in suitable accommodation within government buildings. We note the commitment during the passage of the National Security and Investment Bill in 2021, by the then Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy, Paul Scully MP, that the Government would “ensure that the BEIS Committee is able to access the material it needs”.<sup>12</sup>

**11. We welcome the Government’s commitment to establishing a basis for scrutiny of the work of the Investment Security Unit. We also welcome the undertaking in the Memorandum of Understanding to make certain information on individual cases available to the Committee when requested, and the Government’s willingness to be open to the possibility of sharing other information not usually available to the Committee, on an exceptional basis. We remind the Government of its commitment to ensure that this Committee is able to access the material it needs in order to conduct scrutiny.**

12. We place on record that the Sub-committee’s approach to scrutiny, in line with the Memorandum of Understanding, will be tightly defined. Much of the Sub-committee’s work will be conducted in private, to allow discussion of confidential information. The main focus of its work will be on the Investment Security Unit’s working processes: the Sub-committee has already opened a short inquiry into how the Unit shares information about its work, how it communicates with firms involved in the transactions it reviews, and how it reports on its activity to Parliament and the public.<sup>13</sup> Scrutiny of individual cases will be exceptional rather than routine, and it will be retrospective, once the window for any legal challenge has closed. This is in line with the approach taken by our counterpart committees in the United States Congress in respect of congressional oversight of CFIUS, and further reflects advice we received that it is essential to avoid the perception that investment-screening decisions have been politicised.<sup>14</sup>

13. The Memorandum will be subject to renewal at the start of each Parliament. We envisage that it would be in the interests of the Government, the Committee and the House as a whole for the Sub-committee to hold an oral evidence session before the end of the current Parliament with the Chancellor of the Duchy of Lancaster (as Secretary of State in the Cabinet Office) or with the Minister of State, to review the operation of the Memorandum of Understanding.

14. This report contains no observations or recommendations which require a response by a Government department or by any other body.

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12 HC Debates, [26 April 2021](#), column 153

13 See [Information sharing by the Investment Security Unit - Committees - UK Parliament](#)

14 Evidence from Dr Ashley Lenihan, Professor of the Practice of International Affairs, Georgetown University, [21 June 2022](#), Q3

# Appendix 1: Memorandum of Understanding agreed between the Secretary of State in the Cabinet Office and the Business, Energy and Industrial Strategy Select Committee

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## *Introduction*

1. The National Security and Investment (NSI) Act 2021 (“the NSI Act”) has created a new legislative framework for UK Government screening of, and—if necessary—intervention in, qualifying acquisitions on national security grounds.
2. The Chancellor of the Duchy of Lancaster and Secretary of State in the Cabinet Office is the single, quasi-judicial decision-maker for the NSI system. The Investment Security Unit (ISU) in the Cabinet Office administers the operation of the NSI system and supports the Secretary of State to carry out their statutory functions.
3. During the NSI Act’s passage, the Government committed to establishing a Memorandum of Understanding (MoU) with the BEIS Select Committee to ensure appropriate Parliamentary oversight of the NSI system and the work of the ISU.
4. This MoU sets out the overarching principles which govern the relationship between the Secretary of State and the BEIS Select Committee in respect of the ISU and arrangements for the sharing of, access to, and handling of, relevant information.
5. Nothing in this MoU replaces or supersedes either the Osmotherly Rules or the powers and privileges of select committees. This MoU has been created to complement the existing arrangements in the specific context of the BEIS Select Committee’s oversight of investment screening on national security grounds, in accordance with the Parliamentary commitment outlined above.
6. This MoU is not legally binding—either in itself, or on either party. The MoU should be the subject of renewal at the beginning of each Parliament.

## *The Business, Energy and Industrial Strategy Select Committee*

7. The BEIS Select Committee is a House of Commons select committee.
8. The House of Commons appoints members of the BEIS Select Committee, by a decision on a motion of the House of Commons. The House also elects the Chair of the Committee.
9. The BEIS Select Committee makes its reports to Parliament.
10. The BEIS Select Committee has established a National Security and Investment Sub-Committee to consider NSI Act and ISU issues in private and may, from time-to-time, decide to further scrutinise or provide oversight of NSI Act and ISU issues in public.



11. This MoU shall apply equally to any select committee appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Business and Trade, and to any sub-committee on national security and investment which may be established by that committee; and references in this MoU to the BEIS Select Committee shall apply equally to that committee.

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

12. The NSI Act does not create any specific new statutory role for the BEIS Select Committee. Nonetheless, in recognising the importance of appropriate Parliamentary oversight the Government committed to working with the BEIS Select Committee to facilitate its scrutiny of the NSI system and the work of the ISU during the passage of the NSI Act.

13. Indeed, the Government considers that scrutiny and transparency, whilst balancing the need to protect the UK's national security interests, are integral to ensuring the effectiveness and efficiency of the ISU's operations and governance.

### ***Requirement to Publish Certain Information Under the NSI Act***

14. The Secretary of State has already made statutory commitments to publish certain information to aid transparency and understanding of the NSI system. This information is set out below, along with details on how the Secretary of State will interact with the BEIS Select Committee on these matters.

### ***Final Orders***

15. A final order can be made, where the relevant legal tests are met, by the Secretary of State following the assessment of a trigger event. Such an order may place conditions on the acquisition, block it altogether, or require it to be unwound.

16. The Secretary of State must publish, in such a manner as they consider appropriate, notice of the fact that a final order has been made, varied or revoked.

17. The Secretary of State will write to the Chair of the BEIS Select Committee at the earliest opportunity to inform them that a final order has been made, varied or revoked. Due to the market sensitive nature of this information and the quasi-judicial nature of the Secretary of State's role, such correspondence will not be sent prior to the making, variance or revocation of the order.

### ***Directions to the Competition and Markets Authority***

18. Directions to the Competition and Markets Authority (CMA) to do, or not to do, anything under Part 3 of the Enterprise Act 2002, can be made, where the relevant legal tests are met, by the Secretary of State at any time when a final order is in force, or a final notification is given.

19. The Secretary of State must publish, in such a manner as they consider appropriate, the direction given to the CMA.

20. The Secretary of State will write to the Chair of the BEIS Select Committee at the earliest opportunity to inform them that a direction has been given to the CMA. Due to the market sensitive nature of this information and the quasi-judicial nature of the Secretary of State's role, such correspondence will not be sent prior to the direction being given.

### *Annual Report*

21. In accordance with Section 61 of the NSI Act the Secretary of State will publish an annual report providing information on the operation of the NSI system, including details of:

- a) the expenditure incurred by the Secretary of State in giving, or in connection with giving, financial assistance falling with Section 30 [of the Act].
- b) the amount of the actual or contingent liabilities of the Secretary of State at the end of the relevant period in respect of such financial assistance.
- c) the number of mandatory notices accepted.
- d) the number of mandatory notices rejected.
- e) the average number of working days:
  - i) from receipt of a mandatory notice to notification of a decision to accept that notice, and
  - ii) from receipt of a mandatory notice to giving written reasons for a decision to reject that notice.
- f) The sectors of the economy in relation to which voluntary notices were given.
- g) The number of voluntary notices accepted.
- h) The number of voluntary notices rejected.
- i) the average number of working days:
  - i) from receipt of a voluntary notice to notification of a decision to accept that notice, and
  - ii) from receipt of a voluntary notice to giving written reasons for a decision to reject that notice.
- j) The sectors of economy in relation to which voluntary notices were given.
- k) The number of call-in notices given.
- l) The sectors of the economy in relation to which call-in notices were given.
- m) The number of final notifications given.
- n) The number of final orders made.

- o) The number of final orders varied.
  - p) The number of final orders revoked.
22. The list specified above represents the minimum set of information that the Secretary of State will publish. They may also publish further information and the Government will keep under review the content of the annual report.
23. The Secretary of State will consider all reasonable requests from the BEIS Select Committee regarding the possible inclusion of further information in the annual report. Such requests should be made in writing by the Chair of the Committee.

### ***Oversight of the NSI System and the Work of the Investment Security Unit***

24. The BEIS Select Committee may consider or otherwise oversee the NSI system and the work of the ISU and intends to do so primarily through its National Security and Investment Sub-Committee.

25. The remit of this oversight is for the BEIS Select Committee to determine as appropriate but will likely include:

- a) The effectiveness of the NSI system in identifying and addressing national security risks;
- b) The efficiency of the ISU in accepting and processing notifications;
- c) The efficiency of the ISU in conducting national security assessments;
- d) The effectiveness of co-operation between the ISU and other Departments
- e) The effectiveness of the ISU in monitoring compliance with, and enforcing, final orders;
- f) The experience of businesses and investors of the NSI system; and
- g) The impact of the NSI system on foreign direct investment.

26. The BEIS Select Committee recognises the sensitivity of aspects of the NSI system and the ISU's work. This includes both the national security implications and the commercially sensitive nature of information that the ISU will be handling for a specific regulatory purpose. Accordingly, the BEIS Select Committee should have regard to the following principles:

- a) Oversight should not jeopardise the success of an intervention (or possible intervention) under the NSI Act.
- b) It should not unduly impede the operational effectiveness of the ISU.
- c) It must not compromise security sensitive or commercially sensitive information.
- d) Oversight relating to specific acquisitions should be retrospective unless otherwise agreed.

### ***Provision of Information***

27. The BEIS Select Committee requires information to carry out its oversight function. As the Osmotherly Rules set out, the presumption is that requests for information from the Government will be agreed to.

28. The BEIS Select Committee's National Security and Investment Sub-Committee will request information to be provided by the Secretary of State (or Cabinet Office Ministers or senior officials, as appropriate) in the format of an explanatory memorandum, which will be provided in confidence and will not be published by the BEIS Select Committee, unless with the agreement of the Cabinet Office. National security sensitive and/or commercially sensitive information may be provided in a confidential appendix, as necessary. Where information is requested on individual cases this will form part of an explanatory memorandum to the subcommittee and will:

- a) Provide a broad summary of the requested individual case and the risk factors considered. This will not routinely include any confidential correspondence between external parties and the ISU, raw intelligence, or the risk assessments conducted by the security services and/or government departments. The Secretary of State may consider requests for such information in exceptional circumstances.
- b) Only be granted to the subcommittee on completed cases once a final order or notice has been served and any window for appeal or representation by the relevant parties has closed.

29. If the National Security and Investment Sub-Committee decided to undertake further oversight or scrutiny, either in private or in public, it may request information through:

- a) Oral evidence sessions with Cabinet Office Ministers and senior officials. These sessions allow the BEIS Select Committee to ask detailed questions about particular issues within their remit but also to get a broader sense of the issues that the ISU and Ministers are facing and to decide whether any particular issue might need further scrutiny.
- b) Written material, both regular briefs on agreed lines of reporting and response to specific questions.
- c) Members of the Sub-Committee's staff working with the ISU to obtain information on the Committee's behalf.
- d) Other relevant means that the BEIS Select Committee considers appropriate.

30. The BEIS Select Committee will work together with the ISU to ensure that the provision of information does not involve disproportionate cost or diversion of effort.

31. The BEIS Select Committee may seek confirmation from the Secretary of State of the factual accuracy or completeness of information it has gathered elsewhere before drawing on it in its reports.

32. Where possible, the BEIS Select Committee will be informed of impending Ministerial statements or announcements relating to the NSI system and the work of the ISU which are relevant to its current enquiries or general remit in good time.

33. The BEIS Select Committee will keep the Secretary of State informed as to its future work plans, as far as that is possible and reasonable. Where the BEIS Select Committee decides to scrutinise an NSI Act or ISU issue in public it will inform the Secretary of State as soon as reasonably practicable.

34. The BEIS Select Committee, in consultation with the ISU, will set reasonable deadlines when it makes requests for information. Where it becomes clear that, exceptionally, the ISU is unable to meet a particular deadline set by the BEIS Select Committee for the provision of information, then the ISU will notify the Committee and provide a written explanation in advance of the deadline.

35. The Secretary of State will provide the BEIS Select Committee with a confidential annex to the Annual Report and/or briefing alongside publication of the Annual Report. The content will depend on the trends and occurrences of the Annual Report's reporting period, but is likely to cover statistics and/or commentary about:

- a) The types of risks identified by the ISU through notifications and market monitoring, the types of actions taken to address those risks, and any compliance and enforcement actions;
- b) How the ISU works with other parts of Government;
- c) The use of market monitoring; and
- d) Parties withdrawing from acquisitions that are passing through NSI Act processes.

36. To protect national security sensitive and/or commercially sensitive information and to facilitate the BEIS Select Committee's work at no or lower security classification, the Secretary of State will:

- i) Seek to provide case information in an aggregate format – i.e. the number of acquisitions meeting X criteria, rather than naming specific entities/acquirers.
- ii) Seek to provide information at the lowest, appropriate security classification—including by anonymising and/or generalising case information (where relevant/appropriate) in order to do so.

37. Where the above (paragraph 36) is not possible or would not sufficiently reduce the security classification of the information requested, the Secretary of State will consider whether arrangements can be made for members of the BEIS Select Committee and supporting staff to be given access to relevant documents at a secure government building.

38. In exceptional circumstances concerning particularly sensitive information, the Secretary of State may consider whether the Chair of the BEIS Select Committee can be given access to relevant information on the equivalent to Privy Council terms or through notification under the Official Secrets Act 1989. In the latter case, the Secretary of State

will give the Chair the authority to inform the Sub-Committee that the Chair has been notified under that Act but not the substance of the notification. This would aid the Chair's ability to guide the decision-making of the BEIS Select Committee National Security and Investment Sub-Committee but they could not disclose such information to other members of the Committee.

### ***Protection and Handling of Sensitive Information***

39. The BEIS Select Committee is responsible for ensuring that information disclosed to it is handled in accordance with government document handling, storage and security procedures.

40. As the Osmotherly Rules set out, the release of SECRET or TOP SECRET information is subject to the personal approval of the responsible Minister. Classification is not of itself sufficient reason to withhold information.

41. As the Osmotherly Rules set out, all sensitive government documents will be kept under secure conditions in the BEIS Select Committee Office, where they may be inspected by Committee members. With the agreement of the Secretary of State, copies of OFFICIAL and/or OFFICIAL SENSITIVE documents may be circulated to members of the BEIS Select Committee with appropriate handling guidance.

42. As the Osmotherly Rules set out, where documents classified as SECRET or TOP SECRET are required for meetings of the BEIS Select Committee (either deliberative or evidence in private), numbered copies may be made for each Committee member, but will be handed back on conclusion of the meeting.

43. The BEIS Select Committee in a new Parliament will inherit any documents held in the BEIS Select Committee Office (i.e. those below SECRET) and will be able to continue the ongoing work of its predecessor in the preceding Parliament.

### ***Withholding Information***

44. There may be circumstances in which the Secretary of State considers it inappropriate for the BEIS Select Committee to see certain information.

45. No decision will be taken to withhold information from the BEIS Select Committee, following a request, without the Chair of the BEIS Select Committee being informed of that decision and provided with an explanation for the withholding of such information. If the Secretary of State decides that there is reason to withhold certain information, a representative will discuss the matter with the Chair of the BEIS Select Committee and accompanying staff, if requested.

### ***Public Evidence Sessions***

46. The Secretary of State and the BEIS Select Committee are committed to enabling evidence sessions in public. Where a session is expected to include questioning relating to sensitive information concerning the NSI system or the work of the ISU, the Secretary of State and the BEIS Select Committee will agree adequate safeguards (including on physical security, attendance, and arrangements for broadcast) in advance.

47. During an evidence session, if a witness considers that answering a question put to them would disclose information that the Secretary of State might consider ought properly to be withheld from the BEIS Select Committee, then the witness should state that they will need to take further advice before answering the question. A response must be provided to the BEIS Select Committee as soon as is reasonably possible after the evidence session (generally within 14 days). This will take the form of a substantive response to the question, or a response setting out the Secretary of State's decision, informing the Chair of the BEIS Select Committee that they will be exercising the power to withhold the information.

48. The BEIS Select Committee will supply witnesses giving oral evidence with copies of their verbatim transcripts as soon as is reasonably possible after their appearance (generally within 14 days). This is to enable witnesses to check the transcript is an accurate record of what they said and, if necessary, provide corrections.

### **Reporting**

49. Information must be redacted from a report by the BEIS Select Committee on the NSI system and the work of the ISU if the Secretary of State considers its inclusion would be contrary to the interests of national security or would be likely to prejudice commercial interests. The ISU will work constructively with the BEIS Select Committee to ensure that as much of its report that can be published, is published. The ISU and the BEIS Select Committee will work together to apply a reasonable process for identifying, in consultation with the BEIS Select Committee, sensitive material that must be removed from a report prior to publication, in accordance with the below points:

- a) Draft reports agreed by the Committee will be sent to the Secretary of State ahead of publication for clearance on wording pertaining to the NSI system and work of the ISU. The Secretary of State will reply with any factual corrections and redaction requirements but will not seek to alter the tone of the report or its conclusions. When requiring information to be redacted, Secretary of State will provide an explanation of the harm caused by its inclusion;
- b) Should the Committee disagree with any redactions a senior ISU official will meet with the Chair to explain in further detail why the redactions are warranted;
- c) Final reports will then be sent to the Secretary of State to seek agreement to publish. For any redactions that remain disputed, the Secretary of State will provide an explanation of the harm caused by its inclusion. A response will be given within a standard 10 working days.

50. In accordance with the Osmotherly Rules, the Secretary of State will aim to respond substantively to any report by the BEIS Select Committee within two months.

Signed on 14 March 2023

<b>Nusrat Ghani MP</b> Minister of State in the Cabinet Office	<b>Darren Jones MP</b> Chair of the Business, Energy and Industrial Strategy Committee
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## Appendix 2: Letter from the Secretary of State in the Cabinet Office and Chancellor of the Duchy of Lancaster

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Dear Darren,

I am pleased to have been appointed decision maker for the National Security and Investment Act 2021 (NSI Act). I am keen to now finalise the Memorandum of Understanding (MoU) between my Department and your Committee concerning the NSI Act and the work of the Investment Security Unit (ISU).

I have therefore attached an updated version of this MoU, building on earlier versions proposed by former NSI Act decision makers.

Following the recent Machinery of Government changes, I understand that Parliament is likely to reconfigure certain select committees, including your committee, to reflect updated departmental structures. Depending on the structures the updated select committees take, I propose carrying this MoU forward to the successor to your committee.

### Information on individual acquisitions and explanatory memoranda

I agree with the former decision maker's (Rt. Hon Kwasi Kwarteng MP) position that the Government will ordinarily seek to provide information at an aggregate level rather than on individual cases. I expect there will, however, be some exceptional cases where limited information sharing on individual acquisitions is appropriate, and this will ordinarily be done retrospectively once the window for a legal challenge has closed.

Paragraph 27 of the draft MoU includes important wording to underpin the provision of this information.

### Information about notifications received, and those subsequently cleared

I understand that you previously asked to receive information about the specific notifications that have been made to the ISU, including those I subsequently clear. The highly commercially sensitive nature of this information—often relating to acquisitions not in the public domain—means that I am not prepared to do so routinely. However, I am prepared to consider requests from you on an exceptional basis to confirm whether a notification has been accepted by the ISU and the status of the case in the NSI process. This might be appropriate, for example, when the acquisition is already in the public domain and subject to substantial public and/or Parliamentary interest.

### Further information alongside the annual report

Paragraph 22 of the MoU requires me to consider all reasonable requests from you about the possible inclusion of further information in the annual report. In addition, I suggest that I or my officials provide you with a confidential annex and/or a confidential briefing alongside the Annual Report that provides information that is too sensitive to include in the Annual Report. The specific content will depend on the trends we have seen over the relevant reporting period, but is likely to cover statistics and/or commentary about:



- (1) The types of risks identified, the types of actions taken to address those risks, and any compliance and enforcement actions;
- (2) How the ISU works with other parts of Government;
- (3) The use of market monitoring; and
- (4) Parties withdrawing from acquisitions that are under NSI Act assessment.

I have reflected this in the new paragraph 34 in the MoU.

National security review of increase in shareholdings by Vesa Equity Investment in Royal Mail

You also wrote to the former NSI decision maker, the Rt Hon Grant Shapps MP, on 24 November asking about his announcement on 31 October that he had decided to take no further action on the proposed increase in shareholdings by Vesa Equity Investment in Royal Mail, and on the previous announcement of no further action regarding Altice's acquisition of shares in BT.

As you note, the government does not routinely publish details of final notifications. However, I may choose (as former decision makers have done) to publish information regarding call-in notices or final notifications (clearances) at either stage of my assessment where the parties themselves disclose such information, or where the acquisition is otherwise in the public domain and I consider it is in the public interest to do so. The Market Guidance Notes published in July 2022<sup>15</sup> set this out in more detail.

In relation to both Royal Mail and BT, the former decision makers determined that it was in the public interest to publicly confirm that they had issued final notifications, because Royal Mail and BT were listed companies and therefore planned to inform markets of the final notifications. This ensured that the information provided by the companies themselves, and that provided by the Government, was consistent and clear.

You also asked the former decision maker to inform the Committee when publishing details of a final notification. I can confirm that I or my officials will do so.

Finally, you ask why BEIS informed Royal Mail of the potential acquisition by Vesa Equity. This was because section 1 of the NSI Act requires the decision maker to inform the target of a proposed acquisition if issuing a call-in notice, which my predecessor did in this case. The ISU worked closely with the acquirer who had submitted the notification to ensure they understood this requirement.

As I hope my position on these matters demonstrates, I am firmly committed to providing your Committee with the information it needs to scrutinise the NSI Act and the work of the ISU. Transparency and accountability to Parliament are fundamental parts of effective government, as well as of maintaining the trust of businesses and investors in the UK's new investment screening system.

Yours sincerely,

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15 <https://www.gov.uk/government/publications/national-security-and-investment-nsi-act-market-guidance-notes/national-security-and-investment-market-guidance-notes-july-2022#how-and-when-the-government-will-publish-information-related-to-the-nsi-act>

**RT HON OLIVER DOWDEN MP**

Secretary of State in the Cabinet Office and Chancellor of the Duchy of Lancaster

*3 March 2023*

# Formal minutes

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**Tuesday 21 March 2023**

**Members present:**

Darren Jones, in the Chair

Alan Brown

Ian Lavery

Draft Report (*Memorandum of Understanding on scrutiny of the Investment Security Unit*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 14 read and agreed to.

*Resolved*, That the Report be the Eighth Report of the Committee to the House.

*Ordered*, That the Memorandum of Understanding agreed between the Secretary of State in the Cabinet Office and the Business, Energy and Industrial Strategy Select Committee on 14 March 2023 be appended to the Report.

*Ordered*, That the letter dated 3 March from the Secretary of State in the Cabinet Office and Chancellor of the Duchy of Lancaster be appended to the Report.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 28 March at 9:45am]

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website.

### Session 2022–23

Number	Title	Reference
1st	Pre-appointment hearing with the Government's preferred candidate for Chair of the Competition and Markets Authority	HC 523
2nd	Draft Legislative Reform (Provision of Information etc. relating to disabilities) Order 2022	HC 522
3rd	Energy pricing and the future of the Energy Market	HC 236
4th	Post-pandemic economic growth: state aid and post-Brexit competition policy	HC 759
5th	The semiconductor industry in the UK	HC 291
6th	The semiconductor industry in the UK: Government response	HC 1115
7th	Royal Mail	HC 1045
1st Special	Decarbonising heat in homes: Government Response to the Committee's Seventh Report of 2021–22	HC 208
2nd Special	Energy pricing and the future of the energy market: Responses to the Committee's Third Report of Session 2022–23	HC 761
3rd Special	Post pandemic economic growth: State aid and post-Brexit competition policy: Responses to the Committee's Fourth Report of Session 2022–23	HC 1078

### Session 2021–22

Number	Title	Reference
1st	Post-pandemic economic growth: Industrial policy in the UK	HC 385
2nd	Climate Assembly UK: where are we now?	HC 546
3rd	Post-pandemic economic growth: Levelling up	HC 566
4th	Liberty Steel and the future of the UK steel Industry	HC 821
5th	Pre-legislative scrutiny: draft Downstream Oil Resilience Bill	HC 820
6th	Pre-appointment hearing of the Government's preferred candidate for Chair of the Financial Reporting Council	HC 1079
7th	Decarbonising heat in homes	HC 1038
8th	Post Office and Horizon - Compensation: interim report	HC 1129
9th	Revised (Draft) National Policy Statement for Energy	HC 1151

<b>Number</b>	<b>Title</b>	<b>Reference</b>
10th	Draft Legislative Reform (Renewal of National Radio Multiplex Licences) Order 2022	HC 1199
1st Special	Decarbonising heat in homes: Government Response to the Committee's Seventh Report of 2021–22	HC 208
2nd Special	Net Zero and UN Climate Summits: Scrutiny of Preparations for COP26—interim report: Government Response to the Committee's Third Report of Session 2019–21	HC 120
3rd Special	Uyghur forced labour in Xinjiang and UK value chains: Government Response to the Committee's Fifth Report of Session 2019–21	HC 241
4th Special	Mineworkers' Pension Scheme: Government Response to the Committee's Sixth Report of Session 2019–21	HC 386
5th Special	Climate Assembly UK: where are we now?: Government Response to the Committee's Second Report	HC 680
6th Special	Post-pandemic economic growth: Industrial policy in the UK: Government Response to the Committee's First Report	HC 71
7th Special	Post-pandemic economic growth: Levelling up: Government Response to the Committee's Third Report	HC 924
8th Special	Liberty Steel and the Future of the UK Steel Industry: Government Response to the Committee's Fourth Report	HC 1123
9th Special	Pre-legislative scrutiny: draft Downstream Oil Resilience Bill. Government Response to the Committee's Fifth Report	HC 1177
10th Special	Post Office and Horizon – Compensation: interim report. Government Response to the Committee's Eighth Report	HC 1267

### Session 2019–21

<b>Number</b>	<b>Title</b>	<b>Reference</b>
1st	My BEIS inquiry: proposals from the public	HC 612
2nd	The impact of Coronavirus on businesses and workers: interim pre-Budget report	HC 1264
3rd	Net Zero and UN Climate Summits: Scrutiny of Preparations for COP26 – interim report	HC 1265
4th	Pre-appointment hearing with the Government's preferred candidate for the Chair of the Regulatory Policy Committee	HC 1271
5th	Uyghur forced labour in Xinjiang and UK value chains	HC 1272
6th	Mineworkers' Pension Scheme	HC 1346
1st Special	Automation and the future of work: Government Response to the Committee's Twenty-third Report of Session 2017–19	HC 240
2nd Special	Future of the Post Office Network: Government Response to the Committee's First Report of Session 2019	HC 382
3rd Special	Safety of Electrical Goods in the UK: follow-up: Government Response to the Committee's second report of Session 2019	HC 494

<b>Number</b>	<b>Title</b>	<b>Reference</b>
4th Special	COP26: Principles and priorities—a POST survey of expert views	HC 1000