



Business and Trade Committee

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Dear Deputy Prime Minister,

Business and Trade Subcommittee response to the Call for Evidence on the National Security and Investment Act 2021

We write to submit the Subcommittee's conclusions and recommendations following your Call for Evidence on improving the operation of the National Security and Investment (NSI) Act 2021.

To inform these reflections, we have studied recent reports by the Intelligence and Security Committee (ISC) and the Foreign Affairs and Defence Select Committees. We are grateful to have had the opportunity to take public evidence from Minister Ghani and officials from the Investment Security Unit (ISU) in December 2023, followed by a private meeting on the confidential annex to the Annual Report 2022–23 in January this year, to thoroughly road-test the scrutiny process.

Our recommendations fall under five themes:

- I. the changing context;
- II. the scope of the Act;
- III. implementation of the Act;
- IV. communications with stakeholders; and
- V. enhancing scrutiny and transparency.

We would be happy to provide more detailed information and discuss our findings further with you, the Minister of State and/or officials if that would be beneficial.

We look forward to hearing about your next steps in this review process and working with you to ensure that the NSI system is robust and effective in protecting the UK's national interests.

Please note that we intend to publish this submission, with the exception of the Annex.

Kind regards,

Rt Hon Liam Byrne MP

Chair, Business and Trade Committee

1. The Changing Context

1. The NSI Act is intended to help safeguard our national security in a changing world. The review therefore needs to take account of:
 - a) the changing investment landscape;
 - b) the changing nature of threats from both our adversaries and evolving technology;
 - c) the evolution of our allies' approach to economic security and the necessity of presenting a 'united force'; and
 - d) what has been learned from the operation of the Act to date.

In recent years, there have been important changes in relation to each dimension.

2. It is now clear that there has been a significant change in ***inbound investment trends***. Over the past thirteen years, foreign direct investment (FDI) into the UK has grown. Notably, inward investment from offshore sources and nations classed as 'partially free' or 'not free' has risen more than five-fold, equating to a 529% rise since 2010. In comparison, there has been a much smaller rise in investment from countries classed by Freedom House as 'free' – around a 50% increase in investment. At this point, the total FDI stock from 'partially free' or 'not free' countries is now close to a quarter of a trillion pounds. This represents a rise of £209 billion since 2010. This creates new risks that need robust defences.¹
3. The ***nature of the threat*** to the UK has also changed. As the ISC states in its Annual Report, the "threat to the UK from hostile activity by states is multifaceted and complex".² This deterioration in the international security environment prompted the 2023 'refresh' of the Integrated Review, which flagged new risks from Russia, the evolution of policy under President Xi in China and the wider diversification of state threats.³ The 2022 NATO Strategic Concept similarly reflected the changing nature of the threat, with its emphasis on investing in innovation to maintain our military and technological edge, protecting our "innovation ecosystems" and defending against economic coercion by state and non-state actors.⁴ This sentiment is reflected in the Government's recent Critical Imports and Supply Chain Strategy, which states the vital need to build resilient supply chains for both our economy and our national security.⁵

¹ Analysis by the office of Liam Byrne MP (October 2023), using data from Freedom House, the Office for National Statistics and the House of Commons Library

² [Intelligence and Security Committee of Parliament – Annual Report 2022–2023](#) Annex A: Threat Assessment

³ [Integrated Review Refresh 2023](#) Paras 8 and 19

⁴ [NATO Strategic Concept 2022](#) Paras 24, 27

⁵ [Critical imports and supply chains strategy](#)

4. Our ***allies' strategy*** has also evolved. The European Commission recently adopted five initiatives to strengthen the EU's economic security as part of a three-pillar approach to economic security: "promoting the EU's competitiveness, protecting against risks and partnering with the broadest possible range of countries to advance shared economic security interests".⁶
5. The Biden Administration has also significantly strengthened the US investment regime, both inbound and outbound. We note that in September 2022, President Biden signed an Executive Order instructing CFIUS to consider additional national security factors when screening foreign investment in the US economy. These factors included a transaction's impact on supply chain resilience within and outside the defence industrial base—specifically:⁷
 - a) for manufacturing capabilities, services, critical minerals or technologies that are fundamental to US national security, including but not limited to microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, advanced clean energy, climate adaptation technologies; and
 - b) elements of the agricultural industrial base that have implications for food security.
6. The Order further instructs CFIUS to consider whether a transaction could reasonably result in future advancements and applications in technology that could undermine national security. In other words, CFIUS' risk assessment is based not only on the current state of technologies but also their future advancements.
7. The Order goes on to describe three further national security factors:
 - a) investment trends or the risk of multiple acquisitions or investments in a single sector or related sectors;
 - b) impact on 'cybersecurity', where this term covers cyber-enabled interference in elections at all of levels of government and the protection of databases and data systems, in addition to the operation of critical national infrastructure (CNI), such as communications infrastructure and smart energy grids; and
 - c) access to U.S. persons' sensitive data, including health and biological data.
8. These reforms to CFIUS offer important ideas for reforms to the UK's counterpart screening regime. They also demonstrate an important point of contrast: while the US is expanding

⁶ [European Commission proposes new initiatives to strengthen economic security, 24 January 2024](#)

⁷ [Executive Order 14083, September 2022](#)

the range of qualifying transactions under its regime, the current UK review is aimed at “narrowing and refining” the scope of the NSI Act.

9. Given the UK’s scientific and technological leadership, **it is vital that the UK does not become a ‘back door’ through which our adversaries acquire capabilities that imperil NATO Allies’ collective security.** It is essential that we stay in lockstep with allies to deliver a shared objective that—as US National Security Advisor Jake Sullivan puts it—‘emerging technologies work for, not against, our democracies and security.’⁸
10. ***The operation of the NSI Act to date*** has also provided lessons, the first of which is the **impact of the Government’s decision not to define ‘national security’ clearly and succinctly** in its strategy documents and relevant legislation, including—importantly—the NSI Act.
11. The lack of a clear definition undermines the predictability of the NSI screening regime at a time of rapidly changing legislation and policy. In December 2023, Minister Nus Ghani MP told our Subcommittee that each case called in for review under the Act is “judged on its own merits” and that “there are a number of pieces of legislation out there that deliver different types of scope for industry and deal with different issues of security”.⁹
12. Moreover, the absence of a clear definition of national security leads to the risk that some challenges—such as threats to the integrity of our parliamentary democracy and the defence of free speech and media freedom—are being missed. Since 2018, Parliament has passed seven key pieces of national security legislation, while the Government has also released two versions of the Integrated Review.¹⁰ There is no clear definition of national security across this legislation to ensure both that they join together and that the Government is protecting the UK from the full range of potential harms to its national security.
13. The UK’s NSI Act does not currently explicitly consider risk relating to media freedoms. In contrast, “the freedom and pluralism of the media” is a factor that may be considered under the EU framework for the screening of foreign direct investments, established in

⁸ [Remarks by National Security Advisor Jake Sullivan at the Special Competitive Studies Project Global Emerging Technologies Summit | The White House](#), 16 September 2022

⁹ [Q1, Q2](#)

¹⁰ The National Security Act 2023, the Economic Crime and Corporate Transparency Act 2023, Economic Crime (Transparency and Enforcement) Act 2022, Sanctions and Anti-Money Laundering Act 2018, the Russia (Sanctions) (EU Exit) (Amendment) Regulations 2023, the Telecommunications (Security) Act 2021 and the Procurement Act 2023.

2019,¹¹ while under Australia’s 2023 foreign investment policy, “foreign persons generally require approval before acquiring an interest of at least 10 per cent in an Australian media business, regardless of the value of the investment”.¹²

14. A second lesson from the Act’s operation to date is that **awareness amongst industry of the NSI Act’s coverage appears to be low**. Data in the 2022–23 ISU Annual Report suggests that the signals to the marketplace are not clear enough. A total of 866 transactions were notified to the Government across 34 economic sectors during the reporting period, including the seventeen sectors in which reporting is mandatory.¹³ This is far higher than the 440 notices and declarations reviewed by CFIUS in the much larger economy of the United States or the 306 cases National FDI Cases filed in Germany in 2022, although to some extent this may be explainable by differences in the screening regimes.¹⁴
15. Of the 766 notified transactions reviewed during the reporting period, only 55 were called in for detailed inspection (7%).¹⁵ Understandably, analysts at RUSI concluded that the “very breadth of the categories creates challenges for businesses, who want as clear a picture as possible when making significant, sometimes make-or-break financial decisions”.¹⁶ The same is surely true for Government in reviewing transactions for national security risks: with so many transactions to review, there is obviously a risk that we lose sight of the wood for the trees and fail to spot the key transactions we need to focus on.
16. **An explicit definition of ‘national security’, which is effectively well-communicated and understood by business in particular, would help to ensure that we create a ‘small garden and high fence’.** This would protect the most critical areas of our economy and democracy in practice, as well as intent.

2. The Scope of the Act

¹¹ [Regulation 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union, March 2019](#) Article 4

¹² [Australia’s Foreign Investment Policy](#) page 4

¹³ Noting that each notification may be associated with more than one area of the economy. [National Security and Investment Act 2021 annual report 2022-23 \(PDF\) \(publishing.service.gov.uk\)](#), pp. 11, 17–18

¹⁴ [Treasury Releases CFIUS Annual Report for 2022 | U.S. Department of the Treasury Investment Screening in Germany: Facts & Figures; Investitionsprüfung in Deutschland \(bmwk.de\)](#), p. 3. Unlike the US and Germany, the UK regime captures both domestic and foreign investment, with the UK being the second highest origin of investment for transactions reviewed under the NSI Act in 2022–23 (~30%). However, even adjusting for this ~30%, the UK Government still received notification of more FDI transactions than these comparable regimes.

¹⁵ [National Security and Investment Act 2021 annual report 2022-23](#) Para 7

¹⁶ Royal United Services Institute, [‘Is the National Security and Investment Act Achieving the Intended Results?’](#), 19 May 2022

17. It is critical that the scope of the NSI Act is targeted to protect the most sensitive infrastructure and technologies within our economy, while also reflecting the rapidly changing geopolitical and economic context. The Government must ensure it does not look at technologies in isolation but in the wider context of their global supply chains and ecosystems. **We therefore welcome the proposals by Government to:**

- a) **create a standalone ‘semiconductors’ sector that would be covered under the Act to make it clearer which types of transactions involving semiconductors are subject to mandatory notification.** As the Government suggests, the scope of this semiconductors sector should more closely reflect the 2023 National Semiconductor Strategy, with an emphasis on protecting valuable intellectual property.
- b) **create a standalone ‘critical minerals’ sector under the Act.**

Under current NSI Act regulations, both semiconductors and critical minerals¹⁷ are incorporated under the umbrella of the ‘advanced materials’ sector.¹⁸

18. We have previously been warned by witnesses that the UK is “dependent on international imports for the raw materials that potentially underpin national defence applications”.¹⁹ As the Foreign Affairs Committee concluded in their recent report, critical minerals supply is “not a geological challenge but a geopolitical one” that is central to the UK’s “economic resilience and national security”.²⁰ The Government also expresses concern in the Critical Minerals Strategy that “foreign actors may use control of resources as leverage on other issues”.²¹

19. The Critical Minerals Strategy states that the “National Security and Investment Act 2021 gives government powers to identify and, if necessary, intervene in acquisitions of control over entities and assets in or linked to the UK economy, including those in critical mineral value chains, which might cause national security concerns”.²² However:

- the strategy does not provide further detail as to how these powers are used;

¹⁷ Technically, ‘critical materials’ are covered by the regulations, but a number of minerals are listed, so critical minerals is used here for simplicity.

¹⁸ The list of materials considered critical for the purposes of the Act is defined by the National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021 Schedule 1 paragraph 3(7) and paragraph 3(11). In addition, paragraph 3(2) Metals and Alloys also adds rare earth magnets.

¹⁹ [Q2](#)

²⁰ Foreign Affairs Committee, First Report of Session 2023–24, ‘[A rock and a hard place: building critical mineral resilience](#)’, HC 371, para 52

²¹ [Resilience for the Future: The United Kingdom’s Critical Minerals Strategy](#) Page 7

²² [Resilience for the Future: The United Kingdom’s Critical Minerals Strategy](#) Page 29

- current regulations under the NSI Act cover a wide range of ‘advanced materials’²³ and – for qualifying entities – it is unclear exactly how far down the supply chain an entity that “supplies goods or services to persons in the UK”²⁴ would extend; and
- there is also a notable discrepancy between the materials identified as critical under the NSI Act supporting regulations and those materials covered by the Critical Minerals Strategy, outlined in the table below.

Materials identified as critical minerals or on watchlist under Critical Minerals Strategy but not covered by NSI Act	Materials covered by the NSI Act but not identified as critical or on watchlist under the Critical Minerals Strategy	Materials identified as critical or on watchlist under Critical Minerals Strategy and also covered by NSI Act supporting regulations ²⁵
Magnesium	Activated Carbon	Antimony
Silicon	Arsenic	Bismuth
Tin	Beryllium	Cobalt
Manganese (watchlist)	Boron	Gallium
Nickel (watchlist)	Cadmium	Graphite
Phosphates (watchlist)	Chromium	Indium
	Fluorspar	Iridium (watchlist)
	Germanium	Lithium
	Lead	Niobium
	Mercury	Palladium
	Molybdenum	Platinum
	Osmium	Ruthenium
	Rhenium	Tantalum
	Selenium	Tellurium
		Tungsten
		Vanadium
	Rare earth elements: Rare earth elements are included as a group in the Critical Minerals Strategy. All except Lanthanum and Promethium are listed individually under the NSI Act supporting regulations. Rare earth magnets are also covered under NSI Act supporting regulations. ²⁶	

²³ [The National Security and Investment Act 2021 \(Notifiable Acquisition\) \(Specification of Qualifying Entities\) Regulations 2021 \(legislation.gov.uk\)](#) Schedule 1

²⁴ [National Security and Investment Act 2021 \(legislation.gov.uk\)](#) Section 7(3)

²⁵ [The National Security and Investment Act 2021 \(Notifiable Acquisition\) \(Specification of Qualifying Entities\) Regulations 2021 \(legislation.gov.uk\)](#) 2021 Schedule 1 paragraph 3

²⁶ [The National Security and Investment Act 2021 \(Notifiable Acquisition\) \(Specification of Qualifying Entities\) Regulations 2021 \(legislation.gov.uk\)](#) 2021 Schedule 1 paragraph 3(11) Critical Materials

20. There is an obvious concern that if some critical minerals are not covered by the NSI Act they will present more attractive targets for hostile investment. There is also a risk that supporting NSI Act regulations²⁷ may fail to remain aligned with the Critical Minerals Strategy or keep up-to-date with changes in materials markets.

21. Consequently, we call on the Government to take this opportunity to secure wider critical minerals supply chains, including the capacity to process critical minerals, and to strengthen the UK’s resilience in this area. The Government should ensure that the new ‘critical minerals’ category under the NSI Act remains aligned with the UK Critical Minerals Strategy, which is updated annually.²⁸

22. We also call on the Government to use this review to bring the UK’s investment screening regime under the NSI Act into stronger alignment with those of allies , and in particular with President Biden’s Executive Order 14083 (September 2022), as outlined in Section 1 of this submission. This would involve:

- **creating a new standalone sector to capture transactions relating to media freedoms and the integrity of our democracy;**
- **measures to protect access to UK persons’ sensitive data;**
- **measures to protect the UK’s ‘cybersecurity’, starting from the definition provided in EO 14083;**
- **measures to protect the supply chains and critical imports²⁹ for strategically important infrastructure and technologies, including those that are essential to the current and future collective security of NATO Allies;**
- **measures to protect industry, intellectual property and sensitive data relating to the UK biosecurity industry, including genomics (which is not specifically mentioned under the current secondary legislation), whether through the creation of a standalone sector or inclusion in another sector.**

23. We further request information on the ISU’s approach to identifying the critical sectors subject to mandatory notifications under the Act, of which there are currently seventeen.

²⁷ [The National Security and Investment Act 2021 \(Notifiable Acquisition\) \(Specification of Qualifying Entities\) Regulations 2021 \(legislation.gov.uk\)](#) 2021 Schedule 1 paragraph 3(2) Metals and Alloys

²⁸ [Q25](#), [Q26](#), [Q27](#), [Q29](#)

²⁹ The Government defines critical imports as “those goods imported into the UK which are critical to the UK security and prosperity”, primarily referring to goods essential to the UK’s critical national infrastructure. [Critical Imports and Supply Chains Strategy](#) Page 7

In particular, it is essential that the Committee understands how the ISU undertakes technology forecasting, how this forecasting is assessed against the Government’s understanding of future geopolitical trends, and how expertise within and outside the Government is brought to bear in that process. We appreciate the highly sensitive nature of such information and therefore suggest it could be provided to the Committee in confidence, with a routine update included in the confidential annex to the ISU’s Annual Report to ensure that the Committee remains informed.³⁰

24. The Notifiable Acquisition Regulations establish which areas of the economy and which activities are sufficiently sensitive as to require mandatory notification under the NSI Act. There is a statutory requirement to review these Regulations and publish the conclusions of that review within three years of the Regulations come into force.³¹ However, **given the rapid pace at which emerging technologies develop and geopolitical circumstances can transform, the Government must learn from allies’ regimes, such as CFIUS, and act on signals of change in sensitive sectors. Therefore, while we welcome the current Call for Evidence and review of the Act, we believe that a three-year review timeframe is wholly insufficient. We therefore ask the Government to commit to reviewing the critical sectors subject to mandatory notifications on an annual basis from now on.**
25. Under the Act, acquisitions completed before 12 November 2020 are exempt from review by the ISU. It is unclear, however, whether the Government would have the power to retrospectively call-in transactions completed since that date, should it update its regulations in future to capture new sectors. Allowing for retrospective powers would help the Government to assess the remedies that are needed to address national security risks in areas of the economy that are now deemed sensitive, but it would also significantly increase the unpredictability of the regime for business. **The Government should therefore clarify whether it will retrospectively call-in for review acquisitions completed since 12 November 2020, if it updates the Notifiable Acquisitions Regulations in future.**

3. Implementation of the Act

26. The Minister of State, Nus Ghani MP, has day-to-day oversight of the implementation of the UK’s investment-screening regime under the NSI Act, working with officials to review cases and prepare them for the Deputy Prime Minister’s consideration as decision-maker under

³⁰ The confidential annex to the ISU’s Annual Report is provided to the Committee under its Memorandum of Understanding with the Government on information-sharing. See [The work of the Investment Security Unit \(parliament.uk\)](#), March 2023, para 35

³¹ [Call for Evidence - National Security and Investment Act](#)

the Act. **The Government should use its response to this Call for Evidence to clarify the process for dealing with differences of opinion between the two Ministers.**

27. In December, we asked the Minister of State whether there were any alarming patterns in the notification data collated under the ISU regime so far, which might inform the scope of mandatory notification as well as Government decision-making on individual cases. Minister Ghani told us that “we need to spend some time to collect more data and to see whether there are patterns that provide the evidence that particular investors, institutions or countries are being deliberate” in their actions. She suggested such patterns may become clearer in twelve months’ time.³²
28. However, **it is essential that the Government take all possible steps to counter potential ‘acquisition strategies’ by other countries even as it waits for stronger patterns to emerge within the NSI regime data. This includes routinely:**
- a. **assessing the potential motive of the acquirer or its ultimate beneficial owner as part of formal case reviews;**
 - b. **drawing on Foreign Office and intelligence agencies’ insight into relevant countries’ declared and revealed economic and national security policies; and**
 - c. **sharing insight and information with allies on patterns from within the data of mature investment screening regimes, such as CFIUS, and on relevant third countries’ policy goals.**
 - d. **learning from the experiences of more mature regimes in identifying weaker ‘signals’ of a deliberate strategy of acquisition from within the available data.**
29. Opaque ownership structures, as well as accumulated ownership stakes, are a covert threat to the UK’s economic security, as the ultimate beneficial owners can be easily disguised. Uncovering the true ownership of companies—and any formal or informal links owners may have with hostile countries—is essential to the effective functioning of the NSI regime. **It is therefore imperative that the Government ensures that the Overseas Territories and Crown Dependencies fulfil their responsibilities in introducing and maintaining public registers of beneficial ownership.** As of January 2023, Gibraltar is alone in having introduced a publicly accessible register. Other parties have withdrawn their previous commitments following a ruling in November 2022 by the Court of Justice of the European Union that such publicly accessible registers could violate certain human rights.³³

³² [Q36](#)

³³ [Public registers of beneficial ownership in the Overseas Territories and Crown Dependencies](#)

30. Additionally, we call on the Government to ensure that the NSI regime benefits from joined-up implementation with other recent legislation. This includes:
- cross-referencing cases under review by the ISU with individuals registered with the Foreign Influence Registration Scheme (FIRS), once established under the National Security Act 2023;
 - putting provisions in place to allow for the sharing of vital and intelligence with allies under FIRS;
 - cross-referencing cases under review by the ISU with data held by Companies House. As such, we call on the Government to implement as quickly as possible the proposed reforms to Companies House under the Economic Crime and Corporate Transparency Act 2023.
31. As decision-maker under the Act, the Deputy Prime Minister made 15 Final Orders (FOs) on acquisitions in FY2022–23, most of which imposed remedies intended to mitigate risks to national security. It is essential that such mitigation measures are diligently monitored and that lessons are learned from their implementation. **As the number of transactions subject to remedies will grow in the coming years, the Committee requests the following information, in confidence if necessary:**
- how the ISU monitors, verifies and reports to Ministers on compliance with, and the effectiveness of, remedies imposed on acquisitions;
 - how many ISU officials are currently devoted to this task and how resourcing might change in future.
32. Fifty-seven transactions were subject to Final Notification in FY2022–23, meaning that these cases were called in by the ISU for more detailed investigation but were ultimately allowed to proceed without mitigation, either because the Deputy Prime Minister was not sufficiently satisfied that the transaction had given rise to a risk to national security or because the acquisition did not complete. **The Government should review all transactions that were issued a Final Notification within two years of the decision being taken. This is important to ensure both that sensitive technologies have in fact been protected sufficiently and that companies do not find means to evade ISU scrutiny. Moreover, this would enable the ISU to learn more effectively from experience. The Committee would welcome the Government’s suggestions—in its response to the Call for Evidence—as to how to do this without placing disproportionate strain on limited resources. This may include, for example, conducting spot checks on transactions subject to Final Notifications or principles for prioritising transactions for review.**

33. The Government should also set out, either in its response to the Call for Evidence or in correspondence to this Committee, how it has incorporated systematic learning into its day-to-day operations. For example, in FY2022–23, more than a quarter of the cases called in for more detailed investigation had been voluntarily notified to the ISU. It should not wait until the next ‘set-piece review’ such as this Call for Evidence to use this experience to optimise the implementation of the NSI regime accordingly.

4. Communications with Stakeholders

34. The Committee has heard repeated concerns from stakeholders concerning the ‘black box’ nature of the review process and a lack of communication from the ISU during the review period. While we are sure stakeholders will raise their concerns through this Call for Evidence, we emphasise the following key recommendations:

- a) **The Government should provide a clearer picture of evolving national security threats through an annual National Security Assessment, similar to the Annual Threat Assessment published by the US Government.** Publishing this annual assessment would help to meet the need for a clear, explicit definition of ‘national security’ as discussed in Section 1 of this submission as well as informing internal and public guidance on the NSI regime, by providing a clear framework for how national security concerns affect ‘acquirer risk’ and ‘target risk’. **Crucially, we also need a clearer list of factors that decision-takers use to make judgements.** We clearly have a problem articulating which risk factors are the red flags that mean a transaction may ultimately be blocked or subject to remedies. Moreover, and as the Tony Blair Institute explains, “the national-security and economic guideposts that were intended to be in place when the NSIA was first discussed – the 2017 National Security Capability Review and the 2017 Industrial Strategy white paper – are no longer government policy”.³⁴
- b) **The Government should establish an online tracking portal for all notifications submitted to the ISU.**³⁵ This closed portal would allow the relevant parties to track their notification through the various stages of the review system, thereby reducing the opacity of the process and offering greater certainty and predictability to businesses.
- c) **To increase stakeholders’ understanding of the ISU’s decision-making process, the Government should publish which departments and agencies feed into the decision-**

³⁴ [Transparency, Accountability, Predictability: Protecting National Security Through the UK’s Foreign-Takeover Regime \(institute.global\)](#), 14 March 2023

³⁵ [Q26](#)

making process. This practice would be in line with the CFIUS regime and would increase the transparency of the system.³⁶

- d) **The Government must undertake tailored engagement with groups that play an important role in the UK economy. In particular, we recommend that the Government offer more detailed, targeted guidance to—and engage earlier with—university joint ventures, start-ups and spin outs.** To protect the UK’s critical technologies for future generations, we must ensure that national security issues are a key pillar of the thinking of the researchers and pioneers in this sector. Early engagement, and more open discussion of threats to UK national security, would help to build trust with such groups. While we are aware of limited initiatives to this end within Government, we remain concerned over the level of engagement and the prospect of valuable intellectual property being acquired by hostile actors in ways that would not trigger a review under the NSI Act.
- e) **The Government should pursue increased engagement with and enhanced support to venture capital and private equity firms, which also play an important role in the UK economy but which face unique challenges when engaging with the NSI Act.** This includes, for example, being disproportionately vulnerable to financial losses during the review period. Although the Annual Report stated that no financial assistance was provided during the last reporting period (FY2022–23), the perception alone that a review by the ISU might lead to financial losses could have a chilling effect on such sources of investment in the UK economy. **The Committee would also be particularly interested to hear how the ISU is monitoring the impact of the Act specifically on the business confidence of the venture capital and private equity industries.**

5. Enhancing Scrutiny and Transparency

35. It is essential that Parliament can scrutinise the implementation of the UK’s investment screening regime, given the high economic and national security stakes involved. **In practice however, the design of the NSI Act prohibits us from accessing necessary information about the ways in which decisions were taken on individual cases—specifically, the implication of Section 54 is that it prevents the Government from sharing with Parliament any information received from third parties under the Act.**³⁷ This appears to have been the result of an oversight by the Government

³⁶ [Q36](#)

³⁷ Section 54(2) of the Act lists a narrow set of reasons for disclosing information to public authorities and facilitating parliamentary scrutiny is not among them. In addition, the NSI Act makes clear that “‘public authority’ has the same meaning as in section 6 of the Human Rights Act 1998’; this does not include either House of Parliament.

when drafting the legislation. Nevertheless, this is a fundamental roadblock to scrutiny that affects Parliament in its entirety, including all Committees of MPs and Peers. We are also concerned that Section 54 may prohibit the Government from publishing information that would increase the transparency of the regime for the public and stakeholders.

36. **We therefore call on the Government to explore ways to enable this Committee to fulfil its role in scrutinising the NSI regime through amendment to Section 54 of the National Security and Investment Act 2021. This amendment should be brought forward in the current Parliament.** We would be open to working with the Government to establish and then pursue the most appropriate option for doing so.
37. The publicly available data on the functioning of the NSI regime is limited, given that it has been in operation for only one financial year. **The Government should therefore publish key statistics on the NSI regime halfway through each reporting year for the next five years, in addition to the Annual Report, to provide external stakeholders with more frequent information on how it is working in practice.** This should include statistics such as: the number of mandatory, voluntary and total notifications received by the ISU, and in which economic sectors; the number of notifications called in by the ISU; the number of Final Notifications issued; the number of withdrawals from the review process; and the number of Final Orders made.
38. We note that the Government has improved its reporting via its Annual Report and the confidential annex provided to the Committee and in some instances its public reporting goes beyond that on counterpart regimes such as CFIUS in the United States. However, the Annual Report and confidential annex do not yet match the public and private reporting of CFIUS in important ways. A more detailed comparison is provided in the Annex. However, we call on the Government to match CFIUS reporting on the following at a minimum:
- a) **the value of the transactions reviewed under the Act**, as a means of building investor confidence in the regime. Specifically, we call on the Government to publish the aggregate value of the transactions reviewed annually by the ISU, as well as the annual value of transactions within specific sectors. This would be beneficial in tracking sector-specific trends and avoiding a ‘takeover by stealth’ of individual sectors.
 - b) **notifications, call-ins, Final Notification and Final Orders showing the intersection of the origin of investment and the area of the economy to which the investment relates.** An example from a recent CFIUS Annual Report is included below.³⁸

³⁸ [CFIUS - Annual Report to Congress CY 2022](#) Page 41

Covered Transaction Notices by Acquirer Home Country or Economy and Target Sector, 2020-2022					
Country/Economy	Manufacturing	Finance, Information and Services	Mining, Utilities and Construction	Wholesale Trade, Retail Trade and Transportation	Total
Australia	1	13	4	2	20
Austria	6	1	0	0	7
Bahrain	0	1	0	0	1
Belgium	1	0	1	0	2
Bermuda	0	2	0	0	2
Brazil	2	3	1	1	7
British Virgin Islands	0	3	3	0	6
Canada	9	27	13	5	54
Cayman Islands	5	27	1	0	33
Chile	2	1	0	0	3

- c) **withdrawn transactions.** Withdrawn transactions are an important indication of trends within the NSI regime. Matching CFIUS reporting would better demonstrate investment trends and provide important information on the number of companies that withdrew from the process on national security grounds rather than for other reasons. The Government should use its Annual Report to publish: the number of withdrawals during the assessment period, identifying the number withdrawing on national security grounds;³⁹ and data on the geographies and sectors of the withdrawn transactions, preferably demonstrating the intersection of these. The Government should also disclose each year (in confidence if necessary) the number of companies that withdrew from a transaction and subsequently refiled.
- d) **further reporting on emerging trends within the reviewed transactions, such as commentary on the evidence of espionage or an acquisition strategy** emerging from the data.

6. Conclusion

39. The context in which the NSI Act operates has changed, and continues to change rapidly, yet the Act is not keeping pace. We hope that, by working in collaboration with the ISU and through the implementation of our recommendations, we can ensure the Act is future-proofed against both emerging threats to our national security and the evolution of assets and intellectual property which are of strategic importance to our economy.

³⁹ [Covered Transactions Withdrawals and Presidential Decisions 2008-2022](#) See page 3 for CFIUS reporting on this.

40. In December 2023, the Minister of State told us directly that she believes scrutiny of the NSI Act best sits with this Committee. We acknowledge the Government's efforts to facilitate our work, which have included public evidence sessions, private briefing (including in secure settings on Government premises) and substantive correspondence that has encompassed individual cases subject to review by the ISU. Nevertheless, our hands are tied. The Committee's ability to conduct scrutiny is constrained by our limited access to information due to the operation of Section 54 of the NSI Act. We therefore call on the Government to review the effect of Section 54 on parliamentary scrutiny and bring forth options for change accordingly.