



Law Society
of Scotland

Consultation response

National Security and Investment Act 2021:
statement on the use of the power to call in
acquisitions

August 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Banking, Company and Insolvency Law Sub-committee welcomes the opportunity to respond to the Department for Business, Energy & Industrial Strategy's consultation *on the National Security and Investment Act 2021: statement on the use of the power to call in acquisitions*¹.

Response to questions

1. Is the statement clear in its description of how the Secretary of State expects to use the call-in power provided by the NSI Act?

No, we consider that there is a risk that the degree of risk required for the Secretary of State to exercise their call-in power is unclear.

Paragraph 15 of the statement states “an acquisition may be called in if any one risk factor raises the possibility of a risk to national security”. In examples 2 and 3, it is stated that the transaction will not be likely to be called-in because risk is identified but seen as low risk. In examples 1, 4 and 5, the risk is seen as “high”. Thus paragraph 15 states that any risk can result in a call-in power (a binary measure), whereas the examples seem to provide three tiers of risk within each category. We suggest that either paragraph 15 should be updated to clearly set out how a more qualitative measure will be used (e.g. balancing risks – if so, against what), or the examples should be updated to reflect the binary position outlined in paragraph 15.

2. Does the statement help you to decide whether your acquisition is likely to be called in?

No, we consider it to risk appearing contradictory.

¹ <https://www.gov.uk/government/consultations/national-security-and-investment-act-2021-statement-on-the-use-of-the-power-to-call-in-acquisitions>

3. Are the risk factors that the Secretary of State will consider set out in an understandable way?

We consider that the factors are set out in an understandable way, but how they interact with each other and ultimately act to trigger a calling in risks being unclear.

For further information, please contact:

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