



National Security and Investment Act 2021

2021 CHAPTER 25

PART 1

CALL-IN FOR NATIONAL SECURITY

CHAPTER 2

INTERPRETATION

5 Meaning of “trigger event” and “acquirer”

- (1) For the purposes of this Act, a “trigger event” takes place when—
 - (a) a person gains control of a qualifying entity, as set out in section 8, or
 - (b) a person gains control of a qualifying asset, as set out in section 9.
- (2) In this Act “acquirer” means the person who gains the control referred to in subsection (1) (or in relation to a trigger event that has not yet taken place, would gain that control).

6 Notifiable acquisitions

- (1) The Secretary of State may make regulations for the purposes of this section (“notifiable acquisition regulations”).
- (2) A notifiable acquisition takes place when a person gains control, by virtue of one or more of the cases described in subsection (2), (5) or (6) of section 8, of a qualifying entity of a specified description.
- (3) But a notifiable acquisition does not take place if complying with the requirement to give a mandatory notice under section 14(1) would be impossible for the person within subsection (2).

- (4) A description of qualifying entity that is specified must include provision that the entity carries on activities in the United Kingdom which are of a specified description (whether or not it also carries on other activities).
- (5) Notifiable acquisition regulations may—
 - (a) amend this section in relation to the circumstances in which a notifiable acquisition takes place or does not take place,
 - (b) make provision for exemptions by reference to the characteristics of the person within subsection (2),
 - (c) make consequential amendments of other provisions of this Act.
- (6) Notifiable acquisition regulations may by virtue of subsection (5)(a) include, in particular, provision about the circumstances in which the gaining of control of a qualifying asset of a specified description is a notifiable acquisition.
- (7) A description specified under subsection (6) may only include qualifying assets within section 7(6) if it includes provision that any such asset is used in connection with activities carried on in the United Kingdom which are of a specified description (whether or not it is also used in connection with other activities).
- (8) In this section “specified” means specified in notifiable acquisition regulations.

7 Qualifying entities and assets

- (1) This section defines “qualifying entity” and “qualifying asset” for the purposes of this Act.
- (2) A “qualifying entity” is (subject to subsection (3)) any entity, whether or not a legal person, that is not an individual, and includes a company, a limited liability partnership, any other body corporate, a partnership, an unincorporated association and a trust.
- (3) An entity which is formed or recognised under the law of a country or territory outside the United Kingdom is a “qualifying entity” only if it—
 - (a) carries on activities in the United Kingdom, or
 - (b) supplies goods or services to persons in the United Kingdom.
- (4) A “qualifying asset” is (subject to subsection (6)) an asset of any of the following types—
 - (a) land,
 - (b) tangible (or, in Scotland, corporeal) moveable property,
 - (c) ideas, information or techniques which have industrial, commercial or other economic value.
- (5) Examples of assets within subsection (4)(c) include—
 - (a) trade secrets,
 - (b) databases,
 - (c) source code,
 - (d) algorithms,
 - (e) formulae,
 - (f) designs,
 - (g) plans, drawings and specifications,

- (h) software.
- (6) Land or moveable property situated outside the United Kingdom or the territorial sea, or any asset within subsection (4)(c), is a “qualifying asset” only if it is used in connection with—
 - (a) activities carried on in the United Kingdom, or
 - (b) the supply of goods or services to persons in the United Kingdom.

8 Control of entities

- (1) For the purposes of this Act, a person gains control of a qualifying entity if the person acquires a right or interest in, or in relation to, the entity and as a result one or more of the cases described in this section arises.
- (2) The first case is where the percentage of the shares that the person holds in the entity increases—
 - (a) from 25% or less to more than 25%,
 - (b) from 50% or less to more than 50%, or
 - (c) from less than 75% to 75% or more.
- (3) In subsection (2), the reference to holding a percentage of shares is—
 - (a) in the case of an entity that has a share capital, to holding shares comprised in the issued share capital of the entity of a nominal value (in aggregate) of that percentage of the share capital,
 - (b) in the case of an entity that does not have a share capital, to holding a right to a share of that percentage of the capital or profits of the entity,
 - (c) in the case of a limited liability partnership, to holding a right to a share of that percentage of any surplus assets of the partnership on a winding up.
- (4) For the purposes of subsection (3)(c), to the extent that rights to share in any surplus assets of the limited liability partnership on a winding up are not expressly provided for, each member of the partnership is to be treated as holding the right to an equal share of such assets.
- (5) The second case is where the percentage of the voting rights that the person holds in the entity increases—
 - (a) from 25% or less to more than 25%,
 - (b) from 50% or less to more than 50%, or
 - (c) from less than 75% to 75% or more.
- (6) The third case is where the acquisition is of voting rights in the entity that (whether alone or together with other voting rights held by the person) enable the person to secure or prevent the passage of any class of resolution governing the affairs of the entity.
- (7) In subsections (5) and (6), a reference to the voting rights in an entity is—
 - (a) in the case of an entity that has a share capital, to the rights conferred on shareholders in respect of their shares to vote at general meetings of the entity on all or substantially all matters,
 - (b) in the case of an entity that does not have a share capital, to the rights conferred on members to vote at general meetings of the entity on all or substantially all matters,

and, in the case of an entity that does not have general meetings at which matters are decided by such votes, includes any rights in relation to the entity that are of the equivalent effect.

- (8) The fourth case is (subject to subsection (9)) where the acquisition, whether alone or together with other interests or rights held by the person, enables the person materially to influence the policy of the entity.
- (9) Subsection (8) does not include a case where the person already holds any interest or right that enables the person materially to influence the policy of the entity.

9 Control of assets

- (1) For the purposes of this Act, a person gains control of a qualifying asset if the person acquires a right or interest in, or in relation to, the asset and as a result the person is able—
 - (a) to use the asset, or use it to a greater extent than prior to the acquisition, or
 - (b) to direct or control how the asset is used, or direct or control how it is used to a greater extent than prior to the acquisition.

This is subject to section 11.

- (2) In this section, references to the use of an asset include references to its exploitation, alteration, manipulation, disposal or destruction.

10 Holding and acquiring interests and rights: supplementary

- (1) Schedule 1 provides for particular cases in which a person is to be treated for the purposes of this Act as holding an interest or right.
- (2) A person is to be treated for the purposes of this Act as acquiring an interest or right (to the extent that the person would not otherwise be regarded as doing so) where—
 - (a) the interest or right becomes treated as held by the person by virtue of Schedule 1, or
 - (b) the person is already treated as holding the interest or right by virtue of that Schedule and something occurs in relation to the interest or right which would be regarded as its acquisition by the person (including by virtue of paragraph (a)) if the person was not already treated as holding it.

11 Exceptions relating to control of assets

- (1) For the purposes of this Act a person is not to be regarded as gaining control of a qualifying asset by reason of an acquisition made by an individual for purposes that are wholly or mainly outside the individual's trade, business or craft.
- (2) Subsection (1) does not apply in relation to an asset that—
 - (a) is land, or
 - (b) falls within any of the following (as it has effect from time to time)—
 - (i) the Schedule to the Export of Radioactive Sources (Control) Order 2006 (S.I. 2006/1846),
 - (ii) article 4A of, or Schedule 2 or 3 to, the Export Control Order 2008 (S.I. 2008/3231),

- (iii) Annex I or IV to Council Regulation (EC) No 428/2009 of 5 May 2009,
 - (iv) Annex I to Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012,
 - (v) Annex II or III to Regulation (EU) 2019/125 of the European Parliament and of the Council of 1 January 2019.
- (3) The Secretary of State may by regulations—
- (a) amend subsection (2) so as to add, vary or remove any asset or description of asset,
 - (b) prescribe other circumstances, or descriptions of circumstances, in which a person is not to be regarded for the purposes of this Act as gaining control of a qualifying asset.

12 Trigger events: supplementary

- (1) If a trigger event takes place over a period of more than one day, or if it is unclear when during a period of more than one day the event has taken place, it is treated for the purposes of this Act as taking place on the last day of the period.
- (2) Subsections (3) and (4) apply if a person enters into an agreement or arrangement that enables the person (contingently or not) to do something in the future that would result in a trigger event taking place.
- (3) For the purposes of this Act, entering into the agreement or arrangement does not necessarily establish that arrangements are in progress or contemplation which, if carried into effect, would result in a trigger event taking place.
- (4) The question of whether such arrangements are in progress or contemplation (at the time of entry into the agreement or arrangement or subsequently) is to be determined by reference to all the circumstances, including how likely it is in practice that person will do the thing that would result in a trigger event taking place.