EXPLANATORY MEMORANDUM TO

THE NATIONAL SECURITY AND INVESTMENT ACT 2021 (PRESCRIBED FORM AND CONTENT OF NOTICES AND VALIDATION APPLICATIONS) (AMENDMENT) REGULATIONS 2022

2022 No. 398

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

2. Purpose of the instrument

2.1 The 2021 Regulations set out the content of the National Security and Investment Act 2021 notification forms. There are three types of notification form used to notify the government of acquisitions under the National Security and Investment notification system. This includes a mandatory notification form which is a legal obligation for parties to fill out for certain acquisitions. Without this new corrective instrument, the existing regulations may be unclear to external parties who are legally obligated to notify using these forms.

2.2 This instrument will amend three lines in Schedules 1, 2 and 3 to the National Security and Investment Act 2021 (Prescribed Form and Content of Notices and Validation Applications) Regulations 2021 (the "2021 Regulations") to correct the inconsistent use of the wording "national infrastructure sector". The term "national infrastructure sector" is defined in Section 2 of the 2021 regulations but the Schedules use slightly different terms.

2.3 In Schedule 1, Part 1, paragraph 21(d) "national infrastructure" will be substituted by "national infrastructure sector". In Schedule 2, part 1, paragraph 25(d) "national infrastructure" will be substituted by "national infrastructure sector". In Schedule 3, Part 1, paragraph 29(d) "critical national infrastructure" will be substituted by "national infrastructure sector".

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument amends the National Security and Investment Act 2021 (Prescribed Form and Content of Notices and Validation Applications) Regulations 2021 laid before Parliament on 16 November 2021 to correct the inconsistent use of the term "national infrastructure sector".

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The National Security and Investment Act 2021 provides that in certain circumstances persons can or must notify the Secretary of State of relevant acquisitions and that the Secretary of State may make regulations to prescribe the form and content of those notifications.

6.2 Notifications enable the Secretary of State to assess acquisitions and decide whether to intervene where risks to national security are identified in order to mitigate those risks. There are three types of notification that may be required:

- Mandatory notice: acquirers must notify the Secretary of State of notifiable acquisitions prior to completion, as set out by regulations made under powers in section 6 of the National Security and Investment Act 2021.
- Application for retrospective validation of a notifiable acquisition: where a notifiable acquisition is void as a result of an acquirer failing to notify and receive clearance for that acquisition, any person materially affected by this can apply for that acquisition to be retrospectively validated.
- Voluntary notice: parties can voluntarily notify the Secretary of State of an acquisition that is not a notifiable acquisition.

7. Policy background

What is being done and why?

7.1 This instrument makes a minor correction to existing 2021 regulations which set out the content of the notification forms under the National Security and Investment Act. This correction ensures the existing regulations are clear to external parties who may be legally obligated to notify using the forms.

7.2 The National Security and Investment Act 2021 provides the Government with updated powers to scrutinise acquisitions and intervene through imposing orders on investments and other acquisitions of control to protect national security. The Act also provides businesses and investors with the certainty and transparency they need to do business in the UK.

7.3 The Act makes provision that acquisitions in areas of the economy in which national security risks are particularly likely to arise ("notifiable acquisitions") must be notified to and approved by the Secretary of State before they are completed. Notifiable acquisitions that are completed without being notified and approved are void in law.

7.4 Any person materially affected by the fact that a notifiable acquisition is void may apply to the Secretary of State for retrospective validation of the acquisition. The Secretary of State will then either call in the acquisition for scrutiny or clear and validate it.

7.5 The Act also gives the Secretary of State the power to call in non-notified acquisitions and gives persons the ability to voluntarily notify non-notifiable acquisitions.

7.6 Notifications enable the Secretary of State to assess acquisitions and decide whether to call in and, if necessary, intervene where risks to national security are identified, in order to mitigate those risks.

7.7 The Secretary of State may prescribe the form and content of the three notification forms in regulations in order to receive relevant information. As such, the existing regulations set out the information required on the acquisitions of control covered by the Act.

7.8 During Parliamentary passage of the Act, the Government committed that these notification forms would be clear and simple to complete.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There is no plan to consolidate the legislation amended by these Regulations.

10. Consultation outcome

10.1 No formal public consultation was undertaken for the formulation of this instrument as it is purely corrective.

11. Guidance

11.1 The Government has issued guidance on gov.uk on completing and registering a notification form into the National Security and Investment system.

11.2 The guidance includes practical support to businesses on understanding how they must submit information to the Secretary of State under the National Security and Investment system, including clear guidance on how to fill in the forms themselves. The guidance and digital forms are being reviewed to ensure they are in line with the amendments made in this instrument at the point of laying.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it is purely to correct a drafting error in existing regulations.

13. Regulating small business

13.1 The existing regulations, which this instrument corrects, apply to activities that are undertaken by small businesses.

13.2 The Government concluded that the measures in the existing regulations are proportionate given the national security risks. To provide clarity and minimise impact for small business the Government has issued guidance across the National Security and Investment system.

14. Monitoring & review

14.1 This instrument will be reviewed in the normal course of business.

14.2 This regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State, Lord Callanan, made the following statement about the existing regulations which the instrument is correcting:

"The impacts of the National Security and Investment Act 2021 (Form and Content of Notifications) Regulations 2021 are not expected to exceed £5m. The impacts and effectiveness of the SI will be monitored in the ordinary course of business, and so it would be disproportionate to include a formal review clause."

15. Contact

15.1 Anna Beckett at the Department for Business, Energy and Industrial Strategy, email: anna.beckett@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Beth Martin, Deputy Director for the Investment Security Unit, at Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Callanan at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.