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B. Research collaborations and consortia¹

Event	Comment	Mandatory Notification Required when there is acquisition of control ² of a qualifying entity ³ if its activities are covered by the 17 sector definitions in the Notifiable Acquisition Regulations ⁴	Voluntary Notification Considered when there is acquisition of control ⁵ of a qualifying asset ⁶ where it falls within <i>or close to</i> ⁷ one of the 17 sector definitions. Consider also whether less than 25% shareholding or material influence has been acquired ⁸
Qualifying asset – intellectual property (note the broad definition) ⁹			

¹ Discussion with BEIS/ISU in respect of this table does not constitute official endorsement nor does it fetter the Secretary of State's powers under the Act.

² Sections 8(2) and (5) define control of an entity as the acquisition of a right or interest that allows the acquirer to increase its shares or voting rights in the entity:

- (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.

Sections 8(6) also defines control of an entity as the ability to secure/prevent the passage of any class of resolution.

³ A qualifying entity is defined in sections 7(2) and (3) as 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 that carries on activities or supplies goods or services in the UK.

⁴ The 17 sectors are defined in the *National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021* at: <https://www.legislation.gov.uk/ukdsi/2021/9780348226935/contents>

⁵ Sections 9(1)(a) & (b) define control of assets as the acquisition of a right or interest that allows the acquirer to:

- (a) use the asset, or use it to a greater extent than prior to the acquisition; or
- (b) 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.

⁶ A qualifying asset is defined in sections 7(4) and (6) as:

- (a) land;
- (b) tangible (or, in Scotland, corporeal) moveable property;
- (c) ideas, information or techniques which have industrial, commercial or other economic value; that is situated in the U.K or used in connection with activities or the supply of goods or services in the UK.

⁷ Example: acquiring full control of a company which is not within one of the 17 areas, but 'close to' one of the sectors, means there is a voluntary rather than a mandatory notification trigger

⁸ A trigger event that involves acquiring the ability to exercise material influence over the qualifying entity's policy (section 8(8)) is not within the scope of the mandatory notification regime.

1	Background IP - immediate licence to use for the purposes of the project	Assuming the acquirer does not already have the right to use background IP as described	N/A	Yes - trigger event for voluntary notification Control has been acquired – i.e. to use the asset. Consider the sensitivity of the background IP and possible national security implications.
2	Foreground IP (the results arising from the research) - option for an assignment or licence	No immediate rights to use or control the foreground IP (save that asset owner is restrained from granting conflicting IP rights during the option period)	N/A	Yes – but seeking clearance <i>may</i> only be relevant when the IP is created and option is exercised and assignment or licence is granted ¹⁰
3	Foreground IP (results arising from the research) - immediate¹¹ assignment or licence	Many collaborations or studentship contracts might have relevant IP provisions, but no IP of interest is	N/A	Yes - but seeking clearance may only be relevant when IP is created ¹²

⁹ A “qualifying asset” includes ideas, information or techniques which have industrial, commercial or other economic value. Section 7(4)(c) gives examples: trade secrets, databases, source code, algorithms, formulae, designs, plans, drawings and specifications, and software.

¹⁰ Section 10 preserves the call in power where rights are granted over future assets. While technically this is a trigger event, seeking clearance before it is apparent what IP or results have created will be of no assistance: BEIS would not be able to make an assessment until the nature of the technology is clear.

Section 10

- 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.

Sch 1 para 6(1) Rights exercisable only in certain circumstances etc.

- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
- (b) when the circumstances are within the control of the person.

¹¹ Both background and foreground IP licenses are in scope of the Act, as IP is considered a qualifying asset. Voluntary notification would need to be considered for a non-exclusive as well as an exclusive licence

¹² See footnote 15

		generated during the project		
4	No IP licence but research results are shared	Legal right to use not created	N/A	Take legal advice. ISU may take the view that there could still be a trigger event even if there has not been a formal legal agreement/contract, particularly when data is being shared.

Qualifying entity - unincorporated association (e.g. a consortium agreement)

5	<p>A new consortium is created which:</p> <p>(i) allocates voting rights that cross NSI percentage thresholds;</p> <p>(ii) allows the acquirer to pass or block resolutions governing the affairs of the consortium; or</p> <p>(iii) allows the acquirer to materially influence the policy of the consortium, appoint members of the steering group or affect its strategic direction</p>	<p>These arrangements are normally contractual joint ventures created for the purpose of doing funded research.</p>	<p>No - as the consortium is <i>created</i> not acquired by its members</p>	N/A
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6	New consortium members are introduced who acquire <u>control</u> over the unincorporated association as described in row 4(i) – (iii)	If the consortium already exists and new members join – they are acquiring rights in a qualifying entity so this is a trigger event	Mandatory notification is only relevant if the activities of the consortium are covered by the 17 sector definitions	N/A
7	New consortium members are introduced who acquire immediate <u>licence</u> to use background IP		N/A	Yes, see row 1 – immediate rights are created
8	New consortium members are introduced who acquire <u>option</u> for an assignment or licence to use foreground IP		N/A	Yes - but seeking clearance may only be relevant when the IP is created and option is exercised and assignment or licence is granted (see row 2)
9	New consortium members are introduced who acquire <u>immediate</u> assignment or licence to use foreground IP		N/A	Yes - but seeking clearance may only be relevant when IP is created (see row 3)

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