

Infrastructure & Energy

HORIZON SCANNER

Jan/Feb 2022



WELCOME

Welcome to this first edition of our quarterly horizon scanner. The purpose of this document is to keep you abreast of key legal and regulatory developments.

If you have any questions or require any more information then please don't hesitate to get in touch with us.

If you would like to receive this and other similar updates direct to your inbox, please click the link [here](#).

WHAT WE WILL BE COVERING

Net Zero & Industry News	3
Renewables and Green Energy	6
Hydrogen and CCUS	8
Waste and Resources	9
Construction/Development	10
General / In-house Legal	11



Infrastructure
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NET ZERO & INDUSTRY NEWS

The **Net Zero Strategy policy paper** published in late 2021 set out the UK government's policies and proposals for decarbonising all sectors of the UK economy to meet net zero targets by 2050.

The strategy includes a commitment to have 40GW of **offshore wind** generation by 2030, with more **onshore wind, solar and other renewable energy sources**.

On 8 December 2021, BEIS **announced** that it has opened **an inquiry** into **energy pricing and the future of the energy market** to examine the extent to which the regulatory environment has contributed to current issues affecting the energy market, the impact on consumers of rising energy prices, and the operation of the energy price cap.

On 13 December 2021, Ofgem published its **decision** on its review of its regulatory policy and approach to new **electricity interconnectors**. Ofgem will: open a **cap and floor** investment round in mid-2022 and implement changes to the cap and floor regime to reflect the changing role of interconnectors, to work equally for different market participants, and to protect consumers' interests. Ofgem plans to publish a final summary of its approach during early 2022.

On 29 December 2021 the UK government **announced** that a £19 million investment will go towards setting up five **new heat networks** (across Bristol (x2), Liverpool, London and Worthing) in a major expansion of heat networks to power homes with green energy.



At the end of last year in Scotland, Greenpeace argued that BEIS' and the Oil & Gas Authority's permission for bp and Ithaca to drill for oil in the North Sea was invalid because it was made without full knowledge of environmental effects. In Ireland, a High Court challenge has been brought on wildlife and environmental grounds by residents against a decision to grant planning permission for a solar facility. Greenpeace's Scottish challenge was refused on the facts and the Irish solar farm challenge is currently still in progress, but both are examples of the rising tide of 'green litigation'.

Also in December 2021, ENDS Report and The Telegraph reported the issue of threats of legal action against BEIS by the UK onshore shale gas (fracking) industry, which argues that it has been left behind in the domestic energy revolution.

The Scottish Government has published its [Budget 2022–23](#), setting out almost £2bn of low carbon capital investment in public infrastructure to support the decarbonisation of homes and buildings, transport and industry.

On 7 December 2021 BEIS published its [updated energy projections](#).

On 30 December 2021, Ofgem published a [consultation on proposed changes to the electricity and gas supply standard conditions](#); electricity distribution standard condition and gas transporters standard and standard special conditions which underpin the Supplier of Last Resort (SoLR) arrangements. Significant costs will be included in electricity and gas distribution charges for 2022/23 set on 31 January 2022 and will be included in the retail price cap (and so consumer charges), from April 2022. One option under consideration is third-party financing of the SoLR levies, which could potentially smooth the impact of current extraordinary SoLR levy payments on 2022/23 consumer bills and enable greater ongoing competition in the SoLR processes.



On 15 December 2021 the European Commission (EC) adopted [legislative proposals](#) that seek to **decarbonise the EU gas market** by facilitating the uptake of renewable and low carbon gases and reduce methane emissions in the energy sector in Europe and in its global supply chain. On the same date, the EC [proposed](#) to align rules for the energy performance of buildings with the [European Green Deal](#) and **decarbonise the EU's building stock** by 2050. This [proposal](#) will facilitate the renovation of homes, schools, hospitals, offices and other buildings across Europe to reduce greenhouse gas emissions and energy bills.

The [Environment Act 2021](#) (EA) was enacted in November 2021. Key provisions are summarised [here](#). The UK government has stated that work on implementing policies under the EA is underway, including the development of legally binding environmental targets, and the launching of [consultations on the deposit return schemes for drinks containers, extended producer responsibility for packaging and consistent recycling collections](#). The government has also published a [draft Principles Policy Statement](#), to put protecting the environment at the heart of future policy. Walker Morris will report on developments.



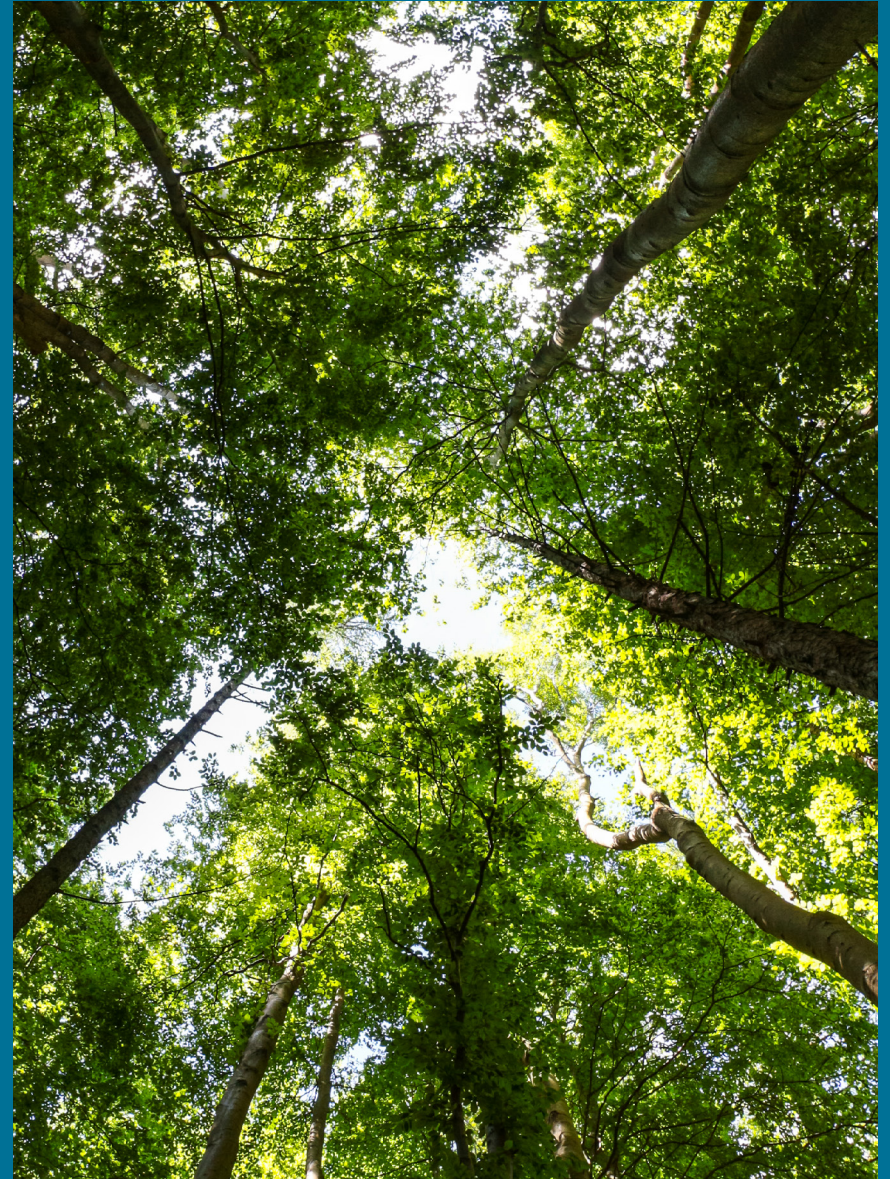
RENEWABLES AND GREEN ENERGY

Further to the UK government's **Transport Decarbonisation Plan**, it is to develop a **low carbon fuel strategy for transport** for publication in 2022 and deliver commitments on **sustainable aviation fuels**.

Regulations have been laid before parliament to establish the **Green Gas Support Scheme (GGSS)**. The GGSS will facilitate and encourage renewable generation of heat by the production of biomethane by anaerobic digestion for injection into the gas grid. The scheme provides support for biomethane producers through a tariff-based mechanism, and is funded by levy payments collected from licensed gas suppliers.

The UK government has **announced** that it will invest £20 million per year across the UK in **tidal stream electricity**. It is anticipated that this will kick-start a thriving Welsh tidal power sector. The funding is made available under the **Contracts for Difference scheme fourth round allocation**, which opened on 13 December 2021. On a related topic, the Welsh government has published **recommendations** and a **written statement** following its deep dive into renewable energy.

Sembcorp Energy UK has **announced** plans to build **Europe's largest battery energy storage system** at its site at Wilton International. The development should support the UK's Net Zero targets by helping to ensure the resilience of the electricity network.



In other battery news, the **UK's largest flow battery** has been energised as part of the [Energy Superhub Oxford project](#). The 2MW vanadium redox flow battery manufactured is being combined with a 50MW lithium-ion battery to operate as a single energy storage asset, which is also the largest battery to be directly connected to the UK's transmission network to date.

BEIS has published [guidance](#) on requirements for **monitoring and reporting biomass used in stationary installations in the UK Emissions Trading Scheme**. The guidance explains sustainability criteria for bioliquids and how to comply; how to determine emission factors, preliminary emission factors and biomass fractions; and monitoring and reporting changes that have applied since 1 January 2021. Also in relation to biomass, (BEIS) has published a [biomass policy statement](#) providing a strategic view on the role of sustainable biomass for net zero. See Walker Morris' [briefing](#) for further information.



HYDROGEN AND CCUS

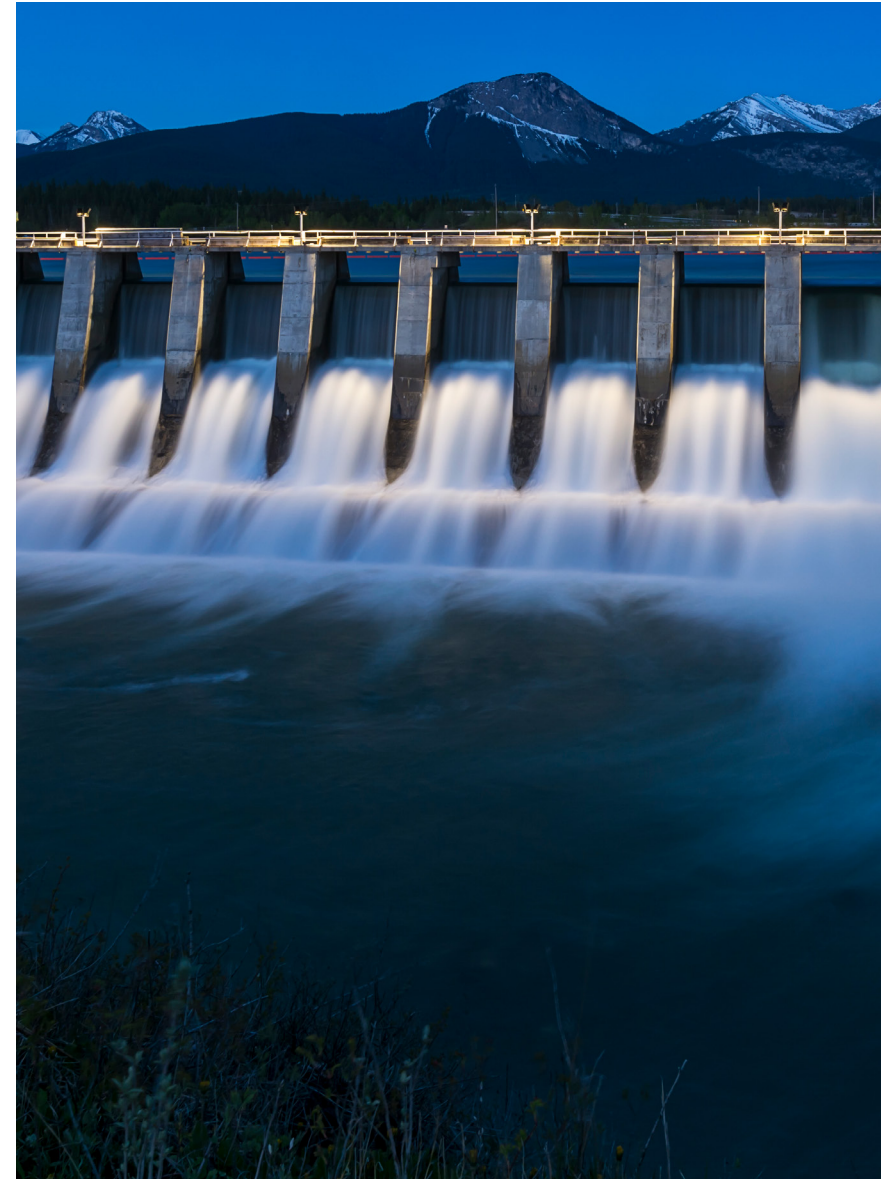
The **Net Zero Strategy** acknowledges that carbon capture usage and storage (CCUS) and hydrogen are central to the decarbonisation of UK power systems.

With an ambition for 5GW UK low carbon hydrogen production capacity by 2030, the Industrial Decarbonisation and Hydrogen Revenue Support (IDHRS) scheme will fund new hydrogen and industrial carbon capture business models. The £240 million Net Zero Hydrogen Fund is to be implemented and the Hydrogen Business Model and the Low Carbon Hydrogen Standard finalised in 2022.

In January 2022 BEIS launched a new programme to help develop bioenergy with carbon capture and storage (BECCS) technologies to produce hydrogen from sustainable biomass and waste. From 12 January 2022, applicants are able to bid for up to £250,000 under Phase 1 of the programme to help develop project plans and show the feasibility of their proposed innovation.

In October 2021 Hynet and the East Coast Cluster were announced as the two industrial clusters under Phase 1 for government support for deployment of CCUS at scale by the mid-2020s. Phase 2 is open to Power, Industrial Carbon Capture and Hydrogen production projects which meet the technology specific eligibility criteria.

bp has announced plans for a major green hydrogen project in the North East. **HyGreen Teesside** strengthens Teesside as the UK's leading hydrogen hub to decarbonise industry and heavy transport. Together with bp's H2Teesside, HyGreen Teesside has the potential to deliver 30% of the UK's 2030 hydrogen production target.



WASTE AND RESOURCES

Policy is to be announced early in 2022 in relation to the three main reforms under the **Resources & Waste Strategy** designed to increase recycling rates:

- consistency of the collection, sorting and separation of household and business waste streams,
- extended producer responsibility (**EPR**), requiring packaging producers to bear the cost of managing packaging once it becomes waste, and
- deposit return scheme (**DRS**) for drinks containers.

Certainty of policy in these areas is required for the industry to invest in the new services and infrastructure needed to implement the changes.

Separate, weekly **food waste collections** are set to follow later. Proposals announced by the government in 2021 pledged mandatory separate collections from 2023, whereas the Chancellor's budget committed to £295 million of capital funding which will allow local authorities in England to prepare to implement free separate food waste collections for all households from 2025.

For the **energy from waste (EfW)** sector, a key priority during the next few years is **decarbonisation**. This will be achieved through a range of measures and technologies including higher rates of plastic recycling and, in the longer term, **carbon capture and storage (CCS)** on EfW facilities to capture emissions from non-recyclable waste. This follows the publication of guidance by BEIS in late 2021 indicating clear support for including EfW projects within the business model for Industrial Carbon Capture. The business model will, however, require development in close consultation with the industry so as not to undermine the Resources and Waste Strategy and investment into essential recycling technologies.



CONSTRUCTION/DEVELOPMENT

The UK Green Building Council's [Net Zero Whole Life Carbon Roadmap](#), launched at the end of 2021, and the Institution of Civil Engineer's [Built Environment Carbon Database](#), due early 2022, should provide significant assistance for operators in the built environment with Net Zero ambitions.

The Department for Transport has published its [response](#) to the consultation on **EV charge points in residential and non-residential buildings**. This is seen as a vital step towards decarbonising England's transport system and will pave the way for the mass transition to zero emission vehicles. See Walker Morris' [briefing](#) for further information. The [Building Regulations etc. \(Amendment\) \(England\) \(No. 2\) Regulations 2021](#) will come into force on 15 June 2022 and will require the installation of EV charge points (or cable routes for EV charge points) for new or newly renovated buildings.

Wates Residential has won a contract to provide a **pioneering eco-housing development in East Sussex** which will see the use of underground 'Earth Sheltered Homes'. Work is due to start early 2022.

As the **Building Safety Bill** continues its progress through Parliament, the DLUHC has published five new sets of [draft regulations](#) and several [factsheets](#), as well as a new [redress factsheet](#) which explains proposed changes to the Defective Premises Act 1972 and section 38 of the Building Act 1984 (which also entails adding a new section 4B to the Limitation Act).

DEFRA has published a [consultation](#), open until 4 April 2022, which lays out proposals for the **implementation of biodiversity net gain**, including how it will be applied to different types of development, detail on what biodiversity information developers will need to provide to planning authorities, and how biodiversity net gain will be monitored. DEFRA has also [announced](#) new funding of over £4 million to expand local planning authorities' ecologist resource.



GENERAL/IN-HOUSE LEGAL

Climate/ESG

In late 2021 the UK government published its [Net Zero Strategy policy paper](#), setting out policies and proposals for decarbonising all sectors of the UK economy to meet net zero targets by 2050.

The International Chamber of Commerce issued new guidance on [environmental claims in marketing and advertising](#). See the [press release](#). See also Walker Morris' [briefings](#) on 'greenwashing' for further information and practical advice.

Businesses are becoming increasingly commercially and socially motivated to voluntarily provide additional reports and claims relating to their environmental and sustainability ambitions.

From 6 April 2022 [climate disclosures](#) are to become mandatory for over 1,300 of the largest UK-registered companies and financial institutions - include many of the UK's largest traded companies, banks and insurers, as well as private companies with over 500 employees and £500 million in turnover - in line with recommendations from the Task Force on Climate-Related Financial Disclosures.

See [Walker Morris' briefing](#) for practical advice on [climate reporting](#).

People

The Flexible Working Taskforce launched practical hybrid working guidance for employers. See this [link](#). Also on [flexible working](#), the House of Commons Library recently published a [briefing paper](#) on remote and hybrid work. The government's consultation on proposals to reform flexible working regulations closed on 1 December 2021.



The government **published** proposed benefit and pension rates 2022 to 2023.

See our recent briefings on **partying through the pandemic** and **mandatory vaccination policies**.

The **Employment Bill** was announced in 2019 but has been delayed due to the pandemic. In anticipation that 2022 will be the year of progress, we expect the Bill to cover issues ranging from (non-exhaustively) a single labour market enforcement agency for vulnerable workers' basic rights, mandatory ethnicity pay gap reporting, one week's unpaid leave for employees with caring responsibilities and twelve weeks' paid neonatal leave for employees with premature or sick babies, making flexible working the default position, increased redundancy protection for pregnant employees, an employer's duty to prevent sexual harassment and an extension from three months to six months to bring discrimination claims. Walker Morris will report on developments.

Data/Regulatory

The Information Commissioner's Office (ICO) has published its **response** to the **consultation** on the **future of data protection in the UK**. Proposed reforms are far-reaching and the response addresses proposals such as reforming the accountability framework, removing cookie pop-ups, extending the 'soft opt-in' exception for e-marketing to non-commercial organisations, changes to subject access requests, reducing barriers to data flows and the ICO's regulatory role.

A new version of the ICO's statutory **data sharing code of practice** came into force on 5 October 2021, providing practical guidance for organisations on how to share personal data in compliance with the requirements of the UK General Data Protection Regulation and Data Protection Act 2018.

Data controllers can breathe a sigh of relief following the Supreme Court's November 2021 **Lloyd v Google** decision which, for the time being at least, should ensure that the floodgates remain closed in relation to **mass data breach claims**. Walker Morris' **briefing** contains further information



and practical advice of interest and assistance to all businesses (as data controllers).

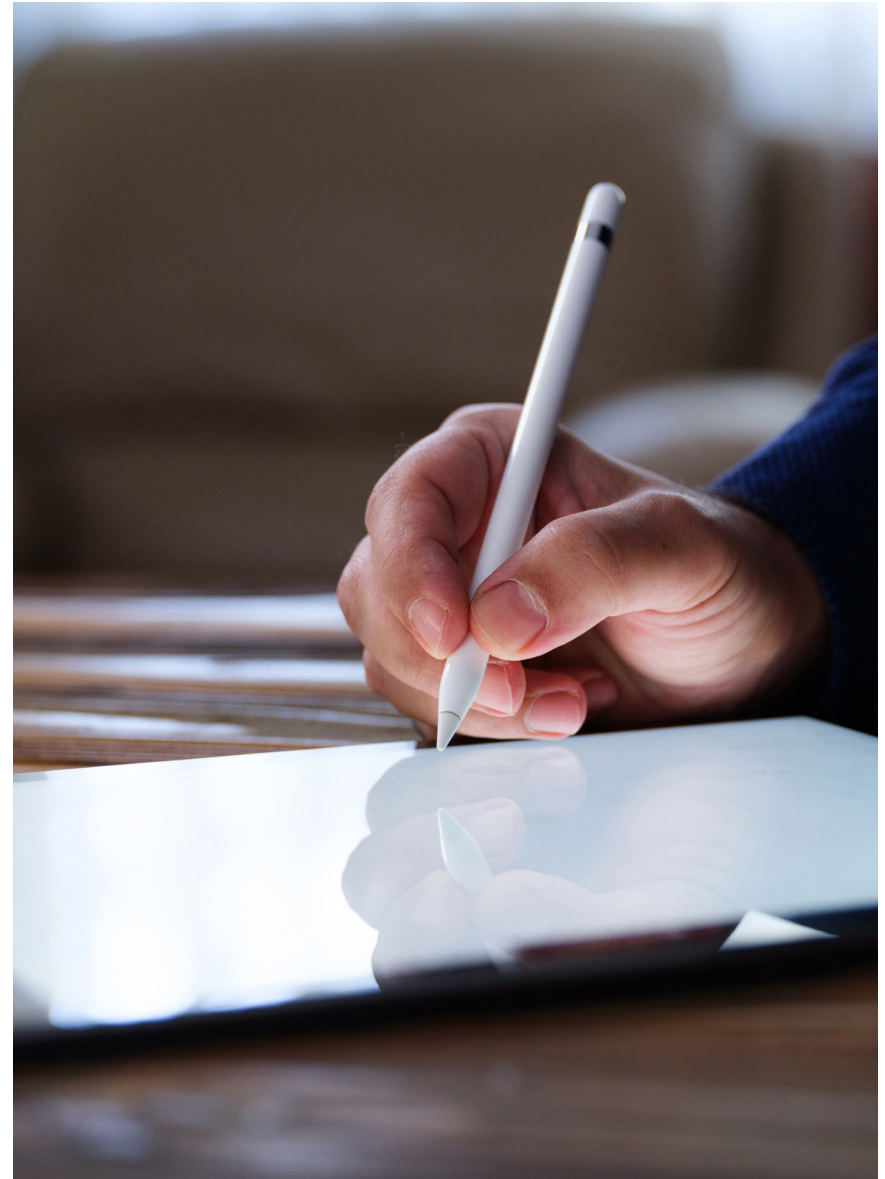
Corporate/Commercial

Smart contracts are computer programs which run automatically, in whole or in part, without the need for human intervention. Smart contracts can be used to define and perform the obligations of a legally binding contract (i.e. smart legal contracts), meaning that contracting parties need only place trust in the coding, rather than in each other to fulfil contractual obligations. Smart legal contracts have the potential to greatly improve efficiency, trust and certainty in business and the Law Commission has now **confirmed** that existing UK law can support smart legal contracts. See Walker Morris' **briefing**.

LIBOR, the reference rate of interest for many financial contracts has, for the most part, been discontinued post 31 December 2021. **SONIA** (the Sterling Overnight Index Average) is the preferred replacement rate for LIBOR. Corporate borrowers should continue to identify contracts and loans which reference LIBOR and engage with counterparties to amend affected provisions.

The government has published the **Product Security and Telecommunications Infrastructure Bill**, which creates a new regulatory scheme to **make consumer connectable products more secure against cyber attacks**. The Bill is a wide-ranging piece of legislation which will impact all economic actors in the supply chain from manufacturers and importers to distributors. Given the pervasiveness of this technology, the Bill is likely to impact property developers, and anyone involved in installing home products like smart fridges and thermostats. Enforcement powers include eye-watering fines up to the greater of £10 million or 4% of an organisation's qualifying worldwide revenue.

The **National Security and Investment Act 2021** has now come fully into force with effect from 4 January 2022. The Act expands the government's powers to scrutinise certain acquisitions and investments on national security grounds, replacing narrower powers in the Enterprise Act 2002.



Under the new regime, where control of (or influence in) a qualifying entity or asset is gained in circumstances considered to pose a risk to national security, BEIS (acting through the Investment Security Unit) will have the power to review and potentially intervene.

In 2021, the government published a [consultation](#) on restoring trust in audit and corporate governance. The consultation proposed that large public companies would be held to higher standards of governance and directors would have increased liabilities. A further proposal was to expand the definition of “public interest entity” to include large private companies. The government’s response to the consultation is awaited.

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