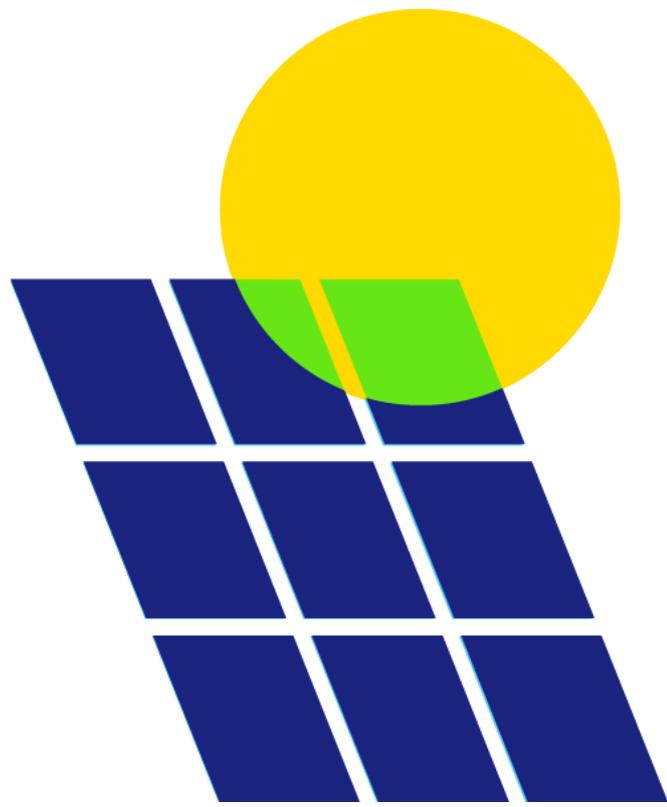




National Security and Investment: Sectors in Scope of the Mandatory Regime



About us

Since 1978, Solar Energy UK has worked to promote the benefits of solar energy and to make its adoption easy and profitable for domestic and commercial users. A not-for-profit association, we are funded entirely by our membership, which includes installers, manufacturers, distributors, large scale developers, investors, and law firms.

Our mission is to empower the UK solar transformation. We are catalysing our members to pave the way for 40GW of solar energy capacity by 2030. We represent solar heat, solar power and energy storage, with a proven track record of securing breakthroughs for all three.

Respondent details

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Would you like this response to remain confidential? No

Introduction

Solar Energy UK welcomes the opportunity to respond to this consultation. The premise of the underlying legislation, to provide national security oversight to critically sensitive technologies and infrastructure in key sectors, is sensible and needed.

However, our members have expressed some concerns with the scope of the mandatory notification regime and the proposed definition of energy entities as currently drafted, and the burden this would place on businesses and transactions.

This response has been drafted in consultation with our more than 200 members and with legal advice from our member law firms.

Response

1. Are the sector definitions sufficiently clear to enable investors and businesses to self-assess whether they must notify and receive approval for relevant transactions? If not, how can the definitions be improved?

As drafted, Solar Energy UK has concerns with the definition of energy entities. The definition is currently sufficiently broad that it would make every player in the energy

market very cautious and would likely deter investment and increase the cost of capital for renewable energy projects.

Solar Energy UK is especially concerned that as drafted this legislation would constrain the growth of the renewable energy sector at the precise moment when we should be accelerating, undermining the green economic recovery the Government has championed, and impeding the solar energy industry's ability to help deliver on the Government's legally binding net zero objectives.

Specifically, the proposed language below is unclear and could be interpreted in such a way as to apply to nearly every entity in the electricity sector:

'An entity involved in the ownership and operation of:

f. electricity undertakings that:

- i. Carry out the function of supply; or
- ii. carry out the function of generation via individual generators that would have a total capacity, in terms of input to a transmission system, greater than or equal to 100 megawatts; or
- iii. carry out the function of generation via generators that, when cumulated with the generators of affiliated undertakings, would have a total capacity, in terms of input to a transmission system, greater than or equal to two gigawatts.'

Many large-scale renewable assets, including solar photovoltaic (PV) generation assets, are ultimately owned by funds or asset managers who aggregate portfolios of individual generating assets. While the proposed language stipulating "100 megawatts" may be intended to focus the proposed legislation only to individual generators greater than or equal to 100 megawatts, generation investments are regularly aggregated into holdings of that size or larger.

It remains somewhat unclear based on the proposed notification scheme whether the notification scheme could lead to arbitrary investment thresholds being established for the sole purpose of avoiding the notification and approval regime.

Solar Energy UK members have also expressed concerns that as drafted the definition of energy entities could be interpreted to apply to any transaction involving assets as well as entities. The language should be revised to clarify that it only pertains to transactions involving commercial entities.

2. To what extent are technical and scientific terms correct and sufficiently clear and commonly understood for the purposes of determining relevant activities?

Solar Energy UK has concerns over the lack of clarity and specificity in the technical terms used to define energy entities.

Our members have expressed significant concerns with the phrase ‘carry out the function of supply’. This could be interpreted to apply to both electricity suppliers as well as any asset that is supplying electricity to the grid at any level. This is sufficiently broad that it could, for example, be interpreted to apply to a homeowner, a school, or a hospital with solar panels on their roof which are supplying electricity to the grid through the Feed in Tariff scheme or the Smart Export Guarantee.

‘Input into a transmission system’ is also vague. The intent may be for the definition to apply to any grid connected assets, however the phrase ‘transmission system’ could be interpreted to only apply to assets connected to the transmission network and not the distribution network. In other words, this could be interpreted as applying only to assets connected at 132kV or higher voltages in Scotland or 275kV and above in England.

Lastly, the definition does not specify precisely how ‘total capacity’ will be measured for the purposes of applying the 100MW or 2GW thresholds. We would recommend clarifying whether ‘total capacity’ refers to MWp alternating current (AC) or MWp direct current (DC) and would recommend specifying what register or reference point will be used to determine the nameplate capacity of generating stations.

3. To what extent do these definitions include the areas of the economy where foreign investment has the greatest potential to cause national security risks?

No comment.

4. How else, aside from mandatory notification under the NSI regime, can the Government ensure relevant transactions receive appropriate screening while minimising the impact on business?

With respect to the solar PV and battery storage sectors, it is not clear that the aims of this legislation would justify the potentially high administrative burden on distributed energy generation and storage assets that could result from the mandatory notification regime.

While the scope of the regime appears to be targeted to larger entities/assets, given the highly distributed nature of solar PV and battery storage industries, in addition to the issue of aggregation noted above, we would recommend the Government explore more targeted mechanisms through which to safeguard national security without creating undue burden on highly distributed sectors.

5. Do these definitions strike the right balance between safeguarding national security and minimising the burdens placed on businesses and investors? Is it possible to narrow the scope of the definitions without compromising national security?

Solar Energy UK is concerned that the geographic scope of the definitions as drafted could be interpreted to apply to both domestic and international acquisitions. The lack of clarity on this point could significantly slow economic activity in the impacted sectors and would likely create an onerous oversight burden for government. Solar Energy UK recommends that the language be clarified to exclude domestic acquisitions.

The 5-year retroactive application of notification would also be especially burdensome and could further deter future investment in renewable energy projects. In addition, the timeline as set out for the Secretary of State to make determinations has the potential to create substantial additional delays for projects or cause transactions that would otherwise be successful to be abandoned, thereby further increasing uncertainty for businesses and investors, and likely increasing the cost of capital.

Solar Energy UK members are also concerned that the proposed regime may have substantial impacts on the solar supply chain. The Government should note that while there is a growing domestic and regional supply chain for certain system components (such as inverters) there are components that form a core part of solar generation and storage assets (for example PV modules and power electronics) which are largely imported into the UK from abroad, with many leading manufacturers and suppliers based in China and Southeast Asia.

Solar Energy UK recommends additional guidance and clarification as to what entities will be impacted by the mandatory regime. This could involve the creation of an expedited mechanism for a trusted category of entities, or for entities which have received prior approval through the mandatory notification regime, to streamline the process and provide greater certainty for businesses and investors. This could include a presumed approved approach if the acquiring entity is headquartered in an allied country for example.

Solar Energy UK would be happy to meet to discuss our concerns and recommendations further if helpful.

