

National Security and Investment Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Before Clause 1

LORD FOX
LORD CLEMENT-JONES

Insert the following new Clause –

“Objective of this Act

- (1) The overarching objective of this Act is to allow the Secretary of State to safeguard national security in respect of economic and social harm.
- (2) When making decisions under this Act, including for the purposes of assessing a risk to national security, the Secretary of State must have regard to the objective in subsection (1).
- (3) The Secretary of State must also have regard to the effect of the application of this Act on –
 - (a) technology investment;
 - (b) the research and innovation environment; and
 - (c) business opportunities for small and medium-sized enterprises.”

Member’s explanatory statement

This amendment sets an objective for the bill in relation to national security and includes a number of other elements to which the Secretary of State must have regard.

Clause 1

LORD VAIZEY OF DIDCOT

Page 1, line 18, leave out “void” and insert “voidable”

Clause 2

LORD LANSLEY

Page 2, line 34, at end insert –

“(4A) In this section, the Secretary of State is to be regarded as becoming aware of a trigger event if the trigger event has been made public, as a result of being so publicised as to be generally known or readily ascertainable.”

Member’s explanatory statement

This amendment would give greater certainty to investors about the time limits in relation to the issuance of a call-in notice; the reference to “made public” reflects the provisions of section 24 of the Enterprise Act 2002 relating to merger control.

Clause 3LORD VAIZEY OF DIDCOT
LORD CLEMENT-JONES

Page 3, line 9, at end insert –

- “(d) the steps that the Secretary of State has taken –
- (i) to limit the extent to which the call-in power may act as a deterrent to legitimate economic activity, and
 - (ii) to discourage unnecessary voluntary notifications.”

Member’s explanatory statement

This amendment seeks to ensure that the Government provides effective guidance to organisations in order to minimise the volume of voluntary notifications and avoid legitimate business activity being otherwise discouraged.

Clause 6

LORD VAIZEY OF DIDCOT

Page 4, line 14, after “a” insert “foreign”

Page 4, line 17, after first “a” insert “foreign”

Page 4, line 24, after “the” insert “foreign”

Page 4, line 31, at end insert “foreign”

Clause 7

LORD VAIZEY OF DIDCOT

Page 5, line 17, after “land” insert “subject to subsection (7)”

LORD VAIZEY OF DIDCOT
LORD CLEMENT-JONES

Page 5, line 20, at end insert “and which are not generally and widely available on the commercial market”

Member's explanatory statement

This amendment seeks to ensure that "business as usual" procurement, such as the purchasing of software licences or standard network equipment, is not captured in the definition of a qualifying asset and so avoids referral requirements, which might create a significant and disproportionate burden on businesses.

LORD VAIZEY OF DIDCOT

Page 5, line 34, at end insert –

“(7) In this section –

“land” is a qualifying asset only if it is located within one mile of a sensitive site;

“sensitive site” means any site identified as such by the Secretary of State and published on a Government website (as updated from time to time).”

Member's explanatory statement

This amendment would require the Government to create an online checking service to confirm whether certain land is regarded as sensitive similar to one provided under the equivalent US regime.

Clause 11

LORD LANSLEY

Page 7, line 33, at end insert –

“(2A) For the purposes of this Act a person is not to be regarded as gaining control of a qualifying asset of the type specified in section 7(4)(c) where –

- (a) the asset is being licensed to that person on a non-permanent basis,
- (b) legal ownership of the asset has not been permanently transferred to the licensee, and
- (c) substantive economic ownership of the asset has not been transferred to the licensee.”

Member's explanatory statement

This amendment would provide that Intellectual Property (IP) licences that do not transfer ownership of the asset to the licensee would not be treated as gaining control by the licensee, as the licensor can impose restrictions on the use of the IP.

Clause 12LORD VAIZEY OF DIDCOT
LORD CLEMENT-JONES

Page 8, line 11, at end insert –

“() In circumstances relating to the creation or potential creation of a qualifying asset, a trigger event only takes place upon the creation of a qualifying asset.”

Member's explanatory statement

This amendment seeks to ensure in particular that research and development partnerships, such as those that are widely formed between commercial organisations and universities with the objective to create new intellectual property (and potentially qualifying assets), are not required to provide notification of the creation of such partnerships at the outset.

Clause 13

LORD VAIZEY OF DIDCOT

Page 8, line 16, leave out “void” and insert “voidable (in whole or in part) by the decision of the Secretary of State where the completion has given rise to a risk to national security”

Page 8, line 22, leave out “void” and insert “voidable”

Clause 14

LORD VAIZEY OF DIDCOT

Page 8, line 27, after “a” insert “foreign”

Page 8, line 28, after “the” insert “foreign”

Page 9, line 11, after “the” insert “foreign”

Page 9, line 21, after second “the” insert “foreign”

Page 9, line 23, after first “the” insert “foreign”

Clause 15

LORD VAIZEY OF DIDCOT

Page 9, line 27, leave out “void” and insert “voidable”

Page 9, line 39, leave out “void” and insert “voidable”

Page 9, line 41, after first “the” insert “foreign”

Clause 16

LORD VAIZEY OF DIDCOT

Page 10, line 3, leave out “void” and insert “voidable”

Clause 17

LORD VAIZEY OF DIDCOT

Page 11, line 14, leave out “void” and insert “voidable”

Clause 32

LORD VAIZEY OF DIDCOT

Page 21, line 5, after first “a” insert “foreign”

Page 21, line 9, after “that” insert “foreign”

Clause 65

LORD VAIZEY OF DIDCOT

Page 38, line 8, at end insert –

““Authorised Country” means Australia, Canada, New Zealand and the United States of America and any other country that the Secretary of State may designate as an Authorised Country in the notifiable acquisition regulations (see section 6),”

Page 38, line 21, at end insert –

““foreign person” means –

- (a) an individual who is neither a United Kingdom national nor a national of an Authorised Country;
- (b) a company in which 25% or more of the voting rights or issued share capital are directly or indirectly held by one or more foreign persons;
- (c) a limited liability partnership in which 25% or more of the designated members are foreign persons;
- (d) a partnership (excluding a limited partnership) in which 25% or more of the partners are foreign persons;
- (e) a trust in which one or more of the trustees or the beneficial owner or owners of 25% or more of the trust are foreign persons;
- (f) a body corporate, of which 25% or more of the beneficial ownership is directly or indirectly held by one or more foreign persons;
- (g) an unincorporated association, of which 25% or more of the beneficial ownership is directly or indirectly held by one or more foreign persons;
- (h) a foreign government (except for the government of an Authorised Country); or
- (i) any other person that the Secretary of State specifies as a foreign person in the notifiable acquisition regulations,”

Member’s explanatory statement

This amendment exempts UK investors and investors from closely allied countries from the mandatory filing regime on the grounds that they are less likely to give rise to national security concerns.

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19 February 2021
