

National Security and Investment Bill

RUNNING LIST OF ALL AMENDMENTS IN GRAND COMMITTEE

Tabled up to and including

24 February 2021

[Sheets HL Bill 165(a) to (m)]

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

BARONESS HAYTER OF KENTISH TOWN

Page 1, line 10, after “security” insert “, including public order and public safety”

LORD LEIGH OF HURLEY
LORD VAIZEY OF DIDCOT

Page 1, line 11, leave out “or contemplation”

Clause 1 - continued

Page 1, line 16, leave out “or contemplation”

LORD VAIZEY OF DIDCOT

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

Member’s explanatory statement

This amendment, with others in the name of Lord Vaizey that substitute “voidable” for “void”, is intended to ensure that transactions are not automatically void. Instead, the Government would have power to declare a transaction (or parts of it) void if it gave rise to national security concerns.

BARONESS MCINTOSH OF PICKERING
LORD HODGSON OF ASTLEY ABBOTTS
LORD CLEMENT-JONES

Page 1, line 18, at end insert –

“(2A) For the purposes of this Act, the following shall not be taken into account when considering whether a trigger event may give rise to a risk to national security –

- (a) adverse effects on levels of employment in the United Kingdom, or a part thereof, except that adverse effects on the employment of one or more specific categories of employee may be taken into account,
- (b) the existence or extent of opportunities for persons resident or established in the United Kingdom to invest in, or make sales in or into, another jurisdiction, or
- (c) the protection from competition of business activities carried on in the United Kingdom or business activities carried on by persons resident or established in the United Kingdom, except to the extent that such business activities contribute materially to national security, or are likely to do so in the future.”

Member’s explanatory statement

This amendment would clarify that certain factors – namely employment effects, reciprocal investment or trading opportunities, and the desire to protect UK business from international competition – cannot be taken into account in assessing whether a trigger event would give rise to a national security risk.

Clause 2

LORD HODGSON OF ASTLEY ABBOTTS
LORD CLEMENT-JONES

Page 2, line 18, leave out “5” and insert “2”

Member’s explanatory statement

This amendment reduces the timeframe after a trigger event in which the Secretary of State can make a call-in notice from five years to two.

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 3

LORD 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.

LORD GRANTCHESTER

Page 3, line 9, at end insert –

“() When considering details of sectors for the purposes of subsection (3)(a), the Secretary of State must consider the current and future domestic capacity in such sectors, having regard to –
(a) the need to promote research and development and innovation in new and existing industries and enterprises, and
(b) the need to protect the United Kingdom’s national security.”

Clause 4

LORD LANSLEY

Page 3, line 28, at end insert –

“(3A) If either House of Parliament resolves not to approve the statement under subsection (2), the Secretary of State may publish a new statement making any changes which appear to the Secretary of State to be necessary in view of the debates in either House of Parliament.

(3B) A statement made in pursuance of subsection (3A) above is not subject to the requirements of paragraphs (1)(a) and (b).”

Member’s explanatory statement

This amendment would permit an expedited process for making a new statement where this is required following a resolution not to approve a statement.

LORD CALLANAN

Page 3, line 38, leave out “requirement in subsection (1)(a)” and insert “requirements in subsection (1)(a) and (b)”

Member’s explanatory statement

This amendment ensures that as well as carrying out the consultation on the statement about the exercise of the call-in power, the requirement to make changes to the statement in view of the responses to the consultation may also be met before this section comes into force.

After Clause 5

BARONESS HAYTER OF KENTISH TOWN

Insert the following new Clause –

“National security definition

When assessing a risk to national security for the purposes of this Act, the Secretary of State must have regard to factors including, but not limited to –

- (a) the likely impact of the trigger event on the United Kingdom’s defence capabilities and interests;
- (b) whether the trigger event risks enabling a hostile actor to –
 - (i) gain control or significant influence of a critical supply chain, critical national infrastructure, or natural resource,
 - (ii) conduct espionage or exert undue leverage over the target entity,
 - (iii) obtain access to sensitive sites, or
 - (iv) corrupt processes or systems;
- (c) the characteristics of the acquirer, including whether it is effectively under the control, or subject to the direction, of another state;
- (d) whether the trigger event adversely affects the United Kingdom’s ability to maintain security of supply or strategic capability in sectors critical to the United Kingdom’s economy, or creates a situation of significant economic dependency;
- (e) the likely impact of the trigger event on the transfer of sensitive data, technology or potentially sensitive intellectual property in strategically important sectors outside of the United Kingdom;
- (f) the likely impact of the trigger event on the United Kingdom’s international interests and obligations, including compliance with legislation on modern slavery and compliance with the UN Genocide Convention;
- (g) the potential of the trigger event to involve or facilitate significant illicit or subversive activities, including terrorism, organised crime, money laundering and tax evasion;
- (h) whether the trigger event may adversely affect the safety and security of British citizens or the United Kingdom; and
- (i) the outcome of the Integrated Review of Security, Defence, Development and Foreign Policy and a national security risk assessment.”

Member’s explanatory statement

This new Clause establishes factors which the Secretary of State must have regard to when assessing a risk to national security.

Clause 6

LORD VAIZEY OF DIDCOT

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

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

LORD LEIGH OF HURLEY

Page 4, line 20, leave out “15% to 15%” and insert “25% to 25%”

Member’s explanatory statement

A mandatory filing threshold of 15% is lower than the thresholds used in some other major foreign direct investment regimes. This amendment seeks to raise the threshold to 25%.

LORD VAIZEY OF DIDCOT

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

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

Clause 7

LORD LEIGH OF HURLEY

Page 5, line 10, at end insert “, save that any entity that has annual turnover in the United Kingdom less than £10 million is not a qualifying entity for the purposes of this Act (other than in circumstances where the acquisition of that entity is by means of artificial arrangements which do not reflect economic reality and are intended to circumvent the provisions of the Act).”

Member’s explanatory statement

This amendment, and the amendment to page 5, line 20 in the name of Lord Leigh of Hurley, seek to introduce value thresholds for qualifying entities and assets (subject to anti-avoidance provisions to prevent the circumvention of the Act), which would bring the NSI regime in line with other leading foreign investment regimes that have de minimis financial thresholds for notification.

LORD HODGSON OF ASTLEY ABBOTTS

LORD CLEMENT-JONES

Page 5, line 14, leave out paragraph (b)

Member’s explanatory statement

This amendment ensures that only those entities that carry on activities in the UK are qualifying entities.

LORD VAIZEY OF DIDCOT

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

Clause 7 - continued

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 LEIGH OF HURLEY

Page 5, line 20, at end insert “,

save that any asset that has a gross value less than £10 million is not a qualifying asset for the purposes of this Act (other than where the acquisition of that asset is by means of artificial arrangements which do not reflect economic reality and are intended to circumvent the provisions of this Act).”

Member’s explanatory statement

This amendment, and the amendment to page 5, line 10 in the name of Lord Leigh of Hurley, seek to introduce value thresholds for qualifying entities and assets (subject to anti-avoidance provisions to prevent the circumvention of the Act), which would bring the NSI regime in line with other leading foreign investment regimes that have de minimis financial thresholds for notification.

LORD LANSLEY

Page 5, line 21, after “include” insert “(but are not limited to)”

Member’s explanatory statement

This amendment gives flexibility to the designation of qualifying assets under subsection (4)(c).

LORD HODGSON OF ASTLEY ABBOTTS
LORD CLEMENT-JONES

Page 5, line 33, leave out paragraphs (a) and (b) and insert “activities carried on in the United Kingdom by a person having control over that asset within the meaning of section 9.”

Member’s explanatory statement

This amendment ensures that only those assets that are used in connection with activities carried on in the UK by the person in control of the asset are qualifying entities.

LORD VAIZEY OF DIDCOT

Page 5, line 34, at end insert –

“(7) In this section –

Clause 7 - continued

“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 8

LORD HODGSON OF ASTLEY ABBOTTS
LORD CLEMENT-JONES

Page 6, leave out lines 20 to 22 and insert “enable the person to secure or prevent the passage of any resolution in respect of any matter governing the affairs of the entity that is equivalent to a matter that can be passed by way of ordinary resolution or special resolution under the Companies Act 2006.”

Member’s explanatory statement

This amendment tightens the scope of the trigger event so that it does not capture minority investor veto rights that would not give rise to national security concerns.

LORD LANSLEY

This amendment replaces two amendments, at page 6, line 35, and page 6, line 38, tabled by Lord Lansley and published in HL Bill 165(c).

Page 6, line 35, leave out from “person” to end and insert “directly or indirectly materially to influence the policy of the entity, or to do so to a greater degree.”

Member’s explanatory statement

This amendment reflects the concept of material influence used in the Enterprise Act 2002.

Clause 10

LORD HODGSON OF ASTLEY ABBOTTS
LORD CLEMENT-JONES

Page 7, line 11, leave out “is” and insert “was, on the commencement date,”

Member’s explanatory statement

This amendment ensures that intra-group investments are not covered by the clause.

Page 7, line 15, at end insert –

“(3) Where more than one person is treated as holding an interest or right due to the provisions of Schedule 1, only one trigger event shall arise in respect of that interest or right.”

Member's explanatory statement

This amendment provides that only one trigger event would arise in cases in which a corporate group comprises multiple separate entities.

Clause 11

LORD LANSLEY
LORD CLEMENT-JONES

Page 7, line 20, at end insert –

- “() For the purposes of this Act a person is not to be regarded as gaining control of a qualifying asset to the extent that the use of a qualifying asset is conducted wholly within the activity of a United Kingdom-based higher education or research institution.”

Member's explanatory statement

This amendment would provide a “safe harbour” in relation to assets wholly controlled within UK higher education and research institutes.

LORD CALLANAN

Page 7, line 26, leave out “or 9”

Member's explanatory statement

This amendment removes the reference to Article 9 of the Export Control Order 2008 (S.I. 2008/3231) which was revoked by regulation 4(7) of the Export Control (Amendment)(EU Exit) Regulations 2019 (S.I. 2019/137).

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.

Page 7, line 36, at end insert –

- “(aa) prescribe circumstances which are not to be regarded as gaining control of a qualifying asset which is the subject of an export control order under the Export Control Act 2002 and related provisions, and”

Member's explanatory statement

This amendment would enable the Secretary of State in regulations to set out where the control of assets under the Export Control Act should not be regarded as gaining control under this Act.

Clause 12

LORD 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 HODGSON OF ASTLEY ABBOTTS
LORD CLEMENT-JONES

Page 8, line 15, at beginning insert “The Secretary of State may make an order that”

Member's explanatory statement

This amendment would reduce undue legal uncertainty for investors and lenders by replacing automatic voiding with a provision for voiding on the order of the Secretary of State.

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”

BARONESS NOAKES

Page 8, line 20, at end insert—

- “() If an acquisition has been notified under section 14 and the Secretary of State has not issued a call-in notice under section 14(8)(b)(i) within the review period specified in respect of that acquisition, the Secretary of State shall be deemed to have approved the acquisition.
- () If an acquisition has been notified under section 18 and the Secretary of State has not issued a call-in notice under section 18(8)(b)(i) within the review period specified in respect of that acquisition, the Secretary of State shall be deemed to have approved the acquisition.”

Member's explanatory statement

This amendment is to give certainty that if the Secretary of State has not issued a call-in notice in respect of acquisitions notified under the mandatory or voluntary procedures, they can proceed and cannot be voided under Clause 13.

LORD HODGSON OF ASTLEY ABBOTTS
LORD CLEMENT-JONES

Page 8, line 21, at beginning insert “The Secretary of State may make an order that”

Member’s explanatory statement

This amendment would reduce undue legal uncertainty for investors and lenders by replacing automatic voiding with a provision for voiding on the order of the Secretary of State.

LORD LANSLEY

Page 8, line 21, leave out from “made,” to end of line 22 and insert “or in relation to which undertakings under section 26(1)(aa) have been accepted, that is completed otherwise than in accordance with the final order or the undertakings (as applicable), is void.”

Member’s explanatory statement

This amendment is linked to amendments in Lord Lansley’s name to Clause 26 which provide for undertakings to be accepted instead of a final order.

LORD VAIZEY OF DIDCOT

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”

BARONESS NOAKES
LORD GRANTCHESTER
LORD LANSLEY
BARONESS BOWLES OF BERKHAMSTED

Page 9, line 1, leave out “As soon as reasonably practicable” and insert “Within 5 working days”

Member’s explanatory statement

This would require the Secretary of State to make a decision on whether to accept a mandatory notification within 5 working days to give more certainty to those who wish to progress notifiable acquisitions.

LORD LANSLEY

Page 9, line 6, at end insert “including as to the information required to be provided in relation to the notifiable acquisition.”

Member’s explanatory statement

The purpose of this amendment is to ensure that the requirement for information to support a decision by the Secretary of State will need to be specified in the Regulations.

Page 9, line 7, leave out paragraph (c)

Clause 14 - continued

LORD VAIZEY OF DIDCOT

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

BARONESS NOAKES

LORD LANSLEY

BARONESS BOWLES OF BERKHAMSTED

Page 9, line 20, leave out “30” and insert “20”

Member’s explanatory statement

This would shorten the period for the Secretary of State to decide whether or not to issue a call-in notice in respect of an acquisition from 6 weeks to 4 weeks to enable transactions which have been notified under the mandatory procedure and do not result in a call-in notice to go ahead more quickly.

LORD LANSLEY

Page 9, line 21, leave out from first “the” to the end of line 22 and insert “notice under subsection (1) was received by the Secretary of State.”

Member’s explanatory statement

This will create more certainty over the timing of consideration.

LORD VAIZEY OF DIDCOT

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 18

BARONESS NOAKES
 LORD GRANTCHESTER
 LORD LANSLEY
 BARONESS BOWLES OF BERKHAMSTED

Page 11, line 30, leave out “As soon as reasonably practicable” and insert “Within 5 working days”

Member’s explanatory statement

This would require the Secretary of State to make a decision on whether to accept a mandatory notification within 5 working days to give more certainty to those who wish to progress acquisitions under the voluntary notification procedure.

LORD LANSLEY

Page 11, line 35, at end insert “including as to the information required to be provided in relation to the trigger event under subsection (2),”

Page 12, line 1, leave out “as soon as practicable” and insert “within 5 working days”

Member’s explanatory statement

This amendment would require the Secretary of State to give notification to relevant persons of the acceptance of a voluntary notice within 5 working days.

BARONESS NOAKES
 LORD LANSLEY
 BARONESS BOWLES OF BERKHAMSTED

Page 12, line 6, leave out “30” and insert “20”

Member’s explanatory statement

This would shorten the period for the Secretary of State to decide whether or not to issue a call-in notice in respect of an acquisition from 6 weeks to 4 weeks to enable transactions which have been notified under the mandatory procedure and do not result in a call-in notice to go ahead more quickly.

LORD LANSLEY

Page 12, line 7, leave out from first “the” to “; but” in line 8 and insert “notice under subsection (2) was received by the Secretary of State”

LORD HODGSON OF ASTLEY ABBOTTS
 LORD CLEMENT-JONES

Page 12, line 9, at end insert –

“(9A) If the Secretary of State has not notified each relevant person that a call-in notice in relation to the trigger event is required by the end of the review period, then no further action may be taken under this Act in relation to the trigger event.”

Member's explanatory statement

This amendment would provide certainty for businesses by providing that no further action can be taken in relation to a trigger event if the Secretary of State has not made a decision on a voluntary notification by the end of the 30 day review period.

Clause 26

LORD LANSLEY

Page 17, line 21, at end insert –

“(aa) accept such undertakings from the acquirer as the Secretary of State deems appropriate to remedy, mitigate or prevent any risk to national security, or”

Member's explanatory statement

This amendment would enable the Secretary of State to accept undertakings in lieu of a final order or a final notification.

Page 17, line 23, at end insert –

“(1A) Undertakings under this section –
(a) come into force when accepted,
(b) may be varied or superseded by another undertaking,
(c) may be released by the Secretary of State, and
(d) may be replaced by the Secretary of State with a final order at any time.”

Member's explanatory statement

This amendment would enable the Secretary of State to accept undertakings in lieu of a final order or a final notification.

LORD BUTLER OF BROCKWELL

Page 17, line 40, at end insert –

“() Before a final order is made, the Secretary of State must share with the Intelligence and Security Committee of Parliament any intelligence relevant to such an order, and a final order shall not be made before the Intelligence and Security Committee has made a report to Parliament on the order.”

LORD LANSLEY

Page 18, line 1, after “a” insert “suitably-qualified”

Member's explanatory statement

This amendment seeks to explore the characteristics and qualifications of the persons the Secretary of State would appoint to supervise activities under a final order.

LORD HODGSON OF ASTLEY ABBOTTS
LORD CLEMENT-JONES

Page 18, line 17, at end insert –

“(9) A final order shall not result in the voiding of any agreements that have resulted in the relevant trigger event.”

Member's explanatory statement

This amendment will give investors certainty that any divestment or unwinding order will not render their contractual arrangements unenforceable.

Clause 32

LORD VAIZEY OF DIDCOT

Page 21, line 5, after first "a" insert "foreign"

Page 21, line 9, after "that" insert "foreign"

Clause 53

LORD CALLANAN

Page 33, line 6, leave out from "followed" to end and insert "when a provision of or made under this Act requires or allows a notice, order, notification or document of any kind to be given or served."

Member's explanatory statement

This amendment ensures that the power to make regulations in clause 53(1) in relation to the procedure for service of documents extends to cover all of the different types of notices, orders and documents under the Bill.

Clause 54

LORD LANSLEY

Page 34, line 15, leave out "and" and insert –

“() whether the United Kingdom has a reciprocal agreement with the country or territory to whose authority the disclosure would be made, and”

Member's explanatory statement

This amendment would require the Secretary of State to take into consideration whether there is a reciprocal agreement in place when deciding to disclose information to an overseas public authority.

Clause 57

LORD LANSLEY

Page 35, line 32, at end insert "(but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation)."

Member's explanatory statement

This amendment would enable the duty or powers under this Act to be taken into account in relation to the application of prohibitions on disclosure under the Investigatory Powers Act.

Clause 61

LORD WEST OF SPITHEAD
LORD ROOKER
LORD CAMPBELL OF PITTENWEEM

Page 36, line 15, at end insert “, except for any confidential annex prepared under subsection (2A).”

Page 36, line 33, at end insert –

- “(m) in respect of mandatory and voluntary notifications, trigger events called-in, and final orders given –
- (i) the jurisdiction of the acquirer and its incorporation;
 - (ii) the number of state-owned entities and details of states of such entities;
 - (iii) the nature of potential national security risks identified;
 - (iv) the particular technological or sectoral expertise that was being targeted; and
 - (v) any other information the Secretary of State may deem instructive on the nature of national security threats uncovered through reviews undertaken under this Act.
- (2A) Where the Secretary of State considers that publication of any information listed in paragraph (m) would be contrary to the interests of national security, those details may be excluded from publication and instead shall be included in a confidential annex to the report provided to the Intelligence and Security Committee of Parliament on the same day that the rest of the report is laid before each House of Parliament.”

LORD GRANTCHESTER

This amendment replaces two amendments tabled by Lord Grantchester and Baroness Hayter of Kentish Town published in HL Bill 165(a).

Page 36, line 33, at end insert –

- “() the average number of days taken to assess a trigger event called in under the Act,
- () the average number of days taken for acceptance decisions in respect of mandatory and voluntary notices,
 - () the average staff resource allocated to the operation of reviews of notices made under sections 14 and 18 over the relevant period,
 - () the number and proportion of notices and call-in notices concerning the acquisition of a small or medium-sized enterprise,
 - () in respect of the acquisition of a small or medium-sized enterprise, the sectors of the economy in relation to which call-in notices were given,
 - () the minimum, average and maximum turnaround times for notifications.”

LORD LANSLEY

Page 36, line 33, at end insert –

- “() the number of final orders varied or revoked.”

Member's explanatory statement

This amendment would add details of orders varied or revoked to the list of details included in the Annual Report.

After Clause 61

BARONESS HAYTER OF KENTISH TOWN
LORD FOX

Insert the following new Clause—

“Annual report to the Intelligence and Security Committee of Parliament

- (1) The Secretary of State must, in relation to each relevant period under section 61—
 - (a) prepare a report in accordance with this section, and
 - (b) provide a copy of it to the Intelligence and Security Committee of Parliament as soon as practicable after the end of that period.
- (2) Each report must provide, in respect of mandatory and voluntary notifications, call-in notices, and final orders made under this Act, details of—
 - (a) the jurisdiction of the acquirer and its incorporation,
 - (b) the number of state-owned entities and details of states of such entities,
 - (c) the nature of national security risks posed in transactions for which there were final orders,
 - (d) particular technological or sectoral expertise that was being targeted, and
 - (e) any other information the Secretary of State deems instructive on the nature of national security threats uncovered through review undertaken under this Act.”

Member's explanatory statement

This new Clause would require the Government to publish an annual security report to the Intelligence and Security Committee of Parliament.

BARONESS HAYTER OF KENTISH TOWN
BARONESS NORTHOVER

Insert the following new Clause—

“Integrated review statement

- (1) As soon as reasonably practicable after the Integrated Review of Security, Defence, Development and Foreign Policy is published, the Secretary of State must publish a statement which outlines how provisions in this Act will align with the United Kingdom's long term security priorities and concerns which have been identified in the Review.
- (2) The statement must cover how provisions in this Act will respond to emerging threats, new technology, biological weapons, cyber, misinformation, and military developments by the UK's adversaries.
- (3) The Secretary of State must lay the statement before Parliament.”

After Clause 61 - continued

LORD GRANTCHESTER

Insert the following new Clause –

“Equity stakes and national security review

- (1) Within one month of the day on which this Act is passed, the Secretary of State must conduct a review of business loans and grants which have been distributed in response to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) to sectors in relation to which the Secretary of State considers that trigger events are more likely to give rise to a risk to national security.
- (2) If loans and grants have been accepted by businesses in these sectors, the Secretary of State must consider converting loans and grants into equity stakes if there is a clear economic and national security rationale for doing so.”

Insert the following new clause –

“Support for small and medium-sized enterprises

- (1) Within 3 months of this Act being passed, the Secretary of State must set up a division charged with engaging with small and medium-sized enterprises (SMEs) affected by any provisions of this Act.
- (2) The division must focus on the following functions –
 - (a) providing updated, efficient and accessible guidance specific to SMEs on compliance with the terms of this Act;
 - (b) engaging with SMEs in advance of a notice under this Act for the purposes of allowing efficient notice and assessment periods, including through use of regulatory sandboxes where beneficial for innovation and national security;
 - (c) providing regular engagement with and assistance to SMEs throughout the assessment periods for SMEs;
 - (d) seeking to deliver prompt, proportionate resolution of complaints by SMEs relating to the provisions of this Act;
 - (e) monitoring the impact on access to investment for SMEs.”

Member’s explanatory statement

This new Clause would require the Secretary of State to set up a small and medium-sized enterprise (SME) engagement division to assist and support SMEs through the national security screening process.

LORD LANSLEY

LORD FOX

Insert the following new Clause –

“Oversight of the ISC

In section 2(1) of the Justice and Security Act 2013 (main functions of the ISC), after paragraph (c) insert –

- “(d) the Investment Security Unit of the Department of Business, Energy and Industrial Strategy.””

Member's explanatory statement

This Clause would include oversight of this regime within the remit of the Intelligence and Security Committee of Parliament, as specified in the relevant statute.

LORD LANSLEY

Insert the following new Clause—

“Interaction with functions under the Export Control Act 2002

Before making an interim order or a final order under this Act in respect of a qualifying asset, the Secretary of State must take account of the application to the asset of any export control, transfer control, technical assistance control or trade control imposed under the Export Control Act 2002 and related provisions.”

Member's explanatory statement

This Clause would require the terms of a final order to take account of export control-related orders applying to the assets.

BARONESS HAYTER OF KENTISH TOWN

Insert the following new Clause—

“Higher education guidance

- (1) Within three months of the day on which this Act is passed, the Secretary of State must publish guidance for the higher education and research sector in relation to provisions in this Act, which includes, but is not limited to—
 - (a) a clear explanation of asset transactions in respect of which higher education institutions must give notice to the Secretary of State;
 - (b) how the provisions of the Act affect contract research, consultancy work, and collaborative research and development;
 - (c) the application of the provisions of the Act to strategic security partnerships and domestic partners.
- (2) The Government must consult the higher education and research sector on draft guidance and include feedback in the final publication.”

LORD CLEMENT-JONES

Insert the following new Clause—

“Review

- (1) Within three years of the day on which this Act is passed and every three years afterwards, the Secretary of State must undertake a review of this Act and report to Parliament on the outcome of the review.
- (2) The review must have regard to—
 - (a) any benefits to national security brought about by this Act,
 - (b) the impact of this Act on levels of foreign investment in the United Kingdom, and
 - (c) whether the benefits to national security brought about by this Act have been proportionate to any adverse impact on levels of foreign investment in the United Kingdom.”

Member's explanatory statement

This amendment would require the Secretary of State to undertake a review of the impact of this Act on national security and foreign investment.

BARONESS HAYTER OF KENTISH TOWN

Insert the following new Clause—

“Investment Security Unit

- (1) Within the period of six months beginning with the day on which this Act is passed, the Investment Security Unit (“ISU”) must be moved, with all necessary resources, from the Department for Business, Energy and Industrial Strategy to the Cabinet Office.
- (2) Responsibility for the ISU must be transferred from the Secretary of State to the relevant Minister of State in the Cabinet Office.
- (3) The Minister of State must set up an advisory board to the ISU.
- (4) The Minister of State must appoint members to the advisory board who include but are not limited to—
 - (a) representatives from relevant government departments;
 - (b) representatives from the Armed Forces;
 - (c) representatives from the Office for Investment;
 - (d) representatives from the National Security Council;
 - (e) experts in defence, security and foreign affairs;
 - (f) experts in energy and critical infrastructure;
 - (g) experts in technology, including artificial intelligence;
 - (h) representatives from business groups, including start-ups and small and medium sized businesses.
- (5) The ISU may give advice to the Minister of State relating to provisions in this Act.”

LORD WEST OF SPITHEAD

Insert the following new Clause—

“Defence supply chain guidance

- (1) Within the period of 3 months beginning with the day on which this Act is passed, the Secretary of State must publish guidance for businesses in the defence supply chain about the provisions in this Act, including a list of countries which the Secretary of State considers less likely to give rise to a risk to national security and from which investment is encouraged.
- (2) In preparing the guidance, the Secretary of State must consult the defence sector on draft guidance and take account of responses in the final publication.”

Clause 63

LORD FOX
LORD CLEMENT-JONES

Page 37, line 39, at end insert –

- “(6) Before making regulations under section 6(1) the Secretary of State must lay before Parliament –
- (a) the proposed draft of the regulations, and
 - (b) a document which explains the proposed draft regulations.
- (7) Where a proposed draft of the regulations is laid before Parliament under subsection (6), no draft statutory instrument containing the regulations is to be laid before Parliament until after the expiry of the 30-day period.
- (8) The Secretary of State must request a committee of either House whose remit includes industrial strategy, economic affairs, science or technology to report on the proposed draft regulations within the 30-day period.
- (9) In preparing a draft statutory instrument containing the regulations, the Secretary of State must take account of –
- (a) any representations,
 - (b) any resolution of either House of Parliament, and
 - (c) any recommendations of a committee under subsection (8),
- made within the 30-day period with regard to the proposed draft regulations.
- (10) If, after the 30-day period, the Secretary of State wishes to make regulations in the terms of the proposed draft or revised draft regulations, they must lay before Parliament a statement –
- (a) stating whether any representations, resolutions or recommendations were made under subsection (9);
 - (b) giving details of any representations, resolutions or recommendations so made; and
 - (c) explaining any changes made in any revised draft of the regulations.
- (11) The Secretary of State may make a statutory instrument containing the regulations (whether or not revised) if, after laying a statement under subsection (10), a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament as outlined in subsection (5).
- (12) In this section, reference to “the 30-day period” in relation to any draft regulations is to the period of 30 days beginning with the day on which the initial proposed draft regulations were laid before Parliament.
- (13) For the purposes of subsection (12) no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.”

Member’s explanatory statement

This amendment would introduce the super-affirmative procedure for regulations made under section 6(1).

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.

Schedule 1

LORD LANSLEY

Page 42, line 31, leave out paragraph (b)

Member’s explanatory statement

This amendment would remove the presumption that a former spouse, civil partner or co-habitee continues to be a connected individual for the purposes of this Act.

Page 43, line 10, leave out sub-paragraph (2) and insert –

“(2) An arrangement under sub-paragraph (1) may be determined by reference to its nature or terms, the time it has been in existence, actions taken by persons in apparent furtherance of an arrangement, or otherwise.”

Member’s explanatory statement

This amendment would provide a set of parameters for the definition of an “arrangement”.