Programme motion agreed to.
Written evidence (Reporting to the House) motion agreed to.
Motion to sit in private agreed to.
Examination of witnesses.
Adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 28 November 2020
The Committee consisted of the following Members:

**Chairs: Sir Graham Brady, † Derek Twigg**

† Aiken, Nickie (Cities of London and Westminster) (Con)
† Baynes, Simon (Clwyd South) (Con)
† Bowie, Andrew (West Aberdeenshire and Kincardine) (Con)
Fletcher, Katherine (South Ribble) (Con)
Flynn, Stephen (Aberdeen South) (SNP)
† Garnier, Mark (Wyre Forest) (Con)
† Gideon, Jo (Stoke-on-Trent Central) (Con)
† Grant, Peter (Glenrothes) (SNP)
† Griffith, Andrew (Arundel and South Downs) (Con)
† Kinnock, Stephen (Aberavon) (Lab)
† Onwurah, Chi (Newcastle upon Tyne Central) (Lab)
† Tarry, Sam (Ilford South) (Lab)
† Tomlinson, Michael (Lord Commissioner of Her Majesty's Treasury)
† Western, Matt (Warwick and Leamington) (Lab)
Whitehead, Dr Alan (Southampton, Test) (Lab)
† Wild, James (North West Norfolk) (Con)
† Zahawi, Nadhim (Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)

Rob Page, Yohanna Sallberg, Committee Clerks
† attended the Committee

Witnesses

Charles Parton OBE, Senior Associate Fellow, Royal United Services Institute

Sir Richard Dearlove KCMG OBE
Public Bill Committee

Tuesday 24 November 2020

(Morning)

[Derek Twigg in the Chair]

National Security and Investment Bill

9.25 am

The Chair: Before we begin, I have a few preliminary points to make. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings. Members can sit in any seat marked with a “please sit here” sign. That includes the side tables and the Public Gallery, although Hansard colleagues have priority on the side tables. Members sitting in the Public Gallery should stand by the microphone to my right.

We will first consider the programme motion on the amendment paper. We will then consider a motion to allow us to deliberate in private on our questions, before the oral evidence sessions. In view of the limited time available, I hope we can take these matters without too much debate. I call the Minister to move the programme motion agreed to yesterday by the Programming Sub-Committee.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): I beg to move,

That—

(1) the Committee shall (in addition to its first meeting at 9.25am on Tuesday 24 November) meet—

(a) at 2.00 pm on Tuesday 24 November;
(b) at 11.30 am and 2.00 pm on Thursday 26 November;
(c) at 9.25 am and 2.00 pm on Tuesday 1 December;
(d) at 11.30 am and 2.00 pm on Thursday 3 December;
(e) at 11.30 am and 2.00 pm on Thursday 8 December;
(f) at 11.30 am and 2.00 pm on Thursday 10 December;
(g) at 9.25 am on Tuesday 15 December;
(2) the Committee shall hear oral evidence in accordance with the following Table:

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<td>Tuesday 24 Nov</td>
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<td>The Royal United Services Institute</td>
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<tr>
<td>November</td>
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<td>Sir Richard Dearlove</td>
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<td>Tuesday 24 Nov</td>
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<td>The Centre for International Studies, London School of Economics</td>
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<td>Skadden, Arps, Slate, Meagher &amp; Flom LLP</td>
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<td>Tuesday 24 Nov</td>
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<td>The Institute of Chartered Accountants in England and Wales</td>
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<td>Tuesday 24 Nov</td>
<td>Until no later</td>
<td>The Investment Association Slaughter and May</td>
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<tr>
<td>November</td>
<td>than 3.30 pm</td>
<td>Professor Ciaran Martin, the Blavatnik School of Government, University of Oxford</td>
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<td>Tuesday 24 Nov</td>
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<td>Herbert Smith Freehills</td>
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<td>Simons Muirhead and Burton</td>
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(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 10; Schedule 1; Clauses 11 to 58; Schedule 2; Clauses 59 to 66; new Clauses; new Schedules; remaining proceedings on the Bill;

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 11.25 am on Tuesday 15 December.

It is a pleasure to serve under your chairmanship, Mr Twigg, and to serve with colleagues on this important Bill Committee.

Question put and agreed to.

Resolved.

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—(Nadhim Zahawi.)

Resolved.

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(Nadhim Zahawi.)

The Chair: Copies of the written evidence that the Committee receives will be made available in the Committee Room. We will now sit in private to discuss lines of questioning.

9.27 am

The Committee deliberated in private.

Examination of Witness

Charles Parton OBE gave evidence.

9.29 am

The Chair: We will now hear oral evidence from the Royal United Services Institute. Before calling the first Member to ask a question, I remind all Members that questions should be limited to matters within the scope of the Bill and that we must stick to the timings in the programme motion. The Committee has agreed that for this sitting we have until 10.30 am. Will the witness introduce themselves for the record? [Interruption.] I am going to suspend the sitting for a few moments to see whether we can sort out the technical problems that we are having. This is not the first time; even the Prime Minister had problems yesterday.

9.31 am

Sitting suspended.
9.34 am

On resuming—

Q1 The Chair: I will resume the sitting. Sir, could I again ask you to introduce yourself?

Charles Parton: Thank you for inviting me. I am Charles Parton. I was, for 38 years, a diplomat, mostly with the UK, but for five years with the European delegation until the end of 2017. My area of work has largely been on China and, in the last decade, on the politics of China and the Communist party. I was an adviser to the Foreign Affairs Committee of the House of Commons on two of its recent China reports. I continue, since leaving diplomacy, to study what the Communist party is doing and the relevance of that to our UK policy.

The Chair: Thank you very much. I call first Chi Onwurah.

Q2 Chi Onwurah (Newcastle upon Tyne Central) (Lab): It is a pleasure to serve under your chairship in this Committee, Mr Twigg. Thank you very much for joining us, with your extensive background, Mr Parton. As you know, we have an investment screening regime under the Enterprise Act 2002 that has led to 12 interventions on national security grounds since the Act came in. Which security threats do you feel are not covered by those existing public interest powers? While we have been waiting for the Government to act on this front, are there specific instances where you think the Government should have acted but did not exercise their powers, or did not have the relevant powers to exercise?

Charles Parton: I would not profess to be an expert on individual cases, but I would like to make some general response to your excellent question. The first point to make is that the Government have not really been attending to the problem with the same emphasis that they should, given the nature of the threat, particularly from the Chinese, although others may be relevant too. I do not think that there is the structure for actually assessing the degree of the threats; I think that 12 cases since 2002 is very few indeed, when you look worldwide at the Chinese programme for technology acquisition, both under and over the table. That in itself shows that there has been insufficient attention paid to the issue.

The delay in the Bill is also regrettable, because the threat has been fairly clear for some time. I would urge the Government, first, to research the question, which is the one you asked, of to what degree in the past have the Chinese in particular bought up technology companies, the acquisition of which was greatly against our interests? That work could and should be done.

I am an associate fellow at the Royal United Services Institute, which has a team that has been looking through technology at a number of questions, but it could quite easily divert that team to look at this question, which needs China expertise and the ability to search through a lot of open data, which it has. I am not a member of the Government, but I am not aware that the Government have done that sort of research to establish the full degree of the problem.

From the point of view of the threat—if you will excuse me, as this is the first question, for putting a little bit of context to it in terms of the China thing—it is

undoubtedly that there is nothing wrong with investment. In fact, that is extremely good. We want as much investment and good relations with China as with everyone else, but we need to recognise that there is a values war going on. I have written an article about that, which came out in the Conservatives’ China Research Group report a week or so ago.

This is not a cold war, because China is very important to us for trade, investment and many global goods, and it is a science and technology power, but we should not underestimate the degree to which Xi Jinping and the Communist party intend, as Xi said to the first politburo meeting, to get the upper hand against western democracies. He talks about us being hostile forces and about a big struggle all the time. When you add that to his policy of civil-military fusion—using civil in the military context—and the fact that he has set up a party organisation specifically to push that forward, and the change in investment policy away from things such as property, football clubs and other things, very much towards benefiting China and its technology, we have to be a lot more careful than we have been in the past.

The first step for that is to do the research. I am not aware of a really good assessment of just how much technology has been bought, the targets and so on. Maybe the Government have one—I don’t know—but I do not think that they do.

Q3 Chi Onwurah: Thank you very much for that response. I certainly agree with you on the delay in addressing this critical issue. I appreciate your experience, particularly with China, which obviously, as you say, has made a number of technology acquisitions.

I was particularly interested in the civil-military fusion, if you like, of China’s technology ambitions. Could you say a little more about how the Chinese see nascent technologies that are indirectly critical to downstream industries that supply our national security? I am trying to understand how, if you like, we differentiate between industrial strategy and technology to ensure that we have leading defence and national security capabilities. Is there a distinction that we can make there? Do we need to do further research, as you suggest? Do the Chinese make that kind of distinction? Do we need to address some elements of our industrial capability when we consider national security?

Charles Parton: We should widen this not only to companies, but to academia, if I could come back to your question from this angle. We have the phenomenon at the moment of Chinese companies, one might say, hiring our academics, in one way or another, to do scientific research on their behalf. Some of that is probably something that our defence establishment and security establishment would be pretty upset about if they were aware of it.

It is quite difficult to distinguish some of these and to know about them all, but a few weeks ago The Daily Telegraph did a story on, I think, Oxford University and Huawei’s commissioning of research. I think there were 17 projects. I looked at those, and I am not a technologist by any means, but some of them rang certain alarm bells. If you are researching, on behalf of the Chinese, on technologies in cryptography, gait—very important for gait recognition. We have facial recognition and voice recognition, but in circumstances where people are wearing masks or there is bad weather, gait is an
Q4 Chi Onwurah: I think you addressed the core of my question. I really like your phrase “defence of technology”, rather than the technology of defence, because the question was around how you distinguish in the industrial strategy between specific security concerns and the development of technologies that can be used to strengthen that surveillance and that repressive regime? What is the difference between that and South African apartheid or some of the other things that we have seen in the past? Increasingly, the excuse of, “Well, we didn’t really know what was going on,” has gone, and companies and academia will have to be much more careful of their reputation. I have slightly moved away from the nub of your question. Perhaps you could just push the tiller a bit and put me back to the centre of it again.

Charles Parton: That is sort of way outside my technical expertise, but I would certainly say that one major criticism I have of the Bill is that you have to set up the right structure to be able to do that. I am not sure that the Bill’s putting everything in the hands of the Department for Business, Energy and Industrial Strategy and its Secretary of State is the right answer.

Q5 Nadhim Zahawi: Good morning, Mr Parton, it is great to see you. Without going further on your last point, I want to reassure you that the Bill is designed to deliver a quasi-judicial role for the Secretary of State for Business, Energy and Industrial Strategy. The team’s infrastructure will be pulling in all parts of Government expertise. My question is this: how do you think the current challenge of covid has exposed national security threats through investment? What are you seeing? How do you see the behaviour of malign actors anywhere in the world at a time of covid?

Charles Parton: I think what covid has done is expose the nature of the Chinese Communist party, in answer to your question. I hope that it has brought home to people the nature of the beast. Looking at what happened, China did not do so well to start with, and its people were pretty upset with it. China then used its external propaganda machine to right its domestic problem, pushing forward the line, “Look how badly the foreigners have done, and look how well we are helping the foreigners out of the mess,” while hiding the fact that it had allowed the virus to propagate so fast in the first place. To many people in democracies, that brought home the fact that the Communist party of China is prepared to use that against us.

Where the Chinese Communist party was unhappy with how countries were acting, it started to put them under pressure and made threats about the delivery of personal protective equipment or whatever. Australia is really taking it in the neck at the moment because it had the temerity to ask—perfectly reasonably—for an investigation of the origins of the virus, which is essential for scientific and preventive purposes. Look at the political pressure on Australia. There is absolutely no doubt that where the Communist party sees an opportunity to use whatever is going on at the moment, it will do so.
The question that I have continuously asked is this: to what degree is investment threatened by a country such as the UK, Australia or Canada standing up for its own interests? We are not actually attacking China, but we are saying, “Sorry, but we have our own interests and our own security. You wouldn’t allow the equivalent in your country, possibly rightly, and we are not allowing it here because we are defending our security, in this case.” To what degree is the tool of depriving someone of investment a real threat? I have urged in a number of papers that the Government look at that in dispassionate terms. The China-Britain Business Council recently put out a paper, but I would not describe it as dispassionate. That is for the Government to do. My own feeling is that the likely conclusion is that, on the whole, the threats are pretty hollow. Chinese investment is not done for charitable reasons.

Since 2017—the high point was 2016—China has cut back on investment. Beijing was getting pretty annoyed at the way money was seeping out not in line with its policies, but investment is now more tightly controlled and aimed at the acquisition of science and technology. To what degree are we vulnerable? This is not charity. Money is very cheap at the moment; it can be got at negative interest rates. It is not as though China is the sole source of money. It invests because it wants technology. Surely we have to look at that carefully and ask where is the mutual benefit. If it is mutually beneficial, fantastic, let us go ahead. Let us not be too brow-beaten by this thing—that if you do not do x or y, or if you do not take Huawei, we will hit your investment. I think, in practice, if you look at that and then look at some of the other threats that China has made over the years, including to your exports, all those have grown for all countries, although they had been in the diplomatic doghouse historically—certainly in the past; we will see about the future—but I think it is greatly exaggerated.

Nadhim Zahawi: I am grateful to you, Mr Parton. I do not want to hog the floor, as I am sure many colleagues want to ask questions. Thank you very much.

Q6 Stephen Kinnock (Aberavon) (Lab): It is a pleasure to serve under your chairmanship, Mr Twigg. I do not know whether you can see me, Charlie, but I am here. I am sitting at the back due to social distancing, but it is good to see you.

Going back to your point about resourcing the investment security unit, can you give a bit more detail about what would be an ideal outcome from your point of view? Would it be that we need specificity in the Bill that key representatives and experts of the intelligence services, of the Ministry of Defence, of the diplomatic corps and of other agencies be formally named in the legislation, so we would have that reassurance that the body doing the screening had all the necessary breadth across the spectrum of both the economy and national security?

Charles Parton: That is a good question; it is not necessarily for me and I do not necessarily have the experience to lay down precisely how it works. For me, I think, first, that all those organisations you have mentioned—although others also on the economic side, such as the Treasury and BEIS—perhaps should be there to set the parameters of what needs to be referred. I think that, as a sort of preliminary filter, one would hope that there was an ability for most companies, and most universities as well, very quickly to put forward the deals or the pieces of work that they felt might be coming up against the parameters set by such a Government body.

For a quick decision, is the topic one that is suitable, or does it need a little more investigation? Should we be working with this organisation, or in some cases this particular Chinese academic or company, which may have links to the military or to the repressive regime? The experts, as it were, which means the SAGE-type committee, surely should be very quickly—companies and academics need to move quite quickly—making a preliminary estimation of whether this needs to be referred upwards to a Government Committee that wants to look at it in more detail.

I do agree with you that the range of interests needs to be representative if the decision is to be perceived by all sides as acceptable when it is eventually made.

Q7 Stephen Kinnock: Thanks very much; that is very helpful. On this point about making sure that we have the most effective and streamlined system in place, one of the areas where the Bill diverges from legislation in similar jurisdictions, such as Germany and Japan, is that it does not contain a definition of national security as such.

In the Japanese and German cases, they refer to national security including concepts of public order. I refer in particular to your comments about organisations out there in the marketplace, whether they are universities or businesses, needing to have clarity to know what needs to be referred and what does not. They need to know where the amber or red light is flashing, and where it is clearly a green light and not an issue. Would that be aided and facilitated if the Bill contained a definition of national security?

Charles Parton: It is a bit like defining terrorism. It is really quite difficult to be all encompassing. Sometimes, I am in sympathy with the Chinese legislation that adds at the bottom “and other offences” or “and other things”. I think it is quite difficult, even if people are convinced that they can effectively define that. It is not only national security; there is a question whether you are aiding crimes against humanity or the genocide that is going on in Xinjiang. I am using loaded terms there, but I think they are justified. There must be some mechanism for ensuring that those, too, are brought to bear, but I am not expert enough in legislation to be able to say, “Yes, we need a watertight definition of national security.”

Certainly, the Bill must convey to companies and academics the need to clear a range of topics. That will not be specific, but, at best, they must be encouraged to consult almost as a default, so that they are not caught out. The other question is, what happens if they don’t? What sort of sanctions are they under if they do not consult, when it is clearly something they should consult on, for reasons either of security or of repression and crimes against humanity?

The Chair: Thank you very much. I now call Andrew Griffith.

Q8 Andrew Griffith (Arundel and South Downs) (Con): It is a pleasure to serve under your chairmanship, Mr Twigg. Mr Parton, thank you for your past service.
You have clearly studied China and Asia at a fascinating time in their own economic development. I will ask you to play devil’s advocate.

As a Committee considering this Bill, we will hear from a constituency that could sometimes trip over into Sinophobia, being against any form of engagement or trade with China. Looking at the economic development of that market and the opportunities that it presents, could you talk a bit about the non-risk-based categories, such as inert goods and household manufactured goods, which the Committee should draw a clear line around, and those categories that you have talked about, which are covered in the Bill and speak to a real national threat?

Charles Parton: Let me make the general point that I am sometimes accused of being anti-Chinese. I greatly resent that. I am anti-party, as anybody should be if they saw what it does in places like Xinjiang or Hong Kong. I am not anti-Chinese. I think the Chinese Communist party itself deliberately muddies the waters on that one and says, “You are anti-China,” when, actually, you are opposing the policies of the Chinese Communist party. That said, I began the session saying that we want investment from China, trade with China and good relations with China. China is a major player. This must not be a cold war. If America or China decides to pursue that, we must try to avoid it.

I always talk about the holy trinity of national security, UK interests and UK values. We should establish those with the Chinese and say, “Sorry, those are non-negotiable. Just as you sometimes come and say, ‘These are our core interests and we are not negotiating them,’ we have the right to do that too.” But beyond that, we want open trading relations and open investment relations. What is wrong with China buying London Taxis International? Nothing. If it wants to invest and that is mutually beneficial, great.

We want an open China as much as possible. We certainly want a much more level playing field than there is at the moment. China runs a series of negative lists and there is much on them, particularly in the area of services, which we would want opened up. We must press for that in conjunction with the Americans, the EU, Australia and all the other democracies that wish to trade with China. In many ways, that is in China’s interest. It is certainly in the interests of its people. A closed market, with China just relying on its own consumption—it is a big market—is not going to be good for China any more than it is good for us. I fully go along with that. I do not think we should be anti-China in any circumstances. That is, in a sense, racist. We should be anti-Communist party, or certain against its policies, but with the Chinese people, and in trading, we should maintain a perfectly normal relationship.

Q9 Matt Western (Warwick and Leamington) (Lab): It is a pleasure to serve under your chairmanship, Mr Twigg. Mr Parton, I want to pick up your point about access to academics, universities and so on. There is clearly a big push from universities to invest heavily in China and build relationships. Do you think there should be more safeguards in the Bill for those relationships? Secondly, do you think the Bill provides sufficient protections for intellectual property?

Charles Parton: On the first question about academics, I am not sure whether this is about investment. I think that academics are in some ways a separate question, unless universities are setting up, as they do, companies, and are moving that way.

Q10 Matt Western: I am thinking about Cambridge and so on, which are moving into more commercial areas.

Charles Parton: Where academia sets up a company, and that involves itself with China, yes, that should be under the purview of the Bill. There is a separate question about when Chinese companies hire or fund—whichever you like to say—UK academics to carry out a specific piece of research for them. Universities are working on that, and that is a very urgent question. Again, I think that a much stricter regime should be put in place to stop the seeping out of technologies that could be used in the military field or the repressive one. I am not convinced that that is there at the moment; I am sure it is not. That might be a separate question. It may or may not be one that requires parliamentary legislation—people who are experts on that can make up their mind—but some form of consultation with the Government, or perhaps a sanctions regime, needs to be put in place so that that does not happen.

On the question of intellectual property rights, China has a very rigorous campaign to get hold of our IP. Some of it is stolen through cyber, and I am sure our intelligence services and others are doing their best to combat that. I am not sure about the degree to which this Bill can act as a defence against Chinese abuse. It can certainly try to encourage companies to raise their own defences, but the UK has an organisation—the Centre for the Protection of National Infrastructure—that aims to put out that advice and help. I do not know whether it is strong enough in its actions and shield; that is outside my area of expertise. It is certainly there, but perhaps it, too, needs strengthening.

Q11 Nickie Aiken (Cities of London and Westminster) (Con): It is a pleasure to serve under your chairmanship, Mr Twigg. Mr Parton, thank you for your time today. You said that small firms may come under pressure to be bought up, and are often targeted. What is your view on how this Bill can strengthen national security by ensuring that firms—particularly small firms—are not taken over by legitimate, friendly actors, which further down the road are bought up by China or whoever? Does the Bill protect us from that type of long-term acquisition?

Charles Parton: I suspect that there is a limit as to how far down the line one can go, but where activity is still going on in the UK—that is to say, where UK individuals are still running that company in the UK on behalf of a friendly foreign country, and the company is later bought up—that should be covered by this Bill. Otherwise, you are absolutely right: you may find a company in Liechtenstein buying it; then the company gets bought by the Chinese, and the technology gets siphoned out. There has to be a defence against that.

If a company is bought by a friendly country and the technology is exported, and nothing is happening in the UK, then I cannot see how extraterritoriality would be applicable.
Q12 Simon Baynes (Clwyd South) (Con): It is a pleasure to serve under your chairmanship, Mr Twigg.

I want to explore the extent to which the world—if I can describe it as one world—of academic consultants and private sector companies, to which you have referred, would agree with what you are saying. You refer to having a SAGE-like committee; is there a danger that, if you did put together a SAGE-like committee, it would actually have very divergent views?

I fully respect where you are coming from, but you made some quite hard-hitting comments earlier about crimes against humanity in the concentration camps, and questioning whether companies and academia should be involving themselves in aspects of China. You also referred to a top mathematician, who was formerly at Oxford University, helping China with cryptography.

I want to get a feel for the extent to which you think that your views are shared by academics, consultants and the private sector, and then feed that back into whether, if you did put together a SAGE-like committee—and I can see the sense in doing that—you might find it quite difficult to come to a consensus.

Finally, it must be quite difficult to judge exactly whether what is being developed—whether it be from an academic idea or from a corporate idea—will be helpful to the Chinese in a way that is detrimental to an academic idea or from a corporate idea—will be involving themselves in aspects of China. You also referred to a top mathematician, who was formerly at Oxford University, helping China with cryptography.

Charles Parton: Can I take those three questions almost backwards, or certainly not in the order in which you have presented them? In terms of expertise within a SAGE-type community, those experts would not be making the political decision. They would be making the technical decision: “To what degree can these technologies be used in a military, as well as a civilian, context?” That is the advice that would be going up. It would then be for the Ministers on a committee to say, “Well, we judge that risk to be acceptable,” or “We do not.”

Of course, nothing is black and white in technology because, as the distinction between civil and military is increasingly eroded, it is quite difficult to know; there are many shades of grey here. A judgement has to be made on any particular technology—either “Sorry, we will have to rule that one out,” or “On this one, yes, there are some risks, and maybe we will come to regret it, but on balance, we will let that one through.”

On whether consultants, academics and others agree with my views on China and the nature of the regime, I think that depends, if you will excuse my saying so, on the degree to which they have studied China and looked at the issues. It is noticeable that those who read what the Chinese communist party says about itself tend very much to agree with what I say, or with the sort of views that I put out. Those who have other interests do not. Of course, there are some who I would say are captured, quite frankly, by the degrees of interference and other aspects that the Chinese United Front Work Department pushes.

There is a variety of opinion there, but I think that those who understand China and read what the party says—the party says an awful lot, actually, if you bother to read what it says; it is not a black box—are inclined very much to my views. Those views are: be careful, because it is not coming from the same angle as us, and has some very distinct and not very nice aspects to it. At the same time, it is a major economic power, a major science and technology power, and a major influence on the goods in the world, whether for health, development, peacekeeping or whatever, and we must get on with the country to the best of our ability. I don’t know if that answers your question fully; do come back.

Simon Baynes: That is good. Thank you very much.

Q13 Peter Grant (Glenrothes) (SNP): I am pleased to take part in this Committee under your chairmanship, Mr Twigg.

Mr Parton, the Bill looks primarily at direct investment by potentially hostile operators. Does it give sufficient protection against indirect control? For example, a company may be reliant on its bankers, who may or may not be based in a hostile territory, and who may rely on technology through a company such as Huawei; or a company’s ultimate owners and controlling party could be registered in an offshore tax haven, and it could be that nobody has any idea who actually owns that company. Does the Bill give sufficient protection against those kinds of threats through indirect influence and control?

Charles Parton: I am not a legal expert, but the Committee stage of the Bill needs to look deeply at that question. If there is any doubt as to who the ultimate owners are, that should be taken into account by whatever organisation makes the recommendation on whether a particular investment is acceptable. If we cannot follow through relatively easily back to the ultimate beneficial owners and users, that is a factor that needs to be weighed very heavily in the decision on allowing a particular, possibly sensitive, investment to go ahead.

Q14 Peter Grant: In your experience, is that a technique that either the Chinese Communist party or other potential hostile players either have used or are likely to use if it is in their interests? Do you have knowledge, for example, of China using non-disclosure territories to set up companies in order to try to invest in the UK or elsewhere? Are you aware of them using the influence of the technology, for example, to try to exert influence on companies that do not, at first glance, appear to be directly owned from China?

Charles Parton: I have to say that that is outside my expertise, but I do think it is an extremely good and important question that could be researched relatively easily. Forgive me if I am pushing RUSI here, but I suspect that RUSI has the capability in one of its teams to do some data mining on that, and come up with an answer. It is a very important question, but I am not aware of any research, though there may be some, that goes deeply into that question. It is certainly one that should be followed up.

Q15 Andrew Bowie (West Aberdeenshire and Kincardine) (Con): It is a pleasure to serve under your chairmanship, Mr Twigg. Good morning, Mr Parton. The Bill obviously aims to protect national security while promoting investment in the United Kingdom and not dissuading any inward investment into the country. With your experience, and given everything that you have said this morning, do you think the Bill will succeed in its aims?
Charles Parton: Again, I am not a legal expert, but it seems to set out the legal framework. It all very much depends on the structures and mechanisms, and the resourcing of them, that are set up to ensure whether the judgments about a particular company or a piece of academic research and the technology from them should be blocked or allowed through. I put it back to the Committee: if its detailed research, and the measures that go into the Bill, show that whatever organisation is set up is sufficient unto the job, and that the channels are there to ensure that all these small and sometimes obscure technologies are at least passed by it, that is a really important piece of work.

Q16 Andrew Bowie: Secondly, I wondered how the proposal might compare to regimes that are already in place in comparable countries—for example, our Five Eyes partners.

Charles Parton: I have not done comparative research on that, or done a paper on it. That is something that needs to be done by the Government. Perhaps they have done that. The impression that I get from discussions of this sort of question in the various fora that I mix in suggests that the Americans and Australians have taken a much more hard-hitting approach than we have. Again, it depends on what structure is set up by the British Government, and how it functions in line with the Bill. Forgive me for not giving you a full answer, but that is the sort of research that needs to be commissioned by the Government in order to make decisions on how to deal with that question.

Andrew Bowie: Thank you.

Q17 James Wild (North West Norfolk) (Con): It is a pleasure to serve under your chairmanship, Mr Twigg. Mr Parton, I want to ask about influence. We have seen companies linked to hostile states hiring former diplomats, civil servants, parliamentarians and Ministers to provide a veneer of respectability. How can we do more to guard against that? Secondly, on the Bill, provided advice is drawn widely from the agencies and other parts of Government through the investment security unit which I think we all share, about ensuring that the sunlight and transparency is the one weapon we need to try to ensure that sunlight and transparency is the one weapon we need to try to ensure.

Charles Parton: The question of elite capture is very important and very topical. First, I have called for this in various papers that I have written. The Cobra committee that makes decisions on employment after political or civil service careers definitely needs strengthening. I am not sure of the degree to which work on that is going on; in fact, I do not think much is. Certainly neither the provisions, nor the exercise of those provisions, have been sufficiently rigorous. It is very much a question of lengthening the amount of time between leaving a particular post and taking up a job where, in some cases, you are laundering the reputations of some of these companies. If that period is too small and the criteria are too weak, there is a great risk of people, while still in office or still in post, saying to themselves, “I’d better not be too harsh on this, because in a couple of years’ time, I might be approaching these people, or they might approach me for a job.” That is pretty crude, I know, but it is perhaps easier to see in the case of a defence company. If you were in the MOD, say, and you had to make a decision, one hopes you would make it entirely in the national interest, rather than with a view to possible employment by whichever company might be bidding for a contract, but that is one area that needs strengthening.

The other area in all influence problems, of course, is that sunlight and transparency is the one weapon we have, but if a Minister, an ex-Minister or a top civil servant is running a consultancy company, and let us say Huawei is employing that company—I choose this example by shear chance—that should be known. That should be declared, because if such people—who are still influential with their old colleagues, whether parliamentary, ministerial or civil service—are urging a certain line, as I have heard some urge, it may not be disinterested; in fact, it certainly is not in some cases. That needs to be made clear. Sorry, could you just repeat the second part of your question?

Q18 James Wild: It was picking up on your point, which I think we all share, about ensuring that the investment security unit draws advice from the agencies and across other parts of Government. Provided it does that, having a quasi-judicial decision that is challengeable under judicial review by a Secretary of State in some ways guards against that soft influence or cronyism getting involved in a SAGE-type committee. Can you see the benefits of that model?

Charles Parton: Yes, but I think you have to be very happy and convinced that the Minister in charge is one whose future does not incline him or her to make a decision that is somewhat biased. It is not without precedent in the world, anyway, that some ex-Ministers have been under the influence of the Chinese Communist party for one reason or another, so you have to be quite careful about that, and it is a really important decision. That is why I would be more inclined to make sure it is very clear that it is not just within the purview of BEIS, because BEIS’s job is to push investment. That is perfectly fair, but there may be occasions—not now, but in the future—where people’s backgrounds, inclinations or futures incline them to be less than even in their judgment.

The Chair: This will probably be the last question, from Stephen Kinnock.

Q19 Stephen Kinnock: Thank you very much, Chair, for giving me another bite at the cherry. Mr Parton, as a final point, I thought it might be useful to remind the Committee of the symbiotic nature of the relationship between the Chinese Communist party and the Chinese business community. Based on your extensive experience in China, could you briefly outline how the Chinese Communist party in essence runs the business community; the role that it plays in ensuring executives are appointed who are sympathetic to the party; and the whole way in which the nomenklatura works? That will help us to understand the extent to which Chinese business interests in this country are, in essence, the same as the interests of the Chinese Communist party.

Charles Parton: That is a very good question.

Chi Onwurah: Could I just add to that? That is an excellent point, but could you also say a little bit on how China responds to proposed takeovers that might implicate its national security, if those takeovers are allowed? How does it respond to that investment into its companies?
Charles Parson: Those are both good points. First of all, divide it into the state-owned sector and the private sector. In terms of the state-owned sector, the top executives of the big state-owned companies are appointed by the central organisation department of the party. That is the organisation that is, as Mr Kinnoch has said, in charge of the nomenklatura: the top 3,000 to 4,000 party officials. Of course, a lot of state-owned companies are also owned at the provincial and lower levels, and there, too, the top executives are party members and beholden to the party. Let us not forget that most foreign investment by the Chinese is state owned, so it is not just a fair bet but a fair certainty that any state-owned enterprise investing is fully politically controlled.

When it comes to the private sector, Huawei has spent a large amount of its time insisting that it is a private company—I really do not care. And I do not really care that the national security law says that any individual or organisation must help the party or security organs when called upon. The brute fact is that, in the way the system is run in China, if the party tells you to do something, the only response from private business to an order is to say, “Certainly, Sir. How high do you want me to jump?” so this debate is entirely superfluous.

The party is now pushing committees into all private enterprises—foreign and local—and it would be a very unwise head of a private company who said, “No, Mr Xi Jinping. I don’t think so,” if nothing else has been shown by what has happened with Jack Ma, China’s second-richest person, and the Ant Group finance company in the last few weeks—there are, of course, financial risk reasons they might want to control Jack Ma’s Ant Group—it is, “Sorry, you are beholden to the Communist party.” That was a very fierce reminder of it.

In terms of this debate, I do not think we should be under any illusion that if a party says to a company about its technology or whatever, “Well okay, it’s all very well that you’ve got that, but we want it fed into our People’s Liberation Army organisations and science and technology system,” no company is going to say, “Oh no, that’s not right. We won’t do that.” For instance, when Huawei says, “If we were asked to do something against our own commitments, in terms of what we do abroad, that would threaten security, we would not do that,” it is rubbish. They know that.

The Chair: I am afraid that brings us to the end of this part of the session. Mr Parson, I thank you on behalf of the Committee for your evidence and the clear, concise answers you gave. We must now move on to the next session. If Members want to take a comfort break for a couple of minutes, I am happy to do that.

10.33 am

Sitting suspended.

Examination of Witness

Sir Richard Dearlove KCMG OBE gave evidence.

10.35 am

Q20 The Chair: Order. We will now hear oral evidence from Sir Richard Dearlove. Please introduce yourself for the record, Sir Richard.

Sir Richard Dearlove: I am Sir Richard Dearlove. I was in MI6 for 38 years. I was chief of the service from 1999 to 2004. Before that I was head of operations, and before that I was head of all the admin and personnel. In fact, I completed the building of the new headquarters and the move of the whole service into that. I retired in 2004 and became the Master of Pembroke College, Cambridge, where I was for 11 years. I am now chair of the board of trustees of the University of London and hold a number of other directorships and advisory roles. I still remain pretty heavily involved as a talking head on geopolitics and intelligence issues, and I have founded a small think tank, which is actually an educational charity in Cambridge called the Cambridge Security Initiative. That gives you in essence my colourful past.

The Chair: Thank you so much for being a witness.

Q21 Chi Onwurah: Thank you very much, Sir Richard, for bringing your expertise to the Committee. The existing powers for intervening in transactions on national security grounds came in when you were chief of MI6. How have security threats evolved since then? Specifically, which security threats do you consider are not covered by existing public interest powers? It would be helpful to hear whether you think the Government have missed specific threats, or types of threat, by relying only on historical powers, and by not bringing in new legislation until now?

Sir Richard Dearlove: Wow. That is a massive question. Bear in mind that a large part of my career related to the cold war. In that period, our main concern was the Soviet Union and the members of the Warsaw Pact. It was characteristic of that period that there were heavy controls, mainly exercised through NATO structures, to prevent strategic material from leaching, as it were, into the economies of the Warsaw pact. I will not go into all the mechanisms. Historically, one does not need to worry about those now, but it was very much an issue that was at the forefront of people’s minds during that period of the cold war. Bear in mind also—I think this is important in looking at the broader context of what you are interested in—that the Soviet Union had hugely sophisticated what’s called S and T operations: science and technology. A whole line of Soviet intelligence of the KGB was devoted to obtaining strategic material that would help the Soviet economy, particularly in the military industrial complex.

This is now in the public domain: in the mid-1980s, there was a major intelligence success, which, interestingly, was conducted by the French, but in which the UK had an important role. We completely dismantled, or learned, exactly what the Soviet Union and its allies were up to on a global basis. We knew before, but we did not know the detail to that extent, and what we learned was pretty shocking. That case has not been greatly publicised, but it was probably one of the most important intelligence cases of the cold war.

With the break-up of the Soviet Union and the disintegration of the Soviet empire, particularly the economic structures that bound the Warsaw pact countries together, in the West our attitudes towards those issues changed very significantly. There was a much more laissez-faire situation and, as countries broke away from the Soviet empire, an enthusiasm to trade with them without the same degree of control.

During that period, you had the emergence of China, which was still very much a regional power but with aspirations to become a global power. To short cut, we
have now transferred to China the concerns we had about the Soviet Union and its allies, but the problem with China in some respects is much more serious than the problem with the Soviet Union, although that was bad enough. Charlie Parton, who was talking to you before, is an expert on China specifically. I am not, and my view is maybe more strategic, although I had a lot to do with China when I was head of MI6.

If you look back at the emergence of China as a regional power, from the very start—when Mao was still alive and was then succeeded by Deng Xiaoping—its intelligence community focused on China’s economic growth. It was not particularly interested in what we would see as strategic or political intelligence. There is a famous passage in Kissinger’s book on China in which he is talking to Mao and Mao says to him, “We’re not interested in your politics because we have our own ideological view of the world, and I don’t really care what our intelligence service reports about what’s going on in the west.” What he did not say, but what was quite clear because it became evident subsequently, particularly under Deng Xiaoping, was that the primary purpose of the Chinese intelligence machine outside China was to contribute to the economic rebuilding of China.

We in the West have been, over a longish period of time, pretty naive and had forgotten the fundamental dangers of having a close relationship with China. I am not anti-Chinese or a cold warrior. I understand—and this is the complexity that lies at the heart of this legislation—that our economies in the West are tied to China’s. They are intertwined in a manner that did not exist during the cold war between the United Kingdom and the Soviet Union. Of course there were economic links with the Soviets but essentially the relationship was one of separation. But that is not the case any longer. We are intimately engaged with the Chinese economy. Our enthusiasm—I am using “our” in the broadest sense of the West’s enthusiasm—to trade with China and to have a close relationship and to build that relationship is thoroughly understandable, but in the process we have let down our guard and we have been extremely laissez-faire, as it were, in our attitude towards the commercial threat from China.

I remember very well on one of my visits to the far east, when I was coming out of China through Hong Kong, talking to a British lawyer who had been head of a legal office in Shanghai for a long time. He said, “Richard, you have got to understand one thing about the Chinese attitude to us: they don’t understand win-win. All they understand is ‘We win, you lose.’” However intimate and successful your relations with China may be economically, if you are too successful, you can absolutely guarantee that the Chinese will transfer that success to themselves in their own economic structures, having allowed you to run successfully for a period of time.

What we now know and understand is that the Chinese are highly organised and strategic in their attitude towards the West and towards us. For example, some of the thousands of Chinese students who are being educated in Western universities, particularly in the UK and the United States, are unquestionably organised and targeted in terms of subjects—I am thinking more about graduates, PhDs and post-docs—looking at areas of strategic interest to the Chinese economy, and they are organised by Chinese intelligence.

We need to conduct our relationship with China with much more wisdom and care. The Chinese understand us incredibly well. They have put their leadership through our universities for 20 or 30 years. We in comparison hardly know anything about China because we just do not have that depth of knowledge and experience. You have people such as Charlie Parton and many wonderful Chinese scholars who understand intimately, in particular, the workings of the Chinese state, but they are rare individuals who are now massively in demand in trying to educate people about the problem that we have on our hands.

I am not one who is saying that we have to hold China at arm’s length. It is impossible to do that because they are so intimately involved in our economy, but we have to understand where we restrict their access, where we control their access and where we do not allow them to build strategic positions at our expense and literally take us for a ride. If you go back a little way, we were incredibly naïve about this, which accounts for the position we got into with Huawei. It was completely ridiculous that we should even have been considering Huawei to build our 5G. That is probably why you called me. I was heavily involved in lobbying MPs through these various structures. I am delighted that the Government have now taken a grip on this issue.

The Chair: Thank you. I have no leeway to go past 11.25 am, so please can we keep questions as succinct as possible.

Sir Richard Dearlove: Sorry. That was a long answer, but it is precisely the question one should be considering.

Q22 Chi Onwurah: Absolutely. I appreciate the response and I would like details of the Soviet case of the military-industrial complex that was dismantled, which you mentioned. That would be interesting to compare.

You have talked about the relationship between the military-industrial complex, in the case of Russia, and economic development, specifically in the case of China. We have essential industries that are critical to our economy and there has been concern that BEIS is going to be overseeing the security implications. Where we have industries and technologies that are critical for national security, they are also critical for our economic security, so our national and economic security end up being linked. You have talked about some of those links in the case of Russia and China. How can we reflect those links effectively in the Bill? Do we need structures within BEIS, or outside BEIS, to identify and reflect the overlap between economic and national security?

Sir Richard Dearlove: This is a really difficult question. I am expressing the problem, not the solutions. You have to bear in mind that I spent my life trying to penetrate Chinese intelligence, if you see what I mean.

The problem is much bigger than just national security; that is one of the difficulties. It leaches into the whole future of our economic competition with China. I do not like to talk about it, but some people use the phrase “a new cold war”. I do not subscribe to that. We have to find some other way of talking about this. They are very serious competitors who are beginning to edge along
the path of enmity in the way they treat us on some issues—witness Hong Kong at the moment—so you have to have some sort of flexible scrutiny arrangement.

The reason this is so difficult to comprehend is that areas like climate change and energy policy, which are national security issues but not right on the frontline, are so big that, I think, China has a pretty disturbing agenda for us. They will encourage us to follow policies that they think are disadvantageous to our economy.

If you take their statements on things like climate change, which is relevant to what we are talking about, China is going to go on increasing its carbon emissions up until 2030, if we look at the figures and understand its policies. China is going to completely miss out renewables. When it has generated enough wealth and success in its economy, it is going to jump from carbon energy straight to nuclear and hydrogen. It will have the wealth and the means to do that. Renewables for the Chinese are going to be rather peripheral, because they will not generate the energy intensity that the Chinese economy requires. China has a road map in its head that is really rather different from ours and there is no question but that, competitively, our green agenda is going to put us at an even greater disadvantage to China, if you take a 30-year view of that.

There are some very worrying aspects of this. That means that if we are gaily allowing the Chinese to walk off with all sorts of bits of our economy, we are going to pay possibly a pretty high price for that over a long period. We need to take a strategic view of this. China certainly has a strategy, and at the moment we do not really have a strategy. We are beginning to realise that we have to have one, and maybe this Bill is a healthy first step in that direction.

You will need sub-committees of some sort, with flexible thinking and experts to advise on where these problems lie. The difficulty is also that we do not want to ruin our economic relationship completely with China. We still need to partner with it in areas that are advantageous to us and our economy as well.

Q23 Nadhim Zahawi: The Bill provides for an annual report to Parliament, Sir Richard. What is your view on balancing transparency and ensuring Government can take national security decisions sensitively? Where does that balance lie in terms of our ability to have as much transparency as we can without harming sensitivities around these decisions?

Sir Richard Dearlove: My view would be that the annual report has as much transparency as possible, but you are probably going to require a secret annex to it. It is a bit like the reports of the Intelligence and Security Committee, which I dealt with frequently as chief. They and we were keen that they should publish their reports, but there comes a point where it is not in our national interest that some of this stuff is put in the public domain. I would be pretty clear cut on that.

The Chair: I call Peter Grant, who will be behind you, Sir Richard, because of the social distancing rules we have in Committees.

Q24 Peter Grant: I think this is the first time I have had to stand further away from somebody to speak to them. Thank you for your attendance today. We have heard a lot this morning about the threat from China and a bit about the threat from Russia. There may well be other hostile states out there that have their eyes on us. There are certainly hostile non-state enterprises that have their eyes on us. Is the Bill wide-ranging enough to allow the Government to respond to all those different kinds of threat? Does it allow enough flexibility to respond to the threats that we have not yet discovered, that we do not know about or have not yet been invented?

Sir Richard Dearlove: Obviously, the threat scenarios shift and change. I think I accept that. Clearly, at the moment, what is driving our considerations is mainly China, but you are right. It applies to others—Iran, North Korea—and there may be other states.

A good example in the past, not a current one, is Pakistan. The Pakistani bomb built by A. Q. Khan—the Khan Research Laboratories—was created by sending 600 Pakistani PhD students to do separate bits of research in different universities around the world. That is the origin of our thinking on counter-proliferation, and it is another very clear example of where you have to have control from the security services. Now, I believe, we register PhDs in relation to the nationalities studying in certain areas.

The Bill should be able to accommodate a changing set of scenarios, and you are right to say that non-governmental organisations can become problematic. The proliferation issue, whereby Khan was trying to sell his technology to other countries, happened around the time of my retirement and the disarmament of Libya. That was all based on Pakistani technology, but there was a commercial network run by a family of Swiss engineers called the Timners. This is an example of how dangerous things can be. The Tinner network had several semi-clandestine factories dotted around the world that were all making different parts for nuclear centrifuges. Okay, that network was eventually dismantled by the UK and the Americans, but the problem of national security goes into some pretty odd areas, and you are right to identify those as not necessarily just being China or, in the past, Russia. There are still aspirations on the part of certain powers to break the non-proliferation treaty and become nuclear weapons states.

Q25 Mark Garnier (Wyre Forest) (Con): It is a pleasure to serve under your chairmanship, Mr Twigg. Sir Richard, I want to ask some questions about how the Bill and the mechanisms that make it operate cut across certain other parts of Government Departments. That is clearly looking at how we can scrutinise investments coming into the UK, but we also have a department with respect to export control. Broadly speaking, this is quite a similar type of problem. Although it is not necessarily looking at intellectual assets, it certainly looks at the ability of countries that are buying certain things to reverse-engineer, and therefore to try to steal our intellectual property in that way.

I am interested in your view on how the department that is proposed to be set up within BEIS to scrutinise this cuts across the Export Control Joint Unit, which is obviously a combination involving four Government Departments. Is that complementing it or contradicting it? Can they cut across each other? How do you see those two departments working together? They ultimately have the same aim, although they come from slightly different objectives.
Sir Richard Dearlove: I cannot give you a detailed answer to that question. From my experience, I would say that on some of these issues the co-ordination of Government Departments is one of the really big challenges, particularly when they ultimately have different objectives. The sophistication of our co-ordination mechanisms in the UK has not been highly developed, so we have run into problems in the past. My suggestion would be that this be given forethought rather than afterthought—that there is some arrangement to avoid those clashes of departmental interest.

Q26 Mark Garnier: I would not want to put words in your mouth, but it sounds like you would suggest that this Committee urge the Government to look at the possibility of developing relationships between those two departments, so that they are not contradicting each other.

Sir Richard Dearlove: Yes, because they could be pulling in different directions. You have to have some degree of co-ordination. It is always better if these things are anticipated and something is put in place in advance, rather than scrabbling around to sort it out afterwards. I have seen that happen a lot.

The Chair: We are back to facing the front now, Sir Richard. Most members of the Committee wish to speak and I want to get everyone in, but I will have to cut them off at 11.25. Keep questions as succinct as possible.

Q27 Matt Western: I want to pick up on a couple of points. You spoke about energy policy and, as we have seen over the past nine months, some of the risks and threats to our society and economy come from unexpected places. Do you think that the Bill does enough to recognise where those threats may come from and that they may be from a malign power?

I am thinking of the consideration of investments from China in our nuclear power stations and other infrastructure networks. Something as simple as road traffic signals or rail infrastructure might break down if someone decided they wanted that to happen. Do you think the Bill does enough to recognise the unexpected areas of investment that a malign state might want to attack?

Sir Richard Dearlove: Probably not is the answer. The Bill should take account of the complexity of modern technology and the difficulties that we could run into in the future if we allow foreign entities to have a strategic piece of our critical infrastructure. Relationships can change over time and you can cause huge difficulties by throwing a switch and engaging a piece of software that is deeply embedded in something somewhere and causing a huge problem.

I do not want to be too alarmist, but Chinese engagement and involvement in nuclear power is another area of terrific concern and worry. It is not something that we should take at face value. We need to think very carefully about some of these issues. I would much rather have a French company building a nuclear power station than a Chinese company.

Q28 James Wild: You mentioned Huawei. Were you involved in 2003 when BT was letting the contract for the network? Did you raise concerns at that point?

Sir Richard Dearlove: No, I was not. The first Huawei contracts were signed by BT in 2003 and, because BT was the primary provider, the relationship between BT and the intelligence community was, let us say, important; I will not go any further than that. BT was a successor to the General Post Office and, essentially, that was how the relationship came about.

At the time, people like myself were deeply concerned and shocked that we were signing deals with a Chinese company that looked to us to have strategic implications. Basically, as chief, I was not consulted. Basically, when I raised some questions, I was largely told, “It is nothing to do with you. These are issues we can control.” The relationship with Huawei took off without real consideration at the time that it would have a bearing on national security. I think that was extremely misplaced. I have written or said somewhere before that those of us who raised objections in 2003 were just disregarded.

Q29 James Wild: Well, the ISC report makes clear that Ministers were not informed about the contract at all at the time.

Sir Richard Dearlove: I knew about the contract and said I thought it was completely inappropriate.

Q30 James Wild: In the Bill, there are 17 sectors listed where mandatory notifications are required. They include transport and communications, as in some of the points that Mr Western was raising. Should others be added to that?

Also, do you think that although we need to look at the Bill as to what it does, we should also recognise that it does not solve all the problems and threats from hostile states—that the intelligence activity and other things we do to raise the cost of theft of IP need to be seen holistically across the piece, and that the Bill cannot solve all the problems?

Sir Richard Dearlove: The Bill is a step in the right direction. What is important about the Bill is that it raises parliamentary and public awareness of the issue. Everybody takes a big step forward in being sensitised to the problems in the future.

To be honest, I do not have any suggestions right now to add to the list, but I might look at that and see whether there are certain areas. For me, the Bill is almost a symbolic move—one that is long overdue and signals a change in attitude at Westminster and on the part of this and future Governments. It is a very healthy, pleasing and important development.

Q31 Stephen Kinnock: Thank you very much, Sir Richard, for the evidence that you have given us today. The Intelligence and Security Committee defines critical national infrastructure as “certain ‘critical’ elements of infrastructure, the loss or compromise of which would have a major, detrimental impact on the availability or integrity of essential services, leading to severe economic or social consequences or to loss of life.”

Would the Bill benefit from having that definition of critical national infrastructure embedded in the middle? Linked to that definition, should special measures be taken to raise our guard even higher when it comes to any kind of investment in our critical national infrastructure?

Sir Richard Dearlove: I would certainly see that as advantageous, because it defines a clear area where you start and from which you can make judgments about
the involvement of foreign firms being given space or activity in those areas. That is not a bad idea at all, actually.

Stephen Kinnock: I know time is short, so thank you.

Q32 Simon Baynes: Thank you, Chair. Thank you, Sir Richard. When and why did we let down our guard to China and where would you restrict its access? You made that comment in your statement, and you have commented already on areas such as nuclear power. Can you add to that to give us a bit more of an idea of other strategic areas where you think we should restrict its access?

Sir Richard Dearlove: I think we were over-enthusiastic about becoming a favoured trading partner with China. I am not going to name names, although I think I have done in one or two instances where, let us say, certain Ministers were incredibly enthusiastic and uncritical about building a commercial relationship with China. Part of that was driven politically, in that if we are going to not be a member of the EU, we need alternative relationships. I am not sure I would see it quite like that.

There has been a big emphasis on building a privileged position with China, which has led to people such as myself shouting from the sidelines and being pretty unpopular. For example, the 48 Group Club that the Chinese set up in the UK is extraordinary. They recruited a whole group of leading British business and political figures into that group who were designated cheerleaders for a burgeoning relationship with China. Huawei was an important part of that. The composition—the British membership of the Huawei board—was a very impressive line-up of people who were there to persuade us to drop our guard.

Anyway, I am glad that that is now largely history. A lot of the people who were involved are very keen to jump ship and be disentangled from those involvements. I am sure that, in time, the economic rewards that they were offered to go on to those boards and things were pretty significant. So the Chinese knew how to play us and that is why we got ourselves into this very difficult position on 5G.

Sorry, what was the second part of your question?

Q33 Simon Baynes: The second part was: can you say a bit more about where you would restrict their access, because that was one of your key points? You have mentioned nuclear power.

Sir Richard Dearlove: On artificial intelligence, given that the UK is a leader in its own field, there are all sorts of aspects of AI and we would not want to allow the Chinese to buy those companies or take over the technology. There is no question but that the China dream that Xi Jinping has expressed is based on—let me put it like this—authoritarian technological supremacy and having a capability that dominates the global market in those areas. Huawei was definitely a step in that direction.

The critical areas are largely about the speed of technological advance and AI-related companies. We are very sophisticated in those areas, and the Chinese do not have a good record themselves of developing that sector without pinching it from the west—not to put too fine a point on it. The embargo placed on chip manufacturing by the Americans is a serious problem for China, because at the moment they cannot replicate that. I am sure that they will solve the problem themselves in due course. Of course, we have a certain dependence on them for certain things such as rare earth elements, so the quicker we can develop alternative sources, the better.

I am Cornish—I was born and brought up in Cornwall—and I see that one area where you might, using new technology, get rare earth out of the ground is Cornwall. I am devoted to the development of the Cornish economy, and I would love to see us making a real effort to develop Cornwall, for example, as a source of those elements, which is technically possible. It would be more expensive than buying them from China, but would be of huge benefit to our domestic economy. That is a good example of a sensitive area.

The Chair: I call Andrew Bowie. This will probably be the last question.

Q34 Andrew Bowie: I will be brief. Thank you for commenting. It is a real privilege to listen to you and take on board everything you said regarding our naïveté and the intertwining of our two economies, nowhere more so than in the North sea, where CNOOC, China’s national oil company, initially through Nexen, a Canadian company—this is going back to something my colleague raised earlier—is now the biggest producer of oil. Allowing what some might describe as a hostile actor to have such control over our energy security is incredible—very naïve.

I was going to ask you a question I put to Mr Parton, although it is probably more relevant to you. How does what the Bill proposes compare with what is being done in other, comparable countries, such as our Five Eyes partners? Does it go as far as the Australians and the Americans, or are we still some way short of where we should be?

Sir Richard Dearlove: No, I think we will catch up. A very good example for us is Australia. They are hyper-dependent economically on their relationship with China, but the current Australian Government had the resolve to take a tough line on strategic issues, and they have suffered as a consequence. But their relationship with China will come back into balance, so the idea that you cannot be hard with the Chinese on these issues because it will prejudice a good trading relationship is rubbish.

The Chinese will probably respect you more if they know you mean business, they want a clear-cut relationship, and they see you have the legal means to impose that domestically, so they cannot just buy a high-tech company and walk off with the intellectual property, thank you very much. In the past, we have been so laissez-faire, it is ridiculous.

Chinese involvement in the oil industry is an interesting example too—I mean, look what they are doing now. They are doing deals with Iran and with Saudi Arabia on carbon fuel, exactly in the way I explained earlier. They are not going to cut their fuel emissions until they are ready to go for a nuclear-hydrogen economy, which they will have the means to do. We are sitting by and watching it happen, in a manner of speaking, and not worrying about the consequences for us.

One of my friends, who is a Chinese scholar, drew my attention—you will enjoy this, I think—to the 36 stratagems from the era of the warring states, which is 481 to 221 BC. I will mention three of the stratagems, because I think they are appropriate to the thinking of this
Committee. Kill with a borrowed sword—that is, get what you can. Loot a burning house—bear that in mind in terms of taking advantage of the current pandemic. The third one is hide a knife behind a smile.

The Chair: We have two minutes left for anyone who wants to get a quick question in.

Q35 Sam Tarry (Ilford South) (Lab): It is an honour to serve under you, Mr Twigg. We have focused mainly on China. Thinking about regimes we could put in place to govern all this as we work through the Bill, do you think there could be exemptions—a bit like the US has done for potential allies? Could we have almost a graded system, so we can build relationships quicker and faster with those we want to support, or do you think that would be a bad idea?

Sir Richard Dearlove: You are talking about allied countries?

Sam Tarry: Obviously, if you are involved in global universities, for example, there will be some countries that we want to keep a much better relationship with, and whose students our intelligence services will have to monitor less.

Sir Richard Dearlove: There is definitely a graded difference in, let us say, our burgeoning relationship with India, but India can also raise some strategic security concerns for us. It has not always been entirely friendly, and bear in mind that it has quite a sophisticated weapons programme of its own. However, it would be wrong to treat India in the same way as you treat China; I agree that there is a gradation of treatment.

The Chair: That brings us to the end of the time allotted for the Committee to ask questions. On behalf of the Committee, I thank our witness very much for his time.

Before we finish, I want to read a message out to Members. I would appreciate it if Members did their best to arrive in the room a few minutes before this afternoon’s sitting starts at 2 pm, to ensure we can be seated in a socially distanced manner so that everybody remains safe.

11.25 am
The Chair adjourned the Committee without Question put (Standing Order 88).
Adjourned till this day at Two o’clock.
NATIONAL SECURITY AND INVESTMENT BILL

Second Sitting
Tuesday 24 November 2020
(Afternoon)

CONTENTS
Examination of witnesses.
Adjourned till Thursday 26 November at half-past Eleven o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 28 November 2020

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The Committee consisted of the following Members:

**Chairs:** † Sir Graham Brady, Derek Twigg

† Aiken, Nickie (*Cities of London and Westminster*) (Con)
† Baynes, Simon (*Clwyd South*) (Con)
Bowie, Andrew (*West Aberdeenshire and Kincardine*) (Con)
Fletcher, Katherine (*South Ribble*) (Con)
† Flynn, Stephen (*Aberdeen South*) (SNP)
† Garnier, Mark (*Wyre Forest*) (Con)
† Gideon, Jo (*Stoke-on-Trent Central*) (Con)
† Grant, Peter (*Glenrothes*) (SNP)
† Griffith, Andrew (*Arundel and South Downs*) (Con)
† Kinnock, Stephen (*Aberavon*) (Lab)
† Onwurah, Chi (*Newcastle upon Tyne Central*) (Lab)
† Tarry, Sam (*Ilford South*) (Lab)
† Tomlinson, Michael (*Lord Commissioner of Her Majesty’s Treasury*)
† Western, Matt (*Warwick and Leamington*) (Lab)
Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Wild, James (*North West Norfolk*) (Con)
† Zahawi, Nadhim (*Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy*)

Rob Page, Yohanna Sallberg, Committee Clerks

† attended the Committee

Witnesses

Dr Ashley Lenihan, Fellow, Centre for International Studies, London School of Economics

Michael Leiter, Partner, National Security; CFIUS and Foreign Investment Reviews; Cybersecurity and Privacy; Congressional Investigations and Government Policy; Skadden, Arps, Slate, Meagher and Flom LLP and Affiliates

David Petrie, Head of Corporate Finance, Institute of Chartered Accountants in England and Wales

Chris Cummings, Chief Executive, Investment Association
Public Bill Committee

Tuesday 24 November 2020

(Afternoon)

[SIR GRAHAM BRADY in the Chair]

National Security and Investment Bill

2 pm

The Committee deliberated in private.

Examination of Witness

Dr Ashley Lenihan gave evidence.

2.3 pm

Q36 The Chair: Members can sit in any seat where there is not a “Do not sit here” sign. Any Member sitting in the Public Gallery should stand by the microphone when they wish to speak.

Dr Lenihan: I can hear you now.

Q37 The Chair: We have until 2.45 pm for this session.

Dr Ashley Lenihan: First, let me thank the Committee for including me in today’s evidence-gathering session. My name is Dr Ashley Lenihan and I am a fellow at the Centre for International Studies at the London School of Economics. Thank you for joining us today. Can you hear me now?

Dr Lenihan: I can hear you now.

Q38 Chi Onwurah (Newcastle upon Tyne Central) (Lab): Thank you very much, Dr Lenihan, for putting your expertise at the disposal of the Committee. I am particularly interested in your expertise in the international aspects of the debate. As you are aware—the Bill responds to this—a number of the UK’s allies have national security and investment screening regimes, and almost all of them have updated their regimes in the light of the changing geopolitical and technological contexts. From your comparative work, what governance and decision-making structures have you found others adopting to ensure that all relevant Government expertise shapes national security and investment decisions? Are they appropriately reflected or considered in the Bill?

Dr Lenihan: That is an excellent question. To answer it, I will first step back for a second and say that the Bill is a very important step in the UK’s alignment with its closest allies on this issue, and especially the Five Eyes, because there is clear evidence that states are trying to use the market and companies over which they have control and influence to gain economic, technological and even military power in foreign investment. During times of economic downturn and crisis when asset prices are low, the opportunities for that type of behaviour increase. Hence, we have seen these modifications to regimes not only in the West, but outside the West as well.

I think one of the most important elements of regimes as they have evolved—especially among the Five Eyes, but among our NATO allies and even in Russia and China—is the move to ensure that review mechanisms have the institutional capacity and resources that they really need behind them. Part of this institutional capacity usually involves a multi-agency review body of some type.

There is always a lead organisation, and in the West—especially in the US, Germany and France—these tend to be in Treasury or in business or trade Ministries, and that lead body, like the Department for Business, Energy and Industrial Strategy in the Bill, receives the information and handles the day-to-day activity. However, in the US with the Committee on Foreign Investment in the United States, the idea behind having a multi-agency review body with multiple agencies and Departments across vast areas of Government is that you have the ability for regularised monitoring and feed-in from these agencies across the spectrum of possible threats, and you have dedicated staff within those agencies who have the necessary security clearances, training and specialised knowledge over time to keep an eye on potentially risky transactions and bring them to the awareness of the lead agency.

One of the key elements of CFIUS that has been very positive is that, as it has evolved, it has brought in more agencies, not less, so you have multiple opinions on the same potential transaction being brought to light and discussed before any decision needs to be taken by a Secretary or Head of State, depending on the question. In CFIUS, that responsibility ultimately lies with the President, but the idea is that you have had a multiplicity of views and, under the Foreign Investment Risk Review Modernisation Act—the most recent update of US legislation—you have an assured national security risk assessment made by the head of intelligence on detailed investigations of certain transactions.

The idea behind this is that—hopefully—any decision made will be viewed by the public as one that is truly based on national security concerns because of the debate that had to take place behind the scenes. That lowers the risk of politicisation and intervention, and again heightens the possibility of actually catching risky transactions in a way that otherwise can be difficult.

One of the great examples of transactions in the US caught not originally in the regularised monitoring process, but by a CFIUS employee in one of the agencies, was the unwinding in 2011 of Huawei’s purchase of 3Leaf, which was a US-based cloud computing technology company that had gone bankrupt. The assets, employees and patents had been purchased by Huawei—bankruptcy assets were not consistently monitored by the regime at that time. The purchase was caught by a Government staffer who happened to notice on his LinkedIn account that somebody whom he knew, who had partially run 3Leaf, was now listed as a consultant for Huawei. That transaction had to be reviewed and retroactively unwound. At that point, of course, one must assume that the bulk of the damage had been done, but it goes to show the importance of having not just one agency looking at these cases and being responsible; a multiplicity is needed across the piece. If I have any concerns with the Bill, my primary concern would be that the institutional capacity and resources behind the review regime are not made clear.
Q39 Chi Onwurah: Thank you, Dr Lenihan. That is absolutely fascinating. The need for different agencies to be involved needs to be recognised.

In terms of your work on investments, and the investment regime, is there not a risk that it ends up capturing a host of investment transactions? I am particularly thinking of the burden and impact on our innovative tech start-ups. The likely definitions of the sectors to be involved include artificial intelligence and data infrastructure. Based on your experience of other countries’ introduction of new investment screening rules, have you found patterns in how similar changes have affected foreign direct investment, and potential trade deals, which is a topical subject? Do you have any thoughts on ways to mitigate the burden and impact, particularly on start-ups?

Dr Lenihan: The Bill is arguably broader in scope on call-in powers than some other foreign direct investment regimes—I would argue that these perhaps even include the US regime—because it does leave wide latitude for call-in powers. The Bill also covers trigger events that are initiated by all investors, both domestic and foreign, and that is truly rare among Western FDI review regimes that are focused on national security. Usually, the concern is to focus the regime on investments from foreign-owned, controlled or influenced entities. Domestic entities and acquirers that have, for example, ultimate foreign ownership or influence in some ways should be able to be caught by any well-institutionalised and resourced regime. I am not sure why it is that we do not actually see the word “foreign” in the Bill, even though it is supposed to be based on foreign direct investment. Perhaps that is a concern about potential domestic threats down the road, but either way, it will lead to a much larger volume of mandatory notifications than most other national security FDI regimes—the US, Germany, Australia and other countries. Almost 17 have made changes in the past couple of years, and these have increased and been modified since the covid pandemic.

I understand that the legislation may be written as it is to include domestic investors, perhaps to avoid appearing to discriminate against foreign investors. I would suggest that that is probably too broad a formulation for focusing on and identifying real risk. The EU framework for FDI screening encourages its EU members to adopt mechanisms that do not discriminate between third-party countries, but that does not mean that it takes the word “foreign” out of its legislation to target foreign investments as opposed to domestic ones. Part of that is about the volume of transactions.

One thing I would highlight is that FIRRM A expanded the scope of covered transactions to include non-controlling investments of potential concern, as well as any other transaction or arrangement intended to circumvent CFIUS’s jurisdiction. But because it has had more cases to review on a detailed level in the past two or three years than in its history, since 1975, a major element of that Act is, again, around staffing and resources. There is a specific provision in FIRRMA, which is very clear that each of its agencies needs to hire under-secretaries in each agency just to be dedicated to this task.

There are two elements. An inter-agency review team is needed. You need enough staff to actually handle and catch all the risks. You need the proper resources to do so—the right access to the databases, the right security clearances, the right training. On top of that, the volume of mandatory notifications will be increased by the fact that this is not just focused on foreign investment. I do not think there is much you can do about the foreign cases that you will get. There will be a high volume of those, and you need to be ready for them, but it is an important national security risk that needs to be dealt with.

Q40 The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): It is a pleasure to serve under your chairmanship, Sir Graham. Dr Ashley, considering your experience of other countries—we talked about the US at length in the first couple of questions—such as Japan and Germany, what are your views on the retrospective powers under our Bill?

Dr Lenihan: Personally, I think they are fine. I know that might not be a popular answer with some. Germany, France and even parts of the EU framework set up this five-year retroactive for cases. I think that is at minimum important. Other countries, such as China, Russia and the US, do not place any limit on retroactivity. I would have to check up on Australia and Canada, but there have been cases that have gone beyond a year there. Under the original Government White Paper, the idea of having only a six-month period, whether or not you have been notified, is quite dangerous, because there have been cases that were well known where they have been caught after that point.

Some of my examples are from the US. The reason for that is that it is one of the longest-standing and most institutionalised regimes. It is also one of the most transparent, from which we know most about the cases that have gone through it. I have looked at over 200 cases of this type of investment over a seven-year period in the US, UK, Europe, China and Russia. One case that stands out in the US is the 3Leaf acquisition by Huawei, which was caught almost at the year mark. Another good example that went over the one-year mark would be the review in 2005 retroactively of Smartmatic, which was a Venezuelan software company, and its purchase of Sequoia Voting Systems, which was a US voting machines firm. Smartmatic was believed to have ties to Chavez. However, that acquisition completed without knowledge of CFIUS and it was not actually able to be unwound until 2007. At that point, you worry about what has happened, but at least you do not have the ongoing concern.

You do need flexibility. With the volume of notifications and the learning curve that the investment security unit will have to undergo, or whatever the final regime truly looks like, it will take time to get the team in place and get the knowledge and systems down, to accurately catch even the most obvious investments that are of concern. Dealing with the kind of evolving and emerging threats we see in terms of novel investments from countries such as China, Russia and Venezuela needs the flexibility to look at retroactively and potentially unwind transactions that the Secretary of State and the investment security unit were not even aware of.

One thing is that for mergers and acquisitions transactions, which are historically what have been covered under these regimes, across Europe, Australia, Canada, Russia, China and the US, all the systems that have been used—the M and A databases: Thomson ONE, Zephyr, Orbis—take training, but they only cover certain...
types of transaction. They do not cover asset transactions; they do not cover real estate transactions, which are of increasing concern, especially for espionage purposes.

It is going to take time, and I believe that flexibility really needs to be there. It can always be reviewed in the future, but I do not think that so far foreign investment has been deterred in any way in countries that have that retroactive capability. To limit the UK’s capacity to protect itself for some kind of strange feeling that we need to be perceived as being even more open than everybody else when under threat is not really wise at this time.

Q41 Matt Western (Warwick and Leamington) (Lab): It is a pleasure to serve under your chairmanship, Sir Graham. Dr Lenihan, I am keen to know more about whether, other than in the US, you have seen good exemplar approaches to screening investments into these sectors; we spoke about Japan and Germany a moment ago. Can you give examples which we might learn from?

Dr Lenihan: I do think the US system is the most institutionalised that we have, and the best at the moment. That being said, Germany’s system is very good; it has caught quite a bit. The German system has also been very good about regularly updating, changing and adapting its regulations as it sees new emerging threats to itself. They seem to have good feed-in across Government and they are exceptionally good at co-ordinating with other states in terms of information of concern.

In terms of national security review, Canadian and Australian systems are quite good. The problem with those systems is that they tend to do national interest reviews at the same time or in tandem with their national security reviews. Over the long term, including national interest in the regime has had an impact on how they are perceived in terms of their openness to foreign direct investment abroad. In the OECD’s FDI restrictedness index, Canada and Australia rank far lower than the US, the UK, Germany and France, and I think this is because of their inclusion of national interest concerns. Similarly, on the World Economic Forum’s global competitiveness index, they rank far lower. That does not provide investors with the type of clarity that they need. In general, we see that investors tend not to be dissuaded from investing just because there is a new foreign direct investment regime, as long as that regime is seen to have clear regulatory guidance, is transparent, and is applied consistently over time.

France sometimes gets quite a bad reputation for economic nationalism, but its review mechanism is also quite good at catching potential threats to national security. Japan is an interesting case. It has been so restrictive for so long that it is a little harder to compare with the other western countries. Its system has been tied in again to an overarching inward investment regime that has been restrictive towards foreign investment for other means beyond national security, so I find that country to be less of a comparator for these purposes. I hope that answers the question.

Q42 Simon Baynes (Clwyd South) (Con): It is a pleasure to serve under your chairmanship, Sir Graham.

I have found your comments particularly interesting, Dr Lenihan. My own background is in the financial world, where I was involved in cross-border M and A and quoted equity transactions. I fully accept the premise of the Bill, which I think is important and has to be put into effect, and I draw encouragement from what you are saying about other regimes, but I am still left wondering a little bit whether, in practice, it will be really quite difficult for us to put into effect. Your point about the necessity of expertise among staff is crucial. Having sat at the centre of the process, I recognise that the point you make about a huge amount of information flowing across, especially in respect of unquoted companies, is very important; often, there is not much established information in the public domain. That first point is very important. The second point is that there is a very complex mechanism of market sensitivity as well. I do not quite know how this system intervenes with that. Also, within the UK itself there is a culture of openness, which has been touched on before, and in some respects we are a very different country from the others, particularly given the strength of the City of London. We therefore have the ability to transact in a way that some other countries do not, and a different culture.

The other point I wanted to raise and to hear your comments on is that there is a danger of political interference. I know that that is not the intention, but it must be a hazard in this process. What happens if the Government get it wrong about a company? Could not that be interpreted as political interference rather than seeking to establish a security risk?

Dr Lenihan: I started my career in mergers and acquisitions in aerospace and defence M and A, in London. I think you make an important point: the UK has historically been the most open country to foreign direct investment on most indices and indicators. That perception is strong, and I do not think that that culture of open investment will or should change with the introduction of the regime. To the contrary, it actually gives you one of the best starting points that any country has to do this.

As I said, on the whole, in the Bill as written, and in the statement of policy intent behind it, it is very clear that the powers for review and intervention should be used only for an identified risk of national security, and not on the grounds of national interest. Regimes that are based only on national security, like that in the US but also Germany and France—even with a very different culture in many ways—have not seen a lowering of levels of foreign direct investment over time, because they have introduced, modified or kept these regimes up to date. It is because, on the one hand, the stable environment that they provide and that the UK will definitely provide for foreign investors, is far more attractive than any uptick in cost from having to get up to speed on a new regime; also, they are able to retain these global perceptions of openness to foreign investment and ease of doing business because of the way in which the rules are applied. As long as the rules are applied consistently, and with clear reasons behind their use, and applied consistently and transparently over time, it should be okay.

The Bill provides for a lot of regulatory guidance, which needs to come forward in a clear and very easily comprehensible and understandable manner. As long as that happens, it should be okay. Global Britain should still be the premier destination for intellectual capital and research, but that it always will be, while also being able to demonstrate to itself and to its allies that it is able to protect itself from this type of investment.
Going forward, Britain's relationship with many of its Five Eyes allies is going to depend on having a comprehensive regime of this nature that is used well. Under FIRRMMA, under US law, for example, the UK is an exempt foreign investor in certain categories—one of three with Canada and Australia. It has been stated that for that to continue—it is going to be reviewed—it needs to have a regime to protect itself. We can talk about this later, but part of that is about the potential concern about not just the ability to share intelligence on these issues, but about acquisition laundering, export controls and all these issues that tumble on behind that can affect investment, trade and intelligence-sharing relationships over time. That is important.

The research evidence shows that foreign investment is not deterred unless there is a problem in how this is applied. There has been politicisation of cases; demonstrated proportionality of response is also extremely important. There are many cases in which a threat to national security can be mitigated by agreements and undertakings without needing to block a deal. When you look at the modern history of foreign direct investment intervention across Europe and the US—even if you look at Russia and China and how they behave—the preference is, where possible, to mitigate national security concerns through comprehensive agreements, and that can be done in a host of ways. It can be that you have a board of directors that is only UK nationals, or that you require divestment of a certain black box technology company to another UK company or a friendly allied country. Whatever it may be, historically, there has been a preference for that type of action to be taken. Vetoes of cases are actually quite rare since world war one, when we first really saw this type of issue pop up.

The concern is if we see the UK blocking deals where it could mitigate because a deal has become a political hockey puck. In today's world, where this is something that is constantly discussed in the Financial Times and The New York Times, whereas it was not 15 years ago, any case has the potential to be discussed widely in the political debate. The question is how it is treated by Government and how other countries perceive that treatment. I know that I have used US examples quite a bit, but if you look at US-China investment, China still invests a lot in the US, even though it complains every time a deal is blocked or mitigated. The reason behind that is because this is a sovereign right under customary international law, and China does the same thing when it has the same concerns. It is only if a case becomes truly politicised that there is an issue.

To give you an example, in 2005 in the US, the case of Dubai Ports World and P&O, which was a takeover of a UK company, became overly politicised in the US system. It is one of the only real examples where it has happened, and that was because there were a few US lawmakers who had a completely different view of the risk and relationship of the US vis-à-vis the United Arab Emirates than the Department of State or the Department of Defence. That is quite rare but what ended up happening was US lawmakers seeking to block a deal when most reasoned professionals in the industry and in various Government Departments thought that any risk could be mitigated simply in a host of other ways.

In the case of overuse, overbalancing, misuse, politicisation, whatever you want to call this tool of economic statecraft, there was a momentary blip in relations between the US and the UAE. There was a momentary stalling of trade talks, change in the currency basket and some uncomfortable months, but the relationship was strong enough to survive and it usually is. This is not really an aspect of going to war. I think the key is proportionality in response, how it is applied, and it is about consistency and transparency. The Bill is well written in many ways, but how it is used can go any number of ways, so it is about how the UK uses it going forward.

The Chair: Thank you, Dr Lenihan. There are lots of Members wanting to speak and we have limited time, so I will try to get through some quickly. I will call Stephen Flynn, Mark Garnier, then Stephen Kinnock.

Stephen Flynn (Aberdeen South) (SNP): Thank you for your comprehensive and helpful answers, Dr Lenihan. I would like to divert back to some of the comments that were made about the Bill on Second Reading, particularly relating to definitions, or a lack thereof, in relation to national security. I would welcome your thoughts as to whether the Bill should or should not have a definition.

My second question relates to the scope of the Bill, which you mentioned earlier. In terms of the consultation going on, 17 sectors have been identified. The glaring omission seems to be social media, but I would appreciate your view on whether artificial intelligence would cover off social media to a level that you would be comfortable with.

Dr Lenihan: Those are both really good questions that I hoped would be asked. If national security is that which seeks to maintain the survival of the state and preserve its autonomy of action within the international system, unfortunately that means that you cannot necessarily define national security in law without binding yourself in an inflexible way. What we have seen is that most foreign direct investment regimes of this nature all refer to national security. I do not know of a single one that actually defines it or limits itself to a particular definition. I could be recalling incorrectly but I have looked at over 18 of them and I have never seen a particular definition.

What you do see in regulations is guidance as to how national security risk might be assessed or examples of what could be considered a threat to national security. US guidance is helpful on this, in terms of how they put their regulations together. Some have argued that it is too comprehensive—it is a lot to read and provides the lawyers with a lot to do—but it is useful and has meant that the process of knowing when you might be triggering concerns is easy to navigate. I really do not think that the UK wants to define it in the Bill.

There was a US Government Accountability Office report in 2008 examining the foreign direct investment restrictions in 11 countries at that time. Each was determined to have its own concept of national security but none of them actually defined it. In 2016 the OECD did a similar report after a new resurgence of changes in laws, and it looked at 17 countries including Lithuania, Korea, Mexico and Japan, and they came to the same conclusion. The OECD has quite good guidance in general on this and they have not recommended that their countries define national security risk, but they have recommended regulations to help increase transparency around what could be considered a risk.
Regarding the sectors for mandatory notification, I think that is a very good question and one that it is difficult to grapple with in many ways, because the threat is emerging and changing at the very same time that technology is emerging, changing and interacting with our society in various ways. Various countries have been trying to deal with this. In the US, a final rule was just put out in relation to non-controlling investments and situations where you have certain mandatory notifications. A pilot programme was initiated in 2018 to try to define—as your consultation will, in many ways—the proper sectors using North American industry classification system codes, instead of standard industrial classification codes as the UK regulation does.

Whatever codes you use, though, the US found that they had an incredibly high volume of mandatory notifications and were not necessarily getting to the issue that they wanted to. They have changed that under the final rule, and now mandatory notifications in that classification are going to be defined [inaudible] and would come under certain US export control regimes. The idea behind that is that the US is doing a review of export control regimes, which will try to get to what foundational technologies might be of concern. I think that applies to your question about social media.

Social media is of concern because of the data, and data retention, involved in most social media. As I understand it, the sectors in the Bill will be kept under constant review and can be changed and updated as needed. That is important, and it might be worth doing a pilot programme.

The Chair: Dr Lenihan, I was trying to squeeze two more questions in, but I think it will probably be just one.

Q43 Mark Garnier (Wyre Forest) (Con): Thank you, Sir Graham. Dr Lenihan, my questions refer back to points you made in response to the first batch of questions. You spoke of the review regime not being quite up to full standard. It is an interesting dichotomy that the Bill sets up a new review regime in BEIS, but there is an export control unit in the Department for International Trade that already looks at arms control, as well as intellectually sensitive exports. I would be interested to hear your comments about how those two play together.

Secondly, it is worth bearing in mind that the Minister, Lord Grimstone, sits in both the DIT and BEIS. He is responsible for investment promotion. We are talking about more acquisitive types of investment, but do you see a potential conflict of interest between the ambitions of the Government to secure more investment into the UK and potentially having the wrong kind of investment?

The Chair: Sorry, Mark, but we have about 90 seconds for that to be answered. Please have a go, Dr Lenihan.

Dr Lenihan: I would suggest that the investment security unit and the unit that will handle the processing of this regime remain in BEIS. That is fine; however, it would be useful to set up in the Bill some sort of multi-departmental review body that contributes regularly, and that has staff in those Departments who monitor the risks in relation to this concern. As you say, the Department for International Trade will be able to monitor, find and catch risk that others—such as the Foreign, Commonwealth and Development Office, GCHQ and its new cyber unit—cannot.

It would seem very strange to not have a feed-in from intelligence agencies and the Ministry of Defence on a regular basis. If you set that up in an institution that is clear, at least to the outside world, about its composition and makeup, as opposed to having ad hoc feed-in over time, it would help with the perception of openness from the outside. It would also help to counter any claims of an individual or place being politicised or used for some other purpose by a particular Minister, because then they could give a balanced opinion for the Secretary of State in charge to make a final decision.

The Chair: Thank you very much, Dr Lenihan. That brings us to the end of the time allotted to the Committee for asking you questions. We are grateful to you for your time. Where members of the Committee wanted to ask questions and were not able to, I will try to give them a bit of priority on the next panel—or in another, if that is helpful.

Examination of Witness

Michael Leiter gave evidence.

2.45 pm

The Chair: We come to our fourth panel of witnesses. We will hear oral evidence from Skadden, Arps, Slate, Meagher and Flom LLP and Affiliates. For this panel we have until 3.30 pm. Mr Leiter, I welcome you, and ask you to introduce yourself for the record.

Michael Leiter: Good afternoon. My name is Michael Leiter, and I head the national security and Committee on Foreign Investment in the United States practice at Skadden Arps. It is a pleasure to be with you this afternoon.

Q44 Chi Onwurah: Thank you, Mr Leiter, for joining us and sharing your extensive expertise with the Committee. I wanted to look at strategic and critical industry. There are a series of cases where nascent or strategically important industries might become critical to national security in the future, but they are important to industrial and economic strategy now. For example, it was not clear that there was a direct national security threat from Deep Mind’s artificial intelligence algorithms in 2014, but it is clear that the company was important for the UK then, and it is clear that artificial intelligence is important for national security now. That is reflected in the Bill. Based on other countries, how do you think the Bill can capture these forward-looking public interest or industrial strategy concerns within national security grounds for acting?

Michael Leiter: Thank you for the question; it is quite a good one. It is one that the United States has struggled with, as have other countries and their regimes. We suggest a couple of approaches. First, one piece that I think the Bill does quite well—although there is a countervailing concern that has to be addressed—is not having a de minimis threshold, in terms of dollars. The Bill is quite strong in that regard, because as you note in your question, just because someone acquires a start-up company for a relatively modest amount—a few million pounds—it does not mean that that company and that technology does not have, or will not have, very significant national security implications.
The flipside of that is, of course, that without the de minimis threshold, it becomes a far more difficult regime to manage. The volume can be much higher. It can potentially poison venture capital innovation. This is best balanced by not having a threshold for dollars, as you do with the no de minimis threshold, but then making sure that regulators have the ability to review these matters extremely quickly. The pace of investment in emerging technologies requires a very short timeframe. It is not like a large public company transaction, which has extended timelines. As long as one implements a very rapid review process and has the officials in Government to keep up with that potential backlog, I think those two interests can be effectively balanced.

Q45 Chi Onwurah: To follow up on your point about notifications, the Government impact assessment for the Bill suggests that up to 1,830 notifications might come in each year under this new regime. I am concerned that they look at the impact on the acquirer, and they do not capture the fact that almost every start-up seeks capital investment at some point. What impact do you foresee on the overall UK investment climate, and what might FIRRMA and CFIUS changes lead us to expect in our case?

Michael Leiter: This is very important. I was rather taken aback by two things about the Bill. The first is the projection of over 1,000 matters, going from the very, very few that the UK has traditionally had; this is an explosive increase in matters. I am concerned that no Government are ready for that rate of change. Even in CFIUS under FIRRMA, although there is not an increase in the overall number of long-form notices, in the short-form declaration process, there was an increase. It was relatively modest, an increase of about one third, so the US now reviews approximately 240 full cases, and about another 100 short-form.

When you talk about going from a few dozen to 1,000, you have to be very sure that you have both the resources and the expertise to process that. I would be concerned by that. Another case where your Bill goes much farther than anything I have seen, and certainly much farther than anything in the United States, is in encompassing not just acquisition and investment in businesses but acquisition and investment in supplies, goods, trade secrets, databases, source code and algorithms, so it is tangible and intangible objects, rather than businesses. That scale is very difficult to predict, and if one is more in the mood for incremental change, so as to see how a Government can handle change, including those elements poses some real risk for management.

Q46 Nadhim Zahawi: Thank you, Mr Leiter. That is really good feedback. Building on the point made by my colleague the shadow Minister, the CFIUS regime in the US obviously operates successfully, in the sense that the US remains an incredibly attractive place for inward investment. How have the US regulators balanced those two things? Does the Bill as drafted provide us with a similar opportunity to strike that balance?

Michael Leiter: I am honoured to have worked with the UK Government for 20-plus years on security issues, and over the past 10 years on economic issues. I certainly think you have the potential to strike that balance. In the US, traditionally, the CFIUS structure was a balance between the security agencies, which tended to want to restrict investment, and the economic and commerce agencies, which tended to want to encourage that investment. Certainly, in the case of China, we have seen massive decline in direct investment because of both Chinese controls and US controls: a tenfold decrease from 2016 to 2018. But as you said, the scale and strength of the US economy mean that global investors look to the United States no matter what.

I do not mean to make less of the UK in any way but, from a UK perspective, one has to be a bit more careful, because you simply do not have the scale that inevitably will attract investment. The US could be a rather poor place to invest, with lots of regulation, but people would still come because of the scale of the market. You don’t have quite that luxury. That is not to say that the UK has not for generations been an incredibly attractive magnet for investment, but whereas the US can err on the side of security, from my perspective, admittedly an American one, the UK might want to be a bit more careful about restrictive measures, because the size of the market is not in and of itself so inherently attractive that companies and investors must be in it. We have a bit of an advantage over you on this one.

Q47 Peter Grant (Glenrothes) (SNP): Good afternoon. I do not know whether your saw much of the previous witness’s evidence, but she commented on how countries such as the United States have a limited number of excluded or exempt countries—including the United Kingdom—that are not covered by their equivalent legislation. What are your thoughts on how the Bill does not have any provision to exempt entire countries from its scope?

Michael Leiter: I was able to see part of Dr Lenihan’s excellent testimony, which was quite informative and good. First, to clarify, although the US does make distinctions for exempted countries—obviously those are the UK, Australia and Canada right now—that exemption is extremely narrow. It limits those countries only on mandatory filings, and only if investors from those countries fulfil a fairly rigorous set of requirements. So, although Canadian, UK and Australian investors were quite excited before CFIUS reform, when the regulations about excepted investors were promulgated, that has had a minimal effect on those countries. It is not a significant advantage. Those countries are still subject to CFIUS review in the vast majority of investments they make. Now, that gives only half the story, because clearly investments from those nations go through a much less rigorous review, and come out with much better results than those from countries where the US has a more strained security relationship.

On what I see in the Bill, I would say a couple of pieces about the excepted possibility. First, as I read the Bill right now, it covers investments from other UK investors—not even simply those outside the UK. If my reading is correct on that front, I have to say that is probably not wise. We have already talked about the significant increase you could have, based to some extent on mandatory transactions as well as some other factors, and I think trying to take a slightly smaller bite of the apple and not including current UK businesses in the scheme would be well advised.

To the extent one has open trade and security relationships with certain countries, lowering the bar for review to exempt them, or including things such as
dollar limits and getting rid of the de minimis exemption, might well make sense. That is another way of making sure that the Secretary of State can focus on those areas you think are the most sensitive from a security perspective. Whether we like to do so or not, that can be aligned to some extent with the country of origin of the investor. It is not always perfect—one must often look below that, especially when dealing with limited partners and private equity—but it is a relatively easy way to reduce the load you may experience if all these measures were implemented.

**Q48 Nickie Aiken** (Cities of London and Westminster)  
(Con): There are 17 sectors included in the Bill, but are any sectors missing? Is there scope for future-proofing?

**Michael Leiter:** Right now, it is a very robust list. In fact, I would probably err on the side of going in the other direction. I think this is a good list of 17, but what is critical is that these sectors gain further definition about what this actually means. Let me give you a quick example: artificial intelligence. I invite you to go online and try to find more than 10 companies in the world right now who are doing well and do not advertise their use of artificial intelligence in one way or another. It is one of the most commonly used marketing terms there is: artificial intelligence and machine learning, all to serve you in your area of work. If one interprets artificial intelligence as encompassing all those businesses, there will be a flood of reviews. Now, if one focuses on those companies not using artificial intelligence but actually developing artificial intelligence, I think the definition of the mandatory sector will make much more sense. That is an area where I think the US is still finding its way. As Dr Lenihan noted, the US began with a set of listed sectors where transactions were more likely to be mandatory. They eliminated that and now focus purely on export controls, but again, it is not that a company uses export control technology; it is that it produces export control technology.

That may be too narrow for your liking, but if one mapped out your 17 sectors as currently described to their widest description, I think there would be very little left in the UK economy, except for some very basic manufacturing and some other services that would not be encompassed. This is a very broad list and, again, I think it will take some time to tune those definitions so they are not overly encompassing. Again, if you look at data infrastructure, communications, transportation—at their extreme, that is quite a broad set of industry descriptions.

**Q49 Sam Tarry** (Ilford South) (Lab): Just thinking and reflecting on a few of your comments, Mr Leiter, if we are given the timescale that you have had at CFIUS—it has a long history, it has been here a long time and you have brought in a new and updated regime to meet the threats that the US Government see are coming towards us—how could we translate that to our context as we see threats that the US Government see are coming towards us have brought in a new and updated regime to meet the threats that we could use? Are there new threats that have been captured by the new regime that you now have in place?

**Michael Leiter:** Thank you for your question. I will do my best to provide some advice. I do so with some hesitation, because I readily accept from my experience working with the US and the UK that although we are related, we have two very different systems. The scale of our Governments and the scale of our private sectors are different, so one should always be very careful of trying to learn lessons from any other single country.

First, I would try to take this incrementally. This is a very big step and in trying to predict second-order and third-order effects of this—both the security effects, which may be positive, and the economic effects, which may not be as positive—I would tread carefully. I would start narrowly, then open up the aperture as necessary, rather than opening up quite wide and then narrowing it down.

Secondly, I think it will take some time, and not only to develop the administrative capabilities to handle this volume within the Government. I think you would have a significant amount of learning to do within your private Bar as to how this works, but also how to manage those voluntary filings. You are talking about including voluntary notifications across the economy, which I think is quite a sensible approach, but that requires a degree of collaboration between the UK security sector and the Secretary of State and the UK private legal Bar and commercial sector to understand where those national security threats and risks may lie. This is something that has developed in the United States over the past 20 years, but does not, in my view, yet exist fully in the UK.

Next, I would say that it is very important to consider how this should be applied for limited partners in private equity. Private equity plays a massive role both in UK and US investment and having clear rules about limited partners and the rights that may or may not implicate non-British ownership in those private equity funds is a very important step to take and one that should be clarified up front. It should not be approached without further clarification.

Lastly, I think it is important to build into the scheme the ability to evolve as technology evolves. I heard some of the questions about social media during the previous panel and it would have been very difficult to understand the sensitivities that are implicated by social media 10 years ago, or perhaps even five years ago. The ability for the review and notification to evolve with changing technology, access to data and new national security threats is critically important. The regime should be a living one that will evolve with those changed political or technological circumstances, not one that keeps still.

**Q50 Sam Tarry:** Following on from that, given the scale and breadth of the challenge you have outlined, covering so many areas, including private equity, how do you think we would best resource and staff this arrangement? Clearly this will be a potentially large undertaking for the Department as it stands at the moment.

**Michael Leiter:** Having worked with some of them, I think you have some outstanding individuals in some of the relevant Departments who can look at this matter. I believe that they will have to increase their interaction with the security elements of Her Majesty's Government in a way that does not perhaps yet fully exist. The departments and agencies that I worked with while I was in the US Government were generally fairly separate from these sorts of investment review, and it will be necessary for training among those agencies to ensure that there is an understanding of the nature of acquisitions and investments in the private sectors in a
way that security agencies do not yet fully understand it. Teaching the economic agencies about those security concerns will also be necessary. I think that the Government will need an initiative to make sure that there is a degree of integration across Her Majesty’s Government based on an understanding of those cross-fertilisations, which will take some period to take hold.

Q51 Andrew Griffith (Arundel and South Downs) (Con): It is a pleasure to serve under your chairmanship, Sir Graham.

Thank you for joining us, Mr Leiter. It is invaluable to have a practitioner’s perspective as we make legislation; that is something I would like us to do more often. I wanted to ask about your practitioner experience with respect to two things: first, the inclusion in the Bill of personal criminal sanctions and, secondly, its behavioural impact, from the point of view of attorneys and lawyers advising clients, on the likelihood of notification.

Michael Leiter: Let me answer that with two points. First, there is clearly an educational process when such a new regime comes into place for bankers, attorneys and business people. This regime will take some time for them to understand as well, but I think that the UK, like the US—I have already drawn some distinctions about the risk of reducing investment in both countries—remains overall one of the most attractive places to invest in the world. One of the reasons is so attractive is that it has a strong rule of law and courts system, and clear legislation. In that regard, those who would come and invest in the UK very much understand the need to comply with these regulations, and criminal and civil penalties.

What we have seen in the United States is an appreciation, even if there was some initial shock at the scope of the review and what might be considered a national security concern, and a very robust understanding that we at the Bar and our clients have developed about the importance of these reviews and compliance with the legal regime that applies. I do not see any likelihood of, or reason for, the same not taking hold in the UK. I find that my clients are quite appreciative of the counsel we give them, whether it is related to the US or a UK foreign investment. Overall, I think that the concern tends be less about personal criminal liability, although such concern undoubtedly inspires some, and more about the ability to continue to have good, strong, open relations with regulators in the country in which business is being done. That is critical.

The second piece I would commend you on, which is much better than the US system, is that the Bill provides for a very full and complete review by your courts. That is quite positive, especially with the change that will have to be implemented by the Government. The fact that there is an ability to turn to the courts for review is central and important. As you may know, that is not nearly equivalent in the United States. The ability to pursue remedies in the courts in the context of CFIUS is actually quite narrow. On behalf of my clients, and for improvement of the system, I am quite jealous of your approach on this front.

Q52 Stephen Flynn: Thank you for your comprehensive answers, Mr Leiter. I am afraid that I have crossed out many of the questions that I had because your answers have been so comprehensive. To go back a couple of steps, you have referenced the structure and understanding of the regulations, and the challenges posed by that, as well as the understandable challenges posed by the creation of a new body to oversee the call-in process. That, understandably, will take time to implement. Do you think that lag and uncertainty might put off investors? On a similar line, in terms of the timeframe for call-in, there is the five-year retrospective, the six months for the Secretary of State to act, and the potential for up to 75 days or more to act. Is any of that likely to put off investors?

Michael Leiter: I will take those in reverse order. You are absolutely right: the timing is often central to much of what goes on in the world of mergers and acquisitions. With respect to the effective five-year look-back with six months of notification, that is not dissimilar to what we have in the United States. It serves a very useful purpose in that it certainly incentivises parties to file voluntarily.

To the extent that one includes a voluntary notification regime, I think that it is very important to have some period of look-back. I do not have a strong view whether that should be four or five years, but I do think that look-back is important in a voluntary regime. Of course, in CFIUS, there is no statute of limitations at all, but in reality, we rarely see CFIUS going back more than one year, at most two or three. Again, I think that if everything were mandatory, this would not be required, because to the extent that one has a voluntary regime, it is perfectly reasonable to give the Government an opportunity to look back. Doing so also provides an important incentive for parties, because they will often calculate the likelihood of the Government coming and knocking on their door one or two years down the line. I think that a general approach makes sense.

With respect to the specific timeline for the reviews, your Bill mirrors not perfectly, but closely, the CFIUS approach. In most cases, that timeline works relatively well, but there are a few exceptions. First, in public company mergers and acquisitions, this is no problem. The period between signing and closing tends to be quite long, so the idea of 75 days is not problematic. Similarly, whenever you have a matter where there is a competition review, which of course encompasses many things—on our side, Antitrust and Hart-Scott-Rodino, and in the UK and EU there are separate regimes—that 75-day period seems to fit relatively well, provides sufficient time for the Government do their review, and will not be problematic.

The place where I think this is more problematic—I apologise that I cannot recall the Member who asked the question—is in smaller-scale, early-stage venture investments. That is where deals can go signed to close within hours or days, and having that longer period could be quite disruptive. In that sense, to the extent that one is concerned with early-stage technology investment, these timelines can be problematic, and finding a window to get through that quickly is quite important.

Finally, with respect to the timing of implementation and the time that it will take to get up to speed, I think it is important to have this effectively phased. I know I have said this several times, but I think this is a rather seismic shift in the UK’s approach to review of investment. I am not saying it is a bad shift. I think it is a shift that is consistent with the United States and other allies in Europe, and Australia. I think it is going in the right
direction, but it is very significant, so having some opportunity to make sure that both the private sector and the public sector are ready for that and understand the rules—that the sectors are defined in a clear way and that parties understand, especially in the realm of having criminal penalties—I think it is particularly important to do that.

I think there are probably ways, to the extent you are worried about a risk during that interim period that things are not being reviewed, of addressing that as well, with the look-back provision, or initially implementing things in a narrower or separate sense, but I would be a bit careful about not having some transition period, which allows, again, both the public and private sectors to adjust to this very significant change.

**Q53 Stephen Flynn:** Obviously, the consultation in relation to the 17 sectors, which was mentioned earlier by a colleague, is going to run beyond the end of the Bill—perhaps, I imagine, of its being implemented. The Government may well just get it through the House, but were that to happen the consultation would still be ongoing, so, again, I am sorry to try to pin you down on this, but do you think that would create a level of uncertainty that investors simply would not be comfortable with, and that they might well look elsewhere unless the Government were clear about having a system in place that makes things more flexible for business?

I am sorry to flip back again, but on smaller-scale early-stage ventures, we said this could be an issue, and again, I am sorry to try to pin you down: could it, or will it, be an issue? Where would you lean in that regard? Will we find that investors seek to go elsewhere with this a little bit more, where the timing is a little easier?

**Michael Leiter:** I think it will be an issue unless you are confident that small-scale, early-stage investors can have their transactions quickly reviewed within roughly 30 to 45 days. If it is longer than that, that will make the investment climate, I think, worse than other competing markets. I think that could have an impact.

On your first point, let’s face it, business always likes predictability, so you always want certainty, but deal makers have to understand risk and understand some uncertainty. That is inherent. I will say, it is not that the US has done this remotely perfectly. The US announced almost two years ago that it was going to further define foundational and emerging technology that would then be subject to different levels of review under CFIUS. Here we are, almost two years later, and we still do not have that. The fact is that there has been uncertainty, and there will be uncertainty on your side as well. Having those definitions clarified as quickly as possible is good.

Do I think that a lack of clarity for three, four or five months about these sectors will suddenly stop investment in the UK? No. I don’t want to exaggerate it to that degree. You can try to pin me down, but the fact is this is all a matter of balancing, and there is no clear answer about when people will stop or start investing. More clarity is better. The faster there is clarity, the better, and to some extent, a lack of clarity will push people to look at other markets.

**Q54 Stephen Kinnock (Aberavon) (Lab):** It is a pleasure to serve under your chairmanship, Sir Graham, and thank you very much, Mr Leiter, for your insightful evidence. I was wondering about the acquirer definitions, which are an important part of the equation, and the extent to which the legal structure and ownership base of the acquirer should play a role and, perhaps, be more clearly defined in the Bill, in terms, also, of what the triggers are for the screening process. If the acquirer is a state-owned enterprise or a state-backed investment vehicle, should that trigger a, for want of a better word, tougher or more robust screening process? If so, what might that look like in practice, and do other regimes contain that differentiation between a private sector acquirer and a state-backed acquirer?

**Michael Leiter:** Thank you for the question. The answer is that many regimes do draw such a distinction, which is generally a good thing, but there is an exception to that as well. This is important on two points, one of which I have already raised so I will not belabour. Understanding the ownership structure of private equity to understand how the Bill will or will not handle limited partners who are managed by a general partner at a fund is very important. That is a significant amount of investment, and clarity on that point is critical.

In the United States, for example, foreign limited partners in US private equity are fundamentally, overall, not considered for CFIUS. For foreign private equity investing in the United States, foreign limited partners are considered. Again, that is broad brush, but that is fundamentally how it works. With respect to sovereign wealth funds or state-controlled investments, there is a perfectly good argument that yes, the standard of review might be a bit more rigorous. In the United States, the way that works is that if a foreign Government-controlled entity invests in what is known as a TID business—one that deals with critical technology, critical infrastructure or sensitive data—in the United States, and if they own more than 25% equity, that is a mandatory filing. So, it is increasing the likelihood of a mandatory filing if you are controlled by a partner.

Using such a standard makes sense. Right now, I do not believe the Bill provides many opportunities for that. You are already saying that, in the 17 sectors, all will be mandatory and there is no de minimis threshold. From that perspective, whether you are a sovereign wealth fund or not, it will be mandatory in a large scale of matters. You could of course say, with a dollar threshold such as you have now, that in the voluntary sector, if it was a state-sponsored entity, that would also be mandatory. I think there is some sense to that, but I would move slowly on that because, as I have noted several times, you are going to have a relatively high number of mandatory filings in the first place.

There is a second important piece to this, though, about whether you actually want to change it for Government-controlled entities. That is, especially in the case of China, but other countries as well, the distinction between state controlled and not state controlled is becoming less and less. Again, in some western democracies, it is quite clear whether it is a state-controlled entity, but to the extent a foreign Government can influence a private sector actor, that distinction starts to fade away, at least partially. Under your regime, it is not clear to me, other than expanding some voluntary into mandatory, how that will apply, and I think, to some extent, the distinction is losing some of its fineness.

**Q55 Stephen Kinnock:** I have a small follow-up question. The points that you have been making about private equity are very interesting. Large swathes of our social
care system in this country, particularly residential care homes, are owned by private equity companies. Do you think it would have a material impact on the assessment of a private equity company if it was looking to invest in the social care sector, which one could argue is critical national infrastructure?

Michael Leiter: That raises two excellent points. First, yes, I think private equity is quite methodical about thinking of those restrictions. Whenever I deal with private equity in the United States, whether it is US private equity, foreign private equity or sovereign wealth funds, there is always a consideration of the way in which the business in which they are investing may be subject to a national security review and whether or not they will, even if approved, lose access to critical information, technology or other management control of the business in a way that would make it a less attractive option. From a US Government perspective, I think that is entirely appropriate; it is the entire purpose of the national security reviews.

It could affect the choices of private equity in the UK, but one still has to identify what the national security risk would be—and not just what the national security risk might be, but the extent to which, if the investment was allowed, the Government could still put in place restrictions that would eliminate or mitigate that national security risk. That leads me to make two very quick points.

First, there has been much commentary about defining what national security means. I would not welcome to go down that path; frankly, I think it is a bit of a fool's errand. The Government will define national security as they may. Certainly, they should not overreach in extreme ways, but this is not one that I think legislative language is well tuned to trying to capture. That is not to say that it should not be limited in practice, but trying to capture it in legislative language is, I think, exceedingly hard. Again, it changes over time, depending on technology, access to data and other factors. One can imagine certain things that, before covid, we never would have considered to be issues of national security, but that are today. Capturing language for that is quite challenging.

The second piece is making sure that you have a good regime. We have been talking so much about screening, punishment and what falls into the bucket of review. There has been much less discussion here, and there is much less discussion in the law, about what mitigation and rules and enforcement there will be. If you permit a foreign investor to invest in one of these sectors and you put in place certain protections to protect British national security, how will you actually make sure that that occurs? It is wonderful to have these rules, but unless you actually have the regime and follow these things and ensure that there is enforcement and monitoring of them, you will have spent an enormous amount of time and money but actually not protected national security, so I think we should not give short shrift—[Inaudible]—deal is closed and approved but still being monitored by the Government for the very national security risk we are trying to protect against.

The Chair: We have to end this session at half-past 3, so I think that this will be the last question and it will come from Simon Baynes.

Simon Baynes: Actually, Mr Kinnock has asked my question, Sir Graham.
Q57 Chi Onwurah: Welcome, Mr Petrie, and thank you very much for placing your expertise at the disposal of the Committee. You have experience of mergers and acquisitions, and I am sure you will be aware that we have seen several transactions in this country—I will name GKN and Melrose, SoftBank and Arm, and indeed I will include the failed Pfizer-AstraZeneca case—where it appeared that the Government had no legal powers to secure jobs, pensions, research and development and key UK industries, relying instead on behind-the-scenes soft power. That created uncertainty and lack of clarity for investors. Do you think that is a problem for both Government and investors, and how do you think we could effectively tackle that gap?

David Petrie: The Government have been very clear that the purpose of this legislation is to focus on protection of national security. The guidance notes they have issued, which accompany the Bill and are intended for market participants, are very clear on that aspect. I would suggest that probably all the factors you listed in your question extend beyond a simple matter of national security—if national security can be a simple matter; no doubt that this Committee has heard this afternoon about the difficulties associated with defining national security. Many of the factors that you set out there, important elements though they are to all stakeholders in a company, are not necessarily matters of national security.

I would also say that that for some of the companies that you mentioned there, while certain of their activities might well be included within the scope of this new Bill, it would be very difficult in certain instances to suggest that they had a direct impact on our national security. Of course, that would be up to the new investment security unit to determine, based on a full representation of the facts. If that unit was at all concerned, a procedure is set out in the Bill whereby it would be able to call for as much evidence as it felt was necessary in order to be able to reach a balanced determination on whether investment by an overseas entity did indeed constitute a real threat to our national security. I think that is the point here.

Q58 Chi Onwurah: Thank you for your response. If we look at GKN-Melrose and, indeed, even SoftBank-Arm, we could consider that they had national security implications. I suppose the point is that there are essential industries that are directly critical for our economy, but that at first may not seem directly critical for national security because they are evolving technologies, as in the case of Arm and the ongoing takeover by Nvidia, or because they are indirectly critical as suppliers to downstream industries that support national security. Again, companies have cyber-security systems in place to protect against the actions of malign actors, but critical infrastructure already has systems and processes, and invests heavily in capital equipment, to ensure that there is not an interruption of supply. The question would be the extent to which ownership of that asset would specifically give the owner of that shares the ability to get in and interrupt supply. That almost implies mechanical breakdown or some deliberate and malign disconnection. Again, companies have cyber-security systems in place to ensure that critical infrastructure does not fail.

The point you made was about whether suppliers of that sort of service to our critical infrastructure and their ownership should be subject to review. As the Bill is set out and as the sectors in scope are drafted—of course, the Government will consult over the next month or so on those definitions and whether they should be adjusted or whether they are as wide-reaching as they should be—a business like that would be captured. The investment security unit and, presumably, the security services would have an opportunity to review whether or not to allow that to go ahead.

Q59 Nadhim Zahawi: Mr Petrie, you will understand better than most that businesses will want to ensure information is being treated sensitively in any transaction. I want to capture your view of the closed material procedure for judicial review under the Bill and what you think of it in terms of that sensitivity of information.

David Petrie: I think a quasi-judicial review is really important and a part of the process, and then, if necessary, there is judicial review. I think the question cuts back to how many times that is likely to happen. We have to step back a little bit and recognise that that would be a situation where the parties to the transaction are challenging the Secretary of State’s decision as to whether or not this is in the interests of national security.

I would assume that if the sellers are British companies, they will probably have received what they feel are adequate assurances that it is okay to sell to an overseas acquirer, but the Secretary of State takes a different view, presumably based on evidence provided by our national security services. Ultimately, if there is a compelling body of evidence to suggest that a transaction should be modified or adjusted or, in extremis, blocked, it would be quite an unreasonable group of shareholders to disagree with that if the Secretary of State was applying the test as set out in the Bill, and indeed in the guidance note, that intervention is to be limited only to matters where the national security of this country is at threat.
That is quite different from the national interest. It is tempting—or possible, rather—in this debate to get sucked into questions about what we should and should not be doing in this country. That is not what this is about. The Government have been very clear to the investment community, and to British business more generally, about the purpose of this legislation. That is why, although markets and investors recognise that it will take a certain amount of time and effort to comply with a mandatory regime—the Government have been very clear about their purpose in introducing that—the market is generally favourably disposed towards it. We need to see—to help us with that, beyond what has already been issued, which is very helpful, I have to say. As the market evolves, that would be extremely helpful.

Q60 Stephen Flynn: Thank you, Mr Petrie, for your answers so far. I just have a couple of straightforward points for you to address. We discussed the timeframe in earlier sessions, in relation to the five years of retrospectivity, the six-month call-in and the potential 75 days. Do you have any concerns about the impact that that might have on potential investors into the UK? On a similar note, in terms of the fact that there will potentially be in excess of 1,800 notifications annually, an entirely new body will have to be set up, possibly working across Departments and involving the security agencies. A lot of detail will need to be put behind that, and again, that will take time. Do you think any of that will cause any uncertainty among investors and perhaps lead them to look elsewhere?

David Petrie: Perhaps I could deal with the second part of your question first, if I may, on the potential number of notifications that the new legislation is going to necessitate. The first point I make about that is that this new investment security unit will need to be very well resourced. A thousand notifications a year is four a day; I am just testing it for reasonableness, as accountants are inclined to do. That is quite a lot of inquiries. I note from the paperwork that the budget allocated to the new unit is between £3.7 million and £10.4 million. I do not know and cannot comment yet as to whether that is likely to be adequate. What I can say is that the impact statement also suggests that of those 1,000 or so transactions which are going to be subject to mandatory notification, only 70 to 95—the numbers set out in the impact statement—are likely to be called in for further review by the Secretary of State, where a very detailed analysis of those businesses and the potential target is going to be necessary.

As, I hope, has been echoed by other witnesses, it is going to be extremely important that this new unit can engage in meaningful pre-consultation with market participants—with British companies, finance directors, and investors and their advisers—so that they can get a pretty clear steer at an early stage as to whether or not this is likely to be subject to further review. If the unit operates in a way where it can give unequivocal guidance to market participants at an early stage and is open to dialogue—I understand from discussions with the Minister that this is the way the unit is being asked to operate—that would be extremely helpful.

I would say that that is about process, certainly, but I think it is also about culture. It has to be a balance, which is well achieved by the Takeover Panel, for example, in this country. You do not tend to approach the Takeover Panel unless you are well-informed and have done your homework—"Don’t bother us with stuff you ought to know" is the unwritten rule. But at the right time and place, I think it is important that there is an opportunity for market participants to be able to engage in a dialogue. The guideline where we put this is "Don’t bother us with stuff you ought to know" question is going to shift. At the moment, we really do not know a lot about the way the Government are going to look at certain transactions. We do know which sectors and operating activities are in scope, but, again, we are not quite sure at what stage it will be right to consult and try and get clear guidance. This process will evolve.

I note that the Bill includes provision for the new unit to issue an annual report as to the number of transactions called in and the sectors they are in. That will be extremely helpful for market participants. An issue here, I think, is potentially asymmetry of information. In order to resolve potential asymmetry of information amongst the investment and advisory community, it would be very helpful that the unit is well resourced and able to engage in meaningful pre-consultation, but, by way of a third recommendation, it would also be extremely useful if it was able to issue meaningful market guidance notes, similar to the notes that accompany the takeover offer document. That would again be extremely helpful so that we can understand. It would help the market to be better informed. If, for example, the unit is receiving a lot of notifications that are not correctly filled in or with important details as to ownership missing, then it would helpful to have guidance notes as to what we can do to make sure this process works with more certainty, speed, clarity and transparency—these are the things financial markets need to see—to help us with that, beyond what has already been issued, which is very helpful, I have to say. As the market evolves, that would be extremely helpful.

Q61 Mark Garnier: May I follow on from that question about the resources? There is talk about 1,800 companies coming forward and voluntarily disclosing that this transaction is going on, but I am just as interested in what happens with those companies that do not disclose this? I am not for a moment suggesting that there are a huge number of dishonest actors involved in the corporate finance market, but given the fact that the threshold has been reduced to £1 million a year, when you read the impact review, there are an awful lot of small businesses with turnover of about £1 million a year that are not very well resourced for their corporate governance functions and that could easily miss the requirement to disclose, should a transaction come through that is enticing for the shareholders, who are presumably offered the same as the directors. Are you confident that the Government have in place sufficient resources to be able to police the whole sector, to make sure that we are not missing out on a number of transactions that are going through? Even if we do, are we getting in there quick enough to make sure that the intellectual damage is not done by the time we have found out what is going on?

David Petrie: That is a very difficult question. We will find out—that is the answer to that. I think businesses working in sectors where there is a real threat to national security know that. They know that they are involved in weapons design or designing software that could have a dual use. In advising companies over the years, I have found that no one knows better than the company directors about the value of their assets and their business, both from a market perspective and to competitors or others seeking to gain access to their technology.
The Bill has been in discussion for some years now, and the advisory community is well aware of its existence and of the Government's desire to put this legislation on the statute book, so I do not think there will be many corporate finance advisers for whom the Bill emerging last week was a surprise. I am very sympathetic to the points made about small companies falling under the provisions of the Bill, but I hope that it will be possible for them to complete what, in the first instance, is a five-page questionnaire—when completed, it could run to 20 pages or more—at a relatively low cost.

To my earlier point, I hope they are able to engage in formal and meaningful dialogue with the unit at the earliest possible opportunity by saying, “This is what we do, and this is what we are worried about.” They have to say, “We’re concerned about this. These are the people from whom we are hoping to attract investment to take the business to the next stage. How do you feel about the Government feel about xyz corporation?” I think that kind of steer would help remove a great deal of uncertainty from the circumstances that you have set out.

Q62 Simon Baynes: Thank you, Mr Petrie, for a very interesting presentation. I want to look at two areas. One was touched on by the previous witness: the inclusion of not only businesses, but tangible and intangible assets. That is one issue. The second is the acquisition of material influence over qualifying entities’ policy being another trigger point. I would have thought that these are more subjective—perhaps I am wrong—in terms of how you define them, whereas the other trigger points are obviously very clear cut. There are different levels of voting shares in the qualifying entity. I think the previous witness was somewhat surprised to see the tangible and intangible assets element of it and said that this goes further than other similar regimes in other countries. Can you comment first on whether you are surprised or whether you think it makes perfect sense? Secondly, is it easy to define the material influence and the assets, either intangible or tangible?

David Petrie: On the question of tangible assets, it really depends on what we are talking about. Again, it was trailed in the White Paper and the Green Paper that assets would also be within scope, so it is not going to be a surprise. It depends very much on the nature of those assets. In a relatively small country, the ability to acquire land or other buildings—strategic assets—immediately next to a sensitive military installation is, presumably, now included within scope because people who know about these things think it ought to be. I think the investment community will have a degree of sympathy there.

With intangible assets, that is a much more difficult question. It depends on the extent to which ownership of those assets is necessary in order for a malign actor to have the control or the information that they might need. It is possible to gain access to intellectual property through means other than ownership, so the question here is, how might those intangible assets be applied in ways that might prejudice our national security in some way? Again, that is something that the unit is going to have to assess on a case-by-case basis.

It makes sense to include assets that could be sold separately, without the sale of shares in a business. Companies often do that. They may well sell a parcel of patents, or parcel up a division and sell it on because it is no longer core to their operating activities. That is understandable. The investment community will understand that. In short, it is not a surprise, and we are going to have to find our way through this on a case-by-case basis.

Q63 Simon Baynes: Could you expand on one or two examples of such intangible assets? You have stated patents. Could you illustrate what you understand to be such assets?

David Petrie: That would be the most obvious example. There are things like industrial designs, blueprints or chemical processes that may not be subject to patents. It is typically those aspects of production and design that it is necessary to ensure would be in the scope of this kind of legislation.

Much of the discussion that has led to the publication of the Bill has been around the ownership of shares or of the business—as to whether that is actually the bit that malign actors might want to get hold of. That may not be what really interests them with the business. It may well be intellectual property or these other assets, which it is necessary to separately define. If they are able to get hold of those without buying the company, then it seems to follow that it makes sense to include that within the scope of this Bill.

Q64 Simon Baynes: But they would be quite difficult to police, would they not? How would you know—

David Petrie: Yes. I don’t think anyone is suggesting that the job of this new investment security unit is going to be straightforward. In fact, we are absolutely not suggesting that. It is going to be absolutely essential for Government Departments to work together and, going back to my original point, for this unit to be extremely well resourced, to be able to respond quickly and appropriately to what is put before it.

Q65 Peter Grant: Good afternoon, Mr Petrie. There will be some entities that try to take over British businesses where the warning flags are flown immediately, because it is well known that either it is a foreign state, or a company controlled by a foreign state. Often, it is difficult or even impossible to know who the ultimate controlling party of a business is if they have arranged to have their ultimate ownership registered somewhere offshore, where that information is not made public. Does the Bill, as presently worded, provide enough protection against a hostile power trying to infiltrate the system by going through a secretive intermediary state? If it does not, what more should be done in the Bill to protect us against that scenario?

David Petrie: This is an issue that is well recognised by the investment and advisory community. I think that, as you say so rightly in your question, the warning flags, flares or whatever they might be will already be going off if this is a particularly sensitive military asset that is being considered for acquisition. I think that the unit will be able to look first at the nature of the asset, and it will be apparent very quickly as to whether this is a very sensitive issue. If the acquirer is not a British public limited company, a British private company or one invested in by private equity, if the ultimate ownership is structured in a way that is not conventional—many companies are held through offshore companies for entirely conventional, obvious and transparent reasons for the investment community—and if there is something
strange about that ownership structure that makes it extremely difficult to trace the ultimate ownership, it feels to me as though that would be one of the 70 to 90 cases that the Secretary of State would want to review in a lot more detail. Then, due and diligent inquiries would be made to try and understand the ultimate ownership of those holding companies. There would be lots of complicated diagrams drawn, no doubt, showing who owns which bit of what and who are the key individuals and shareholders. The answer would be that, I am afraid, this unit is going to have to keep digging until they get to the bottom of who are the ultimate shareholders.

The Bill is drafted in such a way that you do not need to own much in the way of shares—or there are provisions included within it such that if an entity or individuals, or individuals reporting elsewhere, have control or influence over those holding companies, that in itself would be something we would be concerned about. The Bill includes provision for that because we know, and I believe the security services are well aware, that the equivalent of layering is used for acquisition of these sorts of businesses, or people have certainly tried to do that. So, it is going to be a matter of hard work and digging to get to the bottom of who really owns and controls those entities.

Q66 Peter Grant: When you talk about a lot of hard work and digging to get to the bottom of it, does that include potentially gaining information that is not in the public domain and from a jurisdiction where that information is not allowed to be disclosed? Does that potentially mean having to rely on information that is gained covertly by British intelligence, which then cannot be shared in open court if the case is challenged?

David Petrie: I suspect that would be the corollary of that, yes. We are probably dealing with a relatively unusual set of circumstances here. It rather assumes that the shareholders of the British company are absolutely determined to sell or take investment from an entity where its ultimate ownership is quite difficult to identify. We are dealing with quite an unusual situation. I do not know what resources the new unit will have at its disposal, but given that this is relatively rare and is a question of national security, I would expect that the Secretary of State would ask it to use whatever resources are necessary to gain the information it needs.

I hope—again, we will see—that the closed doors process for the judicial review, should it come to that, would enable national security to be protected, so that if there were some other breaches as a result of the investigation, or if explaining how we found out what we know caused a breach in national security elsewhere, that problem could be resolved. I am comfortable—I think that would be the right expression—that those difficulties can be dealt with in circumstances in which the absolute preferred option for the company is to take investment, but I have to say that I think those circumstances would be relatively rare.

Q67 Sam Tarry: How have you found your engagement with Government so far, and what processes are you looking for, in terms of how the Government engage with you and the industry—whether it is with your organisation or more widely? Do you have any comments on that?

David Petrie: Yes, I have. The Government have been very clear about the need to bring this legislation on to the statute book, and they have done so through the Green and White Papers. When consulting on the White Paper, they sought opinion from a very broad spectrum, including business groups, businesses, the investment community and so on. They have set that out in the response to the consultation.

The next consultation is the one on the sectors within the scope of the mandatory regime, and the next month or so is going to be a very important stage in this process. Defining those sectors in a way that market participants understand and that does not trigger manifestly unnecessary notifications is going to be very important, and we look forward to engaging in that process, as does the legal and investment profession and British business.

Q68 Sam Tarry: How do you think the mandatory notification framework could impact small and medium-sized enterprises in particular, which are obviously having a difficult time, given the consequences of the pandemic?

David Petrie: Yes, that is an important consideration. I hope that if small businesses have limited resources, that is recognised by the new unit, and that smaller businesses are able to have an open dialogue with it, and can say, “This is what we do, and this is what we need the money for. We are going to need it quite quickly because we are running out of money.” If the unit is able to give unequivocal guidance very quickly, that would be very helpful.

I would also say that the new unit should not treat the 30-day turnaround for a mandatory notification as the target. The target should be to respond as quickly and efficiently as it can, and in such a way that does not cause difficulty or distress for small and medium-sized companies. A five-page form for a small or medium-sized company seeking investment for a UK or a relatively straightforward overseas entity is not a terribly burdensome obligation. I hope that it will be possible for them to find their way through that at relatively low cost.

The Chair: I do not think there are any more questions, so once again I thank you, Mr Petrie, for generously giving your time to assist the Committee.

David Petrie: Thank you.

Examination of Witness

Chris Cummings gave evidence.

4.10 pm

The Chair: We welcome Chris Cummings, the chief executive of the Investment Association. Mr Cummings, would you be so kind as to introduce yourself for the record?

Chris Cummings: Thank you for the opportunity to appear in front of you. My name is Chris Cummings, and I am the chief executive of the Investment Association.

We represent UK-based fund managers, an industry of some £8.5 trillion used by three quarters of UK households today. We own roughly a third of the FTSE.

Q69 Chi Onwurah: Thank you, Mr Cummings, for sharing your expertise with us. We all recognise the importance of inward investment, and indeed of the Investment Association, to our economy. The impact assessment for the Bill estimates that up to 1,830 notifications might come in each year under the new national security
and investment regime, but those numbers do not capture the fact that almost every start-up seeks capital investment at some point. The requirements to notify are put on the acquirer, but I would like your thoughts on the impact that may have on start-up companies. As part of that, I imagine it will be especially hard to hold merger and acquisition auctions while checking on the outcome of these processes. What do you foresee will be the overall impact on the UK investment climate, and in particular on the ability of our most innovative start-ups to raise capital? I am often told that access to finance is the key barrier to start-ups growing, and staying in the UK as they grow.

Chris Cummings: Thank you; that is such a pertinent question. Before I address the substance of it, I want to try to describe the work of many of my members, which is broadly portfolio investments. They seek not to acquire a company but to invest, taking a very small stake—a fraction of a percent—of those companies. That provides an opportunity for those companies to receive the investment they are looking for, and enables us as investors to invest in a company, an industry or a whole sector in order to generate a return for the investors whose money we are managing. They tend to be pension funds and insurance companies—institutional investors.

Of that £8.5 trillion I mentioned that we manage, about 80% to 85% comes from institutional investors; the other 15% or so comes from retail: people on the high street saving in individual savings accounts and so on. Our view on the Bill is about how we can continue to do our work to help finance companies in the UK and internationally with the investment collateral that we can bring to bear. We do that in the two major parts of the market: listed companies and unlisted companies.

Perhaps I can address the point you made about small and medium-sized enterprises. We make investments in unlisted companies—of course, small and medium-sized enterprises are not listed organisations—by developing an understanding of sectors and industries. We look for individual institutions that we regard as high-performing—that is, high-performing over a long period of time, because we are patient investors, tending to take a two to three-year earn-out period. To help us do that, we need two things. The first is legal certainty around the investment climate here in the UK, so that we understand the rules of the game, so to speak. This particular Bill is helpful in establishing greater clarity about the rules of the game; we do have one or two caveats, but it is helpful. The other is publicly available information, such as analysts’ reports—the type of thing that we as investors would look to receive and interrogate, and on the back of which we would then make an investment decision.

We are really looking for whether the Bill helps make the UK more attractive; whether it helps us funnel savings into productive investment that can help companies grow, create jobs and so on; and whether it is adding to the legal certainty of our investments. You are right to ask about SMES; our members who invest in higher-growth companies are really keen to make sure that the process is as friction-free as possible, and that there are no surprises. Being very clear about a pre-notification regime is especially important to us, as is something like the five-year review period that could come after a deal has ended. Certainty about those 17 sectors is particularly important as well. That is why we have wanted to maintain a really close dialogue with the officials—the team that has sponsored this Bill—to make sure that no inadvertent barriers have been erected to us deploying that investment in the right way.

One of the suggestions we would like to commend to this Committee is something we have seen work particularly well in Japan, which considered a similar raft of legislation: a blanket exclusion for investment—not for takeovers, obviously, but for portfolio investment, where the investment industry wants to support unlisted or listed companies, and it is clear that there is not a desire to take them over, involve ourselves in the management of those firms, seek a position on the board or secure the intellectual property, but where we are just performing the role of long-term investor. That has been judged as being outside the scope of the legislation, but we commend that to the Committee as a practical step that takes forward the principles of the Bill and secures the “investability” of the UK’s investment landscape.

Q70 Chi Onwurah: Thank you very much. I note your suggestion regarding the blanket exception for investment funds. I had two quick follow-up points: first, could you say how they would be defined in such a way that would exclude, for example, foreign sovereign investment funds and so on, which might give cause for concern? Also, you said you had a couple of caveats. I take it that is one; what is your other caveat? 

Chris Cummings: Forgive me; I noticed that I missed the point about mergers and acquisitions. We regard the pre-approval facility that officials have mentioned—I believe the last witness mentioned it, as well—which is a way in which the team responsible could be approached ahead of a deal being put together, as a very sensible, practical step forward, as long as confidentiality was absolutely rigorously maintained.

In terms of definitions, we find the Japanese definition quite attractive, and again we commend it to the Committee. It clearly differentiates out investors such as the ones we represent, who are looking to provide capital for a company and share in its success for the benefit of the investors whose money we manage, but are not seeking to take an active role in the management of those companies. We are not looking to put somebody on the board; we are not looking to intervene directly in day-to-day management decisions. Our relationship is with the board chairman and so on, in order to engage in a constructive and strategic discussion, but we stop short of securing assets or taking an active role in management. That is a system that works well.

Turning to our caveats, I mentioned the five-year review period. We undoubtedly recognise the spirit in which this legislation is drafted, but Governments change, as does public opinion. The strength of this Bill is that it is focused around national security. Perhaps a definition of national security may go a little further in helping investors as well, because we could not really strike upon a catchy, well-rounded use that defined national security, and have a reluctance to move away from national security; we would hate to see the Bill being widened into more public interest ability.
A final point to note would be the interplay between this legislation and the Takeover Panel, which has a different and distinct role to play. The notification percentages are slightly different: it is 25% in the Bill, and 30% in the Takeover Panel, so ensuring that there was no accidental misalignment would be most useful.

Q71 Nadhim Zahawi: Welcome, Mr Cummings. You mentioned the feedback from your members about keeping the Bill focused very much on national security. The message that we want to get out there is that Britain remains very much open for business, and that we want to maintain our place in the premier league of foreign direct investment. How has that statement of policy intent, which we published alongside the Bill, landed with your membership?

Chris Cummings: When it comes to a clarification point around national security, this is similar policy-intent-driven legislation to what we have seen in other emerging markets, such as the US, Germany, France and so on. We do not find that it is out of step with other developed markets. In other jurisdictions—I will take the US as an example—the legislation has started small and then grown as people have become familiar with it. The UK, perhaps because we feel we are playing catch-up—that is not for me to say—has started on a larger scale first. That is why there are queries around scope and around the durations. We look forward to engaging with the definition of the 17 sectors to ensure it is as specific as possible, and to ensure that we understand the operation. We would like to hear from officials and colleagues in ministerial positions on how they see it working in practice, so that the investment community is really clear that the rules of the game have not changed, and that the UK really is as attractive as we want it to be for incoming investment.

As I mentioned, we represent UK-based investment managers, but of course, those organisations are headquartered not only across Europe, but in other parts of the world, particularly the US. We are managing pension scheme money not only for UK savers and pensioners, but from other parts of Europe and places as far-flung as Brazil. If we as investors were looking to make an investment in UK plc, we would need to be clear about where head office was, and where the money was coming from. All those things could be either pre-approved or ruled in court as quickly as possible to ensure that there is not a missed beat in attracting the investment that we all want to see.

The Chair: Nickie Aiken.

Q72 Nickie Aiken: I forgot to say earlier that it is a pleasure to serve under your chairmanship, Sir Graham. Mr Cummings, thank you for your time today. Are there any particular areas in the Bill that concern you—that you think may put off the investment community from investing? Also, what would you say are the particular strengths of this Bill?

Chris Cummings: As for particular strengths, we feel that the aspects that deal evidently with national security are strengthening a regime that needed some modernisation.

On the protection of intellectual property, one of the key areas—it is absolutely essential for us as investors—is knowing that if we are investing in a particular company, we are doing so because, depending on the market and sector it is in, we feel that the intellectual property is clear, maintained and protected by clear legal contracts, and that if something goes awry, we, as investors, have recourse to legal sanctions.

There is much in the Bill to be commended. In terms of areas of weakness—forgive me; I feel I have touched on these—it is about ensuring that, as investors, our position is clear and understood. In investing in a company, when doing that not to try to take it over or seize the reins, it is to provide more of a long-term investment to support the company’s development. We do not feel that quite comes through in the way the Bill has been written at the moment. It has been written, rightly, for takeovers. We do not want to be hit by ricochet—by accident—in wanting to continue to support UK plc and find that new barriers have been erected that prevent us doing that, simply because this part of the investment landscape had not been completely thought through. That is a caveat, rather than a point for deep consideration.

Q73 Nickie Aiken: On the 17 sectors that were included in the Bill, do you think there are too many or do you think any sectors are missing?

Chris Cummings: That is something we are looking forward to engaging with. When you first hear it, 17 sectors sounds like quite a lot, but having worked through the 17 sectors and looked at some of the draft definitions, I think that each one is justifiable.

We would be keen to point out a few things to the Government. First, the greater the specificity around the definitions, the better. Secondly, we should not rush to change the sectors by adding to them too quickly. Investment needs a degree of stability, and legislative stability most of all.

Thirdly, in consulting with industry and thinking about the operations and practice, I would ask to have industry expertise around the table. We found time and again working with officials—they are hugely valuable, talented individuals, but do not come from a commercial background, almost by definition, although some do—that having the commercial insight, we can play a role in nudging in the right area, to ensure that nothing is hard-coded that would prevent a deal because the narrative has not been appreciated. Having that industry insight would be a big step forward, if it could be accommodated.

Q74 Peter Grant: Good afternoon. The Government’s impact assessment expresses the view that a national security regime such as this does not have much of an impact on overseas investors and their investment decisions, as long as they are comfortable that any interventions are appropriate and the regime is predictable. Do you share that view?

Chris Cummings: With any new piece of legislation, and certainly one of this character and this far-reaching, investors will always want to understand the motivations that led to it being introduced, how it will work in practice and whether we can give case studies as quickly as possible to prove that it does work in this way.

The important thing—I cannot stress this enough—is how it gets spoken about by Ministers. That enduring political support for investment carries such weight with investors. More than the words on the page, what matters
is how it is presented—how Ministers then talk about the desire to continue to attract investment and how they make themselves available to investors.

All major economies, because of the covid-19 crisis are seeking new levels of investment, whether for individual corporates or infrastructure investment, let alone Government debt. We feel very strongly that the UK has a tremendous story to tell. Introducing new legislation such as this at a time when, bluntly, we are looking for more investment to come into the UK, will require a degree more explanation. The way it has been phrased so far, as national security and almost as a catch-up activity with other developed jurisdictions, is fine. However, if Ministers make themselves very much available to investors to explain how this will work, and make a bonus of the pre-authorisation facility, so that if investors are troubled that an investment they are considering could attract attention, there is an ability within 30 days—that is a really important point: within 30 days—to have it pre-approved and then stood by, that will go a long way in the investment community.

As you can tell, we will have to paddle a little bit harder, but that has the potential to be a short-term explanation for a long-term gain. Potentially, that is fine. I find it very odd that we have Ministers willing to seize the opportunity to explain this to investors, the course will be set and we will not see further iterations or scope creep from national security to other sectors, which then becomes a little more worrisome.

Q75 Peter Grant: Thank you. Decisions under this legislation will initially be taken by the Secretary of State. In the United Kingdom, the way that Ministers exercise the authority given to them by legislation, and indeed the way that Governments or Prime Ministers exercise the authority that comes down through the concept of the royal prerogative, is governed as much by tradition, convention and understanding as it is by hard legislation. Recently, we have seen an increasing number of occasions when Governments have chosen to do things that are allowed but are completely unprecedented and not according to the usual traditions and conventions. There are some notable examples here, and clearly a number of examples from the outgoing President of the United States. Does that give you a concern that legislation might be passed giving a Minister power under certain understandings, but that the understandings themselves might have no legal force, so a future Minister might exercise that power in a way that is very different from what had been expected or intended when the legislation was passed?

Chris Cummings: Forgive me, but it is obviously not my role to advise future Ministers on attitudes they may take. I can simply say, from an investor’s point of view, that we prize stability, predictability and accountability beyond all things. Making sure that the rule of law applies and that there is no handbrake turn in policy direction matters hugely. Investment is being sought by every economy around the world, and it would be a very rash Minister indeed who decided to unpick something that is a great strength of the UK and one of our global competitive advantages: a system based on the rule of law and an approach to policy making that is entirely transparent and accountable to Parliament, which gives the investment community great confidence that the UK retains its position as one of the safest places in the world to invest.

From our perspective, that accounts for one of the reasons why our investment management industry here in the UK is globally pre-eminent. The UK is not only the largest investment centre in Europe; we are bigger than the next two or three added together. Only the US is a bigger market, and that is because of its substantial domestic scale. When it comes to international investment, the UK is streets ahead of its competitors. We would very strongly urge any parliamentarian, and certainly any Minister, to think twice before taking actions that would have a lasting consequence for our international reputation.

Q76 Simon Baynes: Thank you, Mr Cummings, for a very good presentation. I just want to go back to your point about the blanket exclusion for investment managers. First, you say that is the situation in Japan, but maybe you could say where else it exists. Secondly, why is it needed? I totally accept that, on the whole, the investments being made by your members will not fall within the trigger points, because they will not be taking over 25% of Shell or even some small companies, but they might do in certain circumstances.

Thirdly, to what extent do hedge funds represent members within your organisation? Obviously, they have greater capacity, or greater natural affinity, for investing in smaller companies—not always, but in certain cases. They might actually fall within the remit of the triggers, so I do not quite see how we could implement the blanket exclusion, if from time to time there are exceptions to the exclusion.

Chris Cummings: Thank you for asking me to clarify; I apologise that I was not as clear as I should have been. The hedge fund community has a representative organisation. It is a splendid one that can do a tremendous job in speaking for them, and I would not put myself in that position; I would not try to speak for them. We have members that invest substantially through private markets into smaller and unlisted companies. Again, it comes down to intention. The intention is not to invest in such a way as to take over the company and to seize the reins; the intention is to make an investment that is in the strategic direction of the company, to support its growth.

I am trying not to use the term “passive investment”, because we are anything other than passive when it comes to investing, but it is an approach that is designed to support the company, rather than to change dramatically the company’s ownership or direction, or to land one of our members on its board—in effect, they would then be part of the management and governance of that company. I hope it is more than a subtle definition; it is a distinction with a real difference. That is part of why we think it is an important distinction to make.

Other jurisdictions have been through similar experiences. The Japanese example is so relevant, because it is only a year or so ago that the Japanese Government were considering very similar legislation. As a result of consultation, they came up with the approach that we are suggesting: to exclude the activities of investors, insurance companies and so on, because it is around intentional—not wanting to take an active role in the management or to change the company’s direction, but to support through investment rather than to seek control.
The US has a similar modus operandi. It is not quite as framed in the legislation as it is in Japan—again, just through history. The approaches that we have seen in Germany and France also nudge in the direction that I am describing, so there are parallels. The Japanese experience is the closest match that I can offer the Committee, but we will continue to do further investigations and to feed in ideas through the Bill’s stages and through the consultation on individual sectors.

Q77 Simon Baynes: There is a fairly fine line in smaller companies in which an investment manager takes a major stake. There is a fairly fine line between having an active role in its management and having very close scrutiny of its management. From my own experience in the business, the investment manager keeps a very close eye on it in those cases. If they do not, quite a lot of risk is involved. That is quite a crucial grey area, and it therefore makes me think that a blanket exclusion would create problems. It might be viewed by private equity companies or whatever as being an unfair advantage to investment managers.

Chris Cummings: Certainly, we are keen to see those smaller and medium-sized companies get access to as much growth capital and investment as they need. Part of our enthusiasm for this piece of legislation, and indeed others, is that it is an opportunity to re-excite the UK public about the opportunities for equity—for shareholder participation in fast-growing companies. That is partly why we are so keen to work with your Committee and others to communicate the message.

Perhaps a clearer distinction could be found for the difference between listed and unlisted companies. That is perhaps where we could focus our attention more, on explaining—I am not sure that “blanket exception” is quite the right language for me to use because that seems to be a one-and-done exercise and perhaps there would be more to it than that—but focusing the attention on the listed sector, where it is much more obvious that we as investment managers are investing for the long term rather than seeking control over the company. I hope that would allay some of the concerns that you rightly mention.

Q78 Matt Western: Thank you, Mr Cummings, for being a witness today. I want to come back to the point about capacity in terms of the mandatory notifications. As described, do you think it is going to be able to cope with that, and just how opaque are some business organisations and ownership? With that opacity, will they realistically get to that within 30 days? That is my first question. Secondly, in terms of many transactions, the Government have no legal powers over retaining jobs or research and development in the UK—thinking about SoftBank, Arm and many others. Do you think there is a need to plug those sorts of gaps or deficiencies?

Chris Cummings: You rightly raise the question of scale and resources. It is one of the things we have been consulting our members on, and having discussions with others to try and get a better view of what the notification process would be, who would notify, who would then respond, the scale of the team in the Department that would be exercising due diligence in the applications and whether the system could cope. Bluntly, what would concern us deeply is having a 30-day notice or turnaround period that the Department regularly missed, because that would then create a shadow over this particular piece of legislation. It would gum up the works and, frankly, none of us would wish to see that.

Looking at how the regime works at the moment, with very few notifications, there seems to be a scale difference between where we are today and what the legislation proposes. We would like to hear more from Ministers on how they are going to address that and what the processes would be. There have been discussions about a portal, a very brief form of five pages or so that would be easy to complete, but I think a degree more of reassurance on that point would not go amiss—as would the confidentiality. There is so much around any investment process and the acquisition process that has to remain entirely confidential, that investors would require and would be looking for reassurance that these conversations could be held in the strictest of confidence and that nothing would appear until the right time. In terms of scale and resources, it is a point that we share your interest in.

I was making a note of the point you raised on transactions, but could you repeat that part of the question? Apologies.

Q79 Matt Western: No problem. It was just about various deals, with the example of, say, SoftBank and Arm, and the protection of jobs, research and development and pensions in the UK, and whether the Government need to plug that gap to give assurance and protection here in the UK to those elements.

Chris Cummings: Thank you, and apologies again for omitting that. This is something that we, as the investor community, have been observing for the last few years at least, looking at the different requirements that Governments have tried to put on acquiring companies—Kraft Cadbury and so on, through to SoftBank—and seeing what has happened there, and the role that the takeover panel has been asked to play to police or report on those activities.

The intent behind the Bill at the moment seems to be for national security to preserve intellectual property in that R&D capacity here in the UK. If that is going to be seen through, transparent and accountable mechanisms need to be clarified in the Bill, on how that will work in practice, what resources will be in place to measure, monitor and report it, to whom it would report, and any sanctions that would be applicable afterwards. Those are definitely areas that we feel deserve further scrutiny.

From our point of view, as investors, the last thing we want is to invest in companies where we feel the IP is protected and the R&D facility is well known to us, but where within one, two or three years there has been either a change of management or further changes that mean that IP has been moved or duplicated elsewhere. That is a very legitimate concern.

The Chair: If there are no further questions, I thank you very much on behalf of the Committee for giving your time and assistance, Mr Cummings.

Ordered, That further consideration be now adjourned.

—(Michael Tomlinson.)

4.46 pm

Adjourned till Thursday 26 November at half-past Eleven o’clock.
Public Bill Committee

NATIONAL SECURITY AND INVESTMENT BILL

Third Sitting
Thursday 26 November 2020
(Morning)

CONTENTS
Examination of witnesses.
Adjourned till this day at Two o'clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons, not later than Monday 30 November 2020.
The Committee consisted of the following Members:

**Chairs:** † SIR GRAHAM BRADY, DEREK TWIGG

† Aiken, Nickie (*Cities of London and Westminster*) (Con)
† Baynes, Simon (*Clwyd South*) (Con)
† Bowie, Andrew (*West Aberdeenshire and Kincardine*) (Con)
Fletcher, Katherine (*South Ribble*) (Con)
Flynn, Stephen (*Aberdeen South*) (SNP)
† Garnier, Mark (*Wyre Forest*) (Con)
† Gideon, Jo (*Stoke-on-Trent Central*) (Con)
† Grant, Peter (*Glenrothes*) (SNP)
Griffith, Andrew (*Arundel and South Downs*) (Con)
† Kinnock, Stephen (*Aberavon*) (Lab)
† On wurah, Chi (*Newcastle upon Tyne Central*) (Lab)
† Tarry, Sam (*Ilford South*) (Lab)
† Tomlinson, Michael (*Lord Commissioner of Her Majesty’s Treasury*)
† Western, Matt (*Warwick and Leamington*) (Lab)
Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Wild, James (*North West Norfolk*) (Con)
† Zahawi, Nadhim (*Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy*)

Rob Page, Yohanna Sallberg, Committee Clerks

† attended the Committee

**Witnesses**

Lisa Wright, partner, Slaughter and May
Christian Boney, partner, Slaughter and May
Professor Ciaran Martin, Professor of Practice in the Management of Public Organisations, Blavatnik School of Government, University of Oxford
The other thing that will be important in giving people a sense of whether their transaction should be notified or whether it falls within a mandatory notification sector is the interaction that will take place through informal engagement through the investment security unit. It is very important that the process for getting informal guidance from that unit is as streamlined, interactive and responsive as it can be. That will go some way to giving practitioners realtime guidance on potential concerns.

Lisa Wright: Can I just add a point to the idea of the desire for more certainty around what national security means? I think it is worth recognising that that is particularly important if you look at where we have come from. With the existing regime under the Enterprise Act 2002, there have only ever been a dozen or so interventions on national security grounds. There is not a widespread understanding of what it means and the circumstances in which the Government would intervene. That is the historical position, but we all know that this is constantly evolving.

When you take that and add to it the fact that the prediction now is that there will be, as it says in the papers, between 70 and 90 call-ins a year, that is obviously a huge increase against the 12 since the Enterprise Act. Any greater clarity that can be given around the circumstances in which the Government would be looking to, for instance, exercise the call-in powers would be beneficial, particularly at the beginning of the regime when everybody is trying to learn the ropes.

Q82 Chi Onwurah: You mentioned, and I think it is absolutely right, the issue about going from a standing start to such an increase in the number of callings but also in the number of notifications—the impact assessment estimates 1,830 notifications. That is on the acquirer and does not take into account the fact that almost every start-up seeks capital investment at some point and I imagine would, therefore, as a consequence have to think about this regime. What impact do you foresee on the UK’s investment climate and especially on capital sources for small and medium-sized enterprises? How could that impact be mitigated or encouraged to be as positive as possible?

Christian Boney: I think this question really divides into two. In terms of larger corporates, investment by, and in, larger corporates is very likely to be unimpacted in any meaningful way by this legislation, because large corporates and their advisers are very used to going through regulatory clearance processes. This will just be another thing that needs to be added to the list.

I think you make a very valid point in the context of start-up and early-stage companies. The concern I would have principally is with those companies that are in that phase of their corporate life and fall within the mandatory notification sectors. Given the kinds of companies that this country is trying to encourage to flourish—those that are active in areas like artificial intelligence, advanced robotics and quantum technologies—a reasonable number of start-ups, I would expect, would fall within those mandatory notification sectors. For them, this regime is going to make the process of getting investment more time-consuming and more complex.

Anything that can be done in the process of consulting on the mandatory sectors, and anything that can be done to pair back the regime to make it more workable...
for companies in that stage of life, the better. An example might be some form of de minimis threshold, which is included, such that really early-stage companies do not fall within the mandatory notification regime, but the Government can nevertheless rely on their call-in power down the track, should that early-stage company becomes successful and more strategically important within the UK. Those are my principal thoughts. Lisa, do you have anything to add?

Lisa Wright: Not on that point, no

Q83 The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): May I return to the national security issue—as opposed to the wider public interest test, which is very much focused on national security, versus the wider public interest, to which I think my colleague’s first question alluded?

Chi Onwurah: To clarify, my question was this: how would you distinguish between national and economic security?

Nadhim Zahawi: My question is more about your reflections on the Bill being narrow in its purpose to deal with national security versus the wider public interest.

Lisa Wright: It is already a very broad regime; it catches a lot of transactions, as we have just discussed. I therefore think it is important and right that it is limited, in terms of the substantive concerns that it is catching, to national security. That is already a necessarily, I think, uncertain or undefined concept. Corporates and investors can make it work as long as other aspects of the regime work efficiently. That may be subject to some of the points that Christian just made about the impact on start-ups.

I think that once you broaden the regime out from national security into other considerations, you do risk introducing quite a degree of unpredictability, which possibly would impact on people’s assessment of the investment climate in the UK. My understanding is that the existing intervention regime under the Enterprise Act is planned to remain in force, so national security will come out of that and will be dealt with under this new regime. But there will still be the ability for—[Inaudible.]

The Chair: Mr Boney, do you have any observations while we are waiting for the tech to work?

Christian Boney: I agree entirely with what Lisa has been saying. I think the scope of the Bill is already broad, so to my mind, broadening it further to take account of other areas is likely to introduce the uncertainty that Lisa was referring to and, as a consequence, have a potentially negative impact on the investment climate in the UK.

The Chair: Lisa, it looks like we have got you back now. Would you like to add anything?

Lisa Wright: I am not sure at what point you lost me, but I think I was saying—

Nadhim Zahawi: We lost you while you were talking about a “degree of unpredictability”, Lisa.

Lisa Wright: Okay. In my view, if you were to broaden the regime out from national security to take into account other considerations, that would introduce quite a degree of unpredictability and would, I think, potentially impact negatively on people’s assessment of the investment climate in the UK—I am sorry if I am repeating myself. However, my understanding is that the existing intervention regime will remain, so national security will come out of it, but the Government will still be able to intervene in transactions on other public interest grounds under the Enterprise Act. That regime has some limitations, but those powers will still be there.

Q84 Stephen Kinnock (Aberavon) (Lab): Thank you very much for the really excellent evidence you have already given us. I want to go back to what Mr Boney said about de minimis thresholds and whether you might look at introducing de minimis thresholds for particular areas, sectors or industries that I guess you would say are considered to be low risk from a security point of view and highly beneficial to the UK economy, which should therefore affect our thinking about how you might filter this whole process. But are there not other considerations on filtering as well? In essence, this is a risk management process and you have to identify the highest risks. Surely issues of critical national infrastructure would place a type of acquisition into the high-risk quadrant. If the acquirer is close to a state or Government—particularly a hostile Government—that would place it in the high-risk quadrant. If the acquirer is close to a state or Government—particularly a hostile Government—that would place it in the high-risk quadrant. Therefore, on having a more filtered process, is the de minimis threshold the right way to go, or would it not be better to have a strategic approach based on a hierarchy of risks?

Christian Boney: I think the de minimis concept is potentially relevant and helpful in the context of thinking about what needs to be subject to mandatory notification. If you are not within the mandatory notification regime, that does not mean that the Government cannot exercise the call-in power so long as the relevant tests in the legislation are satisfied; it just means that the relevant company does not have to make a notification. There are elements of the mandatory sectors where some form of de minimis has already been included. Energy is a good example of that, and that makes sense in the context of energy.

I think it is worth exploring whether, within any of the other sectors, where we are more likely to see start-up, early-stage companies operating, there is benefit in introducing some form of de minimis regime solely in respect of the mandatory notification requirement. As I say, if a small-scale company operating in critical artificial intelligence is receiving investment from somebody who we view as a hostile actor, that transaction might escape mandatory notification, but that does not mean it escapes voluntary call-in by the Government at the point they become aware of it. That is something that might be worth exploring.

Stephen Kinnock: Thanks very much. Does Ms Wright want to add anything?

Lisa Wright: No.

Q85 Stephen Kinnock: I want to explore a bit further the issue of critical national infrastructure, which is defined by the Intelligence and Security Committee as
the Government’s 13 sectors ranging from energy to transport infrastructure and anything that relates to public health. With covid, we have seen the massive importance of how we have been overexposed in certain supply chains, and that might have an effect on our thinking about critical national infrastructure. To what extent does that influence your work on mergers and acquisitions and your thinking about whether such mergers and acquisitions in areas of our critical national infrastructure are in the national interest?

**Christian Boney:** If I am following the question correctly, I think it is the correct balance to strike to say that people pursuing significant M and A activity involving the UK’s critical national infrastructure should expect to go through a notification process and should expect their transaction to be at potential risk of examination and call-in. From my experience, corporates undertaking transactions in the spheres of national infrastructure and so on expect that. It is what they see in other countries and jurisdictions, so it is something they come to accept as part of doing deals in top-tier democratic nations.

**Lisa Wright:** I agree with all that. I guess I would also add that people are well aware that these considerations change over time. This year has shown that more than ever. People have an eye on what might not have been an issue yesterday; today, it might be different. We saw the amendments coming through to the Enterprise Act earlier in the autumn to bring in the power to allow the Government to intervene on public health grounds. People are very conscious of the fact that this changes, and they keep an eye on it from that perspective.

**Q86 Simon Baynes (Chwyd South) (Con):** Thank you both for your submissions this morning. I want to go further into the issue of how you, the Government or the agency it sets up to do this makes a judgment about whether a small or start-up company really falls within the Government’s 13 sectors ranging from energy to transport infrastructure and anything that relates to public health. They are the ones who understand the threats and the intelligence. As advisers, we can look at the guidance and cases that have happened in the past, and we can speak to the unit, which, as we understand it, will be open for engagement and will welcome that. We can guide clients through the process, using the touch points and information that is available to us, but ultimately it is the Government that are in possession of the full set of facts and considerations that go into the decisions about whether that particular transaction is a problem or not. I guess what that speaks to is having the right people in the unit and getting them plugged into the right people elsewhere in Government to arm them with the ability to make these assessments.

**Christian Boney:** To pick up on that, I agree entirely with what Lisa said. It is not necessarily an easy thing for the advisory community or clients themselves to make a judgment about whether they are presenting risk to national security. That is why this concept of real-time, interactive engagement with the unit that is set up to police this regime is going to be so important.

In the world I operate in, one of the regulators we deal with is the Takeover Panel, which is fantastic at being responsive, with real-time engagement. It results in a dialogue and an interaction that helps advisers navigate their clients through a regime that is not straightforward at times. That is the kind of practice that could usefully be learned from in the context of the investment security unit, because that kind of real-time feedback and informal advice will be very helpful in helping companies make the judgment about which side of the line they fall.

**Q87 Peter Grant (Glenrothes) (SNP):** Good morning, Ms Wright and Mr Boney. I want to look in more detail at the kind of information that might be included in the Secretary of State’s clause 3 statement, which will set out the kind of factors that they will take into account in deciding whether they needed to intervene.

There is a fair amount of information in the Bill and the documents published alongside it about the kinds of businesses being acquired or taken over that might give rise to concern. There are quite clear definitions of what constitutes a trigger event, whether it is a purchase of shares or whatever, but there is very little detail about how the Secretary of State will decide which potential acquirers pose a threat. There are clearly good reasons why that information cannot be made public in too much detail, but is the fact that there is so little on the face of the Bill about how that decision is arrived at a problem? Does it make it less certain and therefore more likely to result in legal challenges?

**Christian Boney:** Acquirer risk is one of the points picked up in the statement of policy intent that is going to be looked at when determining the level of risk that a transaction presents. When looking at and explaining acquirer risk, I think that helpful additional guidance could be added to it to, for example, make clearer how the Government will consider acquirer risk in the context of things such as private equity funds and other funds that may be looking to invest in the UK. By that, I mean in particular whether the Government will be willing to disregard the identity of limited partners and other investors in funds that sit above the particular acquisition vehicle that is doing the relevant transaction. That is the kind of thing that I think there would be real benefit in trying to make clearer in the statement of policy intent.

**Q88 Peter Grant:** Thank you. I will focus a bit more on the definition of a trigger event, and in particular the catch-all provisions that define when somebody becomes a person with significant influence or control over a company.
The Companies Act 2006 has similar requirements for a company to notify Companies House if certain things happen that put someone in a position of significant influence. From a lay person’s point of view, such as my own, some of those provisions are almost word for word the same in the Companies Act and the Bill. Some appear to have the same effect but the wording is different, and therefore there will potentially be occasions when the definition is different. Would there be benefits in completely aligning both pieces of legislation so that a particular event either has to be notified or does not have to be notified? Otherwise, there is the possibility that some events will have to be notified under the Bill, and other events will have to be notified under the Companies Act but not the Bill.

**Christian Boney:** In short, I think there would be benefit in having as much alignment as there can be. Clearly, the two pieces of legislation are not necessarily designed with the same intent and focus in mind. Yes, I think there is merit in having as much alignment between the two as there can be.

If I may, there is just one point about the trigger events that is worth considering. One of the points in the statement of policy intent in the context of trigger events is the Government considering the risk of espionage. That seems to me to be something that is worth thinking about in the context of this regime. At the moment, the trigger events are focused, as you were saying, on the ability to influence a particular company, but there are other ways in which a company can raise finance by licensing the intellectual property that it probably does.

That is certainly fair. I think the level of influence and control that a debt provider will typically get in what I will call the ordinary courts means that it is less likely—I am certainly not saying it is impossible—to be at the level of getting such granular, sensitive, let us call it operational information, which is the kind of thing we would really be concerned about. It would more be focused on getting access to financial projections, financial performance and that kind of information, which, although it can still be sensitive, is probably less sensitive than operational data. A balance needs to be struck, it seems to me, in the context of this legislation. Not having debt providers obviously within scope does limit the legislation, but does it strike an acceptable balance? My personal view is that, on balance, it probably does.

**Q89 Mark Garnier (Wyre Forest) (Con):** I will carry on with the line you took just now about an investor’s potential influence over or access to a company. A little earlier, you were talking about start-ups who sought to get staged financing in order to try to build their businesses. Of course, there are more ways of getting investment than just getting equity. We know that if a business has a relatively small amount of equity but a huge amount of debt, the provider of the debt has much more influence over the company than perhaps the shareholders do.

We saw that on the banking commission when we looked at the role of bondholders in influencing banks, compared with equity holders. Clearly the bondholders, in effect, had much more influence.

The other thing is that a start-up company can raise money in other ways. The Bill tries to make sure that we are not losing intellectual property, but a business can raise finance by licensing the intellectual property that we are trying to protect—I am not sure that that would come within the scope of this Bill—or even sell the intellectual property and license it back again. There are various other ways in which a company can raise finance, over and above equity, where there is a huge amount of influence or it falls outside the Bill. Clearly, crucial national infrastructure is a very different thing, but intellectual property is something that is very difficult to grab hold of; it is like trying to grasp a handful of sand. Given the objectives, I wonder how the Bill tackles those other areas, which seem to allow malign investors a way through.

**Christian Boney:** I think an important aspect of the Bill—is this one of the reasons why Lisa and I have described it as a broad regime—is that it does allow policing of the acquisition and control of assets, including intellectual property. In my experience, at least, that is quite different from what you see in other international regimes. Clearly, the acquisition of control of assets does not fall within the mandatory notification regime; nevertheless, it is helpful that the Government have the power potentially to exercise a voluntary call-in in respect of, for example, an acquisition or a licence of intellectual property.

**Q90 Mark Garnier:** And the debt issue—the fact that debt holders can be more influential over businesses than equity holders?

**Christian Boney:** That is certainly fair. I think the level of influence and control that a debt provider will typically get in what I will call the ordinary courts means that it is less likely—I am certainly not saying it is impossible—to be at the level of getting such granular, sensitive, let us call it operational information, which is the kind of thing we would really be concerned about. It would more be focused on getting access to financial projections, financial performance and that kind of information, which, although it can still be sensitive, is probably less sensitive than operational data. A balance needs to be struck, it seems to me, in the context of this legislation. Not having debt providers obviously within scope does limit the legislation, but does it strike an acceptable balance? My personal view is that, on balance, it probably does.

**Q91 Nickie Aiken (Cities of London and Westminster) (Con):** From your professional point of view and experience to date, what could be the long-term impact of the Bill on UK business and investors? Will the Bill help or hinder the global position on investing into the United Kingdom?

**Lisa Wright:** In many ways, the regime just brings the UK into line with major international peers. From that perspective, for people doing deals around the world who have already experienced those other regimes, it ought not to have any real negative impact at all, provided that BEIS can deliver on the aspiration set out of a slick and efficient regime, turning around notifications within sensible deal timeframes and providing the kind of informal advice and early engagement promised. That will be critical, particularly in the early stages of the regime. From that perspective, I do not think this should have a long-term negative impact on people wanting to do deals in the UK. As Christian was mentioning earlier, it may be a slightly different picture for the start-ups and the smaller companies where they are caught up in the mandatory sectors, but overall I think it is right that this can be viewed as the UK bringing itself into line with what else is going on around the world.
Christian Boney: I agree with that. That is the right assessment.

Q92 Sam Tarry (Ilford South) (Lab): Picking up the idea of bringing us into line with global peers and equivalent countries, there are many different regimes and you both have incredible global experience. If you have experience of dealing with companies and transactions, mergers and so on, particularly in the US, you will know that it has the Committee on Foreign Investment in the United States, with its white list of almost green-lighted countries, which they can deal with slightly differently. Should we consider something like the US does with its more established regime and having not necessarily an approved list but different layers for our regime, from the most hostile countries through to those who are our closest allies?

Lisa Wright: It is certainly worth considering. I would imagine that those sorts of considerations will be going through the mind of the officials and the Secretary of State tasked with making these assessments and issuing the decisions. I can see there may be some sensitivities and a desire perhaps not to make that all transparent in terms of public documents. Perhaps they think they will deal with it over time through this engagement and, with advisers and parties coming to talk to them, you will get a sense of who is okay and who is not that. But I can see that perhaps they will not want to put that down in very great detail on a public piece of paper, not least because one might imagine it could change over time. I guess there needs to be a degree of flexibility to recognise that.

Christian Boney: I agree. I am certainly not a CFIUS expert, but my understanding of the exempt list of countries is that actually the practical impact is quite tightly drawn. I do agree with Lisa. I think we are likely to get the best sense of those countries that are viewed as more risky than others through the engagement process and as people’s experience of the regime develops.

The Chair: We are almost at the end of the time available for this session, so there will be no further questions for these witnesses, but thank you, Ms Wright and Mr Boney, for being so generous with your time and assisting the Committee so much. We will now move on to the next witness—either we will suspend the sitting briefly until everything is sorted out or we will move seamlessly on—but thank you both very much.

Examination of Witness

Professor Ciaran Martin gave evidence.

12.10 pm

Q93 The Chair: Would you mind, Professor Martin, just introducing yourself for the record and for the benefit of the Committee?

Professor Martin: Thank you. My name is Ciaran Martin. I am currently a professor of practice at the Blavatnik School of Government at the University of Oxford, but until August of this year I was the founding chief executive of the National Cyber Security Centre and a member of the executive board of GCHQ, within the Government. I should also declare for these purposes, although I am not sure it is relevant, that I serve on the advisory board of a US venture capital company called Paladin.

Q94 Chi Onwurah: Welcome, Ciaran; it is great to see you here. Thank you so much for sharing your expertise: as the founder of the National Cyber Security Centre, you have a great deal of expertise. I want to ask you to talk about a question that I have raised a number of times and that your expertise should be able to give us a real view on, which is about understanding the distinction, if there is a distinction, between national security and economic security concerns. You will be familiar with a number of cases, such as Arm and DeepMind, to name just two, that involved an economic security issue, you could argue—in terms of sovereign capability in artificial intelligence in the case of DeepMind, and of mobile silicon in the case of Arm—but that pretty swiftly turned into national security concerns. This Bill identifies a number of different sectors or areas—up to 17, I think—where a notification will be mandatory. How can we look at understanding or reflecting a distinction between evolving economic security and, ultimately, our national security?

Professor Martin: Thank you for your comments, Ms Onwurah; it is nice to see you again. I speak as someone who thinks that the Government have broadly got this issue correct, in terms of their proposals in this Bill. That is not to underestimate the sheer complexity of dealing with the core, fundamental question that you rightly identify of balancing economic security and national security and of where one stops and the other begins. That is a very complicated and difficult thing to do. I think one starts with an attempt to define a core principle, which is essentially around the freedom to act. I think that if you look at something such as Arm—I would say this probably more in the case of Arm than DeepMind—and its potential ultimate sale to Nvidia, you see that the UK has less freedom of choice in a key strategic technology, which undermines its own ability.

I think there is an analogy with the little known but quite long-standing—for more than a century—work on sovereign cryptography. That is one of the areas that has long been covered by national sovereignty requirements. There are things in information security, as we used to call it, cyber-security, as we do call it, that have always needed to be fully sovereign, entirely British-made—they are not very many areas. The problem has been that as technology and communications have changed, it has been quite hard to keep up, and there are always pressures to expand that in a way that is economically harmful to competition and so on. So it needs a clever buyer within Government to identify what will be the strategic areas and what will not be.

In the area of sovereign cryptography, we end up trying to keep, depending on the era, around half a dozen or a dozen companies viable, because it is not a lucrative market. You can see the problem, but the key issue is whether there is enough, first, sovereign, but if not sovereign, friendly capability that allows us the freedom of choice to adopt key technologies. That means identifying the key technologies in the first place, evolving them over time and then having a very difficult to achieve but necessary intelligent function within Government that can evaluate the notifications that it
gets. Of course, at the moment we do not have the power to do that, and that is what this Bill correctly seeks to remedy.

Q95 Chi Onwurah: Thank you. I am very taken by your definition of sovereign and friendly capability. Indeed, that is exactly what we do not have in our 5G networks, hence the mess with Huawei.

Moving on slightly, a comment made numerous times on Second Reading was about the role of the intelligence services. Indeed, my right hon. Friend the Member for North Durham (Mr Jones) asked for more intelligence in the process. How can the Bill better ensure that the intelligence services, including the National Cyber Security Centre, have input and scrutiny and, indeed, provide their expertise as part of the process so that the appropriate decisions are taken?

Professor Martin: I think the essential, principal requirement is not the intelligence services’ involvement—although that is important and I will come to that in a minute—but the understanding of technology and technological developments within Government. These are fundamentally economic issues as well. Apart from anything else, if you look at some of the reasons why the Bill has come about, you will see that, in strategically important technologies, the Government have invested heavily in university-sponsored research and in private sector research, only to see the fruits of that research sold off. Even if that did not impact on national security, which in most cases it does, it is not a good return for the taxpayer in terms of long-term UK involvement if the intellectual property ends up being monetised elsewhere.

I have enormous respect for Mr Jones and I think he is on to something in terms of involving the national security and intelligence services, but I do not think this should be intelligence-led. In my experience—obviously, I cannot go into detail on this particular aspect of it—secret intelligence adds relatively little to your knowledge of intent. If we take Russia and China, the two big strategic threats to the UK, Russia does not have a strategy in this space. We have to worry about Russia and cyber-security because it attacks us, but it attacks us on the internet that the west has built.

China is very different. China has a technological, strategic dominance aim, but it is not a secret. It is published and has been translated into English in the Made in China 2025 strategy, as you know. Our knowledge about the precise, intricate details of how that is implemented gains relatively little from secret intelligence.

What secret intelligence does have, particularly in GCHQ and the NCSC within it, is a knowledge of how technology works in terms of the national security threat space. I think the UK has a head start on other countries, because the National Security Council innovations of the 2010s gave the intelligence services a much bigger voice at the table, and that is reflected in the structures that we have now. The UK should be well placed to be able to listen to the intelligence services, but I would encourage—not least to make sure that in this very delicate balance of trying to show that we still have an open economy and are not shutting the doors to investment—as much transparency as possible on the decision taking. It will not always be possible because GCHQ technologists will know about things—exploitations of particular bits of technology—that they cannot reveal.

They will be able to tell that to secret forums within Government for consideration—I am quite confident about that: there will be a seat at the table for them.

My recommendation would be that, as far as can safely be done, the Government should be relatively open about why they make the judgements they make about strategic areas of technology and the interventions they will make once this Bill is passed—assuming that both Houses wish to pass it.

Q96 Nadhim Zahawi: Professor, that was excellent and I am very grateful for it. I will follow on from that thought and ask about the proposed powers within the regime for the Secretary of State to gather that information, which, as you quite rightly remind us, is not necessarily secret but about understanding the technology, or a particular piece of the technology, within the sector. What are your thoughts on the regime for the Secretary of State to be able to gather that information to inform a decision or to call in witnesses, so that they are able to really understand that particular issue and therefore make a decision on it?

Professor Martin: I suppose the mantra, if I had one, would be, “Broad powers, sparingly used, with accountability mechanisms.” It is incredibly hard to be specific about this, for two reasons: one is that new areas of technology crop up, as they invariably do, and the other is that sweeping categorisations are needed on the face of legislation.

I am not a deep technical expert—although others are available from my former organisation—but if you take sweeping, umbrella titles like “quantum” or “artificial intelligence”, there are huge swathes of that where, actually, not a lot of these powers in the Bill will be used. There will be companies that will be doing very interesting things—10 interesting things—of which only one would be caught by this Bill.

If you take areas like specialist quantum computing and so forth, I think the community of interest and expertise is actually relatively small and has relatively good relations with Government—not least because, again, while it is not perfect, the whole system of research council funding and Government investment in funding technological research is pretty good, by international standards—so you end up knowing these people. One of the reasons that this sort of policy evolution came about, which has led to the publication of the Bill before you—I remember this from discussions within Government—is that people were volunteering to come to us. World-leading experts, people who had been funded by the Government—I will not go into individual cases because it is commercially sensitive and possibly security sensitive—would come to Government and say, “Look, we’ve had this inquiry from a Chinese behemoth,” or even, “We’ve had this inquiry from a US company,” and so forth: “What do you guys think about this?” and, invariably, we would have to have an informal influencing discussion.

I do not think that some of the businesses to which this will apply will be screaming that this is horrible Government regulation and intervention in areas where that should not be made. There was already a dialogue; there was just no legislative framework. Of course, that meant that companies that felt a loyalty to the UK and so forth but that also had to look after their commercial interests were sometimes in a real bind.
To try to answer your question, I think that the powers should be fairly broad. I think there should be accountability and transparency mechanisms, so that there is assurance that they are being fairly and sparingly applied.

Q97 Stephen Kinnock: This is very interesting evidence. I want to ask you a little bit more about China. As you rightly pointed out, much of this is in the public domain, and the Made in China 2025 strategy is very clear about the objective, which is to achieve global technological dominance. Given your experience at the National Cyber Security Centre, can you share with us a little bit more about how that would manifest itself in practice? What do you see as China’s next moves, in terms of rewriting the rules on technology and on creating that dominant position that you have talked about? How do you see that manifesting itself?

Professor Martin: I think there are broadly two or three areas in which China is very interested in doing that. I can make some comments on motivations, because I think they are very important, and then I will finish with how that manifests itself in UK casework.

Clearly, China has set out a stall, which it published in Made in China 2025, in which it said it wants to be the world’s pre-eminent leader in a number of key areas of technology. It mentioned artificial intelligence and quantum, and it is throwing vast sums of state money and long-term strategies at them, unencumbered by the need to seek re-election and popular consent, so it is a very powerful movement. That is the first thing: it is trying to build up its capability.

China is also trying to change, at least for itself—we will come to that in a minute—the way the internet works. It was reported earlier this year that Huawei and other major companies in these international standards bodies are looking at something called new IP protocols, among many other things. To give you a sense of what the motivations behind that are, at the minute when traffic flows around the internet, despite some popular impressions to the contrary, it is actually pretty hard to work out what is going through it. Therefore, it is relatively difficult to censor, although China has managed it in some ways. The new IP protocol will make it much easier to work out what sort of traffic is going through and being rerouted, so it makes it much easier to control. China is trying to dominate and essentially get a lead in the strategic technology, and also to change the character and culture of the technological age from one that started off fairly anarchic to one that is much easier to control. That is what it is trying to do.

Why is China trying to do that? A lot of this is about the assertion of its own power for itself—the regime, power, Chinese nationalism and so forth. I think it does intend to extend its sphere of influence, but I have never seen that as the primary motivation. One of the interesting things, post the pushback from the Trump Administration and the US sanctions on Huawei, is the extent to which China will now accelerate its desire for self-sufficiency, and the extent to which that leads to a separate pole of technological influence that may become less interested in countries such as the UK, European Union countries and North America.

To date, how has that manifested itself in cases in the UK? Ms Onwurah has already mentioned the Huawei controversy. If you take Huawei as a company, I think it shows the different ways in which this can manifest. The Huawei 5G controversy is going to be dealt with by a Bill that I believe is coming to the House next week, not this one. The 5G controversy was not about investment; it was about selling to British companies to build stuff. Obviously, that case has been very heavily analysed.

I think that the more interesting case in the last 10 years involving Huawei was its acquisition in 2012 of the Centre for Integrated Photonics—a world-leading British firm in a really key area of technology. That, in my view, was pretty strategically damaging. If we had our time over again, that is the sort of thing that the Bill might well notify. I know you have taken evidence from the likes of Charles Parton and people with huge China expertise. The fact that the acquisition of the Centre for Integrated Photonics did down Britain’s technological development was probably a by-product. The point is that Huawei could buy world-leading research, which China could then take and appropriate for itself very cheaply. That is what it will continue to do to build up its own capabilities.

Q98 Stephen Kinnock: Given what you just said about the nature of the threat, how should that inform the composition of the investment security unit, which is going to be placed in BEIS and will be the primary locus for the screening of acquisitions? Would you say that it needs to have absolutely leading expertise in technology in the issues that you mentioned—quantum and so on? Should it also have China experts and people who speak Mandarin?

Professor Martin: One of the reasons that this is so difficult, as I said in my first answer to Ms Onwurah, is that I can think of at least three areas of expertise that the unit is going to need to draw on. Technological, yes, because of what technologies will matter. Geopolitical, yes, and I do not have a strong view on whether it needs Mandarin speakers because the UK has a strong and intelligent foreign service mission in country in China and all over the place that can provide input. But the third thing is actually quite a lot of commercial nous—patent laws and so forth.

This is where there is a distinction. This is not all about China. It is layered, and there will be things that we would not want to see going even to quite friendly countries. Arm is a case in point, with the concentration of power in a couple of US companies—particularly when one of them is derived from UK technology. That is not comparable as a strategic threat to Chinese dominance—I hope the Committee does not think I am saying that—but there are times when it would be a damaging foreclosure, if you like, of UK freedom of action and freedom of choice. We know that the US has a strong and sometimes aggressively used extraterritorial legal system in which it can use the power of US companies and block trading with US companies and so on, so we need people who understand those areas where we think, “We are not sure we would want that to leave the country at all” as well as people who understand Chinese. That involves a lot of expertise in things like patents, international law, US commercial law, sanctions and so on.

Q99 Andrew Bowie (West Aberdeenshire and Kincardine) (Con): Professor Martin, I have been listening with interest—it has been fascinating—especially when you were talking about the need to balance national security,
the national interest and economic security. I have been reading the very good briefing by the Law Society of England and Wales, which suggests that the Bill could be improved by the insertion of a definition of national security. Do you agree?

Professor Martin: I do not vehemently disagree with that suggestion, but I am not persuaded by it. It is not a new issue. I remember cases—they have nothing to do with this—going back to the aftermath of the so-called global war on terror, with demands during inquiries for definitions of national security. I am not sure what that would achieve other than it would be heavily litigated. In terms of both definitions of national security and the categories of technology, a better answer is a drumbeat of reviewable activity, which is by definition transparent, about how the Government interpret the scope of the Bill, if it becomes an Act, and the sort of cases it applies to so that, over time, you build up a broadly accepted framework—of course, not everyone will accept it—that is seen to be fair and rational.

Q100 Peter Grant: I understand the reluctance to have an explicit legal definition of national security, but would there be a benefit in having an “except for” clause that makes it clear that certain activities do not come under the category of a threat to national security? Would that help to allay fears about infringements of rights of democratic participation—the right to protest and so on?

Professor Martin: I certainly would not be against things like that, if it could be done in a way that did not compromise the wider use of the Bill, because I do not think there is intent to interfere in the democratic process. I think the intelligence services take that pretty seriously. I remember in other contexts, when asked to co-operate on cyber-security with other countries, given that some cyber-security capabilities—by no means all—can be intrusive, that a lot of due diligence is always done on whether they could be turned by more authoritarian regimes against their own people. I would not object to that in principle. I do not know whether you have a case in mind when you say that might be necessary, but I have an open mind on that.

Q101 Peter Grant: There has been some discussion of whether the investment security unit is best placed within BEIS, the business Department. Do you have a view on that? Does it matter where in government it is based? If it does, would BEIS be your preferred location, or do you think it should be based elsewhere?

Professor Martin: In general terms—this is a personal view, for what it is worth—I do not think the location of most government functions matters a great deal. Perhaps I am just a bit of a contrarian on that point, and always have been. The Government is the Government. Institutions do have cultures. I do not know whether the Government or the intelligence services have offered a formal view, but personally I would be reluctant to put it within the national security estate first, because it has to be economically literate, and secondly, because it has to justify its existence and use. A strong national security input is important, but I would not leave it in the national security community.

I am sorry to sound like a broken record on this point, but I think the more important force in function is some form of reviewable transparency requirement. If you set it up and let it go away, first, you take away pressure to perform well, and secondly, you take away pressure to justify the decisions that are made.

This is a really hard problem. When I was still in government and there were discussions around it, this was not the sort of Bill that most Ministers and politicians came into Government to want to pass. It is a necessity of a bunch of case work that we have become concerned about that has required us to do this. It is sort of the least bad option. The country wants to be open to investment—we are all mindful of the impression it may give that it is trying to deter investment—so it is probably the least bad option, as I say.

I do not think there is any arrogance in government or belief that a bunch of civil servants assembled in BEIS or another Department will make infallible judgments on individual cases, but what is the alternative way to stop the sort of things we have seen happening—world-class taxpayer-funded research in key strategic technologies that are going to be vital for national security being sold for a song to potentially hostile regimes?

Peter Grant: I will leave it there, Sir Graham. I may want to come back later, but I will let someone else in now.

Q102 Simon Baynes: Thank you for your excellent evidence, Professor Martin. You said, if I understood you correctly, that the process needs to be relatively open about why it is making decisions, but I foresee problems, particularly where there are issues of confidentiality and national security. Would you explore that a little? I note that within the terms of the Bill, decisions will be subject to judicial review or appeal, and the Government will be able to apply for a closed material procedure to protect sensitive matters in such proceedings. It seems to me that there is a potential problem there in relation to commercial and national security information sensitivity, so the “openness” of the system might be fairly limited and it might not be as respected as it could be.

Professor Martin: I get that completely. I do not think 100% transparency will be possible in this case. Obviously, it will be judicially reviewable, but I am entirely unsurprised that there is an explicit provision for closed material procedures. It will be a minority, but there will be cases in which the reason why a particular aspect of a particular piece of technology is really sensitive—it will probably be highly specialised, and there might be a dozen people, of whom four serve in government, who actually understand why—cannot be published. Then, of course, there will be commercial sensitivities.

Having said all that, if you take, for example—these are real examples—the current debate around the potential use of offensive cyber, or the sort of allegations Edward Snowden made against Five Eyes countries in 2013, or some of the defences that the Government had to use in the 2000s about their role in the aftermath of 9/11 and Iraq and co-operating with US forces, in my view there is a clear distinction between being able to describe the operating environment and the sorts of thematic issues that you are dealing with, versus individual cases, which often contain extremely sensitive detail. National security organisations can say much more about the former than historically they have been willing to do.
In something like this, where we are talking about business confidence and how the country looks to potentially very friendly and helpful outside investors who like the UK, we want to come here, want to put money here and like the high-quality research and the brilliant innovators and individuals, it should be possible to give them something that says, “In the course of the last year, we have looked at quantum resistant cryptography and here are the types of aspects of this that we are reserving and here are the bits that are more open” or that sort of thing, without disclosing anything sensitive. That is all you need to be able to say—these are the judgments. Let us say that the Bill becomes law in the middle of 2021, for sake of argument. By 2025 and the beginning of the next Parliament, the tech landscape will look very different. You will not want investors to be looking back at the debates you are having in the House now as a guide to the latest way in which the Government are applying this, or looking at drip feeds of information. You will want something official. It should be possible to do that.

Professor Martin: I want to refer back to some earlier questions about the skills within the investigatory unit that would be within BEIS. With your knowledge of Government, do you see any sort of experiences that can be carried over from the export control joint unit within the Department for International Trade? They do not have all the skills there, but they draw on skills from other Departments, particularly when it comes to arms export control and the eight consolidated criteria. Do you think there is potentially an opportunity in the day-to-day structure of the investigations unit for some lessons to be learned and carried across from the ECJU? Or do you think that is irrelevant?

Professor Martin: I do not know the ECJU that well, but it is relevant. I remember, although it was some time ago, being asked for specific inputs into that sort of point. The important thing is that the unit achieves a prominence and reach across the Government, because bits of Government will have to be involved occasionally and there will be bits that will be embedded. It needs a home—in our system of government, every organisation needs a home with a responsible Minister and an accounting officer and all that. However, I do think this needs to be broadly based and multidisciplinary. Export controls are one of the few areas where we have had to do that consistently for a number of years, so I agree that it is well worth a look.

Professor Martin: I think it should be formalised or do you think an informal relationship with other Government Departments will be adequate?

Professor Martin: I think it should be formal. The Government are not new to this. There should be some sort of review board to make sure that it has the right resources, the right performance, the right skillset and so forth. I would encourage ministerial interest. It may be something that the National Security Council wants to periodically review. In my time in national security, there were standing issues that the Government would come back to twice a year, whether there was anything interesting happening on them or not, just to take stock. That might be an issue. In answer to the previous question about transparency, there may be a case for a formal presentation, secret detail and all, to the National Security Council every year, which would include all the potentially covert and sensitive stuff. It really needs to work with the grain of ministerial thinking as well. That will need to be done collectively, at some point, so there may be a role for the NSC.

Q105 Peter Grant: Good afternoon, Professor Martin. As part of the provisions for transparency and parliamentary oversight of the way the powers in the Bill would be used, the Bill would require the Secretary of State to have a statement approved by Parliament and then reviewed at least once every five years. Does that time period seem reasonable to you? Is there an argument for a shorter review period, especially in the early days when everybody will be feeling their way as to how the Bill works?

Professor Martin: There is a reasonable case for a more frequently reviewable point. There is also a cultural point about the way in which the political processes work. There are aspects of Government about which questions are not routinely asked in Parliament, because they seem to be too secret. Again, it is a point about casework versus framework.

To my mind, there is no reason why the Secretary of State for BEIS could not be asked from time to time to update on this or why questions in the House should not be asked. I do not think technology changes fast enough that the whole framework of categories of regulated activity and so forth have to be updated more than every five years, but there will be a possibility of more frequent updates on working, approving listings and that sort of thing.

Peter Grant: To be fair, there is nothing to stop MPs from asking questions about international security, but the chances of us ever getting an answer may be somewhat less.

Q106 Chi Onwurah: You have placed a lot of emphasis on the right technological skills and said that they should be forward looking, for a number of reasons, including identifying new technologies, but also giving clarity and certainty to businesses. Where do you see those tech skills being located? How can the Bill ensure adequate appropriate access to them?

Professor Martin: I am not sure if the Bill will get in the way or help, one way or the other. I think Government technological nous across the civil service needs to be invested in properly. There is a deep, fairly sizeable reservoir in GCHQ. Again, without going into too much detail, more and more people are being transferred and seconded from there into other areas. That is a good thing, and we should welcome that rather than cast aspersions on this being all secret state stuff. It should be permeating normal Government activity.

There will be issues about how to pay for some of the specialists that are needed. I do not think we will ever compete with the big tech companies, but there may be scope for paying some specialists a bit more and bringing them in here. There is something about creating a career path for technologists in Government. There are big issues for the heads of the civil service and the permanent secretaries. If I were heading it, I would want an immediate infusion of seconded talent and private sector buy-ins relatively quickly. Government can do that quite well sometimes, and sometimes not so well. There also needs to be a long-term strategy for technologists in Government.
The Chair: I will now thank you very much, Professor Martin, for giving your time so generously and being of such assistance to the Committee. Given that the next witness is not due to give evidence until 2 pm, I invite the Government Whip to propose the adjournment.

Ordered, That further consideration be now adjourned.
—(Michael Tomlinson.)

12.49 pm

Adjourned till this day at Two o’clock.
Parliamentary Debates
House of Commons
Official Report
General Committees

Public Bill Committee

National Security and Investment Bill

Fourth Sitting
Thursday 26 November 2020
(Afternoon)

Contents
Examination of witnesses.
Adjourned till Tuesday 1 December at twenty-five minutes past
Nine o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 30 November 2020

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The Committee consisted of the following Members:

**Chairs:** † Sir Graham Brady, Derek Twigg

† Aiken, Nickie (*Cities of London and Westminster*) (Con)
† Baynes, Simon (*Clwyd South*) (Con)
† Bowie, Andrew (*West Aberdeenshire and Kincardine*) (Con)
Fletcher, Katherine (*South Ribble*) (Con)
† Flynn, Stephen (*Aberdeen South*) (SNP)
† Garnier, Mark (*Wyre Forest*) (Con)
† Gideon, Jo (*Stoke-on-Trent Central*) (Con)
† Grant, Peter (*Glenrothes*) (SNP)
Griffith, Andrew (*Arundel and South Downs*) (Con)
† Kinnock, Stephen (*Aberavon*) (Lab)

† Onwurah, Chi (*Newcastle upon Tyne Central*) (Lab)
† Tarry, Sam (*Ilford South*) (Lab)
† Tomlinson, Michael (*Lord Commissioner of Her Majesty’s Treasury*)
† Western, Matt (*Warwick and Leamington*) (Lab)
Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Wild, James (*North West Norfolk*) (Con)
† Zahawi, Nadhim (*Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy*)

Rob Page, Yohanna Sallberg, Committee Clerks

† attended the Committee

**Witnesses**

James Palmer, Senior Partner, Herbert Smith Freehills

David Offenbach, Consultant, Simons Muirhead and Burton

Creon Butler, Research Director, Trade, Investment and New Governance Models; Director, Global Economy and Finance Programme, Chatham House

Will Jackson-Moore, Global Private Equity, Real Assets and Sovereign Funds Leader, PwC United Kingdom
Public Bill Committee

Thursday 26 November 2020

(Afternoon)

[Sir Graham Brady in the Chair]

National Security and Investment Bill

Examination of Witness

James Palmer gave evidence.

2 pm

The Chair: We now come to our third panel. We will hear oral evidence from Mr James Palmer, senior partner from Herbert Smith Freehills. This will last until 2.30 pm. Mr Palmer, welcome; thank you for joining us. Would you be so kind as to introduce yourself for the record?

James Palmer: Thank you very much, Chair. I am James Palmer, a corporate mergers and acquisitions, and investments, partner at Herbert Smith Freehills. I have been doing that work for 34 years. I have worked with the Department for Business, Energy and Industrial Strategy on business regulation for over 25 years. I also chair our global board; we are an international firm.

Q107 Chi Onwurah (Newcastle upon Tyne Central) (Lab): Thank you very much, Mr Palmer, for sharing your expertise with us today. I see that you were on the takeover panel for SoftBank’s £24 billion takeover of Arm. Did you consider at the time that that might raise concerns for economic security and national security?

James Palmer: Thank you very much, Chair. I am James Palmer, a corporate mergers and acquisitions, and investments, partner at Herbert Smith Freehills. I have been doing that work for 34 years. I have worked with the Department for Business, Energy and Industrial Strategy on business regulation for over 25 years. I also chair our global board; we are an international firm.

Again, I am not the technical expert. My read of that—nothing to do with the work I did, but obviously I followed it and all the other transactions that have been looked at—is that it was more about economic security and positioning than necessarily about national security per se, but I am not the expert on it.

I think the point that you are drawing out—I heard your question earlier today—is a really fundamental one, which is that there is a spectrum of things that can be regarded as matters of national security. Indeed, the Bill papers draw this out. On the one hand, you have things that are clearly national security, like the risk of infiltration of systems that the country’s security depends on or that the country’s systems depend on—critical infrastructure being an example—but I do think that there are aspects of the Bill that are touching on things that stray more into economic influence and stability.

Again, I am not the expert on this, but I think we all know that in the debate about what is a matter of national security, there is a question of economic dependence, supply chain dependence and so on. That is one of the most difficult areas for this legislation, because where you have a straight, obvious national security real risk of some cyber-infiltration or whatever, nobody is going to argue about that. The grey into issues of supply chain dependency and more economic security starts to raise some of the more difficult areas, which I am sure we can come to.

Q108 Chi Onwurah: Thank you, Mr Palmer; those are very interesting and important points. In your answer to my next question, I would like you to reflect on how this could be better. You make points about the spectrum, and particularly about the need for expertise and wide-ranging consideration in this process. Do you have concerns or suggestions about how they could be better reflected in the Bill?

Also, we have heard a number of times today that under the Bill—this will be reflected in your experience—we are going from 12 call-ins to a much bigger number: 90 or 100. And the impact assessment estimates that, I think, 1,870 notifications might come in under the new regime. Could you consider how best to reflect that or to put in place the skills and the resources for the Bill, and say a little about what impact you think it might have on the attractiveness of investing in UK companies and, in particular, small and medium-sized enterprises?

James Palmer: I have focused on the same numbers as you. I hope the Minister will excuse my saying so, because I think the team have genuinely done a superb job of looking at a lot of granularity on a swathe of issues, but there is one data point I did not agree with: the suggestion that there will be an 18% increase in the reviews; it was framed quite narrowly. In my maths, 12 reviews in nearly 20 years going to nearly 2,000 a year is well over a 10,000% increase. I think that that is a very important context in which to look at this—as the world outside looks at this, it is potentially looked at as pretty seismic change by the UK. Again, there is lots that we can go on to as to the ways in which the detailed thinking around this has tried to mitigate that, and I know the Department has worked very, very hard in trying to mitigate it, but I think that we just need to be realistic.

In terms of the skills, there is a fundamental question, which the Bill papers have started to try to set out, which is this: how do we focus the debate so that it is not all-encompassing? Again, the Minister is aware of my views on this. I am extremely pleased—I know that some may not share this view—that the Bill does not catch a broader public interest test. The reason for that is what happens every time we introduce a power for the Government, for very sensible reasons—these things are always about competing tensions with sensible reasons—to seek to interfere, review something and decide who should own it, or whether they want to impose conditions on that.

Let me give you an analogy. Let us say that I invite someone to come and invest in this country to build a house. At the moment, if I invite them to come to this country to build a house—or a business or a small
technology business—they know they can build that house, live in it and sell it to whoever they want. If I invite them in and say, “Come and live in this country and build your house, but I reserve the right to decide who you sell it to and what conditions I impose on who you sell it to,” that is a very different prism—a new prism.

The Bill team have done a really good job of trying to narrow that so that everybody does not think, “Help! If I come to the UK, there is a Government discretion.” but there is an innate tension between, on one hand, the desire to have a broad power to interfere in circumstances that we have not all thought about to protect something as important as national security and, on the other hand, a desire to give investors certainty. My unhelpful view is that there is not a simple route through that, and I do worry about, in particular, small technology businesses.

Again, the team have done a good job of trying to narrow the sectors. This is a very different proposition, in terms of granularity, from what we saw in 2017 and 2018. But I think a lot of further work may be needed. The Government have been clear that they want to receive further feedback on how to narrow the remit. One example is the breadth of the communications sector, which has no de minimis. Artificial intelligence is not a thing done by four clever businesses anymore; it is a thing done by thousands of businesses. I think an awful lot of businesses are going to get caught that are not actually what the ministerial team are worried about.

The second bit is that, even outside the mandatory regime, other transactions may be judged with hindsight to be a matter of national security. Under the regime, a Minister—maybe not the current Minister, but whoever it is in the future—may decide that it is a matter of national security. As you have already highlighted, there is a spectrum of where economics becomes national security. People are going to worry about the predictability of investing in this country.

I am thinking particularly about smaller businesses. Obviously, there will be huge attractions to investing in the UK for technology. We have skills and expertise that can only be exploited here. The UK has had a very distinctive position as one of the few countries in the world where businesses without a particular nexus to a country have chosen to go as a destination of choice. Those businesses are the ones I am most worried about.

There is also the cost and risk for small businesses. If I was a European venture capitalist, how comfortable would I be in investing in a technology business in the UK that I will be able to sell it to an American or Danish buyer—not the Chinese—in five years’ time, or at least to do so simply? In terms of the call-in power, why would boards take a 1% risk that in five years’ time somebody will judge your transaction as being one that should have been notified? Why would I take even a 1% risk of my transaction being unravelled? I think that the Department has worked very hard—this is not just ritual politeness; I really think it has—to try to narrow it, but I do not think it has done so enough, because I think that there will be a lot more than 1,800 notifications.

Q109 Chi Onwurah: Thank you. You made it clear that you are praising the Department for the work it has done, and I accept your reluctance to criticise it; I think you are right—there is a lot of work, and this is a very complex area. Do you have any direct recommendations you would make to the Department in terms of what might need to change and in particular the preparations it should make for dealing with this large number of notifications?

James Palmer: My partner, Veronica Roberts, appeared before the Foreign Affairs Committee on Tuesday, and she and I will be submitting a list to this Committee. I am afraid we do not have time to go through it today, but I will draw out a couple. Some of the mandatory filing sectors are very broad, such as communications. Again, the Government have said that they welcome narrowing those. There are not de minimises in a number of those sectors. It is true that there are other jurisdictions that do not have de minimises, but they are not jurisdictions with as large a proportion of their GDP linked to trade, and they are not jurisdictions that are as much seen as international business headquarters as well as centres of international business; there is a difference.

There is a de minimis for transport, for example, and it is very focused on ports over a certain threshold and on airports over certain levels of traffic. That is excellent, because those are the kinds of business that it makes sense that you would want to catch. The same layering has not been applied elsewhere. In particular, I worry about catching the sale or the licensing of intellectual property in relation to any of the technology areas. I think that that will catch an awful lot of things that people have not thought about yet, and I think that it will create a big burden for those small businesses. I can conceive that in one or two very narrow areas—in some of the material science and so on, I am told—there may be low-value things that need to be caught. I am personally very sceptical that low-value things need to be caught in many other areas, because how can they be that important to the economy if they have a value that is below £1 million?

One of our concerns is that, although we know that the Government are very committed to a free trade agenda here and trying to make this work, I have worked with new regulators as they have developed for a very long time, and—forgive my saying so—I have never seen a regulator whose remit was only at the level that was predicted when it was set up. All remits expand exponentially, and that is one of the fears we have.

I would certainly advocate ensuring that the factors that the Secretary of State has to have regard to include, for example, impact on trade. The cost-benefit analysis sets out a sensible attempt—again, it is a much more developed piece of work than the, frankly, not-that-great cost-benefit analysis done in 2017-18; this one is a good and credible attempt—to work out what the actual cash costs are. But it does not address, as the Regulatory Policy Committee drew out, the real economic costs. It may all be okay, but the risks there are not hundreds of millions, but absolutely billions, and the UK’s competitive positioning there.

Q110 The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): I was going to ask you about whether the Bill is proportionate between being very focused on national security—albeit, as you quite rightly point out, there is a spectrum of that—versus public interest, but I think that you have answered that issue in saying that you would very much guard against expanding it.
James Palmer: I will just explain why. I remember working when the public interest regime still applied. The move away from the public interest regime started in the 1980s. Pre the 1980s, this country was not an international investment destination; it really was not. We have earned that position. Whatever one's politics—I am not party political—this is something that the UK has earned. We have done that by moving to being pretty open-minded in foreign investment. We have actually not worried that much about national security considerations being controlled through ownership, because again this debate has been—sorry, let me first come back to the Minister's point.

I am very nervous that if you open it up to public interest, you vest that authority in a politician; forgive me, but that is what leads to lobbying, to short-termism, and to completely inconsistent decision taking. I am afraid that whatever Ministers at the time may say about these decisions, there is no external credibility on the predictability of those. It does not matter whether Ministers think they are doing it in good faith or on security grounds. It does not come over that way.

On broadening it to public interest, I completely agree. I am very grateful—because I know that there was a debate about this—that it has been rightly focused just on national security, albeit with a broad ability to intervene to protect the national interest.

Q111 Stephen Kinnock (Aberavon) (Lab): Thank you very much indeed for your useful and interesting evidence. I want to ask about some tangible examples, just to get a sense of where you stand on this spectrum—in this debate between economic openness and national security. You have made your position on it quite clear, which is that we should not sacrifice one to the other. Do you think that the Arm-SoftBank transaction would have gone through under this regime?

James Palmer: My own view is that I actually hope so, because I think that there is a debate here. We all identify a business that has been established in the UK, and we regard it with pride as a national asset. I completely understand that. I am not just interested in global M and A; I am interested in investment in the UK. My goal is not just M and A. It is the investment, which we will not get without M and A at the end, because investors want to know that they have the ability to realise.

My own judgment—I am not an economist, but most of the economic evidence that I have seen supports this—is that you do better by allowing people to come in, allowing them to sell, not necessarily completely untrammelled, but on a broadly liberal perspective, giving them the certainty and confidence to do that.

I think what we are debating here is about those things that are generated solely in the UK—for example, research, work and ideas that are funded by the UK Government. I can see why the UK Government might want to keep control over those things and link their funding to a level of control. If someone takes funding on that basis, I can see that. I do not know enough about the history of Arm, but it was acquired by a Japanese parent, not by a so-called hostile actor. If we are not going to allow Japanese businesses to buy into our technology businesses, I think we look like a less interesting technology investment and growth destination. We might hold on to a business for another five years, but what businesses are we losing for our children and grandchildren in 10, 20 and 30 years’ time? That is how I look at the question.

Q112 Stephen Kinnock: What about AstraZeneca and Pfizer, which, of course, did not go through, mainly because of the political debate that raged around it?

James Palmer: Partly. I was involved in that as well—not entirely, actually. By the way, I think there is a misunderstanding about hostile versus agreed deals. Agreed deals, politically, are regarded as generally okay, and hostile deals as not. But it is about price normally. In occasional cases, there may be other factors, but I think that should not be the determinant of whether a deal is favoured or not.

On AstraZeneca-Pfizer, the challenge there is that AstraZeneca is not just a UK company; it is a global company. Most of its business is not in the UK; it is all around the world. It was built up by making acquisitions around the world. If we say that it cannot be acquired by an American pharmaceuticals company, what message does that give to businesses that want to come and headquarter in the UK to then go and buy elsewhere? The UK has been a net acquirer globally, and I think that our openness is what has allowed us to do that.

I completely understand the concerns about jobs, and I completely understand the concerns about science and the preservation of skills, and I do not dismiss those, but I worry that by trying to hold on to what we have today, we lose the appeal in the long term, a bit at a time, to people coming in the future. It seems to me that if we are going to have research in the UK, which I think we will, it should flow from our research skills, not from holding on to things that want to leave.

Stephen Kinnock: Thanks very much. Do I have time for one more?

The Chair: If it is very quick.

Q113 Stephen Kinnock: Could you just say a word about comparable jurisdictions, such as the United States, where their CFIUS law brings into play the extent to which the acquirer has a history of compliance with US law, and the same for us—not just the acquirer, but perhaps also the state that that acquirer comes from?

James Palmer: There is an interesting issue about compliance with law. You need to be careful, because clearly, the draft legislation envisages—as, by the way, I think, the current very broad discretion, which catches an awful lot of transactions, gives discretion to do—allowing quite a bit of leeway to exercise judgment as to what is a national security issue. If you have an investor that is clearly law-abiding and not about to try to put toxic software into your systems or whatever it might be, you are going to worry a lot less about them, so I do not want to limit the discretion.

Do I think that you need to draw out compliance with law in particular? I am nervous about doing so, because it could become a hobby horse for a company that has breached some law somewhere or other. If a big global company has 50,000 employees, people make mistakes; someone somewhere will do something that will transgress. So I worry about it missing the substance. I think there is a discretion to look more substantively, rather than being too much tied to whether they are law-abiding or not. Again, there is clearly a China focus
here—I am neutral on that issue; that is for you—but you are not going to know whether a Chinese company is law-abiding outside China or in China, in particular if it has not invested outside China before.

The only other thing I would say on comparator regimes is that the whole debate on this has been framed, as it was in the 2017 paper, around the main rationale, which was, “Other countries are doing this, so we need to look at it.” A much better rationale, which has also been articulated by the Government, is, “We’re coming out of the EU. We’ve got EU-based legislation at the moment. It’s actually the right time to take stock, rather than necessarily that the old regime was hugely defective.” I do not think it was as defective as everybody is saying.

We keep talking about France, the US and Australia. My firm is the largest law firm, or one of the largest law firms, in Australia, and we are in all the markets—France, Germany, Italy and Spain—that keep being cited. Those countries are our very friendly trading partners, but none of them has the reputation for being as open and free trade-oriented as this country. I think we need to be careful about setting comparisons with the most controlling of our friends, not the least controlling, because there are a whole load of countries that have not been named in any of the discussions that are not doing any of this.

Take Ireland and technology. Maybe, under pressure from the EU, they will introduce something, but the Irish have been trying to grow technology; so have the Danes and the Swedes, and the Dutch as well. The Dutch will come out with some proposals in this area, but my expectation is that they will be much more limited. The Dutch are very internationally competitive. For new industries—for green tech, which we really want to be in—the Nordic countries are significant competitors, and I do not think they are going to have all this. I think that, for investors, that is a factor we just need to bear in mind as we try to find the right balance.

The Chair: We have less than five minutes left, so I suspect that this will be the last question. Mark Garnier.

Q114 Mark Garnier (Wyre Forest) (Con): When you were answering Chi Onwurah’s question, you posed the question, why would you buy a company if there is just a 1% risk that you would not be able to sell? I was going to ask you how the Bill could be market distorting in terms of the valuations of some of these businesses. You raise a very good point about investing in a business to ask you how the Bill could be market distorting in terms of the valuations of some of these businesses.

Q115 Mark Garnier: Very quickly, although this looks at equity investments, do you have any thoughts about the fact that debt holders can be much more influential and therefore possibly get away with the assets?

James Palmer: I heard the question that you raised this morning on that. I am not troubled by that. I think debt is a bit of a myth. The material influence test that the Government have picked is lower than a number of other EU countries have gone for but is at least consistent—it is levered off the test we already use, which I think is helpful—so I am personally a bit less worried about that than some others are. Finance does not worry me that much. If somebody seeks to foreclose and exercise, they are not going to be able to do so if they are going to be caught. I think we could get ourselves in a knot, and I think the London financing markets could be disastrously impacted if we were to start to try to regulate lending heavily on this.

The Chair: I am afraid that brings us pretty much to the end of the time available. Many thanks, Mr Palmer, for your time and your assistance to the Committee.

We will move seamlessly on to the next session and hear evidence from David Offenbach, a consultant at Simons Muirhead & Burton. While he is taking his seat, let me say to those members of the Committee who were not able to ask questions last time that I will try to make sure that you get an opportunity on this occasion or a future one.

Examination of Witness

David Offenbach gave evidence.

2.29 pm

The Chair: Welcome, Mr Offenbach. May I ask you to introduce yourself for the record?
David Offenbach: Yes, thank you very much, Sir Graham. I am consultant solicitor with Simons Muirhead & Burton solicitors, a firm of some 32 partners, and I have been there 19 years. I am here in a personal capacity. Previously, I was a senior partner of the law firm founded by my late father, and I merged my practice with Simons Muirhead in 2001.

I have acted for small public and private companies, and for 15 years, I was a non-executive director of a fully listed plc. I have been involved professionally in takeovers, and I have written on the subject. Currently, I am updating a paper I wrote previously called—this may be of interest to you—“Takeovers and the Public Interest”.

I have recently ceased being a further education college governor and non-executive director, after 18 years’ service, and I was with a social housing company for 15 years. In fact, one that I finished a term of six years with was the subject of one of the largest takeovers in the social housing sector. It is now one of the biggest housing associations.

Briefly, I welcome this Bill very much; but the UK has changed fundamentally since 2017, when the Government started their consultation on this, so I think that it is good, but it could be better. If the United Kingdom is going to build back better, as the Chancellor said yesterday, after covid and after Brexit, whether there is a deal or not, then this legislation needs to be wider than it is now, and I have some suggestions on how it could be improved and some amendments that might be made to it. Excuse me; I’ve got a bit of a cough.

The Chair: That’s all right. Thank you very much. Shadow Minister, Chi Onwurah.

Q116 Chi Onwurah: Thank you very much, Sir Graham. Welcome, David, and thank you so much for sharing your expertise and experience with us and for giving me an opening, which I cannot resist: what are your suggestions for improving this Bill?

David Offenbach: Well, there are three categories. First, are the 17 subjects that are referred to in the paper sufficient? Sir John Redwood, in the debate last week, said that food should be included, because there is nothing more important than food security. Mr Tim Loughton said that pharma and biotechnology should be included. There is not really very much on energy in the 17 subject matters. So I would like to see those included.

The next is the definition. National security is not defined in the Bill, which I actually approve of, because once it becomes too closely indicated, then it is not easy to decide what should be in it, or what should not be in it. I would like to see a definition that includes what Lord Heseltine said when Melrose took over GKN, that research and development should be a subject of importance; it should be included.

The other thing I would like to see included, contrary to the last speaker, is a general definition of public interest. The reason for that is that when you look at recent examples, you see that it is very easy for things to slip through the net that actually might be both in the national interest and in the interests of national security as a specific point.

Some of these examples have already been mentioned: SoftBank’s purchase of Arm. Now, that was world-beating British technology. It is in every computer, it is in every telephone and it came from Cambridge. It is now the subject of a bid by an American company owned by a Japanese bank. Do we really want to try and hang on to the research and development—as someone said in the House of Commons debate last week, the Crown jewels, or as Harold Macmillan said many years ago, the family silver? At this economic time, is it not desirable that we try and hang on to these important assets that are homegrown? Is self-reliance something that we should bear in mind?

Similarly, in 2014, Google bought DeepMind—world-beating British technology in artificial intelligence. Should that have been the subject of consideration? Recently, Lady Cobham was bemoaning the fact that Cobham had been sold to private equity for £4 billion. She said she only wished that the Act had already been in existence, and then perhaps the nine divisions that have now been reduced to four and the sell-off that started would not have happened. Of course, one of the problems is that the post-offer undertakings that can now legally be provided by companies to the takeover panel are fairly feeble and do not really deal with the issues to protect the necessary research and development and public interest.

At Immarsat, as those of you who drive around Old Street roundabout in the middle of London’s tech city will know, there was a £4 billion takeover of world-beating satellite technology. It started as a United Nations organisation, then became private and was quoted on the London stock exchange and has now gone to private equity.

Nvidia is buying Arm. When they bought Icera in 2011 in Bristol, they closed it down, 300 people lost their jobs and the technology went abroad. One that might now cause a bit of embarrassment is the case of Huawei, which bought from the East of England Development Agency the Centre for Integrated Photonics in 2012. Another piece of world-beating technology owned by the British Government has now gone abroad.

Those are just some of the numerable examples of assets that, at this difficult time, we really ought to try and hang on to. I do not want to decry the argument that Britain is open for business and that we believe in free trade. We do. There is twice as much foreign direct investment into Britain as there is into France and Germany. Several hundred thousand French people live in London. It is the fourth largest French city for French citizens. Why? Ask anybody. It is much easier to do business in London that it is in Paris.

As for the other argument—that if we do not make the business climate easy, people will start up their businesses elsewhere—the answer is that they will not, because in the other places where they want to open their businesses the regimes are tougher than here, so that argument does not wash. France has just passed its recent new law. They use a slightly different test that is more strategic. Their test is not quite as wide as public interest. Of course, a right to intervene on strategic grounds is what Mr Tim Loughton and Mr Bob Seely suggested in the House of Commons debate last week, and Mr Tugendhat was very sad about the fact that Google had bought DeepMind and that SoftBank had managed to acquire Arm. For all those reasons, I think we do need to add to the definitions. That is the position.
Q117 Chi Onwurah: I have a quick follow-up question. Should we consider a separate test of public or strategic interest, or are you saying that our economic and security interests are intertwined, so it is the definition of security interests that needs to be expanded? What are your views on that?

David Offenbach: It is very difficult to separate these. When you look at GKN, for example, 50,000 people—even now, after covid—are headquartered in Redditch, near the Minister’s constituency. It is one of the largest industrial companies worldwide, 250 years old, and a defence contractor to the Ministry of Defence, but the question is whether the amount of defence work it does, apart from its other engineering, is sufficient for it to be called in under the existing legislation. Clearly, the decision was made that it was not appropriate, and it is the same with Cobham. Cobham clearly had a national security element, but it was not sufficient for it to be called in and blocked by the Minister, so I think it is very difficult to separate the economic from the national interest, because these companies are multi-layered; they operate in different markets; some of their work is sensitive, and some of it is not sensitive.

That is why I think it is better to try and improve this Bill than deal with it under a separate Bill. The problem is that it has taken three years to get to where we are with this Bill. If we are just going to say, “Let’s deal with it another time”, it might take another three or four years before we get to consider that, so while it is here, while it is on the table, let’s try to improve it now and make it really work for Britain, so that we can build back better—to use a phrase—going forward.

Q118 Nadhim Zahawi: Welcome, Mr Offenbach; thank you very much for making the time. I wanted to get your view on how you think the Bill deals with the range of sanctions available to the Secretary of State in order to protect national security. How do you see that?

David Offenbach: I am very pleased with it. It is much better than the previous regime, because now, rather than just having post-offer undertakings that are subject only to contempt of court criteria if they are breached, we have a proper statutory framework that will enable the Minister to impose orders so that for non-compliance, there is a breach of statutory duty, not merely a breach of an undertaking. Of course, one of the problems with the takeover code is that the object of a takeover code is to protect shareholders and to encourage fair dealing in takeovers. It is not there—and this has never been its job—to protect the public interest; it is there to protect the shareholders who are in receipt of an offer, so that they have been given fair treatment. For example, if you take SoftBank and Arm at the moment, we do not know whether or not they will have complied with their post-offer undertakings when the five years is up, because the price that is being paid now is more than was paid in 2016. There is no complaint. Public interest is irrelevant to the job of the takeover panel, which is why this new regime is a very welcome improvement on the old regime.

Q119 Sam Tarry (Ilford South) (Lab): Thank you, Mr Offenbach. This is very interesting evidence, and clearly you and the previous witness have really exposed this tension—this debate—between having an open and liberal economic approach, and our self-interest and national security. This is not a new debate: Peter Lilley had his famous Lilley doctrine, and earlier this week, we heard from Sir Richard Dearlove. Most of the Committee members listened in earnest to that discussion.

For me, there is something really important we need to explore a little bit more when it comes to our approach, in terms of rushing to be the most open, the most liberal, the most pro-business country we can possibly be, and the exposure that is left—in this case—to China. Just thinking about that, are there particular areas of law that you think need to be tightened up and thought about alongside this, and that need to be looked at in tandem, perhaps around IP protection, licensing and that kind of thing?

David Offenbach: I think this actually does most of what is necessary. I do not think it needs to be improved in that regard. One thing that does slightly worry me is that the present regime, which is essentially a competition regime, has the Competition and Markets Authority as a statutory body, having lost national security to the new unit that will be set up inside BEIS. They only have financial stability, media plurality and public health, which was added this summer, but it is a proper organisation that deals with public interest in those areas. Public interest is the only area.

It is quite important for us to think that one of the reasons why one wants to extend the definition of national security to a public interest element is because there are many more areas of public interest, other than those three that are now left in the CMA. There is a little bit of an anomaly, because national security does not have its own separate statutory body to deal with these issues. It suggests that this is going to be put into a little hole somewhere in BEIS and that somehow competition is more important than national security, because it has a statutory body.

I wonder whether there should be a parallel statutory body, which could be called the national security investment commission, or something like that, that actually dealt with these things separately, outside BEIS. That would deal with some of the objections that people have and that a Minister is going to be lobbied about. It would be dealt with in more of a quasi-judicial way, in the same way that the CMA now deals with referrals to it. I wonder whether the Minister would like to consider that, as part of the amendments.

Q120 Sam Tarry: Clearly there would be some serious resourcing implications around that. Thinking about what you said earlier, about a number of different examples that have been in the press about major UK-owned companies that were the subject of various takeovers, would you like to say a little about how industrial strategy could also relate to national security?

David Offenbach: I listened to and read the Second Reading debate in the House of Commons last week. I know that a lot of Members were concerned to try not to let issues of industrial strategy stray into areas of national security. It is a subject that I do not really want to go into. Some people have expressed anxiety about the activities of sovereign funds in other countries posing dangers to assets in this country. Is there more of a risk from investments in China? Somehow, people feel that those investments are connected with the Government and that they are not really independent. I think the necessary protections are in this new statute that will prevent that from being an issue.
So far as industrial strategy is concerned, people are worried about sovereign funds. I think Britain should have its own sovereign wealth fund, like Norway does and like we used to have with the Industrial and Commercial Finance Corporation, and then with 3i. There are amazing investments that could be made and wonderful technological discoveries that Britain should be able to get the profits from, and that should not be going overseas. When I went on a trade visit to China a few years ago, I saw the China Investment Corporation. They said, “We are really pleased with our investment in Thames Water. We do nothing every year. The dividends come and it doesn’t cost us any money.” I thought, “Why shouldn’t Britain have the advantage of the dividends, rather than the China Investment Corporation?” Norway’s sovereign wealth fund is worth more than £26,000 for every citizen in Norway and is one of the most successful. That is something that really we ought to look at.

Q121 Simon Baynes: (Clwyd South) (Con): Thank you very much, Mr Offenbach, for your interesting comments which, as my colleague has said, are in sharp contrast to Mr Palmer’s point of view—so that is helpful to us. I have two questions. Apart from the lack of inclusion of public interest, are you broadly happy with the Bill as it stands, in terms of what it is seeking to achieve? I suspect you are.

David Offenbach: Yes, I am.

Q122 Simon Baynes: You refer to other regulatory regimes being tougher, but I think Mr Palmer’s point was that there would be other regimes that are weaker and more liberal. I think the point that he was trying to make is that if controls are tightened here, the capital, knowledge and companies will go elsewhere. Do you not see that as a risk?

David Offenbach: No, I do not—not in the slightest. I am thinking of clients of mine—French—who moved from Paris to London because it is easier to set up and promote business here. Why did they not stay in France? Because they know that the regime is more restrictive. Why did they not go to Australia? Because they are a similar regime. They are more restrictive. We are a very open environment to do business, in this country. You can come here and set up a company in 24 hours, and start trading. You cannot do that in France: it is much more difficult. In Germany, it is much more difficult, and in Australia. Those comparable regimes, if you like, are less favourable. That is why people come from the Baltic countries to set up business here. It is much easier to do business.

Q123 Simon Baynes: I think that Mr Palmer’s point, if I understood him correctly, was that if we bring the Bill in, we create a tougher regime than there is at the moment. I think he used the example of Ireland, and I hope I am not misrepresenting what he said, but he said it was potentially an environment that would have a less structured regime, and therefore could take business away from us, to put it crudely.

David Offenbach: We have the issue that we do not know what difference being out of the European Union is going to make to future investment; but Ireland has been very attractive for many years, partially because of the tax regime—and for lots of other reasons—so will people choose Dublin rather than London if they want to do business? They might very well, but the fact that Britain is open to trade is an important part of the British economy. People will still come here and work here, open businesses and enjoy the infrastructure of the technology and the various businesses that are already here, and that they can feed off, so I am not worried about that in the medium term.

Q124 Peter Grant: (Glenrothes) (SNP): I see from the profile that we have been given that you have considerable experience in land transaction—the legalities of land transactions—as well as company law and so on. Given that part of the Bill that we have not looked at much so far is about controls on the purchase and acquisition of land and other physical assets, as well as companies, are you comfortable with the fact that the processes for controlling potentially hostile purchases of land assets are similar to those being proposed for company takeovers or company acquisitions? Is there any reason why there needs to be different processes for them both?

David Offenbach: It does not need to be any different at all. I was pleased that land was included. Certainly one knows from seeing property transactions and looking at title deeds, sometimes where the owners of these companies are or purport to be is very curious. The Bill covers that very adequately.

Q125 Peter Grant: One important distinction is that while companies legislation is almost entirely reserved to the UK Parliament, a lot of legislative authority for land registration is devolved to the Scottish Parliament and the Scottish Government. Is there a risk of an unintended consequence—that we end up with legislation being passed here that could have an impact on the devolution of land use and purchase regulation to the Scottish Parliament?

David Offenbach: I do not know. I am sure that officials in the Minister’s Department have thought about whether or not this is an issue for the devolved Administration, but I do not think it is a problem.

Q126 Peter Grant: Finally, going back to the acquisition of companies, although it could also be relevant to the acquisition of properties, a key factor is going to be the identity of the person or the business who wants to make the acquisition. That is okay if everybody can see who the owner is. Is the Bill tight enough to give adequate protection against a potentially hostile buyer who sets up a holding company under an anonymous name in some offshore jurisdiction, so that the ultimate buyer of the asset in the United Kingdom is not made public? Is the Bill strong enough to protect against anybody using that as a way of buying up assets that they would not have been allowed to buy up if they had done so in their own name?

David Offenbach: Yes, it is. The first thing that will be looked at is where is the beneficial ownership. It is, first, follow the money and, secondly, follow the beneficial ownership.

Q127 Peter Grant: But what about once you get to the point where you follow the beneficial ownership and find that it is a company registered somewhere offshore, where the identities of the directors, who have ultimate control, or the shareholders, are not made public?
*David Offenbach:* Then you block it.

**Q128 Peter Grant:** So you are suggesting we need to block any purchase of a sensitive asset from a company whose ultimate controlling partner is registered in a tax-haven type regime overseas. Would you go as far as that?

*David Offenbach:* Yes, I am sure that is what the security unit will do. If it cannot be established where the beneficial ownership is, then they will block it, and so they should.

**Q129 Peter Grant:** You were suggesting earlier that the definition of the national security interest needs to be widened to include other national interests such as the strategic economic interest. Are you suggesting that there are some businesses or some assets in the United Kingdom that, although they do not have any national security implications, should not be allowed to be bought over by a company whose ultimate controlling partner remains anonymous?

*David Offenbach:* Well, I remember there was an outcry years ago when Michael Portillo was a Defence Minister and they were going to sell the Ministry of Defence. There was an outcry and it was withdrawn. Should Admiralty Arch become a hotel or is that an asset? These are the sort of issues which, if they come up, will be dealt with at the time. I like to think that certain things are fairly sacrosanct. We would not sell Buckingham Palace or Windsor Castle to a foreign buyer if we did not know who they were—or at all, in fact.

**Q130 Andrew Bowie (West Aberdeenshire and Kincardine) (Con):** Mr Offenbach, thank you very much. I have a very quick question. You ran through a long list of acquisitions at the beginning of your evidence, most of which I think you would suggest were not in the national interest, although people may disagree. Given the Bill as it stands, which, if any, of those acquisitions would have been thwarted or prevented by it? Which, if any, of those acquisitions would have fallen foul of running the risk of being a threat to national security?

*David Offenbach:* The answer is that one is not quite sure. That is why I want to widen the definition. The reason why there are 17 different areas and categories in the Bill is that it is hard to know what national security is at any particular time and how it is reflected in the business that is actually being considered. The only way to make sure that something does not slip through the net is to have a slightly wider definition. There is no definition of national security itself in the Bill, which is perhaps why strategic, research and development, innovation or other issues should be brought in. Then one can be quite sure one has not accidentally lost an asset where there are national security issues.

**Q131 Matt Western (Warwick and Leamington) (Lab):** Thank you, Mr Offenbach, for your evidence this afternoon. I am interested in the example you gave in your statement. Has the pandemic changed the way you view national security?

*David Offenbach:* Completely. It has also changed how the Government view it. In the summer, public health was added to the list of items on which a public interest intervention notice can be given. So it is clear that, in the face of the national emergency that, alas, we face—according to the Chancellor it is the greatest economic crisis for 300 years—we have to hang on to our assets. That is why the Bill is even more necessary than it was before. The pandemic gives added weight to the arguments that I was making even before we had covid. We need to have a wider test to protect our national assets.

**Q132 Matt Western:** What is your view on the Bill’s assessment that state entities and funds pose less of a risk than private entities to the UK?

*David Offenbach:* I am not personally worried about state entities being said to pose more of a risk, because I think that the Bill is strong enough to make it possible to intervene where necessary. Although one is entitled to look at the asset being purchased, the acquirer and the person from whom it is acquired, I do not think that it will be a problem under the Bill as it is drafted.

**Q133 Matt Western:** Going back to my previous question, do you think that we should think about areas such as climate change and other things that are perhaps not necessarily of immediate urgency—some would say, of course, that climate change is urgent—as matters of national security?

*David Offenbach:* I do not think that there is anything other than the 17 already mentioned and the ones that I mentioned, most of which came up in the debate last Tuesday. I think that telecoms might be mentioned as well, but the list really covers all the areas where national security is a significant risk.

**Q134 Stephen Kinnock:** Thank you very much for this useful and important evidence. I have one relatively specific question based on your expertise in real estate. The statement of political intent states:

“Land is generally only expected to be an asset of national security interest where it is, or is proximate to, a sensitive site, examples of which include critical national infrastructure”.

Do you think that scope is too narrow? For example, we know that property in London is used to launder large amounts of money—nefarious organisations often own property in London and use it for nefarious purposes. London is sometimes referred to as a laundromat for dark money. Do you think that that is a national security risk and should be included in the scope of the Bill, and that the land definition in the statement of political intent should reflect the money laundering issue?

*David Offenbach:* I am not sure I quite agree with the statement of intent as part of the Bill papers. The drafting of that section of the Bill is wide enough to include the issues that you raise. It would be open to the Minister to intervene in the cases that you mention without any change to the drafting of the Bill being necessary.

**The Chair:** If there are no further questions at this point, I will say thank you very much, Mr Offenbach. The next witness is not due until 3.15 so we will have a 10-minute suspension.

3.5 pm

Sitting suspended.
3.15 pm

**On resuming—**

**Examination of Witness**

**Creon Butler** gave evidence.

**The Chair:** We will now hear oral evidence from our fifth panel. We welcome Mr Creon Butler from Chatham House. We have until 4 o’clock for this session. Mr Butler, may I welcome you to the Committee? Please will you introduce yourself for the record?

**Creon Butler:** I am Creon Butler, the director of the global economy and finance programme at Chatham House. I am very pleased to have the opportunity to give evidence.

**Q135 Chi Onwurah:** Welcome, Mr Butler, and thank you for sharing your expertise with the Committee. Your expertise is considerable, given that you have advised on policy issues such as climate change, national resource security, global health security and economic security. There are clearly many aspects of security. Are both the distinction and the links between national security and economic security appropriately reflected in the Bill, or could they be better reflected?

**Creon Butler:** You get right to the heart of the matter and, indeed, to one of the points I wanted to make. Yesterday I looked at how national security is defined, and the “Collins English Dictionary” defines it as preventing a country from being attacked by hostile powers. One very important thing in relation to this Bill is that, first, while there is a good justification for having a broad range of powers to intervene, given the breadth of those powers to intervene and collect information, it is important that the Government define more clearly than they have hitherto exactly what those powers will be used for and, in those terms, use them in relation to national security. Specifically, I mean investments that could lead a hostile power to have technology that would enable it to make better weapons to attack us or would enable it to intervene in our critical national infrastructure.

There are other aspects of economic security, such as having a major industry in AI, renewable energy or something of that kind, that could be relevant to broader security in the future. You may well want to have a strategic intervention to ensure that the UK has that kind of industry, but I do not think this is the Bill for doing that. I think there are other tools you would want to use, including competition policy, strategic investments, contracting, R&D and so forth. That is one of the points I wanted to make.

**Q136 Chi Onwurah:** Are the other tools or powers needed to make interventions with regard to strategic capability in place under the Enterprise Act 2002, such as for the Arm takeover? I am not sure that they are. Given your experience, will you say a bit about the level of resourcing and expertise the unit would need to make such assessments?

**Creon Butler:** On your first question, I do not think we have that yet as a country. Actually, with the previous Prime Minister we had a clear definition of a number of sectors that were felt to be very important, but it is a continuing story in terms of exactly how we are going to intervene to ensure that those sectors are strong. We have some powers, but there are a range of tools. I previously mentioned public contracting, where we do our research and development, and competition policy specifically to make it impossible for British companies to develop in those sectors, and so on. There is a broad range of policies for ensuring we have those sectors, and I think they are continuing to evolve.

Your second question is a really crucial one. I guess a key point is that this is not an absolute thing: you cannot protect the country from all possible national security risks through this route. The only way you could do that, potentially, is by having every single investment notified and examined. That would create an enormous bureaucratic monster, which would really not be what we want.

The further point is that when you are looking at the right cases, you want to be sure that the judgments that are made trade off with the national security risk, as I have defined it, but also with the potential economic benefit of having an investment in that area. To do that, you need expertise among the people who are making such judgments, which spans security expertise but also economic, investment and commercial expertise. It is very important, first, that there enough people to do the judgments properly, and secondly, that you have a breadth of expertise. Certainly in the past, we may have swung from one side to the other. Sometimes you have had what people would describe as a securocrat approach: “There is a possible risk here. Let’s go for it—let’s eliminate it, whatever the economic cost.” Sometimes, on the other hand, you have had the alternative situation: “Let’s encourage investment, whatever the risk might be.” I think it is important that we get a balance between those two.

**Q137 Nadhim Zahawi:** Welcome, Mr Butler, and thank you very much for your attendance. Reflecting on the changing nature of the national security threats that we are now facing, which you alluded to in your answer to my colleague, the hon. Member for Newcastle upon Tyne Central, how do you think the Bill builds on the Enterprise Act 2002? It has been 18 years since that legislation was introduced, so it would be great to get your take on that. Given your CV, it is worth getting your reflection on that while we have you here.

**Creon Butler:** I think—I am sure many people have said this—it is very clear that the previous legislation needed updating and was not fit for purpose, given both the way in which the global economy as a whole has evolved and the way in which the threats have evolved. It is both necessary and urgent to update that, and the way the Bill has done that, in terms of this first phase of creating the powers both to collect information and to intervene, makes a lot of sense. We have to fine-tune it and make sure it works properly, but this is a good first step. As I said, though, it is really important, if you are going to have such broad powers, to define exactly how you will use them—and much more precisely than the Government has done hitherto.

The further point is that this piece of legislation does not do everything. Alongside it, we need to strengthen our ability to collect the information we need about those threats. There are a number of elements. One that I have some experience of and that is really important is the question of who actually owns and controls companies that are operating in the UK—the question of beneficial ownership transparency. If you do not know that a hostile power is influencing a company that might be
registered in an overseas territory or something of that kind, you will not be able to take the steps that you need to take.

A further area—it is a step in the right direction, because it gives us the powers to engage with this issue—is through international co-operation. Looking forwards, we need to strengthen and enhance our international co-operation with like-minded partners by going beyond the Five Eyes and including other really key partners, such as Japan, the EU and so on. That will enable us to do two things. First, it will enable us to share information about the things that can happen, such as the techniques that hostile powers are using. You may see it come up first in one country, and if we can share that information, we know that we can be prepared for that. Even more importantly, you may have a hostile power that does a number of things in different parts of the world, and it is only when you see the entire picture that you can see what the threat is.

Having that kind of international co-operation to do that is really important. These powers are necessary to get us in the same place as some of our key allies, in terms of what we can do. I do not think we are ever going to be able to standardise the areas of intervention or the nature of powers, but we should push very hard to enhance the sharing of information in the way I described.

Q138 Stephen Kinnock: Thank you very much for the very interesting evidence that you are providing. I want to focus on the acquirer risk element of the Bill. The statement of political intent states that “the National Security and Investment regime does not regard state-owned entities, sovereign wealth funds—or other entities affiliated with foreign states—as being inherently more likely to pose a national security risk.”

Do you agree with that assessment? Logic would seem to suggest that the closer an entity is to a foreign Government, the more likely it is to pose a risk to our national security.

Creon Butler: Clearly, some state-owned enterprises can be a significant risk, but some clearly are not. VW has a significant state element in it through North Rhine-Westphalia, but that does not make it a national security risk. At the same time—this goes back to the point I was making about who actually controls companies—you could well have a company that is registered in another country and, particularly if that country does not have very beneficial ownership transparency laws, as even some very close allies such as the US do not, the company emanating from it could have ill intent towards us.

For that reason, I think the Bill is right not to make a special regime for companies that are state owned, because that could go wrong in two ways: either you could be looking at only one set of companies when there are others that are potential threats, even though they come from close allies, or you may end up spending a lot of time looking at companies with state shareholdings that are really no threat at all. Clearly, when you come to do the analysis, whether there is a stake from a hostile state will be an important part of the analysis that you do in assessing that threat. I think the Bill gets it right in not creating a special regime, but that does not mean that this will not be an important part of the analysis that you do in assessing the threats.

Q139 Stephen Kinnock: The Bill does not suggest a special regime, but it also seems to say explicitly that the state-owned characteristic should not be considered, because the statement of policy intent says that it is not inherently more likely to pose a national security risk. It does not seem to do either of the two things you are suggesting.

Creon Butler: I did not read it quite that way. I read it more as meaning that that is not a reason for having a special regime, but when it comes to doing the assessment, you look at whether there is a state element of ownership and from which country that state element of ownership comes. That would be a factor when you are examining the likelihood that that particular investor could pose a threat to us. I am not a lawyer; I just read it that way. If the way you are reading it is the correct way to read it, I do not think that is quite right.

Q140 James Wild (North West Norfolk) (Con): Mr Butler, given your experience in the National Security Secretariat, I want to ask you a few structural questions. How you think the NSS should be linked into the new investment security unit in BEIS?

Creon Butler: It is a constantly evolving picture. The benefit that the NSS can bring is a strategic overview. When you want to put the element of national security protection in the context of broader economic security issues, it is really important that the NSS plays a key role. I do not know the precise detail of exactly what the linkages are between the new unit and the NSS. I would think, from the way I worked in the NSS, that they will be very close in terms of people, exchanges, links and so on.

In terms of the respective roles, the strategic role is one that the NSS should play, looking at this element alongside all the other elements of national economic security. As I understand it, it is very important that this unit has a very strong operational focus and effectiveness, the skills that enable it to do this, and the space in which to do it. If I was in charge of designing the relationship, that is how I would design it.

Q141 James Wild: That is helpful. On the operational point, do you have a view on the timescales for turning round the reviews and assessments within the Bill as it stands?

Creon Butler: There is obviously a trade-off again. My sense was that the provisions that are there now are realistic and sensible, but we need to see how the thing evolves and fine tune it according to the experience that we have had. People have pointed out that this will lead to a lot more cases being looked at than before. I do not think that that is a criticism of what is happening; it is a reflection of the world that we are in. However, in the light of the experience of looking at a much broader range of cases, we should be ready to adjust the timesframes and so on, taking account of that experience.

Q142 Matt Western: I wonder, Mr Butler, if you would elaborate on, and give more examples of, the sorts of international threats that you see us facing, in terms of not just national security but economic security, and the links between the two.

Creon Butler: In my view of economic security broadly, the biggest existential threat is climate change. Frankly, we are going through a ghastly pandemic. Fortunately,
it looks like we can see the way out of it, but I do not think that at any point we felt that this particular virus was an existential threat to mankind more generally. My view of climate change is that it is, and it is very close. In any broad assessment of national and economic security, I would put climate change as one of the most important issues. That is why the accelerating efforts both within Governments and in the private sector to deal with it are crucial.

In terms of other kinds of threats, we have had this particular pandemic, which as far as we can see is not an existential one; there could be other pandemics that are. That is why infectious diseases have been so high on our risk register in the past. Steps to ensure that we do not face future pandemics that are even more serious than this one in terms of the threat to human life, or the economy, are a very important priority. Those are two examples of broader threats beyond hostile powers that we should incorporate in our approach to national and economic security.

**Q143 Peter Grant:** Good afternoon, Mr Butler. You highlighted the problem of identifying the fact that an acquiring party may have hostile intent towards us if we do not know who is really in control and who the ultimate owners are. One way of addressing that is simply to have a built-in presumption against allowing any acquisition of a security-sensitive asset or business by a company whose ultimate owners are not identified. Do we need to go as far as that? If not, what else could we do to protect ourselves from hostile elements, which are already making that investment. If that is not clear now, that will undoubtedly use that back-door access, if it is left open?

**Creon Butler:** It is a good question. It is something I worked on when I was in the Government. There is a pending proposal in relation to property, to ensure that no foreign company can invest in UK property without some means—whether their own register of beneficial ownership or a regime put in place in the UK—of ensuring that transparency. That is in relation to ownership of property. It did not go much broader than that, because it involves a major bureaucratic process and there is the issue of not interfering too much with the way the economy works. If we did do that, it would help in relation to one of the national security concerns we have, which was highlighted in the Bill, where a hostile power buys some property close to a very sensitive site.

I need to think about it a bit more, but I do not think it would make sense at this stage to require that we can identify the ownership of every single investment. For example, in the US they do not have consistently strong beneficial ownership rules. You might find a situation in which several US investments in the UK did not meet those transparency requirements. If they were in non-sensitive sectors and did not pose a threat to us at all, it would create a considerable burden.

Thinking it through on my feet, the logic would be to do something of that kind, where it related to sectors that we knew to be sensitive. Indeed, those are already covered by the mandatory notification case. Where you have the mandatory notification, it will presumably trigger information about who owns the company that is making that investment. If that is not clear now, that may be the route to make sure that this element is covered.

**Q144 Peter Grant:** To be clear, you mentioned in your answer the need to regulate foreign-registered companies from certain types of acquisitions. Does that also apply to UK-registered companies, which are in turn owned by foreign companies? The bad guys will set up a UK company to do all the bad stuff through. Do you agree that we need to follow the chain of ownership and control right back to the ultimate controller?

**Creon Butler:** Absolutely. We currently have a public register of beneficial ownership for all UK-registered companies. That was a major and important step. There are issues about whether we are doing enough to enforce those legal requirements. That area could be looked at helpfully in this context. When that regime was designed, the view was that market forces, external pressures and gathering information from NGOs and others would ensure that the information on the register was accurate. I am not sure that we can now be sure that is the case. We want to get that transparency for UK-registered companies, and we may need to do more in that direction, particularly through the enforcement process in Companies House.

**Q145 Stephen Flynn** (Aberdeen South) (SNP): Thank you, Mr Butler, for your evidence so far. It has been incredibly enlightening. It is probably fair to say that national security—what is tantamount to national security—is an ever-evolving feast, particularly given the technology that is now available. Do you feel that the scope of the Bill, particularly the consultation of the 17 sectors that have been included, satisfies your concerns around national security? I am particularly thinking of social media and the level of data that is pertinent within that. Do you think that is adequately covered by the Bill as it stands?

**Creon Butler:** I think this comes again to the point about how we will tightly define national security in relation to these broad powers. I think you are thinking of a hostile power investing in a social media platform that can then be used to attack the UK—I guess that is what you have in mind. It is, again, something that I have not thought through. Probably, I would not see the nature of the threat as being so great that we would necessarily make it a mandatory notification, but by using other sources to collect information about threats, we might use the other powers in the Bill—the calling in and those kind of powers, and the voluntary notification—to make sure that we had covered the threat. I do not think I would put it in the mandatory category, but I would want to use other information and powers to collect information, and to call in a particular investment if I felt it was a threat.

**The Chair:** There are no further questions, so thank you, Mr Butler, for your time and your assistance to the Committee. We have our witness for the sixth and final panel in the witness in the room, so we can move on seamlessly and a little early.

**Examination of Witness**

**Will Jackson-Moore** gave evidence.

3.41 pm

**The Chair:** We have until 4.30 pm at the latest for this session. Mr Jackson-Moore, will you introduce yourself for the record?
Will Jackson-Moore: I am a partner at PricewaterhouseCoopers. I am responsible for our relationships with private equity, infrastructure, real estate and sovereign funds on a global basis. I started working in our Sheffield office, predominantly with small and medium-sized industrial organisations, before moving into our deals practice, where I spent the majority of my career working with corporates and private equity houses, undertaking transactions here in the UK and abroad. I then relocated with my family, while still at PWC to the middle east, where I spent a number of years—I got quite a lot of exposure to the sovereign funds there—before moving back to the UK and into my current role.

My areas of expertise are flows of international capital and the deals market. I am not a specialist in national security matters.

Chi Onwurah: Thank you for sharing your expertise with us, Mr Jackson-Moore. What impact do you expect the measures in the Bill to have on the sovereign funds and other investors you represent—the investors and acquirers of UK assets? You said clearly that you were not an expert in national security—why should you be?—but how will you identify those acquirers who may be considered to pose a national security threat? What kind of engagement would you expect to have with the Department in order to make that sort of call?

Will Jackson-Moore: That is a two-part question. On how the proposed Bill will impact the flow of capital into the UK, generally these are sophisticated investors who operate across the globe, investing in territories that already have equivalent legislation, so the actual legislation itself will not come as a surprise or a barrier. It is in the application of it that there will be concerns, in that, quite rightly, the definitions are drawn quite broadly and we believe that a significant number of transactions and inbound investments will be brought into this—in many cases, voluntarily, so people can get guidance. That will be an area of concern, in terms of whether it will create a barrier, either through publicity or with the timing of bringing capital into the UK. That is probably one of the main concerns right now.

In terms of sovereign funds, I am not in a position to say whether an individual investor or fund is a threat to national security. That is not something I would be looking to comment on.

Chi Onwurah: Would you be expecting to advise your clients as to whether the proposals in the Bill might impact on them? Would you expect to be able to engage with the Department in order to establish that? Have you made, for example, predictions of the number of transactions in which you are involved that might be subject to the proposals in this Bill?

Will Jackson-Moore: In terms of how we might engage with organisations on the applicability of the Bill, I think we would be asked questions about the industries that are covered, the definitions of an industry and what a business actually does. Whether an organisation is drawn into the legislation—whether it is considered a national security threat—is not something we would be involved in. I would be pointing organisations in the direction of their legal advisers on that.

As I said, there are something in the order of 6,000 investments into venture capital in the UK each year. There are approaching 10,000 mergers and acquisitions transactions a year in the UK, plus a number of infrastructure investments, and many of those will fall into the definitions within the Bill. I do not think it is entirely clear to buyers yet whether they would be caught. A traditional private equity house or a venture capitalist looking to invest in a start-up in the UK, may well be owned by Britons, with a management team who are British, but they may have structures that include overseas entities, and many of their investors will be overseas investors. I think that many of those organisations will be wanting guidance as to whether they will be considered an overseas acquirer, even though on the face of it they appear relatively British.

Chi Onwurah: Specifically on whether they meet the definition of an overseas acquirer, I was also interested in this. I think one of the assumptions has been that there will be a large number of self-notifications in order to get guidance early on, but you seem to be implying that that might be considered to be declaring yourself as a threat to national security, and that might be a barrier.

Will Jackson-Moore: No. The way traditional fundraising for a start-up or a transaction takes place is that a business is either put up for sale or seeks investment from a number of parties; the entrepreneur wants to raise finance and have a competitive situation in which the providers of capital are making the most attractive offers possible to reduce the cost of capital for the organisation. I think there would be an incentive for them to be able to say to potential investors, “We are not going to be considered as an asset that is important to national security”. The definitions are quite broad and many organisations will have technologies that right now appear relatively benign and are used for purely civilian purposes but are cutting-edge and on a trajectory whereby in two years’ time they may have military applications or other things that could be a threat to national security.

Chi Onwurah: What that says to me is that, while the impact assessment looks at the cost to the acquirer, there will actually be a cost to the acquired party in terms of clearing themselves in advance or clarifying what their situation is, and I do not think that is covered in the impact assessment as it stands.

Will Jackson-Moore: Yes, in many cases it is a raising of finance for a partial stake. It is an entrepreneur looking to attract capital to expand their business, seeking to bring in an investor to provide maybe 25% of additional equity capital. They want to have a competitive situation where people are offering the most beneficial terms possible. Many of those investors will be overseas investors.

Nadhim Zahawi: Following on that, Mr Jackson-Moore, the current regime under the Enterprise Act 2002 stipulates that the assessment of transactions is dealt with on a case-by-case basis by the Government. This legislation effectively puts into law the timeline by which assessments are made. Do you think that and other provisions in this Bill will send a message to the industry and to the investment community of a slicker, more efficient way of dealing with assessment of transactions?

Will Jackson-Moore: For the vast majority of existing transactions, the existing legislation was not really a major factor; it only addressed a handful of transactions...
each year, whereas this is much more in the mainstream of the M and A market and therefore it will be much more on people’s agenda. We already have a number of organisations reaching out to us to understand the potential implications for ongoing transactions.

I do not think the timeframe in itself represents a barrier, since it is not that dissimilar to other jurisdictions, but again it is the application. If you look at Australia, for example, buyers have the ability to pre-clear themselves, and that type of amendment would be very helpful to ensure the free flowing of capital.

The Chair: Stephen Flynn.

Q150 Stephen Flynn: You caught me making a note there, Sir Graham; apologies. Thank you very much for your evidence so far, Mr Jackson-Moore. It has been incredibly helpful. If I have picked you up correctly, you perhaps inferred that the level of guidance that companies would be seeking in order to provide that assurance is not necessarily there. If that level of guidance is not there, do you feel that that will have an impact on investment ultimately?

Will Jackson-Moore: Yes, it potentially could, because it will create an additional uncertainty. In order to attract capital, you need as much certainty as possible. An ability to say to investors that we do not believe we are in an area of investment that presents a national security threat is important.

Q151 Stephen Flynn: As a follow-up to that, in terms of the fact that the Bill is obviously coming before the consultation has been concluded on the sectors and the consequences therein of being caught within a sector or not, do you think that that timeline will have an impact on investment in the short to medium term?

Will Jackson-Moore: It is already having an effect, in that it is being discussed by organisations that are considering investments into the UK right now. People do not necessarily want to be seen as a guinea pig or have high-profile investments unless they really have to. It is not that it is stopping it; it is just another factor on the balanced scorecard as to whether you are going to make an investment. It is one factor to consider and it is a degree of uncertainty, which is never helpful.

Q152 Andrew Bowie: Earlier on today, and two days ago, we discussed the link between national security and national interest, and I am sure you would agree with me that attracting inward investment is very much in the national interest. We have just heard from the hon. Member for Aberdeen South about the effect that this might be having. We do very well as a country in terms of attracting inward investment; I think we are No. 1 in Europe. As the Bill stands right now, do you think it will have a detrimental effect on our ability to attract inward investment to the UK?

Will Jackson-Moore: Not as the Bill stands in its own right. As you say, we are the largest inbound country for venture capital, for private equity and for infrastructure, and we have been seen as the gold standard for the location in Europe to invest into. Many other European territories have equivalent legislation, but again it is about the application of the legislation, in particular the process, the ability to pre-clear and the timelines actually being met. To understand some of these technologies is not going to be straightforward. These are emerging, cutting-edge technologies in some cases, and the talent required to assess that will not necessarily be easy to attract. Some consideration needs to be given to partnering with research institutes or academia in specific areas, so that there is a panel available to assess certain technologies, not only to understand its position right now but also its trajectory—where that technology may go in the next two or three years.

Q153 Stephen Kinnock: Thanks very much for that helpful evidence. I want to focus on this issue of the target risk and the type of asset that is potentially being acquired. I am interested in the role of private equity in the residential care home sector. Large swathes of our residential care homes are owned by private equity companies. I just wonder whether you think residential care, and social and public services of that nature, should be defined as a critical national infrastructure?

Will Jackson-Moore: It is not something I have specifically considered. It certainly would not that be within what I considered to be a matter of national security under the auspices of the Bill. I do not think I am in a position to comment any further.

Q154 Stephen Kinnock: I am sorry; I saw that you have done a lot of work with private equity and thought that you may have been involved in that aspect of it. On sovereign wealth funds, do you see the China Investment Corporation—I do not know if you have ever done any work with it—as an arm of the Chinese Communist party?

Will Jackson-Moore: I am not in a position to talk about specific individual organisations. A number of sovereign funds in China are very well regarded in the international capital markets. However, in terms of their interaction with Chinese Government, that is not something that I have a perspective on.

Q155 Mark Garnier: My apologies for not being here at the beginning. I am interested in your work on sovereign wealth funds and private equity funds, in terms of working out the value of an investment asset. We heard evidence in the first session this afternoon—I do not know if you were here—than the fact that this Bill will restrict the number of potential buyers out there might then restrict the amount of interest coming in to start with; an investor with a target company to invest in may have limited numbers of people that they could sell it to when they want to exit, which will adjust the price. Have you had any thoughts about that at all?

Will Jackson-Moore: As I mentioned earlier, the UK is the gold standard for a location to invest in, particularly within Europe. Investors like investing in the UK because of the fairness and transparency, UK law and UK courts, and as a place to be based and to live, so there is an inherent benefit to doing UK-based transactions. However, and as we sit here right now, on a scorecard-type approach, the UK is not as attractive a location as it has been historically. We have the uncertainties of Brexit and we have a number of other territories looking to recover and rethink their economies given the situation we are all in, so there will be more—

Mark Garnier: Competition?
Will Jackson-Moore: Yes, there will be more competition for international flows of capital. As I have said, I do not think this Bill in its own right fundamentally changes the attractiveness, but it does create another level of shorter-term uncertainty, just because people have not seen it operating in practice yet.

Q156 Mark Garnier: Let me rephrase the question, then. Countries have directions of travel. Do you think that our direction of travel, as evidenced by things like Brexit and possibly this Bill and others, is a direction to a less attractive place, or not? If you were in government with a five-year plan to try to make us attractive, would this be part of your plan?

Will Jackson-Moore: It is entirely appropriate to have legislation to protect matters of national security, so perhaps this puts us on a level playing field with other nations. But does it specifically enhance our position for the attraction of international capital? The answer is not specifically, but it sets a standard that the international capital markets expect us to put in place.

Mark Garnier: That is very helpful. Thank you.

The Chair: We have no further questions from the Committee, so thank you very much, Mr Jackson-Moore, for your time and assistance. We are finishing slightly ahead of time, but I invite the Government Whip to propose to adjourn.

Ordered, That further consideration be now adjourned.

—(Michael Tomlinson.)

4 pm

Adjourned till Tuesday 1 December at twenty-five minutes past Nine o’clock.
CONTENTS

Clause 1 agreed to.
Clause 2 under consideration when the Committee adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 5 December 2020

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The Committee consisted of the following Members:

*Chairs: Sir Graham Brady, † Derek Twigg*

† Aiken, Nickie (*Cities of London and Westminster*) (Con)
† Baynes, Simon (*Clwyd South*) (Con)
† Bowie, Andrew (*West Aberdeenshire and Kincardine*) (Con)
† Fletcher, Katherine (*South Ribble*) (Con)
† Flynn, Stephen (*Aberdeen South*) (SNP)
† Garnier, Mark (*Wyre Forest*) (Con)
† Gideon, Jo (*Stoke-on-Trent Central*) (Con)
† Grant, Peter (*Glenrothes*) (SNP)
† Griffith, Andrew (*Arundel and South Downs*) (Con)
† Kinnock, Stephen (*Aberavon*) (Lab)
† Onwurah, Chi (*Newcastle upon Tyne Central*) (Lab)
† Tarry, Sam (*Ilford South*) (Lab)
† Tomlinson, Michael (*Lord Commissioner of Her Majesty’s Treasury*)
† Western, Matt (*Warwick and Leamington*) (Lab)
† Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Wild, James (*North West Norfolk*) (Con)
† Zahawi, Nadhim (*Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy*)

Rob Page, Yohanna Sallberg, Committee Clerks

† attended the Committee
Public Bill Committee

Tuesday 1 December 2020
(Morning)

[DEREK TWIGG in the Chair]

National Security and Investment Bill

9.25 am

The Chair: I have a few preliminary points to make. I ask Members to switch electronic devices to silent and remind them of the importance of social distancing—spaces are clearly marked. Members who are not able to fit into the body of the room—the Opposition Benches are full—will have to sit in the Public Gallery. I will suspend the sitting if I think that anyone is in breach of social distancing guidelines. Hansard will be grateful if Members e-mail electronic copies of speaking notes to hansardnotes@parliament.uk.

Today we begin line-by-line consideration of the Bill. The selection list is available at the back of the room, showing how the selected amendments have been grouped for debate. Amendments grouped together are generally on the same or similar issues. Decisions on amendments are made not in the order in which they are debated, but in the order in which they appear on the amendment paper.

The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause that the amendment affects. I will use my discretion to decide whether to allow a separate stand part debate on schedules and clauses following debates on amendments.

Clause 1

CALL-IN NOTICE FOR NATIONAL SECURITY PURPOSES

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I beg to move amendment 3, in page 1, line 6, after “Secretary of State” insert “upon the assessment of a multi-agency review or recommendation of the Intelligence and Security Committee”.

This amendment would require the Secretary of State to consult with the Intelligence and Security Committee before making regulations under this section, and would provide a mechanism for the Committee to respond with recommendations.

Chi Onwurah: May I begin by saying what a pleasure it is to serve under your chairmanship, Mr Twigg, and what a pleasure and, indeed, honour it is to discuss this important Bill with the rest of the Committee?

This issue is important to Members on both sides of the Committee, and as we scrutinise the Bill line by line over the next two weeks I am sure we will get closer—or as close as social distancing allows. Labour Members look forward to a constructive and collegiate debate and recognise that Members on both sides of the Committee share the objective of making well-informed contributions. It was clear from speeches made last night on the Telecommunications (Security) Bill, the interests and ambitions of which overlap those of this Bill, that all Members share a belief in the critical importance of national security, and I am sure that will be reflected in our deliberations.

We agree on the importance of securing our national security, for which line-by-line scrutiny is vital. The Government’s impact assessment notes the need for change and says that national security is an area of “market failure” requiring some Government action. I found that statement somewhat shocking, and a marked difference between the views of Labour and Conservative Members. It is an astonishing claim, because national security is not a private concern first, and a Government after-thought second. There is no market in national security, which is the first duty of a Government and not a failed responsibility of the private sector. It ought to be the first priority of any Government to address it. It is not under-supplied by the market; it is outside the market altogether.

Although that claim is astonishing, it is unsurprising from this Government and the party that leads them. The impact assessment is a marker of a Government who have outsourced significant responsibility for national security; a Government who let Kraft take over Cadbury in 2012 because the market promised good behaviour by the acquirer, only for them to be embarrassed when the acquirer broke all its promises—national responsibility outsourced and British jobs and national interests handed over to the market.

James Wild (North West Norfolk) (Con): Could the shadow Minister explain the national security issues with the Kraft takeover?

Chi Onwurah: I thank the hon. Gentleman for that intervention. I meant to say that national responsibility was outsourced—and British jobs—and the national interest handed over to the market. That was the concern with the Kraft takeover. If he wishes, I shall follow up with further examples, but the national interest and the responsibility of this Conservative Government for economic security have clearly been lacking. This is the Government who let the Centre for Integrated Photonics, a prized research and development centre, be taken over by Huawei in 2012—an event that our head of the National Cyber Security Centre said that in hindsight we would not wish to happen. National security was outsourced and the British interest again relinquished to the market.
Matt Western (Warwick and Leamington) (Lab): My hon. Friend makes a point about the market failure that we have experienced over the past decade and its relevance to issues of impermissibility for national security. The Government actively encouraged inward investment from China and let the market be totally open, without any control whatsoever, which is one of the driving factors in the challenges we face today, especially with Huawei.

Chi Onwurah: I thank my hon. Friend for that intervention. He is absolutely right. This is particularly relevant to amendment 3, as we shall see. This Government, and previous Conservative Governments of the past 10 years, have maintained an ideological position that bypasses the question of national security and leaves Government responsibility much curtailed and focused purely on our defence capabilities and requirements without considering the impact of our technology and R&D. As the debate on the telecoms Bill showed, the Government are not considering the impact of the telecoms sector on our short-term and long-term security.

On the specifics of amendment 3—these principles guide the reason for the amendment—the Secretary of State would have to draw up a multi-agency review or act on the recommendation of Parliament’s Intelligence and Security Committee prior to issuing a call-in notice.

The Bill marks the total transformation of the UK’s existing merger control process and the provisions of the Enterprise Act 2002. It would move us away from 12 reviews in 18 years to a potential 1,830 notifications a year. It would shift the locus of merger control from the experienced Competition and Markets Authority to a novel unit of the Department for Business, Energy and Industrial Strategy. As we heard in our expert evidence, the world is looking at the UK and seeing a pretty seismic change. We recognise the need for such a change, but we do not accept that the skills and knowledge to implement and monitor such a change reside wholly in BEIS.

The Minister is a modest man, and he may not want to share with the Committee the fact that he has recently been made the tsar for vaccine acquisition and delivery across the nation, but that is one of the many responsibilities of his Department. I hope he will agree that is a considerable responsibility, but the responsibility of identifying and understanding the national security implications of 1,830 notifications a year is a particularly great challenge. As someone who champions the importance of trade and economic growth, he will agree that there is potentially a conflict of interest—we have seen this for many years, as my hon. Friend the Member for Warwick and Leamington suggested—between the trading implications of foreign direct investment and access to finance and the national security implications. This is such a huge shift that we cannot rely on discretionary judgments made potentially to suit political ends alone. We cannot rely on BEIS alone because the Department may have a conflict of interest in its separate role of boosting UK investments.

This is a critical point, and I hope to hear from the Minister how he or the Secretary of State will prioritise the role of the Department in boosting investment in the UK and in scrutinising these 1,830 notifications. We need to ensure a robust contribution from across Government and the agencies in guiding these decisions.
In some cases, this may rely on the established sensitive channels of information and access and communications that have marked the work of the Intelligence and Security Committee. That is the best way to guard our national security, relying on our world-leading intelligence agencies, diplomatic service and our civil service expertise across Departments and not just on a single Secretary of State.

During the evidence sessions last week, we heard from an academic expert witness that institutional capacity in this area usually involves a multi-agency review body. We heard from the former head of MI6 that “the co-ordination of Government Departments is one of the really big challenges.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 23, Q25.]

I am sure everyone who heard Sir Richard Dearlove’s evidence was struck that his years at MI6 had clearly taught him that this is a big challenge and that it is important to have co-ordinated and organised multi-agency input. We heard from the recent head of the UK’s National Cyber Security Centre that the new body “needs to be broadly based and multidisciplinary.”—[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 85, Q103.]

The consensus of academic and intelligence service experience is that we need an approach that includes different agencies upstream of the calling decision.

9.45 am

Matt Western: My hon. Friend is making incredibly important points. There are really two issues. One is the volume that will be coming through, as she articulated earlier, but there is also the multiplicity of the challenges and where they may come from. This is not simply about the most obvious security challenges or risks. It is not necessarily about defence contracts or telecoms; it could come from all sorts of areas. It is the soft areas that are perhaps the most vulnerable. That is where the expertise of the different Departments will come into play, and that is why a multi-agency approach is so important.

Chi Onwurah: My hon. Friend is absolutely right. Perhaps I should have emphasised that point more.

When we look at the examples of Huawei or DeepMind, which was allowed to be sold to Google in 2014, we are looking backwards. We now recognise the security implications. Artificial intelligence is a key security capability, as I think the Minister will agree, given that it is one of the 17 sectors for which notification will be mandatory. At that time, it was difficult and I take it—perhaps the Minister will contradict this—that the Department for Business, Energy and Industrial Strategy did not recognise the security implications of the acquisition.

The key question is, what are the acquisitions now that will have security implications in five or 10 years’ time? That is what the Secretary of State needs to know in order to make the decisions we are discussing. It is no injustice to the Secretary of State and the Department for Business, Energy and Industrial Strategy to say that alone, they are not in a position to know that. Deciding from where in the world the great threats to our security may come is not purely technological, although it requires technological expertise, and it is not even purely geopolitical.

Last night we heard a lot about China and Russia. In future, we may be looking at other emerging threats. This is an attempt to improve the Bill by ensuring that there is a multi-agency approach.

Simon Baynes (Clwyd South) (Con): Could you list the agencies that you have in mind under the term “multi-agency”?

Chi Onwurah: I do not think it would be appropriate to be prescriptive at this point. Some of the agencies I have in mind are the Intelligence and Security Committee, the National Cyber Security Centre and our security services—MI5 and MI6. I am very happy to hear from the hon. Gentleman what agencies should be involved, but the key point is that we need multiple agencies.

Matt Western: If the University of Cambridge were approached by a Chinese academic institution with an offer of funding to collaborate on some project, for example, surely that would need the intervention of the Department for Education. It is obviously not just about the intelligence services; it would need the engagement of the DFE and not just BEIS.

Chi Onwurah: I thank my hon. Friend for that important point. I am reluctant to continuously mention China, because this is not an anti-China Bill per se, but we heard in oral evidence of the real concerns about Chinese influence in our higher education institutions. He is right that the Department for Education may have an important input to make about securing our future national security.

In defining the agencies that need to be involved in this multidisciplinary approach, we could look at the Committee on Foreign Investment in the United States, which has nine voting departments, two non-voting agencies and additional White House representation on its decision-making committee. I know that the Department for Business, Energy and Industrial Strategy has done some work on comparisons with other countries, in particular our Five Eyes allies. There are models to take.

Andrew Griffith (Arundel and South Downs) (Con): In the same vein as my hon. Friend for Clwyd South, to expand a little on what multi-agency would mean, would the hon. Lady rule out the Low Pay Commission, for example?

Chi Onwurah: I welcome this debate. If by that the hon. Member is asking whether I think human rights have a relationship to national security, that was very well debated yesterday in relation to the Telecommunications (Security) Bill. A number of his colleagues strongly made the point that there is a relationship between modern-day slavery and our national interest and national security. I do not have the expertise to identify what the agency should be. The Low Pay Commission is not an organisation that I had considered, but I am happy to take his advocacy for its being part of this multidisciplinary approach.

Stephen Kinnock: My hon. Friend is being incredibly generous. Not wishing to second-guess some of the scepticism that we may be picking up from the Government Benches—[Interruption.]
The Chair: Order. Can we have just one meeting?

Stephen Kinnock: Thank you, Mr Twigg. As I was saying, not wishing to second-guess the scepticism that I may be picking up from Government Members, one reason I support the amendment is that I think it brings additional focus to the process. Without a clear definition of what national security is in the Bill, and a clear institutional capacity for the Secretary of State, the Secretary of State will be left with an open-ended process. By having a multi-agency, strong institutional capacity we will streamline the process. Our amendment is about cutting bureaucracy out of the process, and streamlining and focusing it. I hope that hon. Members will consider that when they take their sceptical approach.

Chi Onwurah: As always, I am immensely grateful to my hon. Friend, who does well to remind us that part of the underlying issue, which we will debate later, is the lack of any definition of national security. Rather than just considering the scepticism, let me focus on what we are trying to do. Given the lack of any definition of national security, is it not right that it should not be left to the Department for Business, Energy and Industrial Strategy to decide what the key issues are on national security? Fundamentally, I think that is the question that Committee members must consider.

The amendment seeks to fill the gap that expert advice and international precedence highlight. It enshrines credible decision making in law and, in doing so, protects our security and gives businesses confidence that the decision to call in has been grounded in evidence and expertise, particularly small and medium-sized enterprises, who will find certain provisions of the legislation most burdensome and who may have the most to lose from lengthy processes once the call-in procedure happens—the hon. Member for West Aberdeenshire and Kincardine referred to those processes. It grounds a mechanism for effective accountability for the call-in decisions of the Secretary of State.

Amendment 4, which would amend clause 4, has a similar aim. It would require the Secretary of State to consult with the Intelligence and Security Committee before publishing a statement under section 3, which sets out the scope and nature of how the Secretary of State would exercise the call-in powers. That statement would include details of sectors that might especially pose risks, details of trigger events and details of factors that the Secretary of State would consider in deciding whether to act. It would also include details of the BEIS unit’s resourcing, if amendment 9 were agreed to.

The measures are a seismic shift in terms of the UK’s approach to mergers and acquisitions and it gives significant unit’s resourcing, if amendment 9 were agreed to. Whether to act. It would also include details of the BEIS and Security Committee to changes in the Secretary of State’s call-in powers, ensuring that these major powers consistently act to protect our national security.

Chi Onwurah: As always, I am immensely grateful to my hon. Friend, who does well to remind us that part of the underlying issue, which we will debate later, is the lack of any definition of national security. We are giving the Secretary of State significant, broad powers. Surely it is right that we bring the same level of scrutiny to measures in this Bill, on matters of critical national security. The amendment would bring the scrutiny of the Intelligence and Security Committee to changes in the Secretary of State’s call-in powers, ensuring that these major powers consistently act to protect our national security.

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Matt Western: This is about putting it on a different footing: it is as simple as that. As was said by Sir Richard Dearlove and others in the evidence sessions last week, with the sort of agenda that a Government of any political colour may have, we have seen particularly over the past decade an embrace of, say, China, and the investment in our nuclear power stations provision as well as in other areas. Now, that could have been Russia, and if it had been Russia, what would the advice have been? What would the agenda of the Government of the day have been? Would it have been as embracing? That is why it is really important to understand from the ISC what its views are and to put this in a different setting, as my hon. Friend has said.

Chi Onwurah: Another excellent contribution from my hon. Friend, who raises a delicate, nuanced, important point. Governments of all colours may have trade and geopolitical agendas that lead to, as my right hon. Friend the Member for North Durham (Mr Jones) described it, a “hug a panda” approach, whereas the ISC, which we have seen mark its independence of thought both as a Committee and in its contributions in parliamentary debates, has a duty, a responsibility and an understanding to see beyond short or even medium-term political ambitions and to focus wholeheartedly on the security of our nation. That is where its support is invaluable.

I will finish my comments on the amendment by quoting some of our parliamentary colleagues with regard to the Intelligence and Security Committee. On Second Reading, the Chair of the Select Committee on Foreign Affairs, the hon. Member for Tonbridge and Malling (Tom Tugendhat), said that “there is a real role for Committees of this House in such processes and that the ability to subpoena both witnesses and papers would add not only depth to the Government’s investigation but protection to the Business Secretary who was forced to take the decision”.—[Official Report, 17 November 2020; Vol. 684, c. 238.]

I think that is powerful advocacy for the amendment. A member of the ISC, the right hon. Member for South Holland and The Deepings (Sir John Hayes), said that “we need mechanisms in place to ensure that that flexibility does not allow the Government too much scope. That is why—this is where the ISC, which we have seen mark its independence of thought both as a Committee and in its contributions in parliamentary debates, has a duty, a responsibility and an understanding to see beyond short or even medium-term political ambitions and to focus wholeheartedly on the security of our nation. That is where its support is invaluable.”

We had support in the evidence sessions, support across the House and, most importantly, we have the support of the ISC itself, or at least its agreement that the amendment would be a constructive improvement to the Bill.

Finally, I will say a few words on amendment 5, which would require the Secretary of State to notify the Intelligence and Security Committee before making regulations under clause 6 and would provide a mechanism for the Committee to respond with recommendations. Regulations made under clause 6 would likely define the sectors that pose the greatest national security risk and would come under mandatory notification requirements. With the amendment, the ISC would be able to provide both scrutiny and challenge to those definitions. The Committee will understand that the driving reasons behind the amendment are similar to those behind amendments 3 and 4, which is of course why the amendments have been grouped together, and would seek to improve the Bill through putting in place a requirement for parliamentary scrutiny specifically on those definitions.

As we have said, the Bill gives the Secretary of State major powers, and it demands mandatory notification of investments in large parts of the economy, with 17 proposed sector definitions already. I really cannot emphasise enough how broad those definitions currently seem. I know it is the intention that the definitions should be tightly drawn. However, I speak as a chartered engineer with many years’ experience in technology. Three or four decades ago, we might have talked about digital parts of the economy, but now the economy is digital. Similarly, in the future, parts of the economy not using artificial intelligence—from agriculture to leisure to retail education—will be looking to use it.

Katherine Fletcher (South Ribble) (Con): I am a scientist myself, so I share a passion from a technology perspective. I am listening to the hon. Lady’s view of the breadth of opportunities, but amendment 5 would bring the Intelligence and Security Committee into the process, and I wonder whether we would be creating a bottleneck. The hon. Lady talked earlier about breadth and said that time is critical for SMEs and larger companies that need a decision. I think she would accept that Government is perhaps not the most effective and efficient vehicle, so why does she seek to put additional steps into something that is time critical and based on national security?

Chi Onwurah: I welcome the hon. Lady’s intervention. It is great to have scientific knowledge in Committee and in the House. I welcome the contributions and scrutiny that a scientific background can bring. She is right that there is a tension. The technological environment is fantastic and innovative, with its start-up and enterprise culture. We have great centres of development and innovation, from Cambridge to Newcastle. I am sure hon. Members can mention other centres of great technological development that lead to lots of local start-ups in different areas. All or many of them may be caught by the provisions of the Bill, and that is a concern, but our amendments have been tabled to put in place parliamentary scrutiny.

Parliamentary scrutiny of the call-in process should be, as my hon. Friend the Member for Aberavon said, upstream of the actual call-in notification. This is about the definitions of the sectors to ensure upstream scrutiny. Small businesses, particularly start-ups, seek finance, often foreign investment. There are enough barriers in their way and we do not want to create more unnecessarily, but our amendments are about clarifying and ensuring the robustness of the definitions before they hit the coalface of our small businesses and start-ups, whose interests I want to protect. The Opposition are champions of small businesses, are we not?

Stephen Kinnock: Indeed we are. My hon. Friend is absolutely right. I reiterate that what we propose is, through consultation, removing bottlenecks—the key word in the intervention from hon. Member for South Ribble. By improving consultation and ensuring that we have the best possible expertise, we will make the Secretary of State’s life easier, not more difficult. It is about removing bottlenecks, not adding them.
Chi Onwurah: I thank my hon. Friend for his eloquence. I reiterate that we are looking to make the Secretary of State’s life easier. We hope that, in the not-too-distant future, a Labour Member will be in that position. Our guiding principle is that we want every clause to be as effective as possible and our amendments are designed to make the Bill work as effectively as possible.

Andrew Bowie: I suggest that, in seeking to make the Secretary of State’s life easier, the Opposition are making the life of the Intelligence and Security Committee much more difficult. On current projections, there could be more than 1,000 call-in notices a year. That would make the ISC’s job almost impossible to do alongside all its other important work throughout the rest of the year.

Chi Onwurah: I think the hon. Member and I have the same aims, and we are looking to make the process work as effectively as possible. The Intelligence and Security Committee has clearly said that this is an area in which it can make an important contribution. Further, as my hon. Friend the Member for Aberavon so eloquently said, this is about putting in additional security upstream. I do not envisage—I think I am right in saying this—that these measures would result in the Intelligence and Security Committee reviewing 1,800 call-in notifications; this is about putting in place the ISC’s expertise and scrutiny upstream.

10.15 am

Mark Garnier (Wyre Forest) (Con): I am listening, or trying to—perhaps it would be helpful if we turned the volume up a bit. The hon. Lady is asking Parliament to form part of the process of being the Government, when surely the purpose of Parliament is to scrutinise the Government’s work, rather than doing their work for them. That is why I am finding her arguments quite troubling. Will she explain why she thinks Parliament should be doing the work of the Government, not just scrutinising the Government?

Chi Onwurah: That is a really interesting point, and we could debate for some time the nature of the Government—the Executive—and the role of Parliament. So as not to exhaust your patience, Mr Twigg, I will just say that the role of Parliament is to scrutinise Government, but our proposal is actually about scrutinising decisions that the Government are taking—for example, the definition of the 17 sectors in the amendment that we are considering. I do not want to put words in the hon. Gentleman’s mouth, but I think his argument is that that parliamentary scrutiny should take place only after myriad companies have complained that the definitions are far too broad. We are trying constructively to find a balance on this important question, but I want to draw that balance in the interests of national security, small businesses and our business community who have to work with these definitions.

Mark Garnier: Some of the work of the International Trade Committee carries across to this argument. That Committee’s job is to scrutinise on behalf of Parliament the trade deals that are going through; we have just had the first example of that in the Japanese trade deal. The work of a Select Committee, which is what the hon. Lady is talking about, is to help to inform Parliament and to enable it to scrutinise the Government properly. I am worried that with this amendment, she is asking Parliament to be part of the process of the work of the Government. That is where the amendments become rather confusing. It is important that Parliament scrutinises thoroughly what is done, but it must be independent. What it must not do is to participate in the Government’s work by doing some of that work in its scrutiny.

Chi Onwurah: Perhaps I do not quite understand the point that the hon. Gentleman is making, because we propose that the Intelligence and Security Committee should provide that scrutiny. The scrutiny that the Business, Energy and Industrial Strategy Committee provides is necessarily limited to business. At the centre of this is the fact that we are putting in the Department for Business, Energy and Industrial Strategy a key issue of national security. Is it not right that those who have expertise and experience in security, as opposed to international trade or business, should be part of that?

Mark Garnier: The hon. Lady is being very kind in giving me a chance to come back on this. Surely we should not be putting a duty of Parliament in a Bill. It is up to parliamentarians to decide what we do on scrutiny, and we should not have that in a Bill or enact it in law; we should be doing it anyway.

Chi Onwurah: I am struggling to see how that would happen. How would Parliament, after the Bill becomes law, decide that the Intelligence and Security Committee, as opposed to or in addition to the Business, Energy and Industrial Strategy Committee, should have a role. How would that happen in practice?

Stephen Kinnock: There are plenty of examples of Select Committees getting involved in the upstream work of Government—for example, giving feedback on White Papers. Parliament and its Select Committees consistently get involved in the work of Government in that context.

Mark Garnier: That is a really interesting point, and we could debate for some time the nature of the Government—the Executive—and the role of Parliament. So as not to exhaust your patience, Mr Twigg, I will just say that the role of Parliament is to scrutinise Government, but our proposal is actually about scrutinising decisions that the Government are taking—for example, the definition of the 17 sectors in the amendment that we are considering. I do not want to put words in the hon. Gentleman’s mouth, but I think his argument is that that parliamentary scrutiny should take place only after myriad companies have complained that the definitions are far too broad. We are trying constructively to find a balance on this important question, but I want to draw that balance in the interests of national security, small businesses and our business community who have to work with these definitions.

Mark Garnier: The point is that that is not on the face of legislation. All the Select Committees do this work incredibly well, but they do not have to be told on the face of a Bill to do it. Parliament does it anyway, so I wonder why the amendment is necessary.

Chi Onwurah: I thank the hon. Gentleman for his intervention, because I think we are getting to the nub of it. The amendment is necessary because, as I outlined, there is an inherent conflict of interest within the Department for Business, Energy and Industrial Strategy with regard to foreign investment and national security. In addition, there is a need for security-cleared knowledge. I do not know the security clearance of the current members of the Business, Energy and Industrial Strategy Committee, but I doubt it is at the same level as the members of the Intelligence and Security Committee.

Chi Onwurah: Perhaps I do not quite understand the point that the hon. Gentleman is making, because we propose that the Intelligence and Security Committee should provide that scrutiny. The scrutiny that the Business, Energy and Industrial Strategy Committee provides is necessarily limited to business. At the centre of this is the fact that we are putting in the Department for Business, Energy and Industrial Strategy a key issue of national security. Is it not right that those who have expertise and experience in security, as opposed to international trade or business, should be part of that?

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Katherine Fletcher: Will the hon. Lady give way?

Chi Onwurah: I will.

Katherine Fletcher: Sorry, I nearly put my hand in the air then—I am still new. Listening to the debate, I was reflecting on the efficiency of the process. We must make sure we do not put Parliament within an operational
procedure. Does that not also apply to amendment 3 and the idea of a pre-emptory notification? Is the hon. Lady not seeking to put together some kind of ethereal multi-agency association, when all that is really needed is a phone call to a team of people who are security cleared within BEIS? Does she accept that point?

Chi Onwurah: The hon. Lady makes a good point, in that much would be solved by the appropriate phone call at the appropriate time. Had Sir Richard Dearlove been phoned by the right person when the Huawei acquisition was going through, that issue would have been solved. Whichever Government are in power, we are continuously looking for ways to ensure a more joined-up approach to government.

Given the importance of national security—I think we can all agree that national security is the first duty of Government—and given the reality of the conflicting pressures on Departments, I think these proposals to improve scrutiny by involving a multi-agency approach are necessary. I also point the hon. Lady to the approach of the US Government, who have found this to be necessary, as have others of our allies. With that, I will make some progress.

The Chair: Order. I think it is important that we stick to the amendments we are discussing.

Chi Onwurah: I will follow your guidance, Mr Twigg.

Under the amendments, the Government would have to publish notifiable acquisition regulations to define sectors and notification rules in greater detail. From time to time, those sectors and rules will need to change, with new regulations made to keep up with changing technological, security and geopolitical risks, as we have discussed. To guard our security, not all those risks should be discussed in public, but the need for change and for sensitivity does not preclude the need for accountability—a point I have made a number of times. In other areas of national security, the ISC holds the Government to account through proper scrutiny and with access to sensitive information. It is only right that we bring the same scrutiny to bear here, on matters of critical national security.

The amendment would bring ISC scrutiny to notifiable acquisition regulations specifically up-front of any decision to call in or notify, so ensuring that these major powers consistently act to protect our national security. Again, that is an important point. Significant powers are being given to the Secretary of State to protect our national security. It is right that we should have security input into the definition of these sectors.

In his oral evidence, Professor Martin, the former head of our National Cyber Security Centre, said:

“I think that the powers should be fairly broad”, but

“there should be accountability and transparency mechanisms”.

[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 81, Q96.]

We need to ensure that flexibility does not allow the Government too much scope, so flexibility must go hand in hand with accountability and transparency. The ISC, critically, has the skills, security clearance and expertise to provide that scrutiny and accountability.

The Chair: Before I open up the debate, I will say a couple of things. The Committee is just getting into its stride. The first hour has now gone. I suggest that Members keep interventions succinct. Also, a few people have used the word “you”. Members should refer to each other as “the hon. Member” or, better still, by their constituencies. I have given some leeway, as it was the first hour and the Committee is just getting into its stride. I call Stephen Flynn.

Stephen Flynn (Aberdeen South) (SNP): Thank you, Mr Twigg; it is a pleasure to serve under your chairmanship. I once again thank all the witnesses who gave evidence in previous sittings. They did a sterling job and answered numerous questions in a very insightful way.

As we have seen through the lengthy presentation of the amendments and the back and forth between Members across the Committee, this is an incredibly important matter. Perhaps the amendments strike to the core concern that many have regarding the Bill: its scope and how we balance the need for investment and the desire to continue to encourage inward investment—particularly given that there will be an extremely challenging economic event in just 30 day—against national security concerns without potentially overwhelming a Department and while allowing it to create structures that have sufficient capacity to deal with the potential number of call-ins.

As we heard on numerous occasions, in excess of 1,800 notifications or call-ins are expected annually. How do we marry all that together in a coherent platform, while ensuring that each and every call-in that is made is dealt with coherently on the basis of national security? The amendments are helpful in creating a wider dialogue about how to achieve that. The role of the Intelligence and Security Committee seems to be one that we would want to utilise. Its skills and expertise in this regard are unsurpassed.

On issues of national security, having the key experts in the room assisting the Government is clearly something that all Members would support. I am mindful that there seems to be a wider discussion of how that might work in terms of process, but that relates to the entire Bill, and it would be helpful if the Government would be clearer about why Bills are being discussed before consultation with sectors are complete, and how they intend Departments to deal with the raft of potential call-ins. I am sure that the Minister is incredibly capable, but he is also incredibly busy, and his life is about to get busier; I will not be alone in hoping that he spends a lot more time getting the vaccines rolled out than he does sitting in rooms like this listening to some of our debates.

10.30 am

Notwithstanding that, the hon. Member for Aberavon summed it up best when he talked about removing bottlenecks. I have a wider concern about the potential for micro-businesses and small and medium-sized businesses getting caught up in this. We need to find solutions to make sure that does not happen. Would this amendment achieve that? It certainly appears as though it could.

The Government should give wider consideration not just to that, but to how we balance these competing matters in a way that does not stifle investment. No one wants that.
The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): It is a pleasure to serve under your chairmanship, Mr Twigg, and to speak on this important Bill. I am grateful for the congratulations—or perhaps commiserations!—of the shadow Minister and all colleagues on my new role as the vaccines delivery Minister. I am obviously focused on the NSI Bill now, but I am also conscious of my responsibility for delivery, and I had a very good conversation with the devolved Administrations last night.

I hope that the Committee agrees that the Second Reading debate and the evidence sessions last week demonstrated the importance both of this legislation and of getting it right. I again place on record my thanks to the Opposition parties for the constructive way in which they have approached the Bill thus far, and I look forward to discussing the amendments that they have tabled to this part of the Bill.

Amendment 3 requires the Secretary of State to assess a multi-agency review or recommendation of the Intelligence and Security Committee before issuing a call-in notice. I remind hon. Members that it is vital for the Government to have the necessary powers fully to scrutinise acquisitions of control over entities and assets that may pose national security risks. To enable this, clause 1 gives the Secretary of State power to issue a call-in notice when he or she reasonably suspects that a trigger event has taken place, or is in progress or contemplation, and that that has given rise to, or may give rise to, a national security risk. It is entirely reasonable, as Committee Members have said, to want the Secretary of State to make full use of expertise across Government and Parliament to run the most effective and proportionate regime that he or she can. The amendment aims to recognise that.

To explain why the amendment would not achieve that noble aim, it would be helpful briefly to summarise the overall screening process. First, businesses and investors can notify the Secretary of State of potential national security concern. In certain parts of some sectors, notification by the acquirer will be mandatory. Following a notification, the Secretary of State will have a maximum of 30 working days to decide whether to call in a trigger event to scrutinise it for national security concerns. For non-notified acquisitions, the Secretary of State may call in a completed trigger event within six months of becoming aware of it, both on a case-by-case basis and when developing his overall approach. The Secretary of State intends to draw on a wide variety of expertise from across, and potentially beyond, Government as is appropriate.

If the Secretary of State calls in a trigger event, there will be a detailed review. At the end of the review, the Secretary of State may impose any remedies that he reasonably considers necessary and proportionate to address any national security risk that has been identified. The Bill gives the Secretary of State 30 working days to conduct an assessment, but this may be extended for a further 45 working days if a legal test is met, and then for a further period or periods with the agreement of the acquirer. The purpose of the initial assessment of whether a trigger event should be called in is not to conduct a detailed review of the entire case, or to determine whether the trigger event in question gives rise, or would give rise, to a risk to national security. That comes later. It is simply a preliminary assessment of whether the trigger event warrants a full assessment. Prohibiting the Secretary of State from calling in a trigger event until a multi-agency review has taken place, or the Intelligence and Security Committee has provided a recommendation, could severely upset the process—as we heard eloquently from my hon. Friend the Member for South Ribble.

Chi Onwurah: I thank the Minister for giving way and again congratulate him on his new role. I also thank him for his constructive tone. I sense a contradiction in the point he is making. He is saying that the Business Secretary will call on a wide range of advice and expertise, but that if he is required to call on a wide range of advice and expertise, it will upset the process.

Nadhim Zahawi: What I am trying to get at is the point made so eloquently by my hon. Friend for South Ribble—the bottleneck issue. It is unlikely that adding this review, or requirement for a recommendation at the stage where the Secretary of State is assessing whether to issue a call-in notice, would be feasible within the 30-day window following the notification.

I remind the Committee that the Government’s impact assessment estimates that there will be at least 1,000 notifications every year. As my hon. Friend the Member for South Ribble said, under this amendment, every single one would need a multi-agency review or an Intelligence and Security Committee recommendation, which would be a truly massive and, in my view, unfeasible undertaking.

Chi Onwurah: The review would be required before issuing a call-in notice. The impact assessment mentioned about 1,830 notifications, but only 90 call-in notices. It is not accurate to say that the amendment would require about 1,800 reviews. It is only for those that would lead to a call-in notice, which is a much lower number.

Nadhim Zahawi: We can debate the number, but the issue is one of delay and bottlenecks. It could mean that the Secretary of State was timed out of calling in potentially harmful acquisitions and of imposing any national security remedies. Alternatively, if the initial assessment period following a notification was extended beyond 30 working days, which is not currently possible under the Bill, that could reduce certainty for businesses, which I know the hon. Lady and the hon. Member for Aberavon were also concerned about. Any delay to remedies addressing national security risks would be a problem. However, I assure hon. Members that the Secretary of State will eagerly seek expertise and advice from a wide range of sources, and we will work together to safeguard our national security. Having a slick and efficient call-in process is vital to that.

Amendment 4 seeks to require the Secretary of State to consult the Intelligence and Security Committee prior to publishing a statement on the exercise of the call-in power, known as the statement of policy intent. Clause 4 requires the Secretary of State to carry out such a consultation on a draft of the statement as he thinks appropriate, and to take into account the response to any such consultation during the drafting process. That process could include engagement with interested parties across the House, and I am delighted to learn that such esteemed colleagues as members of the ISC
might wish to discuss the statement in detail. Parliament has been provided with the first draft of the statement, and we would welcome its view on its content.

I draw attention to the fact that clause 4 requires the Secretary of State to lay the statement before Parliament, as my brilliant hon. Friend the Member for West Aberdeenshire and Kincardine rightly pointed out. If either House resolves not to approve the statement within 40 sitting days, the Secretary of State must withdraw it. That provides Parliament, including members of the ISC, with plenty of opportunity to influence and scrutinise the contents of the statement, which I believe is the aim of the amendment and which I am therefore not able to accept.

Amendment 5 would require the Secretary of State to notify the Intelligence and Security Committee prior to making regulations under clause 6 and to enable the Committee to respond with recommendations. I welcome the contributions made by many members of the ISC on Second Reading, and I have since written to the Committee Chair, who unfortunately was unable to attend, to follow up on a number of the recommendations made by his colleagues.

Clause 6 defines the circumstances covered by mandatory notification. The Bill calls them “notifiable acquisitions” on the basis that they must be notified and cleared by the Secretary of State before they can take place.

Members are aware that any modern investment screening regime must provide sufficient flexibility for the Government to examine a broad range of circumstances, bearing in mind the increasingly novel way in which acquisitions are being constructed and hostile actors are pursuing their ends. The regime needs to be able to respond and adapt quickly. Regulations made under the clause will be subject to parliamentary approval through the draft affirmative procedure, giving Members ample opportunity to ensure that mandatory notification and clearance regimes work effectively.

The draft affirmative procedure means that regulations may not be made unless a draft has been laid before Parliament and approved by a resolution of each House. I am pleased to advise esteemed members of the ISC that in developing the regulations the Secretary of State will take the greatest care, and will consult as widely as is judged appropriate, while ensuring he is able to act as quickly as needed. I see no need for a formal consultation mechanism. Indeed, such a mechanism between the Committee and the Secretary of State would be unprecedented.

For the reasons I have set out, I am not able to accept the amendments, and I hope that the hon. Member for Newcastle upon Tyne Central will not press them.

10.45 am

Chi Onwurah: I thank the Minister for his response and the generally constructive tone with which he laid out the aims of the amendments and the reasons he did not feel able to accept them.

There is, however, as I suggested in an intervention, a sense of the Minister playing both sides at once. He says that the scrutiny proposed in the amendments, by the ISC and through the multi-agency approach, should take place, but that it would be wrong to require it because it will take place. The hon. Member for South Ribble said that the challenges and the need for input scrutiny could be addressed by the right phone call at the right time. That is true, but there are many reasons why that might not happen. For example, the Minister might be looking at vaccine delivery at the time the phone call was being made. We therefore propose the amendments to ensure that that input, scrutiny and expertise are in the Bill.

Question put. That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 1

AYES
Flynn, Stephen
Kinnock, Stephen
Onwurah, Chi

NOES
Aiken, Nickie
Baynes, Simon
Bowie, Andrew
Fletcher, Katherine
Gamier, Mark

Question accordingly negatived.

Nadhim Zahawi: It is vital that the Government have the powers necessary fully to scrutinise acquisitions and control over entities and assets that might pose national security risks. The Bill refers to such acquisitions as trigger events.

The clause therefore gives the Secretary of State the power to issue a call-in notice when he or she reasonably suspects that such a trigger event has taken place or is in progress or contemplation and it has given rise to, or may give rise to, a national security risk.

The parameters of the call-in powers will give the Secretary of State sufficient flexibility to examine potentially sensitive acquisitions connected to the United Kingdom while ensuring they may be used only for national security reasons. The Committee will note that in the acquisition of or control over businesses, unlike in the Enterprise Act, there are no minimum thresholds for market share or turnover.

Why is that necessary? It is necessary because acquisitions of small businesses at the start of their ascendency can harm our national security, particularly if they involve the kind of cutting-edge, world-leading technology for which this country is known. Although there is a broad range of scenarios in which the power may be used, of course, most trigger events will not be called in, as they will not raise national security concerns.

Examples of those that may be more likely to be called in include a person acquiring control over an entity that operates part of our critical national infrastructure; a person acquiring the right to use sensitive, cutting-edge intellectual property; and boardroom changes that mean that a person acquires material influence over the policy of a key Government supplier. Clauses 5 to 12 and schedule 1 set that out in detail.

Call-in notices may be issued in relation to trigger events that are in contemplation or in progress, as well as those that have already taken place. That will ensure
Our group of amendments sought to bring legal powers, the pure, ministerial market ideology of recent record. But it was threatened as a result of insufficient expert advice or by considerations, such that our national security was not achieved through narrow legal definitions. Our proposed amendment to clause 1 stands part and for setting out the Bill’s aims at all stages of the process rather than, for example, waiting until a transaction has taken place or is nearing completion, when it is more difficult for the parties involved to make any changes that may be required. It is envisaged that, in most circumstances, call-in notices will be issued after the Secretary of State has received a notification about a trigger event from an involved party, but it is also important that the Secretary of State retains the ability to call in trigger events where no such notification has been received. The limits for issuing a call-in notice are set out in clause 2.

The Government is committed to ensuring that businesses have as much clarity as possible when it comes to the use of this power. We heard in the evidence session about the need for real clarity for businesses, so the Bill is proportionate. The Secretary of State may not, therefore, exercise the power until he publishes a statement for the purposes of clause 3, setting out how he expects to use the power. The Secretary of State must have regard to the statement before giving a call-in notice. A draft of the statement was published when the Bill was introduced. I do not intend to anticipate our discussions in respect of the statement when we move on to clauses 3 and 4, but I am confident that it will provide reassurance that the Secretary of State intends to exercise the call-in powers in a measured and considered way.

Hon. Members will appreciate, though, that it would not be responsible, given that national security may be at stake, for the Secretary of State to be restricted to exercising the power only in the circumstances envisaged in the statement. The purpose of the statement is, after all, to set out how the Secretary of State expects to exercise the call-in power, not to give binding assurances. That is why clause 1 specifies that nothing in the statement limits the power of the Secretary of State to give a call-in notice, though I reiterate that I expect the vast majority of call-in notices to be issued in accordance with the expectations set out in the statement.

I hope that hon. Members will agree that clause 1, alongside clauses 2, 3 and 4, enables the Government to carry out a vital assessment of relevant trigger events in a measured and effective way.

Chi Onwurah: I thank the Minister for his remarks on clause 1 stand part and for setting out the Bill’s aims and ambitions. We largely agree with those aims and ambitions, and in that spirit I will give further clarity on the Opposition’s overall position. We stand in support of the Bill, and indeed we sought it years ago. We support the need for the new powers to protect our national security, and ambitions. We largely agree with the Minister set out. The Government’s impact assessment notes that 80% of transactions in the scope of mandatory notifications will be by SMEs. We heard from our expert witnesses that the impact assessment fails to account for the costs faced by the acquired companies, and for the overall impact on funding for our start-ups. The Opposition will not turn a blind eye to those costs for our small and medium-sized enterprises. At each step, the Opposition will plug gaps left by the Government in coherent policy making, to champion British creativity and innovation. It is the least our small and medium-sized enterprises deserve.

There has already been significant discussion of the right national security powers, both on Second Reading and in the Committee evidence sessions. An essential part of that discussion has been focused on the merits of giving the Government powers to protect our national security by using a public interest test. There are understandable concerns that too broad a test might result in a drop in investment for the UK’s start-ups and businesses, and these concerns note an economic challenge in expanding our national security powers. At the same time, however, there is widespread agreement that national security and economic security are not entirely separate. They are deeply linked. A national security expert told us that a narrow focus on direct technologies of defence, for example, was mistaken, and that we should look at the defence of technologies that seem economically strategic today and might become more strategic in future.

Our concern is that we have a Government who are 18 years behind our allies in even contemplating the new national security investment regime. We have seen only 12 national security screenings in 18 years, and not a single instance of the Government acting decisively to block a takeover and guard our national security. In the context of what other countries are doing and how rapidly technologies progress from being economically strategic to becoming security threats, we must not just consider a narrow national security test, but pursue a road to sovereign technological capability and much more ambitious and robust routes to protecting national security and strategic interests. The Opposition will therefore put the security of our citizens first. We will not shy away from regaining national sovereign capability, and we assure our citizens that Britain will have the technology and the capability to protect its national security.

In scrutinising the Bill and this clause, we will champion clarity and support for our prized SMEs and innovative start-ups—the engine of British jobs and British prosperity. We have already heard from market participants that the Government’s belated rush with this Bill has created huge uncertainty and concern over the ability of BEIS to operate the new investment screening regime that the Minister set out. The Government’s impact assessment notes that 80% of transactions in the scope of mandatory notification will be by SMEs. We heard from our expert witnesses that the impact assessment fails to account for the costs faced by the acquired companies, and for the overall impact on funding for our start-ups. The Opposition will not turn a blind eye to those costs for our small and medium-sized enterprises. At each step, the Opposition will plug gaps left by the Government in coherent policy making, to champion British creativity and innovation. It is the least our small and medium-sized enterprises deserve.

Finally, we will stand for effective scrutiny of the Government of the day. That is why we tabled the amendment, which has unfortunately not been accepted by the Committee. However, we will find proportionate, robust and democratically legitimate means of seeking accountable action to protect our national security. Our amendments will stand up for British security, and for competent and coherent decision making. Clearly, we regret the Committee’s decision on our amendment, but we will not oppose the clause standing part of the Bill.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.
Clause 2

Further provision about call-in notices

11 am

Dr Alan Whitehead (Southampton, Test) (Lab): I beg to move amendment 10, in clause 2, page 2, line 12, leave out subsection (1) and insert—

“(1) No more than one call-in notice may be given in relation to each trigger event, unless material new information becomes available within five years of the initial trigger event.”

This amendment would enable the Secretary of State to issue multiple call-in notices if material new information becomes available.

The Chair: With this it will be convenient to discuss clause stand part.

Dr Whitehead: Rather late in the day, I will say what a pleasure it is to serve under your chairmanship, Mr Twigg. I am sure you are aware that we share an anniversary: we are among the few surviving Members of the 1997 intake—those happy days when Labour used to win elections. We came to this House in 1997 and have been here ever since.

The reason I emphasise that fact, Mr Twigg, is to underline just how many Bills you and I have sat on, led for the Labour party or been involved in over the years. I am unable to tot up the exact number but it is a considerable, and it is a great pleasure to be sitting on this Bill Committee. I have served on a large number of Bill Committees of late, the most recent being the Environment Bill Committee, which has just finished its deliberations. I was unable to be present for this Bill Committee’s witness sessions because I was finishing off the Environment Bill—well, trying to strengthen it rather than finish it off. I am grateful to my colleagues for asking a series of pertinent questions in the evidence sessions. We are all grateful for that and, indeed, to the expert witnesses.

I want to cite the amendment in the context both of the various Bills that have come through the House and of the witness sessions, which I have assiduously read, even though I was not present for them. I hope the Minister will accept that the amendment is entirely in line with the constructive way in which I hope we have gone about our business in this Committee. The amendment, which I shall unpack in a moment, strengthens not only the Bill but the ability of Ministers to do their job properly as far as its provisions are concerned. That is its intention.

The amendment seeks to replace subsection (1), which is a bald sentence:

“No more than one call-in notice may be given in relation to each trigger event.”

My time with Bills has taught me to look carefully through all of the different clauses to find the qualification. In my experience, tucked away somewhere in most Bills is a qualification. Sometimes it is about when a clause is to be implemented, sometimes it is a definition of the wording, and sometimes it is an additional proviso that modifies the clause to which our attention was first drawn.

This clause has no such qualification. It is an absolutely straightforward statement. We have discussed trigger events to some extent in our evidence sessions, and they are elucidated and qualified in further clauses, as are call-in notices, but the fact that we get only one call-in notice per trigger event seems to be the central essence of this subsection. Our amendment seeks to put a question mark against whether that bald statement about the fact that we get one go per trigger event is the wisest formulation to have in the Bill.

The amendment makes a modest change to the clause, stating:

“No more than one call-in notice may be given in relation to each trigger event,”

and adding,

“unless material new information becomes available within five years of the initial trigger event.”

James Wild: From his experience of many Bills, I wonder what the hon. Gentleman made of the provisions in clause 22 on false or misleading information that has been given to the Secretary of State, whereby if he has been given that information he can change a decision he has previously given and can therefore issue another call-in notice.

Dr Whitehead: Yes, indeed. The hon. Member is quite correct to draw attention to clause 22, which concerns false or misleading information. It relates to where someone has, at the time of the trigger event, concealed or misled or sought to deceive those concerned with the trigger event about the nature of the event. I would suggest that that is a different case from what we are trying to establish today. It is not that anyone has tried to deceive anybody or maliciously mislead anybody at the time of the trigger event, but new material may come to light or become available within five years of the initial trigger event that might cause a further call-in notice to be introduced. According to the definition set out in the Bill, that looks like it might not be possible.

Stephen Kinnock: I thank my hon. Friend for giving way, and he is being very generous in doing so. He rightly talks about new material or information, but what about the evolving nature of geopolitical threats? There may well be countries that are not considered to be hostile actors now, but political changes one, two or three years down the line could have a massive impact on whether we see that country as a threat to national security. It could become a hostile actor.

Dr Whitehead: My hon. Friend makes an important point, which was reflected in the evidence sessions on this Bill. I want to dwell on that briefly, because he makes a really important point. These matters are evolving. Not only that, but the nature of databases evolves. The nature of what we do and do not find out evolves. There are circumstances—my hon. Friend mentioned a particularly important one—where the Secretary of State could be excessively curtailed in the diligent pursuit of his role in terms of call-ins and trigger events if no amendment is made to this clause.

The expert evidence we received from Dr Ashley Lenihan of the Centre for International Studies at the London School of Economics gave rise to a couple of important considerations in terms of how evolving circumstances or new information might be important. Dr Lenihan made a very important point, similar to that made by my hon. Friend, when she stated:

“Dealing with the kind of evolving and emerging threats we see in terms of novel investments from countries such as China, Russia and Venezuela needs the flexibility to look at retroactively
and potentially unwind transactions that the Secretary of State and the investment security unit were not even aware of.”—[Official Report, National Security and Investment Public Bill Committee, Tuesday 24 November; c. 34, Q36.]

Speaking of existing databases, Dr Lenihan also stated: “They do not cover asset transactions; they do not cover real estate transactions, which are of increasing concern, especially for espionage purposes.”—[Official Report, National Security and Investment Public Bill Committee, Tuesday 24 November; c. 35, Q36.]

I note that there has been a lot of concern in the United States more recently about real estate purchases in strategic locations, which may give rise to espionage or other national security concerns. As Dr Lenihan emphasises, existing databases do not cover such arrangements but might do in the future and might find it necessary to do so in the future. Under those circumstances, new information could well come to light.

Dr Lenihan also gave an interesting example—this is not strictly in line with our considerations today—of how information might come to light in a way not easily anticipated by those doing the initial call-in notice and trigger event. She referred to the purchase in the United States of a US cloud computing company, 3Leaf, which had gone bankrupt. Huawei—as it happened—quietly bought up the assets, employees and patents of that bankrupt company. That was not noticed at the time by the Committee on Foreign Investment in the United States regulators, because they did not pay attention to bankrupt companies, as opposed companies that continued to operate. That went quietly unnoticed, uncommented upon and unactioned until, Dr Lenihan informed us, a Government staffer happened to notice on his LinkedIn account that someone he thought had been partially running 3Leaf was listed as a consultant for 3Leaf for Huawei. He thought to himself, “How can this be?”

Only through his attention and reporting back was that acquisition unravelled in the United States. No one was providing malicious information or seeking to mislead at the time. It was just that new information came to light, in that instance through surprising mechanisms. However, an important issue came before regulators and the security services. That emphasises that clause 22, important though it is, does not cover those sorts of circumstances and eventualities.

11.15 am

The amendment would close a loophole. If information comes to light that the Government have honestly sought and that has not been dishonestly concealed, there appears to be little, according to line 12, that the Government can do about it. They cannot pursue a new call-in notice. According to line 12, it is a done deal—the trigger event has been and gone and cannot be revived.

The amendment would not provide an open-ended opportunity for someone many years later to find something out. Companies would not be in the position of forever facing the possibility of prejudicial information coming out. We have included a sunset provision on the new information becoming available. The amendment states that it should be “within five years of the initial trigger event.”

That marries with arrangements elsewhere in the Bill for five-year limits.

It is important to make the change, particularly because the impact assessment acknowledges that there is a struggle to access appropriate data on the relevant transactions. It is not that anyone is doing their job badly or concealing anything, but it is possible that information is not accessible at the time of a trigger event.

I hope that the Minister will accept the amendment, and certainly the spirit in which it is intended. Although we want to make it clear that it is important that, as often as possible, the trigger event and the associated call-in are clear, resolved and put to bed thereafter, there are circumstances where that is not possible, and the Minister should have the ability to rectify that problem and act in the best interests of national security and of fair play for the companies involved.

Nadjim Zahawi: I hope that the hon. Member for Southampton, Test and other hon. Members will permit me, in responding to the hon. Gentleman’s points, to begin by considering stand part and by laying out the Government’s broad rationale before turning to the substance of the amendment.

The clause contains further provisions about the use of the call-in power. It is vital that the Secretary of State is able to call in and scrutinise trigger events that have taken place. However, it is right that clear limits are placed on the call-in power to ensure that it is used in a proportionate manner—the whole point here is proportionality. The clause therefore prohibits a trigger event from being called in more than once. It also provides that the Secretary of State may issue a call-in notice only up to five years after a trigger event has taken place and no longer than six months after becoming aware of the trigger event.

The time limit of five years strikes the right balance between ensuring the Secretary of State has enough time to spot completed trigger events that may pose a risk to national security. The hon. Gentleman cited evidence from Dr Lenihan on 3Leaf, which speaks more to the screening operation than the amendment. Of course, the Secretary of State also has to make sure that the risks to national security are balanced against avoiding undue uncertainty for the parties involved, which we all want to make sure we look after, and we have heard from colleagues about the challenges that small businesses face in building or rebuilding their business.

For trigger events that take place before commencement but after the introduction of the Bill, the five-year time limit starts at commencement rather than from when the trigger event takes place. If the Secretary of State becomes aware of that trigger event before commencement, the six-month time limit also starts at commencement. The ability to call in trigger events that take place before the commencement of the call-in power but after the introduction of the Bill will help to safeguard against hostile actors rushing through sensitive acquisitions to avoid the new regime, now that we have set out our main areas of interest.

The five-year time limit does not apply if the Secretary of State has been given false or misleading information, as my hon. Friend the Member for North West Norfolk (James Wild) reminded us, or in relation to notifiable acquisitions that have been completed without prior approval.

In all this, we will seek to provide as much transparency and predictability as possible. The Secretary of State may not, therefore, exercise the power until under, clause 3, a statement is published setting out how.
Stephen Kinnock: Could the Minister say a little more about what the problem is with not having the Minister’s or the Secretary of State’s hands tied? Our amendment simply says that if information comes to light that creates cause for concern, the Secretary of State may, if he or she so wishes, look into it again. It is not an obligation; it simply makes sure that the option is there.

Nadhim Zahawi: I was going to address that at the end of my remarks, but I will touch on it briefly and hopefully reiterate it at the end. It is about certainty and proportionality. Everything we are doing by legislating in this way has an impact on businesses and the certainty of attracting investment and growing, as the shadow Minister, the hon. Member for Newcastle upon Tyne Central, reminded us in her opening speech.

As I was saying, a draft of the statement was published alongside the Bill. Following commencement, if parties involved in trigger events are concerned about them being called in, they will be able to remove any doubt about this by notifying the Secretary of State of their event. They will then be entitled to receive a quick and binding decision on whether the Secretary of State will call in the event.

I will turn briefly to amendment 10, which seeks to extend the Secretary of State’s power to issue a call-in notice in respect of a trigger event that has previously been called in when no new material information becomes available within five years of the trigger event. After a trigger event is called in, the Secretary of State has—

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o’clock.
CONTENTS

Clauses 2 to 10 agreed to.
Schedule 1 agreed to.
Adjourned till Thursday 3 December at half-past Eleven o’clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 5 December 2020
The Committee consisted of the following Members:

**Chairs:** † Sir Graham Brady, Derek Twigg

† Aiken, Nickie (*Cities of London and Westminster*) (Con)
† Baynes, Simon (*Clwyd South*) (Con)
† Bowie, Andrew (*West Aberdeenshire and Kincardine*) (Con)
† Fletcher, Katherine (*South Ribble*) (Con)
† Flynn, Stephen (*Aberdeen South*) (SNP)
† Garnier, Mark (*Wyre Forest*) (Con)
† Gideon, Jo (*Stoke-on-Trent Central*) (Con)
† Grant, Peter (*Glenrothes*) (SNP)
† Griffith, Andrew (*Arundel and South Downs*) (Con)
† Kinnock, Stephen (*Aberavon*) (Lab)
† Onurah, Chi (*Newcastle upon Tyne Central*) (Lab)
† Tarry, Sam (*Ilford South*) (Lab)
† Tomlinson, Michael (*Lord Commissioner of Her Majesty’s Treasury*)
† Western, Matt (*Warwick and Leamington*) (Lab)
† Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Wild, James (*North West Norfolk*) (Con)
† Zahawi, Nadhim (*Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy*)

Rob Page, Yohanna Sallberg, Committee Clerks

† attended the Committee
Public Bill Committee
Tuesday 1 December 2020

[Afternoon]

[SIR GRAHAM BRADY in the Chair]

National Security and Investment Bill

Clause 2

FURTHER PROVISION ABOUT CALL-IN NOTICES

Amendment proposed (this day): 10, in clause 2, page 2, line 12, leave out subsection (1) and insert—

“(1) No more than one call-in notice may be given in relation to each trigger event, unless material new information becomes available within five years of the initial trigger event.”—(Dr Whitehead.)

This amendment would enable the Secretary of State to issue multiple call-in notices if material new information becomes available.

2 pm

Question again proposed. That the amendment be made.

The Chair: I remind the Committee that with this we are discussing clause stand part.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): It is a pleasure to serve under your chairmanship, Sir Graham. As I was saying, after a trigger event is called in, the Secretary of State has 30 working days in which to carry out a full national security assessment, although that may be extended in certain circumstances. During that period, the Secretary of State may use his information-gathering powers under the Bill to gather from relevant parties any further information he requires to make a final decision. I can reassure hon. Members that the Secretary of State will make full use of these powers to fully assess every aspect of an acquisition.

Where, at the end of an assessment, the Secretary of State imposes remedies in relation to a trigger event, the Bill provides a power for him to amend those where appropriate. Such an amendment is really relevant only in cases where a trigger event is called in for scrutiny but ultimately cleared by the Secretary of State outright, without any remedies being imposed. In cases where false or misleading information is provided that materially affects the Secretary of State’s decision to clear a trigger event outright, he may revoke his decision and give a further call-in notice up to six months after the false or misleading information is discovered.

Adding further opportunities to call in a trigger event each time new material information becomes available after the Secretary of State has already had the opportunity to carry out full scrutiny of the trigger event would be disproportionate and give rise to unjustified uncertainty for the parties involved. The Government have been clear that this regime must provide a slicker route to investment by providing clarity and predictability for investors. Sadly, the proposed amendment would create uncertainty for businesses, with them unable to assess if and when the Secretary of State might call in their trigger event again, up to five years after the trigger event has been completed. That is why I am unable to accept the amendment. I hope that the hon. Member for Southampton, Test will agree with me and withdraw it.

Dr Alan Whitehead (Southampton, Test) (Lab): Our amendment was genuinely intended to be helpful, to try to ensure that what we see as a loophole is closed. The Minister has indicated that, in his view, that loophole would be closed at the expense of uncertainty in company land, as it were—uncertainty for those companies that might be subject to this procedure.

The circumstances that would see this amendment put into action—I have outlined some possible circumstances—would be very rare; only circumstances in which things had changed very substantially, in terms of global interest in particular areas of our economy, or circumstances in which information that could have been supplied was not supplied, and not because there was an intention to be malicious or misleading, but because people did not get to the bottom of something first time around. In those circumstances, companies would perhaps anticipate that that change might happen, and certainly if there were substantial global changes in who was interested in what, then companies would also anticipate that to a considerable extent. I do not share the Minister’s view that the amendment would place companies in general in a state of uncertainty.

The additional assistance that the amendment would provide to make the process watertight should be taken seriously. However, I hear what the Minister has said and appreciate that a balance has to be achieved between different arrangements so that they are satisfactory both for national security and for company wellbeing and development—I am sorry that he has perhaps come down slightly further on one side than on the other in his appraisal of amendment 10. However, I appreciate what he has said and therefore beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 2 ordered to stand part of the Bill.

Clause 3

STATEMENT ABOUT EXERCISE OF CALL-IN POWER

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I beg to move amendment 1, in clause 3, page 3, line 1, leave out “may” and insert “shall”.

This amendment would make it obligatory for the Secretary of State to include certain matters in a statement about his/her exercise of the call-in power.

The Chair: With this it will be convenient to discuss the following:

Amendment 2, in clause 3, page 3, line 9, at end insert—

“(d) the Secretary of State’s definition of the scope of what constitutes national security.”

This amendment provides that a statement from the Secretary of State about the exercise of a call-in power may include his/her definition of national security.
Amendment 9, in clause 3, page 3, line 9, at end insert
“(d) details of the resource allocated annually to reviews of national security assessments guiding call-in decisions, including specific headcount, skillsets and review caseload figures.”

This amendment provides that a statement from the Secretary of State about the exercise of a call-in power may include details of the resources allocated to reviews of national security assessments within BEIS.

Chi Onwurah: It is a pleasure to serve under your chairmanship once again, Sir Graham. Amendment 1 would make it obligatory for the Secretary of State to include certain matters in the statement about his or her exercise of the call-in power. As we have said on a number of occasions, the Bill gives major powers to the Secretary of State and marks a significant shift in the UK’s merger control process. It is worth emphasising that. It is important to make sure that that shift is done in a transparent and accountable way. The Bill is critical for our national economy and our national security. There is a great deal of uncertainty and there is no definition of national security, and I will come to that point later.

There is a great deal of latitude in the powers, but the Bill attempts to mitigate that by indicating that the Government may publish a statement setting out the scope of their call-in powers. That statement would include details of which sectors are especially under focus, details of trigger events, and details of factors that may be considered by the Secretary of State as part of an intervention. That transparency is welcome, as far as it goes, but we believe that it should go further. As Professor Martin said of the powers, in his expert evidence, “there should be accountability and transparency mechanisms, so that there is assurance that they are being fairly and sparingly applied.”—[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 81, Q96.]

The Government consultation responses list some detail on the scope of call-in powers but not on a clear final statement of scope. There is no detail on sectors, trigger events and, critically, factors considered under national security. The statutory statement of policy intent—in its current draft version—is woefully lacking in detail. Amendments 1 and 2 are designed to ensure that greater clarity is given about the Secretary of State’s intent. In particular, amendment 2 includes a definition of national security.

There was a good deal of debate during the evidence sessions—I see the Minister nodding—about defining national security. Certainly, I found it a very good and informative debate, hearing from a wide range of experts with different levels of experience in different aspects of national security, from Sir Richard Dearlove to academics, and their views on the importance of and the concerns with defining national security.

Sir Richard Dearlove said that he would certainly see a definition of national security as “advantageous, because it defines a clear area where you start and from which you can make judgments about the involvement of foreign firms being given space or activity in those areas. That is not a bad idea at all, actually.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 25, Q31.]

David Offenbach said:
“National security is not defined in the Bill, which I actually approve of, because once it becomes too closely indicated, then it is not easy to decide what should be in it, or what should not be in it. I would like to see a definition that includes what Lord Heseltine said when Melrose took over GKN, that research and development should be a subject of importance; it should be included.”—[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 99, Q106.]

He also said:
“The only way to make sure that something does not slip through the net is to have a slightly wider definition. There is no definition of national security itself in the Bill, which is perhaps why strategic, research and development, innovation or other issues should be brought in. Then one can be quite sure one has not accidentally lost an asset where there are national security issues.”—[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 105, Q130.]

As I have referred to on a number of occasions, I think the loss of DeepMind to Google and of the Centre for Integrated Photonics to Huawei show that we can lose strategic assets through a lack of clarity about what might constitute a national security threat. Amendment 2 “provides that a statement from the Secretary of State about the exercise of a call-in power may”—not “must”—“include his/her definition of national security.”

We are trying very hard to reflect the advice from certain experts that too closely defining national security would limit the powers of the Secretary of State, would not allow it to evolve with the threats and would give indications that could in some respects be gamed, but at the same time we are trying to address the vacuum that no definition creates. That vacuum risks creating major uncertainty for businesses and arbitrary powers for politicians to intervene without appropriate scope for that intervention.

We discussed earlier the conflict of interests between the Department for Business, Energy and Industrial Strategy welcoming foreign investment and the national security interests perhaps saying that there should not be foreign investment. That is especially challenging in the light of the major increases in interventions expected—as we have heard, we expect to go from 12 interventions to 1,830.

We believe strongly that we owe our citizens and businesses clarity on what will guide this increased intervention, but it is also right for the Government to retain flexibility for action and not to have their hands tied with a precise, narrow definition of national security, as security risks change due to technological, economic and geopolitical changes. Indeed, that is why we have needed this legislation for some years now, and why Labour has been calling for it.

The amendment again seeks to make the Secretary of State’s life easier, by encouraging him—or her, in the future—to provide guidance on the factors that might form part of national security assessments. That would not tie the Government’s hands by ruling anything out; it simply asks them to guide businesses with clarity on the sort of factors that might matter, giving flexibility to the Government and clarity to our small and medium-sized enterprises in particular.

2.15 pm

I emphasise that many of the small and medium-sized enterprises that may be caught up in the measures under the Bill will not be experts on national security; they may simply be doing world-leading research into
particular aspects of artificial intelligence or materials science, so having some guidance would be of significant help to them. Providing guidance only matches what countries across the world already do and is what small businesses across the country desperately seek from the Government.

I will finish my remarks on this amendment with some supporting statements from the some of the experts. Dr Ashley Lenihan from the London School of Economics said:

“What you do see in regulations is guidance as to how national security risk might be assessed or examples of what could be considered a threat to national security. US guidance is helpful on this.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 38, Q42.]

Lisa Wright, of Slaughter and May, said:

“There is not a widespread understanding of what it means and the circumstances in which the Government would intervene.”—[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 70, Q81.]

Several countries give a sense of the factors that might guide national security reviews, which is really what we are asking for here, without excluding areas from the definition. The US FIRRMRA legislation—Foreign Investment Risk Review Modernization Act 2018—provides for a “sense of Congress” on six factors: countries of specific concern; critical infrastructure, energy asset, critical material; history of US law compliance; control of US industries that affect US capability and capacity to meet national security requirements, which is very important; involvement of personally identifying information; and potential new cybersecurity vulnerabilities. The amendment seeks to encourage the Secretary of State to do likewise.

Stephen Kinnock (Aberavon) (Lab): Just to add to the argument that my hon. Friend is making in her very eloquent manner, this is also about having a smart approach to regulation, whereby we do not take a one-size-fits-all approach but recognise that there is a hierarchy of risks. By pointing out in the definition of national security what key factors make up that definition, we will point both the business community and the Secretary of State to that hierarchy of risks and make sure that there is additional screening, monitoring and assessment of those risks where they are considered to be higher because they contain the factors in the definition.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I thank my hon. Friend for that intervention. As a past employee of a regulator, Ofcom, he really appeals to my sense of regulatory best practice in speaking as he does about the importance of smart regulation that is not tied to narrowly defined legalistic definitions of national security but allows, as he says, a hierarchy of assessment of the different interests. We all need to take responsibility for doing everything we can to ensure that kind of smart judgment can be made by small businesses. We encourage giving as much guidance as possible—I see the Minister nodding, so I hope that he will be receptive to the amendment.

Finally, amendment 9 would mandate Business, Energy and Industrial Strategy unit resourcing updates. I will speak briefly to amendment 9, because I know that other hon. Members wish to speak to it. This amendment provides that a statement from the Secretary of State about the exercise of call-in power may include details of the resources allocated to reviews of national security within BEIS.

The driving thought behind this, again, is to ensure that the Secretary of State’s life is made as easy as possible by consistently looking at the resources available to do this very complex and difficult job, particularly given that we are transitioning, as one witness put it, from a standing start to potentially thousands of notifications.

Sam Tarry (Ilford South) (Lab): It is an honour to serve under your chairmanship so soon, Sir Graham. Following on from the eloquent exposition of those last two amendments by my hon. Friend the Member for Newcastle upon Tyne Central, I would like to focus on amendment 9. The amendment is simple. It tries to help the Government help themselves.

Amendment 9 provides that a statement from the Secretary of State about the exercise of a call-in power may include details of the resources allocated through reviews of national security within BEIS. We know that this is a significant and large change that the Department will have to absorb. For that to be effective—in whatever state the Bill ends up passing through Parliament—there will clearly be a need for proper resource allocation and for Parliament to scrutinise that process.

The Bill transforms the UK’s merger control processes. It locates the merger control processes away from the Competition and Markets Authority, which is a new development. The CMA had a history of experience of overseeing those sorts of processes. At the moment, there is no such expertise in BEIS.

While massively expanding the scope of the intervention, as my hon. Friend the Member for Newcastle upon Tyne Central said, moving from only 12 national security interventions in 18 years to potentially over 1,800 is such a significant step change, so it will be important for Parliament to have the ability to monitor that. It is unprecedented. The Government have neither a precedent nor a plan—none has come forward with the notes to this Bill—to assure the House of how the shift will be managed. That is why we felt it was important to put forward this amendment.

I believe this amendment has support on both sides of the House. Crucially, hon. Members across the House have raised legitimate concerns about the capacity and capability that will be required to manage this major shift. My colleague from the Transport Committee, Greg Clark, said,

“It is an enormous challenge for the Department to set up a new unit, especially since the current regime...has dealt with a very small number of transactions each year.”—[Official Report, 17 November 2020; Vol. 684, c. 228.]

Similarly, James Wild said,

“It is crucial that the structures and resources are put in place to ensure that the timetables for review and assessment in the Bill are actually met.”—[Official Report, 17 November 2020; Vol. 684, c. 266.]

I think both of those points are extremely pertinent. I do not see this as a controversial amendment. I think it is important to allow the Bill, once passed, to function effectively and with proper oversight. It also provides the appropriate scrutiny, ensuring that this critical part of our national and economic security...
functions effectively and efficiently. I am sure that in amendments to come we will debate where the balance should be between economic freedoms and our responsibility to safeguard our citizens. But clearly, on the simple idea put forward in this amendment, the Government will have to be transparent about the capability and capacity of BEIS on investment security, as many other countries around the world do.

Stephen Kinnock: My hon. Friend is setting out the case very well. To add to that argument, this is also about reassuring us as Members of Parliament. A Bill is all very well—it puts it all down on paper—but what really matters is putting it into practice. How does the implementation work? The investment security unit will be the key place for that. We need assurance that that crucial part of this process will have the capability to deliver. The amendment we are putting forward is also an assurance amendment—that when Parliament votes this Bill through, we can be assured that the implementation capability will be there.

Sam Tarry: My hon. Friend is absolutely right. As we have shaped our own Bill, we have been learning about regimes in other countries and comparing and contrasting provisions. For example, in the US—we have heard evidence on this from Michael Leiter earlier in the week—they look in detail at only around 240 cases, and then they look at 100 in a short form. We are saying that will have up to 1,800, and at the moment we do not have any guidance on what would be a more detailed and thorough investigation. Clearly, we need to have confidence about the amount of resources and about the fact that the Department has proper oversight of that and has been doing things properly.

This is not just about making our country the most attractive destination to do business; it is also about ensuring that we have the resources in place so that we do not slip up. We do not want another Huawei situation. We do not to be in a place where we do not have the resources, and where the former head of MI6 has to come to our evidence session and say that successive Governments have placed too much emphasis on building the economy at the expense of our security.

One of the evidence sessions last week touched on the idea of moving from just a few dozen cases to 1,000-plus being investigated. We do not know exactly when those cases will come. If there is suddenly a glut of cases at the same time, we need to make sure that the resources are there to deal with all of them. In that way, we will not have smaller companies, in particular, which are not getting the media coverage that some companies have had, falling through the net. As we know, very small, innovative technology companies sometimes develop some very radical forward-thinking technologies, and we might not even notice that they have been bought out or taken over by a state-owned business or by a business that is aligned closely with another state that may not share British values or interests.

I will leave it there, Sir Graham. This is about helping the Government to help themselves, allowing Parliament to have oversight and ensuring that the resources are in place, so that we get this right and do not have to revisit it after a calamity in a few years’ time.

The Chair: Before I call the next speaker, I did not interrupt the hon. Gentleman, because I am feeling benign this afternoon. However, it is timely to remind Members that other Members of the House should be referred to by their constituencies, not by their names.

Dr Whitehead: I did not mention what a pleasure it is to serve under your chairmanship this afternoon, Sir Graham.

The Chair: That is not required.

Dr Whitehead: It is unfortunately force of habit, and it is a habit that I am loth to break.

Amendments 1, 2 and 9 are closely related. Clause 3 is about the Secretary of State putting forward a statement about the exercise of the call-in power and, within that, specifying—or it looks like they are specifying—what at least some of the contents of that statement are likely to be.

I will talk about the context in a moment, but amendment 1 draws attention to another problem that I have had to look at closely on several occasions in my examination of Bills over the years: the use of the word “may”, which appears at the beginning of clause 3 and in clause 3(3). In looking at Bills, whenever the word “may” appears, I have always concluded that there needs to be a silent “(or may not)” after it, although it is never there. That is what that phrase actually means in any piece of legislation.

2.30 pm

What is interesting about the construction of this clause is not only that the Secretary of State is not required to publish a statement—the Secretary of State “may” publish it—but that the Secretary of State is not actually required to include anything in it either. The clause says they “may include, in particular” and then it lists certain things. The “in particular” is peculiar wording, because things that the Secretary of State does not have to include in a statement are actually highlighted by the words “in particular”. That is completely redundant if the Secretary of State does not have to include those things in a statement.

Hon. Members may think that this is just a little piece of pedantry and that I am picking away at things, but I can give the Committee a small story about a piece of legislation where the use of the word “may”, in a way that I will describe in a moment, has had very serious effects. The issue was remarkably similar—a requirement on the Secretary of State to make a statement—and the legislation was the Energy Act 2013. Part 5 set out at great length how the Secretary of State should make a statement about the environmental and climate change obligations and requirements of the Office of Gas and Electricity Markets. The statement was to have a great deal of content—all sorts of guidance on what Ofgem should do.

The only problem was that, at the front of part 5, were the words, “The Secretary of State may, by order, implement this particular part of the legislation.” I am sure hon. Members will not believe this, but seven years later there has been no statement of climate and environmental intent put forward by a Minister as far as Ofgem is concerned. Ofgem is crying out for such a
statement, but it does not have one, because the Government of the day decided that because they “may” implement that particular provision, they would not, and they have not. Despite a number of suggestions that they should, that legislation remains resolutely unimplemented.

The problem we have with this legislation today is that we countenance the idea that the same thing might happen. I am not saying that it necessarily would happen, and I am sure that, in the safe hands of the present Minister, it pretty certainly would not. However, the point is that we are not making legislation in the hope that particularly fine Ministers will be particularly good in their application of it. We are making legalisation in a way that will ensure both that it is proof against the worst things that might happen and that it will stand the test of time even if the worst things do happen.

It is important, therefore, to look very closely at how these things function in the legislation. I can see no good reason why the word “may” should not be replaced by “shall”. I might add that our amendment is slightly misplaced, inasmuch as it targets the “may” at the top of page 3, in clause 3(3), but not the one in clause 3(1), which is the key “may” because everything follows from that. One might argue that the right place for the “shall” would be clause 3(1), which should read: “The Secretary of State shall publish a statement for the purposes of this section.” Clause 3(3) could then read: “The statement may include”—we do not need the words “in particular”—“various things.”

The things the amendment says should be covered include a definition of national security, which is very important in terms of the content of the statement. As my hon. Friend the Member for Newcastle upon Tyne Central mentioned, that need not be a tight definition; it is just a definition for guidance, as far as the statement is concerned. In amendment 9, we say that the Secretary of State’s definition of national security should be followed up with “details of the resource allocated annually to reviews of national security assessments guiding call-in decisions, including specific headcount, skillsets and review caseload figures.”

That is far more specific, but it is nevertheless important in terms of the transparency that is necessary when this statute is introduced. However, I emphasise that all of that is as nothing if the Secretary of State does not have to produce a statement in the first place. We can have a wonderful piece of legislation that says exactly what is to produce a statement in the first place. We can have a wonderful piece of legislation that says exactly what is to happen, and I am sure that, in the safe hands of the present Minister, it pretty certainly would not. However, the point is that we are not making legislation in the hope that particularly fine Ministers will be particularly good in their application of it. We are making legalisation in a way that will ensure both that it is proof against the worst things that might happen and that it will stand the test of time even if the worst things do happen.

I therefore earnestly ask the Minister whether he might reconsider that particular word in that particular part of the legislation, and whether he thinks the word “may” might well be replaced—perhaps on Report or elsewhere—by “shall”. That would give a tremendously strong indication that we are going to go about this process with strong transparency and clear intent, that we are going to do what we said we would and that the rest of the clause is switched on by that “shall” to ensure not only that the statement exists, but that it is transparent, does the job it is supposed to and includes the things that it should, in terms of being a comprehensive statement that is good for now and for the future. I hope the Minister, in between his other, onerous duties, will take two minutes to consider whether he might be more comfortable with that wording, as far as the future of the legislation is concerned.

Nadhim Zahawi: I am pleased to speak to this group of amendments, which relate to clause 3. This clause provides for a statement to be published by the Secretary of State, setting out how he expects to exercise the call-in power. Clause 1 requires that this statement is published before the power may be used. There are three amendments in this grouping—amendments 1, 2 and 9—and I will speak to each of them in turn.

I advise the Committee that we have interpreted amendment 1, including with regard to the Members’ explanatory statement, as seeking to amend clause 3(1) rather than 3(3). The effect of this amendment, as we believe it was intended, is to require the Secretary of State to publish the statement. As I set out on Second Reading, the Government are committed to providing as much clarity and predictability as possible for business when it comes to the use of the new investment screening regime that is provided for by this Bill. The proposed statement will provide valuable information to businesses and investors, and help them to determine whether they should submit a notification about their trigger event. Indeed, the Secretary of State must lay before Parliament, publish and not withdraw the statement before the call-in power may be used. In effect, this means that the Secretary of State will need to have published a statement to use the call-in power, which is crucial to the regime.

Of course, as the security landscape changes over time, may wish to publish an updated statement at a future point; this will need to go through the same consultation and parliamentary procedure as the original statement before it can take its place. I assure hon. Members that the Secretary of State has neither the intention nor the power to run this regime without having first published a statement.

I will now turn briefly to amendment 2, which would allow for the Secretary of State to include a definition of national security in the statement provided for by clause 3. The Secretary of State’s powers under the Bill are expressly predicated on investigating and addressing risks to national security. When exercising these powers, the Secretary of State is required to proceed on the basis that national security is strictly about the security of our nation. That is because what national security means is a question of law, which has already answered by the highest courts of the land as being the security of our nation.

The Secretary of State will obviously need to comply with the law when exercising the powers in the Bill. There is therefore no need to define what national security means in the Bill. As Dr Ashley Leeman—a fellow at the Centre for International Studies at the London School of Economics, who was quoted earlier by the shadow Minister—mentioned in last week’s evidence session:

“What we have seen is that most foreign direct investment regimes of this nature all refer to national security. I do not know of a single one that actually defines it or limits itself to a particular definition”—[Official Report, National Security and Infrastructure Public Bill Committee, 24 November 2020; c. 38, Q43].

Furthermore, as national security is a term used in the Bill, it would in any event not be appropriate for the Secretary of State to define the scope of the term in the statement; the statement is not legislation and is not subject to approval by Parliament.

Wanting to understand the Government’s aims and expectations for these powers is entirely reasonable—there is no discussion about that. However, I refer the Committee
to the comments of Michael Leiter, a partner at Skadden, Arps, Slate, Meagher and Flom LLP, who told us that he would consider that

“it is a bit of a fool’s errand”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 49, Q55.]

to define national security. Instead, the statement will set out how the Secretary of State expects to use the call-in power, and we plan to include details of the types of national security risks in which the Secretary of State is especially interested.

**Stephen Kinnock:** I just want to come back on the point the Minister made about other regimes not using a definition of national security. The United States Foreign Investment Risk Review Modernization Act provides a sense of congress on six factors: countries of special concern; critical infrastructure; energy assets and critical materials; history of compliance with US laws; control of US industries that affect US capability and capacity to meet national security requirements; involvement of personally identifiable information; and potential new cyber-security vulnerabilities. In his comments, the Minister said that no other regime includes a definition of national security, but that sounds like a definition of national security to me.

**Nadhim Zahawi:** I am grateful to the hon. Member for Aberavon for his comments. I was quoting from the evidence that Dr Ashley Lenihan provided. She said:

“I do not know of a single one that actually defines it or limits itself to a particular definition,”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 38 Q42.]

if that is what he was referring to.

Instead, what I am trying to share with the Committee is that the statement will set out how the Secretary of State expects to use the call-in power. Within that, we plan to include details of the types of national security risks in which the Secretary of State is especially interested. These include certain sectors of the economy and types of acquisitions relating to entities and assets that may raise concern. I think I have said enough on that.

2.45 pm

**Matt Western** (Warwick and Leamington) (Lab): I am not sure that the Minister has; it is always a pleasure to hear his dulcet tones. In all seriousness, is this not open to interpretation with a change of Secretary of State, in the way that we have seen in the US with a change of President, and how that President chooses to define what national security means?

**Nadhim Zahawi:** I am grateful for the hon. Member’s contribution. Of course, no Government can tie the hands of future Governments, if that is his argument.

Moving on, I commend hon. Members for their interest in the process and function of the regime, made clear through amendment 9, which provides for additions to the statement about the exercise of the call-in power. It aims to ensure that the regime created by the Bill is properly resourced with the right numbers of skilled staff. The hon. Member for Ilford South was thoughtful in his concern about that. However, I would say to him and other Members that the purpose of the statement is to set out how the Secretary of State expects to exercise the power to give a call-in notice. It will provide information on the types of scenarios where the Secretary of State may consider there to be a national security risk. It would not be appropriate to add details about how the regime will be staffed.

Furthermore, internal arrangements on resource and skills are a matter for the Secretary of State and, of course, the permanent secretary at BEIS. I reassure hon. Members, however, that the Bill compels—this is the lever for Parliament, in my view—the Secretary of State to publish an annual report, which will provide information on the number of mandatory notices accepted and rejected, the number of voluntary notifications accepted and rejected, and the number of call-in notices and final orders made. That review is incredibly important in measuring performance. The exact details and requirements for the annual report are set out in clause 61. I will not go through all of them.

For the reasons I have set out, I am unable to accept the amendments and hope that Opposition Members feel able to withdraw them.

**Chi Onwurah:** I thank the Minister for his response. I particularly thank my hon. Friends for the points that they have raised. My hon. Friend the Member for Ilford South set out the importance of reporting on resourcing. I am disappointed that the Minister could not accept that amendment. He said that it was not appropriate to include details of resourcing and staffing. I point him in the direction of the Government’s misinformation unit, which was set up to grand acclaim in order to address that important issue. As the Minister for vaccines, he will have a strong interest in the effectiveness of misinformation, which could harm our wellbeing and future return to normality.

That unit was set up. Written parliamentary questions that I tabled revealed that it had no full-time staff or full-time equivalents, and we see a resultant lack of action on misinformation. I make that point to counter the Minister’s assertion that it is not important to have details on resourcing reported. On the contrary, our experience in Parliament and the civil service suggests that it is what is resourced that will get done, with the appropriate skill and care. With such a great number of cases, and such a great change in the scope of takeover and acquisition legislation that the Bill represents, reporting on resourcing is very important.

I also thank my hon. Friend the Member for Ilford South for such intriguing and at times amusing oratory on the importance of a single word in the right place.

**Nadhim Zahawi:** Southampton, Test.

**Chi Onwurah:** I am sorry. Southampton, Test.

**Dr Whitehead:** I quite like it.

**Chi Onwurah:** My hon. Friend intends to stay where he is. I thank him for his oratory on the importance of the single word “may”. Something has been lost in translation between ourselves and the Clerks, in that there was originally an intention to address the first “may” with regard to publishing the statement. The Minister says that we do not need that to become a
Onwurah, Chi
Kinnock, Stephen
Flynn, Stephen
Baynes, Simon
Bowie, Andrew
Fletcher, Katherine
Garnier, Mark
Aiken, Nickie

Division No. 3

Question accordingly negatived.

Sam Tarry: I beg to move amendment 11, in clause 3, page 3, line 16, at end insert—

“(7) The Secretary of State must publish guidance for potential acquirers and other interested parties separate from the policy intent statement.

(8) Guidance under subsection (7) must cover—
(a) best practice for complying with the requirements on acquirers imposed by this Act and regulations;
(b) the enforcement of the requirements; and
(c) circumstances where the requirements do not apply.

(9) Guidance under subsection (7) must be published within six months of this Act receiving Royal Assent.”

This amendment would require the Secretary of State to provide clear guidance to potential acquirers and other interested parties.

Again, this is, in our view, a fairly simple amendment. It is important because it is about ensuring that we are an attractive destination for business. A number of witnesses were very clear that many businesses need an early warning. The amendment would require the Secretary of State to provide clear guidance to potential acquirers and other interested parties, so that people are not put off from investing or getting involved in the British economy because of red tape that they might fear being tied up in. The amendment is about providing that clear guidance to companies.

If the Government went even further and published guidance that created regulatory sandboxes and clear engagement guidelines for innovative small and medium-sized enterprises, which could benefit from efficient regulatory engagement to pursue investment transactions just as, for example, the Financial Conduct Authority has done for the UK’s world-leading FinTech sector, we could turn this into an opportunity to encourage the right types of companies from our allies around the world to invest in Britain.

One of the things we fear is the introduction of significant uncertainty. We know that hard work is going on to finalise a trade deal. Businesses have for so long felt that their big problem, in deciding about long and medium-term investment, is uncertainty. The amendment is about tackling straightaway any fears of uncertainty among businesses, particularly innovative SMEs, which will not have the resources to spend on figuring out the lengthy processes and, potentially, the accompanying guidance that could be put in place once the Bill passes. The amendment would require the Government to try to reduce that uncertainty.

Chi Onwurah: I would like to press amendment 2 but withdraw amendment 9. I would like to hear the Committee specifically on national security.

Amendment proposed: 2, in clause 3, page 3, line 9, at end insert—

“(d) the Secretary of State’s definition of the scope of what constitutes national security.”—(Chi Onwurah.)

This amendment provides that a statement from the Secretary of State about the exercise of a call-in power may include his/her definition of national security.

Question put, That the amendment be made.

Division No. 3

AYES
Kinnock, Stephen
Onwurah, Chi
Tarry, Sam

Whitehead, Dr Alan

NOES
Aiken, Nickie
Baynes, Simon
Bowie, Andrew
Fletcher, Katherine
Garnier, Mark
Griffith, Andrew
Tomlinson, Michael
Wild, James
Zahawi, Nadhim

Question accordingly negatived.

The Chair: We must now deal formally with amendments 2 and 9, which can either be pressed to a Division or withdrawn.

Chi Onwurah: I would like to press amendment 2 but withdraw amendment 9. I would like to hear the Committee specifically on national security.

Amendment proposed: 2, in clause 3, page 3, line 9, at end insert—

“(d) the Secretary of State’s definition of the scope of what constitutes national security.”—(Chi Onwurah.)

This amendment provides that a statement from the Secretary of State about the exercise of a call-in power may include his/her definition of national security.

Question put, That the amendment be made.

Division No. 2

AYES
Flynn, Stephen
Kinnock, Stephen
Onwurah, Chi

Weston, Matt
Whitehead, Dr Alan

NOES
Aiken, Nickie
Baynes, Simon
Bowie, Andrew
Fletcher, Katherine
Garnier, Mark
Griffith, Andrew
Tomlinson, Michael
Wild, James
Zahawi, Nadhim

Question accordingly negatived.
Parliament. Does the amendment therefore not perversely create greater potential uncertainty, by enabling Governments to change their guidance willy-nilly, without scrutiny?

Sam Tarry: The hon. Gentleman makes a valid point, but it was not really borne out in the evidence that we heard from the witnesses. They were clear, even while having different approaches, that more guidance accompanying this, and providing it early, would provide that certainty. We heard a range of approaches and opinions, and that advice should clearly be listened to. Dr Lenihan said:

“The Bill provides for a lot of regulatory guidance, which needs to come forward in a clear and very easily comprehensible and understandable manner.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 38, Q42.]

3 pm

Particularly when thinking about how we champion those small and medium-sized enterprises that will boost us and get us back on the front foot once we are out of this awful covid crisis, those are exactly the kinds of companies that we will want to be invested in from abroad, and we should give them a framework that they can quite simply understand without tying them up for too long in too much red tape, while of course balancing that with all the things we have discussed today, including balancing security against economic freedom.

That clarity could also be focused on the new investment security unit, reducing the complexity and increasing the understanding and the relevance of that unit’s work once it is in place. David Petrie from the Institute of Chartered Accountants in England and Wales said that the unit would be “extremely useful if it was able to issue meaningful market guidance notes, similar to the notes that accompany the takeover code. That would again be extremely helpful so that we can understand. It would help the market to be better informed.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 54, Q60.]

In our current climate, that certainty would allow the Bill to serve its purpose in safeguarding our national security while at the same time maintaining Britain as an attractive destination to invest in and to do business.

Chi Onwurah: I thank my hon. Friend the Member for Ilford South for moving the amendment. The Committee must support the aims of the amendment and the implementation of the requirement to publish guidance for potential acquirers and other interested parties separate from the policy intent statement. My hon. Friend set out the importance of avoiding uncertainty and of providing certainty for companies and businesses that might come into the scope of this Bill.

Now is perhaps the time to highlight a failing of the Bill and the impact statement, in that the focus is on the acquirers—those who will acquire companies or shares through transactions. The explanatory notes explain why that is the case: because a trigger event might take two or three separate transactions to complete, such as acquiring a 25% interest, so it has to be on the acquirers to make the notification. I understand that, but I think the impact statement dramatically underestimates—in fact, it does not make an estimate—the impact that will have on those being acquired.

By that, I think particularly of small start-ups—our small, innovative new ventures and new enterprises, perhaps spun out from universities or other institutions. As they seek finance to grow and to thrive and to make further discoveries and innovations, they will have to give a lot of consideration to the provisions in the Bill. To be frank, as all of us who have worked in small businesses know, time is at a premium, as is access to legal advice. Small start-ups need this kind of guidance easily and readily available. I fail to understand why the Minister would not want the Department to provide this guidance specifically to companies, separate from the policy intent statement. I support my hon. Friend’s amendment.

Nadhim Zahawi: Amendment 11 would require the Secretary of State to publish guidance in relation to the Bill and regulations made under it within six months of Royal Assent. The hon. Member for Ilford South raised an important issue and I welcome the opportunity to discuss the Government’s plan for communicating the application of the proposed new regime, including the requirements that would or might be imposed on persons. It is important that appropriate steps are taken to make such persons aware of the requirements that would or might be placed on them. I have used “persons” here deliberately as it is the correct term, but I wish to make it clear that that includes acquirers.

First, the Government have published and will continue to publish guidance alongside key documents in the Bill. Hon. Members will, for example, be able to review the information likely to be required for notifications online, as well as draft guidance. It is our intention to complete similar such guidance wherever it would be beneficial to parties. I hope that that provides sufficient reassurance for the hon. Member for Ilford, South and the shadow Minister that the Government are thinking carefully, and will continue to think carefully, about how to ensure that all parties who need to understand the measure are able to. For the reasons that I have set out, I cannot accept the amendment and I hope that the hon. Member for Ilford, South will withdraw it.

Sam Tarry: I wish to press the amendment.

Question put. That the amendment be made:

Division No. 4]

AYES

Flynn, Stephen
Kinnock, Stephen
Onwurah, Chi

Tarry, Sam
Western, Matt
Whitehead, Dr Alan

NOES

Aiken, Nickie
Baynes, Simon
Bowie, Andrew
Fletcher, Katherine
Garnier, Mark

Griffith, Andrew
Tomlinson, Michael
Wild, James
Zahawi, Nadhim

Question accordingly negatived.

Nadhim Zahawi: I hope that hon. Members will recognise that the Government are committed to providing as much clarity and predictability as possible for business on the use of the new investment screening regime provided for in the Bill. Clause 3 is the third clause related to the call-in power, and concerns the statement of policy intent. Colleagues will remember that clause 1 requires that, prior to the use of the call-in power provided for in that clause, the Secretary of State must publish and not withdraw a statement that sets out how they expect to use the call-in power.

The Secretary of State was pleased to publish a draft of that statement alongside the Bill to enable hon. Members, businesses and indeed, the general public to review the approach he expects to take. As hon. Members will no doubt have seen, the draft statement contains details of what the Secretary of State is likely to be interested in when it comes to national security risks. It includes certain sectors of the economy and the types of entities, assets and acquisitions that may raise concerns.

Although it is crucial for investors to have confidence that there is as much transparency in the regime as possible, there is self-evidently a limit to how much the Government can disclose in that regard given that the regime deals explicitly with national security matters. Nevertheless, the draft statement goes into some detail about the factors that the Secretary of State expects to take into account when making a decision on whether to call in a trigger event. The statement will also be required to be reviewed at least every five years to reflect the changing national security landscape, although in practice it may be reviewed and updated more frequently.

Taken together, I hope that hon. Members will agree that the requirement for the Secretary of State to publish a statement of policy intent prior to use of the call-in power and the requirement to review it regularly provide a good level of transparency and guidance to businesses, while not disclosing our national security vulnerabilities, which of course hostile actors would be grateful to receive. The statement will provide valuable information for businesses and investors and help them, we believe, to determine whether they should submit a notification about their trigger event. I hope that hon. Members feel that I have sufficiently explained and justified the clause and its place in the Bill.

Chi Onwurah: Clause 3 is critical, as it sets out the context in which the Secretary of State will exercise the important power to call in transactions. We have sought in our amendments to improve it. I accept the Minister’s response to and rejection of our amendments, and his belief that the clause provides for the guidance and clarity that businesses need. I would just say to him that it was the clear conclusion of just about every witness in the evidence sessions that greater clarity and understanding were required, and that to make this change was an immense mountain to climb.

In some respects, the Government could not give too much support and guidance, within the bounds of national security, to the many companies and persons who will be caught up in the measures. Having said that, given that it is an essential part of the Bill, which we support, we accept that the clause stand part.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

Question proposed, That the clause stand part of the Bill.

3.15 pm

Nadhim Zahawi: As I turn to clause 4, I will begin with a reference to clause 3. The statement provided for in clause 3 sets out how the Secretary of State expects to exercise the call-in powers that we have just been discussing. It is the Government’s view that this statement is important in ensuring that businesses have as much clarity and predictability as possible regarding the potential use of the call-in powers, including the areas of the economy where national security risks are likely to arise. Likewise, clause 3 also sets out that the Secretary of State is required to review the statement at least every five years.

It is right that there are mechanisms to ensure that the Secretary of State seeks external input, where appropriate, on the proposed contents of the statement and that Parliament can scrutinise the final version. Clause 4 therefore requires the Secretary of State to carry out such consultation on a draft of the statement as he thinks appropriate and to take into account the responses to any such consultation during the drafting process. Those requirements also apply when the Secretary of State seeks to amend or replace a published statement.

Our plan is to launch a public consultation shortly after the passage of the Bill to make sure that affected parties can provide comments to us in good time. Before the final statement may be published, clause 4 also requires the Secretary of State to lay it before Parliament, following which the statement will be subject to a procedure akin to the negative resolution procedure. If either House resolves not to approve the statement within 40 sitting days, the Secretary of State must withdraw the statement. I can assure the House and hon. Members that the Government are committed to ensuring that this new regime works for those most affected by it. Investor and business confidence is imperative to the recovery from the covid pandemic. That is why the Government propose to put in place these requirements before the Secretary of State is able to publish the statement and exercise the call-in power.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.
Clause 5

Meaning of “trigger event” and “acquirer”

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss: Clause 10 stand part.
That schedule 1 be the First schedule to the Bill.

Nadhim Zahawi: I turn now to clauses 5 and 10, alongside schedule 1, which set out much of the detail on the circumstances covered by the Bill. Clause 5 begins to set the scope of what may be called in by the Secretary of State by providing the overarching definitions of “trigger event” and “acquirer”. The Government are clear that these new powers should be sufficiently broad to cover potential risks to national security. Clause 5 sets out that the new regime is focused on the acquisition of control over both qualifying entities and assets. These acquisitions are collectively known as trigger events. I do not intend now to explore what does and does not qualify as an asset or entity. Instead, I would direct hon. Members to clause 7, which provides such definitions.

Following on logically, the person gaining such control is the acquirer, and to address a query raised on Second Reading by my right hon. Friend the Member for Chingford and Woodford Green (Sir Iain Duncan Smith), I should make clear that “person” includes both a body and an individual. Subsequent clauses explain the specific ways that control can be acquired for the purposes of the Bill, but this is a necessary clause to set the broad parameters of the regime. The trigger events within scope of the call-in power are defined in clauses 8 and 9 as acquisitions of control over qualifying entities and assets, but the Government consider that the Bill must supplement that by providing for interests or rights to be treated as held or acquired, and therefore for control to be acquired in certain circumstances, such as acquisitions involving indirect holdings or connected persons.

That is why clause 10, in combination with schedule 1, sets out various ways in which rights or interests are to be treated for the purposes of the Bill as being held or acquired, including, for example, joint arrangements with other parties. These edge cases are critical to ensuring that determined hostile actors cannot deliberately structure acquisitions in certain ways to avoid being covered by the regime. While many trigger events may be straightforward, direct acquisitions by a party without any connection to other persons involved in the target entity or asset, there may be broader factors that need to be taken into account when considering how control over an entity or asset may be held.

It may be that the ability to control the entity or asset is acquired, for example, as a result of arrangements between the acquirer and other shareholders or their relationship to other shareholders. The approach taken in schedule 1 broadly mirrors the concept of holding an interest in a company, already familiar in UK company law through the persons with significant control register, introduced in 2016.

Taking each in turn, paragraph 1 of schedule 1 defines joint interests, whereby two or more people holding an interest or right jointly are each treated as holding it. That means that any joint holdings of the acquirer will be taken into account when assessing whether control has been acquired over a qualifying entity or asset.

Paragraph 2 defines joint arrangements so that parties who arrange to exercise their rights jointly in a predetermined way—for example, to always vote together in a particular way—are each treated as holding the combined rights and interests of all the parties involved in such an arrangement. That is important to prevent hostile actors from being able to co-ordinate the acquisition and exercise of rights that might otherwise fall below the threshold of a trigger event.

Paragraph 3 defines indirect holdings, whereby a person holds an interest or right indirectly through a chain of entities, where each entity in the chain has a majority stake in the entity below it, the last of which holds the interest or right. We know that determined hostile actors are likely to seek to obscure their acquisitions through complex corporate structures, so it is vital that the Secretary of State can intervene in such circumstances.

Paragraph 4 simply stipulates that interests held by nominees for another are to be treated as held by the other, rather than the nominee. Paragraph 5 defines the circumstances in which rights are to be treated as held by a person who controls their exercise; this would cover, for example, instances where a person acquired a stake in an entity, but it was evident that they had an arrangement with a third party about how to exercise the rights that came with that stake.

Paragraphs 6 and 7 provide for the circumstances in which rights that are exercisable only in certain circumstances and rights attached to shares held by way of security are respectively to be treated as held, and mirror corresponding provisions in schedule 1A to the Companies Act 2006.

Paragraphs 8 to 10 define connected persons; as set out, connected persons are each to be treated as holding the combined rights or interests of both or all of them. That would cover, for example, shares in a company separately by a husband and wife or a brother and sister. Finally, paragraph 11 sets out that two or more persons sharing a common purpose are to be treated as holding the combined interests or rights for both or all. That would include two or more persons who co-ordinate their influence in relation to an entity or an asset, similar to joint arrangements. This will ensure that the Secretary of State is able to assess the impact of co-ordinated acquisitions.

Taken together, the concepts detailed in schedule 1 are a crucial part of ensuring that the new regime is flexible enough to deal with the complex reality of some acquisitions of control over entities and assets. Without these provisions, hostile actors could seek to take advantage of the gaps by structuring acquisitions in a way that would be out of scope of the regime, despite the very real risks that that might present. I trust that colleagues on both sides of the Committee want to ensure that the regime covers such cases suitably.

Chi Onwurah: I thank the Minister for his comments on clauses 5 and 10 and schedule 1, which are quite technical provisions designed to allow for the different ways in which control may be acquired over a qualifying entity or asset or a trigger event may occur. I shall not
repeat what the Minister so ably set out, but simply say that we recognise the need to set out ways to mitigate the impact of hostile actors, as he put it, going to complex lengths to hide their interest in a qualifying asset or entity. However, having the powers and these definitions is not the same as actually using them. There have been several instances in which hostile actors have behaved in entirely transparent ways that we have not identified and prevented. While these provisions are necessary, we need to see the ways in which the Secretary of State will actively identify evolving risks even as they hide behind complex financial organisations.

Dr Whitehead: Will the Minister expand on some of the provisions in schedule 1, particularly as they relate to what might be a UK version of the case that I mentioned earlier concerning the US company that Dr Lenihan mentioned in his evidence? A company that had gone bankrupt had its assets, patents and employees bought up by what might have been conceived to be a hostile company in the US, in this case Huawei. If we imagine that happening in the UK, some questions arise about how schedule 1 is worded.

That sort of action might happen in a number of ways. It could be that a potentially hostile company buys up a failed, bankrupt company with the intention of making that company work again but so that it has control of its activities thereafter. Alternatively, the hostile company or organisation might want to buy up elements of the company not to make it work but to make off with the things that it wanted and then push the company further into liquidation. The company would not work but its assets and intellectual property would have passed into the hands of the other organisation.

3.30 pm

Parts of schedule 1 look like a GCSE maths test. Paragraph 6(2) states:

“rights that are exercisable by an administrator or by creditors while an entity is in relevant insolvency proceedings are not to be regarded as held by the administrator or creditors even while the entity is in those proceedings.”

The question is: who actually holds the rights in those circumstances? Is it the person or company that has gone bust? Are they held to hold the rights even though an administrator is acting, as we would ordinarily understand, in place of the company in, for example, trying to get the best price for the company on behalf of the creditors, and therefore has certain rights to act in place of the company, including allowing that company to trade for the time being? Is it the person who has gone bust who has the rights, or is it the company that may have taken over the rights but has dissolved the company, so that the company no longer exists, but the creditors or administrators do not have the rights either because the company is finally in liquidation and the other company has meanwhile made off with the assets?

Does the Minister consider that the wording and arrangements in the schedule are sufficient to take account of those sorts of circumstances?

Mark Garnier: I think the answer to the hon. Gentleman’s question under insolvency law is that the rights belong ultimately to the creditors and shareholders of the company that has been wound up, which is pretty bog standard insolvency law.

Dr Whitehead: Yes, indeed, that is right, but what seems to be the case under the schedule is that the creditors and shareholders of that company would expect their rights and their ownership the remaining assets of the company to be protected and acted on by the administrators of the company, who, according to the schedule, do not have access to and ownership of those rights. Even though what the hon. Member says is absolutely right in terms of the ultimate interests of the shareholders and creditors, what agency do those shareholders and creditors have to do anything relating to rights under the Bill? Should those shareholders and creditors, for example, be held liable under the Bill for reporting what those rights are?

Mark Garnier: The administrators are employed to work on behalf of the creditors and shareholders, so they are serving their interests. It strikes me as relatively obvious that the rights over that intellectual property and those things that are relevant in this schedule still, either directly or indirectly through the administrators, lie with the creditors and shareholders.

Dr Whitehead: But if the IP, the patents and various other things have been made off with by another company, and the administrators have presumably agreed to that, although they never hold the rights, where are the shareholders and creditors’ duties and rights at that point? Indeed, what is the remedy as far as the Government are concerned in those circumstances?

I can honestly say I am fairly confused about this, so I do not have the full answer to the hon. Member’s concerns. I am raising this more because I am not sure whether the wording in the schedule is fully adequate for those circumstances. I would be grateful if the Minister gave me some assurance, took some of the clouds from my mind about this, or alternatively said, “Well, we’re going to have a look at this to see whether there is a bit of a problem that we might have to fix.”

Nadhim Zahawi: My hon. Friend the Member for Wyre Forest addressed the issue of the administrator’s acting on behalf of the creditors. The important point to focus on—I will happily write to the hon. Member for Southampton, Test after the sitting—is that ultimately, it is the acquirer. If a malign actor were to come to acquire those assets, and it is notifiable as part of the 17 sectors, then the transaction is made void. That is the remedy, effectively, because the acquirer would have to come forward and make representations to the investment unit about why they are acquiring and get clearance.

Chi Onwurah: I thank my hon. Friend the Member for Southampton, Test for the points that he is making. I wish to put to him, and effectively the Minister as well, an example which was raised yesterday in debate on the Telecommunications (Security) Bill, with which I am intimately familiar as the collaboration is between Nortel, an equipment vendor for whom I worked in the past, and Huawei, on a project to develop new technology. When two entities come together and collaborate, which I do not think will meet any of the trigger events described here, but instead create something which has IP in it which is of value, how does that come under the provisions of the clauses and the schedule?

The Chair: I have let everyone speak. I do not know whether there are any more answers that the Minister wants to offer.
Nadhim Zahawi: Let us take the example given by the hon. Member of Nortel collaborating with Huawei or any other entity. They have to satisfy themselves that if they wish to acquire something else in future, they will effectively have to go through the same process of national security clearance. Collaboration between entities or in academia are covered under the separate guidance, including from the agencies, on who they collaborate with, but I think that is a different issue. Once an asset is created that has a national security implication for the United Kingdom, the Bill comes into play.

Question put and agreed to.
Clause 5 accordingly agreed to stand part of the Bill.

Clause 6

NOTIFIABLE ACQUISITIONS

Stephen Kinnock: I beg to move amendment 6, in clause 6, page 4, line 27, at end insert—

‘(4A) The Secretary of State must have regard to the protection of critical national infrastructure when making regulations under this section.’

This amendment would require the Secretary of State to have regard to the protection of critical national infrastructure when making notifiable acquisition regulations.

It is a pleasure to serve under your chairmanship, Sir Graham. I congratulate the Minister on his recent appointment as the vaccine tsar. I must say, he is taking multi-tasking to a whole new level, and we wish him well.

I rise to speak in favour of amendment 6, which is closely related to amendments 7 and 8. Sir Graham, should I speak to amendments 7 and 8 as well now, or to amendment 6 alone?

The Chair: Just amendment 6.

Stephen Kinnock: Thank you, Sir Graham.

Before we go down into the weeds of it, it is worth taking a step back and thinking about the fundamental purpose of the Bill. The amendments are informed by that fundamental purpose, because we wish to construct a Bill to support the Bill, but also to improve it. We feel that if our amendments are not accepted, it will be a real missed opportunity to achieve something even better. We can take this Bill from good to great—an objective I am sure the Minister would support.

The aim needs to be around national security, yes, but also about economic resilience, because underlying economic resilience is actually what is required for our national security. The two are fundamentally intertwined. To build that resilience, we need sovereign capability. We need, as a country, to have a business culture based on purpose, rather than on fast bucks and short termism. We need resilience so that we are a country with a healthy and viable manufacturing sector that enables us to export more, because we would argue that the persistent trade deficit we face as a country has an impact on our national security. We also need to develop that sovereign capability. As the covid crisis has demonstrated, we have ended up being far too exposed to highly extended supply chains, many of which go through countries that are not our natural allies. That has left us lacking in resilience. The Bill is about managing risk, and our risk levels are far too high because of the economic model we have fallen into.

Simon Baynes (Clwyd South) (Con): I understand what you are saying, but I think what you are suggesting really changes the whole Bill, because, as we were discussing with the witnesses, it is almost more about national interest. This is about national security, not national infrastructure. What you are proposing is a fundamental change or add-on to the nature of the Bill, which would have ramifications throughout the whole Bill process. I think it is important to make that point at this stage.

The Chair: I was not proposing anything; the hon. Gentleman was.

Stephen Kinnock: I thank the hon. Member for Clwyd South for his intervention. I take that point absolutely, but I think it is important sometimes to go back to the mindset we have around this legislation. The Opposition feel that there are opportunities to strengthen the Bill. Every single Bill that the Department for Business, Energy and Industrial Strategy puts forward should be informed by that need to strengthen our sovereign capability and make us less reliant on risky supply chains, and to be somewhat more realistic about the way that the world and globalisation work. It really was just contextual, but I do take the hon. Member’s point that we should remain within those parameters. I think the mindset is really important.

On the issue of exposure to highly extended supply chains and the way in which we have had the floodgates open for hostile foreign takeovers, this country has the highest number of hostile foreign takeovers in the entire OECD. That really speaks volumes about our economic model.

In terms of relations with China, the Bill is not an anti-China Bill as such, but we all know that the key economic development of the last few decades has been the rise of China. The reality is that we have been naïve and complacent in the way we have dealt with China. Previous Prime Ministers announced a so-called golden era, whereby we were going to open our markets to China, the Chinese were going to do the same, and they would gradually align with the international rules-based order, its norms and even its values, some thought.

That has been an unmitigated disaster. None of that has happened. In fact, what we have seen is that the benefits of the golden era have flowed almost exclusively from west to east. We are still running a £19 billion trade deficit with China and we are still seeing extremely hostile political acts, not least what is happening in Hong Kong and the persecution of the Uyghur people in Xinjiang. Both economically and politically, the strategy has failed.

3.45 pm

It is heartening to see in the Bill some evidence that the Government are learning that lesson. I think the Bill is the Government saying, “Yes, we have been naïve and complacent. We do need to take a more hard-headed, realistic approach to China in particular, so we are going to take some action.” But as I said, the Bill could do so much more and be so much better. It is in that spirit that we have tabled our amendment.

There is also an added element of urgency: the covid crisis will leave many British businesses distressed and vulnerable. They will be vulnerable to more hostile
foreign takeovers, including those backed by state-owned enterprises and state-backed investment vehicles. When we talk about China, there is, of course, no difference between business and the state—business is the state. The Chinese Communist party has a membership of 90 million people. It is absolutely clear that any time a business takes a decision, regardless of whether it is ostensibly or nominally in the private sector, it is the CCP that makes the call. We are dealing with a situation in which our business community—distressed, vulnerable and potentially with huge cash-flow issues—is going to be susceptible to those kinds of hostile foreign takeovers.

Chi Onwurah: My hon. Friend is making an excellent point. In addition to the critical issue of the state of many small businesses after covid, there is Brexit. The low value of the pound means that our distressed assets will be cheaper on the global market.

Stephen Kinnock: My hon. Friend makes a crucial point. As we have constantly said, this is about risk and the hierarchy of risks we face. Risk is always sensitive to what is happening in terms of the global economic outlook. As she rightly points out, Brexit and leaving the transition period will be a seismic event for our country. It will have a massive impact on our currency and the strength of the pound. Combining that with the covid situation means that we have to be careful. We have to be vigilant and ensure that we defend our national interest. That is why it is important that our mindset involves taking a holistic view of our national interest, particularly in the turbulent times in which we find ourselves. This is fundamentally about saying that our national security is not for sale. Our national security does not have a price tag, and it has to be the primary consideration.

With those contextual comments in mind, I move on to amendment 6, which considers a particular aspect of our economy. It focuses on the asset side of the ledger in terms of this Bill—namely, critical national infrastructure. Our amendment would require the Secretary of State to have regard to the protection of critical national infrastructure when making notifiable acquisition regulations. Going back to China, it is remarkable how much of our critical national infrastructure is in the hands of Chinese enterprises or state-backed investment vehicles. This is happening now, right under our noses, and needs to be taken into account in discussing this amendment.

In essence, our amendment offers a way to ensure that critical national infrastructure is given particular and extra consideration in the national security and investment assessments within the regime. Given that the Bill fails to define national security, it does not, by definition, reference critical national infrastructure.

To drill down further, the Government’s consultation on the Bill lists the 17 sectors that might come under the regime’s mandatory notification process, but it does not explicitly list the UK’s critical national infrastructure. In fact, there is not a direct overlap. Five sectors are not included in the 17 that are in the consultation, but they are in our critical national infrastructure. The 17 range from advanced materials, advanced robotics, artificial intelligence, civil nuclear, communications, computing hardware, critical suppliers to Government, critical suppliers to the emergency services, cryptographic authentication, data infrastructure, data infrastructure, defence, energy, engineering biology, military and dual use, quantum technology, satellite and space technologies, to transport. However, the Centre for the Protection of National Infrastructure defines 13 areas as critical national infrastructure, including several sectors that are not included in the 17: food, Government more broadly—not just critical suppliers—health, space and water.

If we look at the impact of the pandemic and think about what critical national infrastructure means, we see that the 17 sectors are already out of date. Given our experience with covid and the concerns about food supply, that is clearly an issue we need to examine closely. Water is crucial to our wellbeing as a nation, yet it is not included in the 17. Our amendment argues that critical national infrastructure should be taken as an asset class. If defined as an asset class, the landscape moves and the definitions of sectors move, but there is clarity about critical national infrastructure always being within the scope of the Bill.

Matt Western: As always, my hon. Friend makes important points. To amplify those, if we had been sitting down and writing this Bill 10 years ago, which would have been a pretty good thing to have done, with hindsight—

Mark Garnier: When you were last in government?

Matt Western: I think I chose my time horizon pretty well. Had we been doing so, we may not have been considering these 17 categories, traffic light systems, underground systems, public transport or railway infrastructure in a way that we have to nowadays because we understand just how interconnected things are. We understand what the threats and risks are from these sorts of investments from possibly rogue organisations, states or businesses.

Stephen Kinnock: I thank my hon. Friend. This is genuinely not an attempt to make a party political point. There is no doubt that we should have seen the impact of the rise of China long before 2010. This is something that has been going on for a long time. President Xi Jinping was appointed in 2013 and there has been a qualitative shift in China’s outlook and the way in which it is engaging with the world. There is an increasingly aggressive and assertive set of economic policies. One of the experts said that the objective is to dominate the global technology scene. That is an explicit objective in the Made in China 2025 vision that the President and the Chinese Communist party adhere to. While we are not trying to make party political points here, a lot has changed in the last seven years.

Dr Whitehead: Does my hon. Friend consider that had these provisions, as amended, been in place in, say, 2015, the Government would not have signed the Secretary of State’s investment agreement with the Chinese state nuclear corporation, giving it control of a nuclear power plant and the right to build its own reactor, staff it with its own staff and run it entirely according to its own interest? Does he think that it was perhaps naive to do that? Might greater protection have been afforded for future deals under this sort of arrangement?
Stephen Kinnock: I thank my hon. Friend. His intervention is telling because it points to a fundamental failing at the heart of Government in terms of being joined up and credible. We cannot condemn aspects of China’s activity and its increasingly assertive behaviour—potential military threats to Taiwan, and sabre-rattling in the South China sea—while opening up our nuclear energy capability to that same hostile foreign actor.

Security is about our credibility, resilience and ability to stand strong and united, because we know that the Chinese Communist party will exploit weakness and division. Consistency is vital—consistency and security are two sides of the same coin.

To answer my hon. Friend’s question, I profoundly and sincerely hope that the investment to which he refers would not have passed this test. Frankly, if it had passed this test, the Bill would end up not being worth the paper it is written on. This is about the implementation of the Bill and the Government’s capability to stand up for our national security and critical national infrastructure, which is at the heart of the amendment.

It is worth pointing out that the Intelligence and Security Committee defines our critical national infrastructure as

“certain ‘critical’ elements of infrastructure, the loss or comprise of which would have a major detrimental impact on the availability or integrity of essential services, leading to severe economic or social consequences or to loss of life.”

I am convinced that no Member present would argue with that definition or against putting those considerations at the heart of what Parliament and the Government stand for.

We must include critical national infrastructure. It would follow best practice—our allies the United States and Canada both include critical national infrastructure in their list of key factors to assess as part of national security, so we would not be reinventing the wheel but simply following best practice. In the expert witness sessions, I asked Sir Richard Dearlove specifically whether he thought that a definition of critical national infrastructure should be included in the Bill. He said:

“I would certainly see that as advantageous, because it defines a clear area where you start and from which you can make judgments”.—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020, c. 24, Q31.]

As I said the start of my comments, sovereign capability is what this is really about, and our sovereign capability is profoundly undermined by the fact that so much of our critical national infrastructure is not in our own hands. Supply chains are over-extended and often depend on actors that perhaps 10 years ago we did not see as we do now, which has to be taken into account. I urge hon. Members to consider the amendment seriously, because it goes to the heart of what Parliament and Government should be about.

Nadhim Zahawi: Amendment 6 would require the Secretary of State to have regard to the protection of critical national infrastructure when making notifiable acquisition regulations. I welcome the intention of the hon. Member for Aberavon to ensure that the protection of critical national infrastructure is considered by the Secretary of State. Indeed, I take it as a ringing endorsement of the approach the Government have taken in clause 6 to define the specific sectors and activities subject to mandatory notification clearance.

As the hon. Gentleman will know, we intend to introduce regulations under the clause once the Bill has received Royal Assent, and we are currently consulting on the sector definitions, which cover much of the critical national infrastructure that he quite rightly shared with the Committee, including energy, civil, nuclear, transport, communications and defence. We are publicly consulting, in particular with sector experts, the legal profession, business and investment communities, to ensure that those definitions provide clarity and certainty, and are focused on the specific parts of sectors and activities that can pose risks to our national security. I can assure the hon. Gentleman that, in developing any notifiable acquisition regulations, the Secretary of State will always take into account the national security needs of the country within the critical national infrastructure sectors, the advanced technology sectors and the wider economy.

4 pm

Stephen Kinnock: I thank the Minister for giving way; he is being very generous. Does he not see the advantage of including this point on the face of the Bill? It makes an important statement—it is a political statement, really—about the need to ensure that, whatever the regulations say, critical national infrastructure is embedded in the Bill.

Nadhim Zahawi: I hear what the hon. Gentleman says. The word that slightly worries businesses is “political” statement. I think that that is a concern. I think his intention is right, and the reason why we have taken the route of mandatory notification for the 17 sectors is precisely the point he makes. I assure him that the Secretary of State will always take into account the national security needs of the country within the critical national infrastructure sectors. Indeed, the hon. Gentleman will recall that the Government introduced a statutory instrument to include health in the Enterprise Act 2002 when the covid pandemic hit.

Dr Whitehead: I wonder whether I can tempt the Minister to confirm that the 2015 Secretary of State’s investment agreement concerning Chinese control of the nuclear power station and reactor was a naive act by the Government and did not take national security properly into consideration, and that the Secretary of State who signed that agreement in the Minister’s Department clearly did not do so. Will the Minister both reflect on the naivety of that deal and give an indication that such a deal would never be contemplated by this Department in future?

Nadhim Zahawi: If the hon. Gentleman is referring to the Hinkley Point deal with EDF, the operator and junior partner in that is CGN.

Dr Whitehead: I was not quite; I was referring to the investment agreement on the Hinkley deal that enabled the Chinese state nuclear corporation to develop one third of that series of reactors entirely within its own resources. That was signed into the agreement by the then Secretary of State so that they would be junior partners in Hinkley, equal partners in Sizewell and 100% owners, operators and organisers of Bradwell.
That is what I was referring to. The Minister ought to say a few words on the likely actions of the Department in future under the terms of the Bill.

The Chair: Crucially, Minister, interesting though this topic may be, those last few words should be firmly in your mind in any response you give.

Nadhim Zahawi: I am grateful to you, Sir Graham, for refocusing our attention on the amendment. Suffice it to say that national security is always taken into account when it comes to nuclear or energy, as it was at the time of those agreements. The point I am trying to make is that we must be flexible to ensure that the new regime can adapt to the threats of tomorrow. That is the right approach to ensure that we can keep this country safe. Of course, any such regulations will be subject to parliamentary approval through the draft affirmative procedure, giving Members of this House and the other place the opportunity to ensure that the mandatory notification and clearance regime works effectively. As such, I cannot accept the amendment and I hope that the hon. Member for Aberdeen South (SNP) will seek leave to withdraw it.

Stephen Kinnock: I thank the Minister, but I am afraid that we will have to push the amendment to a Division, because it is so fundamental to how we see the purpose of the Bill. We have heard lots of assurances today along the lines of, “Trust us. We are on the right track. We get it.” I hope the Minister will forgive us, but we prefer the “trust but verify” model. Therefore, we today along the lines of, “Trust us. We are on the right purpose of the Bill. We have heard lots of assurances, and we have to press the amendment to a Division, because it is so fundamental to how we see the purpose of the Bill. We have heard lots of assurances today along the lines of, “Trust us. We are on the right track. We get it.” I hope the Minister will forgive us, but we prefer the “trust but verify” model. Therefore, we think that this provision should be in the Bill, and I will have to press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 5]

AYES

Kinnock, Stephen

Onwurah, Chi

Tarry, Sam

Western, Matt

Whitehead, Dr Alan

NOES

Aiken, Nickie

Baynes, Simon

Bowie, Andrew

Fletcher, Katherine

Garnier, Mark

Gideon, Jo

Griffith, Andrew

Tomlinson, Michael

Wild, James

Zahawi, Nadhim

Question accordingly negatived.

Amendment proposed: 5, in clause 6, page 5, line 3, at end insert—

“(10) Before making regulations under this section, the Secretary of State must—

(a) provide the Intelligence and Security Committee with one week’s advance notice of his/her intention to bring forward such regulations; and

(b) make any necessary amendments to legislation to allow the Intelligence and Security Committee to respond with recommendations.”

This amendment would require the Secretary of State to notify the Intelligence and Security Committee before making regulations under this section, and would provide a mechanism for the Committee to respond with recommendations.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 6]

AYES

Flynn, Stephen

Kinnock, Stephen

Onwurah, Chi

Western, Matt

Whitehead, Dr Alan

NOES

Aiken, Nickie

Baynes, Simon

Bowie, Andrew

Fletcher, Katherine

Garnier, Mark

Gideon, Jo

Griffith, Andrew

Tomlinson, Michael

Wild, James

Zahawi, Nadhim

Question accordingly negatived.

Stephen Flynn (Aberdeen South) (SNP): I beg to move amendment 13, in clause 6, page 5, line 3, at end insert—

“(10) Notifiable acquisition regulations must be reviewed one year after they are made, and at least once every five years thereafter.”

This amendment would require notifiable acquisition regulations (including which sectors are covered) to be reviewed one year after they are made, and once every five years thereafter.

It is a pleasure to see you in the Chair once again, Sir Graham. As things stand, I think it is probably a fair assessment, based on what we have heard, that perhaps if the Government had their time again they might have been able to bring forward a consultation in relation to which sectors will be linked to the Bill once it is on the statute book.

I think that a disappointing approach has been taken. It could have been done in a much more constructive manner. The purpose of the amendment is to try to highlight that the issue is a real one, and to highlight the scale and scope of the sectors. As we talked about, there is perhaps concern about whether a specific sector goes far enough. For instance, does artificial intelligence look properly at the role of social media? Does the infrastructure tie into social media in any way, shape or form? There are other examples of that too. Having the review after a year would perhaps allow the Government to be a little more certain about where their priorities lie, and to provide additional certainty to businesses in what is an ever-moving landscape. National security is, of course, an ever-evolving issue, as we have heard passionately from a number of Members.

I will keep my remarks succinct. The amendment is about tightening things up and removing the difficulties that are being caused by the lag between the Bill and the consultation, and doing so in a constructive fashion to try to assist the Government.

Nadhim Zahawi: To discuss this amendment, I believe it would be helpful to revisit briefly the role of notifiable acquisition regulations under the regime. A key part of the Bill is the ability it affords the Secretary of State to make acquisitions of certain shares or voting rights in certain entities—noticeable acquisitions, meaning they must be notified and cleared by the Secretary of State before they can take place. Those types of entity are to be specified in regulations by the Secretary of State and the Government have published a consultation on the
definitions of those types of entity, which fall within 17 key sensitive sectors of the economy that we propose to initially be covered by the mandatory notifiable regime.

The regulation-making powers in the clause are the best and most proportionate way to enable the Secretary of State to change over time what does and does not constitute a notifiable acquisition. That is crucial for two main reasons. First, it would not be the right approach to set the types of entity covered by mandatory notification and their definitions in stone, forever, in 2020. We all know how difficult this year is. The Secretary of State must be able to update them, in some cases rapidly, as the threats we face evolve and to keep pace with technological development.

Secondly, the Secretary of State must be able to react to the operation of this regime in practice. While the Bill does not include a white list that exempts specific acquirers from the mandatory regime, we have been clear that we will monitor closely the volumes and patterns of the notifications made to the Secretary of State. It may emerge over time, for example, that acquisitions by institutional investors and pension funds are routinely being notified but very rarely remedied or even called in. Such evidence could build the case for using the powers in this clause to make exemptions to the definition of a notifiable acquisition, on the basis of the characteristics of the acquirer.

The Chair: Order. I do not know who the person who has just walked in is, but only Members are allowed in the room. Please leave immediately.

Andrew Griffith (Arundel and South Downs) (Con): I apologise, Sir Graham.

The Chair: Apology accepted.

Nadhim Zahawi: It is therefore right that the Secretary of State keeps a constant watch on the regulations. Indeed, it is vital that he has the flexibility to re-assess and, if needed, seek to update the regulations as soon as is needed, while taking a proportionate approach that gives as much stability to business and investors as possible. Ensuring this vital timeliness and balance means it would not be appropriate to impose particular requirements on when and how frequently the Secretary of State should review the powers, so I cannot accept the amendment. However, I agree wholeheartedly with the hon. Member for Aberdeen South that keeping the regulations up to date and proportionate is of the utmost importance, and I can assure him that that is what the Secretary of State will do.

Stephen Flynn: I will certainly take that assurance from the Minister in the spirit in which it is given, but that is probably as far as that will go. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Nadhim Zahawi: Clause 6 defines the circumstances covered by mandatory notification. The Bill calls them notifiable acquisitions, on the basis that they must be notified and cleared by the Secretary of State before they can take place. The Government have looked carefully at investment screening regimes around the world, in particular those of our Five Eyes allies and other security partners. Common among them all is the inclusion of a mandatory notification component to ensure that the most sensitive transactions must be actively considered and receive clearance by the relevant authority before they can take place. We have concluded that that is the right step for the United Kingdom to take as well. That reflects our developed view that the Government must have greater assurance that certain acquisitions in the most sensitive sectors, including both the national infrastructure sectors and certain advanced technology sectors, are safe to proceed.

4.15 pm Without that, the risks that some acquisitions may pose from day one, with hostile actors seeking to extract sensitive intellectual property immediately and transport it to far flung corners of the world, may already have crystallised. In such circumstances, intervention after the event would too often be irrelevant, as unwinding the acquisition would not unwind the risk to our national security itself. That is why it is vital that the Bill includes a mandatory notification element at its heart, and that is why the Government have strengthened the policy consulted on in the 2018 White Paper.

Clause 6 provides for acquisitions of certain shares or voting rights in specified qualifying entities that are engaged in specified activities in the UK to be notifiable. By specified, I mean specified in regulations by the Secretary of State. The Government have published a consultation on the definitions of those activities, which fall within 17 key sensitive sectors of the UK economy that we propose to initially be covered by the mandatory notification regime.

We are currently engaging with a wide range of experts as part of that consultation and welcome input from sector specialists, the business and investor communities, and the legal profession, to help refine the definitions. That will ensure that the scope of the mandatory notification elements of the regime is targeted and proportionate, and keeps Britain firmly open for business.

I know that is something that you are particularly passionate about, Sir Graham.

Acquisitions of certain shares or voting rights in these specified entities will be notifiable. The regulations will therefore be the mechanism by which we will place the final part of the definitions of the acquisitions that are to be subject to the mandatory notification regime, giving parties the certainty they need to assess whether their acquisitions fall within the regime.

On that point, hon. Members will see in subsection (2) that the types of acquisition covered by mandatory notification are not simply the full list of trigger events that we will come to discuss in clause 8. That is deliberate. The nature of any modern investment screening regime is that it must provide sufficient flexibility for the Government to examine a broad range of circumstances, given the increasingly novel way in which acquisitions are being structured and the vigorous way hostile actors are pursuing their ends.

However, it must also provide clarity and certainty to businesses and investors, which is particularly true when we consider the mandatory notification regime, under which failure to obtain clearance before completing will result in the voiding of a notifiable acquisition, and possibly criminal or civil penalties. Parties must be able
to self-assess whether they are in scope. To that end, notifiable acquisitions are objective circumstances, primarily based around an acquisition taking a party’s holding of shares or votes, to or past a particular numerical threshold. It also includes the acquisition of voting rights in a specified entity that enables the person to secure or prevent the passage of any class of resolution governing the affairs of the entity.

I emphasise that this approach does not prevent other types of trigger events being notified to the Secretary of State, or otherwise stop him from exercising the call-in power in respect of other types of trigger events, where the legal test is met. This is simply about the scope of the mandatory notification element of the regime.

Should also note that, under subsection (2)(b), the definition of a notifiable acquisition includes a circumstance that is not, in and of itself, a trigger event. Acquisitions that take a party’s shares or voting rights in a specified entity to 15% or more, not exceeding 25%, are notifiable even though they are not, by themselves, trigger events that may be called in by the Secretary for State for scrutiny under the Bill.

The reason why we have nevertheless required such acquisitions to be notified is that increases in shares or voting rights to 15% or more may realistically result in the acquirer having material influence over the policy of the entity, and therefore control of it. That would constitute a trigger event. The notification requirement is thus intended to ensure that the Secretary of State is made aware of the proposed acquisition and can take steps to determine whether material influence will be acquired. That will require an assessment of all the circumstances of the case, including any other rights being acquired, such as board representation. The Secretary of State will be able to obtain the relevant information from the notification form or through his information-gathering powers.

The 15% threshold is broadly consistent with the UK’s merger framework. As the Competition and Markets Authority notes in its mergers guidance:

“Although there is no presumption of material influence below 25%, the CMA may examine any shareholding of 15% or more in order to see whether the holder might be able materially to influence the company’s policy.”

We think that strikes the right balance by requiring parties to focus on a numerical threshold only, while still allowing the Secretary of State to be notified about—and then to call in if the legal test is met—more subjective acquisitions of control in the most sensitive sectors.

I will say a few more words about the regulation-making powers set out in the clause. They are the best and most proportionate way to enable the Government to change, over time, what does and does not constitute a “notifiable acquisition”. That is crucial for two main reasons. First—I have already spoken about sectors—it would not be the right approach to set the sectors covered by mandatory notification and their definitions in stone, forever. The Government must be able to update them—in some cases rapidly—as the threats we face evolve, and to keep pace with technological advances. As I am fond of saying, many of those advanced technology sectors simply did not exist in 2002 when the Enterprise Act was developed. They were merely a speck or, if you will, a quantum dot on the horizon.

Secondly, the Government must be able to react to the operation of that regime in practice. As I explained earlier to the hon. Member for Aberdeen South, although the Bill does not include a white list to exempt specific acquirers, we have been clear that we will closely monitor the volumes and patterns of notifications made to the Secretary of State. It may emerge over time, for example, that acquisitions by institutional investors and pension funds are routine. Such evidence could build the case for using the powers in the clause to make exemptions to the definition a notifiable acquisition on the basis of the characteristics of the acquirer, as subsection (5)(b) would enable us to do.

That is the approach of a Government intent on getting the right balance, both now and in future, between protecting our national security and keeping the UK a premier investment destination. I hope that sentiment is shared on both sides of the Committee.

Chi Onwurah: I will be brief because I know that we have to make progress, but I will say a few words on clause 6, which is in some ways the heart of the Bill, defining as it does what a “notifiable acquisition” is.

I regret that despite the Minister’s repeated assurances, I am not entirely convinced that he has come to the Committee ready to make changes in response to our very constructive proposals. He has repeated on a number of occasions that the Bill is the best and most proportionate means, despite our constructive suggestions to the contrary. I remind him that—as we see in this clause in particular—the Bill gives significant powers to the Secretary of State, and particularly significant additional powers on delegated legislation. It is possible that not every clause is as perfect as it could be or as he seems to think it is. In particular, the amendment set out by my hon. Friend the Member for Aberavon was a really important contribution to bringing critical national infrastructure directly and clearly into the remit of the Bill. If the Minister is so opposed to including them directly, what elements of critical national infrastructure does he think do not form part of our national security?

My hon. Friend the Member for Southampton, Test made an excellent point with the example of our nuclear capability. Only five years ago, the then Prime Minister and Chancellor of the Exchequer were happy to hand not only the financing but the technological development, innovation and reputational consequences to China. Does the Minister agree that if we had had this Bill 10 years ago, as we wished, having critical national infrastructure in it would have made that impossible?

There is also the case of Huawei. When that was debated last night, it was clear that if we had written this Bill five or 10 years ago, I doubt whether the then Government would have included telecommunications, given their lack of interest in many acquisitions and procurements in that area. We now see the impact of having a high-risk vendor in our 5G and fibre network on our national security. We will not oppose clause stand part but we hope to encourage the Minister to accept our most constructive and supportive amendments.

The Chair: Before I put the question formally, for the benefit of Members—particularly new Members who have not been able to be here as much in the last year as would otherwise have been the case—let me say that
good way of thinking of the rules of order in Committee is to think of them as being pretty much the same as in the Chamber. Similarly, above and below the bar applies in Committee as well as in the Chamber.

Question put and agreed to.
Clause 6 accordingly ordered to stand part of the Bill.

Clause 7

Qualifying entities and assets

Question proposed, That the clause stand part of the Bill.

Nadhim Zahawi: Clause 7 provides the definitions of “qualifying entities” and “qualifying assets” within the scope of the Bill, where, if they are subject to an acquisition of control that raises national security risks, the Secretary of State may take action. The Government have deliberately adopted a broad definition of “qualifying entities” to ensure that we can protect national security, regardless of the form of the legal structure of an entity that is being acquired in a trigger event.

Entities can be established or restructured in different forms including, for example, companies, limited liability partnerships and unincorporated associations. The clause includes an indicative, and non-exhaustive, list of the entities in scope. However, “individuals” are explicitly excluded. We expect most trigger events to concern companies, but we must also ensure that hostile actors cannot undermine or bypass the new regime through an entity being structured in such a way as to avoid scrutiny. It is therefore right that the clause provides for a broad definition of an “entity”.

Equally, from time to time, there may be cases that concern the acquisition of control over non-business entities such as trade bodies or industry groups that the Government none the less need to be able to scrutinise. The clause also permits the Secretary of State to scrutinise acquisitions relating to non-UK entities, if the entity carries on activities in the UK or provides goods or services to persons in the UK. As I am sure hon. Members will acknowledge, the cross-border nature of trade and supply chains in today’s world means that conduct abroad may impact national security here. For instance, goods that are critical to the defence of the realm may be supplied from abroad. If those goods were to be interfered with, that could harm our national security.

4.30 pm

Finally, the clause provides a list of the types of assets in scope. This consists of land; tangible—or in Scotland, corporeal—movable property; and ideas, information or techniques that have industrial, commercial or other economic value. Again, qualifying assets include land and movable property situated outside of the UK or the territorial sea, or ideas, information or techniques, but only if the asset is used in connection with activities taking place in the UK or the supply of goods or services to persons in the UK. The Government expect the Secretary of State to intervene in acquisitions of control over assets exceedingly rarely, but it is right for the Secretary of State to be able to scrutinise trigger events involving single sensitive assets, to avoid this becoming an avenue targeted by our adversaries.

Taken together, the definitions provide the Secretary of State with the ability to scrutinise the vast majority of acquisitions related to entities and assets that may raise concern if the acquirer is a hostile party. I hope that hon. Members will agree that this approach is reasonable and proportionate, and one that will support the Government in addressing national security risks facing our country.

Question put and agreed to.
Clause 7 accordingly ordered to stand part of the Bill.

Clause 8

Control of entities

Stephen Kinnock: I beg to move amendment 7, in clause 8, page 6, line 38, at end insert—

“(10) The fifth case is where the acquisition involves state-owned entities or investors originating in a country of risk to UK national security and creates any change of influence.”

This amendment would mean that any acquisition involving state-owned entities or investors originating in a country of risk to UK national security and creating a change of influence would count as a person gaining control of a qualifying entity.

The Chair: With this it will be convenient to discuss amendment 8, in clause 8, page 6, line 38, at end insert—

“(10) The fifth case is where the acquisition involves changes to material influence in industries critical to the UK’s capability and capacity to maintain national security, including economic security.”

This amendment would mean that any acquisition which involves changes to material influence in industries critical to national security would count as a person gaining control of a qualifying entity.

Stephen Kinnock: I am very happy to have the opportunity to set out what we are trying to achieve with this amendment. While the previous amendment was very much about protecting our assets, this one focuses on the characteristics of the acquirer. It is absolutely clear that any successful screening regime has to be based on a solid understanding of both aspects—both the asset and the acquirer—and that both are equally vital to the successful implementation of the regime.

Harking back to the debate we had about an earlier amendment, the objective here has to be smart regulation. What do we mean by that? If we try to catch everything, we end up catching nothing. We have to prioritise. We have to have a screening system that has a smart, nuanced and well-informed understanding of risk, both in terms of the prioritisation of our assets and the prioritisation of understanding the characteristics of the acquirer. It is on that basis that we prioritise action, and when our investment security unit needs to intervene.

The amendment is focused very much on the characteristics of the acquirer. It is about ensuring that we guard ourselves against the influence of foreign powers that wish to do harm to our country—those that have an agenda. The Minister said earlier that companies get a bit worried when we use the term “political”, but national security is a fundamentally political consideration, because it is about our political analysis of the threat from hostile foreign actors and our understanding of what the national interest is in a
holistic sense. We have to give that political leadership. We cannot expect the business community to take that decision for us; we have to give a lead on understanding where the investment is coming from and what the characteristics of the company or investment vehicle are. Fundamentally, going by the old adage that he who pays the piper chooses the tune, where there are state-owned and state-backed entities, it is absolutely clear who is paying the piper and who is choosing to the tune.

The amendment we have tabled would mean that any acquisition involving state-owned entities or investors originating in a country of risk to UK national security—a fundamentally political calculation—and creating a change of influence would count as a person gaining control of a qualifying entity. By including state-owned enterprises explicitly on the face of the Bill, we would be ensuring particular regard to the issue even where shareholding levels are low.

We understand the thresholds for trigger events, but what we are saying is that when the characteristics of the acquirer ring particular alarm bells, that should apply regardless of the shareholding level that is being considered by the acquirer. We know the threat from state-owned enterprises is disproportionate; that is why we are recommending a kind of disproportionate action in this amendment, to address the reality of the characteristics and to ensure that we are carefully guarding against potentially malign actors.

Again, this is not a new concept. Other countries use it in their regimes, and we are simply proposing that we follow suit and have a smarter strategy and approach to regulation at the moment. The clarity that we need, of course, is from understanding that where allied states are involved and the transactions are efficiently screened for approval there is little cause for concern, but with this amendment, even small and discrete investments from hostile states and from state-backed entities within those states would be fully captured.

Let us turn to the expert evidence that we received, particularly from Michael Leiter, the legal expert and lawyer, who said:

“With respect to sovereign wealth funds or state-controlled investments, there is a perfectly good argument that yes, the standard of review might be...more rigorous.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 48, Q54.]

Let us be absolutely clear: we do sometimes see so-called private takeovers, where often the state-backed entity is rather obscured within the ownership structure. They are carried out by companies and investment vehicles that are in fact a front for authoritarian state actors, who have wider political, national security and geopolitical agendas and whose values are frequently at odds with ours.

A recent obvious example is the attempt by an investment vehicle backed by the Chinese state to take over Imagination Technologies. The company was the target of a hostile foreign takeover attempt, and that investment vehicle had direct links to the Chinese state. Then there are even more obvious examples, to which my hon. Friends the Members for Newcastle upon Tyne Central and for Southampton, Test have referred, particularly around Hinkley and Bradwell, where there is a clear ownership structure coming directly from the Chinese state.

We must also recognise the broader agenda with things such as China’s belt and road initiative, which is about creating debt-trap diplomacy. It is about building influence by entering economies in such a major way that those economies effectively become dependent on the Chinese state. Of course, that comes with lots of strings attached, and it is part of the deal that those countries are not able or permitted to speak out when the Chinese state behaves in ways that we would not find acceptable. I hope that the Government and the Minister will seriously consider the amendment, because the characteristics of the acquirer must be taken into account if we are to have a smart regulation system that prioritises and does what the Bill sets out to do.

Nadhim Zahawi: This group of amendments would provide for certain cases to count as a person gaining control of a qualifying entity. The amendments are to clause 8, which defines the circumstances in which a person gains control of a qualifying entity for the purpose of the Bill.

Amendment 7 would ensure, as the hon. Member for Aberavon mentioned, that any acquisition involving state-owned entities or investors originating in a country of risk to UK national security and creating a change of influence would count as a person gaining control of a qualifying entity for the purposes of the Bill. I welcome the hon. Gentleman’s intention to ensure that national security is comprehensively protected. I reassure him that the Bill provides no carve-out or special treatment for state-owned entities or overseas investors where they acquire control of a qualifying entity or asset. They will be subject to the mandatory notification requirements in the same way as any other acquirer, and the Secretary of State will have the power to scrutinise any acquisition of control by such parties where the legal test for call-in is met. That includes the acquisition of material influence over the policy of the entity.

However, the Government have been clear that the regime is nationally agnostic, and that each acquisition will be considered on a case-by-case basis. The draft statement of policy published alongside the Bill simply states that the regime will not “regard state-owned entities, sovereign wealth funds—or other entities affiliated with foreign states—as being inherently more likely to pose a national security risk.”

I strongly believe that this is the right approach. We must recognise that many such organisations have full operational independence in pursuing long-term investment strategies with the objective of economic return, raising no national security risks.

Moreover, the clause already sets out the circumstances that constitute control of an entity based on levels of shareholding and voting rights and material influence. Amendments such as this could, for example, capture increases of equity stakes at any level, even though many could not realistically be expected to give rise to a national security risk. Developing a list of countries of risk would likely be a moving feast that would quickly become out of date in response to changing geopolitics and would most likely harm Britain’s diplomatic relations and place in the world, giving rise to a chilling effect on investment in these shores.

Amendment 8 would create a new case of a person gaining control of a qualifying entity for “changes to material influence” in industries critical to the UK’s
capability and capacity to maintain national security, including economic security. Once more, I welcome the emerging cross-party consensus that the Bill must capture more subjective acquisitions of control, rather than solely levels of shares and voting rights. I reassure the hon. Gentleman that acquisitions of material influence over the policy of an entity are very much in the scope of the Bill. That applies within the 17 sectors but also to the wider economy. Parties can notify the Secretary of State of a trigger event concerning the acquisition of a material influence, and he will have the power to proactively call in such a case if the legal test is met.

I should clarify that material influence is not a scale. It is the lowest level of control that can be acquired over a qualifying entity, which captures acquisitions of smaller stakes or other rights or interests in entities, such as board representation rights. As such, it is not immediately clear to me what circumstances such an amendment would bring into the scope of the Bill, given that it would capture changes to material influence. None the less, I admire the ingenuity of the hon. Gentleman’s seeking, at least in part, to define national security through the amendment and its explicit reference to economic security. As he will know, the Bill does not define national security, and, as I said on Second Reading, I think that is a real strength, not a weakness.

Chi Onwurah: The Minister says that this Bill is not country specific. I know he does not want to define national security in the Bill, but does he think that our national security can be country specific?

4.45 pm

Nadhim Zahawi: I think that the Bill is proportionate and I think that national security is not dependent on a particular country. Malignant actors come from different nationalities. The Committee heard from a number of experts last week the reasons for not defining national security, not least because it might limit the Secretary of State from being able to respond to new and emerging threats that did not fall within the definitions set out in statute. For these reasons I cannot accept these amendments, and I would gently encourage the hon. Member for Aberavon to withdraw them.

Stephen Kinnock: Perhaps the hon. Gentleman will withdraw the amendment in his intervention.

Nadhim Zahawi: I thank the Minister for giving way—sort of. One of the key sentences in the Government’s statement of policy intent is in the section on acquirers, which says:

“Clearly, national security risks are most likely to arise when acquirers are hostile to the UK’s national security, or when they owe allegiance to hostile states or organisations.”

I recognise that the statement of policy intent is a draft, but clearly somebody in government thought it a good idea to put that sentence in there, and I absolutely agree with it. It is therefore very difficult to understand the disconnect that appears to exist between the Bill, which is agnostic on different national actors, and the statement of policy intent, which explicitly talks about when acquirers “owe allegiance to hostile states or organisations.”

On that basis, the amendment touches on a crucial issue and we shall be pushing it to a Division.

The Chair: I think that was an intervention.

Nadhim Zahawi: I do not wish to keep repeating myself, but I have set out the reasons why I cannot accept these amendments. I would again gently encourage the hon. Member to withdraw the amendment, but I suspect we will be heading to a Division.

Stephen Kinnock: We are moving back and forth here. As I set out, the issues around the characteristics of the acquirer are so important to ensuring that we have a smart approach and the sentence within the statement of policy intent is so absolutely spot on that we will push the amendment to a Division to show our support for that section of the statement.

Question put. That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 7

AYES

Kinnock, Stephen
Onwurah, Chi
Tarry, Sam

Whitehead, Dr Alan

NOES

Aiken, Nickie
Baynes, Simon
Bowie, Andrew
Fletcher, Katherine
Gamier, Mark

Gideon, Jo
Griffith, Andrew
Tomlinson, Michael
Wild, James
Zahawi, Nadhim

Question accordingly negatived.

Sam Tarry: I beg to move amendment 12, in clause 8, page 6, line 38, at end insert—

“(10) The fifth case is where a person becomes a major debt holder and therefore gains influence over the entity’s operation and policy decisions.

(11) For the purposes of subsection (8A), a major debt holder is a person who holds at least 25% of the entity’s total debt.”

This amendment would mean that a person becoming a major debt holder would count as a person gaining control of a qualifying entity.

The Chair: With this it will be convenient to discuss amendment 14, in clause 8, page 6, line 38, at end insert—

“(10) The fifth case is where a person becomes a major debt holder and therefore gains influence over the entity’s operations and policy decisions.

(11) For the purposes of subsection (8A), a major debt holder is a person who holds at least 25% of the entity’s total debt.

(12) The sixth case is where a person becomes one of the entity’s top three suppliers of goods, services, infrastructure or resources and therefore gains influence over its operations and policy decisions.”

This amendment would mean that a person becoming a major debt holder or a major supplier would count as a person gaining control of a qualifying entity.

Sam Tarry: Amendment 12 is about where a person becoming a major debt holder would count as a person gaining control of the qualifying entity. I know there is some debate about the technicalities of this, but Admiral Mike Mullen, former chair of the US joint chiefs of staff, famously said of the US:

“The single greatest threat to our national security is our debt.”
This is an important point, because there is a substantial body of evidence to show that the debt holding of bondholders can indeed exert influence over companies. A particular feature of our current economic circumstances is extremely low, or zero, interest rates, so companies have drawn heavily on debt, not just equity, to fund themselves. In that context, it would be a major loophole for this Bill not to put debt investments under scrutiny in protecting our national security. This amendment would simply change that by bringing it into scope.

The amendment would ensure that an entity holding more than a quarter of a company’s debt became a qualifying entity, bringing transactions into the scope of the national security screen. We think this is really important, because we would want that level of scrutiny. We also know that a number of states use this kind of leverage in some of the companies that they are taking over or, indeed, taking the debt from. Without it, hostile actors can be expected to exert explicit influence by buying up UK companies’ debt, and that is something that should worry us all of us. Indeed, the Parliamentary Commission on Banking Standards talked about the importance of how debt can be used to exert influence. It said that,

“while a bank remains solvent, the formal powers of other creditors, such as bondholders, are much more limited.”

However,

“There are some bond issuances may have provisions in situations where the security of the bond may be affected”, secured against “creditors, such as securitised or covered bond holders”.

So in practice, the scale of the funding provided by bank creditors means they simply have more influence over companies. If debt was bought in that way, we could indeed have a situation where a loophole was used to bring in hopefully benign, but potentially troubling influence within a company which could impact our national security.

There is considerable research showing that, in some companies, there is a strategy of using a negative relationship between debt investments in research and development that has actually stopped innovation, so we want to tackle all those things, but most importantly simply focus on closing the loophole that is here. There may be some pushback from the Government side of the Committee to say that, legally, debt holders have no operational control over a company. Of course, technically that is correct, but in practice companies’ executives pay operational control over a company. Of course, technically that is correct, but in practice companies’ executives pay operational control over a company. If debt was bought in that way, we could indeed have a situation where a loophole was used to bring in hopefully benign, but potentially troubling influence within a company which could impact our national security.

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arrangements, would be in scope of the Bill. It was noted by Christian Boney, partner of Slaughter and May, that the Bill strikes an acceptable balance by not having debt providers specified as a separate case. Depending on the facts of the individual case, that might capture the acquisition of rights by the lender to appoint members of the entity’s board. That is a common approach by lenders when striking an agreement to provide significant amounts of finance, particularly for big infrastructure projects, in order to safeguard their funds. The Bill would cover a scenario where that provided material influence over the policy of the entity, but the amendments would go further still and stipulate that any person becoming the holder of 25% or more of an entity’s debt was a trigger event in itself.

The Government do not believe that the provision of loans and finance is automatically a national security issue—indeed, it is part of a healthy business ecosystem that enables businesses to flourish in this country. I fear that such an approach would likely create a chilling effect on the appetite of lenders to support otherwise attractive and viable projects. Lenders need confidence that they can see a return on ordinary debt arrangements in order to provide that service. I believe that such a chilling effect would have a detrimental impact on the range and extent of finance that is available to UK businesses, particularly SMEs, and their future prospects would suffer as a result. That is the very opposite of the Government’s intention. We must support our innovators and entrepreneurs as we seek to build back better from covid, rather than limit their opportunities to succeed.

Amendment 14 would create an additional case for any person who became a top 3 supplier to an entity. In effect, it would be a new trigger event. I share the desire of the hon. Member for Aberdeen South to ensure that business within our most sensitive supply chains can be protected. I believe the Bill does that already by allowing the Secretary of State to call in trigger events across the economy, when he reasonably suspects they may give rise to national security risks. That includes key suppliers.

5 pm

Indeed, we have gone further and set out in our consultation that the sectors and activities that we propose to be covered by mandatory notification include critical suppliers to Government and the emergency services. That approach will ensure that the Secretary of State is notified about acquisitions and control of entities covered by those definitions.

As noted by Michael Leiter at last week’s evidence session, the list of 17 sectors is very robust and it will ensure the right cover. I do not believe it would be right to create a further case to be covered by the Bill, simply by virtue of the fact that a person became a top 3 supplier. As the Government have said throughout the development of the policy for the Bill, they have no intention of intervening in the routine provision of goods and services, and the overwhelming majority of suppliers pose no national security risk whatever.

The Government do not believe that being a top 3 supplier in itself provides control over the entity that it provides the supplies to; it merely reflects the desirability of the goods and services provided by that business. For example, let us consider the top 3 suppliers into the Zahawi household. I am sure that Sainsbury’s, Waterstones and Deliveroo are extremely delighted by my recent lockdown business, but I do not think they would consider that they have control; my credit card statement may, of course, tell a different story.

Modern supply chains move so fast that such trigger events would be happening in incredible volumes, on a daily basis, all of which could be notifiable to Whitehall and bring businesses grinding to a halt. It would put the Government in the position of potentially adjudicating on every supply chain decision in every sector, which would be an enormous power disproportionate to the issue that the amendment, with good intention, seeks to address.

Taken together, Sir Graham, I do not believe these two amendments are in the interest of supporting business in this country to succeed. They do not offer the protections to national security that the Bill already appropriately and proportionately provides. As such, I respectfully ask the hon. Members to withdraw them.

Sam Tarry: I thank the hon. Members for Wyre Forest and for Aberdeen South for their contributions. It is my fear that, in some of the Minister’s answers, there was perhaps an admission from Government colleagues that there is a correct driver, in terms of what we are trying to push at with this amendment. It would be more ideal if we were able to bring back an amended amendment that would win the support of the Government side, given that there clearly is recognition from experienced Members of the House that this is a problem and it could continue to be a problem. That could be a risk. For that reason, we will press for a Division.

The Chair: I am sorry. Can I be clear that you would like a Division?

Sam Tarry: We would indeed, because it is a point of key principle.

Question put. That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 8]

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Question accordingly negatived.

Amendment proposed: 14, in clause 8, page 6, line 38, at end insert—

“(10) The fifth case is where a person becomes a major debt holder and therefore gains influence over the entity’s operations and policy decisions.

(11) For the purposes of subsection (8A), a major debt holder is a person who holds at least 25% of the entity’s total debt.

(12) The sixth case is where a person becomes one of the entity’s top three suppliers of goods, services, infrastructure or resources and therefore gains influence over its operations and policy decisions.”.—[Stephen Flynn.] This amendment would mean that a person becoming a major debt holder or a major supplier would count as a person gaining control of a qualifying entity.


Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 9]

AYES
Flynn, Stephen
Kinnock, Stephen
Onwurah, Chi

NOES
Aiken, Nickie
Baynes, Simon
Bowie, Andrew
Fletcher, Katherine
Garnier, Mark


Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Nadhim Zahawi: Clause 8 sets out for the purpose of the Bill the circumstances in which a person gains control of a qualifying entity as defined in clause 7. More specifically, the clause sets out the four ways in which control can be gained.

The first two cases are where certain shareholdings or voting rights are acquired. The clause stipulates that acquisitions increasing a person’s holding in a qualifying entity above 25%, 50%, 75% or more all constitute trigger events. The thresholds have been chosen because of their significance under UK company law.

Under the Companies Act 2006, a number of key decisions relating to shareholders’ rights in relation to the decision making of a company require a special resolution. Special resolutions require a majority of 75% of votes to be passed. This means that a holding of more than 25% allows one person to, by themselves, block a special resolution. Similarly, a holding of 75% or more allows one person to, by themselves, pass a special resolution.

Under the Companies Act, ordinary resolutions, which apply to more routine shareholder decisions, require a simple majority. This means that a holding of more than 50% allows one person to, by themselves, make decisions affecting the governance of a company.

The Government believe these thresholds represent reasonable proxies for various levels of control over entities. The clause deliberately includes references to both shares and votes to prevent the artificial construction of acquisitions to avoid meeting one of these thresholds—for example, a 40% stake with 51% of voting rights. In most cases, ordinary shares carry the equivalent amount of voting rights: one vote per share.

Recognising that the regime also concerns entities other than companies established under the Companies Act, the third case explicitly extends the same principles on voting rights enabling the passage of a resolution to other entities. That means that any acquisition of voting rights that allows a person to secure or prevent the passage of any resolution governing the affairs of the entity is a trigger event. This is important because other types of entities are not subject to the Companies Act and may have different thresholds for the passing of resolutions.

Finally, the fourth case that constitutes control of an entity is the acquisition of material influence over its policy. This reflects that no single shares or votes threshold is appropriate in every case.

Material influence is an existing concept under the Enterprise Act 2002, which denotes the lowest level of control that might give rise to a relevant merger situation that may be considered for competition or public interest reasons. Material influence captures acquisitions of smaller stakes or other rights or interests in entities, such as board representation and rights, which nonetheless enable a person materially to influence the policy of the entity.

Other factors, such as the status and expertise of the acquirer or a relationship of financial dependence, may be relevant. Clearly, determining whether material influence has been or is to be acquired will require an assessment of all the circumstances of the case by the Secretary of State. It is not possible, therefore, to provide any hard and fast rules that will be applicable in all cases.

The Competition and Markets Authority has published guidance about what it considers to constitute a material influence. The Secretary of State intends to apply that in so far as is possible in the context of this new regime, for the purposes of determining whether control has been or is to be gained over a qualifying entity.

For the avoidance of doubt, the Government have no plans to publish their own separate guidance on material influence. Collectively, these four cases represent the ways in which control of entities can be acquired for the purpose of the Bill. It is vital that they stand part of the Bill so that the Secretary of State may scrutinise acquisitions of control over entities in whatever form that takes. I hope that hon. Members will agree that this approach has been carefully considered to reflect the complexity of the make-up of modern entities.

Chi Onwurah: As we are over time, I shall not detain the Committee long, but I want to say a few words on this important clause. Our debate has again highlighted the Minister’s apparent determination and conviction that the Bill cannot be improved on, even as we all acknowledge—and as the Telecommunications (Security) Bill makes absolutely clear—that the Government’s record on national security in this context can very much be improved on. I noted his celebration of the innovators and entrepreneurs, and his concerns about the chilling effect on them of bringing debt holders into the Bill’s remit as proposed in the amendment of my hon. Friend the Member for Iford South.

The entrepreneurs and innovators seeking investment, particularly foreign investment, are unfortunately to have no such protection from the Minister. We want a consistent and robust approach, given the breadth of powers that the Bill gives to the Secretary of State. I was concerned that, even with the wise intervention of the hon. Member for Wyre Forest, the Minister did not make a proposal to take these constructive amendments away to consider and perhaps return with Government amendments that reflect them later in the Bill’s passage. We will not oppose stand part, but I hope that the Minister will continue to consider our suggestions for the improvement of this and other clauses.

Question put and agreed to.

Clause 8 accordingly ordered to stand part of the Bill.
Clause 9

CONTROL OF ASSETS

Question proposed, That the clause stand part of the Bill.

Nadhim Zahawi: Clause 9 sets out, for the purposes of the Bill, the circumstances in which a person gains control of a qualifying asset, as defined in clause 7. A person gains control of a qualifying asset where they acquire a right or interest in, or in relation to, the asset, and as a result they can do at least one of the following.

First, they can use the asset or use it to a greater extent than prior to the acquisition. This would allow the Secretary of State to intervene, for instance, when an individual purchases a sensitive site and can therefore access and use the site. Secondly, they can direct or control how the asset is used, or direct or control its use to a greater extent than prior to the acquisition. This second mechanism by which a person can gain control over a qualifying asset is particularly important as it brings into the scope of the regime those who may not have complete control over the asset, but who can nevertheless still direct or control its operation. Without that, there would be a control loophole that hostile actors may seek to exploit.

It is worth noting the relationship between this clause and clause 11, which provides an exception for control of assets in circumstances where the acquisition is made for purposes wholly or mainly outside the individual’s trade, business or craft. That is intended to put acquisitions such as consumer purchases firmly out of scope of this regime. I reassure hon. Members that the Secretary of State does not routinely expect to call in trigger events relating to assets. However, I hope that the Committee will agree that it is nevertheless important for the Secretary of State to retain this power to guard against hostile actors who seek to acquire control over sensitive assets as an alternative to acquiring the business which owns them.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clause 10 ordered to stand part of the Bill.

Schedule 1 agreed to.

Ordered, That further consideration be now adjourned.

—(Michael Tomlinson.)

5.16 pm

Adjourned till Thursday 3 December at half-past Eleven o’clock.
Written evidence reported to the House
NSIB01 Dentons UK and Middle East LLP

NSIB02 The Law Society of England and Wales
Public Bill Committee

NATIONAL SECURITY AND INVESTMENT BILL

Seventh Sitting
Thursday 3 December 2020
(Morning)

CONTENTS

Clauses 11 to 13 agreed to.
Clause 14 under consideration when the Committee adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 7 December 2020

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The Committee consisted of the following Members:

**Chairs:** Sir Graham Brady, † Derek Twigg

† Aiken, Nickie (*Cities of London and Westminster*) (Con)
† Baynes, Simon (*Clwyd South*) (Con)
† Bowie, Andrew (*West Aberdeenshire and Kincardine*) (Con)
† Fletcher, Katherine (*South Ribble*) (Con)
† Flynn, Stephen (*Aberdeen South*) (SNP)
† Garnier, Mark (*Wyre Forest*) (Con)
† Gideon, Jo (*Stoke-on-Trent Central*) (Con)
† Grant, Peter (*Glenrothes*) (SNP)
† Griffith, Andrew (*Arundel and South Downs*) (Con)
Kinnock, Stephen (*Aberavon*) (Lab)

† Onwurah, Chi (*Newcastle upon Tyne Central*) (Lab)
† Tarry, Sam (*Ilford South*) (Lab)
† Tomlinson, Michael (*Lord Commissioner of Her Majesty's Treasury*)
† Western, Matt (*Warwick and Leamington*) (Lab)
† Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Wild, James (*North West Norfolk*) (Con)
† Zahawi, Nadhim (*Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy*)

Rob Page, Yohanna Sallberg, Committee Clerks

† attended the Committee
Public Bill Committee

Thursday 3 December 2020

(Morning)

[Derek Twigg in the Chair]

National Security and Investment Bill

11.30 am

The Chair: Good morning, everyone. Before we begin, I have a few preliminary points. As usual, please switch your electronic devices to silent; I just remembered to do mine. The Hansard reporters would be grateful if Members could email any electronic copies of their speaking notes to hansardnotes@parliament.uk.

Clause 11

Exceptions relating to control of assets

Question proposed, That the clause stand part of the Bill.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): Clause 11 is intended to provide an exemption for certain asset acquisitions, which would otherwise be trigger events. The power to call in acquisitions of control over qualifying assets, as defined in clauses 7 and 9, will significantly expand the Government’s ability to protect our national security.

The clause ensures that these new powers will not extend to certain acquisitions made by individuals for purposes that are wholly or mainly outside the individual’s trade, business or craft. The Government do not believe, for example, that it would be right for the Secretary of State to be able to intervene in consumer purchases. Given their nature, such acquisitions cannot reasonably be expected to give rise to national security risks.

Moreover, a regime which could apply to such circumstances would quickly become impractical and could result in significant numbers of additional notifications for no national security gain whatsoever. As such, this clause explicitly limits the types of assets that the Secretary of State may scrutinise in line with the Government’s intention that the regime will primarily concern control of entities and only extend to assets as a precautionary backstop.

It would mean, for example, that sales of software products to consumers by a software company would not be caught by the regime, but—this is important—it would not prevent a transaction involving the software company selling the underlying code base supporting that software to a buyer acting in a professional capacity.

Clause 11 accordingly ordered to stand part of the Bill.

Clause 12

Trigger events: supplementary

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I beg to move amendment 16, in clause 12, page 8, line 4, leave out from “does” to end of line 11 and insert “establishes that arrangements are in progress or contemplation which, if carried into effect, would result in a trigger event taking place.”

This amendment would expand the scope of events to be considered trigger events.

The Chair: With this it will be convenient to discuss clause stand part.

Chi Onwurah: It is a pleasure to serve under your chairship, Mr Twigg, and to see the Committee reconvened to debate this important Bill. On Tuesday, we had a lively, informative and generally collegiate debate in which we learned a significant amount about the Bill and each other. We learned, for example, that the hon. Member for Arundel and South Downs has an interest in low pay, the hon. Member for South Ribble is a scientist, the hon. Member for Wyre Forest regularly reminds us that software to a buyer acting in a professional capacity from the possibility of call-in under the regime, where that might give rise to a national security risk.

The Government have also carefully considered whether certain types of assets should remain outside this exemption clause. We have concluded that all assets that are either land or subject to export controls, as my hon. Friend the Member for Wyre Forest regularly reminds us, should not fall within the exemption. This approach, I believe, reflects the clause, recognises the unique nature of the risks posed by land acquisitions and proximity risk to certain UK sites, as well as the particularly sensitive nature of items on the export control lists. The Government consider that this approach is proportionate and appropriately exempts acquisitions that do not give rise to national security risks, while ensuring flexibility exists to scrutinise hostile actors directly targeting the acquisition of sensitive assets.

Peter Grant (Glenrothes) (SNP): I note that subsection (2) lists some exceptions, many of which are framed in terms of regulations of the European Parliament and the European Council. Let me ask the Minister two things. First, why is that the case, given that we will be completely out of the European Union in a matter of days? Secondly, and perhaps more importantly, if the European Parliament and the European Council were to amend those regulations, do the Government intend to amend this legislation to keep in step with what is happening in the rest of the European Union?

Nadhim Zahawi: I am happy to write to the hon. Gentleman on that detail.

Question put and agreed to.

Clause 11 accordingly ordered to stand part of the Bill.
its intention—or desire—to be a greater part of both the scrutiny of this Bill and its implementation. I hope that in today’s deliberations we will meet with more support from the Minister.

We had lively debates on Tuesday and some votes, which as I have indicated that we did not win. Amendment 16, in my name and those of my hon. Friends, is a probing amendment. We seek to understand that the Minister fully understands the provisions of his Bill. That is an absolutely appropriate thing to do, as hundreds of thousands of business and individuals will be impacted by it and will have to seek to understand it. It is appropriate that we test the impact of the Bill now, particularly as the Minister has many competing duties, and, as we understand, is taking on more onerous ones.

Clause 12 contains supplementary provisions in relation to determining when a trigger event that takes place over more than one day is to be treated as taking place, and determining whether a trigger event is in progress or contemplation in circumstances where a person has entered into an agreement or arrangement that enables them to do something in the future that would result in a trigger event taking place. The amendment, as we have framed it, would considerably expand the scope of events that could be considered trigger events. In effect, it would give the Secretary of State power to call in events under contemplation, by leaving out from “does” to the end of line 11 and inserting:

“establishes that arrangements are in progress or contemplation which, if carried into effect, would result in a trigger event taking place”.

As we have discussed, the Bill gives significant powers to the Secretary of State and the amendment would significantly expand notification volumes. There are many minor transactions where parties agree that someone might have the right to buy more shares in the future, and, in themselves, these transactions do not create direct influence and are unlikely to create a threat to national security. We recognise that the amendment would require all such minor transactions to be notified; it would seek to reflect the potential intention that these minor transactions may be part of a greater contemplation of something which would lead to a trigger event.

We recognise that Government would already have the power to intervene, through notification, once a trigger event takes place, so this amendment brings all possible future trigger events into scope; not just actual, or likely, future events.

**Matt Western** (Warwick and Leamington) (Lab): It is a pleasure to serve under your chairmanship, Mr Twigg. On the point on these disguised elements, does my hon. Friend agree that the issue is about not simply shareholding, but, as we heard in the evidence sessions, membership of boards, and how voting rights might not necessarily be in line with shareholding percentages, and that they can be distorted at a future date?

**Chi Onwurah**: I am grateful to my hon. Friend for that intervention. He makes a good point, which reflects why we are proposing this amendment to test the Bill. As he says, influence can be exercised in a wide range of ways.

I will elaborate on this later, but we must recognise that hostile parties will not sit back and see the Bill, then say “Oh well, that’s fine; we won’t try anything against the United Kingdom’s security,” as a consequence. They will seek ways to game and effect an influence regardless. Changes to the relationships between voting rights and shareholdings, for example, might be one way where they could seek to bypass the Bill.

I recognise that this is a wide-ranging amendment, but I seek to understand how the Minister feels that the Bill, as it stands, can address the kinds of concerns that my hon. Friend has just raised. This also reflects—I emphasise this again—the approach that we are taking, as the Opposition, on the Bill. The first priority and central plank of that approach is to put our national security first, and to do everything that we can to secure the strategic and economic resources on which our security relies; that focus on putting national security first motivates this probing amendment.

As my hon. Friend indicated, there can be a number of contingent investment transactions where parties agree to future events that transfer controls or influence. For example, a buyer might buy a low share of a company today, but might acquire with it the right to influence its shareholding in the future to levels of material influence.

I think the Minister will agree that we must watch out for these disguised transactions. They can start with innocuous levels of shareholdings, but set the ground for harder-to-notice increases in influence. At the moment, the Bill leaves out these transactions from the scope of notification, so the Government could not intervene. The amendment is therefore intended to probe the Government’s approach.

11.45 am

I understand—and we have discussed—that we must ensure a regime that is proportionate in its notification demand, particularly for small and medium-sized enterprises. This has been raised a number of times by Members on both sides of the Committee, who are concerned about avoiding a disproportionate burden on small and medium-sized enterprises, which will make up 80% of the mandatory notification base alone, according to the Government’s impact assessment. For them, this new regime will be a major change, and we have tabled a series of amendments to ease the burden on them.

I also recognise that the amendment expands the powers, and to do so may significantly expand notification volumes without necessarily adding significantly to incremental substantive powers. There are lots of minor transactions, where parties agree that someone might have the right to buy more shares in the future. In themselves, such transactions do not necessarily create direct influence. However, we should not loosen our grip on security to make the regime more efficient for small and medium-sized enterprises. I would hope we could both ensure proportionality for small and medium-sized enterprises and maintain—indeed, increase—our guard on our national security. None of our businesses benefit when we lower our guard.

We must be awake—this is what I hope to hear from the Minister in his response—to the ways in which hostile actors might game the new regime. I am sure they are spending just as much time studying it as we are spending scrutinising it, so we must not assume that our logic will be mirrored by compliant hostile actors. We already heard from the recent head of MI6, Sir Richard Dearlove, of the sophistication of other actors. He noted in his evidence session that,
"the Chinese are highly organised and strategic in their attitude towards the West and towards us...We need to conduct our relationship with China with much more wisdom and care. The Chinese understand us incredibly well.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 19-20, Q21.]

whereas we do not understand them nearly as well. We also heard from Dr Ashley Lenihan of the London School of Economics about the need for powers to deal with complex

"novel investments from countries such as China, Russia and Venezuela...that the Secretary of State and the investment security unit were not even aware of.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 34, Q40.]

That is the complex and changing security context we are in. Faced with that, our approach should be to ensure a wide scope of national security powers while creating the most efficient review process for SMEs, and the most accountable scrutiny structure for Parliament to hold Government to account.

The amendment will ensure the wide scope we need to protect our national security. As a consequence, covert transactions by hostile actors, which start innocuously but are intended to grow to material influence levels, would be ones where the Government could now intervene. We must give regard to expert evidence. We heard that information, not just influence, is critical to national security. Without the amendment, it would be harder for the Government to intervene in time, having to keep a close eye on a range of contingent transactions, and having to act promptly whenever shareholder levels move to become present trigger events, so there is a bit of a cliff edge issue there. It would be much easier and more robust for the Government to be called and act when those contingent events are agreed in the first instance.

I will go back to the expert evidence. I have quoted Professor Martin a number of times. He said

"the mantra, if I had one, would be, ‘Broad powers, sparingly used, with accountability mechanisms.’”—[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 80, Q69.]

I think this amendment aims to achieve that.

Christian Boney from Slaughter and May said:

“At the moment, the trigger events are focused, as you were saying, on the ability to influence a particular company, but there are certainly circumstances where, without acquiring a level of shareholding that enables a person to influence the company, the person can nevertheless gain very significant access to information”.—[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 75, Q88.]

The amendment seeks to probe the Government’s approach to such contingent events. I look forward to hearing from the Minister.

Nadhim Zahawi: I thank the hon. Lady and share her reflections on the collegiate way the Committee has worked. I also thank her for her comments on the quality of the Bill. It is testament to the quality of the team that has worked on it—I place on record my thanks to the excellent civil servants who have worked on the Bill—and the level of consultation. We heard from the hon. Member for Aberavon, who is not in his place, that this has been a long time coming. There was the Green Paper in 2017, the White Paper in 2018 and then the consultation. There was, of course, deep consultation before the laying of the Bill as well.

Chi Onwurah: I thank the Minister for his comments. I want to make it clear that we are not in any way indicating any criticism of the civil servants who have worked hard, in extremely difficult conditions in the midst of a pandemic, to bring the Bill before us. I think we can all agree—we had some discussion on Tuesday about the nature of parliamentary scrutiny—that the objective of the process is that the Bill benefits.

Nadhim Zahawi: Hear, hear—I agree with every word.

For the benefit of the Committee, I will begin with clause stand part, before turning to the amendment. The Secretary of State’s power to call in trigger events that have taken place is limited to a maximum of five years after the trigger event takes place and six months after the Secretary of State becomes aware of the trigger event. It is important to bear that in mind when discussing the amendment. That means that the issue of timing as to when a trigger event actually takes place is incredibly important. Many trigger events will have a self-evident completion date, as supported by contractual or other legal agreements. However, some trigger events may be less clearcut. There could be terms agreed formally by the parties, followed by further documentation, leading to a formal completion, all spread out over a period of time.

The clause ensures that where a trigger event takes place over a period of more than one day, or if it is unclear when during a period of more than one day the event has taken place, the last day of that period is treated as the date the trigger event takes place. In addition, the clause seeks to provide clarity about when a trigger event may be considered to be in progress or contemplation, where a person enters into an agreement or arrangement enabling them to do something in the future that would result in a trigger event taking place. It makes clear that entering into such agreements or arrangements, including contingent ones, does not necessarily mean that a trigger event is in progress or contemplation at the time the agreement or arrangement is entered into.

Amendment 16 would ensure that a person entering into any agreement or arrangement that enables the person, contingently or not, to do something in the future that would result in a trigger event taking place would be deemed a trigger event in progress or contemplation for the purposes of the Bill. I welcome the intention to ensure that the Secretary of State can be notified about acquisitions before they take place and I understand the motivation behind that. That is very much the Government’s policy. Indeed, the inclusion of mandatory notification and clear requirements within the proposed 17 sectors illustrates that approach in the most sensitive parts of the economy.

The timing of any notification is clearly very important. It must contain sufficient information for the Secretary of State to decide whether to give a call-in notice. That means that a proposed acquisition must be at an advanced enough stage that all the key details are known: for example, the names of all the parties involved, the size of any equity stake in the entity or asset, and the specifics of any other rights—such as any board appointment rights, which the hon. Member for Warwick and Leamington cited in his intervention—being provided to the acquirer.

In some cases, however, such details may be known, but the likelihood of a trigger event actually taking place may still be low because the acquisition is conditional.
For example, the striking of a futures contract or an options agreement may stipulate conditions that must be met before the acquirer is required to, or has the right to, acquire a holding in an entity or an asset. Such arrangements are common in the marketplace where, for example, a company’s future share price might be the basis of a conditional acquisition. Equally, lenders provide finance to many UK businesses on the basis of conditional agreements, often with collateral put up by the business as security in return for the loan. Those terms may, subject to certain conditions being met, allow the lender to seize collateral if repayments are not made as agreed.

Peter Grant: Can the Minister explain, first of all, why subsections (3) and (4) are included here as part of a supplementary clause when they clearly affect definitions, and as such go to the very heart of the Bill? The main clause is about defining the date on which something has happened for the purposes of calculating when later stages have to take place, but subsections (3) and (4) not only apply to those timings; they apply to everything in the Bill. I wonder whether the Minister could explain why those subsections are not included in one of the earlier clauses.

Secondly, I understand the Minister’s argument, but would it not be more prudent to work on the assumption that if somebody insists on some kind of contingent future rights being built into an agreement, they think there is a possibility that they will have to exercise them? Would it not therefore be prudent for the Government to work on the assumption that they are likely to be exercised? If not, is the Minister not concerned that we could have a situation where a whole series of small events, none of which looks particularly significant by itself, adds up to something that does become significant when taken in sequence, but there might never have been a stage during that process where the Bill, or the Act, allowed the Government to intervene?

Nadhim Zahawi: I am grateful for the hon. Gentleman’s intervention. I am just getting to the crux of the resistance to this amendment on the Government Benches, so if he will allow me, I will do that. As far as subsections (3) and (4) are concerned, we think they are exactly where they should be in the Bill.

In the loan scenario, obviously loans are routinely paid back by businesses as planned, so lenders do not have the option of enforcing any rights towards collateral. Indeed, even where businesses default on payments, lenders will often look for an alternative way to recoup their funds, such as restructuring the repayment amounts or repayment period. That is why the Secretary of State generally only expects to be notified about and, if the legal test is met, to call in acquisitions when they are genuinely in progress or contemplation, not just when they are optional or might take place in the future, as the amendment would effectively do. That could include where an option holder has decided to exercise their option, or where a lender has decided to enforce their collateral.

None the less, the clause as drafted does provide the Secretary of State with the ability to call in at the time agreements or arrangements are entered into. That would be determined on a case-by-case basis and would, as per subsection (4), take into account how likely it is in practice that the person will do the thing that would result in a trigger event taking place. The amendment put forward by the hon. Member for Newcastle upon Tyne Central—she is right to probe on this—would mean that entry into any agreement or arrangement under which a trigger event could take place in future would be treated as a trigger event currently in progress or contemplation, allowing it to be notified and called in by the Secretary of State. We believe that this would—unintentionally, I am sure—have two significant negative implications.

First, it would mean that hundreds or thousands of theoretical acquisitions would become available for voluntary notification, many of which would simply never come to pass. It may encourage lenders and option holders to routinely notify the Secretary of State of every arrangement they enter into. It would require a huge amount of resource for Whitehall to process those cases in return for little, if any, national security gain.

Secondly, I fear it would harm our national security. Making all potential acquisitions open to voluntary notification at the stage of entry into the initial agreement or other preliminary arrangements would require the Secretary of State to make the one and only decision on whether or not to call in the acquisition at that point, too—prematurely, one would say. They would be asked to do so on the facts as they stood at that moment in time, although the acquisition may not occur for months or years, if at all.

That means that the Secretary of State would not be able to consider any subsequent significant developments, such as behaviour by the acquirer or rapid advances in the technology developed by the target entity. Furthermore, the Secretary of State would not be able to revisit the call-in decision, even if there were such developments, unless false or misleading information was provided and it materially affected the decisions. That is why entering into agreements or arrangements should not in all cases be treated as a trigger event in progress or contemplation.

I trust the hon. Lady can support this justification, and I ask her to withdraw the amendment.

Chi Onwurah: I thank the Minister for his response. I listened carefully to what he laid out. I have some considerations, which I do not feel he fully addressed.

In broad terms, he raised many points that I have raised about why the amendment is broad in scope and could lead to a huge increase in the number of potential trigger events. However, I think he said that hundreds of thousands of actions or contemplations would be considered trigger events. I think it is truer to say that they could be considered trigger events and that the power to consider them as trigger events or not, as in the wording of our amendment, would lie with the Secretary of State. It is a broadening of the Secretary of State’s powers to consider the contemplation of future acts as a trigger event. That is the aim, rather than necessarily bringing them all into scope.

I will not debate with the Minister whether we can trust the Secretary of State to exercise those powers in a proportionate way, but I think he is effectively saying that the concern is that the Secretary of State would not have the resources to do that. I still did not hear him address the gaming point—the idea that transactions
would be deliberately set up in a way that escapes the remit of the Bill. The increased powers for the Secretary of State would address that.

I was also concerned that the Minister said that if an event was called in at this stage, it could not be called in again, even if there was material new information. Surely if a trigger event occurred in future, such as shareholding going above 25%, it could be called in, regardless of whether it had been called in earlier under the amendment. Would he like to respond to that question, particularly as to how this increases the powers of the Secretary of State, rather than necessarily significantly increasing the number of trigger events?

The Chair: Order. To be clear, you are asking the Minister to intervene, because he cannot come back afterwards.

Chi Onwurah: Yes, I am asking whether the Minister would like to intervene.

Nadhim Zahawi: I do not think I need to.

Chi Onwurah: I am disappointed that the Minister chose not to address the genuine concern about the provisions in the Bill being gamed by hostile actors. I share his concerns about increasing the powers of the Secretary of State at a time when, as we understand, there are many more calls on the Department’s responsibilities and it may not have the resources. We have already noted the conflict of interest that can occur between national security and the Department’s focus on increased investment.

As I said, this is a probing amendment, so I will not press it to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 12 ordered to stand part of the Bill.

**Clause 13**

**APPROVAL OF NOTIFIABLE ACQUISITION**

Chi Onwurah: I beg to move amendment 17, in clause 13, page 8, line 22, at end insert—

“(4) The Secretary of State must publish guidance that covers—

(a) consideration of the impact of a notifiable acquisition being deemed void under subsections (1) and (3), with particular regard to the impact on consequential obligations, liabilities and rights in completed events;

(b) who constitutes a ‘materially affected’ person under Clause 16(1); and

(c) the informational and evidential standards that would underpin the requirement for completion ‘in accordance with the final order’ at subsection (3).

(5) Guidance as set out under subsection (4) must be published within 3 months of this Bill becoming an Act and the Secretary of State shall review the guidance once every 12 months thereafter.”

This amendment would mandate the Secretary of State to publish guidance on the approval process of notifiable acquisitions.

The Chair: With this it will be convenient to discuss clause stand part.
will be an extremely good reason for it. Although the complexity of downstream transactions is regrettable, we would be acting in the British interest if we had to trigger these powers.

Chi Onwurah: I thank the hon. Lady for her intervention, which by and large I agree with. That is why we are not seeking to remove the power, but to ensure that the Government and the Secretary of State explain how it would work in practice. She is right that if a bad or hostile actor has deliberately gone behind our national security framework, or the legislation as set out in the Bill, to undertake a transaction, the consequences will be on their head. However, there might be a series of other transactions as a consequence that were not made by bad or hostile actors—I will give some examples—and the impact on them should be set out, as far as possible, to give some clarity, because this is a huge area of uncertainty.

As has been stated on a number of occasions, we attract more foreign investment than any European Union country, and one reason why the UK is such an attractive location for foreign investment is that we have a robust legal framework that is trusted globally, but by giving rise to uncertainty the clause might impact that. We are not seeking to remove this power, but to have it properly explained, as far as possible.

12.15 pm

The hon. Lady and the Committee should recognise that, as well as the uncertainty, the clause places huge requirements on the Department for Business, Energy and Industrial Strategy, as it would require significant capability and capacity from the investment security unit to execute the effect of deeming any transaction legally void. To take that further, I will talk through some examples so that we can fully comprehend why the amendment is so important.

If this provision were applied to the takeover of a public listed company that was then found to have been void, it would be exceptionally difficult to deem that transaction void and to unwind every single dealing in the company’s shares and to answer questions of legal ownership of such shares. There are enormous practical questions about the approach taken in the Bill to deeming transactions void, and the impact assessment does not address those consequences in a sufficiently rigorous way.

We might expect that events would never come to the point where transactions have to be deemed void, that parties will be deterred by that prospect—it is an excellent deterrent—and that the power will never be used, because it is such an effective deterrent that everyone will notify and comply. To that, I say two things. First, we cannot reduce legislation to our hopes of how actors might behave. We should have regard to examples elsewhere, such as Huawei’s acquisition of 3Leaf, where the threat of having to divest still did not stop Huawei pursuing the acquisition without notifying the Committee on Foreign Investment in the United States. Secondly, threats are credible when they can be carried out. Even if the point of the provision is to act as a threat, it needs to show that it can be carried out. If a threat does not work practically, or would heavily harm other, non-hostile actors, it is less effective a deterrent. Even if we believe in the deterrent of the “legally void” provision, it is critical that the Government give thought to the provision’s operation, and that we hear their thinking on that.

There are major question marks over the provision in the clause, but they are not cause to get rid of it altogether. We can see that the “legally void” provision would deter parties from failing to notify or comply, and that it has some international overlap with similar regimes, such as that in France. However, the decision to include the “legally void” provision is a major one. We can see the reasons for it, but we can also see the uncertainty and the concern that it might cause, especially for our small and medium-sized enterprises and, importantly, for those investing in them. As I said previously, there are significant barriers to investment in small and medium-sized enterprises and start-ups as it is. While national security must always come first, we do not want to create further barriers unnecessarily by not giving clarity when there is clarity to be given.

For that reason, we want to know the Government’s thinking on how the provision would operate in practice, on three important fronts. First, we would like the Government to publish guidance that reflects an understanding of how the “legally void” provision would work, and especially how it will affect the rights, obligations and liabilities of parties involved in chain transactions. If one transaction in a chain was deemed to be legally void, what would happen to the rights of employees and—this is an important point—of pension recipients?

Secondly, we recognise that parties who are affected by the “legally void” provision could apply to the Secretary of State for validation, thereby avoiding the transaction being void, and we want clarity on which materially affected parties can do so. Would those whose employment rights or pension liabilities were affected by the transaction be able to apply or would only acquirers in the specific culpable transaction be able to do so? We urge the Government to provide clarity to our small and medium-sized enterprises and investors, because I know that they are worried about the nature of this power.

Thirdly, it is vital that the Government clarify what they expect when they apply the “legally void” provisions to transactions that do not complete in accordance with the Secretary of State’s final order. To comply with the order, to what degree would a party have to show their evidence, and what degree of evidence would be required for the transaction not to risk being deemed void? That might sound complicated, but the clause has complex implications. In some circumstances, orders might not be specific, or they may be subjective and behavioural, so we need a regime that is clear, specific, understanding and rational. We should be able to expect such clarity and rationality from the Government.

Ultimately, the Opposition’s approach is about ensuring that our small and medium-sized enterprises have clarity, and that those who invest in the UK understand the rules and how they work. The amendment is intended to ensure that there is clarity and confidence in the new regime for national security screening. That approach has been supported by experts who have given evidence to the Committee. For example, Dr Ashley Lenihan, of the London School of Economics, said:

“The Bill provides for a lot of regulatory guidance, which needs to come forward in a clear and very easily comprehensible and understandable manner.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020, c. 36, Q42.]

David Petrie, of the Institute of Chartered Accountants in England and Wales, said:
If the unit operates in a way where it can give unequivocal guidance to market participants at an early stage and is open to dialogue...that would be extremely helpful.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 53, Q60.]

Dr Ashley Lenihan also said:

“Dealing with the kind of evolving and emerging threats we see in terms of novel investments from countries such as China, Russia and Venezuela needs the flexibility to look at retroactively and potentially unwind transactions that the Secretary of State and the investment security unit were not even aware of.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 34, Q40.]

I think it is clear that we are supportive of the ability to void transactions.

I want to close by thinking again about the Google acquisition of DeepMind, which took place in 2014. DeepMind has been in the news this week for its fantastic, innovative work on understanding how life itself works. In a letter, the Intelligence and Security Committee has asked what transactions would have come under the purview of this Bill had it been in place earlier. The Opposition have been calling for it, as has the Intelligence and Security Committee. Had it been in place in 2014, and had the Secretary of State for Business at that time been as focused on national security as he should have been, which some might argue was not the case, what would be the expectation? Had he decided in 2019 that that transaction should have been notified because of its security implications and, as a consequence, that it was not valid and should be voided, what would have then been the expectation?

What would be the expectations of the employees of DeepMind, who are now in California, with regard to relocating back to the UK? How would their pension rights be affected? How would acquisitions that DeepMind and/or Google had made over the years be impacted? I do not expect the Minister to be able to set out in detail every potential scenario, but it is right that we have greater and more effective guidance than is to be found in the Bill or its supporting documentation. I look forward to the Minister supporting our amendment and taking it forward.

Nadhim Zahawi: I thank the hon. Lady for her constructive engagement with the whole Bill, and especially with clause 13. She referred to the Intelligence and Security Committee, and this Committee will know that I have written to the Chairman of the Intelligence and Security Committee.

However, in answer to one of the questions raised in the letter that has been circulated to the Committee, which the hon. Lady referred to, it would clearly not be appropriate for me to speculate on individual cases, not least because decisions on past interventions have been taken by previous Ministers or Governments, who made their decisions based on the facts as they were known at the time. The Enterprise Act 2002 has provided a robust basis for nearly two decades to intervene on mergers that might have raised concern. However, it is also right that we modernise our powers, and that is exactly what this Bill will do.

The Bill provides—we had a similar discussion about that at Second Reading—that if an asset or company is deemed very valuable to the United Kingdom, it does not matter who the acquirer is, even if they are from a friendly nation, and an intervention can still be made by the Secretary State.

Clause 13 sets out the mechanisms by which the Secretary of State may approve a notifiable acquisition. After I have set out the rationale for the clause, I will speak to the amendment itself. As I have set out previously, notifiable acquisitions are acquisitions of certain shares or voting rights in specified qualifying entities active within 17 sensitive sectors of the economy. These acquisitions must be notified to, and require approval from, the Secretary of State before they may take place.

That approval can be given in three ways. First, when a mandatory notice is submitted by the acquirer, the Secretary of State may decide not to exercise the call-in power—for example, because he does not reasonably suspect that a national security risk may arise. In those circumstances, he is required to notify each relevant person, following the review period of up to 30 working days, that no further action will be taken under the Bill in relation to the proposed notifiable acquisition.

Secondly, when the Secretary of State exercises the call-in power in relation to the notifiable acquisition, he may make a final order at the end of the assessment process, which, in effect, gives approval to the notifiable acquisition, subject to conditions. Again, in that instance the notifiable acquisition is clear to proceed.

Thirdly, as an alternative to the previous scenarios, at the end of the full assessment process the Secretary of State may ultimately conclude that no remedies are required. In those circumstances, he is required to give a final notification that confirms that no further action will be taken under the Bill in relation to the call-in notice. Once more, that means that the acquisition is cleared to take place.

12.30 pm

Those three routes and outcomes are of critical importance to business, investors and their advisers. It is the means by which they receive certainty about whether they have the Secretary of State’s approval to proceed. In those cases where the Secretary of State confirms that no further action will be taken under the Bill, he cannot revisit the acquisition again barring a narrow exception for circumstances where false or misleading information has been provided to him.

Conversely, subsection (1) places beyond doubt that notifiable acquisitions that take place without the approval of the Secretary of State are void. I am very pleased to hear that the hon. Lady thinks that is an excellent deterrent. That means that the acquisition has no legal effect.

Chi Onwurah: I thank the Minister for eloquently setting out the clause. I have to suggest that he not place words into my mouth—certainly as we have such excellent reporting. Although I did not say that I thought it was an excellent deterrent, I did indicate that it could be an effective deterrent, were it considered workable.

Nadhim Zahawi: I am grateful for that clarification. I wrote down the hon. Lady’s words. She did say that it is an excellent deterrent, and went on to make her argument for the amendment.

To return to the substance, the provision means that the acquisition has no legal effect if it is void. It is not recognised by the law as having taken place. Clearly,
voiding is a situation that it is in the interests of all parties to avoid, which should act as a powerful compliance incentive, if I can describe it as such. The Government’s view is that voiding is the logical result of a regime based on mandatory notification and clearance for acquisitions in the most sensitive sectors before they take place.

Although the Secretary of State, or the courts, may be in a position to punish non-compliance with criminal or civil sanctions, voiding is necessary to limit or prevent risks to national security that may otherwise arise where such acquisitions take place without approval. For example, there may be day one risks whereby hostile actors acquire control of an entity and seek to extract its intellectual property and other assets immediately. This is a reasonable and proportionate approach, and in arriving at this position we have carefully considered the precedent of other investment screening regimes. For example, France, Germany and Italy all have voiding provisions.

Amendment 17 would require the Secretary of State to publish guidance within three months of Royal Assent and then review it annually in relation to the approval process for notifiable acquisitions. I have listened carefully to the hon. Lady’s case for the amendment, and I hope that I can begin on common ground by saying that clearly voiding an acquisition is something that it is in the interests of all parties to avoid. That is why we are consulting on the sector definitions covered by mandatory notification and clearance, rather than simply presenting them to Parliament and external stakeholders like a fait accompli in the Bill.

That approach will allow experts from the sectors and the legal profession, and businesses and investors, to help us to refine the final definitions and tighten them up to ensure that the regime is targeted and provides legal certainty. Equally, mandatory notification applies only to the clearest acquisitions, focused on objective thresholds of shares and voting rights. Together, that will help acquirers to determine whether their acquisitions are in scope of mandatory notification, and therefore allow them to comply with their statutory obligation and avoid any voiding scenarios altogether.

Peter Grant: I agree that the sensible starting point is that, if a major transaction has not complied with legal requirements, it did not happen. As the shadow Minister outlined in her comments, however, it is easy to imagine situations in which the fact of a transaction such as this becoming void could have significant impacts on people who are completely innocent of any failure to comply with the law. Is the Minister comfortable with the fact that the Bill has almost literally nothing to say about those people and that there is not provision for any kind of redress? There is no statement as to what happens to people who may quite innocently find themselves facing significant detriment through the actions and failures of others.

Nadhim Zahawi: I am grateful for the hon. Gentleman’s intervention. As I was laying out, there is precedent from other screening legislation in Germany, France and elsewhere. Of course, the hon. Member for Newcastle upon Tyne Central is concerned about the hundreds of thousands of people who may be shareholders in a company. If the acquisition was a notifiable acquisition and completed without approval, it is void, regardless of the number of shareholders.

I return to the point I was making before the hon. Gentleman’s intervention. Together, this will help the acquirers determine whether their acquisitions are in scope of mandatory notification. None the less, the Bill sets out the various ways in which an acquisition may be retrospectively validated, both proactively by the Secretary of State and in response to a validation application, where non-compliance occurs. I believe the guidance that the amendment would require the Secretary of State to publish is well meaning but fraught with difficulties.

There are a number of reasons why the Government must reject the suggested approach. First, the amendment is an invitation to the Secretary of State to, in effect, legislate through guidance to set out the legal implications of acquisitions being voided pursuant to clause 13. In our view, it would not be appropriate for the Secretary of State to do so, as it is for Parliament to legislate, but ultimately for the courts to interpret and apply that legislation.

The hon. Member for Newcastle upon Tyne Central will be aware of the much-quoted report from the House of Lords Select Committee on the Constitution, which has emphasised the importance of avoiding guidance being used as a substitute for legislation. We have no intention to do so in respect of voiding.

Chi Onwurah: I confess that I am somewhat surprised by the Minister’s comments. Does he feel that all guidance is an invitation to the Secretary of State to effectively legislate through guidance? Is that something that the Minister feels is the case for all guidance? If that is the case, we will not be getting very much guidance for businesses at all. Does he not feel that, in terms of regulatory clarity, there should be effective help and guidance that is not legislation? He is right to say that it is for the legal system to interpret, but it is also right that we have clear laws to be interpreted. As the hon. Member for Glenrothes said, there is currently nothing in the Bill about what “voiding” means and what it could mean.

The Chair: Order. I remind Members to keep interventions as brief as possible.

Nadhim Zahawi: Of course, not all guidance is guidance that the Lords Constitution Committee would have effectively considered to be a substitute for legislation. I will make some more headway, as I am conscious of the time.

Furthermore, the legal implications of voiding will depend on the particular facts of each case. It will ultimately be for the courts, as I said earlier, to resolve any disputes between parties.

Secondly, and for the same reasons, it would not be appropriate for the Secretary of State to publish guidance on who constitutes a “materially affected” person under clause 16(1). If it will assist the Committee, I will say that we consider these to be ordinary words of the English language and that whether a person has been materially affected by voiding will depend on the particular facts of each case. Ultimately, it will be for the courts to interpret this provision and to resolve any disputes between parties.

Thirdly, we do not consider guidance under paragraph (c) in the amendment to be necessary or appropriate. Final orders issued by the Secretary of State will need to be
I have said a number of times that we are going from a standing start of 12 notifications in 18 years under the Enterprise Act 2002, which the Minister cited as having trust powers, to the almost 2,000 that we are expecting. Given his response, however, on which we see no likelihood of him moving, and given that we acknowledge the importance of the powers, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 13 ordered to stand part of the Bill.

Clause 14

MANDATORY NOTIFICATION PROCEDURE

12.45 pm

Sam Tarry (Ilford South) (Lab): I beg to move amendment 18, in clause 14, page 8, line 36, leave out “may” and insert “shall”.

This amendment seeks to make the Secretary of State’s prescription of regulation of the form and content of a mandatory notice mandatory.

The Chair: With this it will be convenient to discuss the following:

Amendment 19, in clause 18, page 11, line 28, leave out “may” and insert “shall”.

This amendment seeks to make the Secretary of State’s prescription of regulation of the form and content of a voluntary notice mandatory.

Clause stand part.

Sam Tarry: It is an honour to serve under your chairmanship, Mr Twigg. These two amendments are simply about giving more direction. One issue that we have debated on every day of the Committee’s scrutiny so far is how the Bill will radically transform the merger control process and create an entirely new centre for that process within BEIS.

Small and medium-sized enterprises across the country will look at these changes with great interest and understanding that national security is important and imperative, but also with uncertainty as they consider the need to seek investment to grow and create jobs. We owe those businesses clarity, confidence and certainty in the new regime, which is why the amendment simply seeks to make the Secretary of State’s prescription of regulation of the form and content of a mandatory notice mandatory by deleting “may” and inserting “shall”.

The Bill gives some clarity on the assessment period and the review period under the new regime, but there is still major uncertainty about the first stage of the regime. It is unclear how long the Secretary of State can take to decide on rejecting a mandatory or voluntary notice. The Government’s consultation suggested that it would be as soon as reasonably practicable, but unfortunately that is of no assurance. For a new unit with major resourcing challenges, as soon as reasonably practicable could be far from soon.

My hon. Friend the Member for Southampton, Test spoke earlier in the week about his experience and the bad practice that could occur if the Secretary of State was left with so much discretion, rather than a little more compulsion. There are a number of examples, including the Energy Act 2013, where having “may” rather than “shall” meant that, in real terms, what was determined by the Bill never came into being.
Clause 66 of the Bill says that some clauses will immediately come into force, but it later says “may”. The Secretary of State could—hopefully he would not—wait for years or not do it at all. In both clauses referred to by the amendments, the regulations must be laid by the Secretary of State, and the term “may” creates some degree of uncertainty. It would be far better to take a more direct approach by inserting “shall”.

It is also unclear what specific form of content and information could be required in the mandatory or voluntary notices that firms and investors would have to provide. We could end that uncertainty. It is already an incredibly challenging time for firms to engage with a major new control process in the midst of a pandemic and, of course, while waiting to hear what our new relationship with the European Union will be.

Chi Onwurah: Thank you, my hon. Friend. The excellent remarks he is making are pertinent to the experience of small and medium enterprises in Ilford South and Newcastle, in that they generally do not have the time to fill out the multiple forms required to receive grants or to apply for support. To expect them not only to respond, but to design the form and decide what should go into it is really taking our small and medium enterprises for granted.

Sam Tarry: My hon. Friend makes a good point. Businesses are feeling huge pressure. SMEs will often experience a degree of fear at the moment about potentially having to grapple with a whole series of new regulations—not just under this important Bill, but under the spin-outs that come out of our ongoing negotiations with the European Union. Many businesses are, I think, holding back on investment and investment decisions—even inward investment into their own company—simply because of the uncertainty. It is incredibly important to remove those barriers and to get people back investing in both staff and technology and feeling that they have the ability to see forward far enough to keep staff on the books through such a difficult crisis.

Chi Onwurah: My hon. Friend is making an excellent point about Brexit, but I will not test the Committee’s patience on that. As for the changing forms and the requirements on SMEs, does my hon. Friend understand why the Minister is putting the onus of deciding what information is required on to small businesses, rather than on to his Department and the civil service, which could do that?

Sam Tarry: One of the things that we have probed a number of times, when taking evidence from witnesses and in our debates in Committee, is the idea that we need to give businesses clarity, because many are feeling uncertain. If they cannot make decisions about forward planning, clearly that will be detrimental as we move through the crisis.

Perhaps I should refer to some of the expert evidence we heard last week. Michael Leiter, who represents a very large, global limited liability partnership, told us: “I think this is a rather seismic shift in the UK’s approach to review of investment... having some opportunity to make sure that both the private sector and the public sector are ready for that and understand the rules... is particularly important.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 46, Q52.]

That was in our discussion about resourcing, and one of the questions that I and colleagues on both sides of the Committee raised was on the resourcing of BEIS. As my hon. Friend the Member for Newcastle upon Tyne Central suggested, rather than the burden falling on small and medium-sized enterprises, there should be a fully resourced and expanding new unit within BEIS. Given that the number of call-ins could rise from 12 to 1,800, as we have heard, we need a huge scaling up of BEIS’s ability to look at these, and obviously it does not have the same experience that the Competition and Markets Authority had previously.

I humbly point out that the Minister assured the House on Second Reading that: “The investment security unit will ensure that clear guidance is available to support all businesses engaging with investment screening.”—[Official Report, 17 November 2020; Vol. 684, c. 277.] The amendment is intended to secure that assurance in substance; not to tie the hands of the Secretary of State, but to give clarity to businesses by shifting from something that may happen to something that shall happen.

Peter Grant: It is a pleasure to serve under your chairmanship, Mr Twigg. I know that there was quite a bit of discussion in an earlier sitting, which I was unable to attend, about the different between “may” and “must”. In relation to clause 14—my comments apply also to
clause 18—if we try to imagine the circumstances in which the Secretary of State would choose not to make those regulations, we realise that there are none. If no regulations have been made, most of subsection (6), which clearly is the meat of the clause, just does not make sense.

Subsection (6) states that the Secretary of State may reject the mandatory notice if

“it does not meet the requirements of this section”.

But the clause does not place any requirements on the notice. A letter that says, “Dear Secretary of State, this is a notice under section 14” would meet all the requirements of that subsection, so it cannot be rejected on those grounds. Clearly, it cannot be rejected on the grounds that

“it does not meet the requirements prescribed by the regulations”, unless the Secretary of State has made the regulations. It can be rejected if

“it does not contain sufficient information to allow the Secretary of State to”

make a decision. How can it possibly be fair for a business to have a notice rejected on the grounds that it does not contain sufficient information to allow a decision to be made by somebody who has chosen not to state what information needs to be provided?

Therefore, two of the grounds on which the Secretary of State can reject the notice are meaningless. The third one has meaning, but it is surely not a reasonable way to treat any business. If there is information that the Secretary of State feels will be necessary to allow her or him to come to a decision on the notice, surely that information should be set out in regulations so that there can be no doubt.

It is perfectly in order for the statutory form of notice to require additional information that cannot be specified in advance. Clearly, the Bill will cover a wide range of transactions, and there will always be information that is needed for one transaction but maybe not for others, but surely we will need to know the name of the acquirer, the identity of the asset and the timing of the intent to acquire. It will be impossible to process any notice without those kinds of things, so surely the Secretary of State will at the very least make regulations requiring that information to be provided. If the Minister can persuade me that there are realistic circumstances in which the Secretary of State can choose not to make any regulations at all, perhaps I would not support the amendment, but the clause will simply not work if the regulations have not been made. For that reason, it should require the Secretary of State to make those regulations.

1 pm

That is made more important by the points that the hon. Member for Ilford South made, in that subsection (5) only requires the Secretary of State to come to a decision “as soon as reasonably practicable”. That is about as vague and woolly a time requirement as it is possible to put in legislation. I remember, thinking back to my days in the Health and Safety Executive, that the phrase “reasonably practicable” appeared in a lot of legislation on health and safety requirements. The “reasonably” part means taking into account the other circumstances applying to the Secretary of State and the Department at the time, so if they are up to their eyes in dealing with Brexit, trade deals, getting the vaccine distributed or anything else, then “as soon as reasonably practicable” could become a very open-ended time limit indeed. As soon as the Secretary of State has decided to accept—

The Lord Commissioner of Her Majesty’s Treasury (Michael Tomlinson): On a point of order, Mr Twigg. I beg to move—

The Chair: Order. The hon. Gentleman cannot move to adjourn while a Member is speaking.

Michael Tomlinson: I apologise to the hon. Member for Glenrothes; I will wait.

Peter Grant: It is easy to see that there will be circumstances where “as soon as reasonably practicable” becomes a very open-ended time limit—or non-time limit—indeed.

Given that so much of the rest of the Bill puts time limits on the Secretary of State to ensure that potentially beneficial transactions cannot be held up forever simply due to delays in the Department, the combination of the words “as soon as reasonably practicable” in subsection (5), right at the start of the process, and the massive uncertainty in the minds of businesses if the Secretary of State does not make regulations persuades me that the Bill should not allow the Secretary of State to make those regulations but should require the Secretary of State to make them, because the clause simply does not work or make sense if they are not made.

Ordered, That the debate be now adjourned.—(Michael Tomlinson.)

1.2 pm

Adjourned till this day at Two o’clock.
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Clauses 14 to 21 agreed to.
Adjourned till Tuesday 8 December at twenty-five minutes past Nine o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 7 December 2020
The Committee consisted of the following Members:

**Chairs:** SIR GRAHAM BRADY, † DEREK TWIGG

† Aiken, Nickie (*Cities of London and Westminster*) (Con)
† Baynes, Simon (*Clwyd South*) (Con)
† Bowie, Andrew (*West Aberdeenshire and Kincardine*) (Con)
† Fletcher, Katherine (*South Ribble*) (Con)
† Garnier, Mark (*Wyre Forest*) (Con)
† Gideon, Jo (*Stoke-on-Trent Central*) (Con)
† Grant, Peter (*Glenrothes*) (SNP)
† Griffith, Andrew (*Arundel and South Downs*) (Con)
† Kinnock, Stephen (*Aberavon*) (Lab)

† Onwurah, Chi (*Newcastle upon Tyne Central*) (Lab)
† Tarry, Sam (*Ilford South*) (Lab)
† Tomlinson, Michael (*Lord Commissioner of Her Majesty's Treasury*)
† Western, Matt (*Warwick and Leamington*) (Lab)
† Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Wild, James (*North West Norfolk*) (Con)
† Zahawi, Nadhim (*Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy*)

Rob Page, Yohanna Sallberg, Committee Clerks

† attended the Committee
Public Bill Committee

Thursday 3 December 2020

(Afternoon)

[DEREK TWIGG in the Chair]

National Security and Investment Bill

2 pm

The Chair: Order, I remind the Committee that interventions should be short. If Members wish to make wider points, they have an opportunity to make a speech, so they should seek to catch my eye while the lead amendment is being moved.

Clause 14

Mandatory notification procedure

Amendment proposed (this day): 18, in clause 14, page 8, line 36, leave out “may” and insert “shall”.

This amendment seeks to make the Secretary of State’s prescription of regulation of the form and content of a mandatory notice mandatory.

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 19, in clause 18, page 11, line 28, leave out “may” and insert “shall”.

This amendment seeks to make the Secretary of State’s prescription of regulation of the form and content of a voluntary notice mandatory.

Clause stand part.

Dr Alan Whitehead (Southampton, Test) (Lab): I will not take up too much of the Committee’s time, but I wish to say a few words about the excellent contribution that my hon. Friend the Member for Ilford South has made to our continuing discussions about “may” and “must”. It is a particularly egregious case that he has highlighted. If we look at the number of “musts” that appear in clause 14—this point has been made by other Members—we see that the subsequent “musts” would fall immediately if the Secretary of State may not prescribe by regulation the form and content of a mandatory notice—so the “must” in subsection (5) is relevant only if the Secretary of State does that in the first place, as are the “musts” in subsections (7) and (8), as my hon. Friend pointed out earlier.

There is also an interesting “must” at the beginning of the clause, which relates to the mandatory notification procedure itself. Subsection (1) states that “a person must give notice to the Secretary of State before the person, pursuant to a notifiable acquisition…gains control in circumstances” and so on. So subsection (1) appears to stand whether or not, in subsection (4), the Secretary of State decides to prescribe by regulation the form and content of a mandatory notice. That means that a person must provide a mandatory notice, even if the Secretary of State has not prescribed any form or content of that notice. The person may therefore have no idea what is to be in that mandatory notice, because the Secretary of State has not put it in regulations, but still they must give notice because this subsection says “must”.

That does not seem to be particularly proportionate. It appears to be constructed in such a way that, regardless of whether the concept is completely unknown to the person giving the notice, it is entirely up to the Secretary of State whether he or she makes the mandatory notice in any way comprehensible. I think that is quite an odd juxtaposition in this instance of “mays” and “musts”.

The “may” in subsection (6) is perfectly acceptable, in as much as its states that: “The Secretary of State may reject the mandatory notice on one or more of the following grounds”.

That “may” is absolutely appropriate. However, the positioning of “must” right at the beginning of the clause, and the positioning of “may” in subsection (4), does not look reasonable to me. That could easily be solved by using the word “shall”, so that the situation is proportionate between those circumstances. That is the essence of the amendment 18, as my hon. Friend the Member for Ilford South outlined earlier.

I accept that there have been a number of occasions when, although I have not particularly liked “may” going into a Bill, it has had some justification. However, the particular juxtaposition that we see here causes me to think that it is a rather important issue, as far as “may” and “shall” are concerned. I am interested to hear whether the Minister thinks that the wording could give rise to the sorts of problems that I have suggested, in the event that another Minister—not himself, of course—might be tempted not to produce such regulations when defining the form and content, because I think that could cause potential problems for reasonableness, as far as this clause is concerned.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I rise to give some thoughts on clause 14 stand part, but will also refer to the amendment proposed by my hon. Friend the Member for Ilford South. Clause 14 is a critical part of this process, because it sets out the mandatory notification procedure. In some respects, it is the mandatory notification which places the greatest burden on those falling, or who might consider themselves to fall, within its remit. This is because it requires the person who is to make a notifiable acquisition to give a mandatory notice to the Secretary of State prior to the acquisition taking place.

The clause goes on to give the Secretary of State the option to set out the form and content of the mandatory notice. I shall come back to that. It then sets out the process by which the Secretary of State “must” decide whether to reject or accept that notice. If a mandatory notice is rejected, the Secretary of State must provide reasons in writing for that decision to be made. It also sets out the timescale elements and the persons to be notified. We recognise that mandatory notifications are an important part of making the Bill have the desired impact on our national security. It is absolutely right that in key areas the onus should be on those who will be aware that the transaction is taking place to notify the Secretary of State.
However, the amendment set out by hon. Friend is all about protecting and supporting the interests of small businesses. I am concerned that the Minister does not seem to be as vigilant about reducing the burden on and setting out the guidance for small businesses as we would like. All our constituencies have small businesses—it is often said that they are the lifeblood of the economy—yet in the Bill, and particularly in the clause, the Minister is not setting out the minimum support that they might require.

My hon. Friend the Member for Southampton, Test got to the nub of the matter in one of his very informative discussions about the difference between “must” and “may”. He observed that the “must” falls on the person who has to do the notifying. For example, it could be a small artificial intelligence start-up with a few members of staff, none of whom is a lawyer—remember that there are no de minimis provisions in the Bill for the size of the acquisition that must be notified—that is seeking investment from a foreign party. That start-up would be asked to indicate whether that investment would involve making a notification. Not only that, it must decide itself the form that the notification should take.

I really cannot understand why the Bill apparently seeks to give discretion to the Secretary of State to lighten his load, but not to our fantastic small businesses or to business generally. As my hon. Friend the Member for Ilford South said, why should a small business, the notifier, also have to set out the format in which its notification takes place? Given that the clause sets out,

“The Secretary of State may by regulations prescribe the form”,

why can we not simply turn that into “shall by regulation prescribe the form and content of a mandatory notice”? Equally, when voluntary notices are considered, I hope the Minister has some ideas about what should be in the notification. If he does, is it not simple and desirable for him to share his ideas with our business community, which in less than a month’s time is facing a huge change in how it trades and does business with the European Union, our largest trading partner by value? That involves countless new forms to be filled out, as we have discussed in the Chamber, some of which are not yet designed. At the same time that that is happening, to require that they should decide for themselves what is involved in a notification seems wholly unacceptable.

On that basis, I ask the Minister to set out whether he intends to accept the amendment. If not, will he tell us what work has gone on in the Department to look at the kind of information might be required? How will the Minister deal with the guidance for small businesses as we would like. All our constituencies have small businesses—it is often said that they are the lifeblood of the economy—yet in the Bill, and particularly in the clause, the Minister is not setting out the minimum support that they might require.

I really cannot understand why the Bill apparently seeks to give discretion to the Secretary of State to lighten his load, but not to our fantastic small businesses or to business generally. As my hon. Friend the Member for Ilford South said, why should a small business, the notifier, also have to set out the format in which its notification takes place? Given that the clause sets out,

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On that basis, I ask the Minister to set out whether he intends to accept the amendment. If not, will he tell us what work has gone on in the Department to look at the kind of information might be required? How will the impact assessment assess the likely level of familiarisation required for this legislation—there is a phrase that says that there is not expected to be a huge amount of familiarisation required in it—while at the same time there is no guidance, assessment or inkling about the kind of information that will be required to be included in that notification?

2.15 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): I am grateful to the hon. Members for Ilford South, for Southampton, Test, and for Glenrothes, as well as to the shadow Minister, the hon. Member for Newcastle upon Tyne Central, for their contributions on this set of amendments and clause 14. With the agreement of the Committee, I will begin with clause 14 stand part and then turn to the amendments.

Clause 14 provides a mechanism for proposed acquirers to notify the Secretary of State of notifiable acquisitions, which are those circumstances covered by clause 6. Contrary to what the hon. Member for Newcastle upon Tyne Central said, we on this side of the House really do care about small business; indeed, we will be celebrating Small Business Saturday by highlighting the great small businesses that are trying to recover from covid-19. To avoid duplication or unnecessary burden for businesses and investors, if the Secretary of State has already given a call-in notice in relation to the proposed notifiable acquisition, no notification is required. Otherwise the proposed acquirer must submit a mandatory notice containing the necessary information for the Secretary of State to make a decision about whether to exercise the call-in power.

The Government carefully considered which parties should be legally responsible for this notification. In many cases we expect this to be a collaborative process between parties that have an aligned aim for the acquisition to take place. However, there may be instances where an acquirer who is purchasing shares from a number of individual sellers is the only party aware that, in totality, they are carrying out a notifiable acquisition. For example, if an acquirer buys 10% equity in an entity specified under the mandatory regime from two separate sellers—20% in total—each seller may be operating under the assumption their transaction does not meet the threshold of a notifiable acquisition. Equally, the entity itself may be unaware of these acquisitions until after they have taken place. As such, only the acquirer can reasonably be expected to know that their activities constitute a notifiable acquisition and the responsibility to notify therefore rests with them.

The precise information that will be required and the form of the mandatory notice will be set out in regulations by the Secretary of State in accordance with subsection (4). For the convenience of the House, the Government have recently published a draft of the information that is likely to be required in a mandatory notice. As hon. Members might expect, this is likely to include all the pertinent details about the acquisition, including the target entity, the nature of its business, the assets it owns, the parties involved, the details of the equity stake and any other rights that form part of the acquisition—for example, any board appointment rights.

Following acceptance of a satisfactory notification—for example, conforming to the format and content prescribed—the Secretary of State then has up to 30 working days to decide whether to exercise the call-in power, or to take no further action under the Bill. The Secretary of State will be entitled to reject a mandatory notice where it does not meet the specified requirements, or where it does not contain sufficient information for him to decide whether to give a call-in notice.

The nature of the information required should mean that such instances are rare, but it is crucial that the requirements of the notice are met in order for the 30-working-day clock to start only at the point the Secretary of State is in a position to make an informed decision. By the end of the 30-working-days review period, the Secretary of State must either give a call-in notice or notify each
relevant person that no further action will be taken under the Bill. In effect, the latter clears the acquisitions to take place unconditionally.

The power to specify in regulations the content and form of the mandatory notice is an important one, as the Secretary of State may need to change this over time in response to the operation of the regime in practice, and in response to the volume and quality of such notices given and rejected. I certainly believe that this approach ensures that Parliament can scrutinise any such changes. This clause is a procedural necessity to give effect to the mandatory notification regime once notifiable acquisition regulations have been made, and I trust that it will be supported by both sides of the Committee.

Amendments 18 and 19 are designed to require the Secretary of State to make regulations specifying the form and content of a mandatory or voluntary notice, ensuring that the parties have clarity on what information they need to provide in order to have properly notified. That is undeniably important—I share the focus of the hon. Member for Ilford South on that point—so this is an entirely sensible proposition. I suggest, however, that the amendments are unnecessary because the Bill as drafted already achieves that aim.

In practice, in order for the notification regime to operate, the Secretary of State will first need to make regulations specifying the form and content of a notification, regardless of whether clauses 14 and 18 say that he “may” or “shall”. I pay homage to the hon. Member for Ilford South on that point—so this is an entirely sensible proposition. I suggest, however, that the amendments are unnecessary because the Bill as drafted already achieves that aim.

Chi Onwurah: I am somewhat confused. The Minister is saying that clause 14(4) in its entirety is unnecessary, because those things are already prescribed. Will he set out in more detail where they are already prescribed? He argues that they are already prescribed, but where are they prescribed?

Nadhim Zahawi: Let me make clear to the hon. Lady what I actually said, which was that whether clauses 14 and 18 say that the Secretary of State “may” or “shall” make such regulations, the notification regimes cannot operate without the notification forms being prescribed in the regulations. My point is that whether the clauses say “may” or “shall”, it makes no difference. I therefore hope that the hon. Member for Ilford South will withdraw the amendment.

Sam Tarry (Ilford South) (Lab): I have listened carefully to the Minister, and I feel that several issues have not been fully explored. The whole point of the amendment is to compel the Secretary of State to be clear that those regulations will be forthcoming in a timely manner, along with the reassurances that small and medium-sized enterprises seek. The amendment would mean that it was not the Secretary of State’s choice when or whether that happened. The use of the word “shall” would allow us to move forward more directly, because the Secretary of State would be compelled to do that as quickly as possible. On that basis, I will press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 10

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Question accordingly negatived.

Clause 14 ordered to stand part of the Bill.

Clause 15

Requirement to consider retrospective validation without application

Question proposed, That the clause stand part of the Bill.

Nadhim Zahawi: Clause 15 places a duty on the Secretary of State to consider whether to retrospectively validate a notifiable acquisition that was not approved by him before it took place. As I made clear in reference to clause 13, a notifiable acquisition that is completed without the approval of the Secretary of State is void. It is in the interests of all parties to avoid that situation, and voiding should act as a powerful incentive for compliance.

None the less, there may be instances where a notifiable acquisition takes place without approval and is therefore void, but the outcome is not a permanent necessity. This clause places a duty on the Secretary of State, following the point at which he becomes aware of the acquisition, to either exercise the call-in power in relation to the acquisition within six months or else issue a validation notice. A validation notice provided for by this Bill has the effect of treating the acquisition as having been completed without the approval of the Secretary of State, as though it were never void.

There are a number of circumstances in which the Secretary of State may decide not to issue a call-in notice in relation to a void acquisition. For example, as the Secretary of State may only call in trigger events, he may decide that the acquisition does not give rise to a trigger event—for instance, the acquisition of a 15% equity stake in a specified entity is a notifiable acquisition, but is not in and of itself a trigger event. A 15% stake may or may not, depending on the facts of the case, amount to or form part of a trigger event, namely the acquisition of material influence over the policy of the entity.

Alternatively, the Secretary of State may reasonably suspect that a trigger event has taken place but not reasonably suspect that it has given rise to, or may give rise to, a national security risk. In those situations, this
clause requires the Secretary of State to give a validation notice in relation to the notifiable acquisition, which in effect provides the retrospective approval for the acquisition and means that it is no longer void. I should be clear that retrospective validation does not change the fact that the acquirer may have committed an offence by completing the acquisition without first obtaining approval. If an offence has been committed, criminal and civil sanctions will be available and may be used to punish that non-compliance.

As provided for by subsection (2)(a), where the Secretary of State decides, following consideration of a void acquisition, to exercise the call-in power in relation to it, he must give a call-in notice to the acquirer and such other persons as he considers appropriate. For the purposes of considering whether a trigger event has taken place under the Bill, including when deciding whether to exercise the call-in power, clause 1(2) provides that the effect of any voiding must be ignored, meaning that a notifiable acquisition that has been completed without approval can still amount to, or form part of, a trigger event even though it is of no legal effect.

This approach has been taken because a legally void acquisition may still result in a de facto exercise of the rights purportedly acquired and, consequently, a risk to national security. Where the call-in power is exercised in relation to a void acquisition, the case follows the conventional assessment process and is subject to the same statutory timelines and information-gathering powers. At the end of this process, the Secretary of State may decide to unconditionally clear the acquisition, resulting in a validation notice being issued and the acquisition no longer being void. Alternatively, he may impose remedies in a final order.

2.30 pm

Dr Whitehead: I have a brief inquiry, following the Minister’s recent letter to me on a previous point raised in Committee, for which I thank him for his prompt attention. If a hostile company takes over another company, effectively puts it into liquidation and walks off with the intellectual property, patents and various other things, and those are out of the door by then, will it be necessary to provide a validation for the transaction, if it has not been previously notified or noticed, and to then pursue the consequences of that validation by subsequent means, given that the company was presumably in existence at the time of the validation, if not thereafter? Would that perhaps not be a cumbersome procedure?

Nadhim Zahawi: I am grateful to the hon. Gentleman for that question; I will write to him on that point, rather than attempting to go through our thinking on this. He raises an important point on what happens after the effect.

Where the final order has the effect of clearing the acquisition outright, subject to conditions, the Bill provides that the acquisition is no longer void. Where the final order has the effect of blocking all or part of the acquisition, the Bill provides that the acquisition remains void to that extent. Further provision on this particular situation is made in clause 17. The deadline of six months for giving either a validation notice or a call-in notice was chosen by the Government to align closely with the Secretary of State’s other requirements to act within certain timescales under the Bill.

Chi Onwurah: I thank the Minister for his promise to write to my hon. Friend the Member for Southampton, Test. The Minister mentioned on a number of occasions that a transaction is no longer void when a validation notice has been given. However, the transaction was void when completed, because it was completed without approval, so there will have been a period when it was void. What are the legal implications of that period?

Nadhim Zahawi: Is the hon. Lady talking about a period when the Secretary of State was not aware of the transaction being void? If he is unaware of it, he is unable to act. It is only once he becomes aware, through a screening process or notification—

Chi Onwurah: I want to explain myself better. The question is not about what the Secretary of State can do, because I clearly understand that he cannot act on what he is not aware of. The fact of the transaction being deemed legally void for a period, which it will have been, may have some legal implications for the owners or the customers or whoever.

Nadhim Zahawi: Again, I am happy to write to the hon. Lady on that. Clearly, only when the Secretary of State is aware that a transaction is clearly in breach of the Bill is it then void. I am not clear as to what she is saying. Is she asking about before he is able to act?

Chi Onwurah: Let me clarify. Clause 13(1) states:

“A notifiable acquisition that is completed without the approval of the Secretary of State is void.”

It is void at the time it is completed, not at the time the Secretary of State becomes aware of it. Sometime later, the Secretary of State becomes aware of it and gives a retrospective clearing of it, but there will regardless have been a period where that transaction was void. What are the legal implications for the owners? It seems to me that having a transaction being void for a period would have some legal implications, regardless of whether the Secretary of State has cleared it.

Nadhim Zahawi: Again, I am happy to write to the hon. Lady on that point. Maybe I am being thick here, but the transaction only becomes void once the information is available to the Secretary of State. Is she talking about before that period?

Chi Onwurah: My understanding is that it becomes void at the point when the transaction is completed. At some point after that, the Secretary of State gives a retrospective validation, but there is nevertheless a period of one year, or however long it takes, when the transaction was void. Does that not have legal implications?

Nadhim Zahawi: I am happy to write to the hon. Lady on that point. What I think she is talking about is about the gap between the Secretary of State being aware and when the transaction actually took place, because the date where it is void is the date of the closing of that transaction, but I am very happy to write to her about that.

It is not in the interests of either the Government or the parties for the Secretary of State to have an unfettered ability to issue a call-in notice, perhaps long after he
becomes aware of the notifiable acquisition. This approach provides a sensible mechanism for resolving the effects of automatic voiding arising from failures to receive clearance. I reassert my view that such situations should be rare, but it is only proper that the Bill provides such a mechanism for the Secretary of State to resolve them satisfactorily, should they arise. I hope hon. Members agree with that position.

Chi Onwurah: I thank all the hon. Members for their contributions, and the Minister for his remarks and his good humoured response to the interrogation on certain parts of this important clause. I recognise the importance of the clause and the importance of considering retrospective validations without application giving the all-consuming power through the voiding of notifiable acquisition without the approval of the Secretary of State. This debate has illustrated the need for greater clarity.

In the absence of the additional guidance that we were looking for in our earlier amendment, this has the possibility of becoming a legal goldmine for lawyers who are requested to give advice on what would or would not constitute a void transaction at what time. I raise that in the context of the requests of my hon. Friend the Member for Southampton, Test and myself for greater clarity about the period, which may represent some sort of legal limbo, between when a transaction takes place but before it is given retrospective approval. However, we do not oppose the clause.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

Clause 16

APPLICATION FOR RETROSPECTIVE VALIDATION OF NOTIFIABLE ACQUISITION

Question proposed, That the clause stand part of the Bill.

Nadhim Zahawi: Clause 16 provides a mechanism for any person materially affected by a notifiable acquisition being void to make an application to the Secretary of State to retrospectively validate the acquisition. Although there is a duty in clause 15 for the Secretary of State to give a validation notice or a call-in notice within six months of becoming aware of the acquisition, we recognise that in practice that is often likely to be a process driven by the parties themselves. It may be, for example, that a party realises that their transaction was a notifiable acquisition only after the event, and wishes to take proactive steps to resolve the situation. The clause allows them to make a formal application for retrospective validation, following a similar process to the conventional mandatory notification route.

Subsection (3) enables the Secretary of State to make regulations prescribing the form and the content of a validation application. It is likely that that will closely resemble the mandatory notification form, given all of that information remains pertinent to the Secretary of State’s decision on whether to give a call-in notice. The Secretary of State will be entitled to reject the application where it does not meet the specified requirements, or contain sufficient information for him to decide whether to give a call-in notice.

If the validation application is accepted, all relevant parties must be notified and a 30 working-day review period begins. By the end of the review period, the Secretary of State must issue either a call-in notice or a validation notice. Once again, if a validation notice is issued, the acquisition is no longer void and the Secretary of State must confirm that no further action under the Bill will be taken in relation to that acquisition. As is the case with clause 15, retrospective validation through that route does not provide immunity against criminal or civil sanctions being pursued.

Validation does not change the fact that a notifiable acquisition did not have the Secretary of State’s approval prior to taking place. This is simply about how the acquisition itself should be treated, following the screening of all pertinent details relating to the acquisition. I hope that hon. Members will be supportive of parties being able to apply to the Secretary of State for a validation notice, and that they will see clause 16 as part of our business-friendly approach to the investment screening regime.

Dr Whitehead: This is more of a slightly extended intervention than a speech. The Minister has set out very clearly what the clause means and how it is to be operated, but I am not sure that he completely covered what the opinion of the Secretary of State may consist of. I am looking at subsection (8), which refers to the Secretary of State’s opinion that “there has been no material change in circumstances since a previous validation application in relation to the acquisition was made.” My concern is that the words “material change” are potentially subjective. That may be overridden by the fact that it is “in the opinion of the Secretary of State”, but there is no definition of what a material change might be considered to be, and what the boundaries of a material change consist of.

The provision does not say “no change”; it says “no material change”. Does the Minister consider that that is safe enough, in terms of the Secretary of State’s opinion overriding the material change, or does he consider that the subjectivity of a material change is potentially actionable if the Secretary of State were to say that there has been no material change, but somebody decided that the Secretary of State’s opinion was not reasonable or proportionate in the context of what has happened to a particular company?

Nadhim Zahawi: I think the hon. Gentleman has answered his own question. Obviously, I do consider that the Secretary of State’s ability on the opinion is safe.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17

RETROSPECTIVE VALIDATION OF NOTIFIABLE ACQUISITION FOLLOWING CALL-IN

Question proposed, That the clause stand part of the Bill.
Nadhim Zahawi: Clause 17 provides for the retrospective validation of notifiable acquisitions that have been completed without approval, following the giving of a call-in notice in either of the situations covered by clauses 15 and 16. The previous two clauses detail how the Secretary of State may give a call-in notice in relation to a notifiable acquisition that has been completed without approval and is therefore void, either on his own initiative after he becomes aware of the acquisition or following a validation application.

Following call-in, there is a national security assessment process. The Secretary of State has a period of 30 working days to either make a final order imposing remedies or give a final notification confirming that no further action will be taken under the Bill in relation to the call-in notice. The Secretary of State may extend the assessment period by an additional period of 45 working days where the legal test is met. If a further legal test is met, the Secretary of State may agree a further extension or extensions with the acquirer.

Where the Secretary of State gives a final notification, in effect giving unconditional clearance to the acquisition, subsection (2) requires him to also issue a validation notice, which means that the acquisition is no longer void. That is because voiding cannot be maintained if there is no national security justification for it. Copies of that validation notice must be given to each person who receives a copy of the final notification, any person who made a validation application and anyone else the Secretary of State considers appropriate.

Alternatively, where, following the assessment process, the Secretary of State makes a final order imposing remedies, subsections (4) and (5) provide for so much of the void acquisition as is compatible with the final order to be validated. It may be helpful if I explain what that means, with some specific examples.

Where a final order has the effect of clearing the acquisition outright, subject to conditions, it means that the entire acquisition is no longer void. Where a final order has the effect of blocking all or part of the acquisition, the acquisition remains void to that extent. That means, for example, that where the Secretary of State decides that it is necessary and proportionate, for the purpose of safeguarding national security, to block 51% of a void 100% acquisition of an entity through a final order, 49% of the acquisition will be validated and the remaining 51% will remain void.

The Bill does not seek to prescribe how such a decision is delivered by the various parties in all circumstances. The Government recognise that some acquisitions may involve a range of sellers and the Secretary of State may not wish to stipulate in every case which constituent parts of the notifiable acquisition should remain void and which should be validated. Rather, we expect the Secretary of State to set out the end state that the acquirer must arrive at and to consider proposals from them to meet these obligations as part of the assessment process before a final order is made.

Any dispute between the parties arising out of how the void or validated elements are chosen will be a private matter for the parties. The Bill does not attempt to limit or cut across any restitutive action taken by the parties against one another if they deem it necessary as a result of the notifiable acquisition, or a proportion of it, remaining void.
given false or misleading information in relation to the decision not to issue a call-in notice, but I expect such instances to be few and far between. On those rare occasions where the notified trigger event does require further action, early notification means that parties can also factor in a security assessment following a formal call-in early on in their commercial timelines.

I hope that the Committee will agree that that is a pragmatic approach that provides the Secretary of State with the time he requires to properly screen trigger events, while giving businesses as much certainty as possible about when they can expect decisions. I would go further and say that the Government would welcome informal discussions with parties before the notification stage begins. That would allow parties to prepare for a potential assessment, while also allowing the Secretary of State to better understand the trigger event.

This is part of our commitment to working with investors and businesses in as transparent a manner as possible while protecting national security. However, I stress that a formal notification procedure is still required to enable the Secretary of State to make an informed assessment of the trigger event based on a full suite of information. I hope that hon. Members recognise the importance of clarifying that in writing.

We agree considerably that we want to minimise the burden on businesses and the chilling effect on investment, while securing national security. The clause is an important part of that, so we will not oppose it.

Chi Onwurah: I thank the Minister for his remarks. He is aware of the Opposition’s concerns about the voluntary notification procedure. I shall not repeat what he has said, and we recognise the importance of the clause and of having such a procedure. As with the mandatory notification procedure, the Minister has rejected our request for a requirement to set out the form of that notification. I would like to press him on this and to ask whether he would perhaps write to me to set out formally where it is that the pre-existing requirement that he said exists says that the Secretary of State “must”, rather than “may”, set out the form for the voluntary notification. I am also not clear whether the voluntary notification form format and information requirements are the same as those for the mandatory notification, given the difference in one being voluntary and one mandatory. Clarification on that would be helpful.

We agree considerably that we want to minimise the burden on businesses and the chilling effect on investment, while securing national security. The clause is an important part of that, so we will not oppose it.

Nadhim Zahawi: I am very happy to write to the hon. Lady; I thought that I had touched on that in my earlier remarks. The forms should be very similar, because ultimately the decision-making process of the Secretary of State whether the notification is voluntary or mandatory, will pretty much be the same thing. I am happy to clarify that in writing.

Chi Onwurah: I thank the Minister for that intervention, and we will not oppose clause stand part.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.
That is to say that unless it can be, or is, established that the requirement to provide information is proportionate to what the Secretary of State wants to do under the Act, the Secretary of State is not able to require the provision of information. That is effectively what the clause states.

We have already heard during evidence to the Committee that there may well be a complex web when it comes to getting information and working out what is and is not relevant, particularly if a hostile power or body is seeking to take over a company or gain access to its information and IP. The information may well not consist of what it appears to consist of, or there may be a number of paths by which that information can be obtained.

From our expert witnesses we heard some interesting examples of things they thought looked rather far from the central activity of information provision. For example, on academic projects, in his expert evidence, Charlie Parton from the Royal United Services Institute told us:

"It is quite difficult to distinguish some of these and to know about them all, but a few weeks ago The Daily Telegraph did a story on, I think, Oxford University and Huawei's commissioning of research. I think there were 17 projects. I looked at those, and I am not a technologist by any means, but some of them rang certain alarm bells."—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 6.]

He was suggesting that, of a number of those postgraduate and PhD projects, there were some that he might have put a question mark against and others not, but he was not sure which were which. Nevertheless he seemed to think that some of those research projects—although they were cited within the ordinary parameters of whatever the research project might be, and who might be collaborating with whom, and who might get what information out of that—might ring alarm bells. That was in terms of who was collaborating, how the information might be used and where it might be going.

Peter Grant (Glenrothes) (SNP): I think I understand what the amendment is intended to achieve, but is not the hon. Gentleman concerned about the danger of almost explicitly building in a recognition that the powers in the Bill do not have to be used proportionately?

Dr Whitehead: The hon. Gentleman raises an important point. I will come to the word “proportionate” in a moment, because that is an important part of this clause. I hope I can satisfy him about my concerns about the word “proportionate”. He may want to come back when we have that discussion.

We heard from Sir Richard Dearlove, who said that, “the Chinese are highly organised and strategic in their attitude towards the West and towards us. For example, some of the thousands of Chinese students who are being educated in Western universities, particularly in the UK and the United States, are unquestionably organised and targeted in terms of subjects".—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 19.]

Before we go any further, perhaps I should say that I have nothing against Chinese students coming to the UK. On the contrary, I think that in general, Chinese students in UK universities is a very positive thing, and spreads a very good element of international learning into the process. I also think we might be reasonably confident that those Chinese students are getting as much from us, in terms of our way of life and our way of organising things, as we are from them. I do not think Sir Richard Dearlove’s point was partial towards Chinese students, but he made the point that he thought that some of those students may have targeted, or have been targeted towards particular subjects and areas in the UK and the United States. Again, that is extremely difficult to find out and go forward on.

I am citing those particular expert witnesses in the context of this area of information, particularly concerning somebody—a company, an organisation, or indeed a state actor—that has hostile, malevolent intent towards the information that they have. It is not very likely that they will simply present that information in a ring binder with coloured markers, specifying where the various bits are; it is a very different process indeed. The clause therefore appears to very much limit the extent to which the requirement to provide information can be carried out, and it does so by requiring the provision of information to be proportionate to the use to which the information is to be put.

The word “proportionate” is very important here, and is potentially a real problem in terms of ensuring that the search for information that may be necessary by diverse means can be carried out properly. On the surface, looking at the ordinary language, one might say that the use of the word “proportionate” is a thoroughly good idea. If we apply the ordinary language test—what is the opposite of proportionate?—the opposite would be unproportionate; we would not want the Secretary of State to go about this in an unproportionate way. However, in legal terms, the word “proportionate” has rather a different context.

Proportionality as a legal term is a relative newcomer to the legal lexicon. It entered the legal arena—I am not saying that it had not been used before, but it was put forward as a concept around which a lot of other matters might turn—with the civil litigation reforms introduced in April 2013, known as the Jackson reforms. They covered the concept of proportionality in legal terms as it relates to costs in legal cases, but the question of proportionality was discussed in a wider context. The concept of proportionality, which had not been a particular issue in legal matters before, stuck itself firmly into the legal lexicon. Since then, there have been a number of debates about whether ways of apportioning legal costs were proportionate, even if they might otherwise be seen as reasonable.

Up until that point, the guidance on the issue of proportionality came from Lord Woolf in the Court of Appeal in—I am sure hon. Members will remember the case well—Lownds v. Home Office, where he concluded that if the legal steps that had been taken had been reasonable and necessary, the other party could not object to the cost of these steps on the grounds of proportionality. The test of reasonableness and necessity overrode the question of the grounds of proportionality.

That is what changed in 2013 with the civil litigation reforms. An interesting commentary was made in an article published on 12 March 2014 in The Law Society Gazette, entitled “Proportionality and legal costs”—I am saying all this because I am not sure I will get the article to Hansard easily.

The author had this to say about the meaning of proportionality:

"However, the meaning of proportionality is not straightforward and the new rules do not provide clear guidance on how proportionality should be applied. The suggestion seems to be
that a body of law will develop on a case-by-case basis until gradually the meaning will become clear. Until that happens, litigants, legal advisers and judges will have to guess at what costs will be considered proportionate in particular circumstances.”

3.15 pm

I am keeping the attention of the Committee perfectly.

Nadhim Zahawi: Riveting!

Dr Whitehead: Yes, it is. Only one Member has left the room, so we are still in good order.

Peter Grant: I fear that the hon. Gentleman is taking the definition of proportionality into a context very different from what is mentioned here in the Bill, because this is not about whether the costs of civil proceedings are justified by the likely outcome, or even how those costs should be divided among the parties.

My reading is that subsection (2) is there to prevent a future Secretary of State—obviously, no one in the present Government would ever do this—from imposing extremely onerous requirements on a business, when it was perfectly possible for the Secretary of State to do due diligence and do the checks he needed to do without that information being provided.

I have not heard anything from the hon. Gentleman that would explain why he wants that protection to be taken out. He has said a lot about Chinese students, who may or may not collectively be working against our national interest, but this clause does not protect against that. What does the hon. Gentleman have against the idea that the Secretary of State is not allowed to put unreasonable and onerous demands on businesses when there is no clear benefit to national security of those demands being made?

Dr Whitehead: I hope that the hon. Gentleman will bear with me a few moments longer. Having unpacked “proportionality” in legal rather than colloquial terms, I want to put it back into the clause and see how it works, as far as the concerns of the Secretary of State go.

Indeed, the hon. Member for Glenrothes has questioned what we want to do on this clause in terms of the colloquial understanding of “proportionality”. I have mentioned how “proportionality” has come into the legal arena, specifically in terms of costs. Nevertheless, “proportionality” is now loose in the legal arena, so there is an interesting area of debate about it in general in the legal arena. That is not necessarily solely attached to the question of costs and civil litigation.

The problem is that there is virtually nothing to define that wider issue of proportionality in case law at the moment. Placing that word back into this particular clause suggests to us that the Secretary of State is restricted considerably on how that information may be gathered. The hon. Member for Glenrothes talked about research projects and various other things listed to us by our expert witnesses. I emphasise that I do not want to undermine those research projects or the presence of Chinese students. All I want to underline from that is that, on occasions, the process of getting hold of information and requiring people to give evidence can be convoluted. Indeed, it may require seeking information by going down paths that are not immediately apparent. As I say, it is not a question of someone turning up with a ring binder of things that can be perused.

In this clause, it appears that the Secretary of State may well have denied him or herself the ability to get hold of information, because it states that it has to be “proportionate to the use to which the information is to be put in the carrying out of the Secretary of State’s functions under this Act.”

But he or she will not know about that information until it has been obtained. If there are difficulties in getting hold of the information, he or she will never know whether it is useful for carrying out his or her functions, because there is already a limit on getting the information in the first place.

I have brought the rather wobbly legal status of proportionality into the debate because it is potentially actionable through an obfuscation or refusal to put information forward by those actors. An actor who was required to give information could say, “It appears to me, your honour, that this request for information is not proportionate.” Of course, the Secretary of State may have a different point of view about what is proportionate from the person who is required to give the information.

There is also a vagueness in the application of the term “proportionate”. Although we think we know what it means in common language, that is not the case in the courts. That could be an additional issue that affects the Secretary of State’s ability to get the required information to make a judgment, over and above the fact that he or she may not know that until the information has been collected. So there are two procedural problems in the clause.

The hon. Member for Glenrothes said to me, to put it bluntly, “What exactly are you driving at? Perhaps it is not a good idea to appear to enable the Secretary of State to act disproportionately.” Of course, that is not what we are saying. We know that the Bill is more or less a giant amendment to the Enterprise Act 2002. Indeed, if hon. Members look at the back of the Bill, they will see that the only Act amended by it. Several amendments are made to the 2002 Act, but that is—it is still sited within that Act. That Act was drawn up before the civil litigation changes to proportionality were put in place. The test set out in that Act, which is not amended by the Bill, is one of reasonableness, which is well understood, widely commented on and pretty clear.

If hon. Members consult the 2002 Act, they will see in clause 55 that the Secretary of State, in terms of enforcement, shall take such action “as he considers to be reasonable and practicable to remedy”.

Therefore, we are not saying that the Secretary of State by acting disproportionately should act unreasonably. We are suggesting that the test that should be carried out is one of reasonableness, and should be in this particular clause. As the Enterprise Act already does, that would indeed prevent the Secretary of State going on fishing expeditions and undertaking actions that are wholly disproportionate because they would be unreasonable in terms of the definition of the Act. Our suggestion is to stick by that definition, which would be good enough to restrict the Secretary of State under the different circumstance that we are in today, in terms of
seeking information. At the same time, it would give the Secretary of State the ability to take a path—I have said it is often a convoluted one—to obtain information that can be judged and used for the purpose of this Bill. I hope that the Minister will be favourably inclined towards that slight, but constrained, addition to his powers under this legislation.

Nadhim Zahawi: I am very pleased to be able to respond to the hon. Member for Southampton, Test on these well-intentioned amendments. I assure him that the Government and the Secretary of State will not be relying on a ring binder with highlighted paragraphs, because we have some of the best security and intelligence agencies in the world that would input into that process. It is an absolute joy to see Her Majesty’s Opposition play such a constructive role in the scrutiny of legislation, and to hear such a thoughtful speech.

Amendment 20 would remove subsection (2) of clause 19, through which the Secretary of State will be able to request information only through an information notice, where such requirements to provide information are proportionate. I agree with the hon. Member for Glenrothes on the issue. We have debated the fact that it is actually up to the courts to interpret if a particular acquirer feels somehow hard done by as a result of the process, and that there is a process to go through. The requirement to provide information is proportionate to the use to which the information is to be put in carrying out the Secretary of State’s functions under the Bill.

Amendment 21 seeks to remove subsection (2) of clause 20. Clause 20 enables the Secretary to require the attendance of witnesses and the giving of evidence. Therefore, clause 20 is complementary to clause 19, as it provides, for example, for the Secretary of State to receive expert explanation in person from those involved in a trigger event where the information previously provided does not give sufficient clarity. Clause 20(2) has a similar effect to clause 19(2). It means that the Secretary of State will be able to request information only through an attendance notice where requirement to give evidence is proportionate to the use to which the evidence is to be put in the carrying out of his functions under the Bill.

In response to both amendments, and mindful of the time, I can say that it is our view that any power of the Secretary of State to require the provision of information under clause 19, or to require the attendance of witnesses under clause 20, must be proportionate—indeed, the information-gathering powers are already significant. The Secretary of State may require information from any person in relation to the exercise of his functions under the Bill, which includes various stages of the procedure both before and after the call-in power is exercised. This may include requiring the provision of personal and commercially sensitive information about the parties in relation to a trigger event. There is good reason to include the restriction that any information required by the Secretary of State is proportionate to the use to which it is to be put in carrying out his functions. It is important that there are the safeguards for business. I have to say that I did not expect to be in the position of arguing against greater powers for the Executive from the legislature. It is clear to me, though, that business confidence and our reputation for being open for investment require it.

I hope that I have provided sufficient points of reassurance on these matters, and encourage the hon. Gentleman to withdraw his amendment.

3.30 pm

Dr Whitehead: I appreciate what the Minister has had to say. He is clearly confident that the fine print of this clause is not going to be a problem. I slightly beg to differ: I think it may be. I also wonder whether the Minister has considered the extent to which what is already there—or, should I say, what I think is already there—in the Enterprise Act 2002 effectively restricts the Minister in his actions, in much the same way as this clause does, except that the restriction is much clearer from a legal point of view. That is to say, by relying on the restrictions that are already in the Enterprise Act, the Minister would probably not act any differently from how he would under this particular clause, but by relying on that element of the 2002 Act, his actions would be far less potentially actionable.

Before the Minister gets carried away by the idea that the legislature, or in this instance the Opposition, is clamouring for the Secretary of State to have far more powers, that is not our case. Our case is that it would be rather wiser to restrict what the Secretary of State may do through clearer legal definitions, which are already there, than through the rather woolly definition that is in the Bill. Before the Minister goes home thinking, “I have free rein to do whatever I like now”, that is not so: it is not so according to the Enterprise Act 2002, and it is something we want to stand strongly by. We do not want to underscore the idea that the Minister can act unreasonably, especially since the phrase “acting unreasonably” has a long pedigree, both in terms of civil action and administrative law over a long period of time.

I am sorry that the Minister does not accept our case, with all the caveats on it, although it may be that he is less inclined to accept the case now that we have highlighted the fact that there are caveats on what the Minister can do. I do not think we want to press this amendment to a Division, but we do so rather more in sorrow than in anger, because we think this could have been a prudent way to proceed with this Bill.

Matt Western (Warwick and Leamington) (Lab): As always, my hon. Friend is making important points. I was surprised to see the letter from the Chair of the Intelligence and Security Committee, which dates back to its 2013 report. Does my hon. Friend agree that if that Committee had been involved and consulted before this legislation was drawn up, some of the issues he is raising could have been brought out into the open and addressed better?

Dr Whitehead: My hon. Friend is right. I think that, because things have changed so substantially over the past decade or so, we tend to see things in a way that we may not have easily seen them just a few years ago. Indeed, the expert witnesses who were before us made considerable points on the question of how naïve we had been on some occasions: we had not really taken into account some of the implications of what we were doing, because we did not have a clear picture of the consequences of those actions.
[Dr Whitehead]

My hon. Friend is right—I suppose this is to some extent wisdom of the stairs—that if we could have considered things at that particular point the way we see them now, we would have expressed ourselves in much firmer and more watertight ways. However, I do not think the fact that we did not do so then is any particular excuse for continuing not to do so now. The idea that we may miss out on the ability to get proper information that can point us in the direction we want to go, albeit possibly by very roundabout means, and that we deny ourselves that particular possibility because we have written something in the legislation that stops us doing it does not seem to me to be fully learning the lessons that we might have done from 2013 onwards.

However, far be it from me to lecture the Minister or otherwise on the wisdom of these things; I am sure he is able to decide that subsequently for himself, just as I have challenged him about the wisdom of the Secretary of State’s investment agreements a little while ago concerning Bradwell. I am sure he knows in his heart that that is an appallingly naive thing to have done in those circumstances, and we might have thought differently had that taken place even today. That is the spirit in which we are moving this amendment. As I say, we do not wish to press it to a vote, but I hope the Minister will be able to consider those points and think about how this section might best be applied in the circumstances.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Nadhim Zahawi: Clause 19 gives the Secretary of State the power to require the provision of information in relation to the exercise of his functions under the Bill. The Bill provides for an investment screening regime for national security purposes—a purpose that we all agree merits appropriate tools. As such, it is essential that the Secretary of State is able to access information in order to arrive at decisions that are fully informed. This clause provides for an information notice that the Secretary of State may issue to require any person to provide information that is proportionate to assisting the Secretary of State in carrying out his functions.

Any information notice may specify a time limit for providing the information and the manner in which the information must be provided. An information notice must specify the information sought, the purpose for which it is sought and the possible consequences of not complying with the notice. There is a range of scenarios in which the Secretary of State will need to require the provision of information, and I will provide some examples to illustrate them.

The first scenario is when the Secretary of State has reason to suspect that a trigger event that may give rise to a risk to national security is in progress or contemplation. That could be where an acquisition has not been notified but the Secretary of State becomes aware of it through market monitoring. In that situation, this clause enables the Secretary of State to require the provision of further information to inform a judgment on whether to call the acquisition in.

Secondly, when a party has submitted a voluntary or mandatory notification to the Secretary of State and that notification has been accepted, the Secretary of State may require additional information from the parties to decide whether to call in the trigger event. Thirdly, when a trigger event has been called in, the Secretary of State may need to require that parties provide further information to help to inform decision making. Information notices will allow the Secretary of State to gather evidence to support accurate and timely decision making. Hon. Members will agree that it is entirely proportionate for the Secretary of State to have recourse to this power as part of the investment screening process provided for in the Bill.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Clause 20

Attendance of witnesses

Question proposed, That the clause stand part of the Bill.

Nadhim Zahawi: The clause provides the Secretary of State with the power to require the attendance of witnesses.

The Government are acutely aware that many of the acquisitions considered by this regime will be complex and highly technical. In addition to clause 19, which enables the Secretary of State to require the provision of information, most likely in written form, this clause enables the Secretary of State to require the giving of evidence. A notice requiring a person to attend under this clause is called an “attendance notice”. The clause is complementary to clause 19, discussed previously, as it provides, for example, for the Secretary of State to be able to receive expert explanation, in person, from those involved in a trigger event, where the information previously provided does not provide sufficient clarity.

In responding to an attendance notice and providing evidence, a person is not required to give any evidence that they could not be compelled to give in civil proceedings before the court. That protects privileged information. In addition, the Secretary of State will only be able to request information through an attendance notice that is proportionate in assisting him in carrying out his functions under the regime.

We envisage a range of scenarios where the Secretary of State may require the attendance of a witness in order to gather further evidence to make an informed decision on the case. I will provide a few to illustrate. First, I expect that a number of cases will involve complex acquisitions, either because of the advanced nature of the technology in question, or due to their financial structuring. In those cases, the Secretary of State may require those who hold expert knowledge to provide him with an explanation. There may also be cases where it seems that parties are being deliberately non-compliant, or only partly compliant with information-gathering requests. I expect those to be rare but, again, it is only right that the Secretary of State has the power to require the attendance of those parties to provide further information.

The attendance of witnesses may also be a more efficient way to secure additional information in some circumstances, and limit the risk that further time will be needed to consider additional information. There will be criminal and civil sanctions available to punish
part of the Bill, given the Minister’s clarification on civil proceedings. We do not oppose the clause standing evidence is undertaken at a level commensurate with the Secretary of State is able to specify a time and that the could be wrong. That is the clarification we wanted. On I understand the Minister to have just said—but hey, I what I thought, which is that this can be challenged post hoc but not at the point of giving evidence. That is what I note that, as he said, the witnesses are required to give evidence on the equivalent level of civil proceedings before the court—as the clause states: “A person is not required under this section to give any evidence which that person could not be compelled to give in civil proceedings before the court.”

To return to our previous debate, if that is the test—if the sanction is not a criminal sanction—what if the witness were to say, “I do not consider the evidence I am being required to give to be proportionate to the use to which it will be put”? What would that mean for the evidence in front of the Secretary of State? Would it be stopped? Would the Secretary of State then be unable to sanction that witness further? Or could the witness be compelled to provide information even if they did not think it was proportionate, and could they take action against the Secretary of State on the grounds that the evidence they had given in the first place was not proportionate? Perhaps the Minister could take us through that procedure, possibly in an intervention.

The Chair: If the Minister wishes to make an intervention, that is a matter for him.

Dr Whitehead: I wonder if the Minister might intervene briefly, just to put my mind at rest.

Nadhim Zahawi: I think I have made very clear how these notices will work. The judicial procedure is open to any party that feels hard done by in any way by this Bill.

Dr Whitehead: I thank the Minister for confirming what I thought, which is that this can be challenged post hoc but not at the point of giving evidence. That is what I understand the Minister to have just said—but hey, I could be wrong. That is the clarification we wanted. On the issue of witness attendance, it is important that the Secretary of State is able to specify a time and that the evidence is undertaken at a level commensurate with civil proceedings. We do not oppose the clause standing part of the Bill, given the Minister’s clarification on proceedings involving witnesses.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21

INFORMATION NOTICES AND ATTENDANCE NOTICES: PERSONS OUTSIDE THE UK

Question proposed, That the clause stand part of the Bill.

Nadhim Zahawi: Clause 21 makes provision in respect of the persons on whom the Secretary of State may serve an information notice or an attendance notice outside the United Kingdom. The clause applies in relation to the two earlier clauses. Clause 19 provides the power for the Secretary of State to obtain information either before or after the call-in power is exercised. Clause 20 gives the Secretary of State the power to require the attendance of witnesses to assist him in carrying out his function under the Bill.

Those outside the United Kingdom to whom an information notice or attendance notice may be given are clearly set out in clause 21, which is technical in nature. The purpose is to ensure that certain categories of persons with a connection to the United Kingdom are caught by the information-gathering powers, even if they are outside the UK. These categories of persons are UK nationals, individuals ordinarily resident in the UK, bodies such as companies incorporated or constituted in the UK, and persons carrying on business in the UK. Perhaps more importantly, notices may also be served on persons outside the UK who have acquired, or who are in the process of or are contemplating acquiring, qualifying UK entities or qualifying assets that are either located in the UK or otherwise connected to the UK. In practice, this means that notices may be served on most parties from whom the Secretary of State may wish to require information or evidence.

Peter Grant: I certainly would not seek to oppose this clause, but will the Minister go into a bit more detail about how it works in practice? What if a notice is served on somebody who is not in the United Kingdom, who is not a UK citizen or UK national, who has never set foot in the United Kingdom and quite possibly never intends to, as might happen if a big multinational is seeking to acquire a business interest in the United Kingdom? Is the intention to create an offence that can be committed by somebody with otherwise no connection with the United Kingdom under UK law? That would mean that the person had committed the offence in a different sovereign territory, not even by something they did, but by something they did not do—not responding to a notice and not attending when required.

I understand why the requirement has to apply to everybody, and I understand that there is no point in serving a statutory notice if there are no consequences to refusing to comply with it; I am just not sure about the practicalities. Has the Minister considered alternative sanctions in those circumstances? For example, the person could be disqualified from being a director or a shareholder in significant UK undertakings. That would potentially have the same effect.

It seems to me that, generally speaking, we would create a criminal offence for the conduct of somebody in a different sovereign territory only in specific circumstances. If somebody is serving with the UK armed forces, for example, they might be covered by UK law even when they are serving abroad. The other
The Minister is concerned about setting a precedent whereby we attempt to apply domestic law to the actions or non-actions of people who, in normal circumstances, are covered by the laws of the country they are in and not the criminal law of the United Kingdom? Given that this might create a difficult precedent, is he satisfied that the Government have looked at every possible alternative sanction? This could create a precedent, and other countries could start legislating to say that what UK citizens do in the United Kingdom is contrary to their laws, which would therefore make any of us subject to arrest and prosecution by the authorities of another country. I am a bit concerned about the reaction that might be provoked from Governments elsewhere if we get this part wrong.

**Nadhim Zahawi:** I think the hon. Gentleman is referring to parties that are abroad and have a business in the UK—what if notice is served on them and they are non-compliant? Obviously, under UK law that would be a problem for them. I certainly think that, if an information notice is served, the timeline for the Secretary of State’s assessment of a trigger event is paused until the information is provided from the individual in whatever jurisdiction they or the entity happen to be at the end of the time period provided for compliance in the information notice.

If a party does not comply during the assessment process, that may lead to more onerous and stricter remedies being imposed by the Secretary of State than would otherwise be the case, including the acquisition being blocked or unwound where appropriate. It will therefore plainly be in the interest of those involved directly in the trigger event to provide information in a timely manner to the Secretary of State in order that a speedy decision can be taken. That is where the leverage lies.

**Peter Grant:** I am grateful to the Minister for that clarification. As I say, I fully understand what the Government are attempting to achieve. I would expect that, in those circumstances, the Minister would block the acquisition if there was a serious failure to comply by anybody who was in practice beyond the reach of UK criminal prosecution. I would certainly hope that in those circumstances the Secretary of State would use the other powers to ensure that they could not become a controlling influence on any strategically important UK undertaking.

As I said, I do not want to divide the Committee. I did not even feel it was appropriate to table an amendment, partly because I could not think of a way of amending it that would make it any better. Having made those points, I am grateful for the Minister’s clarification, and we will leave it to future Secretaries of State to implement it as best they can.

**Matt Western:** I will pick up on one issue, which concerns subsection (3)(a). I would like some clarification from the Minister. I am trying to get my head around what is meant by “a qualifying entity which is formed or recognised”.

Could he give an illustration of what is meant by “recognised”? I assume that this is about some takeover, merger or acquisition. Could it be some sort of shell company or some other form? Perhaps the Minister could clarify what is meant by recognition under the law.

**The Chair:** Well, the Minister has not intervened. I call Dr Alan Whitehead.

**Dr Whitehead:** Briefly, we fully understand the purpose of the clause. It is obviously necessary to ensure that witnesses, wherever they are, if they have a relevant interest in these matters, should be made available to give evidence. I share some of the concerns of the hon. Member for Glenrothes about how workable it might be. I particularly wonder whether subsection (2) includes UK overseas nationals. That is particularly relevant to some of our discussions earlier today. I see in the previous clause that if someone is a UK citizen and domiciled in the UK, they get their bus fare paid if they live more than 10 miles away.

**Nadhim Zahawi:** Quite right.

**Dr Whitehead:** But apparently there are no international flight payments as far as overseas witnesses are concerned. I do not know whether the Minister has that in mind, but I note a big difference between the two clauses. If such witnesses could get some payment towards their attendance in the UK, that might resolve some of the problems that the hon. Member for Glenrothes suggested—provided it is economy class, obviously.
NATIONAL SECURITY AND INVESTMENT BILL

Ninth Sitting

Tuesday 8 December 2020

(Morning)

CONTENTS

Clauses 22 to 28 agreed to.
Clause 29 under consideration when the Committee adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 12 December 2020

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The Committee consisted of the following Members:

Chairs: Sir Graham Brady, † Derek Twigg

† Aiken, Nickie (Cities of London and Westminster) (Con)
† Baynes, Simon (Clwyd South) (Con)
† Bowie, Andrew (West Aberdeenshire and Kincardine) (Con)
† Fletcher, Katherine (South Ribble) (Con)
† Flynn, Stephen (Aberdeen South) (SNP)
† Garnier, Mark (Wyre Forest) (Con)
† Gideon, Jo (Stoke-on-Trent Central) (Con)
Grant, Peter (Glenrothes) (SNP)
† Griffith, Andrew (Arundel and South Downs) (Con)
Kinnock, Stephen (Aberavon) (Lab)
† Onwurah, Chi (Newcastle upon Tyne Central) (Lab)
† Tarry, Sam (Ilford South) (Lab)
† Tomlinson, Michael (Lord Commissioner of Her Majesty’s Treasury)
† Western, Matt (Warwick and Leamington) (Lab)
† Whitehead, Dr Alan (Southampton, Test) (Lab)
† Wild, James (North West Norfolk) (Con)
† Zahawi, Nadhim (Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)

Rob Page, Yohanna Sallberg, Committee Clerks

† attended the Committee
Clause 22

FALSE OR MISLEADING INFORMATION

Question proposed, That the clause stand part of the Bill.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): Clause 22 makes provision for circumstances in which false or misleading information is provided to the Secretary of State. Hon. Members will agree that a regime that protects our national security must take appropriate account of those who wish to mislead us. It is not often that hostile actors offer up honest answers to difficult questions. In addition to the penalties that are provided for in clause 40 and elsewhere, the clause ensures that any decision that is taken on the basis of false or misleading information, and which is materially affected by the false or misleading information, may be reconsidered by the Secretary of State. Following reconsideration, the Secretary of State is then free to affirm, vary or revoke any such decision.

That may, for example, involve calling in a trigger event after an initial decision not to do so, if, for instance, it is discovered that false or misleading information was provided in the notification form. That might ultimately lead to remedies being imposed on the trigger event, including blocking or unwinding it where that is necessary and proportionate for the purpose of safeguarding national security. The Secretary of State is required under subsection (5) to give any call-in notice within six months of discovering that the information was false or misleading.

Nadhim Zahawi: I am grateful for the hon. Lady’s question. The Secretary of State has a number of tools available to him, including our security and intelligence services. Of course, if the information is deemed to be false or misleading, he will be able to take appropriate action.

There is otherwise no time limit to revising a decision. The time limits under subsections (2) and (4) of clause 2 for calling in trigger events that have already taken place do not apply. We judge that this is an important signal to send. If people provide us with false or misleading information in relation to a trigger event, the Secretary of State may still call in the event for consideration whenever the false or misleading information comes to light, even if the event has long since completed. If truthful information is provided, the time limits in subsections (2) and (4) of clause 2 apply. If people provide us with the right information, they will have certainty. If they provide us with false or misleading information, we may revisit the trigger event whenever the false or misleading information comes to light.

Without the clause, parties could, in theory, deliberately provide false information to ease the passage of their trigger event. The Secretary of State would then be powerless to reopen the investigation into the event and impose national security remedies on it. I stress that I expect cases involving the provision of false or misleading information to be few and far between, but the Government must take steps to mitigate such risks.

Hon. Members may have some concern that the Secretary of State’s ability to reconsider previous decisions chips away at businesses’ confidence to invest. To those hon. Members, I say that the provision applies only to materially false or misleading information, and even if such information is provided unintentionally, it is essential that the Secretary of State has the power to consider the case one more. Moreover, it may be the case that false or misleading information is provided deliberately by a hostile actor. I hope hon. Members will agree that as well as providing slick and efficient processes for business, the Bill must not leave any loophole to be exploited.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clause 23

MEANING OF “ASSESSMENT PERIOD”

Chi Onwurah: I beg to move amendment 22, in clause 23, page 15, line 15, leave out from “as” until end of line 16 and insert
“as agreed by the Secretary of State in accordance with subsection (9)”.

This amendment seeks to limit the flexibility of extending the assessment period to the conditions set out in subsection (9), and to remove the need for the approval of the acquirer.

The Chair: With this it will be convenient to discuss the following:

Clause stand part.

New Clause 4—Complaints procedure—

(1) The Secretary of State shall by regulations set up a formal complaints procedure through which acquirers may raise complaints about the procedures followed during the course of an assessment under this Act.

(2) Complaints as set out in subsection (1) may be made to a Procedural Officer, who—

(a) must not have been involved in the assessment and who is to consider significant procedural complaints relating to this section or another part of this Act; and

(b) may determine or settle complaints in accordance with regulations to be published by the Secretary of State within 3 months of this Bill becoming an Act.

This new clause would require the Secretary of State to establish a formal complaints procedure for acquirers.
Chi Onwurah: I rise to speak to amendment 22, which is in my name and that of my hon. Friends, and to new clause 4. It is a pleasure to serve under your chairmanship once more, Mr. Twigg, and to find the Committee reconvened for the perusal of the rest of this important Bill. I thank the Minister for the letters that he has sent to me and my hon. Friends, and to the Intelligence and Security Committee, to address some of the questions that arose in previous sittings.

I am glad that, with this amendment, we move on to part 2 of the Bill, which deals with the process of addressing our national security concerns as part of the Bill’s implementation. In clause 23, we are particularly looking at the assessment period. As I have indicated, we support the intention and, indeed, the objectives of the Bill, and we would have welcomed such a Bill some years ago. Our intention, as we have shown, is to be a constructive Opposition and to make constructive proposals, so I will say at the outset that amendment 22 is a probing amendment that seeks to clarify how the Minister thinks the clause will work in practice. The amendment seeks to limit the significant flexibility of extending the assessment period to the conditions set out in subsection (9), and to remove the need for the approval of the acquirer.

As we have said, the Bill marks a radical shift in our nation’s approach to takeovers and investments. It has been labelled a “seismic shift” and a “total transformation”. We want that radical shift to give the Government the powers they need to protect our national security, as we have made clear. To be effective in doing that, the Bill needs to ensure clarity, certainty and competence—competence is a key word—for our businesses. As we have said on a number of occasions, we are particularly concerned about the impact on our small and medium-sized enterprises, which will bear the bulk of the compliance requirements and which do not have the resources that are at the disposal of many of our larger companies.

We want the Minister to provide clarity on the parts of the assessment period that we find uncertain. Specifically, the Government have set out an assessment period timeline of up to 15 weeks, which is 30 working days for an initial period and 45 working days for an additional period. Clause 23 sets out that the initial period may be extended by the Secretary of State for a further 45 working days if he “reasonably believes that...a risk to national security has arisen from the trigger event or would arise from the trigger event if carried into effect, and...reasonably considers that the additional period is required to assess the trigger event further.”

An extension beyond 75 working days—the initial 30-day period plus 45 days—may be agreed between the Secretary of State and the Secretary of State, if the Secretary of State “is satisfied...a risk to national security has arisen from the trigger event or would arise from the trigger event if carried into effect, and...reasonably considers that the period is required to consider whether to make a final order”.

That is described as the “voluntary period”.

Our concern is that the clause offers the potential for unlimited expansion of the timeline—currently labelled, as I said, a “voluntary period” extension. That creates uncertainty for businesses and, indeed, for Government. Subsection (3)(c) suggests that a voluntary period extension “may be agreed in writing between the Secretary of State and the acquirer”, and yet subsection (9) sets out the ways in which the Secretary of State might agree a voluntary period where they are satisfied of the need for it. Is it a voluntary period for both parties? Will the voluntary period truly be voluntary for businesses?

According to subsection (9), the decision seems to be for the Secretary of State. Subsection (9) sets out a number of considerations “on the balance of probabilities”, but subsection (3)(c) implies that the period is at the agreement of the acquirer. What is the process by which an acquirer can deny the extension and what, if any, is the limit on voluntary period extensions? Businesses up and down the country and international investors in Britain’s high-value start-ups will be looking to the Government for greater clarity. We heard numerous calls for greater clarity during the evidence sessions.

The Bill presents uncertainty for not just businesses but the Government. If a business can deny agreement to extensions under subsection (3)(c), where do the Government go then? The Bill creates a 15-week assessment period, but our existing merger control process can last for 32 weeks with a full phase 1 and phase 2 review. Does the Minister concede that it is possible, especially given the likely resourcing clashes—we have already talked about potential conflicts of interest—that the voluntary period extensions will soon become default period extensions? Have the Government given themselves sufficient powers to trigger extensions, or is the current situation uncertain for businesses and for Government?

That concern is especially important because of the evidential thresholds that are required for the voluntary period extension. The Government have set a bar of reasonable suspicion—that is quite common—for a trigger event to be called in, in clause 1(1). Then there is a separate bar of reasonable belief for the Secretary of State to order an additional period, in clause 23(8), and a third bar of being “satisfied, on the balance of probabilities” to get a voluntary period extension. What is the difference between the three standards of reasonable suspicion, reasonable belief, and being satisfied on the balance of probabilities? I am sure that there were specific reasons for drafting those three separate standards. Could the Minister share them with us? Is he confident that this tighter approach for each step will allow the Government sufficient room to ensure that there are robust reviews and to protect our national security, especially given that the regime will be an entirely new one, with an entirely new investment security unit interpreting those three separate bars?

I note that the Government’s impact assessment contains no estimate of how many transactions are expected to require additional and voluntary period extensions. We are about to embark on a vast shift in merger control, with far more engagement and intervention by the Government in our mergers and acquisitions landscape. We seek clarity with this amendment, to give confidence to our small and medium-sized enterprises and to ensure that there is confidence in our national security. We seek to ensure that the Government have a plan and a detailed understanding of it will work to deliver on the Bill’s proposals.

As I mentioned earlier, during our evidence sessions, there was significant demand from experts to ensure the Bill delivers greater certainty. Will Jackson-Moore of PwC said,

“it is about the application of the legislation, in particular the process, the ability to pre-clear and the timelines actually being...
met. To understand some of these technologies is not going to be straightforward.”—[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 115-116, Q152.]

Lisa Wright from Slaughter and May said that

“...for people doing deals around the world who have already experienced those other regimes, it ought not to have any real negative impact at all, provided that BEIS can deliver on the aspiration set out of a slick and efficient regime, turning around notifications within sensible deal timeframes and providing the kind of informal advice and early engagement promised. That will be critical, particularly in the early stages of the regime.”—[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 76, Q91.]

I ask the Minister to consider whether the clause provides that. This amendment, which sets out to limit the flexibility of extending the assessment period to the condition set out in subsection (9) and to remove the need for the approval of the inquirer, is intended to probe and highlight that.

The intention behind new clause 4 is to ensure greater clarity about the apparent omission of any formal complaints procedure for acquirers. We are concerned that it seems as though the Government have not reflected on the scale of the change that our mergers and acquisitions regime is going through in their appreciation of the operational shift needed to deliver on it.

In a sort of a mathematical trick that I fail to follow, the Government’s impact assessment talks only of an additional 18% of cases relative to the regime under the Enterprise Act 2002, but also states that there will be an increase from 12 reviews in 20 years—that is the figure under the current regime—to nearly 2,000 under this regime.

9.45 am

As the expert witness James Palmer of Herbert Smith Freehills said, in seeking to correct the Government’s sums,

“...in my maths, 12 reviews in nearly 20 years going to nearly 2,000 a year is well over a 10,000% increase.”—[Official Report, National Security and Investment Public Bill Committee, Thursday 26 November 2020; c. 92, Q107.]

However, the impact assessment states that there will be an additional 18% of cases relative to the regime under the Enterprise Act 2002. It is almost impossible to imagine that such a huge increase in cases would take place without any concerns or complaints being expressed by businesses. It is a vast change in the task for Government and one on a scale that, I am afraid to say, the Government, in their impact assessment at least, do not seem to fully comprehend.

We have laid out a number of times our clear and specific concerns about the capacity and capability required to deliver this change in a way that works best for British security and British small and medium enterprises. I do not feel that the Government have responded to those concerns. Even with the best delivery—which, I am afraid to say, is in doubt, given what we have and have not heard from the Minister in response to our concerns—a change of this scale must cause challenges. Small and medium enterprises across the country are reasonably concerned about the change and what it will mean for them. Crucially, they are concerned about what they could do if they did not receive fair treatment in this early transition period to a vastly increased case load. I emphasise again that we are going from a standing start—12 reviews in 20 years—to this significant change, so it is almost inevitable that concerns will be raised.

The Minister may say that there are provisions for judicial review. Those provisions may indeed reassure big businesses, but they will not assure some of our brightest businesses. For many of them, the cost and delay of a judicial review would effectively mean the absence of any relief. For a start-up thwarted from a crucial investment because of a delayed national security review, the capital and the time to fight in the courts would simply not be available. I am sure the Minister will recognise that. Having worked with small businesses, he will know that seeking finance and trying to expand and be first in a competitive market really cannot wait for a judicial review.

With this new clause we want to provide relief to those small and medium enterprises and create a source of efficiency for the Government as they implement this major shift in our national security screening regime. In creating alternative and timely dispute resolution, it would also ease the burdens on our courts, especially as they seek to tackle case backlogs from the pandemic period. This change is going to arrive into our judicial system just as our courts are still dealing with the consequences of the pandemic and have a huge backlog of cases.

The new clause would apply the existing Competition and Markets Authority process for procedural disputes to the new national security process. Just as the CMA process works now, an independent procedural officer would be able to resolve disputes over process and timelines in an efficient and accelerated manner, resolving them well before they reached a severity of dispute that only the courts could resolve. The new clause creates efficiency for small and medium enterprises, for Government, and for the courts—win, win, win. It would also ensure greater confidence in the Government’s ability to deliver on the scale of change they propose and hold the new investment security unit to account in an efficient manner. When the Minister gets to his feet, I hope he is ready to accept the new clause, but in the unlikely instance that he is not, will he set out how the new investment security unit will be held to account specifically by small and medium enterprises in a timely manner?

To give what James Palmer from Herbert Smith Freehills said in evidence more fully, he said:

“...there is one data point I did not agree with: the suggestion that there will be an 18% increase in the reviews; it was framed quite narrowly. In my maths, 12 reviews in nearly 20 years going to nearly 2,000 a year is well over a 10,000% increase.”

Does the Minister agree with that maths, rather than that which is in the impact assessment? James Palmer went on to say:

“I think that that is a very important context in which to look at this—as the world outside looks at this, it is potentially looked at as pretty seismic change by the UK.”—[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 92, Q108.]

Does the Minister not think it is appropriate that we have a complaints procedure for this seismic shift? The Competition and Markets Authority currently has a procedural officer mechanism overseen by someone independent of the merger investigation to mediate
process disputes in an efficient manner. This mechanism allows matters such as compliance with timelines, disclosure requirements and redactions to be mediated over in the most efficient and cost-effective way possible, while retaining the full power of the CMA to undertake the investigations it needs to.

I make it clear that we are not suggesting that we should be reviewing whether or not issues of national security are part of this complaints procedure. As with the CMA complaints procedure, this is about process. It is not about whether there is an issue of national security, but about whether or not timelines have been met efficiently, and whether the process has been followed. Indeed, the Secretary of State could set a scope for the procedural officer under the new clause that still created sufficient power to investigate, as BEIS would need to, and to allow a judicial review relief for the most substantive matters, while resolving some process matters efficiently under the proposed mechanism.

I hope the Minister will recognise that, in putting forward the amendment and new clause, we seek to understand better the workings of clause 23, which sets out the meaning of an assessment period—in a way that, I have to say, is not easily understood in terms of timelines. We seek greater clarity about clause 23, which we recognise is essential to the workings of the Bill, and to introduce a means by which the small and medium enterprises on which our economic prosperity and, indeed, our recovery from the greatest recession in 200 years rely, so that they can feel reassured that they have a means of holding this process to account, thereby ensuring the better working of the Bill and the more efficient and effective protection of our national security and investment.

Nadhim Zahawi: With your indulgence, Mr Twigg, I intend to speak first to clause 23 stand part, then to amendment 22 and new clause 4.

We are committed to the regime providing as much clarity, certainty and predictability as possible for businesses and investors. It is therefore right that we are setting out how long the Secretary of State may take to carry out a full national security assessment and make a final decision on a trigger event following a call-in notice.

Subsection (3)(a) provides for an initial assessment period of 30 working days. The Government have taken advice from the security community, and we consider that in the majority of cases 30 working days will allow for a full national security assessment and for the Secretary of State to decide whether to clear the trigger event outright or to impose final remedies on it.

More complex cases are possible, however, and it is important that a longer period is available for the Secretary of State to consider them. The clause therefore enables the Secretary of State to issue a notice to extend the assessment by 45 working days to assess the trigger event further, for example to determine the extent of the national security risk or to decide on appropriate remedies. That is referred to as the “additional period” under subsection (3)(b). The clause also provides for the assessment period to be further extended beyond the additional period, but only with the written consent of the acquirer. That is termed a “voluntary period” under subsection (3)(c).

The Government are clear that extensions should not be used lightly. The clause therefore includes specific legal tests for their use. To extend the assessment into the additional period, the Secretary of State must reasonably believe, as the hon. Lady referred to, that a trigger event has taken place, or is in progress or contemplation, and that this has given or would give rise to a national security risk. The Secretary of State must also reasonably consider that the additional time is required to assess the trigger event further.

To agree a voluntary period extension with the acquirer, the Secretary of State must be satisfied that, on the balance of probabilities, a trigger event has taken place, or is in progress or contemplation, and that this has given or would give rise to a national security risk. The Secretary of State must also reasonably consider—the third bullet point the hon. Lady mentioned—that the period is required to consider whether to impose final remedies or what those remedies should be.

What the Secretary of State may not do is simply extend the assessment period because it is convenient. The clause is drafted in this way to ensure that we protect the investors and businesses that the hon. Lady quite rightly cares about, as do Government Members, and allow them to operate and thrive in our economy. I hope that hon. Members feel assured that the Government have sought to carefully balance the flexibility required for the Secretary of State to deal with the most complex cases and the need to provide businesses and investors with clear time lines.

Matt Western: Just to understand and clarify the point about how realistic the voluntary period might be, in terms of getting the written agreement of the acquirer, in the Minister’s experience, how realistic is it that a business would accede to that? The business might be under financial pressure, looking for cash or a financial injection, which is the whole point about bringing in private equity. How will the Government ensure that that is possible, when all those other pressures are coming into play?

Nadhim Zahawi: I am grateful to the hon. Gentleman; it is a great question. We are all worrying about the small and medium-sized businesses that his particular experience, how realistic is it that a business would accede to that? The business might be under financial pressure, looking for cash or a financial injection, which is the whole point about bringing in private equity. How will the Government ensure that that is possible, when all those other pressures are coming into play?

10 am

Nadhim Zahawi: I am grateful to the hon. Gentleman; it is a great question. We are all worrying about the small and medium-sized businesses that his particular experience, how realistic is it that a business would accede to that? The business might be under financial pressure, looking for cash or a financial injection, which is the whole point about bringing in private equity. How will the Government ensure that that is possible, when all those other pressures are coming into play?

Matt Western: Just to be clear, if a business is desperately seeking that inward investment, surely it would be less likely to write and agree with the Secretary of State about the additional period, because it is desperate for the funds.

Nadhim Zahawi: I absolutely hear what the hon. Gentleman says. The issue then becomes one of national security. As we heard in the evidence sessions, most founders and directors know exactly what they are inventing and what their intellectual property is, and therefore whether there is a national security risk, however nascent the business may be.
[Nadhim Zahawi]

I briefly turn to amendment 22. I am grateful for the Opposition's continued, and in some ways unexpected, push for ever greater powers for the Secretary of State, who I am certain will be most delighted. The amendment would remove the requirement for the Secretary of State to agree the use of a voluntary period or a further voluntary period with the acquirer to consider whether to make a final order or what provision that final order should contain. I do not believe that would be the right approach.

We have set much store in the statutory timescales provided for in the Bill. It is vital for the businesses and investors that we all care about that they have confidence in when they can expect decisions so that they can plan accordingly, which goes back to the point of the hon. Member for Warwick and Leamington about planning in when they can expect decisions so that they can plan accordingly, which is why there are concerns about how that process would be lengthened beyond the customary timeline. Enabling the Secretary of State to do that unilaterally would be a matter of concern for businesses and investment communities alike.

Chi Onwurah: I thank the Minister for his concern about our encouragement, in our probing amendment, of the Secretary of State having greater powers. When the Minister looks at other organisations, such as the Committee on Foreign Investment in the United States or, even closer to home, the CMA in the UK, which do not have voluntary period extensions, can he understand why there are concerns about how that process would work? What international comparisons has he made?

Nadhim Zahawi: We talk to our Five Eyes allies and other nations. As the Secretary of State and I set out on Second Reading, we have worked collaboratively with many nations to try to get the balance right so that the Bill does what it does and is proportionate.

I accept that the amendment also attempts to provide some mitigation against that by directly referencing subsection (9). That existing subsection limits the Secretary of State to being able to agree a voluntary period only where he

"is satisfied, on the balance of probabilities, that...a trigger event has taken place"
or is "in progress or contemplation", and that

"a risk to national security has arisen...or would arise."

He may do so only for the purpose of considering

"whether to make a final order or what provision a final order should contain."

As such, I gently point out to the hon. Lady that the limitations that she seeks to impose on the Secretary of State through the amendment are already provided for by the clause as drafted. Subsection (3) does not provide a parallel or broader power for the Secretary of State to agree a voluntary period or further voluntary periods for other reasons. It is already subject to the limitations set out in subsection (9). I hope that addresses the hon. Lady's principal concern. I assure her that, as with so many areas in the Bill, we are singing from the same hymn sheet. For those reasons, I cannot accept the amendment, and I respectfully ask her to withdraw it.

I will turn very briefly to new clause 4. I am grateful to hon. Members for contributing to the debate by suggesting a new clause to allow acquirers to lodge complaints. Under the current drafting of the Bill, the Government can already be held to account on their performance on screening investments. First, the Government can be held to account through the annual report that they are required to publish, as provided for in clause 61. That provision requires the Government to report on the number of notifications that they have accepted and rejected, the sectors of the economy in relation to which call-in notices were given, the financial assistance provided and the number of final notifications given.

Secondly, the Government can be held to account through the judicial review process under clause 49. Acquirers, or indeed any party to the transaction, can claim for judicial review of a relevant decision. Furthermore, throughout the review process, the parties to an acquisition can contact the investment security unit for a discussion about their case and can request to speak to a senior official if needed. Creating a formal complaints procedure would be unnecessarily bureaucratic when acquirers already have better routes available to them if they are unhappy with the decision-making process.

Members from across the House have commented that it is important—the hon. Lady mentioned this earlier—that the appropriate resources are allocated to the investment screening unit. The Government are absolutely committed to ensuring that that happens. It would be unwise to divert some of those staff from undertaking scrutiny of issues of national security to staff a complaints procedure, particularly where JR is available for any serious concern regarding the process of assessment.

Chi Onwurah: I hear the Minister repeatedly referencing the judicial review process without, I am afraid, addressing our point: judicial review is not an option that will give relief to a small, nimble start-up.

Nadhim Zahawi: I mentioned judicial review as the second way in which the Government can be held to account. The first is the requirement for the Government to report to Parliament annually. Colleagues and Committees will therefore be able scrutinise the work of the unit. Although I understand the hon. Lady's objective with new clause 4, I am not able to accept it for the reasons that I have set out, and I hope that she will agree to withdraw it.

Chi Onwurah: I thank the Committee for considering our amendment and new clause, I thank the Minister for his response and I thank my hon. Friend the Member for Warwick and Leamington for his able interventions.

I am somewhat disappointed by the Minister's response. I think it is absolutely true, as he said, that as with so much, we are on the same page when it comes to what we are trying to achieve. There are significant issues with the clause as it stands, however, and I do not feel that the Minister has addressed them in his response. He did not, for example—I am happy to take interventions on these points—address the issue of voluntary extensions. We do not see that in the US process, which has a number of stages. It allows 45 days for a national security review, including a 30-day limit for the director of national intelligence to submit intelligence analysis
and an option of a 15-day presidential determination if needed, but it does not have a voluntary period for extensions. The CMA in this country does not have a voluntary period for extensions. The Government are introducing a voluntary period.

I thank the Minister for clarifying that as well as having the acquirer’s approval, the Secretary of State has to meet the conditions in subsection (9), and that both the approval and the conditions in that subsection are satisfied on the balance of probabilities. That does not, however, address the issue that my hon. Friend the Member for Warwick and Leamington raised about whether the acquirer is likely to agree to a voluntary period. Without clarity on that point, the clause allows voluntary extensions that, in practical terms, may not prove to be of use to either the acquirer or the Secretary of State.

On the new clause, I do not want to appear cynical, but I am sure that the Minister and those on the Committee who have worked in and with small businesses—particularly in our tech sector and in some of the 17 areas identified for mandatory notification, such as artificial intelligence and data infrastructure—will agree with me when I say that I do think that any small business would see an annual report to Parliament or a judicial review as a relief, given the ever-present desire for investment finance or for progress and innovation at breakneck speed. The Minister has not made a case against the need for a process to address procedural disputes.

I said that amendment 22 was a probing amendment, but I want to test the will of the Committee on supporting greater clarity and understanding for our small and medium-sized enterprises. I will seek to press the amendment to a vote, as I will for new clause 4.

The Chair: The decision on new clause 4 will be taken at the end of the Bill Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 12]

AYES
Flynn, Stephen
Onwurah, Chi
Tarry, Sam

NOES
Aiken, Nickie
Baynes, Simon
Bowie, Andrew
Fletcher, Katherine
Garnier, Mark

Chi Onwurah: I thank my hon. Friend for giving way and for his excellent comments on the amendment. Does he also recognise that the report under clause 61 is the one that the Minister just described as providing accountability to small businesses regarding their concerns about procedure or how they might be affected by the Bill? Does my hon. Friend therefore agree that adding quality to quantity as a function of that report would be a truly important step?

Dr Whitehead: My hon. Friend makes an important point about the overall effect that shining a light on proceedings, and accounting for them, will have. She

The Chair: With this it will be convenient to discuss clause stand part.

Dr Whitehead: The amendment follows on from a number of concerns that have been raised about small businesses, their role in the production of information and attendance notices, and the effect on those small businesses; and about the potential development of a regime that is far more onerous than those in other parts of the world as we pursue the proper purpose of dealing with information and attendance, and shining a light on the activities of companies that may need to declare what they are doing in a reasonably timely way.

I am reminded of the question of reasonable speed and efficiency, as far as notification and evidence are concerned, as our expert witnesses mentioned earlier in our proceedings. Michael Leiter from Skadden, Arps, Slate, Meagher and Flom LLP stated:

"I think it will be an issue unless you are confident that small-scale, early-stage investors can have their transactions quickly reviewed within roughly 30 to 45 days. If it is longer than that, that will make the investment climate, I think, worse than other competing markets. I think that could have an impact."—[Official Report, National Security and Investment Public Bill Committee, Tuesday 24 November 2020; c. 47, Q53.]

The question in front of us is how we ensure that that happens, or at least shine a light on the process and monitor it. The amendment would require the Secretary of State to publish an annual report of quite extensive proportions on proceedings generally under the Act, as it will be. Hon. Members will note that clause 61 provides for what one might call a quantity report. It will record expenditure, the number of mandatory notices accepted and rejected, the number of voluntary notices accepted and rejected, the number of call-in notices, and the number of final notifications. It is an annual numbers report. The amendment would add quality to that quantity.

Chi Onwurah: I thank my hon. Friend for giving way and for his excellent comments on the amendment. Does he also recognise that the report under clause 61 is the one that the Minister just described as providing accountability to small businesses regarding their concerns about procedure or how they might be affected by the Bill? Does my hon. Friend therefore agree that adding quality to quantity as a function of that report would be a truly important step?

Dr Whitehead: My hon. Friend makes an important point about the overall effect that shining a light on proceedings, and accounting for them, will have. She

“(6) The Secretary of State must publish each year the aggregate amount of days included under subsection (4), the number of called-in events for which such days are included, and the number of times information notices are given for each called-in event in the report required at Clause 61.”

This amendment would require the Secretary of State to publish annual reports of how many information notices were given, how many days were added as a result of them, and how many notices were given in each relevant trigger event.
emphasises that it will be important for small businesses—I will come to the mechanisms by which this might be done—to see how effectively things are run and organised, ideally in their own interest when it comes to the question of turnaround in proceedings. I quoted one expert witness, but a number of them emphasised the point about turnaround and the problems that might arise for small businesses as a result of lengthy periods of consideration.

My hon. Friend emphasises what I want to emphasise, which is that the report under clause 61 does not enable anyone to assess efficiency and effectiveness. A reader of that report could look at what has occurred and what numbers have gone out, but it would not allow them to consider the efficiency with which those numbers have been arrived at. Our amendment would make that possible. The report under clause 61 would be on the numbers, but the amendment would make it much easier for a reader of the report to interrogate the numbers, and it would therefore add quality to quantity.

Katherine Fletcher (South Ribble) (Con): The hon. Gentleman mentioned quality and quantity. I have been reflecting on the fact that today is a relatively momentous day, with the first vaccines going into arms. The Committee is lucky enough to have with us the Minister, who has probably been up all night doing that. Although I appreciate that I am not quite speaking to the amendment, I wish him every success with the programme that is now rolling out, which started remarkably quickly after his appointment.

I want to highlight the difference that the amendment would make between quality and quantity. In practice, the decisions about issuing information notices and attendance notices will be taken by the new BEIS investment security unit, although I have to say that we have not heard much information about that unit—its resourcing, practice or key performance indicators. The operation of the entire new regime, its impact on the UK’s status as a place for investment in high-value start-ups—the impact assessment states that about 80% of transactions in the scope of the mandatory notification will affect start-ups and small and medium-sized enterprises—and its impact on national security will depend on the competence of the new unit when it is set up. So far, the Government have laid out limited plans for securing the capacity and capability it needs. In that context, the extent to which the unit will be able to act efficiently and effectively is a potential concern. To some extent, that is a question of its resourcing and of the way it is set up and required to work.

At the moment, we have no method of assessing how the unit is doing in terms of carrying out what the Bill wants it to do. The amendment, among other things, would bring much greater accountability to the unit to ensure that it carries out an efficient and effective national security screening regime. We have to remember that efficiency is about not just how well the unit goes about its business, but what judgments it makes and, for example, whether it gives multiple information notices out to businesses, as it can under the Bill. Each time a successive notice is given out, it would stop the clock on time limits and extend the period in which that overall examination would take place.

Chi Onwurah: My hon. Friend is making a really important point, because we all know that what is measured throws a light on the process behind it. If these orders are not measured, I am concerned that they will effectively be a way for a hard-pressed department to gain more time. We have all seen during this pandemic—I refer not least to responses to parliamentary questions—how pressure on resources has increased timescales in the operation of Government Departments. This amendment would shine a light on that and prevent such misuse.

Dr Whitehead: My hon. Friend makes an important point on the amendment about how we undertake the difficult job of making sure something is efficiently and effectively carried out, while not taking the wheels from
under the organisation as it does its job. That is a difficult process to undertake, because information notices are clearly important, as are attendance notices, and we should have no mechanisms in the Bill that prevent or undermine the ability of the organisation charged with giving notices out to do that properly. That is a given as far as the process is concerned.

However, it is equally important that substantial light is shed on how that process works in practice and whether, over a period of time, that process might be seen not to be working as well as it should be in combining the necessities of those notices with a reasonably fair approach, particularly as far as small businesses are concerned. Managing that metric properly while enabling the unit to carry out its job properly is quite a task.

The amendment would enable us to undertake that task by requiring the recording of quality—that is, the numbers of notices given out, the “aggregate amount of days” that those notices have consumed and the “number of called-in events for which such days are included”.

By enumerating those numbers and putting them together in each report, we can see whether the unit is doing its job well overall, could improve or could undertake activities to make sure that there was a balance between efficiency, effectiveness and fairness in the whole process.

Indeed, it is not just small businesses that might welcome having a light shone on what is being done to them; it would also be a potentially important tool to allow the Secretary of State to see what the unit, which is essentially carrying out the Secretary of State’s work, would be doing over each period of the year. The Secretary of State could use that reporting mechanism as a way of ensuring that the unit is doing what it should and that the principles we have set out in the Bill for the good expedition of information and attendance notices continue to operate in the best possible way over a period of time.

Adding quality to the quantity in the report is good news all around. It enhances the Secretary of State’s ability to manage his or her own Department. It shines a light for those bodies that ought to be co-operators in the process, but that may sometimes feel themselves as victims in the process. It shines a ray of light on the operation of the organisation itself—the unit carrying out these activities—and is therefore a welcome addition to its activities. That will keep it considering the efficiency and effectiveness of its operations in the knowledge that the information will be stuck in a report each year and will be scrutinised in terms of the unit’s activities in carrying out the wishes behind what will be the Act.

The amendment would be a constructive and careful addition to the reporting process, and one that would considerably enhance the effectiveness of the Bill. I hope the Secretary of State can consider it in the light in which it is intended, which is as an addition to the Bill, and not as seeking to undermine the effectiveness of the process or the activities of the unit itself.

Nadhim Zahawi: I am grateful to the hon. Gentleman. I intend to speak first to clause 24 stand part and then turn to amendment 23. Clause 24 concerns the Secretary of State’s information-gathering powers in clause 19 and his power to require the attendance of witnesses in clause 20, with the requirement that national security assessments are completed within a defined period, which appears in clause 23.

Clause 24(4) ensures that the clock is stopped on the assessment period while the Secretary of State waits for information or for the attendance of witnesses, as required through the issuance of the relevant notices. That helps to avoid the Secretary of State being timed out of properly assessing a case simply because someone fails or refuses to provide information or to attend to give evidence.

Amendment 23 seeks to require that the annual report, provided for in clause 61, includes additional information relating to how often subsection (4) is engaged. In particular, it seeks to require the Secretary of State to include the aggregate number of days on which the clock is stopped as a result of the Secretary of State awaiting the provision of information through clause 19 or the attendance of a witness through clause 20. It also seeks to include the number of call-in days, and the number of times information notices are given for each call-in.

Our response has three parts, though the Committee will be relieved to hear that each part is distinctly and deliberately brief. First, clause 24(4) is entirely necessary to help to ensure that the Secretary of State is not timed out. Secondly, clauses 19(1) and 20(1) stipulate that the requirements to provide information or evidence must relate to the Secretary of State’s functions under the Bill. In this context, that means that they have to be relevant to assessing the trigger event and making a decision on it.

The Secretary of State will furthermore need to comply with public law duties when issuing an information notice or attendance notice, which would preclude him from doing so for an improper purpose, not that he would ever contemplate such a thing. A decision to issue a notice would also be subject to judicial review. There are therefore appropriate legal safeguards on the use of information notices and attendance notices. Finally, clause 61 does not preclude the Secretary of State from publishing such information should it later prove a helpful metric for assessing the regime.

Stephen Flynn (Aberdeen South) (SNP): I have a great deal of sympathy for the amendment, but I am conscious that the Minister is unlikely to agree to it, given what he has said. Bearing that in mind, the detail that is being asked for is probably quite straightforward. I would like this on the record: were a Member to ask for such information, would the Department be willing to provide it in the future, notwithstanding the fact that the amendment will likely be defeated?

Nadhim Zahawi: I am grateful to the hon. Gentleman for his ingenious attempt at augmenting this excellent Bill, but for the reasons I have just set out I see no grounds for including the amendment. I therefore ask the hon. Member for Southampton, Test to please withdraw it.

Dr Whitehead: I am not sure that the Minister has given sufficient consideration to what I thought were genuine points concerning, as I set out, both quality and quantity. He says that it will be possible, if the Secretary of State thought it a good idea, to include some of those points in the annual report. Anyway, that comes back to some of our “may” and “must” arguments. The Secretary of State might, if they want to, decide to do that in an annual report, but the circumstances
under which that happened could be that they wanted to say in the report, “The unit is working brilliantly, everything is hunky dory and terrific, and here is the evidence.” Conversely, were the unit not working very well, they might decide not to put those things into an annual report.

Although the Secretary of State would have the ability to add something to the annual report, if they did not want to do it, or they felt that it was a better idea to put such things under the table, away from the light of day, no one else would ever know about it—unless, as the hon. Member for Aberdeen South suggested, some sort of undertaking were given that those numbers were available on request to hon. Members. The formula that the Minister has put forward falls well short of the mark in meeting the three tests that I have put forward for quality plus quality: that the report should be of benefit to the Minister, the unit, and the firms and companies that may be affected. The Minister addresses only one of those three.

Dr Whitehead: I cannot immediately, because as I mentioned, having that information available in some way or other—we suggest it should be in the report—is a win, win, win all round. It is useful for everybody and potentially important for some.

I do not suggest for a moment that there might be anything untoward about hiding that information away, and I am sure that the Minister absolutely would not want that to happen. However, under the mechanism he has set out and his argument for why this amendment is unnecessary, that is precisely what could happen, which is not something that we should feel very happy about. I hope that, as a minimum, the Minister will address that point, along with the intervention by the hon. Member for Aberdeen South about this information being freely available one way or another, whether in a report or not. I will put Committee members out of their misery. I do not think there was sufficient reassurance in the responses that have been given, and I think we ought to divide that amendment.

Chi Onwurah: Given that, as my hon. Friend sets out, this information should be of use to the unit’s internal workings and that it would, I hope, be readily available in the Department, as part of the workflow in modern-day information management systems, can he think of any reason why the Secretary of State would not want to make it available?

Dr Whitehead: I cannot immediately, because as I mentioned, having that information available in some way or other—we suggest it should be in the report—is a win, win, win all round. It is useful for everybody and potentially important for some.

I do not suggest for a moment that there might be anything untoward about hiding that information away, and I am sure that the Minister absolutely would not want that to happen. However, under the mechanism he has set out and his argument for why this amendment is unnecessary, that is precisely what could happen, which is not something that we should feel very happy about. I hope that, as a minimum, the Minister will address that point, along with the intervention by the hon. Member for Aberdeen South about this information being freely available one way or another, whether in a report or not. An overwhelmingly better idea would be simply and unobtrusively to add it to the report, so that we knew it would come out and could refer to it.

I am not sure whether we would seek to divide the Committee on this—[Interruption]—but I think we might. Like my hon. Friend the Member for Newcastle upon Tyne Central, I am slightly at a loss as to why this provision would not be acknowledged and put in the Bill, or something close to it, one way or another. I invite the Minister to intervene to say whether the disclosure of this information on a regular basis would happen in the report or whether he will give an undertaking to ensure that happens in passing this legislation.

Nadhim Zahawi: We have very carefully considered the types of information that would be helpful to investors. The direction of travel—this was the question raised earlier by the hon. Member for Aberdeen South—for Parliament and the public was to include that information in the annual statement. The Committee should also note that the list does not prevent us from adding other relevant non-sensitive information, as I mentioned earlier. I hope the hon. Member will see fit—I know there is a slight disagreement on the shadow Front Bench—to withdraw the amendment.

Dr Whitehead: I think there is not so much disagreement as puzzlement.

Nadhim Zahawi: I heard the hon. Gentleman say that he was going to withdraw the amendment, then the hon. Member for Newcastle upon Tyne Central said, “No, we’re going to put it to a vote.”

Dr Whitehead: To be precise, I said that I was not sure whether we should divide, because we are a little bemused as to why, one way or another, that information should not be within the report or the Minister could not make a firm statement that it will be regularly available, and the Minister has not said either in his response.

Chi Onwurah: My hon. Friend is making an excellent point. Does he agree that it would be helpful if we could be sure that the Minister’s accuracy were not as low when reporting my hon. Friend’s words as when reporting on the functioning of the clause?

Dr Whitehead: To be kind, I think the Minister was reflecting on what the motives for our brief discussion about dividing might have been, rather than attempting in any way to put words in people’s mouths that were not there.

I will put Committee members out of their misery. I do not think there was sufficient reassurance in the responses that have been given, and I think we ought to record that we would like the amendment to be in the Bill. Therefore, we will divide the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 13]

**AYES**

Flynn, Stephen  
Onwurah, Chi  
Tarry, Sam  
Whitehead, Dr Alan

**NOES**

Aiken, Nickie  
Bayneea, Simon  
Bowie, Andrew  
Fletcher, Katherine  
Garnier, Mark  
Gideon, Jo  
Griffith, Andrew  
Tomlinson, Michael  
Wild, James  
Zahawi, Nadhim

Question accordingly negatived.  
Clause 24 ordered to stand part of the Bill.

**Clause 25**

INTERIM ORDERS

**Question proposed, That the clause stand part of the Bill.**

**The Chair:** With this it will be convenient to discuss clauses 26 to 28 stand part.
Nadhim Zahawi: I turn to clauses 25 to 28, which I shall treat together, as they all relate to orders that the Secretary of State may make in relation to notifiable cases under the national security and investment regime. It is important that, during any national security assessment following a trigger event being called in, parties do not act in a way that undermines the assessment or any remedies that might be imposed at the end of it. Clause 25 therefore gives the Secretary of State the power to impose requirements for the purpose of preventing, reversing or mitigating actions that might pre-empt the regime through what is known as an interim order. In practice, this could include requiring that the parties do not complete a trigger event until a final decision has been issued, or, where the Secretary of State is concerned about access to sensitive intellectual property, an order could be used to prohibit the intellectual property from being transferred or shared pending the outcome of the assessment. The power is necessarily flexible to allow conditions to be tailored to particular cases and particular risks, although it rightly comes with important safeguards.

First, interim orders may be made only during the formal assessment period when a trigger event has already met the legal test to be called in for a full assessment. The Secretary of State may not, therefore, impose an interim order before he has called in a trigger event, which I hope hon. Members will agree is a significant bar to meet in and of itself. Secondly, the Secretary of State must reasonably consider that the provisions are necessary and proportionate for the purpose of preventing, reversing or mitigating a pre-emptive action. Any decision to make an order would be open to judicial review.

Thirdly, as an interim measure it is inherently time limited. In a particular case, there might be a reason why a requirement is not needed for the full duration of the assessment period. Consequently, a specific end date might be given in an order. Furthermore, unless an earlier date has been specified in the order, or the order has been revoked, an interim order will cease to have effect once the Secretary of State has given a final notification or made a final order decision.

The Bill also includes specific provisions for interim orders to be kept under review and for those subject to them to request that they be varied or revoked. That is provided for in clause 27. Without clause 25, it would be possible for a dangerous acquisition outside of the mandatory sectors to be completed before the Secretary of State has an opportunity to assess it properly. Indeed, the Government expect a genuinely determined hostile actor to seek to do just that.

Clause 26 provides for the Secretary of State either to put in place effective remedies to counter national security risks discovered during an assessment of a trigger event, or to clear a trigger event where no national security risk is found. The clause therefore provides for both final orders and final notifications, and subsection (1) requires the Secretary of State either to make a final order or to give a final notification before the end of the assessment period. Final notifications act as notice to parties that no further action is to be taken under the Bill in relation to the call-in notice.

Final orders seek to address any national security risks found during an assessment. Those will not be arbitrary and will be subject to a strict legal test. First, the Secretary of State must be satisfied on the balance of probabilities that a trigger event has taken place or is in progress or contemplation and that this would give rise to a national security risk if carried into effect.

Secondly, the Secretary of State must reasonably consider that the provisions of the order are necessary and proportionate for the purpose of preventing remedy or mitigating the risk.

The permitted contents for final orders are set out in subsection (5). This includes the power to put certain conditions on a trigger event before it can proceed, or for it to remain in place. The subsection also gives the Secretary of State the power to block a trigger event or, where it has already taken place, require that to be unwound. I make it clear to hon. Members that such a course of action would be a last resort. In the nearly two decades since the Enterprise Act 2002 came into force, no Government of either colour has blocked a deal on national security grounds. However, it is still a necessary power to have. There might be some cases where a trigger event poses such an acute risk that it cannot be allowed to proceed in any form, and it would be irresponsible to leave our country unprotected.

Clause 27 provides important safeguards on the continued operation of interim orders and final orders. First, it requires the Secretary of State to keep interim and final orders under review to ensure that they are relevant and proportionate. Secondly, it empowers him to vary or revoke such orders. Thirdly, it compels him to consider any request to vary or revoke an order as soon as practicable after receiving such a request.

Dr Whitehead: Does the Minister consider that the arrangements in clauses 25 to 28 for variations, revocations and exemptions are a proper subject for inclusion in an annual report? As he will observe, clause 61 on the annual report states that the

“The Secretary of State must, in relation to each relevant period—

(a) prepare a report in accordance with this section”.

Although not specifically covered by the word “must” in the clause, does the Minister consider that the arrangements in these clauses are a proper subject for the annual report?

11 am

Nadhim Zahawi: I am grateful to the hon. Gentleman. We have had that debate already, and we have set out clearly what we think is appropriate to be in the report, notwithstanding what we might do in future if that allows investors to have greater clarity.

Matt Western: I was going to make exactly the same point as my hon. Friend the Member for Southampton, Test. Surely the intent behind the question is how we make the operation of the provision much more efficient. We are starting from a zero base. The suggestion that we consider future demands and implications is a constructive one.

Nadhim Zahawi: I see where the hon. Gentleman is coming from. The House has many levers at its disposal, including the Select Committee process, to probe the effectiveness of the new regime.

I shall now make some headway. The provision is designed to ensure that orders reflect changing circumstances and do not remain in force for perpetuity without further consideration. Parties subject to orders
may themselves request that the Secretary of State vary or revoke their order. This is another mechanism to ensure that orders remain appropriate. The Secretary of State must consider such requests unless the request relates to a final order and, in the opinion of the Secretary of State, there has been no material change in circumstances since the order was made or last varied, or if the party concerned has previously made a request to vary or revoke the order since that request.

Chi Onwurah: I thank the Minister for the progress he is making in reading out the provisions of these clauses, but I am trying to understand the length of time that an interim order can be in force. What is the maximum time an interim order can be in force?

Nadhim Zahawi: It is time limited, but that does not specify what the time needs to be. I will happily write to the hon. Lady.

Chi Onwurah: I am not sure that it is time limited, because of the number of additional voluntary periods that the Secretary of State can invoke.

Nadhim Zahawi: I am happy to come back to the hon. Lady on that point.

Clause 28 requires that orders made under this Bill be served on anyone required to comply with them and anyone with whom the call-in notice was served. The clause also places certain requirements on the contents of orders or accompanying explanatory material as well as giving the Secretary of State the power to exclude sensitive information. The clause sets out the process that the Secretary of State must follow after making an interim order or final order. This provides the clarity and predictability that we all want for businesses and investors.

First, clause 25 requires the Secretary of State to serve the order on everyone who needs to be aware of it, including anyone who is required to comply with it as well as anyone on whom the call-in notice was served. That will provide clarity for affected parties. The Secretary of State is also required to serve the order on such other persons as he considers appropriate—for example, a regulator who is considering the trigger event might need to be aware of the terms of an order.

Secondly, the clause sets out the information that must be contained within an order or its accompanying explanatory material, including the reasons for making the order, the trigger event to which the order relates, the date on which the order comes into force, and the possible consequences of not complying with the order. That will help to ensure that parties are clear about why the Secretary of State has made the order and what they must now do as a result.

Thirdly, the clause enables the Secretary of State to exclude information from a copy of an order or its accompanying explanatory material that he considers commercially sensitive or national security sensitive. That will help to ensure that the process of serving orders does not negatively impact on parties’ commercial interest or on our national security interest. The clause makes provision for notifying those affected by variations and revocations of orders, with a view to ensuring that they are properly communicated in a timely manner.

I hope that hon. Members feel reassured that clauses 25 to 28 will frustrate hostile actors and enable the Government to work with business in executing this regime, that there are safeguards to ensure that orders do not stay in place longer than is necessary or proportionate, and that all relevant parties will have the information they need in relation to orders. I therefore commend the clauses to the Committee.

Chi Onwurah: Let me start my thanking the Minister for setting out the purpose and details of clauses 25 to 28, which set out the remedies and the process of the timelines that we discussed in relation to clause 23. As he has suggested, and as the Opposition recognise, many of our amendments and arguments have been focused on trying to ensure that the process of assessment, interim orders and final orders works not just as effectively as possible, but as clearly as possible. It should be as clear as possible to the many businesses that will come under the remit of the Bill, particularly the small and medium-sized enterprises that the Opposition seek to champion.

On the requirements for interim orders, which are set out in clause 25, the Minister is absolutely right to say that we have to have regard to the actions of hostile actors. Indeed, we will be looking for greater clarity on who those hostile actors might be, but we have to recognise that hostile actors might seek to circumvent the provisions of the Bill in order to make off with important intellectual property or to otherwise influence the companies’ assets that they are seeking to acquire. We therefore recognise the importance of interim orders, as set out in clause 25. As I have told the Minister, I am not clear about the maximum timeline that the interim orders can be in place. Regardless of that, it is clearly necessary for them to be put in place and to be defined. They need to be reviewed and rewritten, and other provisions in clause 25 set that out.

My understanding is that interim orders give way to final orders and the final notifications. Although we have some concerns about how those notifications are to be made, which we shall consider later, a final order, made as effectively and quickly as possible, is clearly important.

I am not sure that the Minister made it clear in clause 26(4):

“Before making a final order the Secretary of State must consider any representations made to the Secretary of State”. This seems to me to be a very broad statement, yet here we see—as I am sure my hon. Friend the Member for Southampton, Test will observe—that it does not say “may”, but “must”. I am not clear what that is seeking to address, as I would have thought that it was normal practice for the Secretary of State to consider representations made to them.

I wonder whether this is setting up the potential for a future judicial—or other—review, should any representation be made that was not considered to have been considered. Perhaps the Minister will write to me to give his view on that, or to set out what part of the process that statement is trying to address or give accountability on.

Nadhim Zahawi: If the hon. Lady’s question is about how broad clause 26 is...

Chi Onwurah: Clause 26(4).
Nadhim Zahawi: The reason for that is to enable the Secretary of State to tailor remedies accordingly, as a limited list of remedies could result in risks being ineffectively addressed. I am happy to write to her on anything else she requires.

Chi Onwurah: My question is not about the broadness of the orders, or even the discretion that the Secretary of State has, because, as the Minister has observed, we have sought to probe that level of discretion in these powers; it is about the broadness of the provision that: “Before making a final order the Secretary of State must consider any representations made to the Secretary of State”. What is meant by “consider”? How would a failure to do so be identified and reported on, and how would the Secretary of State be held to account? I seek further clarity on that. Perhaps it is obvious to the Minister, and perhaps it is just to me that it is not obvious.

I would say, in agreeing to the provisions set out in clauses 25 to 27, that there are concerns that they will not be part of the general reporting, certainly in the provisions of clause 25, and interim reports are not mentioned in clause 61. I share the concerns of my hon. Friend the Member for Southampton, Test about a lack of reporting on the provisions of the Bill, but we recognise the importance of the clauses and will not be opposing them.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

Clauses 26 to 28 ordered to stand part of the Bill.

Mark Garnier (Wyre Forest) (Con): On a point of order, Mr Twigg. Is it possible to turn up the heating in here? It is incredibly cold.

The Chair: I am sorry, but there is nothing I can do about that.

Mark Garnier: I think there is recommended guidance of 16°C.

The Chair: I am afraid that is not in my power. We have 10 minutes more to get through. We will ask about heating, but I do not think there is much we can do about it.

Clause 29

Publication of Notice of Final Order

11.15 am

Sam Tarry (Ilford South) (Lab): I beg to move amendment 27, in clause 29, page 19, line 39, leave out paragraph (a) and insert—

“(a) would be likely to prejudice the commercial interests of any person and where the publication would not be in the public interest, or”.

This amendment would prevent the Secretary of State from redacting notices of final order (and information within them) on commercial grounds if redacting is contrary to the public interest.

It is a pleasure to serve under your chairmanship on this frosty morning, Mr Twigg. The amendment is on the public interest for disclosure. It is really about preventing the Secretary of State from redacting notices of final order and the information with them. The Opposition believe that commercial grounds for redacting are contrary to the public interest. It is about putting as much information as possible into the public realm about stuff that is particularly controversial but is really about clear protection of our national security.

Our strong belief is that the fundamental task of any Government, and the reason for the Bill overall, is the protection of our national security. A critical driver of that security is the wider public understanding of the rapidly changing threats that we face, and the different sources of those threats. We have heard from various expert witnesses over the past few weeks that other countries understand, perhaps far better than we do, what some of those threats are, and that our public understanding of threats is even more limited.

When Sir Richard Dearlove gave evidence, with vast experience spanning decades, he said:

“What is important about the Bill is that it raises parliamentary and public awareness of the issue.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020, c. 24, Q30.]

Everyone on both sides of the House would like to see that. He also said, talking about China specifically:

“We need to conduct our relationship with China with much more wisdom and care. The Chinese understand us incredibly well. They have put their leadership through our universities for 20 or 30 years. We in comparison hardly know anything about China”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020, c. 20, Q21.]

The wider point in his evidence was that for too long our business priorities and the desire to be an attractive investment destination had overridden some of the security concerns, across a number of different Governments, perhaps creating a pattern of not taking the threats posed by China as seriously as possible.

The Bill requires the Secretary of State to publish notices of final order, setting out the details of persons and events involving national security that meant the notices were made. Those details are critical to our security and to our understanding of the threats. They must be made public. The amendment would put into the public domain the accurate information that will create public confidence on what the clause seeks to achieve.

As drafted, the clause prevents the publication of information that is critical to our security if it prejudices commercial interest. The Opposition believe that is the wrong judgment. The whole point of the Bill is to take a more strategic view, as indicated by Sir Richard Dearlove. The focus should be on long-term security, but the Bill is a way to protect not only security but our long-term commercial interests. The approach in the amendment might mean some short-term commercial challenges, but it is absolutely right for our national security and our longer-term prosperity.

The amendment would require the Government to publish all details of a final order notice where it is in the interests of national security and the public interest, even when commercial interest could be prejudiced. Where a hostile actor acts against our security interests, it is crucial for the British public to know about it and that we have some appropriate conversations in the public domain. Not to disclose such threats or events for the sake of protecting imminent profits in the short term would be the wrong judgment.

Chi Onwurah: I thank my hon. Friend for the amendment and for the excellent point that he is making. Does he think that if a company was being acquired by a hostile actor, and the Secretary of State thought that knowledge...
of the acquisition would be detrimental to the commercial interests of the company, the clause would allow the Secretary of State to redact that information? It would be in the general public’s interest to know that such an acquisition was taking place.

Sam Tarry: My hon. Friend makes a very good point. It is our belief that national security must be the overriding priority when threats emerge in an ever-changing world. We have heard evidence that threats that should have been seen were not dealt with in the correct way. Bringing that into the public domain through the amendment is incredibly important. That would override the short-term commercial pain if it guaranteed that security was paramount.

If we did not disclose such threats or events, and the focus was just on the short-term protection of swift profits, that would be the wrong judgment, because it would downgrade the overarching purpose of the Bill, which is to use all its mechanisms to enhance our security and ensure that we are on top of it at all times. The amendment would correct the focal point of this area of the Bill, by requiring before any redaction on commercial grounds an assessment of whether publishing would be in the public interest. That puts the onus on, and gives power to, the Secretary of State to make those crucial judgments.

Chi Onwurah: I rise to say a few words in support of my hon. Friend’s amendment. The excellent points that he has made have highlighted a theme of the Committee’s discussions: the potential conflict between the Department’s focus on supporting business and investment into the UK, and our national security. As he set out, the public interest might be in knowing that a hostile acquisition was taking place and in being better informed generally about national security. In addition, I can think of many examples in which the knowledge that a company had come into the purview of the Bill could have a detrimental impact on its stock valuation or reputation.

When the Minister responds, I hope that he will set out what he expects the Secretary of State to do when there is a conflict of interest between public knowledge of hostile actors and specific measures in the Bill to ensure that companies related to potential hostile actors, or those for whom our national security is not in their interests—through chains of influence or company holdings, for example—should not be beyond the reach of the Bill. The clause, by enabling the Secretary of State to leave out details that prejudice the commercial interests of any person, seems to put the focus back on commercial interests rather than national security. The amendment would put the focus back on national security and the public interest.

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o’clock.
Public Bill Committee

NATIONAL SECURITY AND INVESTMENT BILL

Tenth Sitting
Tuesday 8 December 2020
(Afternoon)

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ClAUSES 29 to 52 agreed to.
Adjourned till Thursday 10 December at half-past Eleven o’clock.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 12 December 2020
The Committee consisted of the following Members:

Chair: † Sir Graham Brady, Derek Twigg

† Aiken, Nickie (Cities of London and Westminster) (Con)
† Baynes, Simon (Clwyd South) (Con)
† Bowie, Andrew (West Aberdeenshire and Kincardine) (Con)
† Fletcher, Katherine (South Ribble) (Con)
† Flynn, Stephen (Aberdeen South) (SNP)
† Garnier, Mark (Wyre Forest) (Con)
† Gideon, Jo (Stoke-on-Trent Central) (Con)
† Grant, Peter (Glenrothes) (SNP)
† Griffith, Andrew (Arundel and South Downs) (Con)
Kinnock, Stephen (Aberavon) (Lab)
† Onwurah, Chi (Newcastle upon Tyne Central) (Lab)
† Tarry, Sam (Ilford South) (Lab)
† Tomlinson, Michael (Lord Commissioner of Her Majesty's Treasury)
† Western, Matt (Warwick and Leamington) (Lab)
† Whitehead, Dr Alan (Southampton, Test) (Lab)
† Wild, James (North West Norfolk) (Con)
† Zahawi, Nadhim (Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)

Rob Page, Yohanna Sallberg, Committee Clerks

† attended the Committee
The Chair: Before we adjourned, the Committee was considering amendment 27 to clause 29, and I believe that Chi Onwurah was in the process of concluding her remarks.

Clause 29

**Publication of notice of final order**

Amendment proposed this day: 27, in clause 29, page 19, line 39, leave out paragraph (a) and insert—

“(a) would be likely to prejudice the commercial interests of any person and where the publication would not be in the public interest, or”—(Sam Tarry.)

This amendment would prevent the Secretary of State from redacting information in a notice, including, crucially, a summary of the order, if redacting is contrary to the public interest.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I had been just about to conclude by saying that a key reason for the amendment moved by my hon. Friend the Member for Ilford South is that it asserts and requires the supremacy of the public interest over commercial interest in the Secretary of State’s actions in reporting on final notices. I hope that the Minister will accept the amendment.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): With your permission, Sir Graham, I will speak to clause 29 stand part before turning to the amendment. The Committee has heard about the careful balance that the Government are striking in this regime by allowing for a discreet and commercially sensitive screening process wherever possible, while requiring transparency at key junctures where not to do so may disadvantage third parties. As I set out, this is a key clause, the purpose of which is to deliver that carefully balanced transparency. Inherent in the clause is the degree of flexibility afforded to the Secretary of State to redact information when he judges that to be appropriate, whether for commercial or national security reasons. I hesitate slightly to return to a somewhat recurring theme—the difference between “may” and “shall”—but the fact that the Secretary of State “may” redact information provides him with the flexibility to decide case by case whether that is the right thing to do.

The hon. Member for Ilford South seeks to ensure with this amendment that the Secretary of State will not disregard the public interest when using the flexibility on deciding whether to redact information. The hon. Gentleman need not worry; that is my message to him. The Secretary of State will always seek to serve the public interest in this Bill and in all that he does. I can therefore assure the hon. Gentleman that the Secretary of State will carefully consider any redactions made and that he will not take the decision to exclude information lightly.

Chi Onwurah rose—

Nadhim Zahawi: I suspect that the hon. Member for Ilford South may wonder why, if it makes so little difference, we do not include his amendment and formalise the importance of considering the public interest. I suspect that that is also the point on which the hon. Lady wishes to intervene.

Chi Onwurah: The Committee recognises the importance of giving the powers in the Bill to the Secretary of State in the interests of national security. The powers of redaction are, or could be, in the interests of commercial sensitivity. Does the Minister agree that national security and the public interest should be supreme over commercial sensitivity? Why will he not make that clear?
Nadhim Zahawi: I thought I had made that clear. The Bill strikes that balance between commercial sensitivity and national security.

I return to my reassurance on the importance of considering the public interest. In addition to the general principle that one should avoid amending clauses that, essentially, fulfill their objectives—if it isn’t broken, don’t fix it—I suggest that the Bill is not the place to begin adding references to the public interest. While the Secretary of State cares profoundly about the public interest, this specific regime is intentionally and carefully focused on national security. Although it may be an attractive proposition to certain hon. Members, my strong view is that by introducing ideas of wider public interest into the Bill, we would risk confusing and stretching its scope beyond its carefully crafted calibration. I have a tremendous amount of sympathy with what hon. Members seek to achieve with the amendment but, for the reasons I have set out, I must ask that the hon. Gentleman withdraws it.

Sam Tarry (Ilford South) (Lab): It is a pleasure to serve under your chairmanship, Sir Graham, in these temperatures, which are positively balmy compared with the Siberian ones that we experienced this morning.

I thank the Minister for his comments, but I would say that there is no stretch too far on national security. It is positive to hear that the Minister agrees that the focus on national security is crucial, and that we are driving at the interests of national security in our amendment.

Chi Onwurah: Was my hon. Friend as confused as I was when the Minister spoke about this Bill not being the place to introduce public interest? The Government, however, have introduced commercial sensitivity. We are not seeking to modify national security; it is the introduction of commercial sensitivity that requires the introduction of public interest. We are talking about modifying the importance of commercial sensitivity, not national security. Will my hon. Friend join me in rejecting the Minister’s assertion?

Sam Tarry: I agree wholeheartedly with my hon. Friend. We have been clear that the amendment is simply about preventing the Secretary of State from redacting notices of final order on commercial grounds, if redaction is contrary to the public interest. The whole point of this Bill is to together public interest, national security and commercial interest because they are one and the same. National security is our highest priority, but in the post-Brexit scenario we want to be a country that is as open and positive as possible towards investment from international partners if they share our values and our objectives of supporting and building Britain. It feels as though the Minister is agreeing with us in part, but he is not prepared to accept this amendment. For that reason, I will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 10.

Division No. 14]

AYES

Onwurah, Chi

Tarry, Sam

Garnier, Mark

NOES

Aiken, Nickie

Baynes, Simon

Bowie, Andrew

Fletcher, Katherine

Gideon, Jo

Griffith, Andrew

Tomlinson, Michael

Wild, James

Zahawi, Nadhim

Question accordingly negatived.

Clause 29 ordered to stand part of the Bill.

Clause 30

FINANCIAL ASSISTANCE

Chi Onwurah: I beg to move amendment 24, in clause 30, page 19, line 44, leave out “making of a final order” and insert “making of an interim or a final order”.

This amendment would enable the Secretary of State to give financial assistance in consequence of the making of an interim order.

The Chair: With this it will be convenient to discuss the following:

Amendment 28, in clause 30, page 20, line 3, after “period” insert “or any calendar year."

This amendment would make it mandatory for the Government to inform Parliament if financial assistance given in any financial year, or in any calendar year, exceeds £100 million.

Clause stand part.

Chi Onwurah: My hon. Friends and I have set out how we are seeking to provide constructive support and improvement for this Bill. I am disappointed that the Minister seems to feel that no improvement is possible, but I hope to persuade him otherwise with amendment 24. It is not a probing amendment; it brings a much-needed improvement to what I consider to be an incomprehensible omission in clause 30.

Clause 30 provides that the Secretary of State may, with the consent of the Treasury, give financial assistance to, or in respect of, an entity through a loan guarantee or indemnity, or any other form of financial assistance. The financial assistance must be given as a consequence of him making a final order. That is a key point that I will return to.

Clause 30 further states that during any financial year, if the amount given under the clause totals £100 million or more, the Secretary of State must lay a report of the amount before the House of Commons. It states that during any financial year in which a report has been laid before Parliament, if the Secretary of State provides any further financial assistance under this clause, he must lay before the House a report of the amount.

I set that out to indicate that, as I understand it, the amount of financial assistance that can be provided is not limited. A report must be provided when the amount given under this clause totals £100 million or more, but there is no limit on the amount which can be provided. One would expect the Treasury to provide a limit in any year, but the Bill does not set any limit on the amount of financial assistance that the Secretary of State can make available. It does not, however, provide for any financial assistance in the case of an interim order. The
provision applies only to a final order, specifically in clause 30, on page 19, in line 44. That is why we seek simply to change that to include interim orders under the scope of the financial assistance clause.

2.15 pm

The theme of the Opposition amendments is that we wish to protect our national security, and we think that the measures could have been taken earlier. Part of the social contract is that that should be done in a way that is fair, clear and certain for businesses, so that they understand the legislative framework as far as possible, and so that they feel that it is fair and in the interests of our national security and, as part of that, our national prosperity.

Given the broad powers that the Bill gives the Secretary of State, about which we have had some back and forth, it is all the more important that the appropriate support should be there for affected businesses. I will not trespass on your good nature by drawing too many parallels, Sir Graham, but we see in the pandemic under which we are suffering that public confidence in the ability of the Government depends on the right amount of support being available for those who are adversely affected. Clearly, one aspect of that is the Government’s ability to provide financial assistance to an entity where Government intervention creates a position of loss for the entity.

We discussed in relation to clauses 24 to 26 the level of remedies, in terms of an interim or final notification and how they may affect an entity. Let us consider the example of a British start-up in some very important area—artificial intelligence, let us say—that has an investor lined up and is looking forward to expanding its work because of that investor. As a consequence of the measures in the Bill, however, a final order prevents the investor from investing in this fantastic start-up.

Let us say for the purposes of argument that this start-up is based in Newcastle—an excellent area for start-ups and innovation to come from. I should say that a fantastic small business in Newcastle will already have greater challenges in finding finance and investors, because unfortunately many potential investors are apparently put off by a short train ride from King’s Cross. Once the start-up has found a potential investor, under the provisions of the Bill it is identified that such an investment would form some present or future threat to our national security, so the start-up is prevented from raising funding as a direct consequence of the new national security screening regime. We can all imagine—in fact, it does not require imagination; we can simply anticipate—the huge financial challenges that that might create for small, innovative start-ups. Financial assistance is a critical part of making the new regime effective. A key question is why the Government are only creating the power to provide such assistance in the making of final orders, not interim orders.

I asked earlier what the maximum period for an interim order should be, because with the provisions in clause 23 for an initial period, an additional period, and an additional voluntary period, an interim order could last for a considerable time. I asked the Minister whether there was a maximum time for an interim order. Regardless, an interim order could impose major costs on a British start-up or prevent an acquirer from acquiring an investor or being made for national security reasons or to replace existing investments. There was not sufficient clarity or accountability. Would it not be better to place such investments, which are made in the interests of national security, within the context of the Bill? Would there be a benefit from placing such powers in statute?

Beyond specific events where the amendment would put interim orders in scope, there is a question about the toolkit available to Government for appropriate financial assistance. Clause 30(2) says that financial assistance “means loans, guarantees or indemnities, or any other kind of financial assistance.”

That is slightly circular. Will the Minister clarify whether equity investments come under “any other kind of financial assistance”? The Minister is nodding—I am not sure whether that means that he will clarify or that the equity investment is financial assistance—but can he say if it is included in the scope of the Bill or, if not, if it should be. The stakeholders within the artificial intelligence sector have specifically asked me to raise that point.

Where a small business is unable to raise equity investments because of a Government final order, giving it further debt funding might not be any help if the business’s future inability to make loan payments is threatened. Again, in the crisis in which we find ourselves we see the reluctance of business to take on further debt. In those circumstances, loans may not be considered financial assistance. The Government and the Minister need to clarify whether equity investments are part of financial assistance.

The Minister needs to accept our amendment with regard to interim orders or explain why interim orders do not raise the need for financial assistance in the same way. That is a critical question so that the Government have the powers they need to act decisively and effectively to protect national security, and to do so in a way that is fair to our small businesses.
I point to some of the evidence we heard in the evidence sessions. Christian Boney from Slaughter and May said:

“…I think you make a very valid point in the context of start-up and early-stage companies. The concern I would have principally is with those companies that are in that phase of their corporate life…For them, this regime is going to make the process of getting investment more time-consuming and more complex.”—[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 70, Q80.]

Will the Minister consider whether the Bill, as it stands, addresses that?

Similarly, Michael Leiter said:

“The place where I think this is more problematic…is in smaller-scale, early-stage venture investments. That is where deals can go signed to close within hours or days, and having that longer period could be quite disruptive.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 46, Q52.]

We understand that interim orders and assessments can be extended. It is crucial that the Government respond to those points and think hard about how to put into statute more general powers than this equity funding, especially for cutting-edge start-ups with strategic assets.

We share the aim of the Bill to secure our national security and to ensure that assets that are critical to our national security do not fall under the influence of hostile actors. If in so doing we undermine those assets to the extent where they can no longer contribute to our national security, that is effectively an own goal. I fail to see how the provisions of this clause avoid such an own goal. It would be much to the improvement of the Bill and of confidence in small businesses, particularly start-ups in the sectors affected, if the appropriate form of support could be clearly made available.

We are considering clause stand part, too. We recognise the importance of giving financial assistance, which is what the clause sets out to do. With regard to reporting, I would be interested to understand why the sum of £100 million has been chosen. I am not saying I have another sum to suggest, but why that sum has been chosen is something to understand.

2.30 pm

I think the impact assessment is cited more for what it does not include than what it does, but again, it includes no estimates of financial assistance that the Government might have to provide and the associated costs that would be incurred. Will the Minister say why the sum of £100 million was chosen?

The clause also says that, “the Secretary of State must as soon as practicable lay a report of the amount”.

I imagine that a report of the amount could be a very short one—“£100 million”—but I think all of us who have worked in start-ups and in the tech sector are quite aware that although the financial assistance provided is very important, it also very important to monitor its impact. For example, if it is a loan, in what ways will it be repaid and over what time period, and is the investment effective? I may be mistaken, but I do not see anything in the clause that sets out any need to report anything other than the amount. That is not what I would consider accountability. More generally, for a Government who I hope wish to show good practice on investment and taxpayer value for money, having more information on the amount—but also on how it was used, monitored, how it is to be repaid if it is a loan, and its impact—would also be desirable. On that basis, we support the intention of the clause, but we feel it is in need of some significant improvement.

Stephen Flynn (Aberdeen South) (SNP): I think it was Cicero who said:

“Brevity is a great charm of eloquence.”

In that regard, I will keep my remarks brief. Obviously, what we propose here is incredibly straightforward. It would expand the scope from a financial year to a calendar year. I would not wish to imply that I do not necessarily have complete and utter confidence in the UK Government at all times, and that they might wish, perhaps, to stay away from and overcome any form of scrutiny by making some sort of payment at a certain point in time where the overlap is with a financial year. An amendment such as this, which is succinct and clear, would allow for everyone to be quite happy that where there is a need for the UK Government to put in place a financial assistance level of £100 million, irrespective of whether it is a financial year or a calendar year, Members are fully apprised of that spend.

Nadhim Zahawi: For the benefit of the Committee, I will begin with clause 30 stand part, which makes provision for financial assistance. I will then turn to amendment 24, and amendment 28 from the hon. Member for Aberdeen South.

The Government recognise that final orders, in exceptional cases—and I have to stress in exceptional cases, when we are administering taxpayers’ money—may bring about financial difficulty for the affected parties. This clause therefore gives the Secretary of State the legal authority to provide financial assistance to, or in relation to, entities in consequence of the making of a final order, to mitigate the impacts of a final order, for example. It might also be used where the consequence of a final order in itself might otherwise impact the country’s national security interests.

Hon. Members will know that such clauses are required to provide parliamentary authority for spending by Government in pursuit of policy objectives where no existing statutory authority for such expenditure already exists. I am confident that such assistance would be given only in exceptional circumstances when no alternative was available. For example, the Secretary of State could impose a final order blocking an acquisition of an entity that is an irrereplaceable supplier to Government, subsequently putting the financial viability of the entity in doubt. In such a situation, the Secretary of State could provide financial assistance to the entity to ensure that the supplier could continue operating while an alternative buyer was found.

Such spending would of course be subject to the existing duty of managing public money—the hon. Member for Newcastle upon Tyne Central asked what checks and balances are in place—and compliant with any other legal obligations concerning the use of Government funds. To provide further explicit reassurance regarding the use of the power, subsection (1) specifies that any financial assistance may be given only with the consent of the Treasury.

The clause also covers reporting to the House when financial assistance is given under the clause. I will speak to that further when I turn to the amendments. I
am sure that hon. Members will see the clause as necessary and appropriate, and have confidence that our Government, and future Governments, will have only limited, but sufficient, freedom to provide financial support under the regime as a result.

Amendment 24 would permit the Secretary of State to provide financial assistance in consequence of making an interim order, which was the hon. Lady’s point. As she will know, the Government take the management of our country’s finances very seriously, and such a power naturally requires appropriate safeguards to ensure that public money is spent appropriately. Restricting the power to final orders ensures that the Secretary of State may use it only to assist entities once a national security assessment has been completed and final remedies have been imposed—for example, to mitigate the impact of a final order on a company. It would not be appropriate to use the power to provide aid to an entity that is only temporarily affected by an interim order, which will last only for a period of review, likely to take 30 working days and, at most, 75.

Chi Onwurah: I thank the Minister for his comments. When he says that an interim order can be in place for at most 75 days, I think he is adding 30 days, which is the initial period, to 45 days, which is the additional period. I am afraid that he is forgetting the voluntary periods.

Nadhim Zahawi: Yes, but the point remains that no final order has been made, and public money will be spent only in very limited circumstances, as I mentioned, in consequence of a final order. Any expenditure will be subject to appropriate safeguards.

Amendment 28, tabled by the hon. Member for Aberdeen South, would require the Secretary of State to inform Parliament if financial assistance given under clause 30 in any financial year, or any calendar year, exceeds £100 million. If during any financial year the assistance given under the clause totals £100 million or more, subsection (3) as drafted requires the Secretary of State to lay a report of the amount before the House.

If, during any financial year in which such a report has been laid, the Secretary of State provides any further financial assistance under the clause, subsection (4) requires that he lay a further report of the amount, so if he makes a report before the end of the year and then spends more money, which was the hon. Gentleman’s point, the Secretary of State will need to update the report. As I am sure the hon. Gentleman appreciates, the Government are committed to providing as much transparency as is reasonably possible when it comes to the use of the new investment screening regime provided for in the Bill.

The amendment would effectively mean that the Secretary of State must stand before Parliament twice—likely, once at the end of the calendar year and again at the end of the financial year, a few months later—to lay what is likely to be a rather similar report of the amount given in financial assistance grants under the clause. Although the Secretary of State would be flattered by his popularity, I am sure the hon. Member for Aberdeen South would agree that seeing him for that purpose twice in such a short time would be a case of duplication, and the Secretary of State would not want to take up his valuable time unnecessarily. I can assure him that the Secretary of State is fully committed to transparency and will ensure that Parliament has the information that it needs to track the use of the powers in the regime.

For those reasons, I am unable to accept the amendments, and I hope that hon. Members will not press them.

Chi Onwurah: I thank the Minister for his comments, but I am disappointed that he seems determined merely to respond from his notes, regardless of the validity of the points put to him. On why it is inappropriate for financial assistance to be provided in the case of interim orders, his reason—as far as I can understand it—was purely that interim orders were too short to make any difference. Although he cannot say how long an interim order will last—he can say how long he thinks it may last—it could go on indefinitely, because I cannot see in clause 26 a limit on the number or length of voluntary periods that may be agreed for the assessment. On that basis, the assessment could last a significant time.

In any case, I hope that he, as the Minister for Business and Industry, is aware of how fast-paced the technology sector, in particular, can be. The inability to raise finance at a critical moment or to sell to a particular customer, for example, may cause significant financial and commercial damage to a small business or a start-up. I did not hear the Minister reject that point, yet he has rejected the need for any support during the period of an interim order. As I have shown, that is a mistake, and that is why we will press the amendment to a vote.

The Minister also made no response to my question about equity.

Nadhim Zahawi: I apologise—I should have responded to that, and it was remiss of me not to. We will consider all forms of financial assistance, including equity.

To respond to the point the hon. Lady has just made about companies that may have IP or a product in its early, nascent stage of growth, that are struggling and that are fast-moving in terms of raising funds, we at BEIS talk to many companies like that, outside the remit of the Bill, and we look to support them in a variety of ways.

Chi Onwurah: I genuinely thank the Minister for the clarification that equity investments will be included in this bit of the Bill.

Matt Western (Warwick and Leamington) (Lab): We are focusing greatly on small and medium-sized businesses, but this can also happen to slightly larger organisations, which might be outside the commonly used definition of an SME. When a larger business is distressed because it has lost a major customer and finds itself in financial difficulty, it needs that cash injection, so that sort of assurance is important.

Chi Onwurah: As always, my hon. Friend makes a really important point, and one that I had not thought of. The point about this being applicable to medium-sized businesses is absolutely right. In some ways, medium-sized businesses can often be at a critical point; cash flow is so important, and they could suddenly become very distressed, but with the right cash flow or the right injection of capital, they could expand greatly.

Will the Minister consider this? During the pandemic, when certain innovations have become incredibly important, and cash and support are needed to significantly increase...
the volume of production—of a vaccine, shall we say, with which the Minister is intimately concerned—a delay of 30, 70 or whatever days will create a huge problem for a medium-sized or growing business, as well as for small businesses.

2.45 pm

Nadhim Zahawi: In response to a point made by the hon. Member for Warwick and Leamington about a company being in distress because it has lost a client, irrespective of the national security and investment regime we talk to such companies all the time. Whether they are small, nascent, medium-sized or large, we have other avenues of assistance to help those companies. That is the point I was making.

Chi Onwurah: I thank the Minister for that, which brings me to the point that I wanted to make in response to him. I discerned that that seemed to be his point—that the Bill may cause harm to companies, but that rather than seeking redress under the Bill, or this clause in particular, they should seek redress or some kind of compensation through the well-oiled machinery of Government that provides support for small and growing businesses. I am afraid that that response will be met with undiluted cynicism among the many small and medium-sized businesses that have dealt with Government.

Again, we are talking about a fast-moving situation. Perhaps the Minister will provide examples of where, on such timescales, support has been provided. More importantly, if that is a consequence of the Bill, why would it not be addressed in the Bill, especially as we have a clause that seeks to address this issue in the case of notices of final order. I gave the example of OneWeb satellites, which was a major investment that took some time to come about, and we were not clear whether it was a strategic asset or national security. Clarity is critical.

Matt Western: This is important. I take on board exactly what the Minister is saying, but I am sure he can assure me on this. To give one specific example, Imagination Technologies is a fantastic company, which lost its major customer, which was Apple. Chinese-backed investment—private equity—then came in. The US refused the company the chance to buy into a US business in 2017. I would love to think that whoever was in BEIS in 2017 looked at it closely and offered support. This might be beyond our remit, but it is important that such businesses are reached out to. Will someone in the Minister’s team confirm that the Government tried to support Imagination Technologies?

Chi Onwurah: I very much hope that the Minister or his Department will respond to that. My hon. Friend gave an example of an innovative company in need of support. Presumably it was similar to the cases we are discussing now, and that support was offered. If confirmation is not forthcoming, we should perhaps look for it via a parliamentary question, which might help us.

I want to say one word about amendment 28, which seeks to ensure that the term of the reporting does not undermine what is reported or its effectiveness. The Minister said that if the £100 million barrier was crossed, another report would have to be made on any further expenditure. However, the amendment concerns a small amount of expenditure in a given period, followed by a larger amount, and whether the periods in which the expenditure was made might mean that a report did not have to be made. The Minister also did not address the question of why £100 million was the right threshold for making a report. On that basis, I wish to press the amendment.

Question put. That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 15]

AYES

Flynn, Stephen
Onwurah, Chi
Tarry, Sam

Whitehead, Dr Alan

NOES

Aiken, Nickie
Bowie, Andrew
Fletcher, Katherine
Garnier, Mark
Gideon, Jo
Zahawi, Nadhim

Question accordingly negatived.

Clause 30 ordered to stand part of the Bill.

Clause 31

INTERACTION WITH CMA FUNCTIONS UNDER PART 3 OF ENTERPRISE ACT 2002

Sam Tarry: I beg to move amendment 25, in page 20, line 27, leave out from “in” until end of line 28 and insert

“setting out the reasons for such direction and an assessment of the impacts on grounds for action that may have arisen under Part 3 of the Enterprise Act 2002”

This amendment would require the Secretary of State to set out reasons, and an assessment of the likely impacts, when publishing directions under this section.

The Chair: With this it will be convenient to discuss clause stand part.

Sam Tarry: The amendment would require the Secretary of State to set out the reasons for and an assessment of the likely impacts of published directions under the provisions regarding the Enterprise Act 2002. That is incredibly important because, in one respect, the Bill creates a radical shift by taking the merger control process, which is currently located primarily in the Competition and Markets Authority, and creating an alternative centre for merger control in the new investment security unit in BEIS. That is a big shift. We are trying to focus on setting out the reasons, and an assessment of the likely impacts, when directions come out of the new unit.

I want to expand a little on this. We have a series of reasons for intervention in investment and merger scenarios, such as national security, competition, financial stability, media plurality, public health—the list goes on. Having a single centre for merger control in the CMA helped ensure, partially, that the different reasons for intervention were considered coherently. At the very least, they were
coherent as a package, ensuring that where, for example, national security demanded one solution, competition remedies did not force another. The multiple centres that the Bill creates make coherence more challenging. This is about ensuring that the process is as smooth as possible.

The Government must clarify how they intend the CMA's merger control process to align with their new national security screening and approval process. That is particularly important when we reflect that the Government consultation process currently indicates that national security reviews will be run in parallel with CMA assessments and that the Government will cover interaction between the CMA regime and the new national security regime in a memorandum of understanding. Unfortunately, there is no specific indication of when this will happen. The amendment pushes for clarity now and for statutory accountability when a Secretary of State could otherwise undermine the CMA or take a decision that is contrary to something it will bring forward.

In relation to the Enterprise Act 2002, public interest intervention notice regimes allow the Secretary of State to direct the CMA to ensure that it does not inadvertently undermine the Secretary of State's decision on national security in addressing competition concerns. The power to undermine the CMA is not in itself a problem, but it is about the accountability—that is what we are trying to drive at here. In the face of a vastly extended set of powers for the Secretary of State, the amendment would provide important clarification.

Previously, the CMA had a good reputation with business for independence and for reasons and rules-based decision making. We are really keen that that is continued, and that is what the driving force for this amendment is. For that reason, we seek greater accountability from the Secretary of State. The amendment would require that whenever the Secretary of State subordinates the CMA's decision-making process, the reasons for doing so are published alongside an assessment of the impact in terms of whatever reasons the CMA would have had to act under its part 3 powers, whether that be competition, media plurality or quality, financial stability or, as I mentioned earlier, public health.

This is about the smooth and rational alignment of the merger control process. That is important for the integrity and impartiality of our national merger control processes and so that business can have certainty that these will be fully aligned. The question I would really like the Minister to answer is about the assurances the Government can give on providing specific, timely guidance on how many different parts of the merger control process will now work. How will the combination of the new unit and the pre-existing regime produce the guidance, and be driven by Government to do so, in a timely fashion? One thing that businesses are certainly seeking at the moment is assurances that things are set out as early and as clearly as possible. If that happens, it will allow businesses to plan in a much better way. For those reasons, I would like to hear how the Government plan to bring those two elements together.

Nadhim Zahawi: With your permission, Sir Graham, I will speak initially to clause 31 stand part, before turning to amendment 25. As the Bill separates out national security screening from the competition-focused merger control regime, we must, I am sure colleagues agree, ensure that the two regimes interact effectively, while also maintaining the CMA's operational independence in relation to its merger investigations.

A trigger event under the Bill which is also a merger under the Enterprise Act may raise both national security and competition issues. Not having a power to avoid conflict between the two regimes raises an unacceptable risk for businesses' operations and, of course, the Government’s reputation. The United Kingdom has a deserved and hard-earned reputation for being a dependable place in which to do business. Transparent regimes are fundamental to building and maintaining this reputation and fostering trust between Government and business.

Currently, under the Enterprise Act 2002, if both national security and competition concerns are raised, the CMA provides a report to the Secretary of State, who would then have the final say on how best to balance national security and competition concerns. This clause will ensure that the Secretary of State continues in his vital role of balancing national security and competition concerns. We will be able to avoid the risk of undue regime interference by maintaining regular and open channels of communication with the CMA.

There may, however, still be a risk that parallel investigations for national security and competition reasons reach conflicting conclusions. That may be particularly true in terms of the remedies required to address national security risks and competition concerns respectively. To remedy that issue, the clause enables the Secretary of State to direct the CMA to take, or not take, a particular course of action. The obligation on the Secretary of State to publish any direction given ensures that the decisions will be transparent, and provides certainty for all parties.

Chi Onwurah: The Minister says that it is unlikely that investigations would trigger concerns on both national security and competition grounds. However, the position that we are in right now with regard to Huawei is one in which the desire for more competition in our telecoms...
supply chain—that is, to have three vendors as opposed to two—led to a national security impact, which is why we are now in the process of ripping Huawei out of our network. Does he recognise that such examples may happen?

Nadhim Zahawi: I am grateful to the hon. Lady, but the difference is that I was referring to mergers. Such mergers would be rare. I do not think that anyone is merging with Huawei, or will in the future.

Chi Onwurah: It is quite clear that the acquisition of a vendor in our telecoms network by another country would have almost exactly the same outcome, so it may well apply.

Nadhim Zahawi: I was merely pointing out that there was no merger. The hon. Lady will forgive me: she is correct, but I did say that it is a rare occurrence. That is the point that I was making to the Committee.

The amendment seeks to impose a requirement to publish the reasons for giving a direction. We do not think that that is necessary. The clause already requires the Secretary of State to publish a direction in the manner that he considers appropriate. I do not think that I would be disclosing too many state secrets were I to speculate that that would be published on gov.uk. That is a reasonable bet. In many cases, I envisage that it is likely to be accompanied by a high-level explanation, but it is right that the Secretary of State should be able to decide what is appropriate on a case-by-case basis.

The amendment seeks to require publication of an assessment of the direction’s impact on any grounds for action under part 3 of the Enterprise Act 2002. I have two points to make to the hon. Member for Ilford South. First, such a duty would not be appropriate in all cases—for example, where a direction simply required the CMA not to make a decision on competition remedies until a national security assessment had been concluded. The amendment as drafted would still require an assessment to be published in those circumstances.

Secondly, the predominant impact on grounds for action will of course relate to competition. The CMA is the independent expert competition authority, and nothing in the clause as drafted would prevent it from publishing its own assessment of the impact of a Secretary of State direction on the possible competition issues of a case. The clause also requires the Secretary of State to consult the CMA before giving a direction, so it will be able to inform him of the likely impact and he can factor that into his decision whether to give the direction. I believe that is the right approach and while I understand the hon. Member’s motivations in tabling the amendment, I urge him to withdraw it.

Sam Tarry: One of the questions that sprang to mind while listening to the Minister’s answer was: if there are conflicting remedies, which of security and economic competitiveness would the Secretary of State decide had primacy? In drawing the matter out as clearly as possible, we have seen that one of the issues with telecoms and Huawei was that the primacy of economic competitiveness was viewed as paramount over security. The Bill is not clear about the framework for assessing primacy when it comes to security. We have argued throughout that security needs to be the primary focus, and sometimes that will mean economic competitiveness taking a slight hit. However, we think this is about protecting our long-term economic interest.

Nadhim Zahawi: I want to reassure the hon. Gentleman. He asks whether the Secretary of State can override the CMA’s assessment. To give him some clarity, the power to direct may be used only if a trigger event has been called in for assessment under NSI and either a final order has been enforced or a final notification of no further action has been given. That is stage 1. To direct the CMA without a trigger event having first been culled in and assessed would not be either reasonable or proportionate, in the Government’s view. However, if a merger is considered to be crucial in the interests of national security after an assessment, no competition concerns should be allowed to prevent it from continuing or remaining in place. I hope that offers him that reassurance.

Sam Tarry: Although that gives me some reassurance, the driving force behind the amendment is to ensure that that is clearly laid out in the Bill, for the reasons I have previously argued. Therefore, I will press for a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 16]

AYES
Flynn, Stephen
Onwurah, Chi
Tarry, Sam

Whitehead, Dr Alan

NOES
Aiken, Nickie
Bowie, Andrew
Fletcher, Katherine
Garnier, Mark
Gideon, Jo

Griffith, Andrew
Tomlinson, Michael
Wild, James
Zahawi, Nadhim

Question accordingly negatived.
Clause 31 ordered to stand part of the Bill.

Clause 32

OFFENCE OF COMPLETING NOTIFIABLE ACQUISITION WITHOUT APPROVAL

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 33 to 36 stand part.

Nadhim Zahawi: It is important to ensure that we are able to enforce the regime. If hostile actors realise that there is a gap in enforcement capability, that could serve to undermine the deterrent effect of the regime, and therefore compliance with it, and could cause reputational damage to the United Kingdom’s screening regime. Clauses 32 to 36 focus on enforcement and appeal. I will run through them at a relatively high level, but I am happy to discuss them in more detail if that would be of interest to hon. Members.
Clause 32 establishes the offence of completing without reasonable excuse a notifiable acquisition without approval from the Secretary of State. Completing a notifiable acquisition without approval could put national security at risk. In particular, the risk that hostile actors might seek to immediately extract sensitive intellectual property and transport it to far-flung corners of the world, may already have crystallised. Intervention after the event in such circumstances would too often be irrelevant, as that could not undo the damage done to our national security. I am confident that hon. Members will agree that this offence reflects the severe consequences that might result from completing a notifiable acquisition without approval of the Secretary of State in one of the ways set out in clause 13.

Clause 33 makes it an offence for a person to breach an interim order or a final order without reasonable excuse. Under the regime, interim orders and final orders are the mechanisms whereby the Secretary of State imposes revenues for the purposes of safeguarding the assessment and process of national security respectively. They are, therefore, vital components of the legislation. Given that a breach of an interim order or a final order could undermine the assessment process or put national security at risk, it is right that breaches of such orders carry a clear deterrent. I am confident that hon. Members will agree that it is essential to have robust measures in place to ensure effective compliance with any interim orders or final orders imposed by the Secretary of State.

I will move on to clause 34. It is vital that parties comply with information notices and attendance notices, and that parties do not provide materially false or misleading information to the Secretary of State.

Mark Garnier (Wyre Forest) (Con): On how all this will be policed, the Minister is talking about an incredibly important issue that is crucial to the Bill, but it is a bit like the tax evasion problem, in that a tax evader can be prosecuted only when they have been caught. What policing measures are in place to get to the point of imposing sanctions on those who infringe the measure?

Nadhim Zahawi: My hon. Friend is absolutely right. Part of it is the screening process and, obviously, the security agencies play a major role in that.

Under clause 35(2), it is a defence for a person charged with an offence under this clause to prove that they reasonably believe that the use or disclosure was lawful, or that the information had already and lawfully been made available to the public. I hope that hon. Members are reassured that Government are committed to the safeguarding of information collected by the regime.

Finally, clause 36 ensures that persons in authority in bodies—for example, a body corporate, such as a company, or an unincorporated body, such as a partnership—can be prosecuted under the legislation where they are responsible for an offence committed by their body. This clause therefore ensures that individuals who are responsible for offences committed by their bodies cannot simply hide behind those bodies and escape responsibility. Instead, they too will have committed an offence and can be punished for it. If you will forgive the pun, Sir Graham, if there are skeletons in the cupboard—or filing cabinets, I suppose—it is not just the bodies that can be held responsible. I hope hon. Members will agree that these clauses are both necessary and proportionate.

The Chair: There is no guidance in my script on what I do if I do not forgive the pun.

Question put and agreed to.

Clause 32 accordingly ordered to stand part of the Bill. Clauses 33 to 36 ordered to stand part of the Bill.

Clause 37

PROSECUTION

3.15 pm

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 38 and 39 stand part.

Nadhim Zahawi: The Secretary of State makes decisions under the regime and has the power to impose enforceable interim and final orders. However, the institution of criminal proceedings for offences under the Bill is a matter for the appropriate prosecutor. Clause 37 therefore makes clear who may bring proceedings for an offence under the Bill.

Turning to clause 38, the Government consider it important that persons who have committed an offence under the Bill should be held accountable, particularly partnerships and other unincorporated associations. For example, clause 7 provides that partnerships and unincorporated associations are qualifying entities under the regime. Clause 38 therefore provides that proceedings for offences under the Bill may be brought against partnerships and other types of unincorporated association. I stress that the commencement of criminal proceedings in relation to this regime will likely be very rare indeed but it is nevertheless important that a full spectrum of possible offending is covered.

Clause 39 sets out the criminal penalties available on conviction for offences committed under the Bill. It is crucial that the regime carries a sufficiently robust deterrent to ensure compliance. Given the seriousness of the harm that a breach of the legislation might cause, it is right that these offences carry significant criminal penalties. I do not plan to set out all the penalties available but would be happy to discuss them in more detail if it would be of interest. I hope that hon. Members agree that it is clear who can bring prosecutions under the regime, that it should be possible to prosecute partnerships and unincorporated associations, and that penalties should be sufficiently strong for those convicted of breaking this law.

Question put and agreed to.

Clause 37 accordingly ordered to stand part of the Bill. Clauses 38 and 39 ordered to stand part of the Bill.

Clause 40

POWER TO IMPOSE MONETARY PENALTIES

Question proposed, That the clause stand part of the Bill.

The Chair: With this, it will be convenient to discuss clauses 41 to 47 stand part.
Nadhim Zahawi: Clauses 40 to 47 cover the civil sanctions under the Bill. I will cover them fairly briefly but I am happy to discuss them in more detail if it would be of interest to the Committee.

It is vital that the Secretary of State has appropriate powers to punish and deter non-compliance with the regime. Should a person breach an order under the regime or fail to provide information or evidence where required, it is vital that the Secretary of State has the power to bring the offender into compliance as quickly as possible to ensure the efficacy of the regime.

Clause 40 provides the Secretary of State with the powers to impose monetary penalties on a person where he is satisfied beyond reasonable doubt that the person has committed an offence under clauses 32 to 34. Clause 40(6) requires the Secretary of State to consider the amount of a monetary penalty to be appropriate before imposing it and it must not exceed the relevant maximum set out in clause 41. The power to impose monetary penalties instead of pursuing criminal proceedings will contribute to ensuring that the Secretary of State has a number of enforcement options to tailor to the situation.

The Secretary of State will not take the power to impose monetary penalties lightly and is required by clause 40(7) to take into account a number of factors, including the seriousness of the offence and any steps taken by the person to remedy the offence in question. I am confident that hon. Members will agree that the clause is valuable in ensuring that the Secretary of State has the appropriate enforcement mechanism to secure compliance with the new regime.

Clause 41 sets out the maximum fixed penalty and, where applicable, the maximum daily rate penalty that may be imposed. The penalties set out here are substantive, and I recognise that they may seem draconian, but they may have to be issued against companies that have significant financial incentive to disregard legal requirements under the regime and put national security at risk by going ahead with an acquisition, so the penalties need to be an effective incentive to comply. I also remind Members that these are maximum penalties; the Secretary of State will have a duty to ensure that any penalty imposed is reasonable and proportionate.

The clause also enables the Secretary of State to make regulations specifying how the maximum penalties applicable to businesses should be calculated and to amend the maximum penalty amounts or percentage rates. It is important that we can adjust any penalties over time, to ensure that they are a sufficient deterrent against non-compliance.

Clause 42 requires the Secretary of State to keep all monetary penalties imposed under review. It also provides a power to vary or revoke penalty notices as appropriate in the light of changing circumstances. Importantly, under the clause, where new evidence comes to light about a breach, it can be taken into account by the Secretary of State, and the penalty notice can be increased, decreased or revoked as appropriate. In all variations, there is, of course, a right of appeal, which is provided for by clause 50.

It is important that both criminal and civil sanctions should be available against offences committed under the Bill, but it would not be appropriate for them to be used in tandem. Clause 43 ensures that parties cannot be subject to both criminal and civil sanctions for the same offence. The clause is vital in giving businesses and other parties certainty and assurance that they will not be penalised in two separate ways for the same offence, which would clearly be unfair.

Clause 44 gives the Secretary of State the power to enforce monetary penalties by making unpaid penalties recoverable, as if they were payable under a court. Failure to comply with a penalty notice would be enforced in the same way as a court order to recover unpaid debts. It also provides for interest to be charged on unpaid penalties that are due.

Chi Onwurah: I thank the Minister for setting out the provisions of these clauses. Perhaps this is my ignorance, but what will happen to the moneys recouped through the penalties?

Nadhim Zahawi: I am very happy to write to the hon. Lady on that, but I suppose the money goes back to the Treasury.

Chi Onwurah: That was my assumption, but I know that in certain cases penalties can be used to offset the expenses incurred in creating the regulatory regime, or in supporting companies that are adversely affected, as we discussed earlier.

Nadhim Zahawi: I am very happy to come back to the hon. Lady on that point.

Clause 45 ensures that the Government are not unduly burdened with costs relating to the imposition of monetary penalties, which can be expensive. The clause enables the Secretary of State to recover the associated costs from those who are issued with a penalty notice. The amount demanded will depend on the circumstances of each case, but the Secretary of State will need to comply with public law duties in imposing the requirements and in fixing the amount. In particular, the amount will need to be proportionate.

Dr Alan Whitehead (Southampton, Test) (Lab): Pursuant to the intervention of my hon. Friend the Member for Newcastle upon Tyne Central, will the Minister and his Department not only think about, but make a positive decision on, where the penalties go? I have in mind, as he will know, penalties relating to misdemeanours by electricity supply companies.

Those are routinely collected and distributed for good purposes—to keep people’s electricity bills down, among other things. Maybe the Minister will have a similar scheme that could be a good home for those penalties, so that they are turned around and put to good use.

Nadhim Zahawi: I am quite rightly grateful to my brilliant Whip for reminding me that the Bill contains the provision that the moneys be paid into the Consolidated Fund.

Clause 46 requires the Secretary of State to keep cost recovery notices under review and provides him with the power to vary or revoke a cost recovery notice as he considers appropriate. That will reassure businesses and other persons that cost recovery notices remain appropriate. Finally, it is important that the Secretary of State be able to recover the associated costs from those who are issued penalty notices. Clause 47 therefore provides for an effective range of consequences for non-compliance.
with a cost recovery notice, including the charging of interest, and acts as another important tool in the Secretary of State’s enforcement powers. I hope that the Committee will appreciate the rationale for clauses 40 to 47, which are essential for the effectiveness of the regime.

**Question put and agreed to.**

Clause 40 accordingly ordered to stand part of the Bill.

Clauses 41 to 47 ordered to stand part of the Bill.

**Clause 48**

**Enforcement through civil proceedings**

**Question proposed,** That the clause stand part of the Bill.

**Nadhim Zahawi:** The regime relies on parties complying with information notices and attendance notices, and with interim orders and final orders. Those are crucial levers that the Secretary of State will use to identify, assess and address national security risks, so it is vital that he has appropriate powers to ensure that a person who is given such an order or notice complies with the requirements as set out.

The clause provides the Secretary of State with the power to bring civil proceedings for an injunction or other remedy to require compliance. The power applies whether or not the person is in the UK. Failure to comply with an order made by the court in those circumstances is likely to be considered contempt of court. We should not forget that any failure to obey an information notice or attendance notice, for example, could result in the Secretary of State having insufficient information to decide whether to call in an acquisition or carry out an effective national security assessment. Breaching the requirements of an interim order or final order may undermine the assessment process or harm national security.

Above all, I hope that the Committee will agree that the clause further strengthens the Secretary of State’s enforcement powers, playing a key role in ensuring the efficacy of the regime.

**Question put and agreed to.**

Clause 48 accordingly ordered to stand part of the Bill.

**Clause 49**

**Procedure for judicial review of certain decisions**

**Dr Whitehead:** I beg to move amendment 26, in clause 49, page 30, line 31, leave out “28 days” and insert “three months”

*This amendment would extend the period within which applications for judicial review may be made from 28 days to three months.*

The Chair: With this it will be convenient to discuss clause 49 stand part.

**Dr Whitehead:** I have not spoken other than to intervene, so the amendment gives me a brief opportunity to commend the heroism of my fellow Committee members for carrying on proceedings when most of them wish they were somewhere else because they are too cold. I hope that the authorities will consider ameliorative steps so that we can be a little warmer when the Committee meets on Thursday. Alternatively, Sir Graham, we may need to invent a new Standing Order by which the Chair can rule on whether Members have permission to remove their coats, rather than the customary jackets, before the beginning of proceedings. I am sure that would not be necessary if reasonable action were taken.

The amendment concerns what is referred to in the clause title: the procedure for judicial review of certain decisions. It would be helpful if the Minister clarified what the clause means for other decisions that are set out in the Bill but not included in the provisions for judicial review set out in this clause.

3.30 pm

The procedures in subsection (2) relate to judicial review of a “relevant decision”. Relevant decisions are specified in various clauses, and include the power to require information, the power to require the attendance of witnesses, the power to require the attendance of witnesses outside the UK, the discharge of information, data protection, CMA information, and so on. That means that a number of other decisions in the Bill are not covered by this clause, including, for example, decisions to call in a transaction.

My initial question to the Minister—I would be grateful if he intervened on me—is whether those other areas of decision, which are in the Bill but not covered by this clause, are covered by standard judicial review procedures, not covered by judicial review procedures at all, or covered by reference to the Enterprise Act 2002, which has procedures within it that do not appear to refer directly to some of the other decisions in the Bill that are not covered by this clause. Can he clarify what happens to those decisions in the Bill—I have mentioned one: the call-in notice—that are not covered in subsection (2) on what a relevant decisions means? Does he have any guidance that he can give the Committee on that?

**Nadhim Zahawi:** I am happy to write to the hon. Gentleman on that, but my understanding is that individuals or entities that feel that they have been wronged by the actions of the Secretary of State can can JR the Secretary of State.

**Dr Whitehead:** I thank the Minister for that clarification, which appears to suggest that the whole of the Bill, or the decisions in it, are in principle covered by the ability to bring a judicial review. He will know that under the Civil Procedure Rules 1998 there is some pretty clear guidance about the time limits for judicial reviews. Indeed, the CPRs state that claims must be lodged promptly and, in any event, no later than three months after the grounds to make the claim first arose, unless the court exercises its discretion to extend. The judicial review rules are pretty much governed by that three-month time limit.

In the clause, the framers of the Bill have taken out certain elements of the Bill. I mentioned some of them, including the attendance of witnesses and the power to require information. They have said that, while no new procedure has been put in place for reviewing certain decisions—that is, the normal rules of judicial review apply—the big difference is that any action must be brought within 28 days of the event, and not within three months, as is the case in the standard judicial review arrangements.
Chi Onwurah: I thank my hon. Friend for the excellent points that he is making, which give cause for concern and thought. Given the Minister’s earlier assertion that there was no need for a complaints procedure with regard to the provisions of the Bill, does my hon. Friend agree that neither the reporting requirement, which we have identified will not mean reporting on everything, nor the judicial review provisions, which we have now identified are not reviewable in the normal timescales for everything, will be sufficient to address the concerns of small and medium-sized enterprises? Does he also agree that that will clearly not be the case given the complexities that he has outlined?

Dr Whitehead: My hon. Friend makes an important point about the extent to which justice in such circumstances might be like the Ritz: open to everybody, but not necessarily quite as open to some as to others.

Certainly, that is the case with the time reduction applied to those particular things in the clause. Nevertheless, that reduction has to fit in with judicial review rules for everything else. That is, no new procedure is set out in the Bill, which is otherwise reliant on the standard judicial review procedures.

Hon. Members will see that elsewhere the civil procedure rules refer to the provision of skeleton arguments before a judicial review can be heard. Under those rules, such arguments must be undertaken within 21 working days of a hearing, which in practice means close to the 28 days in the clause, which are not as working days. Given the adherence to the rest of the judicial review rules, therefore, the 28 days can conceivably reduce to virtually nothing the period in which a person may apply for a claim to judicial review under the Bill.

Furthermore—this is what I think my hon. Friend was alluding to—given that brief timescale, it is important and I would say necessary to have a clear idea of when the event that caused the 28-day timescale to come into play took place. I turned up an interesting article, one of Weightmans’ “Insights”, from October 2013, entitled “Is the clock ticking? The importance of time limits in judicial review”. The point made in that article is that getting the point at which the clock started ticking absolutely right is important.

I am not certain whether all the events specified in the clause have identical starting points. That is, is the starting point a trigger mechanism? Is the starting point the issuing of a notice? If the receipt of a notice is delayed—and the initial timing and what the trigger event was. He mentioned that skeleton hearings must take place within 21 working days. Can he say a little bit more, for my understanding, about how those skeleton hearings affect the following timetables in the process?

Dr Whitehead: My hon. Friend somehow suggests that I have knowledge and expertise beyond my calling. I should say that I am not a lawyer, so I have only limited guidance to give her on this. However, from my reading of civil procedure rules, there are certainly elements, which I think relate to working days in some instances and to simple time in others, that are sub-time limits within the overall limit for judicial review. Civil procedure rules give those sub-limits as working practices for the operation of judicial review overall. The skeleton argument rule requires skeleton arguments to be put to the court within a certain period before the hearing takes place. If the hearing is delayed for a long time after the initial event, the 21 days apply before the court hearing. However, if the court hearing is close to the event, those sub-rules within the overall judicial review rules could affect quite substantially an individual’s remaining time to get their case together prior to the hearing.

3.45 pm

Under our current constrained court arrangements, there is no danger of that because court cases are in a serious logjam. However, it serves to put a question mark against how and why the 28-day period was decided upon. Why were these things in particular pulled out and put into the 28 days when other sections of the Bill do not come within 28 days but within three months? What is the rationale behind that?

The amendment suggests that this is probably not a good idea. While it might be seen as redundant in that it says that these sections should not be pulled up and put in a 28-day box, it is probably better for the general principle of upholding judicial review as a reasonable defensive remedy in respect of some of the Bill’s elements to put them back to the standard three-month period. That of course arises because that is what the Government have chosen to do with the Bill. They have chosen to go with standard judicial review proceedings. It would have been possible to write a different form of proceedings into the Bill.

The Enterprise Act 2002 provides for an appeal to a tribunal, which then proceeds along standard judicial review rules but is not the standard judicial review procedure. The Government have not decided to do that, but to do something else. My question to the Minister is why. The question that follows if there is no good answer, is why not just leave it as it is? Why not
leave it to the judicial review procedure for three months? That would not cause anyone any real problems but, on the contrary, might ensure that smaller businesses and organisations have a reasonable opportunity to defend themselves and pursue judicial review in the knowledge that they have more than a very small amount of time to get the judicial review procedures together when they wish to mount them.

As I have said, I am sure that it will be a pretty rare procedure, but it is nevertheless important to maintain it in the Bill. I am sure we all agree that it is an important part of UK law that that should be a remedy open to everyone to undertake, as the Minister mentioned. I hope that I will get a compelling argument from him about why this has been done in this way and what advantages outweigh the disadvantages that I have outlined. If he can do that, I hope that it will not be necessary to divide the Committee this afternoon, but I fear that it might be if the argument that comes forward proves on examination not to be as compelling as I am hoping.

Nadhim Zahawi: I am grateful to the hon. Gentleman for his reasoned and thoughtful remarks. As I said in my intervention, all decisions in the Bill are subject to judicial review. Clause 49 does not apply to information sharing post screening or enforcement decisions. The exception to JR is monetary penalties and cost recovery, which have a bespoke appeals process, as he probably knows.

Clause 49 concerns the procedure for judicial review of certain decisions. The clause provides that any claim for judicial review of certain decisions, which are set out in the clause, must be no more than 28 days after the day on which the grounds for the claim first arose, unless the court considers that there are exceptional circumstances. That period is shorter than the usual period in which a judicial review may be sought, as we have heard from the hon. Member for Southampton, Test. Generally, judicial reviews must be sought within three months, and in England and Wales, but not in Scotland or Northern Ireland, they must also be sought “promptly”.

I will set out why that is the case shortly when I turn to amendment 26, but I believe that the shortened time limit strikes the right balance for the regime, enabling sufficient time for a claim to be lodged while providing for timely certainty about the effect of relevant decisions made under the Bill. I should also note that the court may entertain proceedings that are sought after the 28-day limit if it considers that exceptional circumstances apply. The usual route to challenge a decision made by the Secretary of State is via judicial review, and this is entirely appropriate for decisions made under the Bill. However, it is vital that this route does not result in prolonged uncertainty over decisions relating to screening.

I now turn to amendment 26, which seeks to extend the period within which applications for judicial review may be made from 28 days to three months. As I have set out, the Bill’s 28-day period in which claims for judicial review of certain decisions made under the Bill generally must be filed is shorter than the usual period in which judicial review may be sought. Again, it is entirely right that the hon. Gentleman puts to us on why that is the case as judicial review plays a key role, which he clearly agrees with, in ensuring that the Government, and the Secretary of State in the case of this regime, act within the limits of the law. We have thought carefully about that while developing the Bill, and I welcome this discussion.

Why the shorter period? It is undeniably important that the Secretary of State is held independently accountable for his decisions under the regime. That must, however, be balanced — this is the important thing — against the need to avoid prolonged uncertainty over the status of screened acquisitions or the general functioning of the screening regime, which may have a chilling effect on investment, leaving the types of questions that a judicial review would answer, such as whether a decision to clear a transaction was unlawful, potentially still open for three months before it is clear that a judicial review is not going to be sought, which could make it extremely difficult for the various parties affected to plan and adjust following such a decision. Any party with a sufficient interest could seek a judicial review and all parties affected could be impacted. That is why we have come to this decision.

Chi Onwurah: I thank the Minister for the points he is making, which I am seeking to understand. Clause 49(2) mentions “relevant decisions”. Why would “section 19”, “section 20” and “section 21” that deal with the powers to require information and so on cause uncertainty, and not other provisions in the Bill?

Nadhim Zahawi: The point I was trying to make is that the uncertainty in any of those sections means that any party to a transaction can, if they feel they could frustrate the process because the outcome might not be advantageous to them, use the judicial review process to add to the uncertainty of a transaction. In addition, there is also a public interest in timely certainty and finality about decisions made under the regime that are, after all, imposed for the purpose of safeguarding national security. The 28-day limit is also in line with the current merger screening regime that the hon. Member for Southampton, Test asked about, where applications for the competitions appeal tribunal made under the Enterprise Act 2002 to review a merger decision must be made within four weeks, a time period chosen after public consultation. There may be some situations where, for legitimate reasons, 28 days is simply not enough. It is therefore important to remember that this Bill provides that the court may “entertain proceedings” that are sought after the 28-day limit, if it is considered that exceptional circumstances apply.

This shortened time limit and flexibility is for the courts to deal with exceptional circumstances. It strikes the right balance for this regime, in my view. It allows sufficient time for parties to obtain legal advice and mount a challenge, while also providing timely certainty about the effect of the relevant decision made under the Bill. I therefore hope that the hon. Member for Southampton, Test will withdraw the amendment.

Dr Whitehead: I have to be honest, I did not think that was very good. Let us start with who is shortening and who is not shortening. The Minister said that the Opposition seek to lengthen the period; no, the Opposition are not seeking to lengthen the period. The Government are seeking to shorten the period that is standard in the UK justice system as far as judicial reviews overall are concerned.
That is a very important point, because the Opposition are not trying to do something that is not an ordinary principle of British justice: the Government are trying to do that. The Minister’s remarks could have applied to a lot of other areas, where it might be a bit inconvenient to have a judicial review being tenable for a three-month period after an event had occurred. However, it is not a question of inconvenience. Is a matter so important to national security that the 28 days can be justified under those terms?

The Minister has sought to justify the 28 days under the terms that there may be some uncertainty if there is a longer period for judicial review to be undertaken. He is potentially right about that, but not right as far as this Bill is concerned. He is right potentially as far as any application for judicial review is concerned, in all sorts of areas in this country. That is the problem of judicial review for the Administration, under any circumstances. When someone comes along and says, “I’m going to JR this,” a lot of people clap their hands and say, “That’s very inconvenient. It really does foul things up, because we would like to do this, that and next thing, but because we have been judicially reviewed, we have to carry out the procedure that is there.”

As several people have said in a number of different circumstances, the fact that the JR procedure is there and that often ordinary people have a reasonable amount of time to get their case together to undertake the JR process, is an important principle of the British justice system. The Minister has made no serious case for why these things should be so special under these circumstances. Interestingly, the consultation document did not make any case at all for the 28 days, other than to note that it was a shorter period. I am sorry to say that this appears to be a shortened period simply for administrative convenience.

Chi Onwurah: Does my hon. Friend think that shortening the JR period for administrative reasons is especially contentious, given that the judicial review process would be the only option for small and medium enterprises to complain about the way in which they are being treated under this process? The Minister says that their only option to make a complaint is effectively to JR it, yet they are given less time to do that.

Dr Whitehead: My hon. Friend hits the nail on the head. In many circumstances, we are not talking about the sort of JRs that we hear about in the press, where a big corporation has been judicially reviewed on some subject by another large corporation, or some big body has judicially reviewed someone else about a planning decision.

4 pm

Firms that employ very small numbers of people often find themselves tied up in this process. They need to have this remedy available to them in a way that they can genuinely use, so that they are not constrained by the imposition of what is, as I said, essentially an administratively convenient reduced timescale. I do not think that that ought to be in the Bill. For that reason, we need to press the amendment to a Division, to see whether we can restore to the Bill the three-month period in which people can exercise their right to JR.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.
bodies. That means that conduct abroad that amounts
to an offence can be prosecuted and it also enables the
Secretary of State to impose monetary penalties in
relation to offences committed outside the UK. That
ensures that regime obligations are not unenforceable
simply because they concern conduct abroad. I hope
that hon. Members will agree that, in a globalised world
where transactions routinely take place across borders,
it is important for enforcement to be able to react with
equal agility. I therefore submit that the appeals process
set out in the clauses should be adopted and that, in a
globalised world, it is necessary for extraterritorial regime
breaches to be enforceable.

Chi Onwurah: It is a pleasure to respond in this
debate and observe how quickly we have galloped throughs
parts 2 and 3. I wonder if that may in part relate to the
descending temperatures that we are enjoying. While I
know that the Committee shares my fascination with
the various procedural and judicial issues with which
we were wrestling, the temperature gave no scope for
anyone to get comfortable enough to fail to pay attention.
I recognise that we on this side of the Committee are in
an advantageous position in that we are furthest from
the open windows.

We recognise the importance of clauses 50 to 52 in
terms of appeals against monetary penalties, of appeals
against costs and of having extraterritorial application
and jurisdiction to try offences. The Minister set out the
reasons for that. To return to an intervention from the
hon. Member for Wyre Forest, I am concerned about
whether the provisions will be enforceable and useable
in having extraterritorial application and jurisdiction
over those who are not British and where the offence
does not take place in the UK. Do the Government
envisage—the impact assessment is, once again, remarkably
silent on this—issuing international warrants to get
access to those thought to have committed offences but
who are not in the UK? Will the measures be pursued
and enforced actively or are they there to deal with
exceptional circumstances? I would be happy for the
Minister to intervene.

Nadhim Zahawi: I think that the hon. Lady’s question
is whether the Government will genuinely be able to
punish offences committed overseas. Clearly, in a globalised
world where transactions routinely take place across
borders, it is important that we have the ability to
punish offences and be as agile as those who wish to do
us harm. It is therefore right that these offences have
extraterritorial reach. We will work with overseas public
authorities to ensure that offenders face justice where
appropriate.

Chi Onwurah: I thank the Minister for that intervention.
I am reluctant to test his tolerance by bringing Brexit
into this, but I hope that we will continue to have the
means to engage with overseas jurisdictions in order to
pursue those who break UK law, here or abroad. We
will not oppose the clauses, and I congratulate the
Committee on making such speedy progress.

Question put and agreed to.
Clause 50 accordingly ordered to stand part of the Bill.
Clauses 51 and 52 ordered to stand part of the Bill.
Ordered, That further consideration be now adjourned.
—(Michael Tomlinson.)

4.11 pm

Adjourned till Thursday 10 December at half-past
Eleven o’clock.
Written evidence reported to the House

Public Bill Committee

NATIONAL SECURITY AND INVESTMENT BILL

Eleventh Sitting
Thursday 10 December 2020
(Morning)

CONTENTS

Clauses 53 to 58 agreed to.
Schedule 2 agreed to.
Clauses 59 to 66 agreed to.
Adjourned till this day at Two o’clock.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 14 December 2020
The Committee consisted of the following Members:

**Chairs:** Sir Graham Brady, †Derek Twigg

† Aiken, Nickie (*Cities of London and Westminster*) (Con)
† Baynes, Simon (*Clwyd South*) (Con)
† Bowie, Andrew (*West Aberdeenshire and Kincardine*) (Con)
† Fletcher, Katherine (*South Ribble*) (Con)
† Flynn, Stephen (*Aberdeen South*) (SNP)
† Garnier, Mark (*Wyre Forest*) (Con)
† Gideon, Jo (*Stoke-on-Trent Central*) (Con)
† Grant, Peter (*Glenrothes*) (SNP)
† Griffith, Andrew (*Arundel and South Downs*) (Con)
Kinnock, Stephen (*Aberavon*) (Lab)

† Onwurah, Chi (*Newcastle upon Tyne Central*) (Lab)
† Tarry, Sam (*Ilford South*) (Lab)
† Tomlinson, Michael (*Lord Commissioner of Her Majesty's Treasury*)
† Western, Matt (*Warwick and Leamington*) (Lab)
† Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Wild, James (*North West Norfolk*) (Con)
† Zahawi, Nadhim (*Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy*)

Rob Page, Yohanna Sallberg, Committee Clerks

† attended the Committee
Public Bill Committee

Thursday 10 December 2020
(Morning)

[DEREK TWIGG in the Chair]

National Security and Investment Bill

11.25 am

The Chair: Before we begin, I remind the Committee to observe social distancing and to switch electronic devices to silent. The Hansard reporters would be grateful if hon. Members could email electronic copies of their notes to hansardnotes@parliament.uk.

Clause 53

PROCEDURE FOR SERVICE, ETC

Dr Alan Whitehead (Southampton, Test) (Lab): I beg to move amendment 29, in clause 53, page 32, line 30, leave out “may” and insert “shall”.
This amendment would require the Secretary of State to set out the process to be followed.

The Chair: With this it will be convenient to discuss clause stand part.

Dr Whitehead: We start today’s proceedings with the most innocuous amendment imaginable—it is so innocuous that it is in the realms of “barely noticeable”. It is particularly innocuous in terms of the debates the Committee has already had on the use of the word “may” and the words “shall” or “must”. On this occasion, the amendment merely suggests that in subsection (1)—
“The Secretary of State may by regulations make provision for the procedure which must be followed in giving a notice or serving an order under this Act”—
“shall” should be substituted for “may”.

What is interesting about making provision for procedure that must be followed in giving a notice or serving an order is that the impact assessment assumes that that will be done and analyses how those notice-giving arrangements might work. The impact assessment assumes that the Secretary of State will do that, but the Bill does not state that the Secretary of State must do it.

I cannot think of any good reason why that change should not be made. I can see virtually no circumstances in which the current wording will do anything either way in relation to the issuing of the notices and what those notices might consist of. A requirement that the Secretary of State “shall” do those things would be an unalloyed advance in assuring that they happened. It would not have any consequences for national security or for company considerations, other than that companies might consider it rather more comforting that the Bill requires those details, which are important to them, to actually be produced.

The Minister can perhaps enlighten us on the wider issue. I have been on the other side, constructing and putting a Bill together, years ago in my brief but glorious—or inglorious but brief—ministerial career.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): Glorious.

Dr Whitehead: I think we can agree that it was brief. Bills come to Ministers, fresh from the wells of construction and the pushing of pens to get them into good shape. I wonder whether there is a style guide, deep in the bowels of a building somewhere in Whitehall, that says, “Whenever the Minister is supposed to do something, write ‘may’ in small print.” It is such a long-serving style guide that people have forgotten why the word was ever put in the Bill in the first place.

The Minister would do a great service to the writing of Bills if he were able to say, “I don’t want to go along with the style guide. If someone is supposed to do something, I want to have that written in the Bill.” I appreciate that if the Minister were to say that when sitting around with a number of people who had a freshly minted copy of the proto-Bill in front of them, there would be much stroking of chins and suggestions of, “That is a rather brave method of proceeding, Minister.” But the Minister has the opportunity today, entirely divorced from all those influences, simply to say, “Yes, we will accept this amendment as a stake in the ground for the uprating of the style guide, wherever it happens to be.” That would be a great service to the Committee and to the nation, by getting us into a position where Bills are written to mean what they say and say what they mean.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I do not want to anticipate what the Minister will say, but he has said, with regards to similar amendments, that stating that the Secretary of State will do something does not mean that he definitely must do it. Does my hon. Friend agree that for the sake of clarity—for us in Parliament but also for businesses, particularly those affected by this—changing that one word would greatly improve the understanding of how the Bill will work?

Dr Whitehead: My hon. Friend is absolutely right. If I went to my bank manager, who had called me in about my overdraft, and I said, “I don’t need to say anything other than, ‘I may pay it back,’ but don’t worry, because I will pay it back,” my bank manager might be a little upset and might have something to say about it.

It is curious that we have locutions in the putting together of Bills that fly in the face of common-sense parlance. I agree with my hon. Friend. Friend that it really is no great defence to say, “Don’t worry. We don’t need to change this, because we are going to do it.” It would be far better all round if we were straightforward, accurate and clear and put this wording in the legislation, so that everybody knows what we are doing for the future. If, by so doing, the Minister can banish that style guide from the bowels of the building forever, that would be a great service.

Nadhim Zahawi: I beg you indulgence, Mr Twigg: I intend to speak first to clause stand part and then to amendment 29, which was tabled by the hon. Member for Southampton, Test. Clause 53 gives the Secretary of State the power to make regulations that set out the procedure that the Secretary of State must follow when giving a notice of, or serving, an order once the Bill becomes an Act. The level of detail that these provisions will involve is most appropriately dealt with in delegated
legislation. That will also allow the provisions to be modified more easily if changes are deemed appropriate—in the light of operational experience, for example. I know all colleagues will share with me the wish for the unit’s operations to be as efficient and as slick as we can make them.

Examples of notices and orders include information notices, attendance notices, interim orders, final orders or penalty notices issued by the Secretary of State for non-compliance. The clause sets out what may be included in the regulations. For example, they may include the manner in which a document must be given or served and whether it is allowed to be served electronically—for example, by email.

Amendment 29 would require the Secretary of State to make these regulations, which returns, if I may say so, to the recurring theme raised by the hon. Member for Southampton, Test, about the difference between “may” and “shall”. At the risk of becoming predictable, my thoughts here carry certain echoes of our previous discussions.

As hon. Members will know, clause 53 gives the Secretary of State the power to make regulations that will set out the procedure that must the Secretary of State must follow when giving a notice or serving an order once the Bill becomes an Act. It is an entirely laudable objective to ensure that the Secretary of State provides those affected by this regime with the right information on the operation of the regime, and it is one that I shall always support. In practice, though, the amendment is unnecessary.

Although the Secretary of State may make regulations to that effect, in practice, for the regime to function effectively, he must do so. I assure hon. Members that the Secretary of State certainly does not propose to commence the regime without first making these procedural regulations. I therefore assure the hon. Member that the amendment is not required, as he and the Government seem to be in hearty agreement on the importance of such regulation. I ask him to do the honourable thing and withdraw the amendment.

Chi Onwurah: It is an honour to serve under your chairmanship again, Mr Twigg. I detect a slight rise in temperature, at least on this side of the Committee Room. I do not know whether that is due to the heated exchanges over “may” and “shall”—

Nadhim Zahawi: Passionate exchanges.

Chi Onwurah: Warm exchanges. It is certainly something to be welcomed.

I would like to say a few words to clause 53 stand part. As my hon. Friend the Member for Southampton, Test observed, this is another example of a “may” rather than a “will”. The clause exists purely to enable the Secretary of State to make regulations—that is its function—and yet it places no requirement on the Secretary of State to do so.

While the Minister gave a warm response, saying that he shared my hon. Friend’s concern, I remind him that the Bill is not about our desires; it is about a legislative framework that protects our national security and gives, as much as possible, clarity and certainty to those impacted by it. It is because we recognise the importance of the clause that we wish it to have some effect in law, as opposed to being the gentle suggestion it seems to be at the moment.

Dr Whitehead: The Minister has used a bank manager defence. If my bank manager wrote to me to say, “You have an overdraft that you must pay,” and I wrote back and said, “Dear Bank Manager, I may repay my overdraft,” and then the bank manager called me in and said, “What is the meaning of this letter?” and I said, “Don’t worry, I will pay the overdraft soon. No problem. That letter stands,” that would be a problem for me, but apparently not as far as legislation is concerned. The Minister has effectively said, “Don’t worry. This is definitely going to happen. We are all agreed it will happen,” so why not write it in legislation?

I will not pursue this matter to a Division, because we have exhausted this mine in Committee. The Minister knows that this is not the first time I have raised this issue during the passage of Bills, and I will continue to do so because it is an important principle that legislation should say what it will actually do. Perhaps that is a bit basic, but that is what I think is important. I will indeed withdraw the amendment. I thank the Minister for his reply this morning, although it does not dent my crusading zeal for this particular change to be made in legislation generally. I beg to ask leave to withdraw the amendment.

Chi Onwurah: I beg to move amendment 30, in clause 53, page 34, line 9, leave out “which appears to the Secretary of State” and insert “which, on a reasonable enquiry, appears to the Secretary of State”.

This amendment would require the Secretary of State to only share information, acquired in the course of national security reviews, if the Secretary of State has first undertaken reasonable enquiry.

The Chair: With this it will be convenient to discuss the following:

Clause stand part.
Clause 55 stand part.

Chi Onwurah: In clauses 54 and 55, we consider the disclosure of information by the Secretary of State for Business, Energy and Industrial Strategy, and, in clause 55, information held by HMRC.

Clause 54 specifies the circumstances in which information may be disclosed. Subsection (1) provides an information gateway for public authorities to disclose information to the Secretary of State for the purpose of facilitating the exercise of his function under the Bill. Subsection (2) permits the Secretary of State to disclose information received under the Bill to any UK or overseas public authority for specified purposes. Subsection (9) states:

“overseas public authority’ means a person in any country or territory outside the United Kingdom which appears to the Secretary of State to exercise functions of a public nature”.

The amendment seeks to address the wide definition of the overseas public authorities to which the Secretary of State might disclose information.
[Chi Onwurah]

The Minister has previously asserted that Labour Members are looking to give more and more powers to the Secretary of State, but here we wish to help the Secretary of State, which is the motive behind all our amendments. We wish to aid the Secretary of State by somewhat subscribing the persons or organisations with which he—in this case, at the moment, the relevant Minister is a “he”—is allowed to share information, by inserting in clause 54 the words “which, on a reasonable enquiry, appears to the Secretary of State”. Therefore, the amendment would not simply leave the process open, as it were, to appearances only, without any inquiry.

11.45 am

Again, the reason for tabling the amendment is—returning to a theme that Labour Members constantly refer to, which I fear the Minister still does not recognise or acknowledge—that this is a radical transformation of national security screening, in the case of mergers and acquisitions. As such, the Government must not only hold the confidence, but actually gain the confidence of businesses and investors, because this is new. Businesses and investors do not have confidence in the Government’s ability to do this thing at the moment, because it is not something that the Government are doing at the moment. So, the Government need to gain that confidence, and sufficient confidence to ensure that those going through a security review feel confident about sharing information that is relevant to that review.

Again, I remind the Committee that it is necessary that the sanctions for providing misleading information, whether unintentionally or not, and those for not providing information, are significant, as we discussed in our previous sitting, on Tuesday. So, it is all the more important that those going through a security review feel confident about sharing information that may be extremely sensitive. In fact, can we agree that this information is likely to be confidential and sensitive, given that it might appertain to national security and also to the capabilities and intentions of the investors in the businesses under consideration?

So, to give confidence to those going through a security review, the Government must provide adequate mechanisms for data sharing, adequate investment security unit capacity for secure data handling, and adequate protections on subsequent data sharing. However, the Bill does not do those things.

Speaking also as shadow Minister with responsibility for digital, I am often at a loss to explain and justify, or even understand, the Government’s approach to data sharing and data protection. The Bill refers to setting up “information gateways”, which is a term that is used simply to say that the Government are allowed to share data. Is the Minister aware of how many of these “information gateways” exist in his Department and across Government? Given the number that existed in the Treasury three years ago—that was the last time I looked at this issue and I think there were about 500 then—I am conscious that the Government have lost track of the different ways in which they, and particularly in this case the Secretary of State for Business, Energy and Industrial Strategy, are allowed to share data.

I know that the consultation on the Government’s national data strategy closed just yesterday. The Government describe that strategy as being unashamedly “pro-growth”. They do not say that it is unashamedly pro-security; indeed, there are few references to national security in that national data strategy. Mission 5, championing the international flow of data, states: “In our hyper-connected world, the ability to exchange data securely across borders is essential. Economically, it drives global business, supply chains, trade and development; it will also be critical in enabling the global recovery after coronavirus.” That is very true. It continues: “On a personal level, people rely on the flow of personal data... Finally, it has a huge impact on international cooperation between countries, including for law enforcement and national security, keeping the public safe.”

It seems that the national data strategy is focused on enabling data sharing for the processes of economic growth, rather than protecting our national interests, and the privacy and security of persons and organisations. That comes back to a theme that we have repeatedly mentioned, which is the potential conflict of interest within the Department between its economic missions and motives for investment and growth, and our national security, which we have agreed should be the foremost responsibility of Government.

We have concerns regarding the current data-sharing environment and the intention of the Government in promoting data sharing specifically. Therefore, the wide range that the clause gives the Secretary of State in sharing data with overseas public authorities on appearances only does not facilitate the good working of the Bill. Businesses and investors will be expected to share their most critical information relevant to security, criminality and commercial confidentiality, yet the Secretary of State will have the power to share that information with overseas public authorities on what can best be described as a flimsy test.

The Secretary of State will be able to share that information with persons who appear to be exercising a public function. Can the Minister give some indication of how one appears to be exercising a public function? We seek to add “on a reasonable enquiry”, which would ensure that there was at least some evidence for that decision.

I am conscious, Mr Twigg, that similar language appears in section 243 of the Enterprise Act 2002.

Nadhim Zahawi indicated assent.

Chi Onwurah: I hope the Minister also agrees that we are moving to a much expanded national security screening regime. In 2002, Facebook was a year old or just being born. We are no longer in the place we were in 2002 when it comes to the issues of importance, volume, security and privacy associated with data and data sharing. I hope he will not rely on the 2002 Act as a justification, particularly as we are moving to an expanded national security screening issue and we are in a different data environment.

The strategy says that data is the economic engine, and we must be much better in assuring businesses and investors of their data protection. Instead of relying on appearances, the amendment holds up the standard of reason. Under it, the Secretary of State would have all the relevant powers of data sharing with relevant persons
so long as the Secretary of State had reason, based “on a reasonable enquiry”, to think the person to be a relevant public authority.

It is critical that the UK has a national security regime that is grounded in national, competent exercise of state power to protect our security. The amendment would help to build success in that direction by removing a reliance on the use of appearance and instinct, by successive Secretaries of State, and grounding decisions in “reasonable enquiry” instead.

The expert evidence sessions provided support for that view. For example, Chris Cummings from the Investment Association said:

“There is so much around any investment process and the acquisition process that has to remain entirely confidential, that investors would require and would be looking for reassurance that these conversations could be held in the strictest of confidence and that nothing would appear until the right time.”—[Official Report, National Security and Investment Public Bill Committee; 24 November 2020; c. 66, Q78.]

I ask the Committee to consider whether sharing data on the basis of appearances gives that reassurance.

The clause will give information-sharing powers to the Secretary of State. We recognise the importance of that, and we do not want to hinder it unduly, but we expect that the Secretary of State should, and importantly, should be seen to, exercise those powers on the basis of evidence. It is only right that we have clear evidential requirements. Although the 2002 Act uses similar language, it is right that we in this Committee clean up that language based on 19 further years of experience.

Dr Whitehead: I wonder whether my hon. Friend might be tempted to use a bank manager comparison here as well. If I was summoned by my bank manager to the bank, and he or she said, “It appears you’re overdrawn,” and I said, “Why do you think I’m overdrawn?” and he or she said, “I don’t know. It just appears to me that you’re overdrawn,” I might say, “Could you pursue reasonable inquiries to find out whether my account is actually overdrawn or not?” Does she agree that that is an example of the appropriate use of ordinary language, and that the Bill could be put into that state?

Chi Onwurah: I commend my hon. Friend on the extent to which he has used engagement with a bank manager to illuminate much of our discussion. He is absolutely right. To be honest, if any bank invited you to consider an overdraft on such a flimsy pretext, you would, I hope, change your bank, because you could not feel confident in it.

The serious point is that small and medium businesses and start-ups—our great innovation ecosystem in this country—can move, but we do not want them to move. We want them to stay in this country within the legislative framework. We want the new Bill to provide them with the reassurance and confidence that they need to help to implement the Bill effectively and to protect national security. My hon. Friend’s elegant example highlights the failings of the clause.

I anticipate that the Minister will talk about the language in the Enterprise Act. Not only is that 18 or 19 years old, which is one reason that this Bill has been needed for so long, but the person exercising the functions and powers in the Competition and Markets Authority is not a political appointee or political figure. The Bill refers to a political figure, the Secretary of State, so it is all the more important that he or she should be seen to act on the basis of evidence, not on the basis of appearance or instinct.

The Chair: I gently remind hon. Members to address the Chair when speaking. Thank you very much.

12 noon

Nadhim Zahawi: With your permission, Mr Twigg, I will speak initially to clause 54 stand part and then address amendment 30, relating to clause 54. I will then turn to clause 55 stand part.

On clause 54, for this regime to function effectively, the Secretary of State needs access to the right information at the right time to make decisions with the fullest range of evidence available. All relevant information required by the Secretary of State to make a decision might not be obtainable from the parties to the acquisition, but rather might be stored by other public authorities, both in the UK and overseas. The hon. Member for Newcastle upon Tyne Central referred to the speed at which deals have changed; she mentioned Facebook and others. I agree that modern deals are structured in an increasingly complex manner and often across borders and continents. There is a need to work with allies at home and abroad to ensure that we are making well-aligned, timely and correct decisions.

Therefore, the clause provides that public authorities may disclose information to the Secretary of State for the purpose of facilitating the exercise of his functions under the Bill. Equally, it permits the Secretary of State to disclose information to UK and overseas public authorities for the purpose of facilitating his functions under the Bill, but also for a limited number of other purposes, including crime prevention and the protection of national security. I absolutely agree with those who say that businesses do not want slow decisions made by multiple public authorities working in silos. We all want to see an efficient regime in place. Businesses want public authorities that can talk to each other and give a quick and efficient answer that is right first time. Being able to share information is the first step in Government making fast and informed decisions without having to burden businesses unduly, which I know the hon. Lady cares about.

I of course recognise, though, that some hon. Members will feel uneasy about the Government being able to share potentially very sensitive information both within the UK and overseas. The clause includes a number of safeguards relating to the disclosure of information by the Secretary of State. First, the clause prohibits onward disclosure of information shared by the Secretary of State or use for an alternative purpose without his consent. Secondly, when disclosing information, the Secretary of State must consider whether the disclosure would prejudice, to an unreasonable degree, the commercial interests of any person concerned.

Peter Grant (Glenrothes) (SNP): I fully support the principle that we should share this kind of information with friendly overseas authorities—subject to appropriate precautions to prevent it from being used for the wrong purposes. However, somebody in the UK who breaks this law will get prosecuted, but an overseas public authority cannot be prosecuted in the UK courts, so can the Minister explain why, under clause 54(7), which lists the factors that the Secretary of State has to
consider before deciding whether to release information to an overseas public authority, there is no requirement to assess the rule of law in that other place and to consider whether it has equivalent legislation to prohibit the misuse of information? There is no requirement for the Secretary of State to consider whether they have been given guarantees or assurances by a Government whose word we would expect to be able to take. There is not even a requirement to consider whether the request for information itself might be an attempt to undermine national security.

If the Secretary of State is looking at a potential Chinese takeover of a sensitive undertaking in the UK and a public authority in China says, “We need this information for national security.” there is no requirement for the Secretary of State to take that into account. Can the Minister explain why none of those things is built into this clause now, and are the Government willing to consider amending the clause at a later stage to give the further protection that we may need?

Nadhim Zahawi: I am grateful to the hon. Member. I hope that in my further remarks, if I can make some headway, I will be able to reassure him on those points.

Thirdly, when disclosing information to an overseas public authority, the Secretary of State must have particular regard to whether the law of the country or territory to whom the information is being disclosed provides protection against self-incrimination in criminal proceedings corresponding to the protection provided in the UK, and whether the matter is sufficiently serious to justify disclosure. I hope that addresses the hon. Member’s point.

Peter Grant rose—

The Chair: Order. Mr Grant, please keep your intervention short. If you want to speak, you are allowed to later.

Peter Grant: I am sorry to intervene again so quickly, but the precautions in subsection (7) do not address any of the matters that I raised. Subsection (7)(a) in particular is vital and necessary, but it is nowhere near sufficient and does not address any of the points that I raised.

Nadhim Zahawi: I am grateful. If the drive of the hon. Member’s probing is to ensure that the Secretary of State, when he considers disclosing information to a foreign country, takes into account protecting people being caught in the regime who come from that country, I think I have just made it clear that the clause provides protection against self-incrimination in criminal proceedings corresponding to the protection provided in the United Kingdom. I hope that the hon. Member will be satisfied with that.

Finally, the disclosure is subject to data protection legislation, which provides additional safeguards in relation to the disclosure of personal data. I hope that the hon. Member for Newcastle upon Tyne Central will feel reassured that the Secretary of State may request only the information that he requires in order to exercise his function under the Bill, and that such information will be treated securely.

Amendment 30 aims to increase the scrutiny that the Secretary of State undertakes in deciding whether a person constitutes an overseas public authority for the purposes of disclosing information under clause 54. It is of course important to ensure that any person believed to be a public authority for the purposes of seeking information from, or disclosing information to, is a public authority. I am therefore pleased to reassure the hon. Lady that the Bill does that as it stands. The approach that we have taken mirrors that—indeed in section 243(11) of the Enterprise Act 2002, which includes a similar definition of an overseas public authority for the purposes of disclosure of specified information to overseas public authorities under the Act.

Chi Onwurah: The Minister is generous in giving way. On his rebuttal of my argument on the CMA, it is not about whether I like it. The whole point of the amendment is to take it away from likes, preferences or appearances, and base it on evidence, and the evidence is that the environment has changed dramatically since 2002 in terms of data. Also, the Secretary of State is a political figure.

Nadhim Zahawi: I am grateful to the hon. Lady. I remind her that the legislation requires the Secretary of State to act in a quasi-judicial way, not as a political figure. I appreciate that by a normal reading, “appears” may appear unduly casual, but that is merely a question of the form of legislative drafting, which is consistent, I remind her, with previous relevant legislation.

In addition, I reassure the hon. Lady that the principles of public law apply in any case. The Secretary of State therefore needs to act reasonably in fulfilling his functions under the Bill. That includes having a reasonable basis, supported by sufficient evidence, for coming to the conclusion that a person appears to be an overseas public authority prior to disclosing information. I hope I have provided the Committee with sufficient reassurances, and I therefore hope that the Opposition will withdraw the amendment.

Matt Western (Warwick and Leamington) (Lab): I just want clarification from the Minister on the point of that being semi-judicial.

Nadhim Zahawi: Quasi-judicial.

Matt Western: Quasi-judicial; sorry. How does that square with the responsibilities of the Minister in the Department for Business, Energy and Industrial Strategy?

Nadhim Zahawi: It is not a strange concept that a Minister acts in a quasi-judicial way in making such decisions.

I will now briefly turn to clause 55, which makes provision for specific restrictions in respect of information received under clause 54 from Her Majesty’s Revenue and Customs. For the regime to function effectively, the Secretary of State needs access to the right information at the right time in order to make decisions with the fullest range of evidence available. One such source of information that might be invaluable to the Secretary of State is HMRC. Although the Government expect that the Secretary of State would seek first to secure the information he needs from the parties, it is important that such information can also be provided from elsewhere in Government, if it is held there.
Clause 55 provides that where information is received by the Secretary of State from HMRC or an onward recipient pursuant to clause 54, it may not be used for purposes other than the Secretary of State’s function under the Bill, and nor may it be further disclosed without HMRC’s consent. Clause 35 provides that disclosing information in contravention of clause 55(1) is an offence, as is appropriate.

Chi Onwurah: Will the Minister give way?

Nadhim Zahawi: I am just finishing my point. I hope that hon. Members will agree that clause 55 provides appropriately robust safeguards for the onward sharing or use of information received from HMRC for the purposes of the regime. I recommend that clauses 54 and 55 stand part of the Bill.

Chi Onwurah: I would like to address a question to the Minister. In his remarks on these clauses, he has highlighted a concern. I might have missed it, but I do not see where the Bill sets out the information gateway through which the Secretary of State will receive information from HMRC in order to exercise his functions under the Bill. Clauses 54 and 55 are grouped together under the title of “Information gateways”. They discuss information gateways from the Secretary of State to public authorities and others, but I would really appreciate it if the Minister could write to me to set out how HMRC will disclose information to BEIS for the functions of the Bill. I am sure I do not need to remind the Committee that information held by HMRC is generally considered very sensitive by businesses and individuals alike, and there are generally clear restrictions on its sharing.

To return to the clauses and amendment more generally, part of the Minister’s argument missed what our argument was. We recognise the importance of disclosing some information, and we also recognise that clause 55 sets out tests with regard to the purposes of disclosing the information, and even to how the information can be shared onwards and to what information should be disclosed. What it does not do is test the nature of the public authority. Although we have had an interesting and, indeed, lively debate about the difference between legal language and casual language, I think we can all agree that it is in the interests of our democracy that our legislation can be read and understood by ordinary people. If the term “appears” is to be understood as it is commonly understood, the clause requires the support of our amendment.

12.15 pm

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 18]

AYES
Grant, Peter
Onwurah, Chi
Tarry, Sam

NOES
Baynes, Simon
Bowie, Andrew

Question accordingly negatived.

Clause 54 ordered to stand part of the Bill.

Clause 55 ordered to stand part of the Bill.

Clause 56

DUTY OF CMA TO PROVIDE INFORMATION AND ASSISTANCE

Question proposed, That the clause stand part of the Bill.

Nadhim Zahawi: Clause 56 places a duty on the CMA to provide information and any other assistance to the Secretary of State to enable him to carry out his functions under the Bill. For this regime to function effectively, the Secretary of State needs access to the right information at the right time to make decisions with the fullest range of available evidence.

The Competition and Markets Authority, by virtue of its position as the market regulator, will naturally have access to information that could be relevant to the decisions made by the Secretary of State. Although in practice we would expect the CMA to be entirely willing to provide support to the regime, and we have worked closely with it in drafting the legislation, the clause ensures that there is no doubt in law about the duty placed on the CMA to provide any information in its possession or any other assistance in its power when directed to do so by the Secretary of State, so long as the information or assistance is reasonably required to facilitate the Secretary of State’s functions under the Bill.

I therefore anticipate that the power in the clause—mirroring section 105(5) of the Enterprise Act 2002—would, in practice, be used only rarely, given the Department’s good working relationship with the CMA. I hope the Committee will appreciate that the clause is quite simply about ensuring that the Secretary of State has access to pertinent information relevant to the decision-making process.

Dr Whitehead: I note that the Minister has used precisely the opposite argument that he used for the last clause, relating to the word “must”. In clause 56, the CMA “must” give the Secretary of State information. [Interruption.]

The Chair: Order. Can we have just one meeting, please?

Dr Whitehead: Even though the Minister has worked well with the CMA, as he has just said, and is assured that the relationship will work well, he has put it into legislation just to make sure that it does.

Matt Western: My hon. Friend the Member for Southampton, Test has stolen my thunder—had I known that he was going to stand up, I perhaps would not have done so. It is interesting that paragraph (a) says “must” but paragraph (b) says “may”. Another valid point, beyond the semantics, is about the substance and the resource of the CMA, and whether there should be
provision for that in the Bill. Can the Minister comment on the capacity of the CMA to support the demands and obligations set out in the clause?

Chi Onwurah: I will say a few words to the clause—reflecting the comments made by my hon. Friend the Member for Southampton, Test, in particular—because there seems to be a theme in the Bill. I know that the Minister believes that the Bill is beyond improvement, and that he is reluctant even to contemplate any changes, as he said in response to the hon. Member for Glenrothes, but he must recognise that a consistent theme seems to be that requirements, or “musts”, are placed on others and the discretion—the “may”, if you like—is with the Business Secretary. The Minister himself observed that we are keen to allow the Business Secretary the necessary discretion to fully protect our national security, but does he see not that that would better achieved by clearly circumscribing the Business Secretary’s actions?

I also support my hon. Friend the Member for Warwick and Leamington in his recent contribution. Throughout this Bill, we need to ensure that the resources are there when placing requirements on bodies. I hope that the Minister can give such reassurances. On that basis, we recognise that the clause should stand part.

Question put and agreed to.

Clause 56 accordingly ordered to stand part of the Bill.

**Clause 57**

**DATA PROTECTION**

Question proposed, That the clause stand part of the Bill.

Nadhim Zahawi: Clause 57 provides that the provisions in parts 1 to 4 of the Bill containing a duty or power to disclose or use information do not authorise a contravention of data protection legislation, as set out in the Data Protection Act 2018. In addition, the clause provides that that information may be used or disclosed only if it does not contravene parts 1 to 7, or chapter 1 of part 9, of the Investigatory Powers Act 2016, which contains provisions about the interception and use of information in connection with counter-terrorism and national security. These standard provisions are included where legislation concerns the use or disclosure of information. I hope that hon. Members will therefore be content to support this standard clause as part of the legislation.

Question put and agreed to.

Clause 57 accordingly ordered to stand part of the Bill.

**Clause 58**

**MINOR AND CONSEQUENTIAL AMENDMENTS AND REVOCATIONS**

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to consider that schedule 2 be the Second schedule to the Bill.

Nadhim Zahawi: Clause 58 is purely technical in nature and inserts schedule 2 into the Bill. Schedule 2 provides for minor and consequential amendments and revocations. The Secretary of State currently has the power to intervene in qualifying mergers on national security grounds by issuing a special intervention notice or an overseas disclosure gateway notice under the Enterprise Act 2002, where the statutory requirements are met. It would clearly be unnecessary for the Secretary of State to retain these powers once the provisions of the Bill come into force. Schedule 2 therefore removes national security as a ground on which the Secretary of State may intervene under the Enterprise Act 2002. The Secretary of State will retain the powers in the Enterprise Act 2002 to intervene in qualifying mergers where these raise issues of media plurality, the stability of the UK financial system or retaining the UK capability to combat and to mitigate the effects of public health emergencies.

Question put and agreed to.

Clause 58 accordingly ordered to stand part of the Bill.

Schedule 2 agreed to.

**Clause 59**

**OVERSEAS INFORMATION DISCLOSURE**

Question proposed, That the clause stand part of the Bill.

Nadhim Zahawi: Clause 59 removes a restriction on the ability of the Competition and Markets Authority to co-operate with its international partners on merger cases. At the end of the transition period, the UK will no longer be part of the European Union’s competition system. The CMA will become responsible for investigating the effects of competition on larger international mergers, which were previously investigated by the European Commission. In a globalised economy, effective cross-border enforcement of competition law, which protects UK markets and consumers, relies increasingly on close international co-operation. The ability to disclose confidential information to an overseas authority with this enforcement activity, including in circumstances where parties have not provided their consent for the information to be disclosed, is a crucial ingredient of strong co-operation.

Moreover, the willingness of an overseas authority to disclose confidential information will often depend on whether the receiving authority can reciprocate. Any restrictions on the CMA’s ability to disclose such information could therefore inhibit the effectiveness of its international co-operation. The overseas disclosure gateway, which is set out in section 243 of the Enterprise Act 2002, provides an important mechanism for the CMA to disclose information to its overseas counterparts when consent has not been provided by relevant parties. The gateway permits disclosure for the purpose of helping an overseas authority’s enforcement activities.

However, the CMA is currently unable to use the overseas disclosure gateway to disclose information that comes to it in connection with a merger investigation. This means that the CMA is restricted from sharing certain information with its overseas counterparts that might be crucial to their investigation of a merger. This restriction presents two challenges for the UK’s competition authorities. First, it weakens the control of mergers with an international dimension that might adversely affect UK markets and consumers. Secondly, it inhibits the CMA’s ability to receive information that might be critical to its own merger investigations, because it has
no ability to reciprocate. That, in turn, could also weaken its protection of UK markets and consumers. Clause 59 rectifies this by removing the restriction in the overseas disclosure gateway and allowing the CMA to use the gateway to disclose merger information to overseas public authorities.

Chi Onwurah: I thank the Minister for setting out clause 59, because I had thought that it was inconsequential. I listened to what he said carefully, as I always do, but I did not hear him use the term “national security” once. The function of the Bill is national security. Although we have not defined it, we have debated that the Bill should be narrowly circumscribed to concerns of national security. Having listened carefully to the Minister, I get the impression that the clause has been added, and for very good reasons, to facilitate and enable the CMA’s competition and mergers powers.

We are putting the national security interest relating to mergers and acquisitions firmly here in the Bill, so the CMA is no longer concerned with and involved in that, yet this clause facilitates the CMA’s sharing of information with overseas public authorities. That information, by definition, will not be with regard to national security, because national security investigations will take place under the powers in the Bill that lie with the Secretary of State. I am somewhat confused as to what this clause is doing in the Bill. Would the Minister like to intervene to illuminate and clarify that the clause has something to do with national security?

12.30 pm

Nadhim Zahawi: The hon. Lady is quite right that it is to help the CMA.

Chi Onwurah: I find it somewhat worrying, given our debates about keeping the Bill focused narrowly on national security, that the Government have added a clause to help the CMA in its functions. My hon. Friends and I have been thinking of a number of ways in which we would like to help the CMA in its functions and to improve the Enterprise Act, but we have been resolute in focusing on national security, because that is the matter before the Committee. Yet it seems that the clause, although very well meaning, is designed for an entirely different function.

You are not stopping the debate, Mr Twigg, so I presume it is in order to debate the functions of the CMA in relation to competitions and mergers generally, rather than to national security specifically.

Nadhim Zahawi: It is worth respectfully reminding the hon. Lady and the Committee that this is a separate topic in the Bill that is unrelated to the NSI regime, as set out in the explanatory notes.

Chi Onwurah: I have the explanatory notes, and they do not state that the clause deals with a separate topic. Paragraph 173 states:

“Clause 59 amends the overseas disclosure gateway in section 243 of the Enterprise Act 2002, removing the restriction on UK public authorities disclosing information that comes to them in connection with a merger investigation under that gateway.”

The explanatory notes do not state that the functions of the CMA are separate from national security as clearly as the Minister just has. I do not want to detain the Committee, but I register the Labour party’s concern—

Peter Grant: Does the hon. Lady share my understanding that the definitive statement on what the Bill is about is the long title of the Bill, not the explanatory notes? Does she agree that the long title makes no mention whatsoever of helping the CMA in the general exercise of its purpose?

Chi Onwurah: I am grateful to the hon. Gentleman for his intervention, because he is absolutely right that, rather than having a debate on the contents of the explanatory notes, line-by-line scrutiny of the Bill should focus on what the Bill says, and it does not mention general improvements to our competition and mergers regime, much as we feel that improvements could be made. Although we will not oppose the clause, I register our disappointment that we were not better informed of the Bill’s additional scope.

Nadhim Zahawi: I think that is slightly unfair; it is included in page 4 of the explanatory notes.

Chi Onwurah: The Minister’s argument is to look at page 4 of the explanatory notes, but it does not say that the CMA’s functions are separate from national security.

The Lord Commissioner of Her Majesty’s Treasury (Michael Tomlinson): “Interaction with” the CMA.

Chi Onwurah: It says “interaction with” the CMA, but it does not say that that is separate from national security. In this afternoon’s sitting, when we discuss the additions that we would like to the remit and definition of “national security”, I hope that the Minister will recognise that the Bill is broader than national security, as was simply understood from his previous responses.

Question put and agreed to.

Clause 59 accordingly ordered to stand part of the Bill.

Clause 60: Defamation

Nadhim Zahawi: Clause 60 provides the Secretary of State and the CMA with absolute privilege against action for defamation as a result of the exercise of functions under or by virtue of the Bill. The clause has been included to ensure that the Secretary of State and the CMA have absolute privilege from defamation claims, on the basis that the function of the regime to protect national security is too important to be at risk or in any way curtailed by claims of defamation. It is, of course, not the Government’s intention to defame anyone through the regime or more widely. I hope that hon. Members will agree that this is an appropriate protection, supported by a well-reasoned regime that seeks to protect national security while supporting businesses and investors.

Dr Whitehead: I understand the purpose of the clause and, as the Minister indicated, the question of national security is very important. I can imagine circumstances in which the Secretary of State may, for example, suggest that a company is an agent of a foreign power. That
might be seen to be defamatory, but in terms of the inquiry that is being undertaken the Minister should be protected against such an action.

However, the clause states that there is absolute privilege, which appears to suggest that the privilege could be exercised even on a wholly unreasonable basis—that is, the Minister could say or write what he or she likes about anybody provided it is under the cover of, or could be attached to the purposes of, the Bill. That seems a bit of a wide-ranging provision.

I appreciate what the Minister said on the provision, and that he has already said that it would not be his intention to defame anybody, but might he provide us with an assurance today, on the record, that notwithstanding the very wide scope of the Bill, he does not see the clause as an opportunity for the Secretary of State to wantonly defame anybody if they felt like it, and that it would be strictly used in terms of inquiries that were being undertaken for the purpose of the Bill, and not for any other purposes?

Nadhim Zahawi: I hope I have already made it clear that the Government would not intend to defame anybody. The reason for the clause is that there are various points in the regime where the Secretary of State will make statements that are, in effect, published and would include communications with other parties as well as those for general public consumption. He may therefore be open to such claims, which is why the clause is in the Bill.

Question put and agreed to.

Clause 60 accordingly ordered to stand part of the Bill.

Clause 61

ANNUAL REPORT

Sam Tarry: I beg to move amendment 31, in clause 61, page 36, line 20, at end insert—

“(m) the average number of days taken to assess a trigger event called in under the Act;
(n) the average number of days taken for acceptance decisions in respect of mandatory and voluntary notices;
(o) the average annual headcount allocated to the operation of reviews of notices made under sections 14 and 18 over the relevant period;
(p) the proportion and number of Small to Medium Enterprises in the overall number of notices and call-in notices.”

This amendment would require the Secretary of State to report on the time taken to process notices, the resource allocated to the new Unit and the extent to which Small to Medium Enterprises are being called-in under the new regime.

The Chair: With this it will be convenient to discuss clause stand part.

Sam Tarry: Before turning to the amendment, it occurs to me that the Minister, in his new role as vaccinations tsar, could consider this Committee Room as somewhere to store some of the vaccine.

Amendment 31 would simply require the Secretary of State to report on the time taken to process notices, on the resource allocated to the new unit, and on the extent to which small and medium-sized enterprises are called in under the new regime. It is about requiring greater accountability from BEIS in the investment security unit’s service standards. That sounds anodyne, but it does something very important.

Throughout our discussions, there has been one point of agreement across the Committee: hon. Members, across party lines, have raised concerns about the capacity and capability that a new investment security unit will have to deliver on the Bill’s ambition. A number of the expert witnesses added to that concern, describing the shift as “seismic”—totally transformational—and said that changes will need to be thoroughly resourced in that unit, which should be especially prepared to work closely and efficiently with our innovative start-ups.

Indeed, some of the experts were pretty clear on that point. David Petrie of the ICAEW said:

“The first point I make about that is that this new investment security unit will need to be very well resourced. A thousand notifications a year is four a day; I am just testing it for reasonableness, as accountants are inclined to do. That is quite a lot of inquiries.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 53, Q60.]”

Peter Grant: I certainly sympathise with the hon. Gentleman’s desire for that information to be published. Can he explain why the Bill should require that it be published, rather than leaving it to ongoing scrutiny by the relevant Select Committee? Does he think that the wording of paragraph (o) of the amendment needs to be more precise to be part of an Act of Parliament? If scrutiny were left to the discretion of a Select Committee, it would not need to be quite so clear about what “average” means, for example, because five or six different words mean “average” to statisticians.

Sam Tarry: The hon. Gentleman raises a good point. I think that the wording is precise enough. The accompanying guidance to the Bill could perhaps clarify some of those points. The key reason that we want that in the Bill, rather than for it to be overseen in the way that he has suggested, is that—

The Chair: Would the hon. Gentleman face the Chair when he is speaking, please? Thank you.

Sam Tarry: Certainly, Chair. It is incredibly important to give that sense of clarity and time to small and medium enterprises. That has been a running theme for a number of our amendments, and there are three reasons, which it might help the hon. Member for Glenrothes to understand: first, the unit’s efficiency; secondly, its capacity; and thirdly, its focus on SMEs.

I will expand on that. First, on the unit’s efficiency, by reporting the aggregate time taken for decisions—both assessment decisions and initial acceptance or rejection notices—we would have a mechanism to ensure that the new regime works more efficiently for SMEs. Secondly, on capacity, the amendment drives towards taking stock of the resources behind the unit’s work, so that Parliament and the public will have a mechanism for holding the Government to account for what will be a major new centre for merger investment screening in the UK. Thirdly, we in the Labour party have really tried to make that focus on SMEs paramount in the Bill, so that we have a climate in which SMEs can thrive. That would simply mean that the unit could track the focus of SMEs in its work, and would be able to highlight specific concerns
and the experiences of our most innovative start-ups when interacting with the new regime. Seeing that in live time would be useful for the forward planning of SMEs, and for the Government and Parliament to be able oversee how the process is working once it is in place.

Each paragraph of the clause maintains the Government’s power to protect national security. The clause simply holds power to account through what we would call aggregated transparency.

Nadhim Zahawi: I am grateful to the hon. Member for Ilford South. We are not quite at minus 70 °C, but we are probably very close to it.

I will speak initially to clause 61 stand part before turning to amendment 31. It is crucial for investor confidence that there is as much transparency as possible in the regime, but of course there is evidently a limit to how much the Government can disclose, given that the regime deals explicitly with national security matters. That said, alongside appropriate protections for personal data and commercially sensitive information around national security assessments, the Government are committed to providing as much transparency as possible when it comes to how the new regime functions at an aggregate level.

12.45 pm

Hon. Members will appreciate that, due to the sensitive information generated by the regime with respect to personal and commercial data and national security risk, there is a limit to how much the Secretary of State can disclose publicly. The clause requires the Secretary of State to report annually to Parliament on the use of the powers under the regime. The details of what the report must contain are set out in subsection (2), but I would like to highlight a few points to assist the Committee’s scrutiny.

The report must include information on the sectors of the economy in which voluntary, mandatory and calling notices were given. This will provide Parliament and the public with the ability to scrutinise how effectively the definitions of the mandatory sectors are functioning. It will also give a sense of the areas in the economy where the greatest activity of national security concern is occurring.

The report must also provide the expenditure incurred by the Secretary of State in connection with providing financial assistance to entities in consequence of the making of a final order under the power in clause 30. Those details will, along with those others set out in the clause, provide Parliament with good insight into how the regime is functioning in practice.

It is our view that this annual report will also serve a further important function—to assure investors of Her Majesty’s Government’s technical and dispassionate approach to the screening of investments, providing investors with a predictable and transparent regime, which will continue the UK’s reputation as a great place to do business and to invest.

Amendment 31 seeks to add much to the long list of information that clause 61 requires the Secretary of State to include in the annual report. I will endeavour to be brief in my response. The first part of the amendment seeks inclusion of the average number of days taken to assess a trigger event that has been called in. Hon. Members will remember that clause 23 provides statutory time periods for assessment under the regime. Given those time limits, which are as short as we are able to make them, while also ensuring there is time for appropriate national security assessment, I see no grounds for not benefit from including average times in the annual report.

Secondly, in relation to the time taken for deciding whether to accept mandatory notices and voluntary notices, the Secretary of State must already, as soon as reasonably practicable after receiving a notice, decide whether to accept or reject. Additionally, if rejected, the Secretary of State, as soon as practicable, must provide reasons in writing for that decision to the relevant parties.

Thirdly, the amendment seeks the inclusion of the average headcount of the investment security unit in the annual report. I refer the hon. Member for Ilford South to my response to amendment 9. Arrangements on resourcing are an internal matter for the BEIS permanent secretary. As the Committee will know, it takes only a small group of exceptionally gifted people to improve our nation’s security, as we are doing here in the scrutiny of this Bill. Look around you, Mr Twigg: everybody here is incredibly talented and therefore doing an incredible job in refining the Bill. There will, of course, be sufficient resourcing allocated to the unit in any case.

Chi Onwurah: I wholeheartedly endorse the Minister’s words on the skill and talents in this Committee Room. He said we were improving the Bill, but he is yet to accept any changes, so I am intrigued to understand what improvements he feels we have made.

Nadhim Zahawi: It is the challenge the hon. Lady offers that allows a Minister as junior as the one standing before hon. Members to be able to make the argument.

Finally, the report will also give a sense of the sectors of the economy where the greatest activity of national security concern is occurring. The Secretary of State may include additional information in relation to SMEs if he considers that to be appropriate. For those reasons, I am unable to accept the amendment, and I hope that the hon. Member for Ilford South can withdraw it.

Chi Onwurah: I will say a few words in support of the amendment and on the clause, and will respond to the Minister’s comments. I think we all recognise the importance of reporting annually on the seismic shift in our national security, and of scrutiny of mergers and acquisitions. Yet it has to be said that the Bill does not say what the report’s objective is. Neither did the Minister, in listing what was included, give an understanding of the reasons the items have been included, even as he rejected the amendment of my hon. Friend the Member for Ilford South, which seeks to add points of particular interest to small and medium-sized enterprises.

I note, for example, that the number of final notifications is given but not the number of interim notifications or interim orders made. It is hard to see whether the objective of the report is to give greater confidence, to enable us to fully understand the working, or to enable us to see whether the limited contents of the impact assessment prove to be accurate. The kind of information in the report, and in my hon. Friend’s amendment, is the information that a well-run Department should wish to have. Although we are unclear on the objective of the report, which is not set out, reporting on those
items as fully as possible would certainly improve the workings of the Bill, as my hon. Friend has said he seeks to do.

Sam Tarry: I listened to the Minister’s assessment. We want to tackle a number of other substantial issues this afternoon, so on that basis I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.
Clause 61 ordered to stand part of the Bill.

Clause 62

TRANSITIONAL AND SAVING PROVISION IN RELATION TO THE ENTERPRISE ACT 2002

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 63 to 66 stand part.

Nadhim Zahawi: I now turn to the Bill’s final provisions. Clause 62 sets out the transitional provisions for cases that may qualify for intervention under both the Bill and the Enterprise Act 2002. The starting point for the transition arrangement is that the 2002 Act continues to apply in relation to national security until the new regime is commenced. That means that qualifying mergers can continue to be scrutinised under the Act where the statutory requirements are met.

However, the Government do not wish to expose to some form of double jeopardy qualifying mergers that take place after the introduction of the Bill but before commencement. The clause means that, in effect, the Secretary of State must use one Act or the other. Not doing so would create significant uncertainty for business and investors and could, at least theoretically, lead to the perverse position of the Secretary of State, following commencement of the Bill, re-examining decisions that they themselves made merely weeks ago under the 2002 Act.

Clause 63 makes provision in relation to the regulations that may be made under the Bill are subject to the negative resolution procedure, except regulations made under clause 6, “Notifiable acquisitions”, clause 11, “Exceptions relating to control of assets”, and clause 41, “Permitted maximum penalties”, where the draft affirmative procedure will apply. Given their nature and effect, the Government consider that regulations under those three powers should be subject to the approval of Parliament.

Clause 64 provides that any expenditure incurred by the Secretary of State under the Bill is to be paid out of money provided by Parliament. Clause 65 is purely a technical one to provide for definitions of the key terms used in the Bill. I do not intend to explore individual meanings of key terms now; I will instead direct hon. Members to lunch and to the relevant clauses that provide them. Finally, hon. Members will appreciate that clause 66 is purely a technical one to set out the Bill’s short title and provide details about the commencement of the Bill’s clauses and the extent of the Bill.

Chi Onwurah: I thank the Minister for setting out the provisions of the clauses and for moving us onwards to lunch and to the end of the Bill. I will not detain the Committee with a detailed consideration of the technical provisions in the clauses and the interpretation of the various terms. However, the Bill as a whole would benefit from greater clarity, as my hon. Friend the Member for Southampton, Test has so well set out, particularly in his reference to the use of language by bank managers.

We will not oppose the final clauses. We congratulate the Committee and particularly the Clerks and all those who have supported us in enabling us to reach the final clauses.

Question put and agreed to.
Clause 62 accordingly ordered to stand part of the Bill.
Clauses 63 to 66 ordered to stand part of the Bill.

Michael Tomlinson: On this occasion I will, without rudely interrupting anyone, beg to move that the Committee do now adjourn.

Ordered, That further consideration be now adjourned.—(Michael Tomlinson.)

12.57 pm
Adjourned till this day at Two o’clock.
Public Bill Committee

NATIONAL SECURITY AND INVESTMENT BILL

Twelfth Sitting
Thursday 10 December 2020
(Afternoon)

CONTENTS

New clauses considered.
Bill to be reported, without amendment.
Written evidence reported to the House.
No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 14 December 2020
The Committee consisted of the following Members:

*Chairs: *†Sir Graham Brady, Derek Twigg

† Aiken, Nickie (*Cities of London and Westminster*) (Con)
† Baynes, Simon (*Clwyd South*) (Con)
† Bowie, Andrew (*West Aberdeenshire and Kincardine*) (Con)
† Fletcher, Katherine (*South Ribble*) (Con)
† Flynn, Stephen (*Aberdeen South*) (SNP)
† Garnier, Mark (*Wyre Forest*) (Con)
† Gideon, Jo (*Stoke-on-Trent Central*) (Con)
† Grant, Peter (*Glenrothes*) (SNP)
† Griffith, Andrew (*Arundel and South Downs*) (Con)
Kinnock, Stephen (*Aberavon*) (Lab)
† Onwurah, Chi (*Newcastle upon Tyne Central*) (Lab)
† Tarry, Sam (*Ilford South*) (Lab)
† Tomlinson, Michael (*Lord Commissioner of Her Majesty’s Treasury*)
† Western, Matt (*Warwick and Leamington*) (Lab)
† Whitehead, Dr Alan (*Southampton, Test*) (Lab)
† Wild, James (*North West Norfolk*) (Con)
† Zahawi, Nadhim (*Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy*)

Rob Page, Yohanna Sallberg, Committee Clerks

† attended the Committee
New clause 1 seeks to set out some of the factors that the Secretary of State may have regard to when making assessments under the provisions of the Bill. We recognise some of the implications of including a definition of national security. The Bill is called the National Security and Investment Bill, even if it does go somewhat beyond that title.

James Wild (North West Norfolk) (Con): I note that the hon. Lady uses the word “may” not “shall” in the new clause. Can she explain why she opted for “may” in this instance?

Chi Onwurah: I am grateful for that intervention. First, it shows that the hon. Gentleman is paying attention, which in itself is something to be welcomed. If I may say so, it also shows that he is taking lessons from my hon. Friend the Member for Southampton, Test. We have considered the matter and this is the correct use of the term “may”. I shall go into more detail later, but this is not about prescribing what the Secretary of State must look at; it is about giving greater clarity, particularly to those who will come under the Bill’s remit. One of the expert witnesses put it very well. Those who will come under the Bill’s remit need to get a sense of what the Government mean by national security, not in a specific and detailed definition.

Simon Baynes (Clwyd South) (Con): Would the hon. Lady not agree that there is danger that the new clause would start to try to define in a prescriptive way what a national security risk is, whereas the point of the Bill is that it enables the Government, the Secretary of State and the relevant parties to judge what is a risk? That goes back to the point that my hon. Friend the Member for North West Norfolk made about “may” and “shall”. As far as I can see, the new clause should use “shall”, given what the hon. Lady is trying to achieve, but I accept the point about how such legislation is worded. There is a danger that, by listing all these clauses, we imply that other aspects of danger to national security are not included. I am not sure that it would achieve anything. In many ways, it might obfuscate rather than clarify, although I fully accept that her intention is to clarify.

Chi Onwurah: I thank the hon. Member for that intervention, which I think was made in the proper spirit of the Committee, by seeking to improve the Bill, help the Secretary of State, and help those who will be affected by the Bill to understand it. The hon. Gentleman is quite right that there is a trade-off.

During the expert evidence sessions, we heard both from those who felt that there should be a definition of national security and from those who felt that there should not. However, if my memory serves me, they all tended to agree that there should be greater clarity about what national security could include. For example, Dr Ashley Lenihan of the London School of Economics said:

“What you do see in regulations is guidance as to how national security risk might be assessed or examples of what could be considered a threat to national security.”—[Official Report, National Security and Investment Public Bill Committee, 24 November 2020, c. 38, Q42.]

We also heard that in the US the Foreign Investment Risk Review Modernization Act 2018 provides for a “sense of Congress” on six factors that the Committee on Foreign Investment in the United States and the
President may consider—the term “may” is used well here—in assessing national security: countries of specific concern; critical infrastructure, energy assets and critical material; a history of compliance with US law; control of US industries that affect US capacity to meet national security requirements, which is very important; personally identifiable information; and potential new cyber-security vulnerabilities.

My argument is that if we look at examples from elsewhere, we see indications of what can be included in national security without having a prescriptive definition. That is exactly what the new clause tries to set out. It states:

“When assessing a risk to national security, the Secretary of State may have regard to factors including”,

and then it gives a list of factors, which I shall detail shortly.

The question, “What is national security?” is entirely unanswered, for Parliament, for businesses looking for clarity, for citizens looking for reassurance, and if hostile actors are seeking to take advantage of any loopholes in how the Secretary of State construes national security. I do have sympathy with the argument that we should not be prescriptive and limit the Secretary of State’s flexibility to act by setting down a rigid definition of national security that rules things out. That is the spirit of the new clause. It does not rule out the Secretary of State’s flexibility or set a rigid definition; it simply does what other countries have done well, as our experts witnesses have said, by giving a guide on some factors that the Government might consider, while allowing many more to be included in national security assessments. This is critical in order to give greater clarity to businesses puzzled by the Government’s very high-level definitions of espionage, disruption or inappropriate leverage.

Andrew Griffith (Arundel and South Downs) (Con):
The hon. Lady appears to be advancing two arguments simultaneously. On the one hand, I understand the argument about clarity, which is indeed something that many people would look for in this Bill. However, she also talks about flexibility and that we should not seek to tie the Secretary of State down to a particular, prescriptive definition at any point in time, which I think members on both sides of the Committee would agree on. Given that, I am genuinely confused as to why she would seek to advance this new clause, although I find its actual wording wholly unobjectionable. Perhaps the Minister will reply on this topic, because I think the record of these proceedings could provide that clarity without needing to press the amendment to a vote.

Chi Onwurah: I thank the hon. Gentleman for that intervention, which I found very helpful. If he believes me to be presenting both sides of the argument at once, perhaps that is because the Minister has been doing the very same thing so often during the past few sittings. As the Minister has often said, there is a balance to be sought between flexibility for the Secretary of State and clarity for the business community and other communities. This new clause goes exactly to the point made by the hon. Member for Arundel and South Downs, and strikes that balance. That is why—I will say it again—the new clause does not prescribe what national security is, but it does not leave a vacuum into which supposition, uncertainty and confusion can move.

The new clause gives greater clarity to citizens worried about whether Government will act to protect critical data transfers or our critical national infrastructure. Are those areas part of our national security, even though they are not covered by the Government’s proposed 17 sectors? The new clause provides assurance in that case and—this is important—sends a message to hostile actors that we will act to protect British security through broad powers applied with accountability. It should be clear that we also need to consider how this Bill will be read by the hostile actors against whom we are seeking to protect our nation, and this new clause will send a clearer message as to what may be included in that.

The factors highlighted in this new clause are comparable to guidance provided in other affected national security legislation, most notably the US’s Foreign Investment Risk Review Modernization Act 2018. Paragraph (a) would protect our supply chains and sensitive sites, in addition to acting against the disruption, espionage and inappropriate leverage highlighted in the Government’s statement of policy intent. We have heard from experts, and have also seen from very recent history—namely, that of our 5G network—that our strategic security depends not only on businesses immediately relevant to national security, but on the full set of capabilities and supply chains that feed into those security–relevant businesses. We cannot let another unforeseen disruption, whether pandemic or otherwise, disrupt our access to critical supply.

Paragraphs (b) and (c) look strategically at our national security, not with a short-term eye. We have heard consistently from experts that national security and economic security are not altogether separate. Indeed, they cannot be separated; they are deeply linked. A national security expert told us that a narrow focus on direct technologies of defence was mistaken and that instead we should look to the “defence of technology”. That was a very appropriate phrase, meaning not specific technologies of defence, but defence of technologies that seem economically strategic today and might become strategic for national security tomorrow.

2.15 pm

The former head of the National Cyber Security Centre told us that the Government should have acted in transactions such as Huawei’s acquisition of the Centre for Integrated Photonics, rather than turn a blind eye because it did not seem to fit a narrow definition. We should not turn a blind eye any longer. With guidance from the new clause, the Government would act to protect our strategic security.

Paragraph (d) suggests a clear-eyed focus on the threats of modern technology. We are not competing against obvious physical capabilities alone; we are combating covert digital capabilities, too. We have heard about the critical role that artificial intelligence will play in our nation’s security and the regret expressed by many that DeepMind was allowed to be sold to Google when it was, and still is, a leading force in global artificial intelligence.

We know that the context of artificial intelligence capabilities is grounded in large, diverse training datasets. The new clause would put British frontier technology interests first.

Paragraph (e) would take the Government’s analysis in the statement of policy intent and put it into action. It recognises that national security risks are most likely
to arise when acquirers are hostile to the UK’s national security or when they owe allegiance to hostile states. The origin and source matters—I hope the Minister agrees with that. The former chief of MI6 told us about Chinese intelligence organising the strategic focus of both Chinese commerce and Chinese academic study in ways that are challenging to identify unless we have regard to the country of origin of those parties, which the Bill currently does not have.

Andrew Bowie (West Aberdeenshire and Kincardine) (Con): The hon. Lady mentions Sir Richard Dearlove’s evidence to the Committee a couple of weeks ago. He made very clear that his opinion, as a former head of MI6, was that having a statutory definition of national security would be very prohibitive and do damage to what we are trying to achieve by getting this Bill on the statute book.

Chi Onwurah: Absolutely. That is why we are not seeking a statutory definition of national security. That is why we are seeking to include and to set out points that the Secretary of State may take into account. The hon. Member should recognise that the Government’s statement of intent is designed to give guidance as to how the Bill will work and be used in practice, and what might be taken into account. The guidance is there. It is just that it is very limited.

We are deliberately not seeking a prescriptive definition of national security. We recognise, as Sir Richard Dearlove did, that it can and must evolve over time. We are seeking to give greater guidance and to promote a better understanding of the remit of the Bill, so that it can be better interpreted and better implemented and so that all those who come under its remit can share that understanding. That is what other nations do. The new clause takes our security context seriously, and signals to hostile actors that we will act with seriousness, not superficiality.

Paragraph (f) bridges the gap between the Government’s defined sectors and focus and the critical national infrastructure that we already define and focus on in our wider intelligence and security work. It brings us in line with allies such as Canada. Paragraph (g) defines Canada’s national infrastructure as an explicit factor in national security assessments. In Committee on Foreign Investment in the United States cases, Congress lists critical infrastructure among the six factors that the President and CFIUS may access.

The provision also acts on the agreement of the ex MI6 chief. In relation to having a critical national infrastructure definition in the Bill, he said:

“I would certainly see that as advantageous, because it defines a clear area where you start and from which you can make judgments”—[Official Report, National Security and Investment Public Bill Committee, Tuesday 24 November 2020; c. 24, Q31.]

Some of the interventions have been about whether the new clause hits the right spot between prescribing and defining what national security is and giving greater clarity and focus. We would argue that the evidence that I have just set out shows that it does.

Paragraphs (g), (h) and (i) recognise that national security is about more than a narrow view of military security; it is about human security, clamping down on persistent abuses of law—as other countries do—and recognising that a party that consistently abuses human rights abroad cannot be trusted to do otherwise at home.

It is about knowing that the single greatest collective threat we face, at home and across the world, lies in climate risk. It is about acting on illicit activities and money-laundering threats that underpin direct threats to national security in the form of global terror.

I recognise that many Government Members have recently raised the importance of human rights, illicit activities, money laundering and climate change in our security. In the statement on Hong Kong this week, the Minister for Asia acknowledged that human rights should be part of our considerations when it comes to trade and security but said that he did not feel that the Trade Bill was the right place for such provisions. I argue that today’s Bill is the right place for them because it deals with our national security.

The new clause would show the world that the UK is serious about national security. We must protect our national security against threats at home and abroad, and build our sovereign capability in industries that are the most strategically significant for security. We must view security in the light of modern technologies, climate and geopolitical threats. None of those constrain the Government’s ability to act; they simply sharpen the clarity of that action, and its signal to the world.

When we began line-by-line scrutiny, I spoke of my astonishment that the Government’s impact assessment referred to national security as an area of market failure that therefore required Government action. I hope that the Minister can confirm that he does not believe that national security is an area of market failure, but that it is the first responsibility of Government. The new clause sets out to give bones to that assertion and to demonstrate to the world that we understand our national security and the interests at play in promoting and securing it, and that we will act decisively in the interest of national security, taking into account this range of factors to protect our citizens, our national interest and our economic sovereignty, now and in the future.

Peter Grant (Glenrothes) (SNP): It is a pleasure to follow the hon. Member for Newcastle upon Tyne Central although I confess I was not quite able to pay attention to the early part of her remarks, because I was still reeling from the revelation that a born and bred Geordie is capable of feeling cold. I just hope that her constituents do not get to hear of it, or she might be in trouble at the next election.

Perhaps the aspect of the new clause that I am least comfortable about is the title. I think that is what is causing the problem. The title is “National security definition”, but what follows, thankfully, is not a definition of national security. Like a lot of people, I would love to be able to come up with a definition of national security that worked and was robust, but no one has been able to do that. The new clause, however, does not seek to prescribe what national security is, and despite what was said in some of the interventions, it certainly does not attempt to prescribe what it is not. It gives explicit statutory authority to the Secretary of State to take certain factors into account in determining whether and how, in his judgment, a particular acquisition is a threat to national security.

Chi Onwurah: I can only ascribe my lack of the usual Geordie central heating to being so far from home at the moment. I take the hon. Gentleman’s point about
the new clause seriously, and I think he is right. The title misleading to the extent that we are not looking to define national security.

Peter Grant: If the hon. Lady thinks she is a long way from home—tell me about it.

There was discussion, and quite a lot of questions to some of the early witnesses, about whether we needed to give some kind of guidance on what national security is. Some of us vividly remember—I think that the hon. Lady’s constituents will vividly remember—that there was a time when someone was a threat to national security if they were a coal miner who went on strike, or if they had a trade union membership card in their pocket and worked in the wrong places, such as in Government establishments that officially did not exist then. When we look at the honours that are still bestowed on the person responsible for those two abuses of the claim of national security, it can be understood why some of us are always concerned about giving any Government powers to act in the interest of national security unless clear safeguards are built in.

The other side of the coin is that I can foresee times when the Secretary of State might be grateful for the fact that the clause has been incorporated in the Bill. Let us suppose that someone wanted to take control of or influence a software company. I know that software is itself an area we would want to look at. We all know what can happen when the software that helps to control major transport systems goes wrong. We have all been affected by Heathrow terminal 5 effectively shutting down for hours at a time. When there is a major signalling fault caused by a software malfunction at one of the main London stations, the whole of the south-east can be clogged up for hours or even days.

Can that become a threat to our national security? I think there are circumstances in which it could. I can certainly foresee circumstances in which someone who wanted to damage the United Kingdom—for no other reason than wanting to damage its interests—might seek to do so by getting a way in that enables them to interfere with the code controlling software of the transport or financial services infrastructure, for example. It is not in the interest of any of us, at the point when a Secretary of State intervenes to stop such an acquisition, if the matter can be taken to court and it becomes necessary to argue that deliberately causing the national transport infrastructure to freeze is an attack on our national security. I cannot understand why anyone would want not to add a clause to the Bill to allow such an interpretation to be made if the Secretary of State saw fit.

Chi Onwurah: The hon. Gentleman reminds me that I should have mentioned either the impact assessment or the consultation response. I think the consultation response gives the deliberately induced software failure at Heathrow as an example of a failure of national security that the Bill would be able to circumvent by preventing hostile parties from owning that software company, without setting out how that would be part of the definition of national security that the Bill is seeking.

Peter Grant: I am grateful again for those comments. The hon. Lady has referred again to what is in the explanatory notes. Unless somebody has changed the rules, the explanatory notes are not part of the eventual Act of Parliament. In borderline cases, they may be used by a court to help to interpret what the intention of Parliament was when it passed a Bill, but as a general rule, the intention of Parliament is stated by the words in the Act as it is passed. If it does not say in the Act that a Secretary of State can take those factors into account, there will be an argument that will have to be heard and tried in court, if need be, that a Secretary of State should not have taken those factors into account.

Andrew Griffith: I do not know how familiar the hon. Gentleman is with the process by which the courts look at the definitions for judicial review, but one of the dangers of trying to write them down—I accept that it is “may” language, not “must”—is that the court will look at them. We could inadvertently circumscribe the degree to which the Act can be used. I know that is not the hon. Gentleman’s intention, but I have to say that, in practice—he might be familiar with how the courts work, particularly for judicial review—that is absolutely a legitimate consideration. That is one of the reasons why I would argue that the new clause should not be accepted.

Peter Grant: I hear what the hon. Gentleman is saying, but I am also looking at the following words: “factors including, but not restricted to”. Are those words completely without meaning? If they are, why is it that the Library has dozens, if not hundreds, of pieces of legislation currently in force that have those exact words included in them? Those words are there explicitly to make sure that the list is not intended to be comprehensive. The fact that the word “may” is in there is because it allows the Secretary of State to take the factors into account, but it does not require them to do it in circumstances where it is not appropriate.

The final aspect that I want to look at is the very last factor in new clause 1: money laundering. Everybody knows that money laundering is bad and that it is a threat to our economy; it is a threat to honest businesses and all the rest of it. If the only concern that the Secretary of State had about an acquisition was that it was intended to facilitate large-scale money laundering in the United Kingdom, can we be sure that a court would accept that, and that alone, as evidence of a threat to our national security? I hope it would. The way to make sure it would is to put it in the Bill right now.

We know there are very strong connections between the acquisition of huge amounts of property, particularly in London, by people who got rich very quickly after the collapse of the Soviet Union, large-scale money laundering and organised crime, with the money sometimes being laundered through London, and the growing effectiveness of the threat that the present Russian regime poses to our national security. The Intelligence and Security Committee report from about a year ago highlighted that very clearly.

We know that money laundering can become part of—[Interruption.] The Chair: Order. A Division has been called in the House. In anticipation of there being at least three Divisions, I suspend the Committee for half an hour. We shall resume at 3.3 pm. Should a fourth Division be called, the Committee will resume at 3.13 pm. If everybody is back sooner, we can resume earlier.
2.33 pm

Sitting suspended for Divisions in the House.

3.3 pm

On resuming—

Peter Grant: Even by my standards, it feels as if it is a long time since I stood up to start speaking, so I will bring my comments to a close, Sir Graham.

The examples that I quoted of a potential software threat to our critical transport infrastructure or facilitation of large-scale money laundering are just two examples where I think it would be to the benefit of the legislation to have those factors explicitly permitted for the Secretary of State to take into account when exercising the powers created by the Bill. I understand Government Members’ concern, but I ask them not to judge the new clause by their understandable and shared concerns about the dangers of having a precise dictionary definition of national security. I ask them to judge it by the additional certainty and reassurance it will give the Secretary of State that if they take those factors into account in all of our interests, there will be no question but that the court will uphold the decision. On that basis, I commend the new clause to the Committee. If, as has happened with depressing regularity, the Committee splits along party lines, I sincerely invite the Government to think seriously about tabling a similar measure at a later stage, because the new clause could improve the Bill substantially and it would be a great shame if it was lost simply for party political considerations.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): I am grateful to Opposition speakers, the shadow Minister and the hon. Member for Glenrothes, for their contributions and to my hon. Friends the Members for Arundel and South Downs, for North West Norfolk, for Clwyd South and for West Aberdeenshire and Kincardine for their excellent interventions.

On new clause 1, it will not surprise the hon. Member for Newcastle upon Tyne Central that the Government’s position remains consistent with that of 1 December, when amendments relating to the new clause were discussed. Such amendments included, among others, proposals for the inclusion of a definition of national security in the statement, a non-exhaustive list of factors that the Secretary of State may have regard to when assessing a risk to national security under the Bill, and the Opposition agree that clarity for all parties will be crucial to the regime’s success.

Chi Onwurah: I am listening intently to the Minister’s response—given the great skills of the Committee he is taking the new clause in the right spirit—but it is not appropriate to say that we are presenting an exhaustive list that the Secretary of State may take into account when considering whether something is a risk to national security.

On resuming—

Secondly, the new clause would not replace the statement; instead, it would appear to sit alongside it. The Government think that would probably cause confusion rather than clarity, although I have no doubt that the hon. Lady and the Opposition agree that clarity for all parties will be crucial to the regime’s success.

Thirdly, by stating what may be taken into account when assessing a risk to national security under the Bill, the new clause indirectly sets out what can be a national security risk for the purposes of the Bill, and therefore what comes within the scope of national security—many colleagues pointed out some of the evidence suggesting that we should do exactly the opposite of that—which could clearly have unintended consequences for other pieces of legislation that refer to national security. The Bill requires that the statement from the Secretary of State be reviewed at least every five years to reflect the changing national security landscape. Indeed, in practice, it is likely that it will be reviewed and updated more frequently. We think that this is the right approach, rather than binding ourselves in primary legislation.

Fourthly, but perhaps most importantly, I note in this list that the Secretary of State may have regard to an ever-broadening set of suggestions that Opposition Members wish to be taken into account as part of national security. On Second Reading, the shadow Secretary of State, the right hon. Member for Doncaster North (Edward Miliband), requested that an industrial strategy test be included in the Bill alongside national security assessments. I am afraid that an industrial strategy test is not the purpose of this legislation.

Peter Grant: The Minister comments on a speech by the shadow Secretary of State at an earlier stage of the Bill’s passage and on the undesirability of building an
industrial strategy test into the Bill. I do not see an industrial strategy test mentioned in the new clause, so, for the purpose of clarity, is that part of the new clause that we are debating?

Nadhim Zahawi: I was referring to the shadow Secretary of State’s request on Second Reading that an industrial strategy test be included in the Bill.

As I was saying, factors that the Secretary of State may have regard to through the new clause are wide ranging. This is an important Bill about national security and national security alone. We do not wish to see an ever-growing list of factors for the Secretary of State to take into consideration. That would risk the careful balance that has been struck in this regime between protecting national security and ensuring that the UK remains one of the best places in the world to invest. The Government consider that the Secretary of State should be required to assess national security as strictly about the security of our nation. That is what the Bill requires. These powers cannot and will not be used for economic, political or any other reasons.

While I understand the objectives of the hon. Member for Newcastle upon Tyne Central, for the reasons I have set out I am not able to accept the new clause. I hope the hon. Member will agree to withdraw it.

Chi Onwurah: I thank the Minister for his response, not all of which was entirely unexpected. I also thank the hon. Member for Glenrothes for his speech and his interventions, which were very much to the point.

I feel that the Minister was, to a certain extent, doing what the hon. Member for Arundel and South Downs accused me of doing—I did say that I had learned so much from the Minister—which was arguing both sides of the question at once. He seems to be saying that there should not be any definition, but that if there needs to be a definition, it is already there in the statement that the Secretary of State has set out. Indeed, I have been looking for that statement, because I did not recognise it from the way the Minister described it when talking about giving detail on the types of national security questions that might arise.

3.15 pm

In fact—the Minister may want to intervene on me on this—he seemed to imply that that statement included a list of factors. I do not think that it does, but he seemed to say that the new clause is not necessary because there is already a list of factors in that statement, and that the statement and the new clause would be in some way contradictory. I do not feel that that in any way reflects what is set out in the new clause. The new clause contains a list of factors to guide the Secretary of State. It is not an exhaustive list, but it gives considerably more of a sense of the understanding of national security than is to be found in the Secretary of State’s statement of intent. The Minister said that that could be changed at least every five years, and he argued that the list in new clause 1 appeared to be growing—this is a new clause, so I do not think the list can have grown. Our national security has changed, and the factors that determine it have expanded significantly. If we look at cyber-security, at artificial intelligence, at the threats that are coming from many different areas of the world and at the different state and non-state actors, we can see that that is absolutely the case.

I will not detain the Committee further. National security is broad, and there is a reason for that. We want to set out guidance, and I think it is important to test the will of the Committee on this new clause.

Question put. That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 9.

Division No. 19

AYES

Grant, Peter
Onwurah, Chi
Tarry, Sam

Whitehead, Dr Alan

NOES

Aiken, Nickie
Baynes, Simon
Bowie, Andrew
Fletcher, Katherine
Garnier, Mark

Griffith, Andrew
Tomlinson, Michael
Wild, James
Zahawi, Nadhim

Question accordingly negatived.

New Clause 2

REPORT ON IMPACT ON SMALL TO MEDIUM ENTERPRISES

“Not later than 18 months after the day on which this Act receives Royal Assent, the Secretary of State must lay before Parliament—

(a) a report setting out the impacts the Act has had on Small to Medium Enterprises and early-stage ventures, and

(b) guidance for Small to Medium Enterprises and early-stage ventures on complying with the provisions of this Act.”—(Peter Grant.)

This new clause would require the Government to produce a report setting out the impacts of this legislation on Small to Medium Enterprises and early-stage ventures, and to produce relevant guidance.

Brought up, and read the First time.

Peter Grant: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 3—Grace period for SMEs—

“For the purposes of section 32, a person has a reasonable excuse if—

(a) the entity concerned is a Small to Medium Enterprise; or

(b) this Act has been in force for less than six months.”

This new clause creates a grace period whereby—for alleged offences committed under Section 32 – Small to Medium Enterprises would have a ‘reasonable excuse’ if the alleged offence was committed within the first six months after the Bill’s passage.

Peter Grant: I am pleased to speak to the two new clauses, which stand in my name and that of my hon. Friend the Member for Aberdeen South. Throughout our debate on the Bill, Members have spoken—sometimes with a surprising degree of cross-party consensus—of the need to find the right balance between protecting our collective national security and allowing beneficial investment into the United Kingdom to continue. New clauses 2 and 3 aim to give some recognition to the fact that among the Bill’s potential detrimental effects may well be a disproportionate detrimental impact on smaller businesses and early start-up ventures.
Smaller businesses often lack the resources to have their own in-house team of lawyers or other trade law experts, and they certainly cannot afford the services of the very experienced experts that gave evidence to the Committee a few weeks ago. They may be more adversely affected than a bigger business would be by delays in bringing in investment, because they do not have the same resources to fall back on. Compared with bigger businesses that may have more international connections, smaller businesses are unlikely to be as well informed about which possible investors or partners are likely to raise security concerns. There is a danger that small businesses could commit time and resources to negotiating deals, acquisitions, mergers or investments that a bigger business with a more global perspective would immediately know were non-starters. Small businesses may spend a lot of time on abortive deals and negotiations.

All the way through, I have said that these things may happen. I am not trying to reignite arguments about “may” and “must”, but at the moment nobody really knows what the impact of the legislation will be. We cannot possibly know until it has been in place for a few months, or possibly even a bit longer. What we do know is that when this legislation comes into force, we will rely massively on the growth of existing small businesses and the launch of new ones to drive our post-covid recovery. Big businesses will not do it, and they certainly will not do it on their own. We have all got a responsibility to avoid putting unnecessary obstacles in the way of small businesses who want to start to grow. If we do find that we have unintentionally put those obstacles in the way, we need to be able to remove them.

New clause 2 makes two simple requests—it has two simple requirements. The first is that the Secretary of State reports back to Parliament on impacts the Act has had on small and medium-sized enterprises and early-stage ventures, giving Parliament the chance—should it need it—to consider whether we have created unintended barriers to small businesses. The second requirement is for the Secretary of State to provide guidance to those same companies to give them a bit more certainty about what they need to do to stay on the right side of the law without having to spend money on expensive consultants or legal experts.

New clause 3 tries to minimise the potential damage that the Act could do to small businesses, particularly in the early days when they may be unused to some of the impacts. Clause 32 creates a new offence of completing a notifiable acquisition without reasonable excuse and a notifiable acquisition without the proper authority of the Secretary of State. New clause 3 seeks to recognise that small businesses in particular may find themselves in the wrong side of that clause in the early days of the legislation, not through any malice or wilful neglect, but simply through ignorance, lack of experience or being too busy trying to run their business to be keeping an eye on what is happening in the Houses of Parliament. New clause 3 would effectively provide a grace period of six months in which a small business can put forward the fact that the legislation is new to be taken as a reasonable excuse, which would mean that neither they nor the directors were liable to criminal prosecution. It is critically important to bear in mind that nothing in new clause 3 would do anything whatever to dilute or reduce the effectiveness of the Bill in doing what it is supposed to do. It would not have any impact on the ability of the Secretary of State to take action to protect our national security. It would not have any impact on the exercise of powers either to block an acquisition or merger or to impose conditions on it, should that be necessary. It would not change the fact that if a small business during that six-month period completes an acquisition that should not have been completed, that acquisition would be just as void under the law as any other acquisition.

I understand that new clause 3 is a slightly unusual clause for a piece of legislation, but it would allow us to make sure that the Bill continues to protect national security to the fullest extent it can, but at the same time that we do not have businesses being scared to act in case they end up on the wrong side of the law. We would not have the possibility of the courts having to take up time dealing with prosecutions of small businesses or directors who genuinely meant no harm, but who just—

Andrew Griffith: I welcome the hon. Gentleman’s conversion to the zealous promotion of free enterprise and the cause of small businesses, but would he extend his support to any new taxation measures, new business regulation or employment measures that are advanced by the Government? While I support the thrust, the principle and the philosophy from which he clearly speaks, I do worry that the new clause could create somewhat of a precedent, and I am not sure that all of his colleagues have fully thought through the profound implications for the application of the law on business in this land.

Peter Grant: I can assure the hon. Gentleman that I have been a supporter of small businesses significantly longer than he has perhaps. I did make it clear that this is a way that we can protect small businesses without in any way compromising the integrity of the Bill. There is nothing in the new clause that will in any way weaken the effectiveness of the Bill and protecting our national security. I would be happy at another time to debate the reasons why, for example, employment measures in Scotland should be taken by the Parliament and Government elected by the people of Scotland rather than somewhere down here, but that is not a debate for today. I expect, Sir Graham, that neither you nor anybody else would be too pleased if we started to take up time this afternoon on that subject.

James Wild: In clause 32, there is provision to look at whether a reasonable excuse exists in an individual case. The hon. Member’s amendment would give a blanket exemption to any small business by dint of being a small business. Is the case-by-case basis not a better way to approach the issue?

Peter Grant: That is a valid point, but I do not think it is. The difficulty with the case-by-case basis is that it creates uncertainty and worry for the small business concerned. We are talking about a period of only six months. I do not really think that hostile overseas investors are waiting to pounce during those six months to gobble up small businesses in a way that will damage our national security. Let us face it: if they were going to do that in the first six months, they would be doing it now or they would have done it in the last six months.
I hear what the hon. Gentleman is saying, but the new clause is deliberately worded to explicitly recognise the importance of small businesses, particularly during this period. The Bill is likely to come into force at the exact time that small businesses will be trying to get back on their feet. They need all the help they can get. There is a danger that the way that the Bill could be implemented and enforced will be an unintentional barrier to their growth.

All that we are asking is that, for a short period, until smaller businesses get used to the new legislation, it does not allow them to go ahead with transactions that are otherwise prohibited and would otherwise be blocked by the Secretary of State. The Secretary of State will still have the full power to block those transactions or to impose conditions on them. It does not mean that an acquisition is legally valid if it would otherwise be void under the terms of the legislation. The only difference it makes is that it removes the danger of small businesses or their directors spending time defending themselves in court when they should be developing their business and helping to get the economy back on its feet. On that basis, I commend both new clauses to the Committee.

Chi Onwurah: I rise to speak briefly in support of additional support for SMEs. The hon. Member for Glenrothes is a champion of small businesses, which is a pleasure to hear. As he set out, and as has been set out in a number of the amendments that we have tabled in Committee, we are concerned to make sure that the seismic shift in our national security assessment with regard to mergers and acquisitions does not stifle our innovative but often under-resourced small businesses, which are such an important driver of our economy. New clause 2 reflects our intentions, particularly in amendments 1 and 11, to support and give further guidance to small businesses. I hope that the Minister and Conservative Members recognise the importance of supporting small businesses at this time through direct measures in the Bill.

Nadhim Zahawi: I thank the hon. Member for Glenrothes and the hon. Member for Newcastle upon Tyne Central for setting out the arguments in support of new clauses 2 and 3, which both relate to the treatment of small and medium-sized enterprises in the regime.

On new clause 2, the Government are a strong supporter of SMEs and have sought to provide a slick and easily navigable regime for businesses of all sizes to interact with. We are creating a digital portal and a simple notification process to allow all businesses to interact with the regime without the need for extensive support from law firms, which is a particular burden for small businesses. Furthermore, there is no fee for filling a notification, unlike many of our allies’ regimes, which in some cases charge hundreds of thousands of pounds for a notification. Consequently, we do not expect this regime to disproportionately affect SMEs.

3.30 pm

New clause 3 would create a grace period whereby SMEs would have a “reasonable excuse” defence if they committed an offence within six months of the Bill’s being passed. I can offer reassurance to the hon. Member for Glenrothes that we expect non-compliance to be very low, and we will be making every effort to keep it that way through, for example, effective engagement and outreach.

I can also advise the hon. Gentleman that for the purpose of estimating the cost to the justice system, the impact assessment suggests that for the most serious breaches of the regime, there will be a criminal conviction of any kind less than once a year. It is, however, crucial that the regime carries a sufficiently robust deterrent to ensure compliance. If there was a gap in enforcement with the absence of penalties, that could serve to undermine the deterrent effect of the regime in general, and therefore compliance along with it.

It is also crucial that the regime extends fully to SMEs. It is not just acquisitions of control over large businesses that might harm our national security, as we heard during the very good evidence sessions that we held. For example, imagine a takeover by a potentially hostile actor of a small start-up that had not yet gone to market or turned a profit, but had cutting-edge intellectual property that potential adversaries might use to undermine our security. Indeed, businesses of precisely that type are often seeking investment, and hostile actors could target them.

I should also refer to what is often SMEs’ role as acquirers, particularly for notifiable acquisitions. As the hon. Gentleman will be aware, the Bill specifies that the acquirer is to notify the Secretary of State about notifiable acquisitions. Although most such acquisitions are not expected to give rise to a national security risk, the regime is predicated on the idea that some acquirers could do us harm, and that some might actively seek to do so. With the grace period that he seeks to put in place through the new clause, there would be nothing to stop hostile actors setting up an SME specifically to carry out notifiable acquisitions in the first six months of the regime’s operation, not notifying and then being immune from any penalties.

If and when the Secretary of State found out about such acquisitions, he could still call them in—I am sure that is what the hon. Gentleman was imagining—and, if appropriate, apply remedies. However, I hope he agrees that where the SME held sensitive intellectual property, that intellectual property would be long gone and transferred overseas before the Secretary of State could act.

We therefore need penalties to disincentivise that kind of dangerous behaviour, so while I fully appreciate the sentiment behind the new clause, such a grace period would create an unacceptable loophole that rewarded those seeking to undermine our regime. None the less, I recommit to the hon. Gentleman that the Government will continue to ensure that this regime is proportionate, and that SMEs and entities of all sizes can continue to thrive in this country while we safeguard our national security. I therefore hope that he will not press the new clause.

Peter Grant: I hear what the Minister is saying, but I am still not convinced that he was listening to all the comments from this side of the Committee. However, I do not seek to divide the Committee on either new clause. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.
New Clause 4
COMPLAINTS PROCEDURE
“(1) The Secretary of State shall by regulations set up a formal complaints procedure through which acquirers may raise complaints about the procedures followed during the course of an assessment under this Act.

(2) Complaints as set out in subsection (1) may be made to a Procedural Officer, who—

(a) must not have been involved in the assessment and who is to consider significant procedural complaints relating to this section or another part of this Act; and

(b) may determine or settle complaints in accordance with regulations to be published by the Secretary of State within 3 months of this Bill becoming an Act.”—(Chi Onwurah.)

This new clause would require the Secretary of State to establish a formal complaints procedure for acquirers.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 9.

Division No. 20]

AYES
Grant, Peter
Onwurah, Chi
Tarry, Sam

NOES
Baynes, Simon
Bowie, Andrew
Fletcher, Katherine
Garnier, Mark
Gideon, Jo
Griffith, Andrew
Tomlinson, Michael
Wild, James
Zahawi, Nadhim

Question accordingly negatived.

New Clause 5
HIGH- AND LOW-RISK ACQUIRERS
“(1) The Secretary of State shall set out in writing descriptions of high risk and low risk acquirers by reference to the characteristics of those persons and their actual or potential hostility to the UK’s national security and national interest, and based on regular multi-agency reviews.

(2) Acquirers who meet the description of a high risk acquirer under subsection (1) must be subject to greater scrutiny by the Secretary of State in the carrying out of the Secretary of State’s functions under this Act.

(3) Acquirers who meet the description of a low risk acquirer under subsection (1) must be subject to lesser scrutiny by the Secretary of State in the carrying out of the Secretary of State’s functions under this Act.”—(Sam Tarry.)

This new clause would require the Secretary of State to maintain a list of hostile actors, including potential hostile states, and allied actors to allow different internal security to be applied based on the characteristics of the actors linked to the acquirer.

Brought up, and read the First time.

Sam Tarry (Ilford South) (Lab): I beg to move, That the clause be read a Second time.

The Opposition’s new clause 5 deals with high- and low-risk acquirers. It would require the Secretary of State to maintain a list of hostile actors, including potential hostile states and allied actors, to allow different internal security to be applied based on the characteristics of the actors linked to the acquirer. I will attempt to explain the exact thinking behind the proposal.

There has been widespread agreement inside and outside the Committee that we face a geopolitical context in which many—if not all—threats emanate from a set of hostile actors or states. In fact, the Government’s statement of policy intent for the Bill recognises that “national security risks are most likely to arise when acquirers...owe allegiance to hostile states”.

Throughout this process, the Committee has heard from various experts, including experts on China, as well as from lawyers, intelligence chiefs and think-thank experts. They have told us that origin and state of origin should be important drivers of national security screening processes. Indeed, a number of our allies—most notably, the US—exempt some countries, including Canada, Australia and the UK, from some of the most stringent mandatory notification requirements, and include country of origin among the factors to be considered in assessing security.

In that context, it is perhaps quite concerning that the Minister and the Government have not caught up or been thinking about that. In previous expositions, they have simply maintained that national security is not dependent on a particular country. When we debated a similar provision earlier in this process, I think the Minister said the Government were “agnostic” about the country of origin. That could be a mistake, because national security is not exclusively dependent on a single country. It is short-sighted and, frankly, dangerous, not to see threats that are materially country-specific.

As my hon. Friend the Member for Newcastle upon Tyne Central said, the former head of MI6 told the Committee that, essentially, we need to wake up to the strategic challenge posed by China in particular. I will explore that a little more with some specific examples from around the world of China beginning to tap into start-ups long before they are mature enough to be acquired. In Sweden, for example, between 2014 and 2019, China’s buyers acquired 51 Swedish firms and bought minority stakes in 14 additional firms. In fact, the acquisitions included some 100 subsidiaries.

More worryingly, in 2018, Chinese outfits, two of them linked to the Chinese military, bought three cutting-edge Swedish semiconductor start-ups. There is the 2017 example of Imagination Technologies—a top British chipmaker—which was acquired by a firm owned by a state-controlled Chinese investment group. Before that, a Chinese firm also bought KUKA, a leading German industrial robot-maker.

Andrew Griffith: Although this is interesting, I fear we are drifting a tiny bit off the new clause, which does not refer to geography. Given the Opposition’s desire to continue to shade in any ambiguity with greater clarity and the definition in new clause 5, will the hon. Gentleman give his definition of what “regular” would constitute?

Sam Tarry: I thank the hon. Member for that intervention. The word “regular” would clearly need to be defined in a way that did not overburden the new part of the Department that would oversee the regime, but that would provide the information on a basis that enabled the Minister to make decisions, and to be scrutinised on those decisions regularly enough that the regime was effective and did not lead to oversights.
Chi Onwurah: I thank my hon. Friend for his points on the new clause. The hon. Member for Arundel and South Downs may say that there is no reference to geography, but it is not the case that requiring a list of hostile actors might reflect geography as appropriate, and as the geography of hostile actors changes? Does the number of times that we have mentioned one country in particular—China—not indicate that geographical location can be an indicator of the likelihood of hostile actors?

Sam Tarry: Absolutely. This is not about being particularly anti-China, but it is the strongest example of where we have heard evidence of things that are under way. I will continue with a few more examples. I think this is important, because we are trying to draw back the curtain on exactly what is going on.

Simon Baynes: I perceive a similar issue in new clauses 5 and 1: being prescriptive in this way causes problems, because what happens if a new, potentially dangerous, acquirer appears on the scene who is not incorporated within the terms of the measure?

Sam Tarry: I thank the hon. Member for that intervention, which goes back to what the hon. Member for Arundel and South Downs said. That is why this needs to be looked at regularly enough to be on top of the process. Obviously, threats change. Countries rise and fall and their agendas and Governments change, but we know that in some instances countries are actively making moves to invest in technology companies in such a way that might not be caught by some of the provisions in the Bill. We feel that being more stringent here would allow the Secretary of State more powers to keep, in some ways, a better eye on exactly what is going on.

Perhaps I should explain a little what I mean by that. One of the things that we are trying to uncover and drive at with the new clause is the importance of some of the ways in which venture capital firms are being used, particularly by the Chinese and by some companies. For example, in Cambridge and Oxford—two important tech hubs for our country—start-ups are regularly invited to pitch ideas to the Chinese state investment company. Nothing particularly untoward is happening there, but it is quite interesting that Chinese investors are particularly interested in talking to emerging biotech, internet of things, artificial intelligence and agri-tech companies.

Why is China particularly interested in those areas? The publicly available “Made in China 2025” strategy to become an economic superpower says that the first three things that the Chinese are interested in are biotechnology, the internet of things, and artificial intelligence. It is quite clear that there is a specific move by the Chinese—this could be replicated by other countries, whether it be Russia or others—but it is not as obvious as, “This is a state company that is going to come in and invest.” They will be taking part in buy-ins of some of the companies. This is something that has already happened.

3.45 pm

Peter Grant: Although I understand the intention behind the new clause, some of the wording concerns me. I supported new clause 1 because it was quite clearly permissive and expansive. This new clause is quite clearly prescriptive. Does the hon. Gentleman not accept that the Secretary of State will be guided day to day, which is much more regularly than multi-agency reviews can happen? The Secretary of State will be guided day to day by advice from the security services and others, not as to the theoretical characteristics of an acquirer that might make them a threat, but as to the actual identity and track record of the acquirer and concern.

In particular, is the hon. Gentleman not concerned about requiring the production of a list of high-risk and low-risk characteristics, or that subsection (3) of the new clause in particular would create the possibility that, at some point, somebody who ticked all the boxes for low risk, but was still a high-risk acquirer, could prevent the Secretary of State from undertaking the scrutiny that was required? Can he even explain, for example, what he means by “greater” and “lesser” scrutiny? How would I interpret whether the Secretary of State’s scrutiny had been greater or lesser?

Sam Tarry: I thank the hon. Gentleman for his intervention. Those are valid points, and part of what we are driving at here is to be more prescriptive. The feeling is that we essentially need to allow the loops in the net to be closed enough such that we catch some of these companies. We do not want a situation where a number of companies have portions of them being owned by, for example, China or another country, and do not fall foul of any of the provisions currently in the Bill. In time, that could mean that countries and entities that were hostile to Britain’s strategic goals ended up having quick and strategic access to things around nanotechnology, agriculture and a range of other areas where they had essentially got their hands into something that I think should be protected far more closely by the UK.

To give an example, in the US—this is already under way—a Palo Alto-based venture capital firm backed by the Chinese Government had dozens of US start-ups in its portfolio. On 15 November 2020, the Office of the US Trade Representative said that 151 venture capital investments in US start-ups had featured at least one Chinese investor—up from 20 in 2010. We are not saying we do not want Chinese investment, but what we do not want is a situation where we are unable to have a grip when we find that loads of our technology companies—our most cutting-edge firms—are essentially all part-owned by the Chinese Communist party or one of its subsidiaries. That is why we have been more prescriptive in many parts of the new clause.

Matt Western (Warwick and Leamington) (Lab): My hon. Friend is making some important points. One of the striking things about, for example, Canyon Capital Advisors is how the US authorities intervened when it was looking to take over a particular US tech company. However, when it came to Imagination Technologies, of course, the UK Government did not.

Sam Tarry: That is exactly the kind of example on which we are trying to use the new clause to provide more clarity and give more force to the Bill so it can deal with these sorts of thing. If, for example, public investment by Chinese venture capital groups in western countries—whether it be this country or others—is visible but is actually just the tip of the iceberg, that is going to be a real problem. One lesson that Richard Dearlove described clearly to the Committee was that we need to
[Sam Tarry]

take a longer medium-term view that goes beyond just being the most free-market and economically attractive investment prospect, particularly given the rise of those geopolitical challenges. The Chinese are being explicit about what their goals are. They do not want to build Britain up; they want to take us for as much as they can get. This is about protecting ourselves and ensuring that those smaller things, which may just be going on under the net and may not hit some of the parts on mandatory notices, not the big headline-grabbing things, could be looked at.

I agree with an earlier comment made by the hon. Member for Glenrothes that one problem is that, while we need regular advice from intelligence services and of course it needs to come through to the Secretary of State, having a regularised timeframe in which we know that those things will get full scrutiny is incredibly important. Parliamentarians and the public will want to see if there are any patterns developing in types of investments and the way those investment vehicles are used to buy into some of the most advanced British technology companies.

This new clause does not require the Secretary of State to publish a list of countries; it simply requires that the Secretary of State, working with the agencies, maintains a list of state-driven risks, which feed into national security risks. Our drive, as the Opposition, is to have a regularised timeframe in which we know that we need regular advice from intelligence services and of course it needs to come through to the Secretary of State.

Nadhim Zahawi: This new clause does not require the Secretary of State to publish a list of countries; it simply requires that the Secretary of State, working with the agencies, maintains a list of state-driven risks, which feed into national security risks. Our drive, as the Opposition, is to have a regularised timeframe in which we know that we need regular advice from intelligence services and of course it needs to come through to the Secretary of State.

If this new clause is accepted, it would provide those guarantees and the extra ability to bring together the agents that would be able to compile that list of state-driven risks, which can then inform decisions. In that context, it is vital that the country is assured of the Government’s ability to act on intelligence and expertise in protecting British security against hostile actors.

Nadhim Zahawi: New clause 5 seeks to require the Secretary of State to maintain a written list of high-risk and low-risk acquirers, as we have heard, to allow differential internal scrutiny to be applied, by reference to the characteristics of the actors linked to the acquirer, and based on regular multi-agency reviews. I assume that the intention of the hon. Member for Ilford South is that this list would be an internal document, but I would be happy to discuss my concerns about publishing such judgments, if that would be of interest to him.

In order to exercise the call-in powers, the Bill already requires the Secretary of State to publish a statement, which we will discuss later, about how he expects to exercise the call-in power. This statement may include the factors that the Secretary of State expects to take into account when deciding whether to call in a trigger event. Guided by the statement, the Secretary of State will need to consider every acquisition on its own individual facts, as befits the complex nature of national security assessments. In my view, such a list as the one proposed would not, therefore, be the right way forward.

Mark Garnier: Has the Minister made an assessment of the resources that would be needed to look after a list such as this, not only to compile a list of hostile actors but to look after things like GDPR? There could be any number of legal challenges by companies that find themselves on this list unjustly. Perhaps the characteristics of a hostile actor may not individually be hostile, but a combination of several characteristics could be. It could easily exclude quite benign actors who accidentally fall into this. While the intention of the new clause is not unsound, it sounds like a hideous nightmare to administer.

Nadhim Zahawi: My hon. Friend raises an incredibly important point, because, as he rightly says, factors other than the risk profile of the acquirer may determine whether an acquisition is subjected to greater or lesser scrutiny. It is also likely that any list would quickly go out of date. Entities in this space can change and emerge rapidly, especially if parties are attempting to evade the regime and the Secretary of State’s scrutiny. In addition, such lists being intentionally published or otherwise disclosed publicly could have significant ramifications for this country’s diplomatic relations and our place in the world, in respect of both those on one of the lists and those who are not on the list. Publishing the list may also give hostile actors information about gaming the system, to the UK’s detriment.

I would suggest that what the hon. Member for Ilford South describes would essentially be an internal and highly sensitive part of a national security assessment. While I appreciate the sentiment behind the new clause, I do not believe that it would be appropriate to set out such details in writing. It is, however, entirely reasonable for the hon. Gentleman to seek to reduce the burden on business where possible, in particular if the acquisition presents little risk and can be cleared quickly. I have an enormous amount of sympathy with that aim.

Chi Onwurah: I do not intend to make a speech, but I wanted to intervene on this particular point. A part of the source of the new clause is the Minister’s own comments. He said that national security was not dependent on a particular country. He is giving a lot of reasons why there cannot be a list, because of different actors, but does he recognise that national security may relate to a specific country? Has he woken up to the risks that particular countries may pose?

Nadhim Zahawi: I assure the hon. Lady that Her Majesty’s Government do exactly that, but the Bill is deliberately country-agnostic. Indeed, to give parties predictability on small business and to provide for rapid decisions where possible, the regime has clear and strict timelines, as we have heard throughout the debate. Additionally, clause 6 enables the Secretary of State to make regulations to exempt acquirers from the mandatory notification regime on the basis of their characteristics. Arguably, this places the strongest requirement on acquirers, such as where acquisitions by certain types of party are routinely notified but very rarely remedied or even called in. Taken together, these provisions are already a highly adaptable and comprehensive set of tools, so the list and its proposed use would be unnecessary and potentially harmful.

I shall touch briefly on national interests, which the new clause once again references. I have said before that the regime is intentionally and carefully focused on national security. That is specifically the security of the nation, rather than necessarily its broadest interests. This is therefore not the right place to introduce the concept of national interest, which would substantially and, we strongly believe, unhelpfully expand the scope of the regime.
In conclusion, with the strength provided by clauses 1, 3 and 6 already in the Bill, I am of the very strong opinion that the Bill already achieves its objectives. I therefore cannot accept the new clause and ask that the hon. Member for Ilford South withdraw it.

**Sam Tarry:** As I listened to the Minister, it struck me that one of the witnesses, Charles Parton from RUSI, said:

“Let us not forget that most foreign investment by the Chinese state is owned, so it is not just a fair bet but a fair certainty that any state-owned enterprise investing is fully politically controlled.”

[Official Report, National Security and Investment Public Bill Committee, 24 November 2020; c. 17, Q19.]

That is in part our thinking. One slight contradiction with the Bill is that it does not feel as though it always quite reflects the statement of political intent published alongside it. We support that statement of political intent, so the new clause’s objective was to strengthen the Bill’s commitment to ensuring that the Investment Security Unit is provided with an assessment that recognises the relationship between hostile actors and the countries to which they owe allegiance, which is stated in the statement of political intent.

I hope that the Minister takes time to take stock of what the new clause is trying to do, but on this occasion I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

**New Clause 6**

**ACCESS TO INFORMATION RELEVANT TO NATIONAL SECURITY**

“(1) The Secretary of State may by regulations make provision for the call-in power under section 1 to be exercisable by the Secretary of State in respect of circumstances where a person acquires access to, or the right of access to, sensitive information but does not acquire control of an entity within the meaning of section 8 or control of an asset within the meaning of section 9.

(2) For the purposes of this section, sensitive information means information of any form or description the disclosure of which may give rise to a risk to national security.”

(Def Whitehead.)

This new clause would allow the Secretary of State to regulate to include new trigger events, where a person has access to information relevant to national security, even if the party does not acquire control or material influence over a qualifying asset or entity as a result of an investment.

Brought up, and read the First time.

4 pm

**Dr Alan Whitehead** (Southampton, Test) (Lab): I beg to move, That the clause be read a Second time.

Hon. Members will be sad to know that I have failed in the ballot to be one of the 2,000 supporters to watch Southampton Football Club this Saturday. I will reflect on that, but I have already sat here for much longer than 90 minutes in near-freezing conditions, watching two equally matched teams slug it out together, so I am not too upset about it. That is the last thing I will say about the unpleasant conditions in this Committee Room.

I hope this clause will be seen as helpful to the Secretary of State and as an addition to the armoury of this Bill in dealing with the multitude of different circumstances under which influence may be sought, or technologies and sensitive information may be acquired, as we have discussed. It seeks to give the Secretary of State an exercisable power under the clause 1 call-in powers and it follows on from what my hon. Friend the Member for Ilford South said in the previous debate.

Start-ups may be invested in by venture capitalists, but those venture capitalists may turn out to be bodies that are effectively seeking to gain influence in the start-up or small company, by means of investing in it. They are not seeking to control it, or to control either the entity or the asset, in terms of the meaning in section 8 or 9, but to put themselves in a position where it is pretty impossible for those companies to resist providing information to that limited partner.

In the UK, British start-ups effectively rely on foreign investment. In 2019, 90% of large tech investment rounds included US or Asian investors, according to Atomico’s “The State of European Tech.” There are many circumstances in what we might call our UK venture capital ecosystem in which that kind of sourcing of funds is a regular state of affairs. Venture capital-reliant firms in this country are now receiving millions of pounds from Chinese investors, as my hon. Friend the Member for Ilford South has enumerated for us.

Those venture capital investments do not end up, and are not supposed to end up, with the seeking of material control of those companies. As I have said, it would be difficult—practically impossible—for that venture capital-based firm to deny its limited partner investors access to technological information from portfolio companies. In such cases, especially when limited partner investments in the fund take place after an initial trigger event, those would be missed by the Bill as it currently stands. Indeed, that is made tougher still by the fact that most venture capital funds do not publish the names of limited partners. So the Government would not even know when those investments happen and when access to information passes into potentially hostile hands. That series of circumstances is becoming pretty widespread in the high-tech world, and does not appear to be focused on very accurately by the provisions already in the Bill.

What the amendment seeks to do, as I have mentioned, is enable the Secretary of State—if it is considered by the Secretary of State to be an issue that warrants further consideration—to make regulations for the provision of that call-in power outside the terms of clause 9 of the Bill. I think that is a potentially very positive additional power that would reside in the Bill and would be an additional piece of armament in the hands of the Secretary of State on the basis of what we think is a continuing expansion of investment which may have malicious intent to scoop up, by that venture capital arrangement, a slice of sensitive information.

I was thinking about the equivalent of Chinese dragons in “Dragons’ Den”, taking a portion of the company in return for having a hand in that company’s investments. In a sense, that is what venture capitalists will do under these circumstances. Although the control of the company, as we see in “Dragons’ Den”, remains very much in the hands of the person who has gone into the den in the first place, the investment in that company is nevertheless a source of very substantial leverage in what the company does, what information it provides and what sensitive information it gives out.

I offer this new clause in what I hope will be seen as a very constructive spirit. The clause endeavours to strengthen the Bill by providing a particular option to the Secretary of State, when looking at the entire landscape of how influence is sought, at how sensitive information may be provided and at how assets may effectively be acquired.
Peter Grant: The new clause is a significant improvement to the Bill and I hope that the Government will support it. It takes action to close a loophole that I certainly did not spot reading through the Bill the first time. I suspect a lot of others did not spot it either. It was highlighted by a number of the expert witnesses we spoke to a few weeks ago. They pointed out that a hostile operator does not necessarily need to have control or even significant influence over a security-sensitive operation to be able to do us some harm. One of the examples I vividly remember was that if somebody buys up as little as 5% or 10% of the shares of a company, possibly keeping it even below the threshold where it would need to be publicly notified to Companies House, that might still be enough by agreement to give them a seat on the board of directors. That means they will have access to pretty much everything that is going on within that company. For that kind of scenario alone, it is appropriate that we should look to strengthen the Bill.

The way the new clause is worded is entirely permissive. It would not require anybody to do anything, but it would give the Secretary of State the statutory authority to make regulations, should they be necessary, and to word them in such a way that they could be targeted towards any particular kind of involvement by a hostile power—it is difficult for us to predict now exactly what that might be.

I know that the usual format is that an Opposition amendment is not supported by the Government, but if the Government are not minded to support this one now, I sincerely hope they will bring through something similar on Report or when the Bill goes through the other place at a future date.

Nadhim Zahawi: I am grateful to the hon. Member for Southampton, Test for setting out his case for the new clause and to the hon. Member for Glenrothes for his contribution.

When I first read the new clause, I was fortuitous to see that, despite previous debates that we have had in this Committee, Her Majesty’s Opposition are clearly now firm converts to the “may by regulations” formulation. I am incredibly grateful. We have found much common ground in the course of our line-by-line scrutiny, but this was, I admit, an unexpected area of consensus.

My understanding is that the new clause would enable the Secretary of State to, by regulations, introduce a new trigger event covering circumstances in which a person acquires access to, or the right to access, sensitive information, even if the party does not acquire control over a qualifying entity or asset. The hon. Member for Southampton, Test may have in mind particular circumstances relating to limited partnerships and the role of limited partners.

The attempt to potentially include access to national security sensitive information as a separate trigger event is, in some ways, a reasonable aim, but I fear that it would, at best, sit awkwardly with a Bill introducing a new investment screening regime that is specifically designed around acquisitions of control. At worst it would bring into scope a huge swathe of additional circumstances, outside the field of investment, in which the Secretary of State could intervene, which could be notified by parties and which could create a backlog of cases in return for little to no national security gain.

For example, such a new clause could raise significant question marks about whether the appointment of any employee who might have access to certain information would be a trigger event in scope of the Bill. I am almost certain it would. Similar concerns would apply in respect of any director, contractor, legal adviser or regulator who might have access to sensitive information. That is not the Government’s intention.

If limited partnerships are the specific target of the new clause, I can reassure the hon. Gentleman that there is no specific exemption in the regime for acquisitions of control over a limited partnership. Of course, in practice, the rights of limited partners are, by their nature, limited, so we expect to intervene here by exception. But those acquisitions remain in scope of the call-in power, along with any subsequent acquisitions of control over qualifying entities by the limited partnership—particularly where there are concerns about the general partner who controls the partnership, or limited partners who are exerting more influence than their position formally provides.

I should also highlight that the Bill already covers acquisitions of control over qualifying assets, the definition of which includes “ideas, information or techniques which have industrial, commercial or other economic value”. For the purposes of the Bill, a person gains control of a qualifying asset if they acquire a right or interest in, or in relation to, a qualifying asset that allows them to do one of the two things set out in clause 9(1). That means that an acquisition of a right or an interest in, or in relation to, information with industrial, commercial or other economic value that allows the acquirer to use, or control or direct the use of, that information is in scope of the Bill. Therefore, depending on the facts of a case, an investment in a business that, alongside any equity stake, provides a person with a right to use information that has industrial, commercial or other economic value may be called in by the Secretary of State where the legal test was otherwise met.

The Committee heard from our expert witnesses that these asset provisions are significant new powers and that it is right to ensure that we have the protections we need against those who seek to do us harm, but I firmly believe we must find the right balance for the new regime. That is why acquisitions of control over qualifying entities and assets are a sensible basis for the Bill. Broadening its coverage to ever-wider circumstances risks creating a regime that theoretically captures everything on paper, but that simply cannot operate in practice, due to a case load that simply cannot be serviced by Whitehall. I urge the hon. Member for Southampton, Test to reflect on that point, given all we have heard in the last few weeks about the importance of implementation and resourcing, and I respectfully ask him to withdraw the new clause.

4.15 pm

Dr Whitehead: I respectfully ask the Minister to reflect carefully on what I and the hon. Member for Glenrothes have said this afternoon. Whether or not the Minister thinks the new clause is one he can reasonably adopt, he has already accepted, in terms of what he says may be in the scope of the Bill, that this is a real issue. This is something that we have to think very carefully about and that, by its nature, is fairly difficult to pin
down, because it relates to a series of actions that do not easily fit into the box of control or company takeover. It is much more subtle and potentially wide-ranging, but nevertheless it is something that we know is real. As my hon. Friend the Member for Ilford South said, it is happening in silicon valley, Germany and this country. It is happening in a number of places. Interests are being bought up not because of altruistic concern for the health and welfare of that particular start-up, but for other, much more worrying reasons than simply influence as a limited partner in a company.

I am pleased that the Minister put on record that he thought that the extension of this activity might be in the scope of the Bill already, although I think it is stretching what the Bill has to say to take that line. I hope he will not regret that. When he looks at what he has said about what he thinks is in the Bill, he may find, on reflection, that the new clause would have been more use to him than he thought. However, I am not going to press the issue to a vote this afternoon.

I hope the Minister will reflect carefully. He has already said on the record that he thinks that a number of these measures can be squeezed into the Bill. I hope he will not find that there are circumstances where he needs this method of operation but that it can, after all, not be squeezed into the Bill as well as he thinks it can be. I hear what he says and wish him the best of luck with squeezing things into legislation that perhaps were not quite there. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 7

ANNUAL REPORT TO THE INTELLIGENCE AND SECURITY COMMITTEE

“(1) The Secretary of State must, in relation to each relevant period—
(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 is practicable after the end of that period.
(2) Each report must provide, in respect of mandatory and voluntary notifications, trigger events called-in, and final orders given, details of—
(c) the jurisdiction of the acquirer and its incorporation;
(d) the number of state-owned entities and details of states of such entities;
(e) the nature of national security risks posed in transactions for which there were final orders;
(f) details of particular technological or sectoral expertise that were being targeted; and
(g) any other information the Secretary of State may deem instructive on the nature of national security threats uncovered through reviews undertaken under this Act.”—(Chi Onwurah.)

This new clause would provide the Intelligence and Security Committee with information about powers exercised under this Act, allowing closer scrutiny and monitoring.

Brought up, and read the First time.

Chi Onwurah: I beg to move, That the clause be read a Second time.

It is with some regret that I rise to move new clause 7, because it is the last new clause we propose to the Bill. It is a Christmas present to the Minister. Things have certainly been interesting since we began our line-by-line scrutiny. With your leave, Sir Graham, I will take this opportunity to thank all those involved in drafting the Bill, as well as the Clerks, who have worked so hard and played such an important role in helping to draft amendments and provide support to all members of the Committee. I also thank you, Sir Graham, for chairing it so admirably.

We have learned a great deal over the last couple of weeks. I have learned just about everybody’s constituency—

Nadhim Zahawi: Would the hon. Lady like a test?

Chi Onwurah: I will not take up the opportunity of a test. We have all learned a lot about air flows—in this room, at any rate—as we seek to maintain some heat. What we have not learned, though, is how the Minister believes the Bill can be improved. All our line-by-line scrutiny has yielded many assurances, compliments on our intention and, indeed, some letters, for which I am grateful, but no acceptance and not even the commitment to go and think about some of our constructive proposals, amendments and new clauses. I urge him to consider this new clause as an opportunity to show that he truly believes, as he said earlier, in the skills, experience and expertise of the Committee by reflecting on the potential for improvement.

The new clause returns to an earlier theme and would require—the Minister will be pleased to note that that is a “must”, not a “may”—an annual report to be prepared by the Secretary of State “in accordance with this section” and a copy of it to be provided “to the Intelligence and Security Committee of Parliament as soon as is practicable after the end of that period.” It sets out what should be in that report, such as the events, the number of entities, the nature of the risks and “details of particular technological or sectoral expertise” and so on. It would provide the Intelligence and Security Committee with information about the powers exercised under the Bill and allow closer scrutiny and monitoring.

The new clause reflects how we have consistently supported the need for the Bill. Our approach to the security threats we face is to push for change specifically to allow broad powers of intervention, but for those using those broad powers to be held to account by Parliament and through transparency. Our international allies do exactly that. The US requires CFIUS to produce a non-classified annual report for the public, alongside a classified report for certain members of Congress, to provide security detail to them, allowing congressional scrutiny while retaining sensitivity of information.

As I think the Minister acknowledges, the Government have been late in following where international allies and the Opposition have led with calls to better protect our national security, so he must not fall behind in following our calls for accountability and transparency. That is critical not just to ensure our security and wider parliamentary understanding of the nature of the threats we face but for accountability.

The Secretary of State is to be given sweeping powers. For the last time, I should say that we will go from 12 reviews in 18 years—less than one a year—to 1,830 notifications a year, which is more than five every single day. The Secretary of State will be able to intervene in every single such private transaction. It would be hard to bring claims against national security concerns in court, where the judiciary will understandably find it difficult to define national security against the Government’s definition.
In that context, it is important to bring expert parliamentary scrutiny to the Government’s decisions. I do hope the Minister will reflect on that. Alongside a public report, the new clause would require the Government to publish an annual security report to the Intelligence and Security Committee so that we have greater accountability without compromising security.

I will say a few words about the evidence base and the reason for tabling the amendment. Professor Ciaran Martin said:

“I think that the powers should be fairly broad. I think there should be accountability and transparency mechanisms, so that there is assurance that they are being fairly and sparingly applied.”—[Official Report, National Security and Investment Public Bill Committee, 26 November 2020; c. 81, Q96.]

My understanding is that the only accountability and transparency mechanism is the public report, which may be published, and the prospect of judicial review, neither of which provide for expert scrutiny on the security issues.

I also ask the Minister to reflect on Second Reading, where member after member of the Intelligence and Security Committee stood up to say that they felt that their expertise would be useful and helpful in the working of the Bill.

James Wild: The hon. Lady said that the annual report “may” be published, but in clause 61 it “must” be laid before the House, so there is no question that the annual report will be published.

Chi Onwurah: The hon. Gentleman makes a good point. It must be published, but the details that it sets out are limited. The reporting on other information, as I think the Minister has said, is something that is intended but is not required. We have requested that several other pieces of information be published, but the Minister has said that they may be.

The hon. Member for North West Norfolk is absolutely right that there will be an annual report, but that is a public report that will provide only the limited information set out in clause 61(2). Obviously, it will not provide anything that might have an impact on national security. With regard to what is published in the final notifications, for example, that can be redacted to take out anything of commercial interest as well as of national security interest.

There is no requirement to report on any aspect to do with national security. Given that the only report is a public report, that is understandable. That is why we are proposing that a secure sensitive report should also be published and shared with the Intelligence and Security Committee.

The hon. Member for Tonbridge and Malling (Tom Tugendhat), the Chair of the Foreign Affairs Committee said that

“there is a real role for Committees of this House in such processes and...the ability to subpoena both witnesses and papers would add not only depth to the Government’s investigation but protection to the Business Secretary who was forced to take the decision”.—[Official Report, 17 November 2020; Vol. 684, c. 238.]

A member of the Intelligence and Security Committee also said that

“we need mechanisms in place to ensure that that flexibility does not allow the Government too much scope.”—[Official Report, 17 November 2020; Vol. 684, c. 244.]

As I have already noted, CFIUS has an annual reporting requirement.

4.30 pm

The Chair of the Intelligence and Security Committee, the right hon. Member for New Forest East (Dr Lewis), has written to you, Sir Graham, and the other Chair of this Committee to ask a number of questions that he did not feel had been adequately answered by the Bill or its supporting documentation, and to place his Committee at the disposal of this Committee. He writes that the ISC continues to have a very real interest in the Bill and would have liked to have been included in briefings on it, and he asks about the investment security unit.

To summarise, the Minister must welcome the expertise of the Intelligence and Security Committee. He would certainly be obliged to appear before the Intelligence and Security Committee, if requested to do so. Does he agree that placing an annual report before that Committee would aid business and BEIS confidence? I previously mentioned its potential conflicts of interest, and we spoke about its having access to the right kind of resources. Agreeing to this new clause and to the placing of a report with the Intelligence and Security Committee is in the interests of both the Bill and the better working of our national security.

Nadhim Zahawi: I am grateful to the shadow Minister for her contribution on new clause 7, which seeks to require the Secretary of State to provide an annual report to the Intelligence and Security Committee, including detailed information relating to mandatory and voluntary notifications, trigger events that were called in and final orders made. In particular, it seeks to require the Secretary of State to provide details of factors relevant to the assessment made by the regime, including the jurisdiction of the acquirer; the nature of national security risks posed in transactions where there were final orders; details of particular technological or sectoral expertise that were targeted; and other national security threats uncovered through reviews undertaken under the Bill.

I am pleased that esteemed members of the ISC are taking a continued and consistent interest, including in relation to their role in scrutinising the regime provided for by the Bill. The Committee will be aware that clause 61 requires the Secretary of State to prepare an annual report and to lay a copy before each House of Parliament. That clause provides for full parliamentary and public scrutiny of the detail of the regime, which we judge to be appropriate and which does not give rise to national security issues when published at an aggregate level. I reassure hon. Members that that annual report will include information on the sectors of the economy in which voluntary, mandatory and call-in notices were given. It will also give a sense of the areas of the economy where the greatest activity of national security concern is occurring.

We intend to follow the existing, appropriate Government procedures for reporting back to Parliament, including through responding to the Select Committee on Business, Energy and Industrial Strategy. The ISC’s remit is clearly defined by the Justice and Security Act 2013, together with the statutory memorandum of understanding. That remit does not extend to oversight of BEIS work. I am sure that the BEIS Committee will continue to do a sterling job of overseeing and scrutinising the Department’s overall work. I welcome and encourage the ISC’s security-specific expertise, which the hon. Lady referred to, and its review of the annual report when it is laid before Parliament.
For the reasons I have set out, I am not able to accept the new clause. I hope that hon. Lady will agree to withdraw it.

Chi Onwurah: I thank the Minister for his response, but he did not address the issue scrutiny of sensitive aspects of how the Bill will work. I recognise that the ISC’s remit does not cover BEIS—that is the exact point of requiring such a report. As I think was discussed on Second Reading, the BEIS Committee will not scrutinise any sensitive information or information that is directly relevant to our national security. I am afraid that I cannot accept the Minister’s reasoning for his rejection of the new clause—namely, that it is effectively already covered by clause 61—so I will put it to a Division.

The Committee divided: Ayes 5, Noes 9.
Division No. 21]

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Question accordingly negatived.
Bill to be reported, without amendment.

4.36 pm
Committee rose.
Written evidence reported to the House

NSIB04 Law Society of Scotland

NSIB05 Alternative Investment Management Association Ltd (AIMA)
NSIB06 Taylor Wessing LLP