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Public Bill Committee

NATIONAL SECURITY AND INVESTMENT BILL

Fifth Sitting

Tuesday 1 December 2020

(Morning)

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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)
† 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 assess a multi-agency review prior to issuing a call-in notice.

The Chair: With this it will be convenient to discuss the following:

Amendment 4, in clause 4, page 3, line 21, at end insert—

"(aa) at least one week before the statement is made, consult with the Intelligence and Security Committee in respect of the contents of the statement; and

(ab) amend such legislation as may be necessary to allow such consultation to take place;".

This amendment would require the Secretary of State to consult with the Intelligence and Security Committee before publishing a statement under section 3.

Amendment 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.

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 or inappropriateness 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, as outlined in last night's debate.

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 tzar 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.

Andrew Bowie (West Aberdeenshire and Kincardine) (Con): Is not the entire purpose of calling in a decision to then instigate an investigation into whether that investment would be contrary to national security? It is after the Secretary of State has called it in that the agencies and Departments can look into the investment or takeover to see whether it is contrary to national security. That investigation does not take place before the call-in notice has been issued.

Chi Onwurah: The hon. Member makes an interesting point. We will examine the skills of those involved in the examination once a transaction has been called in. There was a clear contradiction in what he said, because if it is not called in those skills and expertise will not be brought to the table. There is obviously a need for the expertise before the call-in, or there would not be a call-in.

Andrew Bowie: If it is not the calling in by a Minister, what would trigger the multi-agency investigation into the investment or takeover that has caused the problem in the first place?

Chi Onwurah: The hon. Member makes an important point that goes to the heart of our concerns. I do not wish to detain the Committee for too long on this, but it is important to discuss the way in which the skills and resources of our national security services, who do so much to keep us safe and secure, will be used to work with the Department to identify potential triggers for a call-in. Some guidance will be given in the statement issued by the Secretary of State, and we will debate that shortly, but what was mentioned many times yesterday during the debate on the Telecommunications (Security) Bill was the capacity and the need for institutions such as our Intelligence and Security Committee to have a more concrete role. Not all of their expertise and knowledge can be in the public domain. As we heard yesterday, the Committee first issued concerns about Huawei back in 2013. If, back in 2013, the business Department had been able to benefit from that expertise, knowledge and insight the Department for Digital, Culture, Media and Sport would be in a different position today.

Stephen Kinnock (Aberavon) (Lab): As my hon. Friend rightly says, the fundamental purpose of our amendment is to ensure that the screening process takes place upstream so that the multi-agency and highly technical capability of intelligence agencies and the Ministry of Defence can be deployed in advance of the Secretary of State—who otherwise may be in a state of isolation—making an initial decision about whether there is a trigger event or whether action is required. The amendment would ensure that the screening process is done by multiple agencies that can then give the Secretary of State advice that is well informed and rooted in an understanding of the risk that we face.

Chi Onwurah: I thank my hon. Friend for putting it so clearly, and I hope that addresses the concerns of the hon. Member for West Aberdeenshire and Kincardine. We want the screening process to benefit from the knowledge of our intelligence agencies and others before the Secretary of State calls it in. Our national security depends on having those robust contributions from across Government and the agencies in guiding decisions.

[Chi Onwurah]

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, Innovation and Skills 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 the Member 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 powers and discretion to the Secretary of State. It suggests that the Government may publish a statement setting out the scope of the call-in powers. As part of our discussion this morning, we have talked about the way in which security threats evolve over time in the light of technological change—for example, security threats that we did not recognise in the past led to the Huawei debacle—and also, importantly, in the light of political changes, so it is understandable that our understanding of some of those changes will be imperfect and will rely on sensitive information. However, the critical point is that the fact that there will be change and its sensitivity should not preclude the need for accountability.

In other areas of national security, the Intelligence and Security Committee holds Government to account through proper scrutiny and with access to sensitive information. I refer again to the debates on the Telecommunications (Security) Bill and the Second Reading of this Bill, where members of the Intelligence and Security Committee demonstrated their understanding of the key issues around national security and their ability to make a contribution—I think it is fair to say that they are very willing to make a contribution. It is only 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.

Scrutiny is especially needed in this area. We have had the Enterprise Act since 2002, but there have been only 12 national security cases under it. That speaks very clearly to the lack of experience and an acute need for scrutiny as we now move up to almost 2,000 annual cases. Several witnesses in our evidence sessions emphasised that we were going from effectively zero—a standing start—to Formula 1 performance levels, and that as such, we needed to ensure that we put in place the resources, the expertise and the support to enable that to be effective and not unnecessarily impede our business, our economy and our foreign investment.

10 am

As Professor Martin said in one evidence session,

"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.]

That goes to the point that my hon. Friend the Member for Warwick and Leamington has just raised: we do not have a definition of national security. We are giving the Secretary of State significant, broad powers. Surely it is the tradition in our democracy that that must go hand in hand with accountability and transparency mechanisms, and what is better placed to do that than the Intelligence and Security Committee?

Andrew Bowie: I am listening intently to what the hon. Lady is saying and I understand the point she is trying to make, but surely it is already within the power of the ISC to call in anything that it thinks is a threat to national security. Therefore, it can investigate anything that it thinks it will be detrimental to the national interest. If we read further down, clause 4(2) states:

"Either House of Parliament may at any time before the expiry of the 40-day period resolve not to approve the statement."

There is already capacity in the Bill as it stands, and the procedures that we already have in Parliament, to ensure scrutiny of any procedures that the Secretary of State might decide to take forward.

Chi Onwurah: I recognise that at the point that the hon. Gentleman is trying to make, and I agreed with him until he said that there are already powers to "ensure scrutiny". The powers that he describes might enable scrutiny, but I do not think they would ensure scrutiny. We are trying to ensure the scrutiny of the Intelligence and Security Committee by writing it into the Bill. I see him nodding, and I appreciate that we understand each other here.

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 point was made by my hon. Friend the Member for Tonbridge and Malling (Tom Tugendhat) and I emphasise it on behalf of the ISC—Committees in this place missioned to do just that need to play an important role."—[*Official Report*, 17 November 2020; Vol. 684, c. 244.]

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 would to provide both scrutiny and challenge to these sector 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 the 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 to 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 *rose—*

Chi Onwurah: I am happy to give way again.

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.

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

[Katherine Fletcher]

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 much 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 trigger events 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 the Member 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

[Nadhim Zahawi]

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	Tarry, Sam
Kinnock, Stephen	Western, Matt
Onwurah, Chi	Whitehead, Dr Alan

NOES

Aiken, Nickie	Gideon, Jo
Baynes, Simon	Griffith, Andrew
Bowie, Andrew	Tomlinson, Michael
Fletcher, Katherine	Wild, James
Garnier, Mark	Zahawi, Nadhim

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

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 ascendancy 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

that potential national security risks can be examined at any stage 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 are 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 need for the Bill, and indeed we sought it years ago. We support the need for the new powers to protect our national security, as set out by the Minister, and the need for those new powers in the context of changing technological, commercial and geopolitical realities. Our approach to the Bill is therefore one of constructive challenge and is guided by three principles, the first being the security of our citizens. We do not want narrow legal definitions. Our proposed amendment to clause 1 would have ensured broad input into the considerations, such that our national security was not threatened as a result of insufficient expert advice or by the pure, ministerial market ideology of recent record. Our group of amendments sought to bring legal powers, multi-agency expertise and proper decision making to bear in putting British security first.

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 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 provision that mediates 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 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.

Nadhim 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.