# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# NATIONAL SECURITY AND INVESTMENT BILL

*Ninth Sitting*

*Tuesday 8 December 2020*

*(Morning)*

CONTENTS

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:**

*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 8 December 2020*

*(Morning)*

[Derek Twigg *in the Chair*]

## National Security and Investment Bill

9.25 am

**The Chair:** Before we begin, I remind colleagues of the importance of social distancing. Please switch electronic devices to silent. The *Hansard* reporters would be very grateful if Members could email any electronic copies of their speaking notes to hansardnotes@parliament.uk.

### 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 would 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.

**Chi Onwurah** (Newcastle upon Tyne Central) (Lab): I thank the Minister for his comments on clause 22. This possibly shows a lack of understanding on my part, but could he say a little about how the Secretary of State will ascertain, decide or judge that information has been 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 acquirer 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

*[Chi Onwurah]*

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 working 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** (Warwick and Leamington) (Lab): 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?

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 angle would very much apply to. He will recall that, in the evidence sessions, we heard evidence to suggest that business founders and directors are best placed to know if their business has a national security angle, so the Secretary of State will clearly work with those business owners, innovators and pioneers to try to mitigate the national security risk while making sure that they can survive and thrive. It is in no one's interests for them not to do well in the United Kingdom; that would probably create a greater national security threat.

**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 for an investment or fundraising event. That is why any extension of the assessment period, beyond the collective 75 maximum working days of the initial period and the additional period combined, requires agreement from the acquirer in recognition of the fact that the process is being lengthened beyond the customary timeline. Enabling the Secretary of State to do that unilaterally would be a matter of concern for business 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 | Western, Matt |
| Onwurah, Chi | |
| Tarry, Sam | 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.*

*Clause 23 ordered to stand part of the Bill.*

## Clause 24

### Effect of information notice and attendance notice

10.15 am

**Dr Alan Whitehead** (Southampton, Test) (Lab): I beg to move amendment 23, in clause 24, page 16, line 26, at end insert—

"(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.*

**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 each year the aggregate number 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 in clause 61.

We have not debated clause 61 yet, but it requires the Secretary of State to produce 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

*[Dr Whitehead]*

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 wanted to talk about the quality and quantity of vaccination and of the Minister's time.

**The Chair:** I am not sure that the Minister has been administering the vaccines himself.

**Dr Whitehead:** I am grateful to the hon. Lady for that interestingly injected intervention—*[Laughter.]*

**Nadhim Zahawi:** More!

**Dr Whitehead:** It is the way I tell them.

**Chi Onwurah:** It is important that the Committee recognises the momentous occasion of the first use of the vaccine in this country and congratulates the Minister. It is also important that we reflect on the fact that our fantastic NHS and key workers, rather than the Minister himself, made it possible.

**Dr Whitehead:** Indeed. I was about to reflect on the appointment a long while ago—in another time and another Administration, when there was a severe and prolonged drought—of a Minister for drought, the right hon. Denis Howell. The Minister's success was amazing: within about three days of his appointment, it poured with rain.

**Nadhim Zahawi** *rose—*

**The Chair:** Before the Minister intervenes, may I say that it is important to keep to the detail of the Bill.

**Nadhim Zahawi:** Just to second what the hon. Member for Newcastle upon Tyne Central said, we have an incredible team in our NHS in England, Scotland, Wales and Northern Ireland, our military and all the other planners who have delivered today. I want to put that on the record.

**Dr Whitehead:** I absolutely endorse that. I also congratulate the Minister on the fact that things are really happening on his watch. I do not necessarily make the parallel with drought and rain falling down, but 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.

10.30 am

One could argue that giving out multiple notices due to operational necessity, because the unit is having difficulty going about its business—either because it is not properly resourced or because it has other difficulties in terms of its practice—might needlessly delay companies looking at business-critical investments and going about their business. The cause of that may be that the unit does not have sufficient resources to carry out its work efficiently.

**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

*[Dr Whitehead]*

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.

10.45 am

**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 | Western, Matt |
| Onwurah, Chi | |
| Tarry, Sam | 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.*

*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

*[Nadhim Zahawi]*

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°.

**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

*[Chi Onwurah]*

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.

11.25 am

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

*Adjourned till this day at Two o'clock.*