PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

NATIONAL SECURITY AND INVESTMENT BILL

Sixth Sitting

Tuesday 1 December 2020

(Afternoon)

CONTENTS

CLAUSES 2 TO 10 agreed to.
SCHEDULE 1 agreed to.
Adjourned till Thursday 3 December at half-past Eleven o'clock.
Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 5 December 2020

The Committee consisted of the following Members:

Chairs: † Sir Graham Brady, Derek Twigg

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

(Afternoon)

[Sir Graham Brady *in the Chair*]

National Security and Investment Bill

Clause 2

Further provision about call-in notices

Amendment proposed (this day): 10, in clause 2, page 2, line 12, leave out subsection (1) and insert—

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

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

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing clause stand part.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): It is a pleasure to serve under your chairmanship, Sir Graham. As I was saying, after a trigger event is called in, the Secretary of State has 30 working days in which to carry out a full national security assessment, although that may be extended in certain circumstances. During that period, the Secretary of State may use his information-gathering powers under the Bill to gather from relevant parties any further information he requires to make a final decision. I can reassure hon. Members that the Secretary of State will make full use of these powers to fully assess every aspect of an acquisition.

Where, at the end of an assessment, the Secretary of State imposes remedies in relation to a trigger event, the Bill provides a power for him to amend those where appropriate. Such an amendment is really relevant only in cases where a trigger event is called in for scrutiny but ultimately cleared by the Secretary of State outright, without any remedies being imposed. In cases where false or misleading information is provided that materially affects the Secretary of State's decision to clear a trigger event outright, he may revoke his decision and give a further call-in notice up to six months after the false or misleading information is discovered.

Adding further opportunities to call in a trigger event each time new material information becomes available after the Secretary of State has already had the opportunity to carry out full scrutiny of the trigger event would be disproportionate and give rise to unjustified uncertainty for the parties involved. The Government have been clear that this regime must provide a slicker route to investment by providing clarity and predictability for investors. Sadly, the proposed amendment would create uncertainty for businesses, with them unable to assess if and when the Secretary of State might call in their trigger event again, up to five years after the trigger event has been completed. That is why I am unable to accept the amendment. I hope that the hon. Member for Southampton, Test will agree with me and withdraw it.

Dr Alan Whitehead (Southampton, Test) (Lab): Our amendment was genuinely intended to be helpful, to try to ensure that what we see as a loophole is closed. The Minister has indicated that, in his view, that loophole would be closed at the expense of uncertainty in company land, as it were—uncertainty for those companies that might be subject to this procedure.

The circumstances that would see this amendment put into action—I have outlined some possible circumstances—would be very rare; only circumstances in which things had changed very substantially, in terms of global interest in particular areas of our economy, or circumstances in which information that could have been supplied was not supplied, and not because there was an intention to be malicious or misleading, but because people did not get to the bottom of something first time around. In those circumstances, companies would perhaps anticipate that that change might happen, and certainly if there were substantial global changes in who was interested in what, then companies would also anticipate that to a considerable extent. I do not share the Minister's view that the amendment would place companies in general in a state of uncertainty.

The additional assistance that the amendment would provide to make the process watertight should be taken seriously. However, I hear what the Minister has said and appreciate that a balance has to be achieved between different arrangements so that they are satisfactory both for national security and for company wellbeing and development—I am sorry that he has perhaps come down slightly further on one side than on the other in his appraisal of amendment 10. However, I appreciate what he has said and therefore beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 2 ordered to stand part of the Bill.

Clause 3

Statement about exercise of call-in power

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I beg to move amendment 1, in clause 3, page 3, line 1, leave out "may" and insert "shall".

This amendment would make it obligatory for the Secretary of State to include certain matters in a statement about his/her exercise of the call-in power.

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

Amendment 2, in clause 3, page 3, line 9, at end insert—

"(d) the Secretary of State's definition of the scope of what constitutes national security."

This amendment provides that a statement from the Secretary of State about the exercise of a call-in power may include his/her definition of national security.

Amendment 9, in clause 3, page 3, line 9, at end insert—

"(d) details of the resource allocated annually to reviews of national security assessments guiding call-in decisions, including specific headcount, skillsets and review caseload figures."

This amendment provides that a statement from the Secretary of State about the exercise of a call-in power may include details of the resources allocated to reviews of national security assessments within BEIS.

Chi Onwurah: It is a pleasure to serve under your chairship once again, Sir Graham. Amendment 1 would make it obligatory for the Secretary of State to include certain matters in the statement about his or her exercise of the call-in power. As we have said on a number of occasions, the Bill gives major powers to the Secretary of State and marks a significant shift in the UK's merger control process. It is worth emphasising that. It is important to make sure that that shift is done in a transparent and accountable way. The Bill is critical for our national economy and our national security. There is a great deal of uncertainty and there is no definition of national security, and I will come to that point later.

There is a great deal of latitude in the powers, but the Bill attempts to mitigate that by indicating that the Government may publish a statement setting out the scope of their call-in powers. That statement would include details of which sectors are especially under focus, details of trigger events, and details of factors that may be considered by the Secretary of State as part of an intervention. That transparency is welcome, as far as it goes, but we believe that it should go further. As Professor Martin said of the powers, in his expert evidence,

"there should be accountability and transparency mechanisms, so that there is assurance that they are being fairly and sparingly applied."—[*Official Report, National Security and Investment Public Bill Committee,* 26 November 2020; c. 81, Q96.]

The Government consultation responses list some detail on the scope of call-in powers but not on a clear final statement of scope. There is no detail on sectors, trigger events and, critically, factors considered under national security. The statutory statement of policy intent—in its current draft version—is woefully lacking in detail. Amendments 1 and 2 are designed to ensure that greater clarity is given about the Secretary of State's intent. In particular, amendment 2 includes a definition of national security.

There was a good deal of debate during the evidence sessions—I see the Minister nodding—about defining national security. Certainly, I found it a very good and informative debate, hearing from a wide range of experts with different levels of experience in different aspects of national security, from Sir Richard Dearlove to academics, and their views on the importance of and the concerns with defining national security.

Sir Richard Dearlove said that he would certainly see a definition of national security as

"advantageous, because it defines a clear area where you start and from which you can make judgments about the involvement of foreign firms being given space or activity in those areas. That is not a bad idea at all, actually."—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 25, Q31.]

David Offenbach said:

"National security is not defined in the Bill, which I actually approve of, because once it becomes too closely indicated, then it is not easy to decide what should be in it, or what should not be in it. I would like to see a definition that includes what Lord Heseltine said when Melrose took over GKN, that research and development should be a subject of importance; it should be included."—[*Official Report, National Security and Investment Public Bill Committee,* 26 November 2020; c. 99, Q106.]

He also said:

"The only way to make sure that something does not slip through the net is to have a slightly wider definition. There is no definition of national security itself in the Bill, which is perhaps why strategic, research and development, innovation or other issues should be brought in. Then one can be quite sure one has not accidentally lost an asset where there are national security issues."—[*Official Report, National Security and Investment Public Bill Committee,* 26 November 2020; c. 105, Q130.]

As I have referred to on a number of occasions, I think the loss of DeepMind to Google and of the Centre for Integrated Photonics to Huawei show that we can lose strategic assets through a lack of clarity about what might constitute a national security threat. Amendment 2

"provides that a statement from the Secretary of State about the exercise of a call-in power may"—

not "must"—

"include his/her definition of national security."

We are trying very hard to reflect the advice from certain experts that too closely defining national security would limit the powers of the Secretary of State, would not allow it to evolve with the threats and would give indications that could in some respects be gamed, but at the same time we are trying to address the vacuum that no definition creates. That vacuum risks creating major uncertainty for businesses and arbitrary powers for politicians to intervene without appropriate scope for that intervention.

We discussed earlier the conflict of interests between the Department for Business, Energy and Industrial Strategy welcoming foreign investment and the national security interests perhaps saying that there should not be foreign investment. That is especially challenging in the light of the major increases in interventions expected—as we have heard, we expect to go from 12 interventions to 1,830.

We believe strongly that we owe our citizens and businesses clarity on what will guide this increased intervention, but it is also right for the Government to retain flexibility for action and not to have their hands tied with a precise, narrow definition of national security, as security risks change due to technological, economic and geopolitical changes. Indeed, that is why we have needed this legislation for some years now, and why Labour has been calling for it.

The amendment again seeks to make the Secretary of State's life easier, by encouraging him—or her, in the future—to provide guidance on the factors that might form part of national security assessments. That would not tie the Government's hands by ruling anything out; it simply asks them to guide businesses with clarity on the sort of factors that might matter, giving flexibility to the Government and clarity to our small and medium-sized enterprises in particular.

2.15 pm

I emphasise that many of the small and medium-sized enterprises that may be caught up in the measures under the Bill will not be experts on national security; they may simply be doing world-leading research into

particular aspects of artificial intelligence or materials science, so having some guidance would be of significant help to them. Providing guidance only matches what countries across the world already do and is what small businesses across the country desperately seek from the Government.

I will finish my remarks on this amendment with some supporting statements from the some of the experts. Dr Ashley Lenihan from the London School of Economics said:

"What you do see in regulations is guidance as to how national security risk might be assessed or examples of what could be considered a threat to national security. US guidance is helpful on this".—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 38, Q42.]

Lisa Wright, of Slaughter and May, said:

"There is not a widespread understanding of what it means and the circumstances in which the Government would intervene."—[*Official Report, National Security and Investment Public Bill Committee,* 26 November 2020; c. 70, Q81.]

Several countries give a sense of the factors that might guide national security reviews, which is really what we are asking for here, without excluding areas from the definition. The US FIRRMA legislation—Foreign Investment Risk Review Modernization Act 2018—provides for a "sense of Congress" on six factors: countries of specific concern; critical infrastructure, energy asset, critical material; history of US law compliance; control of US industries that affect US capability and capacity to meet national security requirements, which is very important; involvement of personally identifying information; and potential new cybersecurity vulnerabilities. The amendment seeks to encourage the Secretary of State to do likewise.

Stephen Kinnock (Aberavon) (Lab): Just to add to the argument that my hon. Friend is making in her very eloquent manner, this is also about having a smart approach to regulation, whereby we do not take a one-size-fits-all approach but recognise that there is a hierarchy of risks. By pointing out in the definition of national security what key factors make up that definition, we will point both the business community and the Secretary of State to that hierarchy of risks and make sure that there is additional screening, monitoring and assessment of those risks where they are considered to be higher because they contain the factors in the definition.

Chi Onwurah: I thank my hon. Friend for that intervention. As a past employee of a regulator, Ofcom, he really appeals to my sense of regulatory best practice in speaking as he does about the importance of smart regulation that is not tied to narrowly defined legalistic definitions of national security but allows, as he says, a hierarchy of assessment of the different interests. We all need to take responsibility for doing everything we can to ensure that kind of smart judgment can be made by small businesses. We encourage giving as much guidance as possible—I see the Minister nodding, so I hope that he will be receptive to the amendment.

Finally, amendment 9 would mandate Business, Energy and Industrial Strategy unit resourcing updates. I will speak briefly to amendment 9, because I know that other hon. Members wish to speak to it. This amendment provides that a statement from the Secretary of State about the exercise of call-in power may include details of the resources allocated to reviews of national security within BEIS.

The driving thought behind this, again, is to ensure that the Secretary of State's life is made as easy as possible by consistently looking at the resources available to do this very complex and difficult job, particularly given that we are transitioning, as one witness put it, from a standing start to potentially thousands of notifications.

Sam Tarry (Ilford South) (Lab): It is an honour to serve under your chairmanship so soon again, Sir Graham. Following on from the eloquent exposition of those last two amendments by my hon. Friend the Member for Newcastle upon Tyne Central, I would like to focus on amendment 9. The amendment is simple. It tries to help the Government help themselves.

Amendment 9 provides that a statement from the Secretary of State about the exercise of a call-in power may include details of the resources allocated through reviews of national security within BEIS. We know that this is a significant and large change that the Department will have to absorb. For that to be effective—in whatever state the Bill ends up passing through Parliament—there will clearly be a need for proper resource allocation and for Parliament to scrutinise that process.

The Bill transforms the UK's merger control processes. It locates the merger control processes away from the Competition and Markets Authority, which is a new development. The CMA had a history of experience of overseeing those sorts of processes. At the moment, there is no such expertise in BEIS.

While massively expanding the scope of the intervention, as my hon. Friend the Member for Newcastle upon Tyne Central said, moving from only 12 national security interventions in 18 years to potentially over 1,800 is such a significant step change, so it will be important for Parliament to have the ability to monitor that. It is unprecedented. The Government have neither a precedent nor a plan—none has come forward with the notes to this Bill—to assure the House of how the shift will be managed. That is why we felt it was important to put forward this amendment.

I believe this amendment has support on both sides of the House. Crucially, hon. Members across the House have raised legitimate concerns about the capacity and capability that will be required to manage this major shift. My colleague from the Transport Committee, Greg Clark, said,

"It is an enormous challenge for the Department to set up a new unit, especially since the current regime…has dealt with a very small number of transactions each year."—[*Official Report*, 17 November 2020; Vol. 684, c. 228.]

Similarly, James Wild said,

"It is crucial that the structures and resources are put in place to ensure that the timetables for review and assessment in the Bill are actually met."—[*Official Report*, 17 November 2020; Vol. 684, c. 266.]

I think both of those points are extremely pertinent.

I do not see this as a controversial amendment. I think it is important to allow the Bill, once passed, to function effectively and with proper oversight. It also provides the appropriate scrutiny, ensuring that this critical part of our national and economic security

functions effectively and efficiently. I am sure that in amendments to come we will debate where the balance should be between economic freedoms and our responsibility to safeguard our citizens. But clearly, on the simple idea put forward in this amendment, the Government will have to be transparent about the capability and capacity of BEIS on investment security, as many other countries around the world do.

Stephen Kinnock: My hon. Friend is setting out the case very well. To add to that argument, this is also about reassuring us as Members of Parliament. A Bill is all very well—it puts it all down on paper—but what really matters is putting it into practice. How does the implementation work? The investment security unit will be the key place for that. We need assurance that that crucial part of this process will have the capability to deliver. The amendment we are putting forward is also an assurance amendment—that when Parliament votes this Bill through, we can be assured that the implementation capability will be there.

Sam Tarry: My hon. Friend is absolutely right. As we have shaped our own Bill, we have been learning about regimes in other countries and comparing and contrasting provisions. For example, in the US—we have heard evidence on this from Michael Leiter earlier in the week—they look in detail at only around 240 cases, and then they look at 100 in a short form. We are saying that will have up to 1,800, and at the moment we do not have any guidance on what would be a more detailed and thorough investigation. Clearly, we need to have confidence about the amount of resources and about the fact that the Department has proper oversight of that and has been doing things properly.

This is not just about making our country the most attractive destination to do business; it is also about ensuring that we have the resources in place so that we do not slip up. We do not want another Huawei situation. We do not to be in a place where we do not have the resources, and where the former head of MI6 has to come to our evidence session and say that successive Governments have placed too much emphasis on building the economy at the expense of our security.

One of the evidence sessions last week touched on the idea of moving from just a few dozen cases to 1,000-plus being investigated. We do not know exactly when those cases will come. If there is suddenly a glut of cases at the same time, we need to make sure that the resources are there to deal with all of them. In that way, we will not have smaller companies, in particular, which are not getting the media coverage that some companies have had, falling through the net. As we know, very small, innovative technology companies sometimes develop some very radical forward-thinking technologies, and we might not even notice that they have been bought out or taken over by a state-owned business or by a business that is aligned closely with another state that may not share British values or interests.

I will leave it there, Sir Graham. This is about helping the Government to help themselves, allowing Parliament to have oversight and ensuring that the resources are in place, so that we get this right and do not have to revisit it after a calamity in a few years' time.

The Chair: Before I call the next speaker, I did not interrupt the hon. Gentleman, because I am feeling benign this afternoon. However, it is timely to remind Members that other Members of the House should be referred to by their constituencies, not by their names.

Dr Whitehead: I did not mention what a pleasure it is to serve under your chairmanship this afternoon, Sir Graham.

The Chair: That is not required.

Dr Whitehead: It is unfortunately force of habit, and it is a habit that I am loth to break.

Amendments 1, 2 and 9 are closely related. Clause 3 is about the Secretary of State putting forward a statement about the exercise of the call-in power and, within that, specifying—or it looks like they are specifying—what at least some of the contents of that statement are likely to be.

I will talk about the context in a moment, but amendment 1 draws attention to another problem that I have had to look at closely on several occasions in my examination of Bills over the years: the use of the word "may", which appears at the beginning of clause 3 and in clause 3(3). In looking at Bills, whenever the word "may" appears, I have always concluded that there needs to be a silent "(or may not)" after it, although it is never there. That is what that phrase actually means in any piece of legislation.

2.30 pm

What is interesting about the construction of this clause is not only that the Secretary of State is not required to publish a statement—the Secretary of State "may" publish it—but that the Secretary of State is not actually required to include anything in it either. The clause says they "may include, in particular" and then it lists certain things. The "in particular" is peculiar wording, because things that the Secretary of State does not have to include in a statement are actually highlighted by the words "in particular". That is completely redundant if the Secretary of State does not have to include those things in a statement.

Hon. Members may think that this is just a little piece of pedantry and that I am picking away at things, but I can give the Committee a small story about a piece of legislation where the use of the word "may", in a way that I will describe in a moment, has had very serious effects. The issue was remarkably similar—a requirement on the Secretary of State to make a statement—and the legislation was the Energy Act 2013. Part 5 set out at great length how the Secretary of State should make a statement about the environmental and climate change obligations and requirements of the Office of Gas and Electricity Markets. The statement was to have a great deal of content—all sorts of guidance on what Ofgem should do.

The only problem was that, at the front of part 5, were the words, "The Secretary of State may, by order, implement this particular part of the legislation." I am sure hon. Members will not believe this, but seven years later there has been no statement of climate and environmental intent put forward by a Minister as far as Ofgem is concerned. Ofgem is crying out for such a

statement, but it does not have one, because the Government of the day decided that because they "may" implement that particular provision, they would not, and they have not. Despite a number of suggestions that they should, that legislation remains resolutely unimplemented.

The problem we have with this legislation today is that we countenance the idea that the same thing might happen. I am not saying that it necessarily would happen, and I am sure that, in the safe hands of the present Minister, it pretty certainly would not. However, the point is that we are not making legislation in the hope that particularly fine Ministers will be particularly good in their application of it. We are making legalisation in a way that will ensure both that it is proof against the worst things that might happen and that it will stand the test of time even if the worst things do happen.

It is important, therefore, to look very closely at how these things function in the legislation. I can see no good reason why the word "may" should not be replaced by "shall". I might add that our amendment is slightly misplaced, inasmuch as it targets the "may" at the top of page 3, in clause 3(3), but not the one in clause 3(1), which is the key "may" because everything follows from that. One might argue that the right place for the "shall" should be clause 3(1), which should read: "The Secretary of State shall publish a statement for the purposes of this section." Clause 3(3) could then read: "The statement may include"—we do not need the words "in particular"—"various things."

The things the amendment says should be covered include a definition of national security, which is very important in terms of the content of the statement. As my hon. Friend the Member for Newcastle upon Tyne Central mentioned, that need not be a tight definition; it is just a definition for guidance, as far as the statement is concerned. In amendment 9, we say that the Secretary of State's definition of national security should be followed up with

"details of the resource allocated annually to reviews of national security assessments guiding call-in decisions, including specific headcount, skillsets and review caseload figures."

That is far more specific, but it is nevertheless important in terms of the transparency that is necessary when this statement is produced. However, I emphasise that all of that is as nothing if the Secretary of State does not have to produce a statement in the first place. We can have a wonderful piece of legislation that says exactly what is supposed to be in the statement, but it will fall to the ground, as I have illustrated, if the word "may" stays in at the beginning of the clause.

I therefore earnestly ask the Minister whether he might reconsider that particular word in that particular part of the legislation, and whether he thinks the word "may" might well be replaced—perhaps on Report or elsewhere—by "shall". That would give a tremendously strong indication that we are going to go about this process with strong transparency and clear intent, that we are going to do what we said we would and that the rest of the clause is switched on by that "shall" to ensure not only that the statement exists, but that it is transparent, does the job it is supposed to and includes the things that it should, in terms of being a comprehensive statement that is good for now and for the future. I hope the Minister, in between his other, onerous duties, will take two minutes to consider whether he might be more comfortable with that wording, as far as the future of the legislation is concerned.

Nadhim Zahawi: I am pleased to speak to this group of amendments, which relate to clause 3. This clause provides for a statement to be published by the Secretary of State, setting out how he expects to exercise the call-in power. Clause 1 requires that this statement is published before the power may be used. There are three amendments in this grouping—amendments 1, 2 and 9—and I will speak to each of them in turn.

I advise the Committee that we have interpreted amendment 1, including with regard to the Members' explanatory statement, as seeking to amend clause 3(1) rather than 3(3). The effect of this amendment, as we believe it was intended, is to require the Secretary of State to publish the statement. As I set out on Second Reading, the Government are committed to providing as much clarity and predictability as possible for business when it comes to the use of the new investment screening regime that is provided for by this Bill. The proposed statement will provide valuable information to businesses and investors, and help them to determine whether they should submit a notification about their trigger event. Indeed, the Secretary of State must lay before Parliament, publish and not withdraw the statement before the call-in power may be used. In effect, this means that the Secretary of State will need to have published a statement to use the call-in power, which is crucial to the regime.

Of course, as the security landscape changes over time, he may wish to publish an updated statement at a future point; this will need to go through the same consultation and parliamentary procedure as the original statement before it can take its place. I assure hon. Members that the Secretary of State has neither the intention nor the power to run this regime without having first published a statement.

I will now turn briefly to amendment 2, which would allow for the Secretary of State to include a definition of national security in the statement provided for by clause 3. The Secretary of State's powers under the Bill are expressly predicated on investigating and addressing risks to national security. When exercising these powers, the Secretary of State is required to proceed on the basis that national security is strictly about the security of our nation. That is because what national security means is a question of law, which has already been answered by the highest courts of the land as being the security of our nation.

The Secretary of State will obviously need to comply with the law when exercising the powers in the Bill. There is therefore no need to define what national security means in the Bill. As Dr Ashley Lenihan—a fellow at the Centre for International Studies at the London School of Economics, who was quoted earlier by the shadow Minister—mentioned in last week's evidence session:

"What we have seen is that most foreign direct investment regimes of this nature all refer to national security. I do not know of a single one that actually defines it or limits itself to a particular definition".—[*Official Report, National Security and Infrastructure Public Bill Committee,* 24 November 2020; c. 38, Q42.]

Furthermore, as national security is a term used in the Bill, it would in any event not be appropriate for the Secretary of State to define the scope of the term in the statement; the statement is not legislation and is not subject to approval by Parliament.

Wanting to understand the Government's aims and expectations for these powers is entirely reasonable—there is no discussion about that. However, I refer the Committee

to the comments of Michael Leiter, a partner at Skadden, Arps, Slate, Meagher and Flom LLP, who told us that he would consider that

"it is a bit of a fool's errand"—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 49, Q55.]

to define national security. Instead, the statement will set out how the Secretary of State expects to use the call-in power, and we plan to include details of the types of national security risks in which the Secretary of State is especially interested.

Stephen Kinnock: I just want to come back on the point the Minister made about other regimes not using a definition of national security. The United States Foreign Investment Risk Review Modernization Act provides a sense of congress on six factors: countries of special concern; critical infrastructure, energy assets and critical materials; history of compliance with US laws; control of US industries that affect US capability and capacity to meet national security requirements; involvement of personally identifiable information; and potential new cyber-security vulnerabilities. In his comments, the Minister said that no other regime includes a definition of national security, but that sounds like a definition of national security to me.

Nadhim Zahawi: I am grateful to the hon. Member for Aberavon for his comments. I was quoting from the evidence that Dr Ashley Lenihan provided. She said:

"I do not know of a single one that actually defines it or limits itself to a particular definition,"—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 38 Q42.]

if that is what he was referring to.

Instead, what I am trying to share with the Committee is that the statement will set out how the Secretary of State expects to use the call-in power. Within that, we plan to include details of the types of national security risks in which the Secretary of State is especially interested. These include certain sectors of the economy and types of acquisitions relating to entities and assets that may raise concern. I think I have said enough on that.

2.45 pm

Matt Western (Warwick and Leamington) (Lab): I am not sure that the Minister has; it is always a pleasure to hear his dulcet tones. In all seriousness, is this not open to interpretation with a change of Secretary of State, in the way that we have seen in the US with a change of President, and how that President chooses to define what national security means?

Nadhim Zahawi: I am grateful for the hon. Member's contribution. Of course, no Government can tie the hands of future Governments, if that is his argument.

Moving on, I commend hon. Members for their interest in the process and function of the regime, made clear through amendment 9, which provides for additions to the statement about the exercise of the call-in power. It aims to ensure that the regime created by the Bill is properly resourced with the right numbers of skilled staff. The hon. Member for Ilford South was thoughtful in his concern about that. However, I would say to him and other Members that the purpose of the statement is to set out how the Secretary of State expects to exercise the power to give a call-in notice. It will provide information on the types of scenarios where the Secretary of State may consider there to be a national security risk. It would not be appropriate to add details about how the regime will be staffed.

Furthermore, internal arrangements on resource and skills are a matter for the Secretary of State and, of course, the permanent secretary at BEIS. I reassure hon. Members, however, that the Bill compels—this is the lever for Parliament, in my view—the Secretary of State to publish an annual report, which will provide information on the number of mandatory notices accepted and rejected, the number of voluntary notifications accepted and rejected, and the number of call-in notices and final orders made. That review is incredibly important in measuring performance. The exact details and requirements for the annual report are set out in clause 61. I will not go through all of them.

For the reasons I have set out, I am unable to accept the amendments and hope that Opposition Members feel able to withdraw them.

Chi Onwurah: I thank the Minister for his response. I particularly thank my hon. Friends for the points that they have raised. My hon. Friend the Member for Ilford South set out the importance of reporting on resourcing. I am disappointed that the Minister could not accept that amendment. He said that it was not appropriate to include details of resourcing and staffing. I point him in the direction of the Government's misinformation unit, which was set up to grand acclaim in order to address that important issue. As the Minister for vaccines, he will have a strong interest in the effectiveness of misinformation, which could harm our wellbeing and future return to normality.

That unit was set up. Written parliamentary questions that I tabled revealed that it had no full-time staff or full-time equivalents, and we see a resultant lack of action on misinformation. I make that point to counter the Minister's assertion that it is not important to have details on resourcing reported. On the contrary, our experience in Parliament and the civil service suggests that it is what is resourced that will get done, with the appropriate skill and care. With such a great number of cases, and such a great change in the scope of takeover and acquisition legislation that the Bill represents, reporting on resourcing is very important.

I also thank my hon. Friend the Member for Ilford South for such intriguing and at times amusing oratory on the importance of a single word in the right place.

Nadhim Zahawi: Southampton, Test.

Chi Onwurah: I am sorry. Southampton, Test.

Dr Whitehead: I quite like it.

Chi Onwurah: My hon. Friend intends to stay where he is. I thank him for his oratory on the importance of the single word "may". Something has been lost in translation between ourselves and the Clerks, in that there was originally an intention to address the first "may" with regard to publishing the statement. The Minister says that we do not need that to become a

[Chi Onwurah]

"shall" because it will be published but rejects the notion of it becoming "shall" despite the fact that it will be published. I leave it to the Committee to decide on the holes in that logic.

I am sure that the Minister was not deliberately trying to misinterpret what we were saying, but we made it clear that we are not looking for a precise and narrow definition of national security; we are looking for broad indications or guidance. As my hon. Friend the Member for Aberavon said in citing how the US does it, we are looking for a sense of what is taken into consideration with regard to national security. I would only plead with the Minister to recognise the circumstances of so many small businesses, start-ups and investors in trying to understand what the Secretary of State will take into account. This is intended not to define it narrowly, but to give a sense of what will be taken into account as we move into this new regime that is so vastly different. Because these amendments are important and significant, I intend to press them.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 2]

AYES

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

NOES

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

Question accordingly negatived.

The Chair: We must now deal formally with amendments 2 and 9, which can either be pressed to a Division or withdrawn.

Chi Onwurah: I would like to press amendment 2 but withdraw amendment 9. I would like to hear the Committee specifically on national security.

Amendment proposed: 2, in clause 3, page 3, line 9, at end insert—

"(d) the Secretary of State's definition of the scope of what constitutes national security."—*(Chi Onwurah.)*

This amendment provides that a statement from the Secretary of State about the exercise of a call-in power may include his/her definition of national security.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 3]

AYES

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

NOES

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

Question accordingly negatived.

Sam Tarry: I beg to move amendment 11, in clause 3, page 3, line 16, at end insert—

"(7) The Secretary of State must publish guidance for potential acquirers and other interested parties separate from the policy intent statement.

(8) Guidance under subsection (7) must cover—

(a) best practice for complying with the requirements on acquirers imposed by this Act and regulations;

(b) the enforcement of the requirements; and

(c) circumstances where the requirements do not apply.

(9) Guidance under subsection (7) must be published within six months of this Act receiving Royal Assent."

This amendment would require the Secretary of State to provide clear guidance to potential acquirers and other interested parties.

Again, this is, in our view, a fairly simple amendment. It is important because it is about ensuring that we are an attractive destination for business. A number of witnesses were very clear that many businesses need an early warning. The amendment would require the Secretary of State to provide clear guidance to potential acquirers and other interested parties, so that people are not put off from investing or getting involved in the British economy because of red tape that they might fear being tied up in. The amendment is about providing that clear guidance to companies.

If the Government went even further and published guidance that created regulatory sandboxes and clear engagement guidelines for innovative small and medium-sized enterprises, which could benefit from efficient regulatory engagement to pursue investment transactions just as, for example, the Financial Conduct Authority has done for the UK's world-leading FinTech sector, we could turn this into an opportunity to encourage the right types of companies from our allies around the world to invest in Britain.

One of the things we fear is the introduction of significant uncertainty. We know that hard work is going on to finalise a trade deal. Businesses have for so long felt that their big problem, in deciding about long and medium-term investment, is uncertainty. The amendment is about tackling straightaway any fears of uncertainty among businesses, particularly innovative SMEs, which will not have the resources to spend on figuring out the lengthy processes and, potentially, the accompanying guidance that could be put in place once the Bill passes. The amendment would require the Government to try to reduce that uncertainty.

Mark Garnier (Wyre Forest) (Con): I have a lot of sympathy for what the hon. Member says, because clearly the more clarity a potential investor has when investing in the UK, the better. The only problem is that if the Government are in a position to provide guidance in the first place, they are in a position to subsequently update it. Governments of different colours could change the guidance without necessarily having to refer back to

Parliament. Does the amendment therefore not perversely create greater potential uncertainty, by enabling Governments to change their guidance willy-nilly, without scrutiny?

Sam Tarry: The hon. Gentleman makes a valid point, but it was not really borne out in the evidence that we heard from the witnesses. They were clear, even while having different approaches, that more guidance accompanying this, and providing it early, would provide that certainty. We heard a range of approaches and opinions, and that advice should clearly be listened to. Dr Lenihan said:

"The Bill provides for a lot of regulatory guidance, which needs to come forward in a clear and very easily comprehensible and understandable manner."—[*Official Report, National Security and Investment Public Bill Committee*, 24 November 2020; c. 38, Q42.]

3 pm

Particularly when thinking about how we champion those small and medium-sized enterprises that will boost us and get us back on the front foot once we are out of this awful covid crisis, those are exactly the kinds of companies that we will want to be invested in from abroad, and we should give them a framework that they can quite simply understand without tying them up for too long in too much red tape, while of course balancing that with all the things we have discussed today, including balancing security against economic freedom.

That clarity could also be focused on the new investment security unit, reducing the complexity and increasing the understanding and the relevance of that unit's work once it is in place. David Petrie from the Institute of Chartered Accountants in England and Wales said that the unit would be

"extremely useful if it was able to issue meaningful market guidance notes, similar to the notes that accompany the takeover code. That would again be extremely helpful so that we can understand. It would help the market to be better informed."—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 54, Q60.]

In our current climate, that certainty would allow the Bill to serve its purpose in safeguarding our national security while at the same time maintaining Britain as an attractive destination to invest in and to do business.

Chi Onwurah: I thank my hon. Friend the Member for Ilford South for moving the amendment. The Committee must support the aims of the amendment and the implementation of the requirement to publish guidance for potential acquirers and other interested parties separate from the policy intent statement. My hon. Friend set out the importance of avoiding uncertainty and of providing certainty for companies and businesses that might come into the scope of this Bill.

Now is perhaps the time to highlight a failing of the Bill and the impact statement, in that the focus is on the acquirers—those who will acquire companies or shares through transactions. The explanatory notes explain why that is the case: because a trigger event might take two or three separate transactions to complete, such as acquiring a 25% interest, so it has to be on the acquirers to make the notification. I understand that, but I think the impact statement dramatically underestimates—in fact, it does not make an estimate—the impact that will have on those being acquired.

By that, I think particularly of small start-ups—our small, innovative new ventures and new enterprises, perhaps spun out from universities or other institutions. As they seek finance to grow and to thrive and to make further discoveries and innovations, they will have to give a lot of consideration to the provisions in the Bill. To be frank, as all of us who have worked in small businesses know, time is at a premium, as is access to legal advice. Small start-ups need this kind of guidance easily and readily available. I fail to understand why the Minister would not want the Department to provide this guidance specifically to companies, separate from the policy intent statement. I support my hon. Friend's amendment.

Nadhim Zahawi: Amendment 11 would require the Secretary of State to publish guidance in relation to the Bill and regulations made under it within six months of Royal Assent. The hon. Member for Ilford South raised an important issue and I welcome the opportunity to discuss the Government's plan for communicating the application of the proposed new regime, including the requirements that would or might be imposed on persons. It is important that appropriate steps are taken to make such persons aware of the requirements that would or might be placed on them. I have used "persons" here deliberately as it is the correct term, but I wish to make it clear that that includes acquirers.

First, the Government have published factsheets on the digital platform .gov that make clear what the measures in the proposed legislation are and who they apply to. The factsheet "Process for Business" sets out step by step what steps persons must or may need to take to ensure compliance with the regime. Secondly, we have set up the email address investment.screening@beis.gov.uk specifically for the purpose of providing advice on what may be in scope of the NSI regime for persons to contact to ensure that they properly understand the proposed regime. Of course, the Government believe that the Bill does not require any adjustment but should adjustments happen as it passes the scrutiny of this House and the other place, then any adjustments that affect persons would be reflected in the factsheets.

Thirdly, the Government have published and will continue to publish guidance alongside key documents in the Bill. Hon. Members will, for example, be able to review the information likely to be required for notifications online, as well as draft guidance. It is our intention to complete similar such guidance wherever it would be beneficial to parties. I hope that that provides sufficient reassurance for the hon. Member for Ilford, South and the shadow Minister that the Government are thinking carefully, and will continue to think carefully, about how to ensure that all parties who need to understand the measure are able to. For the reasons that I have set out, I cannot accept the amendment and I hope that the hon. Member for Ilford, South will withdraw it.

Sam Tarry: I wish to press the amendment.

Question put, That the amendment be made:

The Committee divided: Ayes 6, Noes 9.

Division No. 4]

AYES

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

NOES

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

Question accordingly negatived.

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

Nadhim Zahawi: I hope that hon. Members will recognise that the Government are committed to providing as much clarity and predictability as possible for business on the use of the new investment screening regime provided for in the Bill. Clause 3 is the third clause related to the call-in power, and concerns the statement of policy intent. Colleagues will remember that clause 1 requires that, prior to the use of the call-in power provided for in that clause, the Secretary of State must publish and not withdraw a statement that sets out how they expect to use the call-in power.

The Secretary of State was pleased to publish a draft of that statement alongside the Bill to enable hon. Members, businesses and, indeed, the general public to review the approach he expects to take. As hon. Members will no doubt have seen, the draft statement contains details of what the Secretary of State is likely to be interested in when it comes to national security risks. It includes certain sectors of the economy and the types of entities, assets and acquisitions that may raise concerns.

Although it is crucial for investors to have confidence that there is as much transparency in the regime as possible, there is self-evidently a limit to how much the Government can disclose in that regard given that the regime deals explicitly with national security matters. Nevertheless, the draft statement goes into some detail about the factors that the Secretary of State expects to take into account when making a decision on whether to call in a trigger event. The statement will also be required to be reviewed at least every five years to reflect the changing national security landscape, although in practice it may be reviewed and updated more frequently.

Taken together, I hope that hon. Members will agree that the requirement for the Secretary of State to publish a statement of policy intent prior to use of the call-in power and the requirement to review it regularly provide a good level of transparency and guidance to businesses, while not disclosing our national security vulnerabilities, which of course hostile actors would be grateful to receive. The statement will provide valuable information for businesses and investors and help them, we believe, to determine whether they should submit a notification about their trigger event. I hope that hon. Members feel that I have sufficiently explained and justified the clause and its place in the Bill.

Chi Onwurah: Clause 3 is critical, as it sets out the context in which the Secretary of State will exercise the important power to call in transactions. We have sought in our amendments to improve it. I accept the Minister's response to and rejection of our amendments, and his belief that the clause provides for the guidance and clarity that businesses need. I would just say to him that it was the clear conclusion of just about every witness in the evidence sessions that greater clarity and understanding were required, and that to make this change was an immense mountain to climb.

In some respects, the Government could not give too much support and guidance, within the bounds of national security, to the many companies and persons who will be caught up in the measures. Having said that, given that it is an essential part of the Bill, which we support, we accept that the clause stand part.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

CONSULTATION AND PARLIAMENTARY PROCEDURE

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

3.15 pm

Nadhim Zahawi: As I turn to clause 4, I will begin with a reference to clause 3. The statement provided for in clause 3 sets out how the Secretary of State expects to exercise the call-in powers that we have just been discussing. It is the Government's view that this statement is important in ensuring that businesses have as much clarity and predictability as possible regarding the potential use of the call-in powers, including the areas of the economy where national security risks are likely to arise. Likewise, clause 3 also sets out that the Secretary of State is required to review the statement at least every five years.

It is right that there are mechanisms to ensure that the Secretary of State seeks external input, where appropriate, on the proposed contents of the statement and that Parliament can scrutinise the final version. Clause 4 therefore requires the Secretary of State to carry out such consultation on a draft of the statement as he thinks appropriate and to take into account the responses to any such consultation during the drafting process. Those requirements also apply when the Secretary of State seeks to amend or replace a published statement.

Our plan is to launch a public consultation shortly after the passage of the Bill to make sure that affected parties can provide comments to us in good time. Before the final statement may be published, clause 4 also requires the Secretary of State to lay it before Parliament, following which the statement will be subject to a procedure akin to the negative resolution procedure. If either House resolves not to approve the statement within 40 sitting days, the Secretary of State must withdraw the statement. I can assure the House and hon. Members that the Government are committed to ensuring that this new regime works for those most affected by it. Investor and business confidence is imperative to the recovery from the covid pandemic. That is why the Government propose to put in place these requirements before the Secretary of State is able to publish the statement and exercise the call-in power.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Clause 5

MEANING OF "TRIGGER EVENT" AND "ACQUIRER"

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

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

Clause 10 stand part.

That schedule 1 be the First schedule to the Bill.

Nadhim Zahawi: I turn now to clauses 5 and 10, alongside schedule 1, which set out much of the detail on the circumstances covered by the Bill. Clause 5 begins to set the scope of what may be called in by the Secretary of State by providing the overarching definitions of "trigger event" and "acquirer". The Government are clear that these new powers should be sufficiently broad to cover potential risks to national security. Clause 5 sets out that the new regime is focused on the acquisition of control over both qualifying entities and assets. These acquisitions are collectively known as trigger events. I do not intend now to explore what does and does not qualify as an asset or entity. Instead, I would direct hon. Members to clause 7, which provides such definitions.

Following on logically, the person gaining such control is the acquirer, and to address a query raised on Second Reading by my right hon. Friend the Member for Chingford and Woodford Green (Sir Iain Duncan Smith), I should make clear that "person" includes both a body and an individual. Subsequent clauses explain the specific ways that control can be acquired for the purpose of the Bill, but this is a necessary clause to set the broad parameters of the regime. The trigger events within scope of the call-in power are defined in clauses 8 and 9 as acquisitions of control over qualifying entities and assets, but the Government consider that the Bill must supplement that by providing for interests or rights to be treated as held or acquired, and therefore for control to be acquired in certain circumstances, such as acquisitions involving indirect holdings or connected persons.

That is why clause 10, in combination with schedule 1, sets out various ways in which rights or interests are to be treated for the purposes of the Bill as being held or acquired, including, for example, joint arrangements with other parties. These edge cases are critical to ensuring that determined hostile actors cannot deliberately structure acquisitions in certain ways to avoid being covered by the regime. While many trigger events may be straightforward, direct acquisitions by a party without any connection to other persons involved in the target entity or asset, there may be broader factors that need to be taken into account when considering how control over an entity or asset may be held.

It may be that the ability to control the entity or asset is acquired, for example, as a result of arrangements between the acquirer and other shareholders or their relationship to other shareholders. The approach taken in schedule 1 broadly mirrors the concept of holding an interest in a company, already familiar in UK company law through the persons with significant control register, introduced in 2016.

Taking each in turn, paragraph 1 of schedule 1 defines joint interests, whereby two or more people holding an interest or right jointly are each treated as holding it. That means that any joint holdings of the acquirer will be taken into account when assessing whether control has been acquired over a qualifying entity or asset.

Paragraph 2 defines joint arrangements so that parties who arrange to exercise their rights jointly in a predetermined way—for example, to always vote together in a particular way—are each treated as holding the combined rights and interests of all the parties involved in such an arrangement. That is important to prevent hostile actors from being able to co-ordinate the acquisition and exercise of rights that might otherwise fall below the threshold of a trigger event.

Paragraph 3 defines indirect holdings, whereby a person holds an interest or right indirectly through a chain of entities, where each entity in the chain has a majority stake in the entity below it, the last of which holds the interest or right. We know that determined hostile actors are likely to seek to obscure their acquisitions through complex corporate structures, so it is vital that the Secretary of State can intervene in such circumstances.

Paragraph 4 simply stipulates that interests held by nominees for another are to be treated as held by the other, rather than the nominee. Paragraph 5 defines the circumstances in which rights are to be treated as held by a person who controls their exercise; this would cover, for example, instances where a person acquired a stake in an entity, but it was evident that they had an arrangement with a third party about how to exercise the rights that came with that stake.

Paragraphs 6 and 7 provide for the circumstances in which rights that are exercisable only in certain circumstances and rights attached to shares held by way of security are respectively to be treated as held, and mirror corresponding provisions in schedule 1A to the Companies Act 2006.

Paragraphs 8 to 10 define connected persons; as set out, connected persons are each to be treated as holding the combined rights or interests of both or all of them. That would cover, for example, shares in a company separately by a husband and wife or a brother and sister. Finally, paragraph 11 sets out that two or more persons sharing a common purpose are to be treated as holding the combined interests or rights for both or all. That would include two or more persons who co-ordinate their influence in relation to an entity or an asset, similar to joint arrangements. This will ensure that the Secretary of State is able to assess the impact of co-ordinated acquisitions.

Taken together, the concepts detailed in schedule 1 are a crucial part of ensuring that the new regime is flexible enough to deal with the complex reality of some acquisitions of control over entities and assets. Without these provisions, hostile actors could seek to take advantage of the gaps by structuring acquisitions in a way that would be out of scope of the regime, despite the very real risks that that might present. I trust that colleagues on both sides of the Committee want to ensure that the regime covers such cases suitably.

Chi Onwurah: I thank the Minister for his comments on clauses 5 and 10 and schedule 1, which are quite technical provisions designed to allow for the different ways in which control may be acquired over a qualifying entity or asset or a trigger event may occur. I shall not

[Chi Onwurah]

repeat what the Minister so ably set out, but simply say that we recognise the need to set out ways to mitigate the impact of hostile actors, as he put it, going to complex lengths to hide their interest in a qualifying asset or entity. However, having the powers and these definitions is not the same as actually using them. There have been several instances in which hostile actors have behaved in entirely transparent ways that we have not identified and prevented. While these provisions are necessary, we need to see the ways in which the Secretary of State will actively identify evolving risks even as they hide behind complex financial organisations.

Dr Whitehead: Will the Minister expand on some of the provisions in schedule 1, particularly as they relate to what might be a UK version of the case that I mentioned earlier concerning the US company that Dr Lenihan mentioned in his evidence? A company that had gone bankrupt had its assets, patents and employees bought up by what might have been conceived to be a hostile company in the US, in this case Huawei. If we imagine that happening in the UK, some questions arise about how schedule 1 is worded.

That sort of action might happen in a number of ways. It could be that a potentially hostile company buys up a failed, bankrupt company with the intention of making that company work again but so that it has control of its activities thereafter. Alternatively, the hostile company or organisation might want to buy up elements of the company not to make it work but to make off with the things that it wanted and then push the company further into liquidation. The company would not work but its assets and intellectual property would have passed into the hands of the other organisation.

3.30 pm

Parts of schedule 1 look like a GCSE maths test. Paragraph 6(2) states:

"rights that are exercisable by an administrator or by creditors while an entity is in relevant insolvency proceedings are not to be regarded as held by the administrator or creditors even while the entity is in those proceedings."

The question is: who actually holds the rights in those circumstances? Is it the person or company that has gone bust? Are they held to hold the rights even though an administrator is acting, as we would ordinarily understand, in place of the company in, for example, trying to get the best price for the company on behalf of the creditors, and therefore has certain rights to act in place of the company, including allowing that company to trade for the time being? Is it the person who has gone bust who has the rights, or is it the company that may have taken over the rights but has dissolved the company, so that the company no longer exists, but the creditors or administrators do not have the rights either because the company is finally in liquidation and the other company has meanwhile made off with the assets? Does the Minister consider that the wording and arrangements in the schedule are sufficient to take account of those sorts of circumstances?

Mark Garnier: I think the answer to the hon. Gentleman's question under insolvency law is that the rights belong ultimately to the creditors and shareholders of the company that has been wound up, which is pretty bog standard insolvency law.

Dr Whitehead: Yes, indeed, that is right, but what seems to be the case under the schedule is that the creditors and shareholders of that company would expect their rights and their ownership the remaining assets of the company to be protected and acted on by the administrators of the company, who, according to the schedule, do not have access to and ownership of those rights. Even though what the hon. Member says is absolutely right in terms of the ultimate interests of the shareholders and creditors, what agency do those shareholders and creditors have to do anything relating to rights under the Bill? Should those shareholders and creditors, for example, be held liable under the Bill for reporting what those rights are?

Mark Garnier: The administrators are employed to work on behalf of the creditors and shareholders, so they are serving their interests. It strikes me as relatively obvious that the rights over that intellectual property and those things that are relevant in this schedule still, either directly or indirectly through the administrators, lie with the creditors and shareholders.

Dr Whitehead: But if the IP, the patents and various other things have been made off with by another company, and the administrators have presumably agreed to that, although they never hold the rights, where are the shareholders and creditors' duties and rights at that point? Indeed, what is the remedy as far as the Government are concerned in those circumstances?

I can honestly say I am fairly confused about this, so I do not have the full answer to the hon. Member's concerns. I am raising this more because I am not sure whether the wording in the schedule is fully adequate for those circumstances. I would be grateful if the Minister gave me some assurance, took some of the clouds from my mind about this, or alternatively said, "Well, we're going to have a look at this to see whether there is a bit of a problem that we might have to fix."

Nadhim Zahawi: My hon. Friend the Member for Wyre Forest addressed the issue of the administrator's acting on behalf of the creditors. The important point to focus on—I will happily write to the hon. Member for Southampton, Test after the sitting—is that ultimately, it is the acquirer. If a malign actor were come to acquire those assets, and it is notifiable as part of the 17 sectors, then the transaction is made void. That is the remedy, effectively, because the acquirer would have to come forward and make representations to the investment unit about why they are acquiring and get clearance.

Chi Onwurah: I thank my hon. Friend the Member for Southampton, Test for the points that he is making. I wish to put to him, and effectively the Minister as well, an example which was raised yesterday in debate on the Telecommunications (Security) Bill, with which I am intimately familiar as the collaboration is between Nortel, an equipment vendor for whom I worked in the past, and Huawei, on a project to develop new technology. When two entities come together and collaborate, which I do not think will meet any of the trigger events described here, but instead create something which has IP in it which is of value, how does that come under the provisions of the clauses and the schedule?

The Chair: I have let everyone speak. I do not know whether there are any more answers that the Minister wants to offer.

Nadhim Zahawi: Let us take the example given by the hon. Member of Nortel collaborating with Huawei or any other entity. They have to satisfy themselves that if they wish to acquire something else in future, they will effectively have to go through the same process of national security clearance. Collaboration between entities or in academia are covered under the separate guidance, including from the agencies, on who they collaborate with, but I think that is a different issue. Once an asset is created that has a national security implication for the United Kingdom, the Bill comes into play.

Question put and agreed to.

Clause 5 accordingly agreed to stand part of the Bill.

Clause 6

Notifiable acquisitions

Stephen Kinnock: I beg to move amendment 6, in clause 6, page 4, line 27, at end insert—

'(4A) The Secretary of State must have regard to the protection of critical national infrastructure when making regulations under this section.'

This amendment would require the Secretary of State to have regard to the protection of critical national infrastructure when making notifiable acquisition regulations.

It is a pleasure to serve under your chairmanship, Sir Graham. I congratulate the Minister on his recent appointment as the vaccine tsar. I must say, he is taking multi-tasking to a whole new level, and we wish him well.

I rise to speak in favour of amendment 6, which is closely related to amendments 7 and 8. Sir Graham, should I speak to amendments 7 and 8 as well now, or to amendment 6 alone?

The Chair: Just amendment 6.

Stephen Kinnock: Thank you, Sir Graham.

Before we go down into the weeds of it, it is worth taking a step back and thinking about the fundamental purpose of the Bill. The amendments are informed by that fundamental purpose, because we wish to be constructive and to support the Bill, but also to improve it. We feel that if our amendments are not accepted, it will be a real missed opportunity to achieve something even better. We can take this Bill from good to great—an objective I am sure the Minister would support.

The aim needs to be around national security, yes, but also about economic resilience, because underlying economic resilience is actually what is required for our national security. The two are fundamentally intertwined. To build that resilience, we need sovereign capability. We need, as a country, to have a business culture based on purpose, rather than on fast bucks and short termism. We need resilience so that we are a country with a healthy and viable manufacturing sector that enables us to export more, because we would argue that the persistent trade deficit we face as a country has an impact on our national security. We also need to develop that sovereign capability. As the covid crisis has demonstrated, we have ended up being far too exposed to highly extended supply chains, many of which go through countries that are not our natural allies. That has left us lacking in resilience. The Bill is about managing risk, and our risk levels are far too high because of the economic model we have fallen into.

Simon Baynes (Clwyd South) (Con): I understand what you are saying, but I think what you are suggesting really changes the whole Bill, because, as we were discussing with the witnesses, it is almost more about national interest. This is about national security, not national infrastructure. What you are proposing is a fundamental change or add-on to the nature of the Bill, which would have ramifications throughout the whole Bill process. I think it is important to make that point at this stage.

The Chair: I was not proposing anything; the hon. Gentleman was.

Stephen Kinnock: I thank the hon. Member for Clwyd South for his intervention. I take that point absolutely, but I think it is important sometimes to go back to the mindset we have around this legislation. The Opposition feel that there are opportunities to strengthen the Bill. Every single Bill that the Department for Business, Energy and Industrial Strategy puts forward should be informed by that need to strengthen our sovereign capability and make us less reliant on risky supply chains, and to be somewhat more realistic about the way that the world and globalisation work. It really was just contextual, but I do take the hon. Member's point that we should remain within those parameters. I think the mindset is really important.

On the issue of exposure to highly extended supply chains and the way in which we have had the floodgates open for hostile foreign takeovers, this country has the highest number of hostile foreign takeovers in the entire OECD. That really speaks volumes about our economic model.

In terms of relations with China, the Bill is not an anti-China Bill as such, but we all know that the key economic development of the last few decades has been the rise of China. The reality is that we have been naïve and complacent in the way we have dealt with China. Previous Prime Ministers announced a so-called golden era, whereby we were going to open our markets to China, the Chinese were going to do the same, and they would gradually align with the international rules-based order, its norms and even its values, some thought.

That has been an unmitigated disaster. None of that has happened. In fact, what we have seen is that the benefits of the golden era have flowed almost exclusively from west to east. We are still running a £19 billion trade deficit with China and we are still seeing extremely hostile political acts, not least what is happening in Hong Kong and the persecution of the Uyghur people in Xinjiang. Both economically and politically, the strategy has failed.

3.45 pm

It is heartening to see in the Bill some evidence that the Government are learning that lesson. I think the Bill is the Government saying, "Yes, we have been naïve and complacent. We do need to take a more hard-headed, realistic approach to China in particular, so we are going to take some action." But as I said, the Bill could do so much more and be so much better. It is in that spirit that we have tabled our amendment.

There is also an added element of urgency: the covid crisis will leave many British businesses distressed and vulnerable. They will be vulnerable to more hostile

foreign takeovers, including those backed by state-owned enterprises and state-backed investment vehicles. When we talk about China, there is, of course, no difference between business and the state—business is the state. The Chinese Communist party has a membership of 90 million people. It is absolutely clear that any time a business takes a decision, regardless of whether it is ostensibly or nominally in the private sector, it is the CCP that makes the call. We are dealing with a situation in which our business community—distressed, vulnerable and potentially with huge cash-flow issues—is going to be susceptible to those kinds of hostile foreign takeovers.

Chi Onwurah: My hon. Friend is making an excellent point. In addition to the critical issue of the state of many small businesses after covid, there is Brexit. The low value of the pound means that our distressed assets will be cheaper on the global market.

Stephen Kinnock: My hon. Friend makes a crucial point. As we have constantly said, this is about risk and the hierarchy of risks we face. Risk is always sensitive to what is happening in terms of the global economic outlook. As she rightly points out, Brexit and leaving the transition period will be a seismic event for our country. It will have a massive impact on our currency and the strength of the pound. Combining that with the covid situation means that we have to be careful. We have to be vigilant and ensure that we defend our national interest. That is why it is important that our mindset involves taking a holistic view of our national interest, particularly in the turbulent times in which we find ourselves. This is fundamentally about saying that our national security is not for sale. Our national security does not have a price tag, and it has to be the primary consideration.

With those contextual comments in mind, I move on to amendment 6, which considers a particular aspect of our economy. It focuses on the asset side of the ledger in terms of this Bill—namely, critical national infrastructure. Our amendment would require the Secretary of State to have regard to the protection of critical national infrastructure when making notifiable acquisition regulations. Going back to China, it is remarkable how much of our critical national infrastructure is in the hands of Chinese enterprises or state-backed investment vehicles. This is happening now, right under our noses, and needs to be taken into account in discussing this amendment.

In essence, our amendment offers a way to ensure that critical national infrastructure is given particular and extra consideration in the national security and investment assessments within the regime. Given that the Bill fails to define national security, it does not, by definition, reference critical national infrastructure.

To drill down further, the Government's consultation on the Bill lists the 17 sectors that might come under the regime's mandatory notification process, but it does not explicitly list the UK's critical national infrastructure. In fact, there is not a direct overlap. Five sectors are not included in the 17 that are in the consultation, but they are in our critical national infrastructure. The 17 range from advanced materials, advanced robotics, artificial intelligence, civil nuclear, communications, computing hardware, critical suppliers to Government, critical suppliers to the emergency services, cryptographic authentication, data infrastructure, data infrastructure, defence, energy, engineering biology, military and dual use, quantum technology, satellite and space technologies, to transport. However, the Centre for the Protection of National Infrastructure defines 13 areas as critical national infrastructure, including several sectors that are not included in the 17: food, Government more broadly—not just critical suppliers—health, space and water.

If we look at the impact of the pandemic and think about what critical national infrastructure means, we see that the 17 sectors are already out of date. Given our experience with covid and the concerns about food supply, that is clearly an issue we need to examine closely. Water is crucial to our wellbeing as a nation, yet it is not included in the 17. Our amendment argues that critical national infrastructure should be taken as an asset class. If defined as an asset class, the landscape moves and the definitions of sectors move, but there is clarity about critical national infrastructure always being within the scope of the Bill.

Matt Western: As always, my hon. Friend makes important points. To amplify those, if we had been sitting down and writing this Bill 10 years ago, which would have been a pretty good thing to have done, with hindsight—

Mark Garnier: When you were last in government?

Matt Western: I think I chose my time horizon pretty well. Had we been doing so, we may not have been considering these 17 categories, traffic light systems, underground systems, public transport or railway infrastructure in a way that we have to nowadays because we understand just how interconnected things are. We understand what the threats and risks are from these sorts of investments from possibly rogue organisations, states or businesses.

Stephen Kinnock: I thank my hon. Friend. This is genuinely not an attempt to make a party political point. There is no doubt that we should have seen the impact of the rise of China long before 2010. This is something that has been going on for a long time. President Xi Jinping was appointed in 2013 and there has been a qualitative shift in China's outlook and the way in which it is engaging with the world. There is an increasingly aggressive and assertive set of economic policies. One of the experts said that the objective is to dominate the global technology scene. That is an explicit objective in the Made in China 2025 vision that the President and the Chinese Communist party adhere to. While we are not trying to make party political points here, a lot has changed in the last seven years.

Dr Whitehead: Does my hon. Friend consider that had these provisions, as amended, been in place in, say, 2015, the Government would not have signed the Secretary of State's investment agreement with the Chinese state nuclear corporation, giving it control of a nuclear power plant and the right to build its own reactor, staff it with its own staff and run it entirely according to its own interest? Does he think that it was perhaps naive to do that? Might greater protection have been afforded for future deals under this sort of arrangement?

Stephen Kinnock: I thank my hon. Friend. His intervention is telling because it points to a fundamental failing at the heart of Government in terms of being joined up and credible. We cannot condemn aspects of China's activity and its increasingly assertive behaviour —potential military threats to Taiwan, and sabre-rattling in the South China sea—while opening up our nuclear energy capability to that same hostile foreign actor. Security is about our credibility, resilience and ability to stand strong and united, because we know that the Chinese Communist party will exploit weakness and division. Consistency is vital—consistency and security are two sides of the same coin.

To answer my hon. Friend's question, I profoundly and sincerely hope that the investment to which he refers would not have passed this test. Frankly, if it had passed this test, the Bill would end up not being worth the paper it is written on. This is about the implementation of the Bill and the Government's capability to stand up for our national security and critical national infrastructure, which is at the heart of the amendment.

It is worth pointing out that the Intelligence and Security Committee defines our critical national infrastructure as

"certain 'critical' elements of infrastructure, the loss or comprise of which would have a major detrimental impact on the availability or integrity of essential services, leading to severe economic or social consequences or to loss of life."

I am convinced that no Member present would argue with that definition or against putting those considerations at the heart of what Parliament and the Government stand for.

We must include critical national infrastructure. It would follow best practice—our allies the United States and Canada both include critical national infrastructure in their list of key factors to assess as part of national security, so we would not be reinventing the wheel but simply following best practice. In the expert witness sessions, I asked Sir Richard Dearlove specifically whether he thought that a definition of critical national infrastructure should be included in the Bill. He said:

"I would certainly see that as advantageous, because it defines a clear area where you start and from which you can make judgments".—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 24, Q31.]

As I said the start of my comments, sovereign capability is what this is really about, and our sovereign capability is profoundly undermined by the fact that so much of our critical national infrastructure is not in our own hands. Supply chains are over-extended and often depend on actors that perhaps 10 years ago we did not see as we do now, which has to be taken into account. I urge hon. Members to consider the amendment seriously, because it goes to the heart of what Parliament and Government should be about.

Nadhim Zahawi: Amendment 6 would require the Secretary of State to have regard to the protection of critical national infrastructure when making notifiable acquisition regulations. I welcome the intention of the hon. Member for Aberavon to ensure that the protection of critical national infrastructure is considered by the Secretary of State. Indeed, I take it as a ringing endorsement of the approach the Government have taken in clause 6 to define the specific sectors and activities subject to mandatory notification clearance.

As the hon. Gentleman will know, we intend to introduce regulations under the clause once the Bill has received Royal Assent, and we are currently consulting on the sector definitions, which cover much of the critical national infrastructure that he quite rightly shared with the Committee, including energy, civil, nuclear, transport, communications and defence. We are publicly consulting, in particular with sector experts, the legal profession, business and investment communities, to ensure that those definitions provide clarity and certainty, and are focused on the specific parts of sectors and activities that can pose risks to our national security. I can assure the hon. Gentleman that, in developing any notifiable acquisition regulations, the Secretary of State will always take into account the national security needs of the country within the critical national infrastructure sectors, the advanced technology sectors and the wider economy.

4 pm

Stephen Kinnock: I thank the Minister for giving way; he is being very generous. Does he not see the advantage of including this point on the face of the Bill? It makes an important statement—it is a political statement, really—about the need to ensure that, whatever the regulations say, critical national infrastructure is embedded in the Bill.

Nadhim Zahawi: I hear what the hon. Gentleman says. The word that slightly worries businesses is "political" statement. I think that that is a concern. I think his intention is right, and the reason why we have taken the route of mandatory notification for the 17 sectors is precisely the point he makes. I assure him that the Secretary of State will always take into account the national security needs of the country within the critical national infrastructure sectors. Indeed, the hon. Gentleman will recall that the Government introduced a statutory instrument to include health in the Enterprise Act 2002 when the covid pandemic hit.

Dr Whitehead: I wonder whether I can tempt the Minister to confirm that the 2015 Secretary of State's investment agreement concerning Chinese control of the nuclear power station and reactor was a naive act by the Government and did not take national security properly into consideration, and that the Secretary of State who signed that agreement in the Minister's Department clearly did not do so. Will the Minister both reflect on the naivety of that deal and give an indication that such a deal would never be contemplated by this Department in future?

Nadhim Zahawi: If the hon. Gentleman is referring to the Hinkley Point deal with EDF, the operator and junior partner in that is CGN.

Dr Whitehead: I was not quite; I was referring to the investment agreement on the Hinkley deal that enabled the Chinese state nuclear corporation to develop one third of that series of reactors entirely within its own resources. That was signed into the agreement by the then Secretary of State so that they would be junior partners in Hinkley, equal partners in Sizewell and 100% owners, operators and organisers of Bradwell.

[Dr Whitehead]

That is what I was referring to. The Minister ought to say a few words on the likely actions of the Department in future under the terms of the Bill.

The Chair: Crucially, Minister, interesting though this topic may be, those last few words should be firmly in your mind in any response you give.

Nadhim Zahawi: I am grateful to you, Sir Graham, for refocusing our attention on the amendment. Suffice it to say that national security is always taken into account when it comes to nuclear or energy, as it was at the time of those agreements. The point I am trying to make is that we must be flexible to ensure that the new regime can adapt to the threats of tomorrow. That is the right approach to ensure that we can keep this country safe. Of course, any such regulations will be subject to parliamentary approval through the draft affirmative procedure, giving Members of this House and the other place the opportunity to ensure that the mandatory notification and clearance regime works effectively. As such, I cannot accept the amendment and I hope that the hon. Member for Aberavon will seek leave to withdraw it.

Stephen Kinnock: I thank the Minister, but I am afraid that we will have to push the amendment to a Division, because it is so fundamental to how we see the purpose of the Bill. We have heard lots of assurances today along the lines of, "Trust us. We are on the right track. We get it." I hope the Minister will forgive us, but we prefer the "trust but verify" model. Therefore, we think that this provision should be in the Bill, and I will have to press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 5]

AYES

Kinnock, Stephen	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.

Amendment proposed: 5, in clause 6, page 5, line 3, at end insert—

"(10) Before making regulations under this section, the Secretary of State must—

(a) provide the Intelligence and Security Committee with one week's advance notice of his/her intention to bring forward such regulations; and

(b) make any necessary amendments to legislation to allow the Intelligence and Security Committee to respond with recommendations."—*(Chi Onwurah.)*

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

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 6]

AYES

Flynn, Stephen	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.

Stephen Flynn (Aberdeen South) (SNP): I beg to move amendment 13, in clause 6, page 5, line 3, at end insert—

"(10) Notifiable acquisition regulations must be reviewed one year after they are made, and at least once every five years thereafter."

This amendment would require notifiable acquisition regulations (including which sectors are covered) to be reviewed one year after they are made, and once every five years thereafter.

It is a pleasure to see you in the Chair once again, Sir Graham. As things stand, I think it is probably a fair assessment, based on what we have heard, that perhaps if the Government had their time again they might have been able to bring forward a consultation in relation to which sectors will be linked to the Bill once it is on the statute book.

I think that a disappointing approach has been taken. It could have been done in a much more constructive manner. The purpose of the amendment is to try to highlight that the issue is a real one, and to highlight the scale and scope of the sectors. As we talked about, there is perhaps concern about whether a specific sector goes far enough. For instance, does artificial intelligence look properly at the role of social media? Does the infrastructure tie into social media in any way, shape or form? There are other examples of that too. Having the review after a year would perhaps allow the Government to be a little more certain about where their priorities lie, and to provide additional certainty to businesses in what is an ever-moving landscape. National security is, of course, an ever-evolving issue, as we have heard passionately from a number of Members.

I will keep my remarks succinct. The amendment is about tightening things up and removing the difficulties that are being caused by the lag between the Bill and the consultation, and doing so in a constructive fashion to try to assist the Government.

Nadhim Zahawi: To discuss this amendment, I believe it would be helpful to revisit briefly the role of notifiable acquisition regulations under the regime. A key part of the Bill is the ability it affords the Secretary of State to make acquisitions of certain shares or voting rights in certain entities—notifiable acquisitions, meaning they must be notified and cleared by the Secretary of State before they can take place. Those types of entity are to be specified in regulations by the Secretary of State and the Government have published a consultation on the

definitions of those types of entity, which fall within 17 key sensitive sectors of the economy that we propose to initially be covered by the mandatory notifiable regime.

The regulation-making powers in the clause are the best and most proportionate way to enable the Secretary of State to change over time what does and does not constitute a notifiable acquisition. That is crucial for two main reasons. First, it would not be the right approach to set the types of entity covered by mandatory notification and their definitions in stone, forever, in 2020. We all know how difficult this year is. The Secretary of State must be able to update them, in some cases rapidly, as the threats we face evolve and to keep pace with technological development.

Secondly, the Secretary of State must be able to react to the operation of this regime in practice. While the Bill does not include a white list that exempts specific acquirers from the mandatory regime, we have been clear that we will monitor closely the volumes and patterns of the notifications made to the Secretary of State. It may emerge over time, for example, that acquisitions by institutional investors and pension funds are routinely being notified but very rarely remedied or even called in. Such evidence could build the case for using the powers in this clause to make exemptions to the definition of a notifiable acquisition, on the basis of the characteristics of the acquirer.

The Chair: Order. I do not know who the person who has just walked in is, but only Members are allowed in the room. Please leave immediately.

Andrew Griffith (Arundel and South Downs) (Con): I apologise, Sir Graham.

The Chair: Apology accepted.

Nadhim Zahawi: It is therefore right that the Secretary of State keeps a constant watch on the regulations. Indeed, it is vital that he has the flexibility to re-assess and, if needed, seek to update the regulations as soon as is needed, while taking a proportionate approach that gives as much stability to business and investors as possible. Ensuring this vital timeliness and balance means it would not be appropriate to impose particular requirements on when and how frequently the Secretary of State should review the powers, so I cannot accept the amendment. However, I agree wholeheartedly with the hon. Member for Aberdeen South that keeping the regulations up to date and proportionate is of the utmost importance, and I can assure him that that is what the Secretary of State will do.

Stephen Flynn: I will certainly take that assurance from the Minister in the spirit in which it is given, but that is probably as far as that will go. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Nadhim Zahawi: Clause 6 defines the circumstances covered by mandatory notification. The Bill calls them notifiable acquisitions, on the basis that they must be notified and cleared by the Secretary of State before they can take place. The Government have looked carefully at investment screening regimes around the world, in particular those of our Five Eyes allies and other security partners. Common among them all is the inclusion of a mandatory notification component to ensure that the most sensitive transactions must be actively considered and receive clearance by the relevant authority before they can take place. We have concluded that that is the right step for the United Kingdom to take as well. That reflects our developed view that the Government must have greater assurance that certain acquisitions in the most sensitive sectors, including both the national infrastructure sectors and certain advanced technology sectors, are safe to proceed.

4.15 pm

Without that, the risks that some acquisitions may pose from day one, with hostile actors seeking to extract sensitive intellectual property immediately and transport it to far flung corners of the world, may already have crystallised. In such circumstances, intervention after the event would too often be irrelevant, as unwinding the acquisition would not unwind the risk to our national security itself. That is why it is vital that the Bill includes a mandatory notification element at its heart, and that is why the Government have strengthened the policy consulted on in the 2018 White Paper.

Clause 6 provides for acquisitions of certain shares or voting rights in specified qualifying entities that are engaged in specified activities in the UK to be notifiable. By specified, I mean specified in regulations by the Secretary of State. The Government have published a consultation on the definitions of those activities, which fall within 17 key sensitive sectors of the UK economy that we propose to initially be covered by the mandatory notification regime.

We are currently engaging with a wide range of external experts as part of that consultation and welcome input from sector specialists, the business and investor communities, and the legal profession, to help refine the definitions. That will ensure that the scope of the mandatory notification elements of the regime is targeted and proportionate, and keeps Britain firmly open for business. I know that is something that you are particularly passionate about, Sir Graham.

Acquisitions of certain shares or voting rights in these specified entities will be notifiable. The regulations will therefore be the mechanism by which we will place the final part of the definitions of the acquisitions that are to be subject to the mandatory notification regime, giving parties the certainty they need to assess whether their acquisitions fall within the regime.

On that point, hon. Members will see in subsection (2) that the types of acquisition covered by mandatory notification are not simply the full list of trigger events that we will come to discuss in clause 8. That is deliberate. The nature of any modern investment screening regime is that it must provide sufficient flexibility for the Government to examine a broad range of circumstances, given the increasingly novel way in which acquisitions are being structured and the vigorous way hostile actors are pursuing their ends.

However, it must also provide clarity and certainty to businesses and investors, which is particularly true when we consider the mandatory notification regime, under which failure to obtain clearance before completing will result in the voiding of a notifiable acquisition, and possibly criminal or civil penalties. Parties must be able

to self-assess whether they are in scope. To that end, notifiable acquisitions are objective circumstances, primarily based around an acquisition taking a party's holding of shares or votes, to or past a particular numerical threshold. It also includes the acquisition of voting rights in a specified entity that enables the person to secure or prevent the passage of any class of resolution governing the affairs of the entity.

I emphasise that this approach does not prevent other types of trigger events being notified to the Secretary of State, or otherwise stop him from exercising the call-in power in respect of other types of trigger events, where the legal test is met. This is simply about the scope of the mandatory notification element of the regime.

I should also note that, under subsection (2)(b), the definition of a notifiable acquisition includes a circumstance that is not, in and of itself, a trigger event. Acquisitions that take a party's shares or voting rights in a specified entity to 15% or more, not exceeding 25%, are notifiable even though they are not, by themselves, trigger events that may be called in by the Secretary for State for scrutiny under the Bill.

The reason why we have nevertheless required such acquisitions to be notified is that increases in shares or voting rights to 15% or more may realistically result in the acquirer having material influence over the policy of the entity, and therefore control of it. That would constitute a trigger event. The notification requirement is thus intended to ensure that the Secretary of State is made aware of the proposed acquisition and can take steps to determine whether material influence will be acquired. That will require an assessment of all the circumstances of the case, including any other rights being acquired, such as board representation. The Secretary of State will be able to obtain the relevant information from the notification form or through his information-gathering powers.

The 15% threshold is broadly consistent with the UK's merger framework. As the Competition and Markets Authority notes in its mergers guidance:

> "Although there is no presumption of material influence below 25%, the CMA may examine any shareholding of 15% or more in order to see whether the holder might be able materially to influence the company's policy."

We think that strikes the right balance by requiring parties to focus on a numerical threshold only, while still allowing the Secretary of State to be notified about—and then to call in if the legal test is met—more subjective acquisitions of control in the most sensitive sectors.

I will say a few more words about the regulation-making powers set out in the clause. They are the best and most proportionate way to enable the Government to change, over time, what does and does not constitute a "notifiable acquisition". That is crucial for two main reasons. First—I have already spoken about sectors—it would not be the right approach to set the sectors covered by mandatory notification and their definitions in stone, forever. The Government must be able to update them—in some cases rapidly—as the threats we face evolve, and to keep pace with technological advances. As I am fond of saying, many of those advanced technology sectors simply did not exist in 2002 when the Enterprise Act was developed. They were merely a speck or, if you will, a quantum dot on the horizon.

Secondly, the Government must be able to react to the operation of that regime in practice. As I explained earlier to the hon. Member for Aberdeen South, although the Bill does not include a white list to exempt specific acquirers, we have been clear that we will closely monitor the volumes and patterns of notifications made to the Secretary of State. It may emerge over time, for example, that acquisitions by institutional investors and pension funds are routine. Such evidence could build the case for using the powers in the clause to make exemptions to the definition a notifiable acquisition on the basis of the characteristics of the acquirer, as subsection (5)(b) would enable us to do.

That is the approach of a Government intent on getting the right balance, both now and in future, between protecting our national security and keeping the UK a premier investment destination. I hope that sentiment is shared on both sides of the Committee.

Chi Onwurah: I will be brief because I know that we have to make progress, but I will say a few words on clause 6, which is in some ways the heart of the Bill, defining as it does what a "notifiable acquisition" is.

I regret that despite the Minister's repeated assurances, I am not entirely convinced that he has come to the Committee ready to make changes in response to our very constructive proposals. He has repeated on a number of occasions that the Bill is the best and most proportionate means, despite our constructive suggestions to the contrary. I remind him that—as we see in this clause in particular—the Bill gives significant powers to the Secretary of State, and particularly significant additional powers on delegated legislation. It is possible that not every clause is as perfect as it could be or as he seems to think it is. In particular, the amendment set out by my hon. Friend the Member for Aberavon was a really important contribution to bringing critical national infrastructure directly and clearly into the remit of the Bill. If the Minister is so opposed to including them directly, what elements of critical national infrastructure does he think do not form part of our national security?

My hon. Friend the Member for Southampton, Test made an excellent point with the example of our nuclear capability. Only five years ago, the then Prime Minister and Chancellor of the Exchequer were happy to hand not only the financing but the technological development, innovation and reputational consequences to China. Does the Minister agree that if we had had this Bill 10 years ago, as we wished, having critical national infrastructure in it would have made that impossible?

There is also the case of Huawei. When that was debated last night, it was clear that if we had been writing this Bill five or 10 years ago, I doubt whether the then Government would have included telecommunications, given their lack of interest in many acquisitions and procurements in that area. We now see the impact of having a high-risk vendor in our 5G and fibre network on our national security. We will not oppose clause stand part but we hope to encourage the Minister to accept our most constructive and supportive amendments.

The Chair: Before I put the question formally, for the benefit of Members—particularly new Members who have not been able to be here as much in the last year as would otherwise have been the case—let me say that a

good way of thinking of the rules of order in Committee is to think of them as being pretty much the same as in the Chamber. Similarly, above and below the bar applies in Committee as well as in the Chamber.

Question put and agreed to.

Clause 6 accordingly ordered to stand part of the Bill.

Clause 7

QUALIFYING ENTITIES AND ASSETS

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

Nadhim Zahawi: Clause 7 provides the definitions of "qualifying entities" and "qualifying assets" within the scope of the Bill, where, if they are subject to an acquisition of control that raises national security risks, the Secretary of State may take action. The Government have deliberately adopted a broad definition of "qualifying entities" to ensure that we can protect national security, regardless of the form of the legal structure of an entity that is being acquired in a trigger event.

Entities can be established or restructured in different forms including, for example, companies, limited liability partnerships and unincorporated associations. The clause includes an indicative, and non-exhaustive, list of the entities in scope. However, "individuals" are explicitly excluded. We expect most trigger events to concern companies, but we must also ensure that hostile actors cannot undermine or bypass the new regime through an entity being structured in such a way as to avoid scrutiny. It is therefore right that the clause provides for a broad definition of an "entity".

Equally, from time to time, there may be cases that concern the acquisition of control over non-business entities such as trade bodies or industry groups that the Government none the less need to be able to scrutinise. The clause also permits the Secretary of State to scrutinise acquisitions relating to non-UK entities, if the entity carries on activities in the UK or provides goods or services to persons in the UK. As I am sure hon. Members will acknowledge, the cross-border nature of trade and supply chains in today's world means that conduct abroad may impact national security here. For instance, goods that are critical to the defence of the realm may be supplied from abroad. If those goods were to be interfered with, that could harm our national security.

4.30 pm

Finally, the clause provides a list of the types of assets in scope. This consists of land; tangible—or in Scotland, corporeal—movable property; and ideas, information or techniques that have industrial, commercial or other economic value. Again, qualifying assets include land and movable property situated outside of the UK or the territorial sea, or ideas, information or techniques, but only if the asset is used in connection with activities taking place in the UK or the supply of goods or services to persons in the UK. The Government expect the Secretary of State to intervene in acquisitions of control over assets exceedingly rarely, but it is right for the Secretary of State to be able to scrutinise trigger events involving single sensitive assets, to avoid this becoming an avenue targeted by our adversaries.

Taken together, the definitions provide the Secretary of State with the ability to scrutinise the vast majority of acquisitions related to entities and assets that may raise concern if the acquirer is a hostile party. I hope that hon. Members will agree that this approach is reasonable and proportionate, and one that will support the Government in addressing national security risks facing our country.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Clause 8

CONTROL OF ENTITIES

Stephen Kinnock: I beg to move amendment 7, in clause 8, page 6, line 38, at end insert—

"(10) The fifth case is where the acquisition involves state-owned entities or investors originating in a country of risk to UK national security and creates any change of influence."

This amendment would mean that any acquisition involving state-owned entities or investors originating in a country of risk to UK national security and creating a change of influence would count as a person gaining control of a qualifying entity.

The Chair: With this it will be convenient to discuss amendment 8, in clause 8, page 6, line 38, at end insert—

"(10) The fifth case is where the acquisition involves changes to material influence in industries critical to the UK's capability and capacity to maintain national security, including economic security."

This amendment would mean that any acquisition which involves changes to material influence in industries critical to national security would count as a person gaining control of a qualifying entity.

Stephen Kinnock: I am very happy to have the opportunity to set out what we are trying to achieve with this amendment. While the previous amendment was very much about protecting our assets, this one focuses on the characteristics of the acquirer. It is absolutely clear that any successful screening regime has to be based on a solid understanding of both aspects—both the asset and the acquirer—and that both are equally vital to the successful implementation of the regime.

Harking back to the debate we had about an earlier amendment, the objective here has to be smart regulation. What do we mean by that? If we try to catch everything, we end up catching nothing. We have to prioritise. We have to have a screening system that has a smart, nuanced and well-informed understanding of risk, both in terms of the prioritisation of our assets and the prioritisation of understanding the characteristics of the acquirer. It is on that basis that we prioritise action, and when our investment security unit needs to intervene.

The amendment is focused very much on the characteristics of the acquirer. It is about ensuring that we guard ourselves against the influence of foreign powers that wish to do harm to our country—those that have an agenda. The Minister said earlier that companies get a bit worried when we use the term "political", but national security is a fundamentally political consideration, because it is about our political analysis of the threat from hostile foreign actors and our understanding of what the national interest is in a

[Stephen Kinnock]

holistic sense. We have to give that political leadership. We cannot expect the business community to take that decision for us; we have to give a lead on understanding where the investment is coming from and what the characteristics of the company or investment vehicle are. Fundamentally, going by the old adage that he who pays the piper chooses the tune, where there are state-owned and state-backed entities, it is absolutely clear who is paying the piper and who is choosing to the tune.

The amendment we have tabled would mean that any acquisition involving state-owned entities or investors originating in a country of risk to UK national security—a fundamentally political calculation—and creating a change of influence would count as a person gaining control of a qualifying entity. By including state-owned enterprises explicitly on the face of the Bill, we would be ensuring particular regard to the issue even where shareholding levels are low.

We understand the thresholds for trigger events, but what we are saying is that when the characteristics of the acquirer ring particular alarm bells, that should apply regardless of the shareholding level that is being considered by the acquirer. We know the threat from state-owned enterprises is disproportionate; that is why we are recommending a kind of disproportionate action in this amendment, to address the reality of the characteristics and to ensure that we are carefully guarding against potentially malign actors.

Again, this is not a new concept. Other countries use it in their regimes, and we are simply proposing that we follow suit and have a smarter strategy and approach to regulation at the moment. The clarity that we need, of course, is from understanding that where allied states are involved and the transactions are efficiently screened for approval there is little cause for concern, but with this amendment, even small and discrete investments from hostile states and from state-backed entities within those states would be fully captured.

Let us turn to the expert evidence that we received, particularly from Michael Leiter, the legal expert and lawyer, who said:

> "With respect to sovereign wealth funds or state-controlled investments, there is a perfectly good argument that yes, the standard of review might be…more rigorous."—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 48, Q54.]

Let us be absolutely clear: we do sometimes see so-called private takeovers, where often the state-backed entity is rather obscured within the ownership structure. They are carried out by companies and investment vehicles that are in fact a front for authoritarian state actors, who have wider political, national security and geopolitical agendas and whose values are frequently at odds with ours.

A recent obvious example is the attempt by an investment vehicle backed by the Chinese state to take over Imagination Technologies. The company was the target of a hostile foreign takeover attempt, and that investment vehicle had direct links to the Chinese state. Then there are even more obvious examples, to which my hon. Friends the Members for Newcastle upon Tyne Central and for Southampton, Test have referred, particularly around Hinkley and Bradwell, where there is a clear ownership structure coming directly from the Chinese state.

We must also recognise the broader agenda with things such as China's belt and road initiative, which is about creating debt-trap diplomacy. It is about building influence by entering other economies in such a major way that those economies effectively become dependent on the Chinese state. Of course, that comes with lots of strings attached, and it is part of the deal that those countries are not able or permitted to speak out when the Chinese state behaves in ways that we would not find acceptable. I hope that the Government and the Minister will seriously consider the amendment, because the characteristics of the acquirer must be taken into account if we are to have a smart regulation system that prioritises and does what the Bill sets out to do.

Nadhim Zahawi: This group of amendments would provide for certain cases to count as a person gaining control of a qualifying entity. The amendments are to clause 8, which defines the circumstances in which a person gains control of a qualifying entity for the purpose of the Bill.

Amendment 7 would ensure, as the hon. Member for Aberavon mentioned, that any acquisition involving state-owned entities or investors originating in a country of risk to UK national security and creating a change of influence would count as a person gaining control of a qualifying entity for the purposes of the Bill. I welcome the hon. Gentleman's intention to ensure that national security is comprehensively protected. I reassure him that the Bill provides no carve-out or special treatment for state-owned entities or overseas investors where they acquire control of a qualifying entity or asset. They will be subject to the mandatory notification requirements in the same way as any other acquirer, and the Secretary of State will have the power to scrutinise any acquisition of control by such parties where the legal test for call-in is met. That includes the acquisition of material influence over the policy of the entity.

However, the Government have been clear that the regime is nationally agnostic, and that each acquisition will be considered on a case-by-case basis. The draft statement of policy published alongside the Bill simply states that the regime will not

> "regard state-owned entities, sovereign wealth funds—or other entities affiliated with foreign states—as being inherently more likely to pose a national security risk."

I strongly believe that this is the right approach. We must recognise that many such organisations have full operational independence in pursuing long-term investment strategies with the objective of economic return, raising no national security risks.

Moreover, the clause already sets out the circumstances that constitute control of an entity based on levels of shareholding and voting rights and material influence. Amendments such as this could, for example, capture increases of equity stakes at any level, even though many could not realistically be expected to give rise to a national security risk. Developing a list of countries of risk would likely be a moving feast that would quickly become out of date in response to changing geopolitics and would most likely harm Britain's diplomatic relations and place in the world, giving rise to a chilling effect on investment in these shores.

Amendment 8 would create a new case of a person gaining control of a qualifying entity for "changes to material influence" in industries critical to the UK's

capability and capacity to maintain national security, including economic security. Once more, I welcome the emerging cross-party consensus that the Bill must capture more subjective acquisitions of control, rather than solely levels of shares and voting rights. I reassure the hon. Gentleman that acquisitions of material influence over the policy of an entity are very much in the scope of the Bill. That applies within the 17 sectors but also to the wider economy. Parties can notify the Secretary of State of a trigger event concerning the acquisition of a material influence, and he will have the power to proactively call in such a case if the legal test is met.

I should clarify that material influence is not a scale. It is the lowest level of control that can be acquired over a qualifying entity, which captures acquisitions of smaller stakes or other rights or interests in entities, such as board representation rights. As such, it is not immediately clear to me what circumstances such an amendment would bring into the scope of the Bill, given that it would capture changes to material influence. None the less, I admire the ingenuity of the hon. Gentleman's seeking, at least in part, to define national security through the amendment and its explicit reference to economic security. As he will know, the Bill does not define national security, and, as I said on Second Reading, I think that is a real strength, not a weakness.

Chi Onwurah: The Minister says that this Bill is not country specific. I know he does not want to define national security in the Bill, but does he think that our national security can be country specific?

4.45 pm

Nadhim Zahawi: I think that the Bill is proportionate and I think that national security is not dependent on a particular country. Malignant actors come from different nationalities. The Committee heard from a number of experts last week the reasons for not defining national security, not least because it might limit the Secretary of State from being able to respond to new and emerging threats that did not fall within the definitions set out in statute. For these reasons I cannot accept these amendments, and I would gently encourage the hon. Member for Aberavon to withdraw them.

Stephen Kinnock *rose—*

Nadhim Zahawi: Perhaps the hon. Gentleman will withdraw the amendment in his intervention.

Stephen Kinnock: I thank the Minister for giving way—sort of. One of the key sentences in the Government's statement of policy intent is in the section on acquirers, which says:

"Clearly, national security risks are most likely to arise when acquirers are hostile to the UK's national security, or when they owe allegiance to hostile states or organisations."

I recognise that the statement of policy intent is a draft, but clearly somebody in government thought it a good idea to put that sentence in there, and I absolutely agree with it. It is therefore very difficult to understand the disconnect that appears to exist between the Bill, which is agnostic on different national actors, and the statement of policy intent, which explicitly talks about when acquirers "owe allegiance to hostile states or organisations."

On that basis, the amendment touches on a crucial issue and we shall be pushing it to a Division.

The Chair: I think that was an intervention.

Nadhim Zahawi: I do not wish to keep repeating myself, but I have set out the reasons why I cannot accept these amendments. I would again gently encourage the hon. Member to withdraw the amendment, but I suspect we will be heading to a Division.

Stephen Kinnock: We are moving back and forth here. As I set out, the issues around the characteristics of the acquirer are so important to ensuring that we have a smart approach and the sentence within the statement of policy intent is so absolutely spot on that we will push the amendment to a Division to show our support for that section of the statement.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 7]

AYES

Kinnock, Stephen	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.

Sam Tarry: I beg to move amendment 12, in clause 8, page 6, line 38, at end insert—

"(10) The fifth case is where a person becomes a major debt holder and therefore gains influence over the entity's operation and policy decisions.

(11) For the purposes of subsection (8A), a major debt holder is a person who holds at least 25% of the entity's total debt."

This amendment would mean that a person becoming a major debt holder would count as a person gaining control of a qualifying entity.

The Chair: With this it will be convenient to discuss amendment 14, in clause 8, page 6, line 38, at end insert—

"(10) The fifth case is where a person becomes a major debt holder and therefore gains influence over the entity's operations and policy decisions.

(11) For the purposes of subsection (8A), a major debt holder is a person who holds at least 25% of the entity's total debt.

(12) The sixth case is where a person becomes one of the entity's top three suppliers of goods, services, infrastructure or resources and therefore gains influence over its operations and policy decisions."

This amendment would mean that a person becoming a major debt holder or a major supplier would count as a person gaining control of a qualifying entity.

Sam Tarry: Amendment 12 is about where a person becoming a major debt holder would count as a person gaining control of the qualifying entity. I know there is some debate about the technicalities of this, but Admiral Mike Mullen, former chair of the US joint chiefs of staff, famously said of the US:

"The single greatest threat to our national security is our debt."

[Sam Tarry]

This is an important point, because there is a substantial body of evidence to show that the debt holding of bondholders can indeed exert influence over companies. A particular feature of our current economic circumstances is extremely low, or zero, interest rates, so companies have drawn heavily on debt, not just equity, to fund themselves. In that context, it would be a major loophole for this Bill not to put debt investments under scrutiny in protecting our national security. This amendment would simply change that by bringing it into scope.

The amendment would ensure that an entity holding more than a quarter of a company's debt became a qualifying entity, bringing transactions into the scope of the national security screen. We think this is really important, because we would want that level of scrutiny. We also know that a number of states use this kind of leverage in some of the companies that they are taking over or, indeed, taking the debt from. Without it, hostile actors can be expected to exert explicit influence by buying up UK companies' debt, and that is something that should worry us all of us. Indeed, the Parliamentary Commission on Banking Standards talked about the importance of how debt can be used to exert influence. It said that,

"while a bank remains solvent, the formal powers of other creditors, such as bondholders, are much more limited."

However,

"The terms of some bond issuances may have provisions in situations when the security of the bond may be affected",

secured against

"creditors, such as securitised or covered bond holders".

So in practice, the scale of the funding provided by bank creditors means they simply have more influence over companies. If debt was bought in that way, we could indeed have a situation where a loophole was used to bring in hopefully benign, but potentially troubling influence within a company which could impact our national security.

There is considerable research showing that, in some companies, there is a strategy of using a negative relationship between debt investments in research and development that has actually stopped innovation, so we want to tackle all those things, but most importantly simply focus on closing the loophole that is here. There may be some pushback from the Government side of the Committee to say that, legally, debt holders have no operational control over a company. Of course, technically that is correct, but in practice companies' executives pay huge attention to bondholders and are materially influenced by them in substantive practice. There are a number of examples of that. From our point of view, we would like to push forward this amendment so that we bring into scope something that is otherwise a major loophole.

Stephen Flynn: I will be brief, as our amendment 14 is incredibly similar to the amendment moved by the hon. Member for Ilford South—not the hon. Member for Southampton, Test; I know that much. In any case, it is indeed very similar; I would just add that we must be clear about the fact that power does not just lie in ownership and investment, but also in debt and, indeed, in suppliers too. If we are standing blind to that, then I am not quite sure where we are at, particularly in terms of national security. Surely, it is an issue that we should be giving cognisance to, and the amendment certainly seems like a constructive proposal for the Minister to take forward.

I also have a fear that, as we approach anything to do with national security and investment, the bad guys, as they are often portrayed—and rightly so—will look for ways to get around things. If there is potentially a way to get around things, particularly by buying up debt or buying up the supply chain into an organisation, then I have absolutely no doubt they will do that. As we know, they will seek to exploit every opportunity available to them to wreak the damage they want to cause. We need to be mindful of that.

Mark Garnier: I am very sympathetic to the amendment tabled by the hon. Member for Ilford South. He refers to the Parliamentary Commission on Banking Standards, on which I sat. There is no question whatever that the bondholders of banks have a huge amount of influence on a bank—more so than the equity holders. I am worried about a couple of things with the amendment. The first is that it is very difficult to define what level of debt ownership constitutes control, because technically there is no control in law. It is possible to have an influence, but we cannot define what control is.

The second point is that tradeable debt, as in bond market debt, is something that is usually stuck to quite a sophisticated company. Most companies will have bank debt. Of course, if we start talking about bank debt, we introduce the tricky concept of where the bank is domiciled. For example, someone can borrow money from Barclays Bank, or they can go to a Russian, Chinese or Hong Kong-based bank. The sentiment behind the amendment is really important, because there is a lot of control by debt owners, be they banks or bond holders. However, it is too complicated to support at this level, because it needs much more debate and scrutiny, and we would need a much more cleverly worded amendment to support this. I do think it is a very important point, and I support the principle behind it.

Nadhim Zahawi: These amendments would ensure that a person becoming a major debt holder would count as a person in control of a qualifying entity. Amendment 14 would go further and ensure that a person becoming a top 3 supplier to an entity also counted as a person gaining control of a qualifying entity. I acknowledge that the hon. Members for Ilford South and for Aberdeen South are right to highlight that there are, in a small number of cases, national security risks that can be posed through debt.

Access to finance is crucial for so many businesses. In order to grow and succeed, they will often take out loans that are secured against the businesses and assets that they have fought so hard to build. That is why the Bill allows the Secretary of State to scrutinise acquisitions of control that take place where lenders exercise rights over such collateral, which goes to the point made by my hon. Friend the Member for Wyre Forest. Such an approach will prevent hostile actors from artificially structuring acquisitions in the form of loans, which, following a swift and convenient default, might otherwise allow them to evade scrutiny.

I can provide further reassurance to the Committee that the acquisition of any right or interest that enabled a person to exercise material influence over the policy of a qualifying entity, including by creditors through debt

arrangements, would be in scope of the Bill. It was noted by Christian Boney, partner of Slaughter and May, that the Bill strikes an acceptable balance by not having debt providers specified as a separate case. Depending on the facts of the individual case, that might capture the acquisition of rights by the lender to appoint members of the entity's board. That is a common approach by lenders when striking an agreement to provide significant amounts of finance, particularly for big infrastructure projects, in order to safeguard their funds. The Bill would cover a scenario where that provided material influence over the policy of the entity, but the amendments would go further still and stipulate that any person becoming the holder of 25% or more of an entity's debt was a trigger event in itself.

The Government do not believe that the provision of loans and finance is automatically a national security issue—indeed, it is part of a healthy business ecosystem that enables businesses to flourish in this country. I fear that such an approach would likely create a chilling effect on the appetite of lenders to support otherwise attractive and viable projects. Lenders need confidence that they can see a return on ordinary debt arrangements in order to provide that service. I believe that such a chilling effect would have a detrimental impact on the range and extent of finance that is available to UK businesses, particularly SMEs, and their future prospects would suffer as a result. That is the very opposite of the Government's intention. We must support our innovators and entrepreneurs as we seek to build back better from covid, rather than limit their opportunities to succeed.

Amendment 14 would create an additional case for any person who became a top 3 supplier to an entity. In effect, it would be a new trigger event. I share the desire of the hon. Member for Aberdeen South to ensure that business within our most sensitive supply chains can be protected. I believe the Bill does that already by allowing the Secretary of State to call in trigger events across the economy, when he reasonably suspects they may give rise to national security risks. That includes key suppliers.

5 pm

Indeed, we have gone further and set out in our consultation that the sectors and activities that we propose to be covered by mandatory notification include critical suppliers to Government and the emergency services. That approach will ensure that the Secretary of State is notified about acquisitions and control of entities covered by those definitions.

As noted by Michael Leiter at last week's evidence session, the list of 17 sectors is very robust and it will ensure the right cover. I do not believe it would be right to create a further case to be covered by the Bill, simply by virtue of the fact that a person became a top 3 supplier. As the Government have said throughout the development of the policy for the Bill, they have no intention of intervening in the routine provision of goods and services, and the overwhelming majority of suppliers pose no national security risk whatever.

The Government do not believe that being a top 3 supplier in itself provides control over the entity that it provides the supplies to; it merely reflects the desirability of the goods and services provided by that business. For example, let us consider the top 3 suppliers into the Zahawi household. I am sure that Sainsbury's, Waterstones and Deliveroo are extremely delighted by my recent lockdown business, but I do not think they would consider that they have control; my credit card statement may, of course, tell a different story.

Modern supply chains move so fast that such trigger events would be happening in incredible volumes, on a daily basis, all of which could be notifiable to Whitehall and bring businesses grinding to a halt. It would put the Government in the position of potentially adjudicating on every supply chain decision in every sector, which would be an enormous power disproportionate to the issue that the amendment, with good intention, seeks to address.

Taken together, Sir Graham, I do not believe these two amendments are in the interest of supporting business in this country to succeed. They do not offer the protections to national security that the Bill already appropriately and proportionately provides. As such, I respectfully ask the hon. Members to withdraw them.

Sam Tarry: I thank the hon. Members for Wyre Forest and for Aberdeen South for their contributions. It is my fear that, in some of the Minister's answers, there was perhaps an admission from Government colleagues that there is a correct driver, in terms of what we are trying to push at with this amendment. It would be more ideal if we were able to bring back an amended amendment that would win the support of the Government side, given that there clearly is recognition from experienced Members of the House that this is a problem and it could continue to be a problem. That could be a risk. For that reason, we will press for a Division.

The Chair: I am sorry. Can I be clear that you would like a Division?

Sam Tarry: We would indeed, because it is a point of key principle.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 8]

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.

Amendment proposed: 14, in clause 8, page 6, line 38, at end insert—

"(10) The fifth case is where a person becomes a major debt holder and therefore gains influence over the entity's operations and policy decisions.

(11) For the purposes of subsection (8A), a major debt holder is a person who holds at least 25% of the entity's total debt.

(12) The sixth case is where a person becomes one of the entity's top three suppliers of goods, services, infrastructure or resources and therefore gains influence over its operations and policy decisions.".—*(Stephen Flynn.)*

This amendment would mean that a person becoming a major debt holder or a major supplier would count as a person gaining control of a qualifying entity.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 9]

AYES

Flynn, Stephen	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: Clause 8 sets out for the purpose of the Bill the circumstances in which a person gains control of a qualifying entity as defined in clause 7. More specifically, the clause sets out the four ways in which control can be gained.

The first two cases are where certain shareholdings or voting rights are acquired. The clause stipulates that acquisitions increasing a person's holding in a qualifying entity above 25%, 50%, 75% or more all constitute trigger events. The thresholds have been chosen because of their significance under UK company law.

Under the Companies Act 2006, a number of key decisions relating to shareholders' rights in relation to the decision making of a company require a special resolution. Special resolutions require a majority of 75% of votes to be passed. This means that a holding of more than 25% allows one person to, by themselves, block a special resolution. Similarly, a holding of 75% or more allows one person to, by themselves, pass a special resolution.

Under the Companies Act, ordinary resolutions, which apply to more routine shareholder decisions, require a simple majority. This means that a holding of more than 50% allows one person to, by themselves, make decisions affecting the governance of a company.

The Government believe these thresholds represent reasonable proxies for various levels of control over entities. The clause deliberately includes references to both shares and votes to prevent the artificial construction of acquisitions to avoid meeting one of these thresholds—for example, a 40% stake with 51% of voting rights. In most cases, ordinary shares carry the equivalent amount of voting rights: one vote per share.

Recognising that the regime also concerns entities other than companies established under the Companies Act, the third case explicitly extends the same principles on voting rights enabling the passage of a resolution to other entities. That means that any acquisition of voting rights that allows a person to secure or prevent the passage of any resolution governing the affairs of the entity is a trigger event. This is important because other types of entities are not subject to the Companies Act and may have different thresholds for the passing of resolutions.

Finally, the fourth case that constitutes control of an entity is the acquisition of material influence over its policy. This reflects that no single shares or votes threshold is appropriate in every case.

Material influence is an existing concept under the Enterprise Act 2002, which denotes the lowest level of control that might give rise to a relevant merger situation that may be considered for competition or public interest reasons. Material influence captures acquisitions of smaller stakes or other rights or interests in entities, such as board representation and rights, which nonetheless enable a person materially to influence the policy of the entity.

Other factors, such as the status and expertise of the acquirer or a relationship of financial dependence, may be relevant. Clearly, determining whether material influence has been or is to be acquired will require an assessment of all the circumstances of the case by the Secretary of State. It is not possible, therefore, to provide any hard and fast rules that will be applicable in all cases.

The Competition and Markets Authority has published guidance about what it considers to constitute a material influence. The Secretary of State intends to apply that in so far as is possible in the context of this new regime, for the purposes of determining whether control has been or is to be gained over a qualifying entity.

For the avoidance of doubt, the Government have no plans to publish their own separate guidance on material influence. Collectively, these four cases represent the ways in which control of entities can be acquired for the purpose of the Bill. It is vital that they stand part of the Bill so that the Secretary of State may scrutinise acquisitions of control over entities in whatever form that takes. I hope that hon. Members will agree that this approach has been carefully considered to reflect the complexity of the make-up of modern entities.

Chi Onwurah: As we are over time, I shall not detain the Committee long, but I want to say a few words on this important clause. Our debate has again highlighted the Minister's apparent determination and conviction that the Bill cannot be improved on, even as we all acknowledge—and as the Telecommunications (Security) Bill makes absolutely clear—that the Government's record on national security in this context can very much be improved on. I noted his celebration of the innovators and entrepreneurs, and his concerns about the chilling effect on them of bringing debt holders into the Bill's remit as proposed in the amendment of my hon. Friend the Member for Ilford South.

The entrepreneurs and innovators seeking investment, particularly foreign investment, are unfortunately to have no such protection from the Minister. We want a consistent and robust approach, given the breadth of powers that the Bill gives to the Secretary of State. I was concerned that, even with the wise intervention of the hon. Member for Wyre Forest, the Minister did not make a proposal to take these constructive amendments away to consider and perhaps return with Government amendments that reflect them later in the Bill's passage. We will not oppose stand part, but I hope that the Minister will continue to consider our suggestions for the improvement of this and other clauses.

Question put and agreed to.

Clause 8 accordingly ordered to stand part of the Bill.

Clause 9

CONTROL OF ASSETS

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

Nadhim Zahawi: Clause 9 sets out, for the purposes of the Bill, the circumstances in which a person gains control of a qualifying asset, as defined in clause 7. A person gains control of a qualifying asset where they acquire a right or interest in, or in relation to, the asset, and as a result they can do at least one of the following.

First, they can use the asset or use it to a greater extent than prior to the acquisition. This would allow the Secretary of State to intervene, for instance, when an individual purchases a sensitive site and can therefore access and use the site. Secondly, they can direct or control how the asset is used, or direct or control its use to a greater extent than prior to the acquisition. This second mechanism by which a person can gain control over a qualifying asset is particularly important as it brings into the scope of the regime those who may not have complete control over the asset, but who can nevertheless still direct or control its operation. Without that, there would be a control loophole that hostile actors may seek to exploit.

It is worth noting the relationship between this clause and clause 11, which provides an exception for control of assets in circumstances where the acquisition is made for purposes wholly or mainly outside the individual's trade, business or craft. That is intended to put acquisitions such as consumer purchases firmly out of scope of this regime. I reassure hon. Members that the Secretary of State does not routinely expect to call in trigger events relating to assets. However, I hope that the Committee will agree that it is nevertheless important for the Secretary of State to retain this power to guard against hostile actors who seek to acquire control over sensitive assets as an alternative to acquiring the business which owns them.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clause 10 ordered to stand part of the Bill.

Schedule 1 agreed to.

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

5.16 pm

Adjourned till Thursday 3 December at half-past Eleven o'clock.

Written evidence reported to the House

NSIB01 Dentons UK and Middle East LLP

NSIB02 The Law Society of England and Wales