PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

NATIONAL SECURITY AND INVESTMENT BILL

Eighth Sitting

Thursday 3 December 2020

(Afternoon)

CONTENTS

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Monday 7 December 2020

The Committee consisted of the following Members:

Chairs: Sir Graham Brady, † Derek Twigg

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

Rob Page, Yohanna Sallberg, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 3 December 2020

(Afternoon)

[Derek Twigg *in the Chair*]

National Security and Investment Bill

2 pm

The Chair: Order. I remind the Committee that interventions should be short. If Members wish to make wider points, they have an opportunity to make a speech, so they should seek to catch my eye while the lead amendment is being moved.

Clause 14

Mandatory notification procedure

Amendment proposed (this day): 18, in clause 14, page 8, line 36, leave out "may" and insert "shall".—*(Sam Tarry.)*

This amendment seeks to make the Secretary of State's prescription of regulation of the form and content of a mandatory notice mandatory.

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 19, in clause 18, page 11, line 28, leave out "may" and insert "shall".

This amendment seeks to make the Secretary of State's prescription of regulation of the form and content of a voluntary notice mandatory.

Clause stand part.

Dr Alan Whitehead (Southampton, Test) (Lab): I will not take up too much of the Committee's time, but I wish to say a few words about the excellent contribution that my hon. Friend the Member for Ilford South has made to our continuing discussions about "may" and "must". It is a particularly egregious case that he has highlighted. If we look at the number of "musts" that appear in clause 14—this point has been made by other Members—we see that the subsequent "musts" would fall immediately if the Secretary of State may not prescribe by regulation the form and content of a mandatory notice—so the "must" in subsection (5) is relevant only if the Secretary of State does that in the first place, as are the "musts" in subsections (7) and (8), as my hon. Friend pointed out earlier.

There is also an interesting "must" at the beginning of the clause, which relates to the mandatory notification procedure itself. Subsection (1) states that

"a person must give notice to the Secretary of State before the person, pursuant to a notifiable acquisition…gains control in circumstances"

and so on. So subsection (1) appears to stand whether or not, in subsection (4), the Secretary of State decides to prescribe by regulation the form and content of a mandatory notice. That means that a person must provide a mandatory notice, even if the Secretary of State has not prescribed any form or content of that notice. The person may therefore have no idea what is to be in that mandatory notice, because the Secretary of State has not put it in regulations, but still they must give notice because this subsection says "must".

That does not seem to be particularly proportionate. It appears to be constructed in such a way that, regardless of whether the concept is completely unknown to the person giving the notice, it is entirely up to the Secretary of State whether he or she makes the mandatory notice in any way comprehensible. I think that is quite an odd juxtaposition in this instance of "mays" and "musts".

The "may" in subsection (6) is perfectly acceptable, in as much as its states that:

"The Secretary of State may reject the mandatory notice on one or more of the following grounds".

That "may" is absolutely appropriate. However, the positioning of "must" right at the beginning of the clause, and the positioning of "may" in subsection (4), does not look reasonable to me. That could easily be solved by using the word "shall", so that the situation is proportionate between those circumstances. That is the essence of the amendment 18, as my hon. Friend the Member for Ilford South outlined earlier.

I accept that there have been a number of occasions when, although I have not particularly liked "may" going into a Bill, it has had some justification. However, the particular juxtaposition that we see here causes me to think that it is a rather important issue, as far as "may" and "shall" are concerned. I am interested to hear whether the Minister thinks that the wording could give rise to the sorts of problems that I have suggested, in the event that another Minister—not himself, of course—might be tempted not to produce such regulations when defining the form and content, because I think that could cause potential problems for reasonableness, as far as this clause is concerned.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I rise to give some thoughts on clause 14 stand part, but will also refer to the amendment proposed by my hon. Friend the Member for Ilford South. Clause 14 is a critical part of this process, because it sets out the mandatory notification procedure. In some respects, it is the mandatory notification which places the greatest burden on those falling, or who might consider themselves to fall, within its remit. This is because it requires the person who is to make a notifiable acquisition to give a mandatory notice to the Secretary of State prior to the acquisition taking place.

The clause goes on to give the Secretary of State the option to set out the form and content of the mandatory notice. I shall come back to that. It then sets out the process by which the Secretary of State "must" decide whether to reject or accept that notice. If a mandatory notice is rejected, the Secretary of State must provide reasons in writing for that decision to be made. It also sets out the timescale elements and the persons to be notified. We recognise that mandatory notifications are an important part of making the Bill have the desired impact on our national security. It is absolutely right that in key areas the onus should be on those who will be aware that the transaction is taking place to notify the Secretary of State.

However, the amendment set out by hon. Friend is all about protecting and supporting the interests of small businesses. I am concerned that the Minister does not seem to be as vigilant about reducing the burden on and setting out the guidance for small businesses as we would like. All our constituencies have small businesses—it is often said that they are the lifeblood of the economy—yet in the Bill, and particularly in the clause, the Minister is not setting out the minimum support that they might require.

My hon. Friend the Member for Southampton, Test got to the nub of the matter in one of his very informative discussions about the difference between "must" and "may". He observed that the "must" falls on the person who has to do the notifying. For example, it could be a small artificial intelligence start-up with a few members of staff, none of whom is a lawyer—remember that there are no de minimis provisions in the Bill for the size of the acquisition that must be notified—that is seeking investment from a foreign party. That start-up would be asked to indicate whether that investment would involve making a notification. Not only that, it must decide itself the form that the notification should take.

I really cannot understand why the Bill apparently seeks to give discretion to the Secretary of State to lighten his load, but not to our fantastic small businesses or to business generally. As my hon. Friend the Member for Ilford South said, why should a small business, the notifier, also have to set out the format in which its notification takes place? Given that the clause sets out,

"The Secretary of State may by regulations prescribe the form",

why can we not simply turn that into "shall by regulation prescribe the form and content of a mandatory notice"?

Equally, when voluntary notices are considered, I hope the Minister has some ideas about what should be in the notification. If he does, is it not simple and desirable for him to share his ideas with our business community, which in less than a month's time is facing a huge change in how it trades and does business with the European Union, our largest trading partner by value? That involves countless new forms to be filled out, as we have discussed in the Chamber, some of which are not yet designed. At the same time that that is happening, to require that they should decide for themselves what is involved in a notification seems wholly unacceptable.

On that basis, I ask the Minister to set out whether he intends to accept the amendment. If not, will he tell us what work has gone on in the Department to look at the kind of information might be required? How will the impact assessment assess the likely level of familiarisation required for this legislation—there is a phrase that says that there is not expected to be a huge amount of familiarisation required in it—while at the same time there is no guidance, assessment or inkling about the kind of information that will be required to be included in that notification?

2.15 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): I am grateful to the hon. Members for Ilford South, for Southampton, Test, and for Glenrothes, as well as to the shadow Minister, the hon. Member for Newcastle upon Tyne Central, for their contributions on this set of amendments and clause 14. With the agreement of the Committee, I will begin with clause 14 stand part and then turn to the amendments.

Clause 14 provides a mechanism for proposed acquirers to notify the Secretary of State of notifiable acquisitions, which are those circumstances covered by clause 6. Contrary to what the hon. Member for Newcastle upon Tyne Central said, we on this side of the House really do care about small business; indeed, we will be celebrating Small Business Saturday by highlighting the great small businesses that are trying to recover from covid-19. To avoid duplication or unnecessary burden for businesses and investors, if the Secretary of State has already given a call-in notice in relation to the proposed notifiable acquisition, no notification is required. Otherwise the proposed acquirer must submit a mandatory notice containing the necessary information for the Secretary of State to make a decision about whether to exercise the call-in power.

The Government carefully considered which parties should be legally responsible for this notification. In many cases we expect this to be a collaborative process between parties that have an aligned aim for the acquisition to take place. However, there may be instances where an acquirer who is purchasing shares from a number of individual sellers is the only party aware that, in totality, they are carrying out a notifiable acquisition. For example, if an acquirer buys 10% equity in an entity specified under the mandatory regime from two separate sellers—20% in total—each seller may be operating under the assumption their transaction does not meet the threshold of a notifiable acquisition. Equally, the entity itself may be unaware of these acquisitions until after they have taken place. As such, only the acquirer can reasonably be expected to know that their activities constitute a notifiable acquisition and the responsibility to notify therefore rests with them.

The precise information that will be required and the form of the mandatory notice will be set out in regulations by the Secretary of State in accordance with subsection (4). For the convenience of the House, the Government have recently published a draft of the information that is likely to be required in a mandatory notice. As hon. Members might expect, this is likely to include all the pertinent details about the acquisition, including the target entity, the nature of its business, the assets it owns, the parties involved, the details of the equity stake and any other rights that form part of the acquisition—for example, any board appointment rights.

Following acceptance of a satisfactory notification—for example, conforming to the format and content prescribed—the Secretary of State then has up to 30 working days to decide whether to exercise the call-in power, or to take no further action under the Bill. The Secretary of State will be entitled to reject a mandatory notice where it does not meet the specified requirements, or where it does not contain sufficient information for him to decide whether to give a call-in notice.

The nature of the information required should mean that such instances are rare, but it is crucial that the requirements of the notice are met in order for the 30-working-day clock to start only at the point the Secretary of State is in a position to make an informed decision. By the end of the 30-working-days review period, the Secretary of State must either give a call-in notice or notify each

[Nadhim Zahawi]

relevant person that no further action will be taken under the Bill. In effect, the latter clears the acquisitions to take place unconditionally.

The power to specify in regulations the content and form of the mandatory notice is an important one, as the Secretary of State may need to change this over time in response to the operation of the regime in practice, and in response to the volume and quality of such notices given and rejected. I certainly believe that this approach ensures that Parliament can scrutinise any such changes. This clause is a procedural necessity to give effect to the mandatory notification regime once notifiable acquisition regulations have been made, and I trust that it will be supported by both sides of the Committee.

Amendments 18 and 19 are designed to require the Secretary of State to make regulations specifying the form and content of a mandatory or voluntary notice, ensuring that the parties have clarity on what information they need to provide in order to have properly notified. That is undeniably important—I share the focus of the hon. Member for Ilford South on that point—so this is an entirely sensible proposition. I suggest, however, that the amendments are unnecessary because the Bill as drafted already achieves that aim.

In practice, in order for the notification regime to operate, the Secretary of State will first need to make regulations specifying the form and content of a notification, regardless of whether clauses 14 and 18 say that he "may" or "shall". I pay homage to the hon. Member for Southampton, Test for introducing that experience to the Committee. Regardless of whether clauses 14 and 18 say that the Secretary of State "may" or "shall" make such regulations, the notification regimes cannot operate without the notification forms being prescribed in the regulations.

Chi Onwurah: I am somewhat confused. The Minister is saying that clause 14(4) in its entirety is unnecessary, because those things are already prescribed. Will he set out in more detail where they are already prescribed? He argues that they are already prescribed, but where are they prescribed?

Nadhim Zahawi: Let me make clear to the hon. Lady what I actually said, which was that whether clauses 14 and 18 say that the Secretary of State "may" or "shall" make such regulations, the notification regimes cannot operate without the notification forms being prescribed in regulations. My point is that whether the clauses say "may" or "shall", it makes no difference. I therefore hope that the hon. Member for Ilford South will withdraw the amendment.

Sam Tarry (Ilford South) (Lab): I have listened carefully to the Minister, and I feel that several issues have not been fully explored. The whole point of the amendment is to compel the Secretary of State to be clear that those regulations will be forthcoming in a timely manner, along with the reassurances that small and medium-sized enterprises seek. The amendment would mean that it was not the Secretary of State's choice when or whether that happened. The use of the word "shall" would allow us to move forward more directly, because the Secretary of State would be compelled to do that as quickly as possible. On that basis, I will press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 10]

AYES

Grant, Peter	Western, Matt
Onwurah, Chi	
Tarry, Sam	Whitehead, Dr Alan

NOES

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

Question accordingly negatived.

Clause 14 ordered to stand part of the Bill.

Clause 15

Requirement to consider retrospective validation without application

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

Nadhim Zahawi: Clause 15 places a duty on the Secretary of State to consider whether to retrospectively validate a notifiable acquisition that was not approved by him before it took place. As I made clear in reference to clause 13, a notifiable acquisition that is completed without the approval of the Secretary of State is void. It is in the interests of all parties to avoid that situation, and voiding should act as a powerful incentive for compliance.

None the less, there may be instances where a notifiable acquisition takes place without approval and is therefore void, but the outcome is not a permanent necessity. This clause places a duty on the Secretary of State, following the point at which he becomes aware of the acquisition, to either exercise the call-in power in relation to the acquisition within six months or else issue a validation notice. A validation notice provided for by this Bill has the effect of treating the acquisition as having been completed without the approval of the Secretary of State, as though it were never void.

There are a number of circumstances in which the Secretary of State may decide not to issue a call-in notice in relation to a void acquisition. For example, as the Secretary of State may only call in trigger events, he may decide that the acquisition does not give rise to a trigger event—for instance, the acquisition of a 15% equity stake in a specified entity is a notifiable acquisition, but is not in and of itself a trigger event. A 15% stake may or may not, depending on the facts of the case, amount to or form part of a trigger event, namely the acquisition of material influence over the policy of the entity.

Alternatively, the Secretary of State may reasonably suspect that a trigger event has taken place but not reasonably suspect that it has given rise to, or may give rise to, a national security risk. In those situations, this

clause requires the Secretary of State to give a validation notice in relation to the notifiable acquisition, which in effect provides the retrospective approval for the acquisition and means that it is no longer void. I should be clear that retrospective validation does not change the fact that the acquirer may have committed an offence by completing the acquisition without first obtaining approval. If an offence has been committed, criminal and civil sanctions will be available and may be used to punish that non-compliance.

As provided for by subsection (2)(a), where the Secretary of State decides, following consideration of a void acquisition, to exercise the call-in power in relation to it, he must give a call-in notice to the acquirer and such other persons as he considers appropriate. For the purposes of considering whether a trigger event has taken place under the Bill, including when deciding whether to exercise the call-in power, clause 1(2) provides that the effect of any voiding must be ignored, meaning that a notifiable acquisition that has been completed without approval can still amount to, or form part of, a trigger event even though it is of no legal effect.

This approach has been taken because a legally void acquisition may still result in a de facto exercise of the rights purportedly acquired and, consequently, a risk to national security. Where the call-in power is exercised in relation to a void acquisition, the case follows the conventional assessment process and is subject to the same statutory timelines and information-gathering powers. At the end of this process, the Secretary of State may decide to unconditionally clear the acquisition, resulting in a validation notice being issued and the acquisition no longer being void. Alternatively, he may impose remedies in a final order.

2.30 pm

Dr Whitehead: I have a brief inquiry, following the Minister's recent letter to me on a previous point raised in Committee, for which I thank him for his prompt attention. If a hostile company takes over another company, effectively puts it into liquidation and walks off with the intellectual property, patents and various other things, and those are out of the door by then, will it be necessary to provide a validation for the transaction, if it has not been previously notified or noticed, and to then pursue the consequences of that validation by subsequent means, given that the company was presumably in existence at the time of the validation, if not thereafter? Would that perhaps not be a cumbersome procedure?

Nadhim Zahawi: I am grateful to the hon. Gentleman for that question; I will write to him on that point, rather than attempting to go through our thinking on this. He raises an important point on what happens after the effect.

Where the final order has the effect of clearing the acquisition outright, subject to conditions, the Bill provides that the acquisition is no longer void. Where the final order has the effect of blocking all or part of the acquisition, the Bill provides that the acquisition remains void to that extent. Further provision on this particular situation is made in clause 17. The deadline of six months for giving either a validation notice or a call-in notice was chosen by the Government to align closely with the Secretary of State's other requirements to act within certain timescales under the Bill.

Chi Onwurah: I thank the Minister for his promise to write to my hon. Friend the Member for Southampton, Test. The Minister mentioned on a number of occasions that a transaction is no longer void when a validation notice has been given. However, the transaction was void when completed, because it was completed without approval, so there will have been a period when it was void. What are the legal implications of that period?

Nadhim Zahawi: Is the hon. Lady is talking about a period when the Secretary of State was not aware of the transaction being void? If he is unaware of it, he is unable to act. It is only once he becomes aware, through a screening process or notification—

Chi Onwurah: I want to explain myself better. The question is not about what the Secretary of State can do, because I clearly understand that he cannot act on what he is not aware of. The fact of the transaction being deemed legally void for a period, which it will have been, may have some legal implications for the owners or the customers or whoever.

Nadhim Zahawi: Again, I am happy to write to the hon. Lady on that. Clearly, only when the Secretary of State is aware that a transaction is clearly in breach of the Bill is it then void. I am not clear as to what she is saying. Is she asking about before he is able to act?

Chi Onwurah: Let me clarify. Clause 13(1) states:

"A notifiable acquisition that is completed without the approval of the Secretary of State is void."

It is void at the time it is completed, not at the time the Secretary of State becomes aware of it. Sometime later, the Secretary of State becomes aware of it and gives a retrospective clearing of it, but there will regardless have been a period where that transaction was void. What are the legal implications for the owners? It seems to me that having a transaction being void for a period would have some legal implications, regardless of whether the Secretary of State has cleared it.

Nadhim Zahawi: Again, I am happy to write to the hon. Lady on that point. Maybe I am being thick here, but the transaction only becomes void once the information is available to the Secretary of State. Is she talking about before that period?

Chi Onwurah: My understanding is that it becomes void at the point when the transaction is completed. At some point after that, the Secretary of State gives a retrospective validation, but there is nevertheless a period of one year, or however long it takes, when the transaction was void. Does that not have legal implications?

Nadhim Zahawi: I am happy to write to the hon. Lady on that point. What I think she is talking about is about the gap between the Secretary of State being aware and when the transaction actually took place, because the date where it is void is the date of the closing of that transaction, but I am very happy to write to her about that.

It is not in the interests of either the Government or the parties for the Secretary of State to have an unfettered ability to issue a call-in notice, perhaps long after he

[Nadhim Zahawi]

becomes aware of the notifiable acquisition. This approach provides a sensible mechanism for resolving the effects of automatic voiding arising from failures to receive clearance. I reassert my view that such situations should be rare, but it is only proper that the Bill provides such a mechanism for the Secretary of State to resolve them satisfactorily, should they arise. I hope hon. Members agree with that position.

Chi Onwurah: I thank all the hon. Members for their contributions, and the Minister for his remarks and his good humoured response to the interrogation on certain parts of this important clause. I recognise the importance of the clause and the importance of considering retrospective validations without application giving the all-consuming power through the voiding of notifiable acquisition without the approval of the Secretary of State. This debate has illustrated the need for greater clarity.

In the absence of the additional guidance that we were looking for in our earlier amendment, this has the possibility of becoming a legal goldmine for lawyers who are requested to give advice on what would or would not constitute a void transaction at what time. I raise that in the context of the requests of my hon. Friend the Member for Southampton, Test and myself for greater clarity about the period, which may represent some sort of legal limbo, between when a transaction takes place but before it is given retrospective approval. However, we do not oppose the clause.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

Clause 16

APPLICATION FOR RETROSPECTIVE VALIDATION OF NOTIFIABLE ACQUISITION

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

Nadhim Zahawi: Clause 16 provides a mechanism for any person materially affected by a notifiable acquisition being void to make an application to the Secretary of State to retrospectively validate the acquisition. Although there is a duty in clause 15 for the Secretary of State to give a validation notice or a call-in notice within six months of becoming aware of the acquisition, we recognise that in practice that is often likely to be a process driven by the parties themselves. It may be, for example, that a party realises that their transaction was a notifiable acquisition only after the event, and wishes to take proactive steps to resolve the situation. The clause allows them to make a formal application for retrospective validation, following a similar process to the conventional mandatory notification route.

Subsection (3) enables the Secretary of State to make regulations prescribing the form and the content of a validation application. It is likely that that will closely resemble the mandatory notification form, given all of that information remains pertinent to the Secretary of State's decision on whether to give a call-in notice. The Secretary of State will be entitled to reject the application where it does not meet the specified requirements, or contain sufficient information for him to decide whether to give a call-in notice.

If the validation application is accepted, all relevant parties must be notified and a 30 working-day review period begins. By the end of the review period, the Secretary of State must issue either a call-in notice or a validation notice. Once again, if a validation notice is issued, the acquisition is no longer void and the Secretary of State must confirm that no further action under the Bill will be taken in relation to that acquisition. As is the case with clause 15, retrospective validation through that route does not provide immunity against criminal or civil sanctions being pursued.

Validation does not change the fact that a notifiable acquisition did not have the Secretary of State's approval prior to taking place. This is simply about how the acquisition itself should be treated, following the screening of all pertinent details relating to the acquisition. I hope that hon. Members will be supportive of parties being able to apply to the Secretary of State for a validation notice, and that they will see clause 16 as part of our business-friendly approach to the investment screening regime.

Dr Whitehead: This is more of a slightly extended intervention than a speech. The Minister has set out very clearly what the clause means and how it is to be operated, but I am not sure that he completely covered what the opinion of the Secretary of State may consist of. I am looking at subsection (8), which refers to the Secretary of State's opinion that

"there has been no material change in circumstances since a previous validation application in relation to the acquisition was made."

My concern is that the words "material change" are potentially subjective. That may be overridden by the fact that it is

"in the opinion of the Secretary of State",

but there is no definition of what a material change might be considered to be, and what the boundaries of a material change consist of.

The provision does not say "no change"; it says "no material change". Does the Minister consider that that is safe enough, in terms of the Secretary of State's opinion overriding the material change, or does he consider that the subjectivity of a material change is potentially actionable if the Secretary of State were to say that there has been no material change, but somebody decided that the Secretary of State's opinion was not reasonable or proportionate in the context of what has happened to a particular company?

Nadhim Zahawi: I think the hon. Gentleman has answered his own question. Obviously, I do consider that the Secretary of State's ability on the opinion is safe.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17

RETROSPECTIVE VALIDATION OF NOTIFIABLE ACQUISITION FOLLOWING CALL-IN

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

2.45 pm

Nadhim Zahawi: Clause 17 provides for the retrospective validation of notifiable acquisitions that have been completed without approval, following the giving of a call-in notice in either of the situations covered by clauses 15 and 16. The previous two clauses detail how the Secretary of State may give a call-in notice in relation to a notifiable acquisition that has been completed without approval and is therefore void, either on his own initiative after he becomes aware of the acquisition or following a validation application.

Following call-in, there is a national security assessment process. The Secretary of State has a period of 30 working days to either make a final order imposing remedies or give a final notification confirming that no further action will be taken under the Bill in relation to the call-in notice. The Secretary of State may extend the assessment period by an additional period of 45 working days where the legal test is met. If a further legal test is met, the Secretary of State may agree a further extension or extensions with the acquirer.

Where the Secretary of State gives a final notification, in effect giving unconditional clearance to the acquisition, subsection (2) requires him to also issue a validation notice, which means that the acquisition is no longer void. That is because voiding cannot be maintained if there is no national security justification for it. Copies of that validation notice must be given to each person who receives a copy of the final notification, any person who made a validation application and anyone else the Secretary of State considers appropriate.

Alternatively, where, following the assessment process, the Secretary of State makes a final order imposing remedies, subsections (4) and (5) provide for so much of the void acquisition as is compatible with the final order to be validated. It may be helpful if I explain what that means, with some specific examples.

Where a final order has the effect of clearing the acquisition outright, subject to conditions, it means that the entire acquisition is no longer void. Where a final order has the effect of blocking all or part of the acquisition, the acquisition remains void to that extent. That means, for example, that where the Secretary of State decides that it is necessary and proportionate, for the purpose of safeguarding national security, to block 51% of a void 100% acquisition of an entity through a final order, 49% of the acquisition will be validated and the remaining 51% will remain void.

The Bill does not seek to prescribe how such a decision is delivered by the various parties in all circumstances. The Government recognise that some acquisitions may involve a range of sellers and the Secretary of State may not wish to stipulate in every case which constituent parts of the notifiable acquisition should remain void and which should be validated. Rather, we expect the Secretary of State to set out the end state that the acquirer must arrive at and to consider proposals from them to meet these obligations as part of the assessment process before a final order is made.

Any dispute between the parties arising out of how the void or validated elements are chosen will be a private matter for the parties. The Bill does not attempt to limit or cut across any restitutive action taken by the parties against one another if they deem it necessary as a result of the notifiable acquisition, or a proportion of it, remaining void.

This overall approach absolutely fits with our desire for the regime to be as reasonable and proportionate as possible. We have incorporated requirements for notifiable acquisitions to be retrospectively validated where the call-in power is not exercised in relation to them: where they do not pose a risk to national security, for example, or where the call-in power is exercised but ultimately no further action is taken in relation to them after the assessment process. We have developed a tailored approach through this clause, which provides for so much of a void acquisition as is compatible with a final order, and therefore with national security, to be validated automatically.

This is the legislation of a Government seeking to balance the country's national security and prosperity interests. I hope colleagues on both sides of the Committee will support that approach in the clause.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clause 18

VOLUNTARY NOTIFICATION PROCEDURE

Amendment proposed: 19, in clause 18, page 11, line 28, leave out "may" and insert "shall".—*(Sam Tarry.)*

This amendment seeks to make the Secretary of State's prescription of regulation of the form and content of a voluntary notice mandatory.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 11]

AYES

Grant, Peter	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.

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

Nadhim Zahawi: The Government are committed to providing as much certainty as possible for business. The clause therefore provides parties with a mechanism to require the Secretary of State to decide whether a trigger event outside the mandatory notification regime will be called in. If parties wish, they may notify the Secretary of State of such a trigger event when it is in progress or contemplation or, alternatively, after it has taken place. Any early notification will allow businesses to plan for, and mitigate, any issues that may subsequently arise.

Following the acceptance of a satisfactory notification—one that conforms to the prescribed format and content, for example—the Secretary of State has up to 30 working days to decide whether to exercise the call-in power or to take no further action under the Bill. Businesses can rest assured that where the Secretary of State decides to take no further action following assessment of a notification, that decision may not be revisited further down the line. The only exception is if the Secretary of State has been

[Nadhim Zahawi]

given false or misleading information in relation to the decision not to issue a call-in notice, but I expect such instances to be few and far between. On those rare occasions where the notified trigger event does require further action, early notification means that parties can also factor in a security assessment following a formal call-in early on in their commercial timelines.

I hope that the Committee will agree that that is a pragmatic approach that provides the Secretary of State with the time he requires to properly screen trigger events, while giving businesses as much certainty as possible about when they can expect decisions. I would go further and say that the Government would welcome informal discussions with parties before the notification stage begins. That would allow parties to prepare for a potential assessment, while also allowing the Secretary of State to better understand the trigger event.

This is part of our commitment to working with investors and businesses in as transparent a manner as possible while protecting national security. However, I stress that a formal notification procedure is still required to enable the Secretary of State to make an informed assessment of the trigger event based on a full suite of information. I hope that hon. Members recognise the length the Government are going to to put in place a robust regime that both protects national security and retains business and investor confidence. The voluntary notification procedure, alongside the mandatory notification part of the regime, helps to strike that balance and will, I believe, work in the interests of all parties.

Chi Onwurah: I thank the Minister for his remarks. He is aware of the Opposition's concerns about the voluntary notification procedure. I shall not repeat what he has said, and we recognise the importance of the clause and of having such a procedure. As with the mandatory notification procedure, the Minister has rejected our request for a requirement to set out the form of that notification. I would like to press him on this and to ask whether he would perhaps write to me to set out formally where it is that the pre-existing requirement that he said exists says that the Secretary of State "must", rather than "may", set out the form for the voluntary notification. I am also not clear whether the voluntary notification form format and information requirements are the same as those for the mandatory notification, given the difference in one being voluntary and one mandatory. Clarification on that would be helpful.

We agree considerably that we want to minimise the burden on businesses and the chilling effect on investment, while securing national security. The clause is an important part of that, so we will not oppose it.

Nadhim Zahawi: I am very happy to write to the hon. Lady; I thought that I had touched on that in my earlier remarks. The forms should be very similar, because ultimately the decision-making process of the Secretary of State, whether the notification is voluntary or mandatory, will pretty much be the same thing. I am happy to clarify that in writing.

Chi Onwurah: I thank the Minister for that intervention, and we will not oppose clause stand part.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clause 19

POWER TO REQUIRE INFORMATION

Dr Whitehead: I beg to move amendment 20, in clause 19, page 12, leave out lines 24 to 27.

This amendment seeks to broaden the Secretary of State's powers to require information.

The Chair: With this it will be convenient to discuss amendment 21, in clause 20, page 13, leave out lines 17 to 20.

This amendment seeks to broaden the information gathering powers of the Secretary of State, in specific regard to witness attendance.

Dr Whitehead: I ought to explain to the Committee that the Opposition are under some multi-tasking pressures this afternoon, Mr Twigg. I should have been in the previous debate in the main Chamber on the future of coal, in my role as energy Front-Bench spokesperson for Labour. I managed to factor that job out to somebody else in order to be here in the Committee this afternoon, and I am sure that the Committee is delighted to hear that. Unfortunately, there was no such luck for the shadow Minister, my hon. Friend the Member for Newcastle upon Tyne Central.

Katherine Fletcher (South Ribble) (Con): I thank the hon. Gentleman for highlighting that our time is precious in the House. I, too, was hoping to be in the future of coal debate, to highlight the importance of the West Lancashire light railway. I thank him for bringing it to the attention of the Committee.

The Chair: I think we should stick to the business.

Dr Whitehead: I just wanted to explain the musical chairs that have gone on this afternoon, Mr Twigg.

The Chair: We are very grateful.

3 pm

Dr Whitehead: The amendments relate to clauses 19 and 20. Amendment 20 might be regarded as slightly unusual, as it seeks to remove a number of sentences in the Bill: to be precise, lines 24 to 27 on page 12—it would remove clause 19(2), while amendment 21 would remove clause 20(2). The Minister might be saying to himself that Oppositions usually try to restrict Ministers' powers, yet here we are trying to extend their powers through these amendments. I want to explain why we think that is important.

We want to hear from the Minister why he thinks those particular paragraphs should remain in the Bill, and how the restriction that they place on the Secretary of State's activity is advantageous to the Bill's main purpose. The paragraphs that the amendments would take out relate to the power to require information and the power to require the attendance of witnesses and seek evidence. I am sure that hon. Members can read clause 19 for themselves, but I will point out the key part:

> "The Secretary of State is not to require the provision of information under this section except where the requirement to provide information is proportionate to the use to which the information is to be put in the carrying out of the Secretary of State's functions under this Act."

That is to say that unless it can be, or is, established that the requirement to provide information is proportionate to what the Secretary of State wants to do under the Act, the Secretary of State is not able to require the provision of information. That is effectively what the clause states.

We have already heard during evidence to the Committee that there may well be a complex web when it comes to getting information and working out what is and is not relevant, particularly if a hostile power or body is seeking to take over a company or gain access to its information and IP. The information may well not consist of what it appears to consist of, or there may be a number of paths by which that information can be obtained.

From our expert witnesses we heard some interesting examples of things they thought looked rather far from the central activity of information provision. For example, on academic projects, in his expert evidence, Charlie Parton from the Royal United Services Institute told us:

"It is quite difficult to distinguish some of these and to know about them all, but a few weeks ago *The Daily Telegraph* did a story on, I think, Oxford University and Huawei's commissioning of research. I think there were 17 projects. I looked at those, and I am not a technologist by any means, but some of them rang certain alarm bells."—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 6.]

He was suggesting that, of a number of those postgraduate and PhD projects, there were some that he might have put a question mark against and others not, but he was not sure which were which. Nevertheless he seemed to think that some of those research projects—although they were cited within the ordinary parameters of whatever the research project might be, and who might be collaborating with whom, and who might get what information out of that—might ring alarm bells. That was in terms of who was collaborating, how the information might be used and where it might be going.

Peter Grant (Glenrothes) (SNP): I think I understand what the amendment is intended to achieve, but is not the hon. Gentleman concerned about the danger of almost explicitly building in a recognition that the powers in the Bill do not have to be used proportionately?

Dr Whitehead: The hon. Gentleman raises an important point. I will come to the word "proportionate" in a moment, because that is an important part of this clause. I hope I can satisfy him about my concerns about the word "proportionate". He may want to come back when we have that discussion.

We heard from Sir Richard Dearlove, who said that,

"the Chinese are highly organised and strategic in their attitude towards the West and towards us. For example, some of the thousands of Chinese students who are being educated in Western universities, particularly in the UK and the United States, are unquestionably organised and targeted in terms of subjects".—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 19.]

Before we go any further, perhaps I should say that I have nothing against Chinese students coming to the UK. On the contrary, I think that in general, Chinese students in UK universities is a very positive thing, and spreads a very good element of international learning into the process. I also think we might be reasonably confident that those Chinese students are getting as much from us, in terms of our way of life and our way of organising things, as we are from them. I do not think Sir Richard Dearlove's point was partial towards Chinese students, but he made the point that he thought that some of those students may have targeted, or have been targeted towards, particular subjects and areas in the UK and the United States. Again, that is extremely difficult to find out and go forward on.

I am citing those particular expert witnesses in the context of this area of information, particularly concerning somebody—a company, an organisation, or indeed a state actor—that has hostile, malevolent intent towards the information that they have. It is not very likely that they will simply present that information in a ring binder with coloured markers, specifying where the various bits are; it is a very different process indeed. The clause therefore appears to very much limit the extent to which the requirement to provide information can be carried out, and it does so by requiring the provision of information to be proportionate to the use to which the information is to be put.

The word "proportionate" is very important here, and is potentially a real problem in terms of ensuring that the search for information that may be necessary by diverse means can be carried out properly. On the surface, looking at the ordinary language, one might say that the use of the word "proportionate" is a thoroughly good idea. If we apply the ordinary language test—what is the opposite of proportionate?—the opposite would be unproportionate; we would not want the Secretary of State to go about this in an unproportionate way. However, in legal terms, the word "proportionate" has rather a different context,

Proportionality as a legal term is a relative newcomer to the legal lexicon. It entered the legal arena—I am not saying that it had not been used before, but it was put forward as a concept around which a lot of other matters might turn—with the civil litigation reforms introduced in April 2013, known as the Jackson reforms. They covered the concept of proportionality in legal terms as it relates to costs in legal cases, but the question of proportionality was discussed in a wider context. The concept of proportionality, which had not been a particular issue in legal matters before, stuck itself firmly into the legal lexicon. Since then, there have been a number of debates about whether ways of apportioning legal costs were proportionate, even if they might otherwise be seen as reasonable.

Up until that point, the guidance on the issue of proportionality came from Lord Woolf in the Court of Appeal in—I am sure hon. Members will remember the case well—Lownds *v.* Home Office, where he concluded that if the legal steps that had been taken had been reasonable and necessary, the other party could not object to the cost of these steps on the grounds of proportionality. The test of reasonability and necessity overrode the question of the grounds of proportionality.

That is what changed in 2013 with the civil litigation reforms. An interesting commentary was made in an article published on 12 March 2014 in *The Law Society Gazette*, entitled "Proportionality and legal costs"—I am saying all this because I am not sure I will get the article to *Hansard* easily.

The author had this to say about the meaning of proportionality:

"However, the meaning of proportionality is not straightforward and the new rules do not provide clear guidance on how proportionality should be applied. The suggestion seems to be

[Dr Whitehead]

that a body of law will develop on a case-by-case basis until gradually the meaning will become clear. Until that happens, litigants, legal advisers and judges will have to guess at what costs will be considered proportionate in particular circumstances."

3.15 pm

I am keeping the attention of the Committee perfectly.

Nadhim Zahawi: Riveting!

Dr Whitehead: Yes, it is. Only one Member has left the room, so we are still in good order.

Peter Grant: I fear that the hon. Gentleman is taking the definition of proportionality into a context very different from what is mentioned here in the Bill, because this is not about whether the costs of civil proceedings are justified by the likely outcome, or even how those costs should be divided among the parties.

My reading is that subsection (2) is there to prevent a future Secretary of State—obviously, no one in the present Government would ever do this—from imposing extremely onerous requirements on a business, when it was perfectly possible for the Secretary of State to do due diligence and do the checks he needed to do without that information's being provided.

I have not heard anything from the hon. Gentleman that would explain why he wants that protection to be taken out. He has said a lot about Chinese students, who may or may not collectively be working against our national interest, but this clause does not protect against that. What does the hon. Gentleman have against the idea that the Secretary of State is not allowed to put unreasonable and onerous demands on businesses when there is no clear benefit to national security of those demands' being made?

Dr Whitehead: I hope that the hon. Gentleman will bear with me a few moments longer. Having unpacked "proportionality" in legal rather than colloquial terms, I want to put it back into the clause and see how it works, as far as the concerns of the Secretary of State go.

Indeed, the hon. Member for Glenrothes has questioned what we want to do on this clause in terms of the colloquial understanding of "proportionality". I have mentioned how "proportionality" has come into the legal arena, specifically in terms of costs. Nevertheless, "proportionality" is now loose in the legal arena, so there is an interesting area of debate about it in general in the legal arena. That is not necessarily solely attached to the question of costs and civil litigation.

The problem is that there is virtually nothing to define that wider issue of proportionality in case law at the moment. Placing that word back into this particular clause suggests to us that the Secretary of State is restricted considerably on how that information may be gathered. The hon. Member for Glenrothes talked about research projects and various other things listed to us by our expert witnesses. I emphasise that I do not want to undermine those research projects or the presence of Chinese students. All I want to underline from that is that, on occasions, the process of getting hold of information and requiring people to give evidence can be convoluted. Indeed, it may require seeking information by going down paths that are not immediately apparent. As I say, it is not a question of someone turning up with a ring binder of things that can be perused.

In this clause, it appears that the Secretary of State may well have denied him or herself the ability to get hold of information, because it states that it has to be

"proportionate to the use to which the information is to be put in the carrying out of the Secretary of State's functions under this Act."

But he or she will not know about that information until it has been obtained. If there are difficulties in getting hold of the information, he or she will never know whether it is useful for carrying out his or her functions, because there is already a limit on getting the information in the first place.

I have brought the rather wobbly legal status of proportionality into the debate because it is potentially actionable through an obfuscation or refusal to put information forward by those actors. An actor who was required to give information could say, "It appears to me, your honour, that this request for information is not proportionate." Of course, the Secretary of State may have a different point of view about what is proportionate from the person who is required to give the information.

There is also a vagueness in the application of the term "proportionate". Although we think we know what it means in common language, that is not the case in the courts. That could be an additional issue that affects the Secretary of State's ability to get the required information to make a judgment, over and above the fact that he or she may not know that until the information has been collected. So there are two procedural problems in the clause.

The hon. Member for Glenrothes said to me, to put it bluntly, "What exactly are you driving at? Perhaps it is not a good idea to appear to enable the Secretary of State to act disproportionately." Of course, that is not what we are saying. We know that the Bill is more or less a giant amendment to the Enterprise Act 2002. Indeed, if hon. Members look at the back of the Bill, they will see that that is the only Act amended by it. Several amendments are made to the 2002 Act, but that is it—it is still sited within that Act. That Act was drawn up before the civil litigation changes to proportionality were put in place. The test set out in that Act, which is not amended by the Bill, is one of reasonableness, which is well understood, widely commented on and pretty clear.

If hon. Members consult the 2002 Act, they will see in clause 55 that the Secretary of State, in terms of enforcement, shall take such action

"as he considers to be reasonable and practicable to remedy".

Therefore, we are not saying that the Secretary of State by acting disproportionately should act unreasonably. We are suggesting that the test that should be carried out is one of reasonableness, and should be in this particular clause. As the Enterprise Act already does, that would indeed prevent the Secretary of State going on fishing expeditions and undertaking actions that are wholly disproportionate because they would be unreasonable in terms of the definition of the Act. Our suggestion is to stick by that definition, which would be good enough to restrict the Secretary of State under the different circumstance that we are in today, in terms of

seeking information. At the same time, it would give the Secretary of State the ability to take a path—I have said it is often a convoluted one—to obtain information that can be judged and used for the purpose of this Bill. I hope that the Minister will be favourably inclined towards that slight, but constrained, addition to his powers under this legislation.

Nadhim Zahawi: I am very pleased to be able to respond to the hon. Member for Southampton, Test on these well-intentioned amendments. I assure him that the Government and the Secretary of State will not be relying on a ring binder with highlighted paragraphs, because we have some of the best security and intelligence agencies in the world that would input into that process. It is an absolute joy to see Her Majesty's Opposition play such a constructive role in the scrutiny of legislation, and to hear such a thoughtful speech.

Amendment 20 would remove subsection (2) of clause 19, through which the Secretary of State will be able to request information only through an information notice, where such requirements to provide information are proportionate. I agree with the hon. Member for Glenrothes on the issue. We have debated the fact that it is actually up to the courts to interpret if a particular acquirer feels somehow hard done by as a result of the process, and that there is a process to go through. The requirement to provide information is proportionate to the use to which the information is to be put in carrying out the Secretary of State's functions under the Bill.

Amendment 21 seeks to remove subsection (2) of clause 20. Clause 20 enables the Secretary to require the attendance of witnesses and the giving of evidence. Therefore, clause 20 is complementary to clause 19, as it provides, for example, for the Secretary of State to receive expert explanation in person from those involved in a trigger event where the information previously provided does not give sufficient clarity. Clause 20(2) has a similar effect to clause 19(2). It means that the Secretary of State will be able to request information only through an attendance notice where requirement to give evidence is proportionate to the use to which the evidence is to be put in the carrying out of his functions under the Bill.

In response to both amendments, and mindful of the time, I can say that it is our view that any power of the Secretary of State to require the provision of information under clause 19, or to require the attendance of witnesses under clause 20, must be proportionate—indeed, the information-gathering powers are already significant. The Secretary of State may require information from any person in relation to the exercise of his functions under the Bill, which includes various stages of the procedure both before and after the call-in power is exercised. This may include requiring the provision of personal and commercially sensitive information about the parties in relation to a trigger event. There is good reason to include the restriction that any information required by the Secretary of State is proportionate to the use to which it is to be put in carrying out his functions. It is important that there are the safeguards for business. I have to say that I did not expect to be in the position of arguing against greater powers for the Executive from the legislature. It is clear to me, though, that business confidence and our reputation for being open for investment require it.

I hope that I have provided sufficient points of reassurance on these matters, and encourage the hon. Gentleman to withdraw his amendment.

3.30 pm

Dr Whitehead: I appreciate what the Minister has had to say. He is clearly confident that the fine print of this clause is not going to be a problem. I slightly beg to differ: I think it may be. I also wonder whether the Minister has considered the extent to which what is already there—or, should I say, what I think is already there—in the Enterprise Act 2002 effectively restricts the Minister in his actions, in much the same way as this clause does, except that the restriction is much clearer from a legal point of view. That is to say, by relying on the restrictions that are already in the Enterprise Act, the Minister would probably not act any differently from how he would under this particular clause, but by relying on that element of the 2002 Act, his actions would be far less potentially actionable.

Before the Minister gets carried away by the idea that the legislature, or in this instance the Opposition, is clamouring for the Secretary of State to have far more powers, that is not our case. Our case is that it would be rather wiser to restrict what the Secretary of State may do through clearer legal definitions, which are already there, than through the rather woolly definition that is in the Bill. Before the Minister goes home thinking, "I have free rein to do whatever I like now", that is not so: it is not so according to the Enterprise Act 2002, and it is something we want to stand strongly by. We do not want to underscore the idea that the Minister can act unreasonably, especially since the phrase "acting unreasonably" has a long pedigree, both in terms of civil action and administrative law over a long period of time.

I am sorry that the Minister does not accept our case, with all the caveats on it, although it may be that he is less inclined to accept the case now that we have highlighted the fact that there are caveats on what the Minister can do. I do not think we want to press this amendment to a Division, but we do so rather more in sorrow than in anger, because we think this could have been a prudent way to proceed with this Bill.

Matt Western (Warwick and Leamington) (Lab): As always, my hon. Friend is making important points. I was surprised to see the letter from the Chair of the Intelligence and Security Committee, which dates back to its 2013 report. Does my hon. Friend agree that if that Committee had been involved and consulted before this legislation was drawn up, some of the issues he is raising could have been brought out into the open and addressed better?

Dr Whitehead: My hon. Friend is right. I think that, because things have changed so substantially over the past decade or so, we tend to see things in a way that we may not have easily seen them just a few years ago. Indeed, the expert witnesses who were before us made considerable points on the question of how naive we had been on some previous occasions; we had not really taken into account some of the implications of what we were doing, because we did not have a clear picture of the consequences of those actions.

[Dr Whitehead]

My hon. Friend is right—I suppose this is to some extent wisdom of the stairs—that if we could have considered things at that particular point the way we see them now, we would have expressed ourselves in much firmer and more watertight ways. However, I do not think the fact that we did not do so then is any particular excuse for continuing not to do so now. The idea that we may miss out on the ability to get proper information that can point us in the direction we want to go, albeit possibly by very roundabout means, and that we deny ourselves that particular possibility because we have written something in the legislation that stops us doing it does not seem to me to be fully learning the lessons that we might have done from 2013 onwards.

However, far be it from me to lecture the Minister or otherwise on the wisdom of these things; I am sure he is able to decide that subsequently for himself, just as I have challenged him about the wisdom of the Secretary of State's investment agreements a little while ago concerning Bradwell. I am sure he knows in his heart that that is an appallingly naive thing to have done in those circumstances, and we might have thought differently had that taken place even today. That is the spirit in which we are moving this amendment. As I say, we do not wish to press it to a vote, but I hope the Minister will be able to consider those points and think about how this section might best be applied in the circumstances we have before us today. 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 19 gives the Secretary of State the power to require the provision of information in relation to the exercise of his functions under the Bill. The Bill provides for an investment screening regime for national security purposes—a purpose that we all agree merits appropriate tools. As such, it is essential that the Secretary of State is able to gain access to information to arrive at decisions that are fully informed. This clause provides for an information notice that the Secretary of State may issue to require any person to provide information that is proportionate to assisting the Secretary of State in carrying out his functions.

Any information notice may specify a time limit for providing the information and the manner in which the information must be provided. An information notice must specify the information sought, the purpose for which it is sought and the possible consequences of not complying with the notice. There is a range of scenarios in which the Secretary of State will need to require the provision of information, and I will provide some examples to illustrate them.

The first scenario is when the Secretary of State has reason to suspect that a trigger event that may give rise to a risk to national security is in progress or contemplation. That could be where an acquisition has not been notified but the Secretary of State becomes aware of it through market monitoring. In that situation, this clause enables the Secretary of State to require the provision of further information to inform a judgment on whether to call the acquisition in.

Secondly, when a party has submitted a voluntary or mandatory notification to the Secretary of State and that notification has been accepted, the Secretary of State may require additional information from the parties to decide whether to call in the trigger event. Thirdly, when a trigger event has been called in, the Secretary of State may need to require that parties provide further information to help to inform decision making. Information notices will allow the Secretary of State to gather evidence to support accurate and timely decision making. Hon. Members will agree that it is entirely proportionate for the Secretary of State to have recourse to this power as part of the investment screening process provided for in the Bill.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Clause 20

ATTENDANCE OF WITNESSES

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

Nadhim Zahawi: The clause provides the Secretary of State with the power to require the attendance of witnesses.

The Government are acutely aware that many of the acquisitions considered by this regime will be complex and highly technical. In addition to clause 19, which enables the Secretary of State to require the provision of information, most likely in written form, this clause enables the Secretary of State to require the giving of evidence. A notice requiring a person to attend under this clause is called an "attendance notice". The clause is complementary to clause 19, discussed previously, as it provides, for example, for the Secretary of State to be able to receive expert explanation, in person, from those involved in a trigger event, where the information previously provided does not provide sufficient clarity.

In responding to an attendance notice and providing evidence, a person is not required to give any evidence that they could not be compelled to give in civil proceedings before the court. That protects privileged information. In addition, the Secretary of State will only be able to request information through an attendance notice that is proportionate in assisting him in carrying out his functions under the regime.

We envisage a range of scenarios where the Secretary of State may require the attendance of a witness in order to gather further evidence to make an informed decision on the case. I will provide a few to illustrate. First, I expect that a number of cases will involve complex acquisitions, either because of the advanced nature of the technology in question, or due to their financial structuring. In those cases, the Secretary of State may require those who hold expert knowledge to provide him with an explanation. There may also be cases where it seems that parties are being deliberately non-compliant, or only partly compliant with information-gathering requests. I expect those to be rare but, again, it is only right that the Secretary of State has the power to require the attendance of those parties to provide further information.

The attendance of witnesses may also be a more efficient way to secure additional information in some circumstances, and limit the risk that further time will be needed to consider additional information. There will be criminal and civil sanctions available to punish

non-compliance with the notices and the provision of false or misleading information. The attendance notice is provided under threat of such sanction as it is important that the Secretary of State receives the information he needs and can count on to come to a decision.

Peter Grant: A brief question: is it the Government's intention to allow for witnesses to attend virtually, if it is unreasonable for them to attend physically at the Department, or the Minister's office?

Nadhim Zahawi: I suspect that the Government will accommodate whichever way is secure and provides the evidence.

I am sure that hon. Members will agree that the clause is crucial in allowing the Secretary of State to consider the fullest range of information in order to make informed decisions under this regime.

Dr Whitehead: The Minister has given a good exposition of what the clause is about: the attendance of witnesses. I note that, as he said, the witnesses are required to give evidence on the equivalent level of civil proceedings before the court—as the clause states:

"A person is not required under this section to give any evidence which that person could not be compelled to give in civil proceedings before the court."

3.45 pm

To return to our previous debate, if that is the test—if the sanction is not a criminal sanction—what if the witness were to say, "I do not consider the evidence I am being required to give to be proportionate to the use to which it will be put"? What would that mean for the evidence in front of the Secretary of State? Would it be stopped? Would the Secretary of State then be unable to sanction that witness further? Or could the witness be compelled to provide information even if they did not think it was proportionate, and could they take action against the Secretary of State on the grounds that the evidence they had given in the first place was not proportionate? Perhaps the Minister could take us through that procedure, possibly in an intervention.

The Chair: If the Minister wishes to make an intervention, that is a matter for him.

Dr Whitehead: I wonder if the Minister might intervene briefly, just to put my mind at rest.

Nadhim Zahawi: I think I have made very clear how these notices will work. The judicial procedure is open to any party that feels hard done by in any way by this Bill.

Dr Whitehead: I thank the Minister for confirming what I thought, which is that this can be challenged post hoc but not at the point of giving evidence. That is what I understand the Minister to have just said—but hey, I could be wrong. That is the clarification we wanted. On the issue of witness attendance, it is important that the Secretary of State is able to specify a time and that the evidence is undertaken at a level commensurate with civil proceedings. We do not oppose the clause standing part of the Bill, given the Minister's clarification on proceedings involving witnesses.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21

INFORMATION NOTICES AND ATTENDANCE NOTICES: PERSONS OUTSIDE THE UK

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

Nadhim Zahawi: Clause 21 makes provision in respect of the persons on whom the Secretary of State may serve an information notice or an attendance notice outside the United Kingdom. The clause applies in relation to the two earlier clauses. Clause 19 provides the power for the Secretary of State to obtain information either before or after the call-in power is exercised. Clause 20 gives the Secretary of State the power to require the attendance of witnesses to assist him in carrying out his function under the Bill.

Those outside the United Kingdom to whom an information notice or attendance notice may be given are clearly set out in clause 21, which is technical in nature. The purpose is to ensure that certain categories of persons with a connection to the United Kingdom are caught by the information-gathering powers, even if they are outside the UK. These categories of persons are UK nationals, individuals ordinarily resident in the UK, bodies such as companies incorporated or constituted in the UK, and persons carrying on business in the UK. Perhaps more importantly, notices may also be served on persons outside the UK who have acquired, or who are in the process of or are contemplating acquiring, qualifying UK entities or qualifying assets that are either located in the UK or otherwise connected to the UK. In practice, this means that notices may be served on most parties from whom the Secretary of State may wish to require information or evidence.

Peter Grant: I certainly would not seek to oppose this clause, but will the Minister go into a bit more detail about how it works in practice? What if a notice is served on somebody who is not in the United Kingdom, who is not a UK citizen or UK national, who has never set foot in the United Kingdom and quite possibly never intends to, as might happen if a big multinational is seeking to acquire a business intertest in the United Kingdom? Is the intention to create an offence that can be committed by somebody with otherwise no connection with the United Kingdom under UK law? That would mean that the person had committed the offence in a different sovereign territory, not even by something they did, but by something they did not do—not responding to a notice and not attending when required.

I understand why the requirement has to apply to everybody, and I understand that there is no point in serving a statutory notice if there are no consequences to refusing to comply with it; I am just not sure about the practicalities. Has the Minister considered alternative sanctions in those circumstances? For example, the person could be disqualified from being a director or a shareholder in significant UK undertakings. That would potentially have the same effect.

It seems to me that, generally speaking, we would create a criminal offence for the conduct of somebody in a different sovereign territory only in specific circumstances. If somebody is serving with the UK armed forces, for example, they might be covered by UK law even when they are serving abroad. The other

[Peter Grant]

circumstance is if the crimes are so heinous as to be regarded as crimes against international law—crimes against humanity and war crimes, for example. I understand that the Education Secretary thinks that Britain is just the best country in the word and nobody else can touch us, but I doubt even he would think that failing to respond to a notice from the UK Secretary of State constitutes a crime against international law.

Is the Minister concerned about setting a precedent whereby we attempt to apply domestic law to the actions or non-actions of people who, in normal circumstances, are covered by the laws of the country they are in and not the criminal law of the United Kingdom? Given that this might create a difficult precedent, is he satisfied that the Government have looked at every possible alternative sanction? This could create a precedent, and other countries could start legislating to say that what UK citizens do in the United Kingdom is contrary to their laws, which would therefore make any of us subject to arrest and prosecution by the authorities of another country. I am a bit concerned about the reaction that might be provoked from Governments elsewhere if we get this part wrong.

Nadhim Zahawi: I think the hon. Gentleman is referring to parties that are abroad and have a business in the UK—what if notice is served on them and they are non-compliant? Obviously, under UK law that would be a problem for them. I certainly think that, if an information notice is served, the timeline for the Secretary of State's assessment of a trigger event is paused until the information is provided from the individual in whatever jurisdiction they or the entity happen to be at the end of the time period provided for compliance in the information notice.

If a party does not comply during the assessment process, that may lead to more onerous and stricter remedies being imposed by the Secretary of State than would otherwise be the case, including the acquisition being blocked or unwound where appropriate. It will therefore plainly be in the interest of those involved directly in the trigger event to provide information in a timely manner to the Secretary of State in order that a speedy decision can be taken. That is where the leverage lies.

Peter Grant: I am grateful to the Minister for that clarification. As I say, I fully understand what the Government are attempting to achieve. I would expect that, in those circumstances, the Minister would block the acquisition if there was a serious failure to comply by anybody who was in practice beyond the reach of UK criminal prosecution. I would certainly hope that in those circumstances the Secretary of State would use the other powers to ensure that they could not become a controlling influence on any strategically important UK undertaking.

As I said, I do not want to divide the Committee. I did not even feel it was appropriate to table an amendment, partly because I could not think of a way of amending it that would make it any better. Having made those points, I am grateful for the Minister's clarification, and we will leave it to future Secretaries of State to implement it as best they can.

Matt Western: I will pick up on one issue, which concerns subsection (3)(a). I would like some clarification from the Minister. I am trying to get my head around what is meant by

"a qualifying entity which is formed or recognised".

Could he give an illustration of what is meant by "recognised"? I assume that this is about some takeover, merger or acquisition. Could it be some sort of shell company or some other form? Perhaps the Minister could clarify what is meant by recognition under the law.

The Chair: Well, the Minister has not intervened. I call Dr Alan Whitehead.

Dr Whitehead: Briefly, we fully understand the purpose of the clause. It is obviously necessary to ensure that witnesses, wherever they are, if they have a relevant interest in these matters, should be made available to give evidence. I share some of the concerns of the hon. Member for Glenrothes about how workable it might be. I particularly wonder whether subsection (2) includes UK overseas nationals. That is particularly relevant to some of our discussions earlier today. I see in the previous clause that if someone is a UK citizen and domiciled in the UK, they get their bus fare paid if they live more than 10 miles away.

Nadhim Zahawi: Quite right.

Dr Whitehead: But apparently there are no international flight payments as far as overseas witnesses are concerned. I do not know whether the Minister has that in mind, but I note a big difference between the two clauses. If such witnesses could get some payment towards their attendance in the UK, that might resolve some of the problems that the hon. Member for Glenrothes suggested—provided it is economy class, obviously.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

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

3.58 pm

Adjourned till Tuesday 8 December at twenty-five minutes past Nine o'clock.