# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# NATIONAL SECURITY AND INVESTMENT BILL

*Seventh Sitting*

*Thursday 3 December 2020*

*(Morning)*

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**not later than**

**Monday 7 December 2020**

**The Committee consisted of the following Members:**

*Chairs:* Sir Graham Brady, † Derek Twigg

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

Rob Page, Yohanna Sallberg, *Committee Clerks*

**† attended the Committee**

# Public Bill Committee

*Thursday 3 December 2020*

*(Morning)*

[Derek Twigg *in the Chair*]

## National Security and Investment Bill

11.30 am

**The Chair:** Good morning, everyone. Before we begin, I have a few preliminary points. As usual, please switch your electronic devices to silent; I just remembered to do mine. The *Hansard* reporters would be grateful if Members could email any electronic copies of their speaking notes to hansardnotes@parliament.uk.

### Clause 11

Exceptions relating to control of assets

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

**The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi):** Clause 11 is intended to provide an exemption for certain asset acquisitions, which would otherwise be trigger events. The power to call in acquisitions of control over qualifying assets, as defined in clauses 7 and 9, will significantly expand the Government's ability to protect our national security.

The clause ensures that these new powers will not extend to certain acquisitions made by individuals for purposes that are wholly or mainly outside the individual's trade, business or craft. The Government do not believe, for example, that it would be right for the Secretary of State to be able to intervene in consumer purchases. Given their nature, such acquisitions cannot reasonably be expected to give rise to national security risks.

Moreover, a regime which could apply to such circumstances would quickly become impractical and could result in significant numbers of additional notifications for no national security gain whatsoever. As such, this clause explicitly limits the types of assets that the Secretary of State may scrutinise in line with the Government's intention that the regime will primarily concern control of entities and only extend to assets as a precautionary backstop.

It would mean, for example, that sales of software products to consumers by a software company would not be caught by the regime, but—this is important—it would not prevent a transaction involving the software company selling the underlying code base supporting that software to a buyer acting in a professional capacity from the possibility of call-in under the regime, where that might give rise to a national security risk.

The Government have also carefully considered whether certain types of assets should remain outside this exemption clause. We have concluded that all assets that are either land or subject to export controls, as my hon. Friend the Member for Wyre Forest regularly reminds us, should not fall within the exemption. This approach, I believe, reflected in the clause, recognises the unique nature of the risks posed by land acquisitions and proximity risk to certain UK sites, as well as the particularly sensitive nature of items on the export control lists. The Government consider that this approach is proportionate and appropriately exempts acquisitions that do not give rise to national security risks, while ensuring flexibility exists to scrutinise hostile actors directly targeting the acquisition of sensitive assets.

**Peter Grant** (Glenrothes) (SNP): I note that subsection (2) lists some exceptions, many of which are framed in terms of regulations of the European Parliament and the European Council. Let me ask the Minister two things. First, why is that the case, given that we will be completely out of the European Union in a matter of days? Secondly, and perhaps more importantly, if the European Parliament and the European Council were to amend those regulations, do the Government intend to amend this legislation to keep in step with what is happening in the rest of the European Union?

**Nadhim Zahawi:** I am happy to write to the hon. Gentleman on that detail.

*Question put and agree to.*

*Clause 11 accordingly ordered to stand part of the Bill.*

### Clause 12

TRIGGER EVENTS: SUPPLEMENTARY

**Chi Onwurah** (Newcastle upon Tyne Central) (Lab): I beg to move amendment 16, in clause 12, page 8, line 4, leave out from "does" to end of line 11 and insert

"establishes that arrangements are in progress or contemplation which, if carried into effect, would result in a trigger event taking place."

*This amendment would expand the scope of events to be considered trigger events.*

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

**Chi Onwurah:** It is a pleasure to serve under your chairship, Mr Twigg, and to see the Committee reconvened to debate this important Bill. On Tuesday, we had a lively, informative and generally collegiate debate in which we learned a significant amount about the Bill and each other. We learned, for example, that the hon. Member for Arundel and South Downs has an interest in low pay, the hon. Member for South Ribble is a scientist, the hon. Member for Wyre Forest has a great interest in defending business investment, and my hon. Friend the Member for Southampton, Test knows well the difference between "may" and "shall", and entered Parliament at the same time as yourself, Mr Twigg. We learnt that my hon. Friend the Member for Ilford South has a great interest in defending our national security through supply chains. We learnt that I have a tendency to mispronounce and misplace my hon. colleagues' constituencies—something that I am working on. We also learnt that the Minister feels this Bill is perfect in every way, clause and subsection, such was his reluctance to accept the most constructive and helpful amendments—I would say—put forward by the Opposition. As we look at our amendments today, I gently point out to the Minister that that is not a view held by everyone across the House, even by Government Members. I note the letter sent yesterday by the Intelligence and Security Committee pointing out several aspects that we have raised, requiring clarification and significantly indicating

its intention—or desire—to be a greater part of both the scrutiny of this Bill and its implementation. I hope that in today's deliberations we will meet with more support from the Minister.

We had lively debates on Tuesday and some votes, which as I have indicated that we did not win. Amendment 16, in my name and those of my hon. Friends, is a probing amendment. We seek to understand that the Minister fully understands the provisions of his Bill. That is an absolutely appropriate thing to do, as hundreds of thousands of business and individuals will be impacted by it and will have to seek to understand it. It is appropriate that we test the impact of the Bill now, particularly as the Minister has many competing duties, and, as we understand, is taking on more onerous ones.

Clause 12 contains supplementary provisions in relation to determining when a trigger event that takes place over more than one day is to be treated as taking place, and determining whether a trigger event is in progress or contemplation in circumstances where a person has entered into an agreement or arrangement that enables them to do something in the future that would result in a trigger event taking place. The amendment, as we have framed it, would considerably expand the scope of events that could be considered trigger events. In effect, it would give the Secretary of State power to call in events under contemplation, by leaving out from "does" to the end of line 11 and inserting:

"establishes that arrangements are in progress or contemplation which, if carried into effect, would result in a trigger event taking place".

As we have discussed, the Bill gives significant powers to the Secretary of State and the amendment would significantly expand notification volumes. There are many minor transactions where parties agree that someone might have the right to buy more shares in the future, and, in themselves, these transactions do not create direct influence and are unlikely to create a threat to national security. We recognise that the amendment would require all such minor transactions to be notified; it would seek to reflect the potential intention that these minor transactions may be part of a greater contemplation of something which would lead to a trigger event.

We recognise that Government would already have the power to intervene, through notification, once a trigger event takes place, so this amendment brings all possible future trigger events into scope, not just actual, or likely, future events.

**Matt Western** (Warwick and Leamington) (Lab): It is a pleasure to serve under your chairmanship, Mr Twigg. On the point on these disguised elements, does my hon. Friend agree that the issue is about not simply shareholding, but, as we heard in the evidence sessions, membership of boards, and how voting rights might not necessarily be in line with shareholding percentages, and that they can be distorted at a future date?

**Chi Onwurah:** I am grateful to my hon. Friend for that intervention. He makes a good point, which reflects why we are proposing this amendment to test the Bill. As he says, influence can be exercised in a wide range of ways.

I will elaborate on this later, but we must recognise that hostile parties will not sit back and see the Bill, then say "Oh well, that's fine; we won't try anything against the United Kingdom's security," as a consequence. They will seek ways to game and effect an influence regardless. Changes to the relationships between voting rights and shareholdings, for example, might be one way where they could seek to bypass the Bill.

I recognise that this is a wide-ranging amendment, but I seek to understand how the Minister feels that the Bill, as it stands, can address the kinds of concerns that my hon. Friend has just raised. This also reflects—I emphasise this again—the approach that we are taking, as the Opposition, on the Bill. The first priority and central plank of that approach is to put our national security first, and to do everything that we can to secure the strategic and economic resources on which our security relies; that focus on putting national security first motivates this probing amendment.

As my hon. Friend indicated, there can be a number of contingent investment transactions where parties agree to future events that transfer controls or influence. For example, a buyer might buy a low share of a company today, but might acquire with it the right to influence its shareholding in the future to levels of material influence.

I think the Minister will agree that we must watch out for these disguised transactions. They can start with innocuous levels of shareholdings, but set the ground for harder-to-notice increases in influence. At the moment, the Bill leaves out these transactions from the scope of notification, so the Government could not intervene. The amendment is therefore intended to probe the Government's approach.

11.45 am

I understand—and we have discussed—that we must ensure a regime that is proportionate in its notification demand, particularly for small and medium-sized enterprises. This has been raised a number of times by Members on both sides of the Committee, who are concerned about avoiding a disproportionate burden on small and medium-sized enterprises, which will make up 80% of the mandatory notification base alone, according to the Government's impact assessment. For them, this new regime will be a major change, and we have tabled a series of amendments to ease the burden on them.

I also recognise that the amendment expands the powers, and to do so may significantly expand notification volumes without necessarily adding significantly to incremental substantive powers. There are lots of minor transactions, where parties agree that someone might have the right to buy more shares in the future. In themselves, such transactions do not necessarily create direct influence. However, we should not loosen our grip on security to make the regime more efficient for small and medium-sized enterprises. I would hope we could both ensure proportionality for small and medium-sized enterprises and maintain—indeed, increase—our guard on our national security. None of our businesses benefit when we lower our guard.

We must be awake—this is what I hope to hear from the Minister in his response—to the ways in which hostile actors might game the new regime. I am sure they are spending just as much time studying it as we are spending scrutinising it, so we must not assume that our logic will be mirrored by compliant hostile actors. We already heard from the recent head of MI6, Sir Richard Dearlove, of the sophistication of other actors. He noted in his evidence session that,

"the Chinese are highly organised and strategic in their attitude towards the West and towards us…We need to conduct our relationship with China with much more wisdom and care. The Chinese understand us incredibly well",—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 19-20, Q21.]

whereas we do not understand them nearly as well. We also heard from Dr Ashley Lenihan of the London School of Economics about the need for powers to deal with complex

"novel investments from countries such as China, Russia and Venezuela…that the Secretary of State and the investment security unit were not even aware of."—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 34, Q40.]

That is the complex and changing security context we are in. Faced with that, our approach should be to ensure a wide scope of national security powers while creating the most efficient review process for SMEs, and the most accountable scrutiny structure for Parliament to hold Government to account.

The amendment will ensure the wide scope we need to protect our national security. As a consequence, covert transactions by hostile actors, which start innocuously but are intended to grow to material influence levels, would be ones where the Government could now intervene. We must give regard to expert evidence. We heard that information, not just influence, is critical to national security. Without the amendment, it would be harder for the Government to intervene in time, having to keep a close eye on a range of contingent transactions, and having to act promptly whenever shareholder levels move to become present trigger events, so there is a bit of a cliff edge issue there. It would be much easier and more robust for the Government to be called and act when those contingent events are agreed in the first instance.

I will go back to the expert evidence. I have quoted Professor Martin a number of times. He said

"the mantra, if I had one, would be, 'Broad powers, sparingly used, with accountability mechanisms'."—[*Official Report, National Security and Investment Public Bill Committee,* 26 November 2020; c. 80, Q96.]

I think this amendment aims to achieve that.

Christian Boney from Slaughter and May said:

"At the moment, the trigger events are focused, as you were saying, on the ability to influence a particular company, but there are certainly circumstances where, without acquiring a level of shareholding that enables a person to influence the company, the person can nevertheless gain very significant access to information".—[*Official Report, National Security and Investment Public Bill Committee,* 26 November 2020; c. 75, Q88.]

The amendment seeks to probe the Government's approach to such contingent events. I look forward to hearing from the Minister.

**Nadhim Zahawi:** I thank the hon. Lady and share her reflections on the collegiate way the Committee has worked. I also thank her for her comments on the quality of the Bill. It is testament to the quality of the team that has worked on it—I place on record my thanks to the excellent civil servants who have worked on the Bill—and the level of consultation. We heard from the hon. Member for Aberavon, who is not in his place, that this has been a long time coming. There was the Green Paper in 2017, the White Paper in 2018 and then the consultation. There was, of course, deep consultation before the laying of the Bill as well.

**Chi Onwurah:** I thank the Minister for his comments. I want to make it clear that we are not in any way indicating any criticism of the civil servants who have worked hard, in extremely difficult conditions in the midst of a pandemic, to bring the Bill before us. I think we can all agree—we had some discussion on Tuesday about the nature of parliamentary scrutiny—that the objective of the process is that the Bill benefits.

**Nadhim Zahawi:** Hear, hear—I agree with every word.

For the benefit of the Committee, I will begin with clause stand part, before turning to the amendment. The Secretary of State's power to call in trigger events that have taken place is limited to a maximum of five years after the trigger event takes place and six months after the Secretary of State becomes aware of the trigger event. It is important to bear that in mind when discussing the amendment. That means that the issue of timing as to when a trigger event actually takes place is incredibly important. Many trigger events will have a self-evident completion date, as supported by contractual or other legal agreements. However, some trigger events may be less clearcut. There could be terms agreed formally by the parties, followed by further documentation, leading to a formal completion, all spread out over a period of time.

The clause ensures that where a trigger event takes place over a period of more than one day, or if it is unclear when during a period of more than one day the event has taken place, the last day of that period is treated as the date the trigger event takes place. In addition, the clause seeks to provide clarity about when a trigger event may be considered to be in progress or contemplation, where a person enters into an agreement or arrangement enabling them to do something in the future that would result in a trigger event taking place. It makes clear that entering into such agreements or arrangements, including contingent ones, does not necessarily mean that a trigger event is in progress or contemplation at the time the agreement or arrangement is entered into.

Amendment 16 would ensure that a person entering into any agreement or arrangement that enables the person, contingently or not, to do something in the future that would result in a trigger event taking place would be deemed a trigger event in progress or contemplation for the purposes of the Bill. I welcome the intention to ensure that the Secretary of State can be notified about acquisitions before they take place and I understand the motivation behind that. That is very much the Government's policy. Indeed, the inclusion of mandatory notification and clear requirements within the proposed 17 sectors illustrates that approach in the most sensitive parts of the economy.

The timing of any notification is clearly very important. It must contain sufficient information for the Secretary of State to decide whether to give a call-in notice. That means that a proposed acquisition must be at an advanced enough stage that all the key details are known: for example, the names of all the parties involved, the size of any equity stake in the entity or asset, and the specifics of any other rights—such as any board appointment rights, which the hon. Member for Warwick and Leamington cited in his intervention—being provided to the acquirer.

In some cases, however, such details may be known, but the likelihood of a trigger event actually taking place may still be low because the acquisition is conditional.

For example, the striking of a futures contract or an options agreement may stipulate conditions that must be met before the acquirer is required to, or has the right to, acquire a holding in an entity or an asset. Such arrangements are common in the marketplace where, for example, a company's future share price might be the basis of a conditional acquisition. Equally, lenders provide finance to many UK businesses on the basis of conditional agreements, often with collateral put up by the business as security in return for the loan. Those terms may, subject to certain conditions being met, allow the lender to seize collateral if repayments are not made as agreed.

**Peter Grant:** Can the Minister explain, first of all, why subsections (3) and (4) are included here as part of a supplementary clause when they clearly affect definitions, and as such go to the very heart of the Bill? The main clause is about defining the date on which something has happened for the purposes of calculating when later stages have to take place, but subsections (3) and (4) not only apply to those timings; they apply to everything in the Bill. I wonder whether the Minister could explain why those subsections are not included in one of the earlier clauses.

Secondly, I understand the Minister's argument, but would it not be more prudent to work on the assumption that if somebody insists on some kind of contingent future rights being built into an agreement, they think there is a possibility that they will have to exercise them? Would it not therefore be prudent for the Government to work on the assumption that they are likely to be exercised? If not, is the Minister not concerned that we could have a situation where a whole series of small events, none of which looks particularly significant by itself, adds up to something that does become significant when taken in sequence, but there might never have been a stage during that process where the Bill, or the Act, allowed the Government to intervene?

**Nadhim Zahawi:** I am grateful for the hon. Gentleman's intervention. I am just getting to the crux of the resistance to this amendment on the Government Benches, so if he will allow me, I will do that. As far as subsections (3) and (4) are concerned, we think they are exactly where they should be in the Bill.

In the loan scenario, obviously loans are routinely paid back by businesses as planned, so lenders do not have the option of enforcing any rights towards collateral. Indeed, even where businesses default on payments, lenders will often look for an alternative way to recoup their funds, such as restructuring the repayment amounts or repayment period. That is why the Secretary of State generally only expects to be notified about and, if the legal test is met, to call in acquisitions when they are genuinely in progress or contemplation, not just when they are optional or might take place in the future, as the amendment would effectively do. That could include where an option holder had resolved to exercise their option, or where a lender had decided to enforce their collateral.

None the less, the clause as drafted does provide the Secretary of State with the ability to call in at the time agreements or arrangements are entered into. That would be determined on a case-by-case basis and would, as per subsection (4), take into account how likely it is in practice that the person will do the thing that would result in a trigger event taking place. The amendment put forward by the hon. Member for Newcastle upon Tyne Central—she is right to probe on this—would mean that entry into any agreement or arrangement under which a trigger event could take place in future would be treated as a trigger event currently in progress or contemplation, allowing it to be notified and called in by the Secretary of State. We believe that this would—unintentionally, I am sure—have two significant negative implications.

12 noon

First, it would mean that hundreds or thousands of theoretical acquisitions would become available for voluntary notification, many of which would simply never come to pass. It may encourage lenders and option holders to routinely notify the Secretary of State of every arrangement they enter into. It would require a huge amount of resource for Whitehall to process those cases in return for little, if any, national security gain.

Secondly, I fear it would harm our national security. Making all potential acquisitions open to voluntary notification at the stage of entry into the initial agreement or other preliminary arrangements would require the Secretary of State to make the one and only decision on whether or not to call in the acquisition at that point, too—prematurely, one would say. They would be asked to do so on the facts as they stood at that moment in time, although the acquisition may not occur for months or years, if at all.

That means that the Secretary of State would not be able to consider any subsequent significant developments, such as behaviour by the acquirer or rapid advances in the technology developed by the target entity. Furthermore, the Secretary of State would not be able to revisit the call-in decision, even if there were such developments, unless false or misleading information was provided and it materially affected the decisions. That is why entering into agreements or arrangements should not in all cases be treated as a trigger event in progress or contemplation.

I trust the hon. Lady can support this justification, and I ask her to withdraw the amendment.

**Chi Onwurah:** I thank the Minister for his response. I listened carefully to what he laid out. I have some considerations, which I do not feel he fully addressed.

In broad terms, he raised many points that I have raised about why the amendment is broad in scope and could lead to a huge increase in the number of potential trigger events. However, I think he said that hundreds of thousands of actions or contemplations would be considered trigger events. I think it is truer to say that they could be considered trigger events and that the power to consider them as trigger events or not, as in the wording of our amendment, would lie with the Secretary of State. It is a broadening of the Secretary of State's powers to consider the contemplation of future acts as a trigger event. That is the aim, rather than necessarily bringing them all into scope.

I will not debate with the Minister whether we can trust the Secretary of State to exercise those powers in a proportionate way, but I think he is effectively saying that the concern is that the Secretary of State would not have the resources to do that. I still did not hear him address the gaming point—the idea that transactions

*[Chi Onwurah]*

would be deliberately set up in a way that escapes the remit of the Bill. The increased powers for the Secretary of State would address that.

I was also concerned that the Minister said that if an event was called in at this stage, it could not be called in again, even if there was material new information. Surely if a trigger event occurred in future, such as shareholding going above 25%, it could be called in, regardless of whether it had been called in earlier under the amendment. Would he like to respond to that question, particularly as to how this increases the powers of the Secretary of State, rather than necessarily significantly increasing the number of trigger events?

**The Chair:** Order. To be clear, you are asking the Minister to intervene, because he cannot come back afterwards.

**Chi Onwurah:** Yes, I am asking whether the Minister would like to intervene.

**Nadhim Zahawi:** I do not think I need to.

**Chi Onwurah:** I am disappointed that the Minister chose not to address the genuine concern about the provisions in the Bill being gamed by hostile actors.

I share his concerns about increasing the powers of the Secretary of State at a time when, as we understand, there are many more calls on the Department's responsibilities and it may not have the resources. We have already noted the conflict of interest that can occur between national security and the Department's focus on increased investment.

As I said, this is a probing amendment, so I will not press it to a vote. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 12 ordered to stand part of the Bill.*

## Clause 13

### Approval of notifiable acquisition

**Chi Onwurah:** I beg to move amendment 17, in clause 13, page 8, line 22, at end insert—

"(4) The Secretary of State must publish guidance that covers—

(a) consideration of the impact of a notifiable acquisition being deemed void under subsections (1) and (3), with particular regard to the impact on consequential obligations, liabilities and rights in completed events;

(b) who constitutes a "materially affected" person under Clause 16(1); and

(c) the informational and evidential standards that would underpin the requirement for completion "in accordance with the final order" at subsection (3).

(5) Guidance as set out under subsection (4) must be published within 3 months of this Bill becoming an Act and the Secretary of State shall review the guidance once every 12 months thereafter."

*This amendment would mandate the Secretary of State to publish guidance on the approval process of notifiable acquisitions.*

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

**Chi Onwurah:** Amendment 17 addresses the unwinding of void transactions. Clause 13, which is the start of chapter 3 of the Bill, is concerned with the approval of notifiable acquisitions. It provides that:

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

It is a short clause with only three subsections, of which that is the first. Subsection (2) says that the Secretary of State may approve a notifiable acquisition by giving a notification, making a final order, or giving a final notification under various clauses. Subsection (3) says:

"A notifiable acquisition, in relation to which a final order has been made, that is completed otherwise than in accordance with the final order, is void."

I want to emphasise the consequences and impact of such a short clause. Our amendment adds a new subsection that says that the Secretary of State must publish guidance that covers

"consideration of the impact of a notifiable acquisition being deemed void…with particular regard to…consequential obligations, liabilities and rights in completed events;…who constitutes a 'materially affected' person…and…the informational and evidential standards that would underpin the requirement for completion 'in accordance with the final order' at subsection (3)."

The amendment effectively mandates the Secretary of State to publish guidance on how the mechanism of deeming non-compliant transactions void would work in practice. Once again, we tabled it genuinely in the spirit of improving the Bill, because this issue is potentially a hugely significant part of it. The two words "is void" have a huge impact, which needs to be unpacked. This is a constructive amendment; we want to ensure that there is clarity for small and medium-sized enterprises, and accountability to Parliament, on how the new powers will be exercised.

I know that the Minister rejected further new powers in the last amendment, but even without them these new powers are significant. We welcome the expanded powers to tackle national security concerns, but we need to ensure that they come with accountability and guidance. The ability for transactions to be deemed legally void where they have not been approved by the Secretary of State, or where they have not complied with the Secretary of State's final order, has potentially huge repercussions. Again, it marks a radical shift from today's regime under the Enterprise Act 2002 and from the Government's White Paper.

Under the "legally void" provision, transactions that took place three to five years ago could now be immediately deemed void. If the first transaction in a chain were deemed void, that would leave the legal rights and entitlements of all subsequent transaction parties in total uncertainty. That is not just a theoretical concern that we are raising to test or probe the Bill, but a truly practical one. A number of investment transactions involve a change of shareholder parties over a three to five-year period. The automatic default of non-compliant transactions becoming void would mean an impossible series of rights, entitlements and changes having to be unwound. It may well be practically unworkable and legally uncertain.

**Katherine Fletcher** (South Ribble) (Con): I appreciate the point that the hon. Lady is making, in that transactions over a period of three to five years could become complex, but surely if something is called in and deemed void in the overriding interest of national security there

will be an extremely good reason for it. Although the complexity of downstream transactions is regrettable, we would be acting in the British interest if we had to trigger these powers.

**Chi Onwurah:** I thank the hon. Lady for her intervention, which by and large I agree with. That is why we are not seeking to remove the power, but to ensure that the Government and the Secretary of State explain how it would work in practice. She is right that if a bad or hostile actor has deliberately gone behind our national security framework, or the legislation as set out in the Bill, to undertake a transaction, the consequences will be on their head. However, there might be a series of other transactions as a consequence that were not made by bad or hostile actors—I will give some examples—and the impact on them should be set out, as far as possible, to give some clarity, because this is a huge area of uncertainty.

As has been stated on a number of occasions, we attract more foreign investment than any European Union country, and one reason why the UK is such an attractive location for foreign investment is that we have a robust legal framework that is trusted globally, but by giving rise to uncertainty the clause might impact that. We are not seeking to remove this power, but to have it properly explained, as far as possible.

12.15 pm

The hon. Lady and the Committee should recognise that, as well as the uncertainty, the clause places huge requirements on the Department for Business, Energy and Industrial Strategy, as it would require significant capability and capacity from the investment security unit to execute the effect of deeming any transaction legally void. To take that further, I will talk through some examples so that we can fully comprehend why the amendment is so important.

If this provision were applied to the takeover of a public listed company that was then found to have been void, it would be exceptionally difficult to deem that transaction void and to unwind every single dealing in the company's shares and to answer questions of legal ownership of such shares. There are enormous practical questions about the approach taken in the Bill to deeming transactions void, and the impact assessment does not address those consequences in a sufficiently rigorous way.

We might expect that events would never come to the point where transactions have to be deemed void, that parties will be deterred by that prospect—it is an excellent deterrent—and that the power will never be used, because it is such an effective deterrent that everyone will notify and comply. To that, I say two things. First, we cannot reduce legislation to our hopes of how actors might behave. We should have regard to examples elsewhere, such as Huawei's acquisition of 3Leaf, where the threat of having to divest still did not stop Huawei pursuing the acquisition without notifying the Committee on Foreign Investment in the United States. Secondly, threats are credible when they can be carried out. Even if the point of the provision is to act as a threat, it needs to show that it can be carried out. If a threat does not work practically, or would heavily harm other, non-hostile actors, it is less effective a deterrent. Even if we believe in the deterrence of the "legally void" provision, it is critical that the Government give thought to the provision's operation, and that we hear their thinking on that.

There are major question marks over the provision in the clause, but they are not cause to get rid of it altogether. We can see that the "legally void" provision would deter parties from failing to notify or comply, and that it has some international overlap with similar regimes, such as that in France. However, the decision to include the "legally void" provision is a major one. We can see the reasons for it, but we can also see the uncertainty and the concern that it might cause, especially for our small and medium-sized enterprises and, importantly, for those investing in them. As I said previously, there are significant barriers to investment in small and medium-sized enterprises and start-ups as it is. While national security must always come first, we do not want to create further barriers unnecessarily by not giving clarity when there is clarity to be given.

For that reason, we want to know the Government's thinking on how the provision would operate in practice, on three important fronts. First, we would like the Government to publish guidance that reflects an understanding of how the "legally void" provision would work, and especially how it will affect the rights, obligations and liabilities of parties involved in chain transactions. If one transaction in a chain was deemed to be legally void, what would happen to the rights of employees and—this is an important point—of pension recipients?

Secondly, we recognise that parties who are affected by the "legally void" provision could apply to the Secretary of State for validation, thereby avoiding the transaction being void, and we want clarity on which materially affected parties can do so. Would those whose employment rights or pension liabilities were affected by the transaction be able to apply or would only acquirers in the specific culpable transaction be able to do so? We urge the Government to provide clarity to our small and medium-sized enterprises and investors, because I know that they are worried about the nature of this power.

Thirdly, it is vital that the Government clarify what they expect when they apply the "legally void" provisions to transactions that do not complete in accordance with the Secretary of State's final order. To comply with the order, to what degree would a party have to show their evidence, and what degree of evidence would be required for the transaction not to risk being deemed void? That might sound complicated, but the clause has complex implications. In some circumstances, orders might not be specific, or they may be subjective and behavioural, so we need a regime that is clear, specific, understanding and rational. We should be able to expect such clarity and rationality from the Government.

Ultimately, the Opposition's approach is about ensuring that our small and medium-sized enterprises have clarity, and that those who invest in the UK understand the rules and how they work. The amendment is intended to ensure that there is clarity and confidence in the new regime for national security screening. That approach has been supported by experts who have given evidence to the Committee. For example, Dr Ashley Lenihan, of the London School of Economics, said:

> "The Bill provides for a lot of regulatory guidance, which needs to come forward in a clear and very easily comprehensible and understandable manner."—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 36, Q42.]

David Petrie, of the Institute of Chartered Accountants in England and Wales, said:

"If the unit operates in a way where it can give unequivocal guidance to market participants at an early stage and is open to dialogue…that would be extremely helpful."—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 53, Q60.]

Dr Ashley Lenihan also said:

"Dealing with the kind of evolving and emerging threats we see in terms of novel investments from countries such as China, Russia and Venezuela needs the flexibility to look at retroactively and potentially unwind transactions that the Secretary of State and the investment security unit were not even aware of."—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 34, Q40.]

I think it is clear that we are supportive of the ability to void transactions.

I want to close by thinking again about the Google acquisition of DeepMind, which took place in 2014. DeepMind has been in the news this week for its fantastic, innovative work on understanding how life itself works. In a letter, the Intelligence and Security Committee has asked what transactions would have come under the purview of this Bill had it been in place earlier. The Opposition have been calling for it, as has the Intelligence and Security Committee. Had it been in place in 2014, and had the Secretary of State for Business at that time been as focused on national security as he should have been, which some might argue was not the case, what would be the expectation? Had he decided in 2019 that that transaction should have been notified because of its security implications and, as a consequence, that it was not valid and should be voided, what would have then been the expectation?

What would be the expectations of the employees of DeepMind, who are now in California, with regard to relocating back to the UK? How would their pension rights be affected? How would acquisitions that DeepMind and/or Google had made over the years be impacted? I do not expect the Minister to be able to set out in detail every potential scenario, but it is right that we have greater and more effective guidance than is to be found in the Bill or its supporting documentation. I look forward to the Minister supporting our amendment and taking it forward.

**Nadhim Zahawi:** I thank the hon. Lady for her constructive engagement with the whole Bill, and especially with clause 13. She referred to the Intelligence and Security Committee, and this Committee will know that I have written to the Chairman of the Intelligence and Security Committee.

However, in answer to one of the questions raised in the letter that has been circulated to the Committee, which the hon. Lady referred to, it would clearly not be appropriate for me to speculate on individual cases, not least because decisions on past interventions have been taken by previous Ministers or Governments, who made their decisions based on the facts as they were known at the time. The Enterprise Act 2002 has provided a robust basis for nearly two decades to intervene on mergers that might have raised concern. However, it is also right that we modernise our powers, and that is exactly what this Bill will do.

The Bill provides—we had a similar discussion about that at Second Reading—that if an asset or company is deemed very valuable to the United Kingdom, it does not matter who the acquirer is, even if they are from a friendly nation, and an intervention can still be made by the Secretary State.

Clause 13 sets out the mechanisms by which the Secretary of State may approve a notifiable acquisition. After I have set out the rationale for the clause, I will speak to the amendment itself. As I have set out previously, notifiable acquisitions are acquisitions of certain shares or voting rights in specified qualifying entities active within 17 sensitive sectors of the economy. These acquisitions must be notified to, and require approval from, the Secretary of State before they may take place.

That approval can be given in three ways. First, when a mandatory notice is submitted by the acquirer, the Secretary of State may decide not to exercise the call-in power—for example, because he does not reasonably suspect that a national security risk may arise. In those circumstances, he is required to notify each relevant person, following the review period of up to 30 working days, that no further action will be taken under the Bill in relation to the proposed notifiable acquisition.

Secondly, when the Secretary of State exercises the call-in power in relation to the notifiable acquisition, he may make a final order at the end of the assessment process, which, in effect, gives approval to the notifiable acquisition, subject to conditions. Again, in that instance the notifiable acquisition is clear to proceed.

Thirdly, as an alternative to the previous scenarios, at the end of the full assessment process the Secretary of State may ultimately conclude that no remedies are required. In those circumstances, he is required to give a final notification that confirms that no further action will be taken under the Bill in relation to the call-in notice. Once more, that means that the acquisition is cleared to take place.

12.30 pm

Those three routes and outcomes are of critical importance to business, investors and their advisers. It is the means by which they receive certainty about whether they have the Secretary of State's approval to proceed. In those cases where the Secretary of State confirms that no further action will be taken under the Bill, he cannot revisit the acquisition again barring a narrow exception for circumstances where false or misleading information has been provided to him.

Conversely, subsection (1) places beyond doubt that notifiable acquisitions that take place without the approval of the Secretary of State are void. I am very pleased to hear that the hon. Lady thinks that is an excellent deterrent. That means that the acquisition has no legal effect.

**Chi Onwurah:** I thank the Minister for eloquently setting out the clause. I have to suggest that he not place words into my mouth—certainly as we have such excellent reporting. Although I did not say that I thought it was an excellent deterrent, I did indicate that it could be an effective deterrent, were it considered workable.

**Nadhim Zahawi:** I am grateful for that clarification. I wrote down the hon. Lady's words. She did say that it is an excellent deterrent, and went on to make her argument for the amendment.

To return to the substance, the provision means that the acquisition has no legal effect if it is void. It is not recognised by the law as having taken place. Clearly,

voiding is a situation that it is in the interests of all parties to avoid, which should act as a powerful compliance incentive, if I can describe it as such. The Government's view is that voiding is the logical result of a regime based on mandatory notification and clearance for acquisitions in the most sensitive sectors before they take place.

Although the Secretary of State, or the courts, may be in a position to punish non-compliance with criminal or civil sanctions, voiding is necessary to limit or prevent risks to national security that may otherwise arise where such acquisitions take place without approval. For example, there may be day one risks whereby hostile actors acquire control of an entity and seek to extract its intellectual property and other assets immediately. This is a reasonable and proportionate approach, and in arriving at this position we have carefully considered the precedent of other investment screening regimes. For example, France, Germany and Italy all have voiding provisions.

Amendment 17 would require the Secretary of State to publish guidance within three months of Royal Assent and then review it annually in relation to the approval process for notifiable acquisitions. I have listened carefully to the hon. Lady's case for the amendment, and I hope that I can begin on common ground by saying that clearly voiding an acquisition is something that it is in the interests of all parties to avoid. That is why we are consulting on the sector definitions covered by mandatory notification and clearance, rather than simply presenting them to Parliament and external stakeholders like a fait accompli in the Bill.

That approach will allow experts from the sectors and the legal profession, and businesses and investors, to help us to refine the final definitions and tighten them up to ensure that the regime is targeted and provides legal certainty. Equally, mandatory notification applies only to the clearest acquisitions, focused on objective thresholds of shares and voting rights. Together, that will help acquirers to determine whether their acquisitions are in scope of mandatory notification, and therefore allow them to comply with their statutory obligation and avoid any voiding scenarios altogether.

**Peter Grant:** I agree that the sensible starting point is that, if a major transaction has not complied with legal requirements, it did not happen. As the shadow Minister outlined in her comments, however, it is easy to imagine situations in which the fact of a transaction such as this becoming void could have significant impacts on people who are completely innocent of any failure to comply with the law. Is the Minister comfortable with the fact that the Bill has almost literally nothing to say about those people and that there is not provision for any kind of redress? There is no statement as to what happens to people who may quite innocently find themselves facing significant detriment through the actions and failures of others.

**Nadhim Zahawi:** I am grateful for the hon. Gentleman's intervention. As I was laying out, there is precedent from other screening legislation in Germany, France and elsewhere. Of course, the hon. Member for Newcastle upon Tyne Central is concerned about the hundreds of thousands of people who may be shareholders in a company. If the acquisition was a notifiable acquisition and completed without approval, it is void, regardless of the number of shareholders.

I return to the point I was making before the hon. Gentleman's intervention. Together, this will help the acquirers determine whether their acquisitions are in scope of mandatory notification. None the less, the Bill sets out the various ways in which an acquisition may be retrospectively validated, both proactively by the Secretary of State and in response to a validation application, where non-compliance occurs. I believe the guidance that the amendment would require the Secretary of State to publish is well meaning but fraught with difficulties.

There are a number of reasons why the Government must reject the suggested approach. First, the amendment is an invitation to the Secretary of State to, in effect, legislate through guidance to set out the legal implications of acquisitions being voided pursuant to clause 13. In our view, it would not be appropriate for the Secretary of State to do so, as it is for Parliament to legislate, but ultimately for the courts to interpret and apply that legislation.

The hon. Member for Newcastle upon Tyne Central will be aware of the much-quoted report from the House of Lords Select Committee on the Constitution, which has emphasised the importance of avoiding guidance being used as a substitute for legislation. We have no intention to do so in respect of voiding.

**Chi Onwurah:** I confess that I am somewhat surprised by the Minister's comments. Does he feel that all guidance is an invitation to the Secretary of State to effectively legislate through guidance? Is that something that the Minister feels is the case for all guidance? If that is the case, we will not be getting very much guidance for businesses at all. Does he not feel that, in terms of regulatory clarity, there should be effective help and guidance that is not legislation? He is right to say that it is for the legal system to interpret, but it is also right that we have clear laws to be interpreted. As the hon. Member for Glenrothes said, there is currently nothing in the Bill about what "voiding" means and what it could mean.

**The Chair:** Order. I remind Members to keep interventions as brief as possible.

**Nadhim Zahawi:** Of course, not all guidance is guidance that the Lords Constitution Committee would have effectively considered to be a substitute for legislation. I will make some more headway, as I am conscious of the time.

Furthermore, the legal implications of voiding will depend on the particular facts of each case. It will ultimately be for the courts, as I said earlier, to resolve any disputes between parties.

Secondly, and for the same reasons, it would not be appropriate for the Secretary of State to publish guidance on who constitutes a "materially affected" person under clause 16(1). If it will assist the Committee, I will say that we consider these to be ordinary words of the English language and that whether a person has been materially affected by voiding will depend on the particular facts of each case. Ultimately, it will be for the courts to interpret this provision and to resolve any disputes between parties.

Thirdly, we do not consider guidance under paragraph (c) in the amendment to be necessary or appropriate. Final orders issued by the Secretary of State will need to be

*[Nadhim Zahawi]*

clear, and it is expected that in most instances they will follow extensive discussions with the parties so that all understand the conditions being imposed on the trigger event. That is equally true in relation to voided acquisitions scrutinised by the Secretary of State retrospectively. Where remedies imposed by the Secretary of State include restrictions on completion, it will be an objective question of fact, dependent on the circumstances of each case, whether the acquisition proceeds contrary to those conditions. This does not involve any determination by the Secretary of State, and it would ultimately be for the courts to resolve any disputes between parties, so it would not be appropriate for the Secretary of State to issue guidance setting out the "informational and evidential standards" that would apply. More generally, the value of any guidance would be limited, given that it would necessarily reflect the fact that retrospective validation will be dependent on the facts of an individual case.

The new regime understandably covers a broader range of acquisitions than is the case now. That is absolutely correct, as the hon. Lady stated. The combination of that fact with the reality that some voided acquisitions will come to light months or years after they take place and any number of events, involving numerous parties, may have occurred since then means that the Secretary of State must consider any validation application on a case-by-case basis. That is the right approach to keep this country safe, and this takes us back to the central issue that voiding is the logical result of a regime based on mandatory notification and clearance for acquisitions in the most sensitive sectors before they take place.

**Chi Onwurah:** I sense that the Minister's speech is coming to a close. He makes the point that voiding is the logical consequence of the new regime, based on mandatory notification. I have said that we recognise that, but, further to the intervention by the hon. Member for Glenrothes, if it is the necessary consequence, why is it not included in the impact assessment?

**Nadhim Zahawi:** I thank the hon. Lady and the hon. Member for Glenrothes for their questions. It would be nigh on impossible to have an impact assessment as to what happened to a deal that should have been notified under the 17 sectors and then was voided. I believe that is something the Opposition should understand, in terms of the proportionality of the new regime, and I hope that it is something the hon. Lady and her colleagues can support. I hope that she will withdraw her amendment.

**Chi Onwurah:** I thank the Minister for his remarks. As I set out, we recognise the importance of this power. We were not seeking to remove the power to void—for transactions to be deemed void. But as I also set out, the two words "is void" have a huge impact, and it is of concern that neither the Bill nor the impact assessment addresses that. The Minister said that it would be impossible to assess the impact of voiding, but the impact assessment, where it looks at the number of affected businesses, estimates the number of investment decisions, notifications, security assessments and remedies. It makes estimates of all those, but has nothing to say on the number of potential voidings. That is a significant gap in the Bill and the impact assessment and, as a consequence, in the level of certainty and understanding about the Bill.

I have said a number of times that we are going from a standing start of 12 notifications in 18 years under the Enterprise Act 2002, which the Minister cited as having robust powers, to the almost 2,000 that we are expecting. Given his response, however, on which we see no likelihood of him moving, and given that we acknowledge the importance of the powers, I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 13 ordered to stand part of the Bill.*

## Clause 14

### Mandatory notification procedure

12.45 pm

**Sam Tarry** (Ilford South) (Lab): I beg to move amendment 18, in clause 14, page 8, line 36, leave out "may" and insert "shall".

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

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

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

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

Clause stand part.

**Sam Tarry:** It is an honour to serve under your chairmanship, Mr Twigg. These two amendments are simply about giving more direction. One issue that we have debated on every day of the Committee's scrutiny so far is how the Bill will radically transform the merger control process and create an entirely new centre for that process within BEIS.

Small and medium-sized enterprises across the country will look at these changes with great interest and understanding that national security is important and imperative, but also with uncertainty as they consider the need to seek investment to grow and create jobs. We owe those businesses clarity, confidence and certainty in the new regime, which is why the amendment simply seeks to make the Secretary of State's prescription of regulation of the form and content of a mandatory notice mandatory by deleting "may" and inserting "shall".

The Bill gives some clarity on the assessment period and the review period under the new regime, but there is still major uncertainty about the first stage of the regime. It is unclear how long the Secretary of State can take to decide on rejecting a mandatory or voluntary notice. The Government's consultation suggested that it would be as soon as reasonably practicable, but unfortunately that is of no assurance. For a new unit with major resourcing challenges, as soon as reasonably practicable could be far from soon.

My hon. Friend the Member for Southampton, Test spoke earlier in the week about his experience and the bad practice that could occur if the Secretary of State was left with so much discretion, rather than a little more compulsion. There are a number of examples, including the Energy Act 2013, where having "may" rather than "shall" meant that, in real terms, what was determined by the Bill never came into being.

Clause 66 of the Bill says that some clauses will immediately come into force, but it later says "may". The Secretary of State could—hopefully he would not—wait for years or not do it at all. In both clauses referred to by the amendments, the regulations must be laid by the Secretary of State, and the term "may" creates some degree of uncertainty. It would be far better to take a more direct approach by inserting "shall".

It is also unclear what specific form of content and information could be required in the mandatory or voluntary notices that firms and investors would have to provide. We could end that uncertainty. It is already an incredibly challenging time for firms to engage with a major new control process in the midst of a pandemic and, of course, while waiting to hear what our new relationship with the European Union will be.

**Chi Onwurah:** I thank my hon. Friend for the excellent remarks he is making. Is his experience of small and medium enterprises in Ilford South the same as mine in Newcastle, in that they generally do not have the time to fill out the multiple forms required to receive grants or to apply for support? To expect them not only to respond, but to design the form and decide what should go into it is really taking our small and medium enterprises for granted.

**Sam Tarry:** I agree. It is Small Business Saturday this weekend, and I imagine that many SMEs will be telling us when we are back in our constituencies about exactly these kinds of issues: the uncertainty, and the decisions they want to take about investment in staff, in technology and, of course, in equipment.

With this amendment we are trying to focus on ensuring that businesses have as much clarity as possible, so that they can begin to plan. If that uncertainty is ended, as we come out of the covid crisis and move forward from the debacle of Brexit, it will be better for businesses to have clarity, so that they can begin to take the positive decisions that will hopefully create jobs.

It is already challenging for firms to engage in such a tricky process. Remember that small and medium enterprises will not have the vast resources that are perhaps available to the multinationals or mergers-and-acquisitions-type companies from which we heard evidence. It will be far more frightening for SMEs to face such things given everything else they are dealing with at the moment.

The amendment would go a long way towards ending uncertainty for SMEs and ensuring that the Government act with clarity and, of course, with competence. It would require the Government to publish guidance on the form and content of the notices that firms will have to fill out. There will always be a degree of paperwork for businesses, but this is about ensuring that it can be filled in as quickly as possible. The recommendation is that guidance should create efficient forms and content requirements, and that it contains some indication of how long the Government will take to accept or reject a mandatory or voluntary notice,

**Matt Western:** My hon. Friend is making some important points. The issue here, as he is illustrating, is simply that the pressures that SMEs face in particular are about cash-flow and attracting inward investment. They do not have the resources or the capacity to cope with those sorts of approaches and will be under huge pressure. That is why the amendment is so important.

**Sam Tarry:** My hon. Friend makes a good point. Businesses are feeling huge pressure. SMEs will often experience a degree of fear at the moment about potentially having to grapple with a whole series of new regulations—not just under this important Bill, but under the spin-outs that come out of our ongoing negotiations with the European Union. Many businesses are, I think, holding back on investment and investment decisions—even inward investment into their own company—simply because of the uncertainty. It is incredibly important to remove those barriers and to get people back investing in both staff and technology and feeling that they have the ability to see forward far enough to keep staff on the books through such a difficult crisis.

**Chi Onwurah:** My hon. Friend is making an excellent point about Brexit, but I will not test the Committee's patience on that. As for the changing forms and the requirements on SMEs, does my hon. Friend understand why the Minister is putting the onus for deciding what information is required on to small businesses, rather than on to his Department and the civil service, which could do that?

**Sam Tarry:** One of the things that we have probed a number of times, when taking evidence from witnesses and in our debates in Committee, is the idea that we need to give businesses clarity, because many are feeling uncertain. If they cannot make decisions about forward planning, clearly that will be detrimental as we move through the crisis.

Perhaps I should refer to some of the expert evidence we heard last week. Michael Leiter, who represents a very large, global limited liability partnership, told us:

"I think this is a rather seismic shift in the UK's approach to review of investment… having some opportunity to make sure that both the private sector and the public sector are ready for that and understand the rules…is particularly important".—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 46, Q52.]

That was in our discussion about resourcing, and one of the questions that I and colleagues on both sides of the Committee raised was on the resourcing of BEIS. As my hon. Friend the Member for Newcastle upon Tyne Central suggested, rather than the burden falling on small and medium-sized enterprises, there should be a fully resourced and expanding new unit within BEIS. Given that the number of call-ins could rise from 12 to 1,800, as we have heard, we need a huge scaling up of BEIS's ability to look at these, and obviously it does not have the same experience that the Competition and Markets Authority had previously.

I humbly point out that the Minister assured the House on Second Reading that:

"The investment security unit will ensure that clear guidance is available to support all businesses engaging with investment screening".—[*Official Report*, 17 November 2020; Vol. 684, c. 277.]

The amendment is intended to secure that assurance in substance; not to tie the hands of the Secretary of State, but to give clarity to businesses by shifting from something that may happen to something that shall happen.

**Peter Grant:** It is a pleasure to serve under your chairmanship, Mr Twigg. I know that there was quite a bit of discussion in an earlier sitting, which I was unable to attend, about the different between "may" and "must". In relation to clause 14—my comments apply also to

*[Peter Grant]*

clause 18—if we try to imagine the circumstances in which the Secretary of State would choose not to make those regulations, we realise that there are none. If no regulations have been made, most of subsection (6), which clearly is the meat of the clause, just does not make sense.

Subsection (6) states that the Secretary of State may reject the mandatory notice if

"it does not meet the requirements of this section".

But the clause does not place any requirements on the notice. A letter that says, "Dear Secretary of State, this is a notice under section 14" would meet all the requirements of that subsection, so it cannot be rejected on those grounds. Clearly, it cannot be rejected on the grounds that

"it does not meet the requirements prescribed by the regulations",

unless the Secretary of State has made the regulations. It can be rejected if

"it does not contain sufficient information to allow the Secretary of State to"

make a decision. How can it possibly be fair for a business to have a notice rejected on the grounds that it does not contain sufficient information to allow a decision to be made by somebody who has chosen not to state what information needs to be provided?

Therefore, two of the grounds on which the Secretary of State can reject the notice are meaningless. The third one has meaning, but it is surely not a reasonable way to treat any business. If there is information that the Secretary of State feels will be necessary to allow her or him to come to a decision on the notice, surely that information should be set out in regulations so that there can be no doubt.

It is perfectly in order for the statutory form of notice to require additional information that cannot be specified in advance. Clearly, the Bill will cover a wide range of transactions, and there will always be information that is needed for one transaction but maybe not for others, but surely we will need to know the name of the acquirer, the identity of the asset and the timing of the intent to acquire. It will be impossible to process any notice without those kinds of things, so surely the Secretary of State will at the very least make regulations requiring that information to be provided. If the Minister can persuade me that there are realistic circumstances in which the Secretary of State can choose not to make any regulations at all, perhaps I would not support the amendment, but the clause will simply not work if the regulations have not been made. For that reason, it should require the Secretary of State to make those regulations.

1 pm

That is made more important by the points that the hon. Member for Ilford South made, in that subsection (5) only requires the Secretary of State to come to a decision

"As soon as reasonably practicable".

That is about as vague and woolly a time requirement as it is possible to put in legislation. I remember, thinking back to my days in the Health and Safety Executive, that the phrase "reasonably practicable" appeared in a lot of legislation on health and safety requirements. The "reasonably" part means taking into account the other circumstances applying to the Secretary of State and the Department at the time, so if they are up to their eyes in dealing with Brexit, trade deals, getting the vaccine distributed or anything else, then "as soon as reasonably practicable" could become a very open-ended time limit indeed. As soon as the Secretary of State has decided to accept—

**The Lord Commissioner of Her Majesty's Treasury (Michael Tomlinson):** On a point of order, Mr Twigg. I beg to move—

**The Chair:** Order. The hon. Gentleman cannot move to adjourn while a Member is speaking.

**Michael Tomlinson:** I apologise to the hon. Member for Glenrothes; I will wait.

**Peter Grant:** It is easy to see that there will be circumstances where "as soon as reasonably practicable" becomes a very open-ended time limit—or non-time limit—indeed.

Given that so much of the rest of the Bill puts time limits on the Secretary of State to ensure that potentially beneficial transactions cannot be held up forever simply due to delays in the Department, the combination of the words "as soon as reasonably practicable" in subsection (5), right at the start of the process, and the massive uncertainty in the minds of businesses if the Secretary of State does not make regulations persuades me that the Bill should not allow the Secretary of State to make those regulations but should require the Secretary of State to make them, because the clause simply does not work or make sense if they are not made.

*Ordered*, That the debate be now adjourned.—*(Michael Tomlinson.)*

1.2 pm

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