PARLIAMENTARY DEBATES

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GENERAL COMMITTEES

Public Bill Committee

NATIONAL SECURITY AND INVESTMENT BILL

Tenth Sitting

Tuesday 8 December 2020

(Afternoon)

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Saturday 12 December 2020

The Committee consisted of the following Members:

Chairs: † Sir Graham Brady, Derek Twigg

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

Rob Page, Yohanna Sallberg, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 8 December 2020

Afternoon

[Sir Graham Brady *in the Chair*]

National Security and Investment Bill

2 pm

The Chair: Before we adjourned, the Committee was considering amendment 27 to clause 29, and I believe that Chi Onwurah was in the process of concluding her remarks.

Clause 29

Publication of notice of final order

Amendment proposed this day: 27, in clause 29, page 19, line 39, leave out paragraph (a) and insert—

"(a) would be likely to prejudice the commercial interests of any person and where the publication would not be in the public interest, or"—*(Sam Tarry.)*

This amendment would prevent the Secretary of State from redacting notices of final order (and information within them) on commercial grounds if redacting is contrary to the public interest.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I had been just about to conclude by saying that a key reason for the amendment moved by my hon. Friend the Member for Ilford South is that it asserts and requires the supremacy of the public interest over commercial interest in the Secretary of State's actions in reporting on final notices. I hope that the Minister will accept the amendment.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Nadhim Zahawi): With your permission, Sir Graham, I will speak to clause 29 stand part before turning to the amendment. The Committee has heard about the careful balance that the Government are striking in this regime by allowing for a discreet and commercially sensitive screening process wherever possible, while requiring transparency at key junctures where not to do so could disadvantage third parties.

Clause 29 is a key clause, the purpose of which is to deliver that essential but carefully chosen transparency. It places a duty on the Secretary of State to publish a notice of the fact that a final order has been made, varied or revoked. The main purpose of publishing notice of those facts is to ensure that third parties who may have a financial interest in a trigger event are not disadvantaged by the provision of information only to the parties involved. Examples of relevant third parties might include shareholders, suppliers or customers of the target entity, and other investors who may be considering investing.

The clause will provide important reassurance to the business community and the wider public about the circumstances in which final orders are made, varied and revoked. It specifies what information must appear in a notice, including, crucially, a summary of the order, revocation or variation, its effect, and the reasons for it. Similarly to the approach on orders, subsection (3) allows the Secretary of State to exclude information from the notice when he considers it commercially sensitive or national security sensitive. The clause is complemented by the requirement in clause 61 for the Secretary of State to report annually to Parliament on the use of the powers in the Bill. Clause 61(2) sets out an extensive list of the aggregate data that the annual report must include. Together, those provisions will help investors and businesses to understand the regime, and will ensure that Parliament can hold the Government to account on their operation at both individual and aggregate levels.

I will now turn to amendment 27 to clause 29. I remind the Committee that the clause requires the Secretary of State to publish a notice when a final order has been made, varied or revoked. As drafted, subsection (3)(a) provides that the Secretary of State may exclude from that public notice anything that he considers likely to prejudice the commercial interests of any person. The amendment would prevent the Secretary of State from excluding such information, unless he considers that publishing it would not be in the public interest.

The Committee has heard about the careful balance that the Government are seeking to strike in this regime, to allow, as I mentioned earlier, for a discreet and commercially sensitive screening process wherever possible, while requiring transparency at key junctures when not to do so may disadvantage third parties. As I set out, this is a key clause, the purpose of which is to deliver that carefully balanced transparency. Inherent in the clause is the degree of flexibility afforded to the Secretary of State to redact information when he judges that to be appropriate, whether for commercial or national security reasons. I hesitate slightly to return to a somewhat recurring theme—the difference between "may" and "shall"—but the fact that the Secretary of State "may" redact information provides him with the flexibility to decide case by case whether that is the right thing to do.

The hon. Member for Ilford South seeks to ensure with this amendment that the Secretary of State will not disregard the public interest when using the flexibility on deciding whether to redact information. The hon. Gentleman need not worry; that is my message to him. The Secretary of State will always seek to serve the public interest in this Bill and in all that he does. I can therefore assure the hon. Gentleman that the Secretary of State will carefully consider any redactions made and that he will not take the decision to exclude information lightly.

Chi Onwurah *rose—*

Nadhim Zahawi: I suspect that the hon. Member for Ilford South may wonder why, if it makes so little difference, we do not include his amendment and formalise the importance of considering the public interest. I suspect that that is also the point on which the hon. Lady wishes to intervene.

Chi Onwurah: The Committee recognises the importance of giving the powers in the Bill to the Secretary of State in the interests of national security. The powers of redaction are, or could be, in the interests of commercial sensitivity. Does the Minister agree that national security and the public interest should be supreme over commercial sensitivity? Why will he not make that clear?

Nadhim Zahawi: I thought I had made that clear. The Bill strikes that balance between commercial sensitivity and national security.

I return to my reassurance on the importance of considering the public interest. In addition to the general principle that one should avoid amending clauses that, essentially, fulfil their objectives—if it isn't broken, don't fix it—I suggest that the Bill is not the place to begin adding references to the public interest. While the Secretary of State cares profoundly about the public interest, this specific regime is intentionally and carefully focused on national security. Although it may be an attractive proposition to certain hon. Members, my strong view is that by introducing ideas of wider public interest into the Bill, we would risk confusing and stretching its scope beyond its carefully crafted calibration. I have a tremendous amount of sympathy with what hon. Members seek to achieve with the amendment but, for the reasons I have set out, I must ask that the hon. Gentleman withdraws it.

Sam Tarry (Ilford South) (Lab): It is a pleasure to serve under your chairmanship, Sir Graham, in these temperatures, which are positively balmy compared with the Siberian ones that we experienced this morning.

I thank the Minister for his comments, but I would say that there is no stretch too far on national security. It is positive to hear that the Minister agrees that the focus on national security is crucial, and that we are driving at the interests of national security in our amendment.

Chi Onwurah: Was my hon. Friend as confused as I was when the Minister spoke about this Bill not being the place to introduce public interest? The Government, however, have introduced commercial sensitivity. We are not seeking to modify national security; it is the introduction of commercial sensitivity that requires the introduction of public interest. We are talking about modifying the importance of commercial sensitivity, not national security. Will my hon. Friend join me in rejecting the Minister's assertion?

Sam Tarry: I agree wholeheartedly with my hon. Friend. We have been clear that the amendment is simply about preventing the Secretary of State from redacting notices of final order on commercial grounds, if redaction is contrary to the public interest. The whole point of this Bill is to together public interest, national security and commercial interest because they are one and the same. National security is our highest priority, but in the post-Brexit scenario we want to be a country that is as open and positive as possible towards investment from international partners if they share our values and our objectives of supporting and building Britain. It feels as though the Minister is agreeing with us in part, but he is not prepared to accept this amendment. For that reason, I will press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 10.

Division No. 14]

AYES

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

NOES

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

Question accordingly negatived.

Clause 29 ordered to stand part of the Bill.

Clause 30

Financial assistance

Chi Onwurah: I beg to move amendment 24, in clause 30, page 19, line 44, leave out

"making of a final order"

and insert

"making of an interim or a final order".

This amendment would enable the Secretary of State to give financial assistance in consequence of the making of an interim order.

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

Amendment 28, in clause 30, page 20, line 3, after "period" insert "or any calendar year,".

This amendment would make it mandatory for the Government to inform Parliament if financial assistance given in any financial year, or in any calendar year, exceeds £100 million.

Clause stand part.

Chi Onwurah: My hon. Friends and I have set out how we are seeking to provide constructive support and improvement for this Bill. I am disappointed that the Minister seems to feel that no improvement is possible, but I hope to persuade him otherwise with amendment 24. It is not a probing amendment; it brings a much-needed improvement to what I consider to be an incomprehensible omission in clause 30.

Clause 30 provides that the Secretary of State may, with the consent of the Treasury, give financial assistance to, or in respect of, an entity through a loan guarantee or indemnity, or any other form of financial assistance. The financial assistance must be given as a consequence of him making a final order. That is a key point that I will return to.

Clause 30 further states that during any financial year, if the amount given under the clause totals £100 million or more, the Secretary of State must lay a report of the amount before the House of Commons. It states that during any financial year in which a report has been laid before Parliament, if the Secretary of State provides any further financial assistance under this clause, he must lay before the House a report of the amount.

I set that out to indicate that, as I understand it, the amount of financial assistance that can be provided is not limited. A report must be provided when the amount given under this clause totals £100 million or more, but there is no limit on the amount which can be provided. One would expect the Treasury to provide a limit in any year, but the Bill does not set any limit on the amount of financial assistance that the Secretary of State can make available. It does not, however, provide for any financial assistance in the case of an interim order. The

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provision applies only to a final order, specifically in clause 30, on page 19, in line 44. That is why we seek simply to change that to include interim orders under the scope of the financial assistance clause.

2.15 pm

The theme of the Opposition amendments is that we wish to protect our national security, and we think that the measures could have been taken earlier. Part of the social contract is that that should be done in a way that is fair, clear and certain for businesses, so that they understand the legislative framework as far as possible, and so that they feel that it is fair and in the interests of our national security and, as part of that, our national prosperity.

Given the broad powers that the Bill gives the Secretary of State, about which we have had some back and forth, it is all the more important that the appropriate support should be there for affected businesses. I will not trespass on your good nature by drawing too many parallels, Sir Graham, but we see in the pandemic under which we are suffering that public confidence in the ability of the Government depends on the right amount of support being available for those who are adversely affected. Clearly, one aspect of that is the Government's ability to provide financial assistance to an entity where Government intervention creates a position of loss for the entity.

We discussed in relation to clauses 24 to 26 the level of remedies, in terms of an interim or final notification and how they may affect an entity. Let us consider the example of a British start-up in some very important area—artificial intelligence, let us say—that has an investor lined up and is looking forward to expanding its work because of that investor. As a consequence of the measures in the Bill, however, a final order prevents the investor from investing in this fantastic start-up.

Let us say for the purposes of argument that this start-up is based in Newcastle—an excellent area for start-ups and innovation to come from. I should say that a fantastic small business in Newcastle will already have greater challenges in finding finance and investors, because unfortunately many potential investors are apparently put off by a short train ride from King's Cross. Once the start-up has found a potential investor, under the provisions of the Bill it is identified that such an investment would form some present or future threat to our national security, so the start-up is prevented from raising funding as a direct consequence of the new national security screening regime. We can all imagine—in fact, it does not require imagination; we can simply anticipate—the huge financial challenges that that might create for small, innovative start-ups. Financial assistance is a critical part of making the new regime effective. A key question is why the Government are only creating the power to provide such assistance in the making of final orders, not interim orders.

I asked earlier what the maximum period for an interim order should be, because with the provisions in clause 23 for an initial period, an additional period, a voluntary period and an additional voluntary period, an interim order could last for a considerable time. I asked the Minister whether there was a maximum time for an interim order. Regardless, an interim order could impose major costs on a British start-up or prevent an acquirer from acquiring or investing in one should it increase its level of influence in an unacceptable way. That could cause the loss of business-critical investment. Does the Minister consider that it would be appropriate to be able to provide financial assistance in the case of interim orders as in the case of final notices?

A similar concern applies to more general instances where financial assistance will be critical in securing national security. Has the Minister considered a wider power of financial assistance that would allow the Government to intervene pre-emptively in cases where Government investment could secure strategic assets for the UK, even if a precise trigger event has not occurred? The clause provides for financial assistance when a final order has been made, but has he considered provision for financial assistance before a final order has been made or an event has been called in? I have in mind cases such as OneWeb satellite, where the Government made a major investment just a few months ago to secure, as we are told, strategic assets, yet that was outside trigger events or a case such as bankruptcy proceedings. Does the Minister consider that existing statutory powers are sufficient, and clear enough in law, to provide for such pre-emptive investment? In the case of OneWeb, there certainly was not sufficient clarity about whether the investment was being made for national security reasons or to replace existing investments. There was not sufficient clarity or accountability. Would it not be better to place such investments, which are made in the interests of national security, within the context of the Bill? Would there be a benefit from placing such powers in statute?

Beyond specific events where the amendment would put interim orders in scope, there is a question about the toolkit available to Government for appropriate financial assistance. Clause 30(2) says that financial assistance

"means loans, guarantees or indemnities, or any other kind of financial assistance (actual or contingent)."

That is slightly circular. Will the Minister clarify whether equity investments come under

"any other kind of financial assistance."?

The Minister is nodding—I am not sure whether that means that he will clarify or that the equity investment is financial assistance—but can he say if it is included in the scope of the Bill or, if not, if it should be. The stakeholders within the artificial intelligence sector have specifically asked me to raise that point.

Where a small business is unable to raise equity investments because of a Government final order, giving it further debt funding might not be any help if the business's future inability to make loan payments is threatened. Again, in the crisis in which we find ourselves we see the reluctance of business to take on further debt. In those circumstances, loans may not be considered financial assistance. The Government and the Minister need to clarify whether equity investments are part of financial assistance.

The Minister needs to accept our amendment with regard to interim orders or explain why interim orders do not raise the need for financial assistance in the same way as final orders. That is a critical question so that the Government have the powers they need to act decisively and effectively to protect national security, and to do so in a way that is fair to our small businesses.

I point to some of the evidence we heard in the evidence sessions. Christian Boney from Slaughter and May said:

"I think you make a very valid point in the context of start-up and early-stage companies. The concern I would have principally is with those companies that are in that phase of their corporate life…For them, this regime is going to make the process of getting investment more time-consuming and more complex."—[*Official Report, National Security and Investment Public Bill Committee,* 26 November 2020; c. 70, Q80.]

Will the Minister consider whether the Bill, as it stands, addresses that?

Similarly, Michael Leiter said:

"The place where I think this is more problematic…is in smaller-scale, early-stage venture investments. That is where deals can go signed to close within hours or days, and having that longer period could be quite disruptive."—[*Official Report, National Security and Investment Public Bill Committee,* 24 November 2020; c. 46, Q52.]

We understand that interim orders and assessments can be extended. It is crucial that the Government respond to those points and think hard about how to put into statute more general powers than this equity funding, especially for cutting-edge start-ups with strategic assets.

We share the aim of the Bill to secure our national security and to ensure that assets that are critical to our national security do not fall under the influence of hostile actors. If in so doing we undermine those assets to the extent where they can no longer contribute to our national security, that is effectively an own goal. I fail to see how the provisions of this clause avoid such an own goal. It would be much to the improvement of the Bill and of confidence in small businesses, particularly start-ups in the sectors affected, if the appropriate form of support could be clearly made available.

We are considering clause stand part, too. We recognise the importance of giving financial assistance, which is what the clause sets out to do. With regard to reporting, I would be interested to understand why the sum of £100 million has been chosen. I am not saying I have another sum to suggest, but why that sum has been chosen is something to understand.

2.30 pm

I think the impact assessment is cited more for what it does not include than what it does, but again, it includes no estimates of financial assistance that the Government might have to provide and the associated costs that would be incurred. Will the Minister say why the sum of £100 million was chosen?

The clause also says that,

"the Secretary of State must as soon as practicable lay a report of the amount".

I imagine that a report of the amount could be a very short one—"£100 million"—but I think all of us who have worked in start-ups and in the tech sector are quite aware that although the financial assistance provided is very important, it also very important to monitor its impact. For example, if it is a loan, in what ways will it be repaid and over what time period, and is the investment effective? I may be mistaken, but I do not see anything in the clause that sets out any need to report anything other than the amount. That is not what I would consider accountability. More generally, for a Government who I hope wish to show good practice on investment and taxpayer value for money, having more information on the amount—but also on how it was used, monitored, how it is to be repaid if it is a loan, and its impact—would also be desirable. On that basis, we support the intention of the clause, but we feel it is in need of some significant improvement.

Stephen Flynn (Aberdeen South) (SNP): I think it was Cicero who said:

"Brevity is a great charm of eloquence."

In that regard, I will keep my remarks brief. Obviously, what we propose here is incredibly straightforward. It would expand the scope from a financial year to a calendar year. I would not wish to imply that I do not necessarily have complete and utter confidence in the UK Government at all times, and that they might wish, perhaps, to stay away from and overcome any form of scrutiny by making some sort of payment at a certain point in time where the overlap is with a financial year. An amendment such as this, which is succinct and clear, would allow for everyone to be quite happy that where there is a need for the UK Government to put in place a financial assistance level of £100 million, irrespective of whether it is a financial year or a calendar year, Members are fully apprised of that spend.

Nadhim Zahawi: For the benefit of the Committee, I will begin with clause 30 stand part, which makes provision for financial assistance. I will then turn to amendment 24, and amendment 28 from the hon. Member for Aberdeen South.

The Government recognise that final orders, in exceptional cases—and I have to stress in exceptional cases, when we are administering taxpayers' money—may bring about financial difficulty for the affected parties. This clause therefore gives the Secretary of State the legal authority to provide financial assistance to, or in relation to, entities in consequence of the making of a final order, to mitigate the impacts of a final order, for example. It might also be used where the consequence of a final order in itself might otherwise impact the country's national security interests.

Hon. Members will know that such clauses are required to provide parliamentary authority for spending by Government in pursuit of policy objectives where no existing statutory authority for such expenditure already exists. I am confident that such assistance would be given only in exceptional circumstances when no alternative was available. For example, the Secretary of State could impose a final order blocking an acquisition of an entity that is an irreplaceable supplier to Government, subsequently putting the financial viability of the entity in doubt. In such a situation, the Secretary of State could provide financial assistance to the entity to ensure that the supplier could continue operating while an alternative buyer was found.

Such spending would of course be subject to the existing duty of managing public money—the hon. Member for Newcastle upon Tyne Central asked what checks and balances are in place—and compliant with any other legal obligations concerning the use of Government funds. To provide further explicit reassurance regarding the use of the power, subsection (1) specifies that any financial assistance may be given only with the consent of the Treasury.

The clause also covers reporting to the House when financial assistance is given under the clause. I will speak to that further when I turn to the amendments. I

[Nadhim Zahawi]

am sure that hon. Members will see the clause as necessary and appropriate, and have confidence that our Government, and future Governments, will have only limited, but sufficient, freedom to provide financial support under the regime as a result.

Amendment 24 would permit the Secretary of State to provide financial assistance in consequence of making an interim order, which was the hon. Lady's point. As she will know, the Government take the management of our country's finances very seriously, and such a power naturally requires appropriate safeguards to ensure that public money is spent appropriately. Restricting the power to final orders ensures that the Secretary of State may use it only to assist entities once a national security assessment has been completed and final remedies have been imposed—for example, to mitigate the impact of a final order on a company. It would not be appropriate to use the power to provide aid to an entity that is only temporarily affected by an interim order, which will last only for a period of review, likely to take 30 working days and, at most, 75.

Chi Onwurah: I thank the Minister for his comments. When he says that an interim order can be in place for at most 75 days, I think he is adding 30 days, which is the initial period, to 45 days, which is the additional period. I am afraid that he is forgetting the voluntary periods.

Nadhim Zahawi: Yes, but the point remains that no final order has been made, and public money will be spent only in very limited circumstances, as I mentioned, in consequence of a final order. Any expenditure will be subject to appropriate safeguards.

Amendment 28, tabled by the hon. Member for Aberdeen South, would require the Secretary of State to inform Parliament if financial assistance given under clause 30 in any financial year, or any calendar year, exceeds £100 million. If during any financial year the assistance given under the clause totals £100 million or more, subsection (3) as drafted requires the Secretary of State to lay a report of the amount before the House.

If, during any financial year in which such a report has been laid, the Secretary of State provides any further financial assistance under the clause, subsection (4) requires that he lay a further report of the amount, so if he makes a report before the end of the year and then spends more money, which was the hon. Gentleman's point, the Secretary of State will need to update the report. As I am sure the hon. Gentleman appreciates, the Government are committed to providing as much transparency as is reasonably possible when it comes to the use of the new investment screening regime provided for in the Bill.

The amendment would effectively mean that the Secretary of State must stand before Parliament twice—likely, once at the end of the calendar year and again at the end of the financial year, a few months later—to lay what is likely to be a rather similar report of the amount given in financial assistance grants under the clause. Although the Secretary of State would be flattered by his popularity, I am sure the hon. Member for Aberdeen South would agree that seeing him for that purpose twice in such a short time would be a case of duplication, and the Secretary of State would not want to take up his valuable time unnecessarily. I can assure him that the Secretary of State is fully committed to transparency and will ensure that Parliament has the information that it needs to track the use of the powers in the regime.

For those reasons, I am unable to accept the amendments, and I hope that hon. Members will not press them.

Chi Onwurah: I thank the Minister for his comments, but I am disappointed that he seems determined merely to respond from his notes, regardless of the validity of the points put to him. On why it is inappropriate for financial assistance to be provided in the case of interim orders, his reason—as far as I can understand it—was purely that interim orders were too short to make any difference. Although he cannot say how long an interim order will last—he can say how long he thinks it may last—it could go on indefinitely, because I cannot see in clause 26 a limit on the number or length of voluntary periods that may be agreed for the assessment. On that basis, the assessment could last a significant time.

In any case, I hope that he, as the Minister for Business and Industry, is aware of how fast-paced the technology sector, in particular, can be. The inability to raise finance at a critical moment or to sell to a particular customer, for example, may cause significant financial and commercial damage to a small business or a start-up. I did not hear the Minister reject that point, yet he has rejected the need for any support during the period of an interim order. As I have shown, that is a mistake, and that is why we will press the amendment to a vote.

The Minister also made no response to my question about equity.

Nadhim Zahawi: I apologise—I should have responded to that, and it was remiss of me not to. We will consider all forms of financial assistance, including equity.

To respond to the point the hon. Lady has just made about companies that may have IP or a product in its early, nascent stage of growth, that are struggling and that are fast-moving in terms of raising funds, we at BEIS talk to many companies like that, outside the remit of the Bill, and we look to support them in a variety of ways.

Chi Onwurah: I genuinely thank the Minister for the clarification that equity investments will be included in this bit of the Bill.

Matt Western (Warwick and Leamington) (Lab): We are focusing greatly on small and medium-sized businesses, but this can also happen to slightly larger organisations, which might be outside the commonly used definition of an SME. When a larger business is distressed because it has lost a major customer and finds itself in financial difficulty, it needs that cash injection, so that sort of assurance is important.

Chi Onwurah: As always, my hon. Friend makes a really important point, and one that I had not thought of. The point about this being applicable to medium-sized businesses is absolutely right. In some ways, medium-sized businesses can often be at a critical point; cash flow is so important, and they could suddenly become very distressed, but with the right cash flow or the right injection of capital, they could expand greatly.

Will the Minister consider this? During the pandemic, when certain innovations have become incredibly important, and cash and support are needed to significantly increase

the volume of production—of a vaccine, shall we say, with which the Minister is intimately concerned—a delay of 30, 70 or whatever days will create a huge problem for a medium-sized or growing business, as well as for small businesses.

2.45 pm

Nadhim Zahawi: In response to a point made by the hon. Member for Warwick and Leamington about a company being in distress because it has lost a client, irrespective of the national security and investment regime we talk to such companies all the time. Whether they are small, nascent, medium-sized or large, we have other avenues of assistance to help those companies. That is the point I was making.

Chi Onwurah: I thank the Minister for that, which brings me to the point that I wanted to make in response to him. I discerned that that seemed to be his point—that the Bill may cause harm to companies, but that rather than seeking redress under the Bill, or this clause in particular, they should seek redress or some kind of compensation through the well-oiled machinery of Government that provides support for small and growing businesses. I am afraid that that response will be met with undiluted cynicism among the many small and medium-sized businesses that have dealt with Government.

Again, we are talking about a fast-moving situation. Perhaps the Minister will provide examples of where, on such timescales, support has been provided. More importantly, if that is a consequence of the Bill, why would it not be addressed in the Bill, especially as we have a clause that seeks to address this issue in the case of notices of final order. I gave the example of OneWeb satellites, which was a major investment that took some time to come about, and we were not clear whether it was a strategic asset or national security. Clarity is critical.

Matt Western: This is important. I take on board exactly what the Minister is saying, but I am sure he can assure me on this. To give one specific example, Imagination Technologies is a fantastic company, which lost its major customer, which was Apple. Chinese-backed investment—private equity—then came in. The US refused the company the chance to buy into a US business in 2017. I would love to think that whoever was in BEIS in 2017 looked at it closely and offered support. This might be beyond our remit, but it is important that such businesses are reached out to. Will someone in the Minister's team confirm that the Government tried to support Imagination Technologies?

Chi Onwurah: I very much hope that the Minister or his Department will respond to that. My hon. Friend gave an example of an innovative company in need of support from the Department. Presumably it was similar to the cases we are discussing now, and that support was offered. If confirmation is not forthcoming, we should perhaps look for it via a parliamentary question, which might help us.

I want to say one word about amendment 28, which seeks to ensure that the term of the reporting does not undermine what is reported or its effectiveness. The Minister said that if the £100 million barrier was crossed, another report would have to be made on any further expenditure. However, the amendment concerns a small amount of expenditure in a given period, followed by a larger amount, and whether the periods in which the expenditure was made might mean that a report did not have to be made. The Minister also did not address the question of why £100 million was the right threshold for making a report. On that basis, I wish to press the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 15]

AYES

Flynn, Stephen	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 30 ordered to stand part of the Bill.

Clause 31

INTERACTION WITH CMA FUNCTIONS UNDER PART 3 OF ENTERPRISE ACT 2002

Sam Tarry: I beg to move amendment 25, in page 20, line 27, leave out from "in" until end of line 28 and insert

"setting out the reasons for such direction and an assessment of the impacts on grounds for action that may have arisen under Part 3 of the Enterprise Act 2002"

This amendment would require the Secretary of State to set out reasons, and an assessment of the likely impacts, when publishing directions under this section.

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

Sam Tarry: The amendment would require the Secretary of State to set out the reasons for and an assessment of the likely impacts of published directions under the provisions regarding the Enterprise Act 2002. That is incredibly important because, in one respect, the Bill creates a radical shift by taking the merger control process, which is currently located primarily in the Competition and Markets Authority, and creating an alternative centre for merger control in the new investment security unit in BEIS. That is a big shift. We are trying to focus on setting out the reasons, and an assessment of the likely impacts, when directions come out of the new unit.

I want to expand a little on this. We have a series of reasons for intervention in investment and merger scenarios, such as national security, competition, financial stability, media plurality, public health—the list goes on. Having a single centre for merger control in the CMA helped ensure, partially, that the different reasons for intervention were considered coherently. At the very least, they were

[Sam Tarry]

coherent as a package, ensuring that where, for example, national security demanded one solution, competition remedies did not force another. The multiple centres that the Bill creates make coherence more challenging. This is about ensuring that the process is as smooth as possible.

The Government must clarify how they intend the CMA's merger control process to align with their new national security screening and approval process. That is particularly important when we reflect that the Government consultation process currently indicates that national security reviews will be run in parallel with CMA assessments and that the Government will cover interaction between the CMA regime and the new national security regime in a memorandum of understanding. Unfortunately, there is no specific indication of when this will happen. The amendment pushes for clarity now and for statutory accountability when a Secretary of State could otherwise undermine the CMA or take a decision that is contrary to something it will bring forward.

In relation to the Enterprise Act 2002, public interest intervention notice regimes allow the Secretary of State to direct the CMA to ensure that it does not inadvertently undermine the Secretary of State's decision on national security in addressing competition concerns. The power to undermine the CMA is not in itself a problem, but it is about the accountability—that is what we are trying to drive at here. In the face of a vastly extended set of powers for the Secretary of State, the amendment would provide important clarification.

Previously, the CMA had a good reputation with business for independence and for reasons and rules-based decision making. We are really keen that that is continued, and that is what the driving force for this amendment is. For that reason, we seek greater accountability from the Secretary of State. The amendment would require that whenever the Secretary of State subordinates the CMA's decision-making process, the reasons for doing so are published alongside an assessment of the impact in terms of whatever reasons the CMA would have had to act under its part 3 powers, whether that be competition, media plurality or quality, financial stability or, as I mentioned earlier, public health.

This is about the smooth and rational alignment of the merger control process. That is important for the integrity and impartiality of our national merger control processes and so that business can have certainty that these will be fully aligned. The question I would really like the Minister to answer is about the assurances the Government can give on providing specific, timely guidance on how many different parts of the merger control process will now work. How will the combination of the new unit and the pre-existing regime produce the guidance, and be driven by Government to do so, in a timely fashion? One thing that businesses are certainly seeking at the moment is assurances that things are set out as early and as clearly as possible. If that happens, it will allow businesses to plan in a much better way. For those reasons, I would like to hear how the Government plan to bring those two elements together.

Nadhim Zahawi: With your permission, Sir Graham, I will speak initially to clause 31 stand part, before turning to amendment 25. As the Bill separates out national security screening from the competition-focused merger control regime, we must, I am sure colleagues agree, ensure that the two regimes interact effectively, while also maintaining the CMA's operational independence in relation to its merger investigations.

A trigger event under the Bill which is also a merger under the Enterprise Act may raise both national security and competition issues. Not having a power to avoid conflict between the two regimes raises an unacceptable risk for businesses' operations and, of course, the Government's reputation. The United Kingdom has a deserved and hard-earned reputation for being a dependable place in which to do business. Transparent regimes are fundamental to building and maintaining this reputation and fostering trust between Government and business.

Currently, under the Enterprise Act 2002, if both national security and competition concerns are raised, the CMA provides a report to the Secretary of State, who would then have the final say on how best to balance national security and competition concerns. This clause will ensure that the Secretary of State continues in his vital role of balancing national security and competition concerns. We will be able to avoid the risk of undue regime interference by maintaining regular and open channels of communication with the CMA.

There may, however, still be a risk that parallel investigations for national security and competition reasons reach conflicting conclusions. That may be particularly true in terms of the remedies required to address national security risks and competition concerns respectively. To remedy that issue, the clause enables the Secretary of State to direct the CMA to take, or not take, a particular course of action. The obligation on the Secretary of State to publish any direction given ensures that the decisions will be transparent, and provides certainty for all parties.

3 pm

As directing the CMA interferes with its independence, we have drafted the clause so as to allow the Secretary of State to give a direction only where he reasonably considers that it is necessary and proportionate to prevent, remedy or mitigate a risk to national security. Furthermore, the power may be used only when a final order under the Bill is in force, or a final notification that no further action will be taken in relation to a trigger event under the Bill has been given. The clause also requires the Secretary of State to consult the CMA before giving a direction.

The amendment tabled by the hon. Member for Ilford South would require the Secretary of State, when publishing a direction given to the CMA under the clause, to set out the reasons for the direction and provide an assessment of its impact on any grounds for action by the CMA in relation to the merger. Let me reassure the Committee that I expect the use of such directions to be rare. Most mergers are unlikely to trigger both competition and national security concerns, and for those that do, the separate processes of the CMA and the Secretary of State will be able to take place smoothly in parallel with each other.

Chi Onwurah: The Minister says that it is unlikely that investigations would trigger concerns on both national security and competition grounds. However, the position that we are in right now with regard to Huawei is one in which the desire for more competition in our telecoms

supply chain—that is, to have three vendors as opposed to two—led to a national security impact, which is why we are now in the process of ripping Huawei out of our network. Does he recognise that such examples may happen?

Nadhim Zahawi: I am grateful to the hon. Lady, but the difference is that I was referring to mergers. Such mergers would be rare. I do not think that anyone is merging with Huawei, or will in the future.

Chi Onwurah: It is quite clear that the acquisition of a vendor in our telecoms network by another country would have almost exactly the same outcome, so it may well apply.

Nadhim Zahawi: I was merely pointing out that there was no merger. The hon. Lady will forgive me: she is correct, but I did say that it is a rare occurrence. That is the point that I was making to the Committee.

The amendment seeks to impose a requirement to publish the reasons for giving a direction. We do not think that that is necessary. The clause already requires the Secretary of State to publish a direction in the manner that he considers appropriate. I do not think that I would be disclosing too many state secrets were I to speculate that that would be published on gov.uk. That is a reasonable bet. In many cases, I envisage that it is likely to be accompanied by a high-level explanation, but it is right that the Secretary of State should be able to decide what is appropriate on a case-by-case basis.

The amendment also seeks to require publication of an assessment of the direction's impact on any grounds for action under part 3 of the Enterprise Act 2002. I have two points to make to the hon. Member for Ilford South. First, such a duty would not be appropriate in all cases—for example, where a direction simply required the CMA not to make a decision on competition remedies until a national security assessment had been concluded. The amendment as drafted would still require an assessment to be published in those circumstances.

Secondly, the predominant impact on grounds for action will of course relate to competition. The CMA is the independent expert competition authority, and nothing in the clause as drafted would prevent it from publishing its own assessment of the impact of a Secretary of State direction on the possible competition issues of a case. The clause also requires the Secretary of State to consult the CMA before giving a direction, so it will be able to inform him of the likely impact and he can factor that into his decision whether to give the direction. I believe that is the right approach and while I understand the hon. Member's motivations in tabling the amendment, I urge him to withdraw it.

Sam Tarry: One of the questions that sprang to mind while listening to the Minister's answer was: if there are conflicting remedies, which of security and economic competitiveness would the Secretary of State decide had primacy? In drawing the matter out as clearly as possible, we have seen that one of the issues with telecoms and Huawei was that the primacy of economic competitiveness was viewed as paramount over security. The Bill is not clear about the framework for assessing primacy when it comes to security. We have argued throughout that security needs to be the primary focus, and sometimes that will mean economic competitiveness taking a slight hit. However, we think this is about protecting our long-term economic interest.

Nadhim Zahawi: I want to reassure the hon. Gentleman. He asks whether the Secretary of State can override the CMA's assessment. To give him some clarity, the power to direct may be used only if a trigger event has been called in for assessment under NSI and either a final order has been enforced or a final notification of no further action has been given. That is stage 1. To direct the CMA without a trigger event having first been called in and assessed would not be either reasonable or proportionate, in the Government's view. However, if a merger is considered to be crucial in the interests of national security after an assessment, no competition concerns should be allowed to prevent it from continuing or remaining in place. I hope that offers him that reassurance.

Sam Tarry: Although that gives me some reassurance, the driving force behind the amendment is to ensure that that is clearly laid out in the Bill, for the reasons I have previously argued. Therefore, I will press for a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 16]

AYES

Flynn, Stephen	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 31 ordered to stand part of the Bill.

Clause 32

OFFENCE OF COMPLETING NOTIFIABLE ACQUISITION WITHOUT APPROVAL

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

The Chair: With this it will be convenient to discuss clauses 33 to 36 stand part.

Nadhim Zahawi: It is important to ensure that we are able to enforce the regime. If hostile actors realise that there is a gap in enforcement capability, that could serve to undermine the deterrent effect of the regime, and therefore compliance with it, and could cause reputational damage to the United Kingdom's screening regime. Clauses 32 to 36 focus on enforcement and appeal. I will run through them at a relatively high level, but I am happy to discuss them in more detail if that would be of interest to hon. Members.

[Nadhim Zahawi]

Clause 32 establishes the offence of completing without reasonable excuse a notifiable acquisition without approval from the Secretary of State. Completing a notifiable acquisition without approval could put national security at risk. In particular, the risk that hostile actors might seek to immediately extract sensitive intellectual property and transport it to far-flung corners of the world, may already have crystallised. Intervention after the event in such circumstances would too often be irrelevant, as that could not undo the damage done to our national security. I am confident that hon. Members will agree that this offence reflects the severe consequences that might result from completing a notifiable acquisition without approval of the Secretary of State in one of the ways set out in clause 13.

Clause 33 makes it an offence for a person to breach an interim order or a final order without reasonable excuse. Under the regime, interim orders and final orders are the mechanisms whereby the Secretary of State imposes revenues for the purposes of safeguarding the assessment and process of national security respectively. They are, therefore, vital components of the legislation. Given that a breach of an interim order or a final order could undermine the assessment process or put national security at risk, it is right that breaches of such orders carry a clear deterrent. I am confident that hon. Members will agree that it is essential to have robust measures in place to ensure effective compliance with any interim orders or final orders imposed by the Secretary of State.

I will move on to clause 34. It is vital that parties comply with information notices and attendance notices, and that parties do not provide materially false or misleading information to the Secretary of State.

Mark Garnier (Wyre Forest) (Con): On how all this will be policed, the Minister is talking about an incredibly important issue that is crucial to the Bill, but it is a bit like the tax evasion problem, in that a tax evader can be prosecuted only when they have been caught. What policing measures are in place to get to the point of imposing sanctions on those who infringe the measure?

Nadhim Zahawi: My hon. Friend is absolutely right. Part of it is the screening process and, obviously, the security agencies play a major role in that.

Under clause 35(2), it is a defence for a person charged with an offence under this clause to prove that they reasonably believe that the use or disclosure was lawful, or that the information had already and lawfully been made available to the public. I hope that hon. Members are reassured that Government are committed to the safeguarding of information collected by the regime.

Finally, clause 36 ensures that persons in authority in bodies—for example, a body corporate, such as a company, or an unincorporated body, such as a partnership—can be prosecuted under the legislation where they are responsible for an offence committed by their body. This clause therefore ensures that individuals who are responsible for offences committed by their bodies cannot simply hide behind those bodies and escape responsibility. Instead, they too will have committed an offence and can be punished for it. If you will forgive the pun, Sir Graham, if there are skeletons in the cupboard—or filing cabinets, I suppose—it is not just the bodies that can be held responsible. I hope hon. Members will agree that these clauses are both necessary and proportionate.

The Chair: There is no guidance in my script on what I do if I do not forgive the pun.

Question put and agreed to.

Clause 32 accordingly ordered to stand part of the Bill.

Clauses 33 to 36 ordered to stand part of the Bill.

Clause 37

PROSECUTION

3.15 pm

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

The Chair: With this it will be convenient to discuss clauses 38 and 39 stand part.

Nadhim Zahawi: The Secretary of State makes decisions under the regime and has the power to impose enforceable interim and final orders. However, the institution of criminal proceedings for offences under the Bill is a matter for the appropriate prosecutor. Clause 37 therefore makes clear who may bring proceedings for an offence under the Bill.

Turning to clause 38, the Government consider it important that persons who have committed an offence under the Bill should be held accountable, particularly partnerships and other unincorporated associations. For example, clause 7 provides that partnerships and unincorporated associations are qualifying entities under the regime. Clause 38 therefore provides that proceedings for offences under the Bill may be brought against partnerships and other types of unincorporated association. I stress that the commencement of criminal proceedings in relation to this regime will likely be very rare indeed but it is nevertheless important that a full spectrum of possible offending is covered.

Clause 39 sets out the criminal penalties available on conviction for offences committed under the Bill. It is crucial that the regime carries a sufficiently robust deterrent to ensure compliance. Given the seriousness of the harm that a breach of the legislation might cause, it is right that these offences carry significant criminal penalties. I do not plan to set out all the penalties available but would be happy to discuss them in more detail if it would be of interest. I hope that hon. Members agree that it is clear who can bring prosecutions under the regime, that it should be possible to prosecute partnerships and unincorporated associations, and that penalties should be sufficiently strong for those convicted of breaking this law.

Question put and agreed to.

Clause 37 accordingly ordered to stand part of the Bill.

Clauses 38 and 39 ordered to stand part of the Bill.

Clause 40

POWER TO IMPOSE MONETARY PENALTIES

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

The Chair: With this, it will be convenient to discuss clauses 41 to 47 stand part.

Nadhim Zahawi: Clauses 40 to 47 cover the civil sanctions under the Bill. I will cover them fairly briefly but I am happy to discuss them in more detail if it would be of interest to the Committee.

It is vital that the Secretary of State has appropriate powers to punish and deter non-compliance with the regime. Should a person breach an order under the regime or fail to provide information or evidence where required, it is vital that the Secretary of State has the power to bring the offender into compliance as quickly as possible to ensure the efficacy of the regime.

Clause 40 provides the Secretary of State with the powers to impose monetary penalties on a person where he is satisfied beyond reasonable doubt that the person has committed an offence under clauses 32 to 34. Clause 40(6) requires the Secretary of State to consider the amount of a monetary penalty to be appropriate before imposing it and it must not exceed the relevant maximum set out in clause 41. The power to impose monetary penalties instead of pursuing criminal proceedings will contribute to ensuring that the Secretary of State has a number of enforcement options to tailor to the situation.

The Secretary of State will not take the power to impose monetary penalties lightly and is required by clause 40(7) to take into account a number of factors, including the seriousness of the offence and any steps taken by the person to remedy the offence in question. I am confident that hon. Members will agree that the clause is valuable in ensuring that the Secretary of State has the appropriate enforcement mechanism to secure compliance with the new regime.

Clause 41 sets out the maximum fixed penalty and, where applicable, the maximum daily rate penalty that may be imposed. The penalties set out here are substantive, and I recognise that they may seem draconian, but they may have to be issued against companies that have significant financial incentive to disregard legal requirements under the regime and put national security at risk by going ahead with an acquisition, so the penalties need to be an effective incentive to comply. I also remind Members that these are maximum penalties; the Secretary of State will have a duty to ensure that any penalty imposed is reasonable and proportionate.

The clause also enables the Secretary of State to make regulations specifying how the maximum penalties applicable to businesses should be calculated and to amend the maximum penalty amounts or percentage rates. It is important that we can adjust any penalties over time, to ensure that they are a sufficient deterrent against non-compliance.

Clause 42 requires the Secretary of State to keep all monetary penalties imposed under review. It also provides a power to vary or revoke penalty notices as appropriate in the light of changing circumstances. Importantly, under the clause, where new evidence comes to light about a breach, it can be taken into account by the Secretary of State, and the penalty notice can be increased, decreased or revoked as appropriate. In all variations, there is, of course, a right of appeal, which is provided for by clause 50.

It is important that both criminal and civil sanctions should be available against offences committed under the Bill, but it would not be appropriate for them to be used in tandem. Clause 43 ensures that parties cannot be subject to both criminal and civil sanctions for the same offence. The clause is vital in giving businesses and other parties certainty and assurance that they will not be penalised in two separate ways for the same offence, which would clearly be unfair.

Clause 44 gives the Secretary of State the power to enforce monetary penalties by making unpaid penalties recoverable, as if they were payable under a court. Failure to comply with a penalty notice would be enforced in the same way as a court order to recover unpaid debts. It also provides for interest to be charged on unpaid penalties that are due.

Chi Onwurah: I thank the Minister for setting out the provisions of these clauses. Perhaps this is my ignorance, but what will happen to the moneys recouped through the penalties?

Nadhim Zahawi: I am very happy to write to the hon. Lady on that, but I suppose the money goes back to the Treasury.

Chi Onwurah: That was my assumption, but I know that in certain cases penalties can be used to offset the expenses incurred in creating the regulatory regime, or in supporting companies that are adversely affected, as we discussed earlier.

Nadhim Zahawi: I am very happy to come back to the hon. Lady on that point.

Clause 45 ensures that the Government are not unduly burdened with costs relating to the imposition of monetary penalties, which can be expensive. The clause enables the Secretary of State to recover the associated costs from those who are issued with a penalty notice. The amount demanded will depend on the circumstances of each case, but the Secretary of State will need to comply with public law duties in imposing the requirements and in fixing the amount. In particular, the amount will need to be proportionate.

Dr Alan Whitehead (Southampton, Test) (Lab): Pursuant to the intervention of my hon. Friend the Member for Newcastle upon Tyne Central, will the Minister and his Department not only think about, but make a positive decision on, where the penalties go? I have in mind, as he will know, penalties relating to misdemeanours by electricity supply companies.

Those are routinely collected and distributed for good purposes—to keep people's electricity bills down, among other things. Maybe the Minister will have a similar scheme that could be a good home for those penalties, so that they are turned around and put to good use.

Nadhim Zahawi: I am quite rightly grateful to my brilliant Whip for reminding me that the Bill contains the provision that the moneys be paid into the Consolidated Fund.

Clause 46 requires the Secretary of State to keep cost recovery notices under review and provides him with the power to vary or revoke a cost recovery notice as he considers appropriate. That will reassure businesses and other persons that cost recovery notices remain appropriate. Finally, it is important that the Secretary of State be able to recover the associated costs from those who are issued penalty notices. Clause 47 therefore provides for an effective range of consequences for non-compliance

[Nadhim Zahawi]

with a cost recovery notice, including the charging of interest, and acts as another important tool in the Secretary of State's enforcement powers. I hope that the Committee will appreciate the rationale for clauses 40 to 47, which are essential for the effectiveness of the regime.

Question put and agreed to.

Clause 40 accordingly ordered to stand part of the Bill.

Clauses 41 to 47 ordered to stand part of the Bill.

Clause 48

ENFORCEMENT THROUGH CIVIL PROCEEDINGS

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

Nadhim Zahawi: The regime relies on parties complying with information notices and attendance notices, and with interim orders and final orders. Those are crucial levers that the Secretary of State will use to identify, assess and address national security risks, so it is vital that he has appropriate powers to ensure that a person who is given such an order or notice complies with the requirements as set out.

The clause provides the Secretary of State with the power to bring civil proceedings for an injunction or other remedy to require compliance. The power applies whether or not the person is in the UK. Failure to comply with an order made by the court in those circumstances is likely to be considered contempt of court. We should not forget that any failure to obey an information notice or attendance notice, for example, could result in the Secretary of State having insufficient information to decide whether to call in an acquisition or carry out an effective national security assessment. Breaching the requirements of an interim order or final order may undermine the assessment process or harm national security.

Above all, I hope that the Committee will agree that the clause further strengthens the Secretary of State's enforcement powers, playing a key role in ensuring the efficacy of the regime.

Question put and agreed to.

Clause 48 accordingly ordered to stand part of the Bill.

Clause 49

PROCEDURE FOR JUDICIAL REVIEW OF CERTAIN DECISIONS

Dr Whitehead: I beg to move amendment 26, in clause 49, page 30, line 31, leave out "28 days" and insert "three months"

This amendment would extend the period within which applications for judicial review may be made from 28 days to three months.

The Chair: With this it will be convenient to discuss clause 49 stand part.

Dr Whitehead: I have not spoken other than to intervene, so the amendment gives me a brief opportunity to commend the heroism of my fellow Committee members for carrying on proceedings when most of them wish they were somewhere else because they are too cold. I hope that the authorities will consider ameliorative steps so that we can be a little warmer when the Committee meets on Thursday. Alternatively, Sir Graham, we may need to invent a new Standing Order by which the Chair can rule on whether Members have permission to remove their coats, rather than the customary jackets, before the beginning of proceedings. I am sure that would not be necessary if reasonable action were taken.

The amendment concerns what is referred to in the clause title: the procedure for judicial review of certain decisions. It would be helpful if the Minister clarified what the clause means for other decisions that are set out in the Bill but not included in the provisions for judicial review set out in this clause.

3.30 pm

The procedures in subsection (2) relate to judicial review of a "relevant decision". Relevant decisions are specified in various clauses, and include the power to require information, the power to require the attendance of witnesses, the power to require the attendance of witnesses outside the UK, the discharge of information, data protection, CMA information, and so on. That means that a number of other decisions in the Bill are not covered by this clause, including, for example, decisions to call in a transaction.

My initial question to the Minister—I would be grateful if he intervened on me—is whether those other areas of decision, which are in the Bill but not covered by this clause, are covered by standard judicial review procedures, not covered by judicial review procedures at all, or covered by reference to the Enterprise Act 2002, which has procedures within it that do not appear to refer directly to some of the other decisions in the Bill that are not covered by this clause. Can he clarify what happens to those decisions in the Bill—I have mentioned one: the call-in notice—that are not covered in subsection (2) on what a relevant decisions means? Does he have any guidance that he can give the Committee on that?

Nadhim Zahawi: I am happy to write to the hon. Gentleman on that, but my understanding is that individuals or entities that feel that they have been wronged by the actions of the Secretary of State can JR the Secretary of State.

Dr Whitehead: I thank the Minister for that clarification, which appears to suggest that the whole of the Bill, or the decisions in it, are in principle covered by the ability to bring a judicial review. He will know that under the Civil Procedure Rules 1998 there is some pretty clear guidance about the time limits for judicial reviews. Indeed, the CPRs state that claims must be lodged promptly and, in any event, no later than three months after the grounds to make the claim first arose, unless the court exercises its discretion to extend. The judicial review rules are pretty much governed by that three-month time limit.

In the clause, the framers of the Bill have taken out certain elements of the Bill. I mentioned some of them, including the attendance of witnesses and the power to require information. They have said that, while no new procedure has been put in place for reviewing certain decisions—that is, the normal rules of judicial review apply—the big difference is that any action must be brought within 28 days of the event, and not within three months, as is the case in the standard judicial review arrangements.

Chi Onwurah: I thank my hon. Friend for the excellent points that he is making, which give cause for concern and thought. Given the Minister's earlier assertion that there was no need for a complaints procedure with regard to the provisions of the Bill, does my hon. Friend agree that neither the reporting requirement, which we have identified will not mean reporting on everything, nor the judicial review provisions, which we have now identified are not reviewable in the normal timescales for everything, will be sufficient to address the concerns of small and medium-sized enterprises? Does he also agree that that will clearly not be the case given the complexities that he has outlined?

Dr Whitehead: My hon. Friend makes an important point about the extent to which justice in such circumstances might be like the Ritz: open to everybody, but not necessarily quite as open to some as to others.

Certainly, that is the case with the time reduction applied to those particular things in the clause. Nevertheless, that reduction has to fit in with judicial review rules for everything else. That is, no new procedure is set out in the Bill, which is otherwise reliant on the standard judicial review procedures.

Hon. Members will see that elsewhere the civil procedure rules refer to the provision of skeleton arguments before a judicial review can be heard. Under those rules, such arguments must be undertaken within 21 working days of a hearing, which in practice means close to the 28 days in the clause, which are not as working days. Given the adherence to the rest of the judicial review rules, therefore, the 28 days can conceivably reduce to virtually nothing the period in which a person may apply for a claim to judicial review under the Bill.

Furthermore—this is what I think my hon. Friend was alluding to—given that brief timescale, it is important and I would say necessary to have a clear idea of when the event that caused the 28-day timescale to come in took place. I turned up an interesting article, one of Weightmans' "Insights", from October 2013, entitled "Is the clock ticking? The importance of time limits in judicial review". The point made in that article is that getting the point at which the clock started ticking absolutely right is important.

I am not certain whether all the events specified in the clause have identical starting points. That is, is the starting point a trigger mechanism? Is the starting point the issuing of a notice? Is the starting point the receipt of a notice? If the receipt of a notice is delayed—and the judicial review procedure very much hinges on the actions of the Secretary of State in issuing notices—my hon. Friend can imagine that, for a small business, that could be very confusing and possibly difficult to adhere to. If it turns out that the point at which the 28-day clock starts to tick varies according to different provisions of the clause, descibed as the particular provisions that the Secretary of State has reserved for the 28-day reduction in judicial review, that will be pretty difficult for people to adhere to properly.

Judicial review is a very important part of the process; not that it would often be used, but it is important that it is there in the Bill. It is also important that the people affected by the arrangements have access to the judicial review process. The Government obviously recognise that by putting it into legislation. I am concerned not about the fact that it is in the legislation—it should be—but about whether placing certain areas of concern in the Bill under that 28-day heading has been completely thought out. If it has been completely thought out, why has it been thought out in that particular way? What is it about those things that requires the normal rules of judicial review to be reduced from three months to 28 days?

Chi Onwurah: I am sorry to interrupt my hon. Friend while he is in full flow, and I am immensely grateful for what I am learning about the intricacies of the judicial review process and the importance of understanding the initial timing and what the trigger event was. He mentioned that skeleton hearings must take place within 21 working days. Can he say a little bit more, for my understanding, about how those skeleton hearings affect the following timetables in the process?

Dr Whitehead: My hon. Friend somehow suggests that I have knowledge and expertise beyond my calling. I should say that I am not a lawyer, so I have only limited guidance to give her on this. However, from my reading of civil procedure rules, there are certainly elements, which I think relate to working days in some instances and to simple time in others, that are sub-time limits within the overall limit for judicial review. Civil procedure rules give those sub-limits as working practices for the operation of judicial review overall. The skeleton argument rule requires skeleton arguments to be put to the court within a certain period before the hearing takes place. If the hearing is delayed for a long time after the initial event, the 21 days apply before the court hearing. However, if the court hearing is close to the event, those sub-rules within the overall judicial review rules could affect quite substantially an individual's remaining time to get their case together prior to the hearing.

3.45 pm

Under our current constrained court arrangements, there is no danger of that because court cases are in a serious logjam. However, It serves to put a question mark against how and why the 28-day period was decided upon. Why were these things in particular pulled out and put into the 28 days when other sections of the Bill do not come within 28 days but within three months? What is the rationale behind that?

The amendment suggests that this is probably not a good idea. While it might be seen as redundant in that it says that these sections should not be pulled up and put in a 28-day box, it is probably better for the general principle of upholding judicial review as a reasonable defensive remedy in respect of some of the Bill's elements to put them back to the standard three-month period. That of course arises because that is what the Government have chosen to do with the Bill. They have chosen to go with standard judicial review proceedings. It would have been possible to write a different form of proceedings into the Bill.

The Enterprise Act 2002 provides for an appeal to a tribunal, which then proceeds along standard judicial review rules but is not the standard judicial review procedure. The Government have not decided to do that, but to do something else. My question to the Minister is why. The question that follows if there is no good answer, is why not just leave it as it is? Why not

leave it to the judicial review procedure with three months? That would not cause anyone any real problems but, on the contrary, might ensure that smaller businesses and organisations have a reasonable opportunity to defend themselves and pursue judicial review in the knowledge that they have more than a very small amount of time to get the judicial review procedures together when they wish to mount them.

As I have said, I am sure that it will be a pretty rare procedure, but it is nevertheless important to maintain it in the Bill. I am sure we all agree that it is an important part of UK law that that should be a remedy open to everyone to undertake, as the Minister mentioned. I hope that I will get a compelling argument from him about why this has been done in this way and what advantages outweigh the disadvantages that I have outlined. If he can do that, I hope that it will not be necessary to divide the Committee this afternoon, but I fear that it might be if the argument that comes forward proves on examination not to be as compelling as I am hoping.

Nadhim Zahawi: I am grateful to the hon. Gentleman for his reasoned and thoughtful remarks. As I said in my intervention, all decisions in the Bill are subject to judicial review. Clause 49 does not apply to information sharing post screening or enforcement decisions. The exception to JR is monetary penalties and cost recovery, which have a bespoke appeals process, as he probably knows.

Clause 49 concerns the procedure for judicial review of certain decisions. The clause provides that any claim for judicial review of certain decisions, which are set out in the clause, must be no more than 28 days after the day on which the grounds for the claim first arose, unless the court considers that there are exceptional circumstances. That period is shorter than the usual period in which a judicial review may be sought, as we have heard from the hon. Member for Southampton, Test. Generally, judicial reviews must be sought within three months, and in England and Wales, but not in Scotland or Northern Ireland, they must also be sought "promptly".

I will set out why that is the case shortly when I turn to amendment 26, but I believe that the shortened time limit strikes the right balance for the regime, enabling sufficient time for a claim to be lodged while providing for timely certainty about the effect of relevant decisions made under the Bill. I should also note that the court may entertain proceedings that are sought after the 28-day limit if it considers that exceptional circumstances apply. The usual route to challenge a decision made by the Secretary of State is via judicial review, and this is entirely appropriate for decisions made under the Bill. However, it is vital that this route does not result in prolonged uncertainty over decisions relating to screening.

I now turn to amendment 26, which seeks to extend the period within which applications for judicial review may be made from 28 days to three months. As I have set out, the Bill's 28-day period in which claims for judicial review of certain decisions made under the Bill generally must be filed is shorter than the usual period in which judicial review may be sought. Again, it is entirely right that the hon. Gentleman wishes to probe us on why that is the case as judicial review plays a key role, which he clearly agrees with, in ensuring that the Government, and the Secretary of State in the case of this regime, act within the limits of the law. We have thought carefully about that while developing the Bill, and I welcome this discussion.

Why the shorter period? It is undeniably important that the Secretary of State is held independently accountable for his decisions under the regime. That must, however, be balanced—this is the important thing—against the need to avoid prolonged uncertainty over the status of screened acquisitions or the general functioning of the screening regime, which may have a chilling effect on investment, leaving the types of questions that a judicial review would answer, such as whether a decision to clear a transaction was unlawful, potentially still open for three months before it is clear that a judicial review is not going to be sought, which could make it extremely difficult for the various parties affected to plan and adjust following such a decision. Any party with a sufficient interest could seek a judicial review and all parties affected could be impacted. That is why we have come to this decision.

Chi Onwurah: I thank the Minister for the points he is making, which I am seeking to understand. Clause 49(2) mentions "relevant decisions". Why would "section 19", "section 20" and "section 21" that deal with the powers to require information and so on cause uncertainty, and not other provisions in the Bill?

Nadhim Zahawi: The point I was trying to make is that the uncertainty in any of those sections means that any party to a transaction can, if they feel they could frustrate the process because the outcome might not be advantageous to them, use the judicial review process to add to the uncertainty of a transaction. In addition, there is also a public interest in timely certainty and finality about decisions made under the regime that are, after all, imposed for the purpose of safeguarding national security. The 28-day limit is also in line with the current merger screening regime that the hon. Member for Southampton, Test asked about, where applications for the competitions appeal tribunal made under the Enterprise Act 2002 to review a merger decision must be made within four weeks, a time period chosen after public consultation. There may be some situations where, for legitimate reasons, 28 days is simply not enough. It is therefore important to remember that this Bill provides that the court may "entertain proceedings" that are sought after the 28-day limit, if it is considered that exceptional circumstances apply.

This shortened time limit and flexibility is for the courts to deal with exceptional circumstances. It strikes the right balance for this regime, in my view. It allows sufficient time for parties to obtain legal advice and mount a challenge, while also providing timely certainty about the effect of the relevant decision made under the Bill. I therefore hope that the hon. Member for Southampton, Test will withdraw the amendment.

Dr Whitehead: I have to be honest, I did not think that was very good. Let us start with who is shortening and who is not shortening. The Minister said that the Opposition seek to lengthen the period; no, the Opposition are not seeking to lengthen the period. The Government are seeking to shorten the period that is standard in the UK justice system as far as judicial reviews overall are concerned.

That is a very important point, because the Opposition are not trying to do something that is not an ordinary principle of British justice; the Government are trying to that. The Minister's remarks could have applied to a lot of other areas, where it might be a bit inconvenient to have a judicial review being tenable for a three-month period after an event had occurred. However, it is not a question of inconvenience. Is a matter so important to national security that the 28 days can be justified under those terms?

The Minister has sought to justify the 28 days under the terms that there may be some uncertainty if there is a longer period for judicial review to be undertaken. He is potentially right about that, but not right as far as this Bill is concerned. He is right potentially as far as any application for judicial review is concerned, in all sorts of areas in this country. That is the problem of judicial review for the Administration, under any circumstances. When someone comes along and says, "I'm going to JR this," a lot of people clap their hands and say, "That's very inconvenient. It really does foul things up, because we would like to do this, that and next thing, but because we have been judicially reviewed, we have to carry out the procedure that is there."

As several people have said in a number of different circumstances, the fact that the JR procedure is there and that often ordinary people have a reasonable amount of time to get their case together to undertake the JR process, is an important principle of the British justice system. The Minister has made no serious case for why these things should be so special under these circumstances. Interestingly, the consultation document did not make any case at all for the 28 days, other than to note that it was a shorter period. I am sorry to say that this appears to be a shortened period simply for administrative convenience.

Chi Onwurah: Does my hon. Friend think that shortening the JR period for administrative reasons is especially contentious, given that the judicial review process would be the only option for small and medium enterprises to complain about the way in which they are being treated under this process? The Minister says that their only option to make a complaint is effectively to JR it, yet they are given less time to JR it.

Dr Whitehead: My hon. Friend hits the nail on the head. In many circumstances, we are not talking about the sort of JRs that we hear about in the press, where a big corporation has been judicially reviewed on some subject by another large corporation, or some big body has judicially reviewed someone else about a planning decision.

4 pm

Firms that employ very small numbers of people often find themselves tied up in this process. They need to have this remedy available to them in a way that they can genuinely use, so that they are not constrained by the imposition of what is, as I said, essentially an administratively convenient reduced timescale. I do not think that that ought to be in the Bill. For that reason, we need to press the amendment to a Division, to see whether we can restore to the Bill the three-month period in which people can exercise their right to JR.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 17]

AYES

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

NOES

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

Question accordingly negatived.

Clause 49 ordered to stand part of the Bill.

Clause 50

Appeals against monetary penalties

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

The Chair: With this it will be convenient to discuss clauses 51 and 52 stand part.

Nadhim Zahawi: With permission, Sir Graham, I will speak to clauses 50, 51 and 52 together. Clause 50 concerns appeals against penalty notices or variation notices. It is only right that parties have the opportunity to appeal decisions made by the Secretary of State in relation to monetary penalties imposed. Clause 50 provides a person who has received a penalty notice or a variation notice with the right to appeal to the court within 28 days, starting from the day after the notice is served.

On an appeal against a penalty notice, the clause provides that the court may confirm or quash the decision to impose a monetary penalty, confirm or reduce the amount of a penalty, and confirm or vary the period in which the penalty must be paid. It may not increase the amount of the monetary penalty. Where the appeal is against a variation notice, the court may confirm, vary or quash the variation, but again it may not increase the amount of the monetary penalty.

Clause 51 provides a right of appeal against decisions made by the Secretary of State related to requirements to pay costs associated with monetary penalties. Clause 52 concerns extraterritorial application and jurisdiction to try offences under the regime. Let me briefly turn back to clauses 32 to 35, which create the offences of the regime. We would normally expect that if those offences occurred, they would happen in the UK. That will not, however, always be the case, and offences will not always involve UK nationals or bodies.

As befits a regime that concerns the actions of international actors in relation to the United Kingdom, the Bill has some application beyond the shores of the UK. For example, the Bill gives the Secretary of State the power to issue final orders on conduct outside the UK by certain categories of person with a connection to the UK, including UK nationals and companies incorporated here. Therefore, clause 52 provides for the offences in clauses 32 to 35 to have extraterritorial effect, including in relation to non-UK nationals and

[Nadhim Zahawi]

bodies. That means that conduct abroad that amounts to an offence can be prosecuted and it also enables the Secretary of State to impose monetary penalties in relation to offences committed outside the UK. That ensures that regime obligations are not unenforceable simply because they concern conduct abroad. I hope that hon. Members will agree that, in a globalised world where transactions routinely take place across borders, it is important for enforcement to be able to react with equal agility. I therefore submit that the appeals process set out in the clauses should be adopted and that, in a globalised world, it is necessary for extraterritorial regime breaches to be enforceable.

Chi Onwurah: It is a pleasure to respond in this debate and observe how quickly we have galloped throughs parts 2 and 3. I wonder if that may in part relate to the descending temperatures that we are enjoying. While I know that the Committee shares my fascination with the various procedural and judicial issues with which we were wrestling, the temperature gave no scope for anyone to get comfortable enough to fail to pay attention. I recognise that we on this side of the Committee are in an advantageous position in that we are furthest from the open windows.

We recognise the importance of clauses 50 to 52 in terms of appeals against monetary penalties, of appeals against costs and of having extraterritorial application and jurisdiction to try offences. The Minister set out the reasons for that. To return to an intervention from the hon. Member for Wyre Forest, I am concerned about whether the provisions will be enforceable and useable in having extraterritorial application and jurisdiction over those who are not British and where the offence does not take place in the UK. Do the Government envisage—the impact assessment is, once again, remarkably silent on this—issuing international warrants to get access to those thought to have committed offences but who are not in the UK? Will the measures be pursued and enforced actively or are they there to deal with exceptional circumstances? I would be happy for the Minister to intervene.

Nadhim Zahawi: I think that the hon. Lady's question is whether the Government will genuinely be able to punish offences committed overseas. Clearly, in a globalised world where transactions routinely take place across borders, it is important that we have the ability to punish offences and be as agile as those who wish to do us harm. It is therefore right that these offences have extraterritorial reach. We will work with overseas public authorities to ensure that offenders face justice where appropriate.

Chi Onwurah: I thank the Minister for that intervention. I am reluctant to test his tolerance by bringing Brexit into this, but I hope that we will continue to have the means to engage with overseas jurisdictions in order to pursue those who break UK law, here or abroad. We will not oppose the clauses, and I congratulate the Committee on making such speedy progress.

Question put and agreed to.

Clause 50 accordingly ordered to stand part of the Bill.

Clauses 51 and 52 ordered to stand part of the Bill,.

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

4.11 pm

Adjourned till Thursday 10 December at half-past Eleven o'clock.

Written evidence reported to the House

NSIB03 Joint Working Party of the Company Law Committees of the City of London Law Society and the Law Society of England and Wales