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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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In Hybrid sittings, [V] after a Member's name indicates that they contributed by video call.

The following abbreviations are used to show a Member's party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Tuesday 16 March 2021

The House met in a hybrid proceeding.

Noon

Prayers—read by the Lord Bishop of Winchester.

Arrangement of Business
Announcement

12.07 pm

The Lord Speaker (Lord Fowler): My Lords, the Hybrid Sitting of the House will now begin. Some Members are here in the Chamber, others are participating remotely, but all Members will be treated equally.

Oral Questions will now begin. Please can those asking supplementary questions keep them brief and confined to two points? I ask that Ministers' answers are also brief.

Climate Change Committee: Carbon Budget Report
Question

12.08 pm

Asked by ***Baroness Blackstone***

To ask Her Majesty's Government, further to the report by the Climate Change Committee *Sixth Carbon Budget report*, published on 9 December 2020, what plans they have (1) to engage the public on, and (2) to ensure the behaviour changes included in, the recommendations of that report.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): My Lords, we are engaging the public on the challenge of net zero through regular dialogues, consultations and online advice services. In 2020, we launched the brand Together for Our Planet, with a dedicated website, stakeholder engagement and a push across government digital channels. We are also developing policies to support people to make greener lifestyle choices, such as buying an electric vehicle or insulating their home, which will form part of the upcoming sectoral decarbonisation plans.

Baroness Blackstone (Ind Lab): My Lords, I thank the Minister for his Answer, but I am sure he will agree that we need more than a website. Four months ago, the Minister assured the House that a dedicated engagement team was up and running and working on how COP 26 could be utilised to best affect behaviour change. So far, the only civic society engagement is an art competition for under-16s and a hashtag. Assuming that that is not the extent of the campaign, can the Minister say when the behaviour change part will be launched, what areas it will cover and who is leading on it? Speed is of the essence.

Lord Callanan (Con): Throughout 2020, we held deliberative dialogues with the public on transport and heat decarbonisation, the environment, the future of food, carbon capture, usage and storage, and our transition to net zero. I can assure the noble Baroness that, in the run-up to COP 26, we will be working closely with businesses, civil society groups, schools and others.

The Lord Bishop of Winchester [V]: My Lords, at local and national levels, in communities across the country, the Church of England is committed to reducing net carbon emissions to zero by 2030. Can the Minister say a bit more about the plans Her Majesty's Government have to offer practical support for local communities already committed to transformation, using new, low-carbon technologies to achieve net-zero emissions?

Lord Callanan (Con): The right reverend Prelate makes some good points. A BEIS-supported parish council carbon calculator has just been launched to support local communities to develop their own plans for tackling emissions locally. Once they have developed a plan, the Rural Community Energy Fund is available to support the development of net-zero energy projects.

The Earl of Caithness (Con): My Lords, does my noble friend agree that the advice he mentioned in his reply to the original Question needs to pass the "three Cs" test and be clear, concise and consistent? Does he agree that the handling of the Cumbrian coal mine is an example of where the three Cs test was failed on all accounts?

Lord Callanan (Con): My noble friend will realise that there is a limit to the amount I can say on this. The planning application was called in by the Secretary of State for Housing, Communities and Local Government on 11 March.

Baroness Boycott (CB) [V]: My Lords, in November, I asked a supplementary question, and the Minister said that

"all campaign spend will be released in line with the usual Cabinet Office spend data publications."—[*Official Report*, 18/11/20; col. 1415.]

This was in relation to what we are spending on engagement for COP. I have had a look, and I cannot see anything related to COP 26 engagement since then. Can the Minister please be clear about whether or not the Government actually plan to spend money on public engagement to drive behaviour change? If so, what is the budget? As the noble Baroness, Lady Blackstone, said, this is a crucial and urgent issue. If the Minister does not have the figures to hand, could he please write to me and place a copy in the Library?

Lord Callanan (Con): I agree with the noble Baroness that this is crucial work, and, as I said, the figures will be released in due course. If there is any further information I can release at the moment, I will of course write to the noble Baroness.

Lord Clark of Windermere (Lab) [V]: My Lords, the message from the *Sixth Carbon Budget* report is important but complicated. We need to take people with us if we are going to succeed. The message needs to be clearer

[Lord Clark of Windermere]
and simpler. Will the Government use the resources at their disposal to re-present the case, so that it can be understood by the ordinary person and not only the expert?

Lord Callanan (Con): I agree with the noble Lord that we need to engage not only experts or early movers in this technology but the public as a whole. He makes some good points, and we will engage the full resources of Government to make sure that this message gets across.

Lord Greaves (LD): My Lords, I chair Pendle council's climate emergency working group. An additional 100 pages, as part of this huge document, are about local authorities:

"For local authorities, this does not entail focused emissions cuts"—

this is government policy—

"in separate sectors, but means transforming whole places towards Net Zero, working with residents, communities and businesses to deliver the right changes and investments for the area."

That seems fairly obvious to some of us, but the report says that

"there is no overall plan for how local authorities fit into delivering Net Zero."

Will the Government devote more attention to the need to bring local authorities together in this vital work?

Lord Callanan (Con): The noble Lord makes some good points. Local government is indeed a key partner in delivering net zero, and this Government are supporting it with a range of funding streams covering key decarbonisation areas such as transport and building. Local government bodies are, of course, key to leading transition in their areas, leading by example on their own estates, and supporting and enabling others to follow their campaigns.

Lord Lucas (Con) [V]: My Lords, does my noble friend the Minister agree that, since we are asking for long-term, fundamental and voluntary changes in behaviour, we should do that on the basis of trust and openness? Will the Government investigate the potential for setting up a repository of the best available data and research, so that individuals can easily establish, for instance, how much they are helping by adopting a vegan diet and how on earth it is possible for the local council to say that it is recycling when it is mashing up broken glass with our newspapers?

Lord Callanan (Con): I certainly agree with the first part of my noble friend's question about the need for trust and openness. The Government are currently examining how best to support the public in making green choices and adopting sustainable behaviours. This includes identifying information that people need and how it can best be communicated, and providing it in an accessible format.

Lord Grantchester (Lab): My Lords, one year into the pandemic, what lessons have the Government learned to encourage behavioural change in relation to net zero, given that the Public Accounts Committee reports this month that the

"Government has not yet properly engaged with the public on the substantial behaviour changes that achieving net zero will require",

via co-ordinated, cross-department, consistent messaging?

Lord Callanan (Con): It is important that we get cross-departmental working going correctly. Obviously, the pandemic has resulted in some challenges in this area, but we are devoting considerable attention across government committees, and different departments are engaging with each other to try to get that message across. I agree with the noble Lord that there needs to be consistent messaging, and we need to get all of government focused on this effort.

Lord Krebs (CB) [V]: My Lords, to get to net zero we need to encourage people to switch from cars to walking and cycling for local journeys. In this context, how does the average investment in local infrastructure in the UK to support this transition compare with places such as Copenhagen, where this has been done successfully, with about 50% of journeys on foot or bike? Secondly, my local authority, Oxfordshire County Council, is proposing changes that will increase car traffic in residential urban side streets and therefore discourage walking and cycling. How will the Government respond to this?

Lord Callanan (Con): I am not aware of the specific changes proposed in Oxfordshire—I will certainly have a look at that—but there is a walking and cycling strategy. The Government have devoted considerable resources through the Department for Transport to encouraging both those modes of transport.

Baroness Sugg (Con) [V]: My Lords, the *Sixth Carbon Budget* report includes options for reducing emissions in the aviation sector. Can my noble friend the Minister tell us what the Government are doing to encourage sustainable aviation fuels, the development and take-up of which would not only reduce emissions but would support and create new green-collar jobs across the country?

Lord Callanan (Con): My noble friend makes some very good points. As we were both aviation Ministers, I am delighted to tell her that today we launch the Green Fuels, Green Skies competition, which will provide up to £15 million in funding for the early-stage development of first-of-a-kind, large-scale sustainable aviation fuel projects in the UK.

Lord Taylor of Goss Moor (LD) [V]: I refer noble Lords to my interests in relation to sustainable development and low-carbon heat. Does the Minister agree that the switch from coal to gas was successful primarily because it was made easy and simple for households to make the switch by connecting to the infrastructure that was put into the great majority of streets in the UK? Is there more that the Government could do to support low-carbon networked heat solutions to make it similarly easy for people to connect and go low-carbon?

Lord Callanan (Con): The noble Lord makes some very good points. Networked heat will be one of a number of different contributions that we will need to make to encourage transition to low or no-carbon heating. A number of different options are available, supported through a range of government incentive schemes.

The Lord Speaker (Lord Fowler): My Lords, all supplementary questions have been asked. We therefore come to the second Oral Question.

Independent Office for Police Conduct

Question

12.19 pm

Asked by ***Lord Lexden***

To ask Her Majesty's Government what assessment they have made of the work of the Independent Office for Police Conduct in relation to Operation Midland.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Wolfson of Tredegar) (Con): My Lords, following the publication of the IOPC's investigation report, in October 2019 the Home Secretary asked the director-general to set out his plan for improving public confidence in the IOPC. The Home Secretary has been clear that she believes that there are outstanding questions and will discuss these with Sir Richard Henriques. We also welcome the Home Affairs Committee's current inquiry into the police complaint system. We understand that the committee is taking evidence in relation to Operation Midland.

Lord Lexden (Con): My Lords, would we not all agree across the House with the following words:

"I find it quite extraordinary that anyone who is referred for misconduct is not interviewed"?

Would we not all share courageous Lady Brittan's astonishment that a deputy assistant commissioner of the Metropolitan Police—a man who was in charge of the disastrous Operation Midland and who allowed false evidence to be used to obtain search warrants—was not asked a single question in person before being cleared by the IOPC of allegations of misconduct? Why has the distinguished former High Court judge Sir Richard Henriques, to whom my noble friend referred, not yet received a reply to his request last month for an investigation into the

"apparent condoning of police criminality by its notional watchdog"

and other serious issues? Why is Sir Richard still waiting for an answer, and when will the investigation be started?

Lord Wolfson of Tredegar (Con): My Lords, as I understand it, Lady Brittan has received an apology from the Commissioner of the Metropolitan Police; again, I extend my sympathy to her for the events to which she and indeed her late husband were subjected. The IOPC is an independent body, which takes its decisions independently from the Government and from the police. I cannot and will not comment on the way in which the IOPC conducts its own investigations. My understanding is that Sir Richard will receive a letter from the Home Secretary. However, it is worth bearing in mind in relation to his more recent comments that in his report itself Sir Richard said that

"the officers had conducted this investigation in a conscientious manner and with propriety and honesty."

Lord Hunt of Wirral (Con) [V]: Like my noble friend Lord Lexden, I hope that Ministers will initiate a comprehensive inquiry into the manifest shortcomings of Operation Midland and the IOPC. I also wonder whether the Minister shares the widely held view that the considerable injustice done to all those who have been defamed can never been remedied without expanding the remit of any such inquiry to include Midland's associated and no less egregious scandal, Operation Conifer.

Lord Wolfson of Tredegar (Con): My Lords, as regards injustice, as I have previously said, the commissioner has apologised both to Lady Brittan and to Lord Brammall. On the shortcomings of the IOPC, we agree that there is room for further progress. The Home Secretary has raised concerns about the IOPC's performance, and in October 2019 she formally requested a report on the IOPC's plans to increase efficiency and effectiveness—that is on the Home Office website. The Government are not minded to initiate a public inquiry into either Operation Midland or Operation Conifer, because both operations have already been subject to considerable scrutiny.

Lord Berkeley of Knighton (CB) [V]: My Lords, we all want to avoid terrible cases like this. Some people are concerned that if there is anonymity up until charging, which of course would stop cases like this one and that of Cliff Richard, people may not come forward with important information. However, does the Minister agree that if people come forward after charging, that is still possible and in fact more possible, because the CPS will by then have looked at the allegations and found out whether there was anything worth pursuing?

Lord Wolfson of Tredegar (Con): My Lords, there is indeed a difference between pre and post charge. The Government believe that, in principle and in general, there should be a right to anonymity pre charge in respect of all offences. But—it is an important but—there will be exceptional circumstances where there are legitimate policing reasons for naming a suspect, such as an imminent threat to life. The guidance in this regard is governed by the College of Policing's authorised professional practice on media relations, which states:

"Police will not name those arrested, or suspected of a crime, save in exceptional circumstances … such as a threat to life, the prevention or detection of crime, or where police have made a public warning".

After charge, as the noble Lord indicates, the position is different.

Lord Campbell-Savours (Lab) [V]: My Lords, should we not congratulate the *Mail* and in particular journalist Stephen Wright for his forensic work in unravelling the Beech affair and their exposure of deficiencies in the Rodhouse-led investigations? Why does not Mr Rodhouse, who prior to the abuse scandals had a reputation for competence and thorough investigations, interview and explain the background to his actions? We all make mistakes in life and sometimes admitting them can be both therapeutic and clear the air. At least the public would then understand what has happened.

Lord Wolfson of Tredegar (Con): My Lords, so far as the *Mail*'s investigations are concerned, I would make three points. First, the message must go out that if you deliberately lie about sexual abuse, you will go

[Lord Wolfson of Tredegar]
to prison for a long time—in this case, 18 years. Secondly, as the noble Lord said, people make mistakes. The MPS made mistakes, it has learned, it needed to learn, and it is continuing to learn. Thirdly, however, the message must go out: if you are a victim of child sex abuse, even if it is historic, come forward. We have successfully prosecuted and obtained over 5,000 convictions, and in every case we will seek to ensure that justice is done, whether that be a conviction or an acquittal.

Baroness Harris of Richmond (LD) [V]: My Lords, one of the major recommendations of Sir Richard's review was that the Met's media communications policy should be amended to avoid any details of age or geography being released to the public in relation to the arrest, search, interview or bail of any suspect. Is the Minister satisfied that this recommendation is being followed and monitored to ensure that deviation from it will constitute a disciplinary offence?

Lord Wolfson of Tredegar (Con): My Lords, in her letter to the Home Secretary dated 15 February 2021, the commissioner set out that the MPS will follow the College of Policing media approved professional practice, which I set out to the House a few moments ago. Whether a breach of that is a disciplinary matter must be a matter for the police and for the IOPC.

Lord Rosser (Lab) [V]: This Question is about victims of false allegations and the role of the IOPC in investigating what happened and why. We also need to do better for all those victims who bring forward legitimate allegations yet are failed. Some 99% of rapes reported to the police in England and Wales result in no legal proceedings whatever. What more can the police and the IOPC do to play their part in helping to ensure that the rate of prosecutions for rape increases?

Lord Wolfson of Tredegar (Con): The noble Lord raises a critical point. Both my department and the CPS are focused on ensuring that we improve the number of rape allegations which come to court, where there is sufficient evidence to do so, and that the conviction rate improves as well. That is a huge amount of work and outside the ambit of a particular answer, but he will know that the Government are particularly focused on that area.

The Lord Speaker (Lord Fowler): I call the noble Lord, Lord King of Bridgwater. No? I call the noble Baroness, Lady Jones of Moulsecoomb.

Baroness Jones of Moulsecoomb (GP): My Lords, in my activist world I hear a lot of complaints against the IOPC and its previous incarnation. I am curious about the fact that a lot of former police officers work there as investigators. It has been suggested that the IOPC does not investigate as thoroughly as it might because it has too many former police officers. Has the Home Office paid any attention to that?

Lord Wolfson of Tredegar (Con): My Lords, one must have a balance. If you are going to investigate the police, you need some people in your organisation who have the skill set to know how the police operate. The figures are these. Overall, 23% of IOPC staff are former police officers—that is 28% in operations. However, first, they do not investigate their former force; and secondly, most senior decision-makers are not former police officers. By law, the director-general cannot be a former police officer, and the current director-general has put in place a practice that the two deputies are also not former police officers.

The Lord Speaker (Lord Fowler): My Lords, I regret that the time allowed for this Question has elapsed—not least because supplementaries and answers were too long.

Zimbabwe: Human Rights Abuses

Question

12.29 pm

Asked by ***Baroness Hoey***

To ask Her Majesty's Government what representations they have made (1) to the African Union, and (2) to the government of South Africa, about reports of human rights abuses in Zimbabwe.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con) [V]: My Lords, we remain concerned by the human rights situation in Zimbabwe, particularly the continued targeted arrests of, violence against and abductions of journalists, civil society activists and opposition politicians. We engage regularly with the African Union and South Africa on Zimbabwe, including on human rights issues. The Foreign Secretary discussed Zimbabwe with the South African Foreign Minister in November 2020, and the Minister for Africa discussed our approach with the former African Union Peace and Security Commissioner, Smaïl Chergui, in July 2020.

Baroness Hoey (Non-Afl): I thank the Minister for that Answer. The human rights abuses and the breakdown of the rule of law in Zimbabwe over the past few years have been devastating for the people of Zimbabwe, but also for the neighbouring countries. It has very negative economic and social consequences for them. With the very welcome focus of Her Majesty's Government on getting value for money from overseas development aid, what is the FCDO doing to ensure that development aid, along with diplomatic engagement, encourages all members of the Southern African Development Community—SADC—to take action themselves, which would bring respect for human rights and the possibility of free and fair elections in the wonderful country of Zimbabwe?

Lord Goldsmith of Richmond Park (Con) [V]: I pay tribute to the noble Baroness's work on supporting democracy for the Zimbabwean people, and I recognise that she has not only been present in Zimbabwe during previous elections but has a deep love for that country. We remain extremely concerned about the human rights situation in Zimbabwe. We provide significant

ODA support, but not directly via the Zimbabwean Government. Our efforts are geared towards empowering people through education and via conservation, which provides significant opportunities for tourism and jobs. As we look towards elections in 2023, much needs to be done to ensure a fair playing field. That is what we will continue to push for; it is what the Zimbabwean people deserve.

Baroness Jay of Paddington (Lab) [V]: My Lords, as an official Commonwealth observer at the last election in Zimbabwe, I was warned particularly about the threats posed by the new Government to women's rights. Reports of abuses have greatly accelerated recently. Just last week, I was contacted by women's organisers, asking for help to press for the release of three prominent women being held for political activity. What representations are being made about these types of cases and about women's rights in general?

Lord Goldsmith of Richmond Park (Con) [V]: Of course, we are very concerned by the failure to address the allegations of abduction and abuse of three MDC Alliance members: Joana Mamombe, Cecilia Chimbiri and Netsai Marova. We continue to call for investigations into those allegations. The Minister for Africa reiterated this message when he spoke to Zimbabwe's late Foreign Minister, Sibusiso Moyo, on 8 June 2020. We have raised our concerns about the arrests and rearrests of Joana Mamombe and Cecilia Chimbiri, who were recently denied bail, and we will continue to follow their cases closely.

Lord Oates (LD) [V]: Does the Minister recognise that if we are to have any influence on the appalling human rights abuses in Zimbabwe, we must also engage consistently with countries in the region to advance regional prosperity, underpinned by respect for human rights, the rule of law and democratic norms? When will the Government develop an overall strategy for the region that has some chance of successfully moving these issues forward?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, we engage with the African Union on all reports of human rights abuses in instances where the African Union has leverage and political will. We are not convinced that that is the case in Zimbabwe. However, when the African Union has taken proactive steps to address concerns about the political and economic situation in Zimbabwe, the UK has been supportive. We support the special envoys appointed by Cyril Ramaphosa, but they have also struggled due to the lack of engagement from the Government of Zimbabwe. We will work with all partners where it makes most sense for the UK.

Lord Blencathra (Con): My Lords, Zimbabwe and, indeed, the world should have been a better place now that the evil Mugabe is thankfully out of it, but does my noble friend agree that Mnangagwa seems to be no better? The murders, rapes and torture continue, with any government critics beaten to death or simply disappeared. South Africa, regrettably, seems to be heading the same way, first under Zuma and now under Ramaphosa. Knowing the Government's limited powers, what can and will they actually do to save the starving and beaten people of Zimbabwe?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, we have repeatedly made clear our disappointment at the lack of political and economic progress of the Zimbabwean Government. On 1 February, we announced sanctions to hold to account those individuals responsible for human rights violations. We support the Zimbabwean people through numerous aid programmes, focusing on poverty reduction, humanitarian assistance, standing up for human rights and supporting Zimbabwe's recovery from the Covid pandemic. On South Africa, we strongly support President Ramaphosa's efforts to tackle corruption and promote accountability, as well as efforts to address those crimes perpetrated under President Zuma.

Lord St John of Bletso (CB): My Lords, is the Minister aware that neither the African Union nor the South African Government have publicly commented on the recent forced and unconstitutional displacement by the Government of Zimbabwe of more than 13,000 villagers in Chilonga, where a recent De Beers report has shown a large deposit of diamonds?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, I was not aware that neither South Africa nor the African Union has commented on the large-scale displacement that the noble Lord has described. The UK has a long-standing partnership with South Africa; we speak often and candidly on a broad range of issues, including, of course, Zimbabwe. I am sure my colleague, my noble friend Lord Ahmad, and the Minister for Africa will raise this issue in their next conversation.

Lord Collins of Highbury (Lab): My Lords, there is evidence that President Mnangagwa is using Covid-19 restrictions as a cover for a crackdown on opposition and criticism. It is also clear that stakeholders, including trade unions and businesses, are being sidelined in discussions relating to recovery plans. What are the UK Government doing to engage with Zimbabwean civil society, including trade unions, to address their human rights concerns, including with the ITUC?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, this year, we are providing £81 million in bilateral development assistance to Zimbabwe. When our support through multilateral systems is included, that increases to £139 million. As I said earlier, we do not give aid directly to the Government of Zimbabwe; those funds are designed specifically to empower civil society, partly through education, partly via multilateral organisations, notably UN agencies, international NGOs and, of course, the private sector.

Lord Chidgey (LD) [V]: My Lords, apparently a high-level ANC delegation from South Africa met officials from Zimbabwe's ruling ZANU-PF party to address the escalating economic and political crisis last September. Its priorities should have been the deteriorating human rights situation. Unidentified assailants have abducted and tortured more than 70 government critics.

[LORD CHIDGEY]
Arbitrary arrests, violent assaults, abductions and police crackdowns on anti-corruption protests abound unchecked. What specific actions is the UK taking to persuade South Africa that the key message to ZANU-PF should be that Zimbabwe's economic and political crisis cannot be resolved by repressing the people of Zimbabwe?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, I am afraid I did not catch the whole question; the reception was poor. However, the UK engages often and regularly with South Africa on Zimbabwe, including on human rights. For example, the Foreign Secretary spoke to Foreign Minister Pandor in November about Zimbabwe, including its impact on its neighbours. The UK recognises the important roles of the African Union and South Africa in relation to Zimbabwe, and we will continue to engage with both, given that we share a desire to see a prosperous Zimbabwe that respects human lives.

Lord Dodds of Duncairn (DUP) [V]: My Lords, with elections due in two years' time, the people of Zimbabwe need real hope of lasting change. May I join other noble Lords in asking the Minister what more the Government can do, alongside our partners, to bring real pressure to bear on neighbours in the region to put effective pressure on the Government of Zimbabwe to end the current appalling state of human rights in that country?

Lord Goldsmith of Richmond Park (Con) [V]: The UK stands ready in friendship to support a Zimbabwe that fully embraces the rule of law, human rights and reform. The ball is in the court of the Zimbabwean Government. The UK is on the side of the Zimbabwean people; we always have been and we will continue to work alongside the international community to support good governance, respect for human rights and genuine political and economic reform in Zimbabwe, to help secure a brighter and better future for all Zimbabweans.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for this Question has also elapsed. We now come to the fourth Oral Question.

Independent Chief Inspector of Borders and Immigration: Site Visits

Question

12.39 pm

Asked by ***Lord Roberts of Llandudno***

To ask Her Majesty's Government what assessment they have made of the findings of the Independent Chief Inspector of Borders and Immigration's site visits (1) to Penally camp, and (2) to Napier barracks, published on 8 March.

Lord Parkinson of Whitley Bay (Con): My Lords, during the pandemic, the number of accommodated asylum seekers has increased and we have sought alternative accommodation options, including two MoD sites. We expect the highest standards from providers and have instructed them to make improvements following the interim report from the independent chief inspector. We await his full report on contingency accommodation and will lay that in Parliament with the department's response, as usual, after the inspection is completed.

Lord Roberts of Llandudno (LD) [V]: I have been assured many times that the Penally camp and Napier barracks sites are adequate, safe, secure, habitable and fit for purpose as accommodation for refugees. Then the inspector's report comes out. It is totally contradictory and supports the views expressed by Public Health England, the Red Cross and others that these sites are not suitable. Some of the words describing them, such as "filthy" and "decrepit" are totally unacceptable. Then we find that in Napier, 197 of the refugees are infected with the virus. What is the difference between what the Home Office sees as adequate accommodation and the damning report of the inspectorate?

Lord Parkinson of Whitley Bay (Con): My Lords, as I said, this is an interim report from the independent chief inspector, which made important findings that we are of course acting on. We look forward to seeing his report in full, once it is complete. It is important to remember the context in which we are operating—the additional pressures that the Covid-19 pandemic has put on the asylum accommodation estate. Establishing extra sites to react to that has been challenging. We recognise that there is room for improvement and we look forward to seeing the full report so that we can continue to improve.

Lord Boateng (Lab) [V]: My Lords, this latest, albeit interim, report reveals that the health of all the residents at Napier barracks is at risk. A third are reported to be suicidal. Although the report is interim, it joins the reports of the Crown Premises Fire Safety Inspectorate and Public Health England in presenting a damning picture of the place. At Christmas, I attended church with residents of Napier barracks. It shames us all. We know that it is not easy to be a Home Office Minister but what more does the Minister require before the Home Office stops placing people in the barracks and decants those who are there, before we see loss of life and still further damage to the United Kingdom's international reputation for human rights?

Lord Parkinson of Whitley Bay (Con): My Lords, the Home Office has been working with Public Health England and Public Health Wales, as well as the Crown fire inspectorate, in respect of Penally to make sure that the temporary accommodation that we have had to set up in light of the pandemic is safe and in line with their recommendations. As of last Friday, 12 March, there are 48 people at Napier and 55 at Penally. This is temporary accommodation and we are working to make sure that it is indeed that.

Baroness Warsi (Con) [V]: My Lords, my noble friend has a difficult task today because he will be aware that this issue was raised by noble Lords on 11 February, when we were told that the accommodation was
"safe, warm, fit for purpose".—[*Official Report*, 11/2/21; col. 489]

It is clear from the latest findings of the ICIBI that this is not the case. What is the Government's response now in relation to the findings about what is actually going on in these barracks? Serious safeguarding concerns have been raised, specifically in relation to people who have self-harmed and those at high risk of doing so who have been relocated to accommodation that is unfit for human habitation.

Lord Parkinson of Whitley Bay (Con): My noble friend is right to point to the fact that many people who come to the UK seeking asylum have been through traumatic experiences and have important safeguarding needs. Given that, safeguarding has been at the heart of the activity of the Home Office in the setting up and running of Napier and Penally. An on-site nurse and migrant help are available at both sites to ensure that people who are at risk of harm get the help that they need. We are continually improving our safeguarding measures, including in the light of the interim report from the chief inspector, and we have commissioned further work from our providers to make sure that all staff are fully trained in this important area.

Lord Paddick (LD) [V]: My Lords, in answer to a previous Question, a Minister in the other place said that the barracks

"were good enough for the armed services and they are certainly more than good enough for people who have arrived in this country seeking asylum."—[*Official Report*, Commons, 8/2/21; col. 10]

However, on 3 February the National Audit Office said that the barracks had suffered from "decades of under-investment" and that troops were living in substandard accommodation. Is the Home Office saying that substandard accommodation is more than good enough for those seeking sanctuary in this country?

Lord Parkinson of Whitley Bay (Con): My Lords, we do not think that this is substandard accommodation. The noble Lord is right to point out that this is accommodation in which we ask those who serve our country and put their lives at risk to stay. We have undertaken work to improve the sites at Penally and Napier to make them safe and habitable for those who are coming here seeking asylum.

Lord Robathan (Con): My Lords, some years ago I stayed in Napier barracks and more recently, about four years ago, I showered and had lunch there at the start and end of a charitable bicycle ride around France. The barracks are comfortable. While they are pretty basic, they are warm and dry, the food is good and the showers work. Can my noble friend explain how it can be that these barracks have been used for many years by soldiers, who defend us and our country without complaint in the House of Lords, and yet now for people who understandably have fled poverty and violence in their own countries and have almost certainly come through a safe country—namely, France—they are deemed not to be acceptable?

Lord Parkinson of Whitley Bay (Con): My Lords, my noble friend speaks from personal experience which I think might be unique in your Lordships' House. He is right to point to the fact that we have tried to make the accommodation suitable for those who need to be there. We want them to stay there for as short a time as possible, but because of the constrictions of the pandemic, in some cases they have had to stay for longer than we would have liked.

Baroness Wheatcroft (CB) [V]: My Lords, I declare an interest in having a home that is half a mile away from the Napier barracks, and I must say that the site has looked near derelict for several years. However, in November a letter was sent to the Home Secretary and the Department of Health signed by Doctors of the World, the Faculty of Public Health and the Royal College of Psychiatrists saying that these premises were not suitable, that in a time of pandemic they were positively dangerous, and urging the Home Secretary to close them down immediately. Can the Minister tell us why, despite that letter and other evidence to the contrary, the Home Secretary has continued to insist that these premises are safe, although nearly half the inmates have contracted Covid?

Lord Parkinson of Whitley Bay (Con): As I have said, we are working with Public Health England and Public Health Wales to make sure that the accommodation is in line with recommendations. We have taken additional measures to mitigate the risks of Covid transmission, such as increased distance between beds, staggered mealtimes, one-way systems and advice for the people staying there. I am pleased to say that there have been no positive tests for Covid at Penally and no people currently in Napier testing positive for Covid either.

Lord Kennedy of Southwark (Lab Co-op): My Lords, the findings of the chief inspector are shocking and scathing about the failures in the preparation of a Covid-safe site, poor leadership, "inadequate oversight" by the Home Office and "serious safeguarding concerns" at these unsuitable locations. Does the noble Lord agree that the report is shocking and scathing, and can he tell me who is taking responsibility for these failures?

Lord Parkinson of Whitley Bay (Con): My Lords, this is an interim report, but there are some troubling findings and we are acting on them. We look forward to seeing the full report so that we can do that. The Home Office takes this issue very seriously. While the full report has not yet been given to the Home Secretary, when it has been, she will take it very seriously.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, for the avoidance of doubt, can the Minister indicate what action will be taken to improve fire safety at Napier?

Lord Parkinson of Whitley Bay (Con): My Lords, we have been working with the Crown Premises Fire Safety Inspectorate throughout and have had further advice from the Kent Fire and Rescue Service. We are grateful to them for their proactive work and we continue to work with them both to make sure that the accommodation is safe.

The Lord Speaker (Lord Fowler): My Lords, the time allowed for the Question has elapsed and that brings Question Time to an end.

12.51 pm

Sitting suspended.

VSO: Volunteering for Development Programme

Private Notice Question

1.02 pm

Tabled by ***Baroness Coussins***

To ask Her Majesty's Government, further to the cuts to the overseas aid budget, what plans they have to renew their grant for the Voluntary Service Overseas "Volunteering for Development" programme.

The Minister of State, Department for the Environment, Food and Rural Affairs and Foreign, Commonwealth and Development Office (Lord Goldsmith of Richmond Park) (Con) [V]: My Lords, the impact of the global pandemic on the UK economy has forced us to take the tough decision to temporarily reduce our aid budget. We are now working through the implications of these changes for individual programmes, including the Volunteering for Development grant. No decisions have yet been made. We understand the need to communicate with VSO in a timely manner regarding this grant.

Baroness Coussins (CB): VSO is the UK's flagship development agency but, in just two weeks' time, will be forced to close down its Covid-19 response work in 18 countries if its grant is not renewed. Allowing this vital work to fold would be totally at odds with the UK's commitment to support Covid recovery globally, not just domestically, and completely out of sync with any definition of global Britain. Will the Minister act urgently to reassure VSO that its grant will be renewed?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, VSO is a highly valued programme that the FCDO—and DfID, formerly—has been proud to support for many years. I reiterate the earlier point that no decision on the programme has yet been taken. Officials have been working closely with VSO to understand its position and will continue to do so.

Baroness Armstrong of Hill Top (Lab) [V]: My Lords, does the Minister realise that, because the Government could not take a decision before the end of last month, the UK has lost its outstanding youth volunteering programme run through VSO, International Citizen Service? Does he further recognise that, as the noble Baroness, Lady Coussins, said, the only other major volunteering programme that gets to the heart of local communities now in helping them to tackle Covid will go if VSO does not get reassurance within the next two weeks? The knowledge, skills, experience, networks and influence that it brings will be thrown away if the Government cannot come to a decision in just two weeks.

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, the current phase of the V4D programme was originally due to end on 31 March last year, but we extended it for a year principally so that VSO could support vulnerable communities across the globe through the challenges of the pandemic. As I have said, no decision on the next step has been made yet, but it will be made shortly.

Baroness Garden of Frognal (LD): My Lords, following the last speaker, can the Minister say why the Government halted the International Citizen Service, which has provided many community, business and political leaders of the future? How can the Government be so negative in funding programmes that support girls' education, health systems and much else in parts of the world where development and soft power are key to government priorities?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, despite the changes that were recently announced, our aid budget will continue to serve the primary aim of reducing poverty in developing countries through a number of different means. The new strategic approach to ODA will ensure that every penny we spend goes as far as possible and makes a world-leading difference. The Foreign Secretary has set out how we will deliver better results for the world's poorest, as well as for the UK, through focusing on the seven global challenges where the UK can make the most difference.

Lord Herbert of South Downs (Con) [V]: My Lords, I welcome the approach set out in today's integrated review, but our aid spending and what we can do globally are crucial to soft power. It seems that the large sum of money that has been taken out of the ODA budget has, in one year, potentially impacted, for example, aid programmes in Yemen, research and development programmes on global public health and the funding of LGBT groups. All of this will impact our soft power, just as it does volunteering. Will my noble friend report back the strong views of many of us on this side of the House, as well as others, that the 0.7% target should be restored as soon as possible?

Lord Goldsmith of Richmond Park (Con) [V]: My noble friend is right to value our ODA in the context of the tremendous soft power that it brings the United Kingdom. I will convey his message to the Government. The creation of the FCDO and the strategic oversight of ODA spend by the whole of government means that we will do aid better across government, even if the budget is temporarily smaller. We will ensure that the UK's aid secures a greater impact across the globe. We will combine our aid with diplomacy to maximise its impact, focusing our efforts on where the UK can make a world-leading difference and ensuring that the UK is a force for good across the globe.

Lord Loomba (CB) [V]: My Lords, unfortunately, there is increased violence and atrocities against women and girls in many developing countries around the world. We are also aware that education and skills training is fundamental to support them to become self-reliant and empowered. Can the Minister tell us what budget the Government have allocated for education and skills training to support such suffering women and girls, and which countries will benefit from it?

Lord Goldsmith of Richmond Park (Con) [V]: The noble Lord is right: no development intervention is more transformational than 12 years of quality education for girls. That is why it is a major priority for the Government. Between 2015 and 2020, the UK supported 15.6 million children to gain a decent education, of which 8.1 million were girls. We will use our G7 presidency this year to rally the international community to step up and support girls' education and co-host, with Kenya, the replenishment of the Global Partnership for Education in July 2021.

The Lord Bishop of Winchester [V]: My Lords, is the Minister aware that, if the cuts to the overseas aid budget lead to cuts to the Voluntary Service Overseas programme, they will negatively impact the international distribution of Covid-19 vaccines, given the involvement of VSO in Covid-19 response programmes in different parts of the world, such as Covid safety training for healthcare workers and rural populations in Tanzania, Sierra Leone, Ethiopia, et cetera?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, the FCDO and VSO were able to work together to pivot over 80% of programming to pandemic response in just 10 days, including supporting educating girls and children living with disabilities, strengthening healthcare systems, protecting basic livelihoods, and so on. We have shifted much of the focus of our ODA over recent months towards enabling countries to cope with Covid. It is fair to say that the UK is a world leader in doing so, and we will remain so.

Lord Collins of Highbury (Lab): My Lords, today's integrated review claims that the Government want to "shape the world of the future."
The failure to renew the volunteering for development grant in a timely manner, combined with the closure of the International Citizen Service, shows that there is a yawning chasm between the Government's words and their actions. I hope that the Minister will today personally commit to expedite matters so that the FCDO renews the grant in a timely manner, and so that when international travel resumes, the International Citizen Service will restart.

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, it is in all our interests that this decision is taken quickly, and I will convey the noble Lord's message to the FCDO. If I may make a broader point, despite the changes that have been brought in temporarily—it is our intention to return to 0.7% as soon as the fiscal situation allows—we remain a world-leading donor. We will spend over £10 billion in ODA this year; I believe that makes us the second biggest donor of the G7.

Lord Bruce of Bennachie (LD) [V]: My Lords, the decision to leave VSO hanging on a cliff is beyond belief; this is no way to make decisions. Slashing humanitarian aid, development assistance and now VSO sends a signal of disappointment and delusion. Are the Government trading the reality of soft power for some of the delusions of hard power? Will the Government now immediately—today—commit the funding needed for VSO?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, I am afraid that that is not an announcement I am at liberty to make. However, as I said, it is in all our interests that the decision is taken as quickly as possible.

Baroness Sugg (Con) [V]: My Lords, it seems that unless it gets a decision in the next few weeks, VSO may be an early casualty of the aid cuts. The current law allows the Government to miss the 0.7% by accident or in an emergency; it does not allow the Government to plan and do this with intent for an indefinite number of years. It has now been nearly four months since the announcement, and we are seeing the real-world, distressing impacts of this policy. Can my noble friend the Minister tell me when we will see the legislation to make this policy lawful, and confirm that a vote will be held in both Houses?

Lord Goldsmith of Richmond Park (Con) [V]: As my noble friend said, the legislation allows for the 0.7% target to not be met in a particular year in light of economic and fiscal circumstances. The Foreign Secretary is currently looking carefully at what is required by law. The legislation envisages that the 0.7% target may not be met in a particular year as a consequence of circumstances with which we are all too familiar.

Baroness Hollins (CB) [V]: My Lords, I speak as a former VSO volunteer; I believe that VSO has created a large cohort of outward-facing, global citizens connected by a belief in what UK aid can achieve overseas. The Government like to talk about "global Britain", but is the Minister aware that unless a positive decision to renew the grant for VSO is made by the end of the month, the organisation will have to notify 180 national and other partners that the UK Government have withdrawn funding? Will the Minister confirm that funding will be in place for VSO? When will the Government inform it of the decision?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, I am not able to provide that announcement—that declaration—unilaterally. However, the noble Baroness is absolutely right that ICS volunteers like her have made a lasting impact in some of the world's poorest communities, while building up their own skills, confidence and job prospects. It is a cherished part of the programme and the funding that we have provided over the years—a source of pride for this country. As I say, the decision will be delivered as soon as possible.

Lord McConnell of Glenscorrodale (Lab): My Lords, the Government have form on this: they announced the cuts to the ODA budget this year on the day after the last Summer Recess. The Chancellor avoided referencing the ODA cuts in his Budget speech last week, and I suspect that this announcement might be coming at the end of next week, to avoid parliamentary scrutiny during the Easter Recess—just as the cuts start to bite. Can the Government guarantee that there will be an announcement before the Easter Recess? In making that announcement, will they understand that the VSO, as much as any other organisation, has changed its strategic purpose to build partnerships on the ground and develop volunteering that makes a real

[Lord McConnell of Glenscorrodale]
difference inside partner countries, rather than simply supporting children and older people from this country going to volunteer on a temporary basis? It is a strategic approach by VSO that is making a real difference.

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, I will not take issue with anything that the noble Lord said in the second part of his question, although I question the cynicism that he has shown on the timing of government decisions. I will convey his powerfully delivered message to the FCDO, and, as I have said before, I and other colleagues will do what we can to ensure that we have the quickest possible resolution.

Lord Marlesford (Con) [V]: My Lords, the Minister talks about VSO without relating it to its political position in the world. He talks about officials considering its future, but it is a decision for politicians; it is they who must decide whether or not we continue it. Will he bear in mind that, unlike much of our aid, VSO is very difficult to corrupt or divert, so it should survive in spite of a cut, and that it is for politicians—the Minister himself—to make the decision?

Lord Goldsmith of Richmond Park (Con) [V]: My Lords, volunteers make a uniquely valuable contribution to sustainable development, including empowering women and girls across the globe. During the Covid response, our volunteering for development programme demonstrated the ability of local community and national volunteers, who can mobilise as first responders even when national and international travel is restricted. I strongly agree with my noble friend on the importance of the volunteering process—both UK nationals volunteering elsewhere and volunteers in situ. As I have said to previous speakers, I will convey his message, but I do not doubt that this is a decision that will be taken by Ministers, not officials, and I do not think anyone has pretended otherwise.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): My Lords, the time allowed for the Private Notice Question has now elapsed. Apologies to the noble Baroness, Lady Watkins of Tavistock.

Policing and Prevention of Violence against Women

Statement

The following Statement was made in the House of Commons on Monday 15 March.

"With permission, Mr Speaker, I should like to make a Statement on the tragic death of Sarah Everard and the events of Saturday evening. I would like to begin by saying that my thoughts and prayers are with Sarah's family and friends at this unbearable time. I know that every Member of this House will join me in offering her loved ones our deepest sympathies. While this is a horrific case, which has rightly prompted debate and questions about wider issues, we must remember that a young woman has lost her life and that a family is grieving.

Let me turn to this weekend's events. I have already said that some of the footage circulating online of Clapham Common is upsetting. While the police are rightly operationally independent, I asked the Metropolitan Police for a report into what had happened. This Government back our police in fighting crime and keeping the public safe, but in the interests of providing greater assurance and ensuring public confidence, I have asked Her Majesty's Inspectorate of Constabulary to conduct a full, independent lessons-learned review. The Metropolitan Police Commissioner has welcomed this and I will await the report and, of course, update the House in due course.

I would like to take a moment to acknowledge why Sarah's death has upset so many. My heartache and that of others can be summed up in just five words, "She was just walking home." While the specific circumstances of Sarah's disappearance are thankfully uncommon, what has happened has reminded women everywhere of the steps that we take each day without a second thought to keep ourselves safe. It has rightly ignited anger at the danger posed to women by predatory men, an anger I feel as strongly as anyone. Accounts shared online in the wake of Sarah's disappearance are so powerful because every single one of us can relate to them. Too many of us have walked home from school or work alone only to hear footsteps uncomfortably close behind us. Too many of us have pretended to be on the phone to a friend to scare someone off. Too many of us have clutched our keys in our fist in case we need to defend ourselves. And that is not okay.

Women and girls must feel safe while walking our streets. That is why we have continued to take action. Our landmark Domestic Abuse Bill is on track to receive Royal Assent by the end of April, and this will transform our collective response to that abhorrent crime. It builds on other measures that we have introduced, including the controlling or coercive behaviour offence and the domestic violence disclosure scheme, known as Clare's law, which enables individuals to ask the police whether their partner has a violent or abusive past. We have also introduced new preventive tools and powers to tackle crimes including stalking, female genital mutilation and so-called upskirting, but we can never be complacent. That is why throughout the passage of the Domestic Abuse Bill, we have accepted amendments from honourable Members from political parties across the House. The Bill now includes a new offence of non-fatal strangulation, outlaws threats to disclose intimate images and extends the controlling or coercive behaviour offence to cover post-separation abuse. This is in addition to the Bill's existing measures, which include a new statutory definition of domestic abuse that recognises the many forms that abuse can take—psychological, physical, emotional, economic and sexual—and, of course, the impact of abuse on children, as well as new rules to prevent victims from having to go through the pain of being cross-examined by their abusers in family and civil courts.

We all know that action is needed to improve the outcomes for rape cases, and we are currently developing robust actions as part of our end-to-end review of rape to reverse the decline in outcomes in recent years. At the end of last year, in December, I launched the first ever public survey of women and girls to hear

their views on how we can better tackle these gendered crimes. On Friday, in the wake of the outpouring of grief, I reopened that survey. I can tell the House that as of 11 am today, the Home Office had received 78,000 responses since 6 pm on Friday. That is completely unprecedented, and considerably more than the 18,000 responses received over the entire 10-week period when the survey was previously open. I am listening to women and girls up and down the country, and their views will help to shape a new strategy on tackling violence against women and girls, which I will bring forward to the House later this year.

The Police, Crime, Sentencing and Courts Bill, which we will shortly be debating, will end the halfway release of those convicted for sexual offences such as rape. Instead, under our law, vile criminals responsible for these terrible crimes will spend at least two-thirds of their time behind bars. Our new law will extend the scope of the Sexual Offences Act 2003 with regard to the abuse of positions of trust—something that predominantly affects young girls—and it will introduce Kay's law, which will encourage the police to impose pre-charge bail with appropriate conditions where it is necessary and proportionate to do so. We hope that that will provide reassurance and additional protection for alleged victims in high harm cases such as domestic abuse. I note that the Opposition will be voting against these crucial measures to support victims of violent crimes, including young women and girls.

The Government are providing an extra £40 million to help victims during the pandemic and beyond. Last month we launched a new Government advertising campaign, #ItStillMatters, to raise awareness of sexual violence services and ensure that victims know where to get help.

Over the past year, during the coronavirus pandemic, the police have been faced with an unenviable and immensely difficult task—one that, for the most part, they have approached with skill and professionalism—of helping to enforce regulations, as determined by Parliament, with one crucial objective in mind: to save lives. On 6 January, this House approved those changes by 524 votes to 16. Sadly, as of Sunday 14 March, more than 125,500 lives have been lost to this horrible virus. It is for that reason that I continue to urge everyone, for as long as these regulations are in place, not to participate in large gatherings or attend protests. The right to protest is the cornerstone of our democracy, but the Government's duty remains to prevent more lives being lost during the pandemic.

There will undoubtedly be more discussions of these vital issues in the days and weeks to come, but we cannot and must not forget that a family is grieving. I know that the thoughts and prayers of the whole House are with Sarah's loved ones at this truly terrible time."

1.18 pm

Lord Rosser (Lab) [V]: I would first like to express our heartfelt condolences and sympathy to the family and friends of Sarah Everard. Her tragic and appalling death has shocked and shaken us all, as the reaction to it has shown. We know that, much as we might want to think we can fully understand the turmoil and unbridled grief her family and friends are going through, in reality there is no way we can.

The pictures and media reports of what happened on Saturday during the policing of the vigil at Clapham Common have rightly led to many expressions of concern. The Inspectorate of Constabulary is undertaking a lessons-learned investigation and we await its findings. I would appreciate the Minister indicating first when those findings are expected and, secondly, that they will be made public. It also seems that the Home Secretary had discussions with the Metropolitan Police about the vigil and that she subsequently asked for a report on what happened from the commissioner. Will that report be made public?

Can the Government say what the purpose was of the discussions that the Home Secretary had with the Metropolitan Police prior to and about the vigil? The Home Secretary has said that operational issues are a matter for the police, so can we have an assurance that the Home Secretary did not seek to influence the commissioner on what the operational decisions on the policing of the vigil should be? Is there a record of those discussions, and will it be made public?

The tragic death of Sarah Everard and the apparent circumstances surrounding it have highlighted the fears felt extensively by women and girls over their personal safety, and the extent of the harassment, abuse and violence, including fatal violence, that they face on an all too regular basis from men. To say that a solution is for women to stay indoors and be more careful is completely unacceptable. The solution lies in men changing cultures and attitudes towards women and leading that change. It is not women who should change their behaviour. It is men and wider society that must change.

It is clear that the Government have failed in their role of creating an environment in which women and girls do not walk around in fear outside and live in fear inside. The Statement by the Home Secretary goes to some lengths to set out what the Government believe that they have done, and what they propose to do, to ensure that women and girls can feel safe. It is a very defensive part of the Statement. That the Government felt it necessary to put it in the Statement at such length says it all.

Interestingly, the Statement makes no reference to the reduction in the number of front-line police officers over the last decade, which the Government are now trying to reverse, no reference to the failed and damaging reorganisation of the probation service, which has had to be reversed, and no reference to the impact of the cuts made in our criminal justice system as far as our courts are concerned.

The Statement does make reference to the Domestic Abuse Bill. It is a good Bill, but the Government know that there is more that they could and should be doing to ensure that all women can safely leave abuse and access refuge services, that women feel safe to report abuse to the police, that disabled women have protection when intimate caring relationships turn abusive, and plenty more that this House has asked for. In particular, yesterday this House voted to ensure the registering, monitoring and supervision of serial abusers and stalkers—in essence, dangerous and predatory men—and to require a strategy on perpetrators. What will the Government now do about delivering that? They have

[LORD ROSSER]
come forward with plans to increase CCTV and street lighting, and to put more police in bars. That will make hardly a dent in the real problems. The real issue —as we are told by women who are shouted at while they are out running, who are followed on public transport, who are unsafe as they walk home—is not the lighting on the street but the perpetrators and harassers on the street.

We have put forward a 10-point plan on what now must happen. We must particularly address the low level of rape charges and convictions, and the need for new laws to stop harassment. Will the Government use the Police, Crime, Sentencing and Courts Bill to tackle these issues? At the moment, the Bill seems more concerned with statues than with women. Are the Government now prepared to work with us and others in a collaborative way, to put forward and promote measures that will fully address the concerns that so many women and girls feel about their personal safety in this country today?

Lord Paddick (LD) [V]: My Lords, my heart goes out to the friends and family of Sarah Everard. I cannot imagine the pain and grief that they feel at this time. It also goes out to all women and girls whose fear of being attacked has, understandably, increased as a result of these terrible events. I also say to each and every decent and honest police officer—some of whom have contacted me, shocked and concerned about how recent events have made their job of protecting and reassuring the public more difficult, not just because of the allegations made against someone in their own ranks but because of the serious mishandling of the vigil on Clapham Common by their own senior officers—that I understand how they feel.

I was an advanced public-order-trained police officer—a senior officer trained to the highest level to deal with situations such as that faced by the police on Saturday—and I have been in charge of policing numerous high-profile events. What went wrong? I say first to the Metropolitan Police Commissioner that I make no criticism of the officers on the ground carrying out the orders of their senior officers. I am not an armchair critic of operational police officers making difficult decisions in real time on the ground. However, I am a critic of the senior police officers who set and devised such a disastrous strategy and then implemented it from the calm of the control room.

One of the first lessons that you are taught as a senior public order officer is not to ban gatherings. Organisers can work with you to implement restrictions; they can provide stewards to marshal those attending, and they can make public appeals that this should be a peaceful, socially distanced, candlelit vigil. Instead, the organisers were forced to withdraw, local authority Covid marshals could not be deployed, and the police were set against the public. Those seeking confrontation with the police, and who have nothing to do with women's safety, potentially saw an opportunity, and the chances of being able to safely and peacefully police this vigil faded into the distance.

The appalling scenes that we saw on Clapham Common on Saturday were the inevitable result of decisions made by the police long before they forcibly broke up those who had gathered, albeit irresponsibly close together in large numbers. The decisions that the police made were even more unbelievable when you consider the circumstances that gave rise to the vigil in the first place.

The Home Secretary has said that she discussed the policing of the vigil with the commissioner on Friday. What advice did she give to the police about the way that it should be handled? I can understand someone with no training and no experience suggesting a zero-tolerance approach to the vigil, but not highly trained and experienced senior police officers. I appreciate that the Minister cannot account for the actions of the Mayor of London, but he should be asked the same question. That is why the leader of the Liberal Democrats, Ed Davey, has written to them both asking exactly this question.

What about the response? No, Home Secretary, the scenes at Clapham Common were not "upsetting"; they were totally unacceptable. A so-called independent review has been commissioned from Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, which has just published a report that concludes that the police must find the correct balance between the rights of protestors and the rights of others, and that:
"The balance may tip too readily in favour of protestors".
Does the Minister seriously think that HMICFRS is the right body to conduct this review, in the light of its report, published only five days ago? I know that the Minister agrees with me that knee-jerk reactions are not the best way to find lasting solutions to serious problems.

We have seen too many media reports showing perfectly lit CCTV footage of women being attacked to believe that more lighting and CCTV are the answer. Because of government cuts to local authority budgets, many councils have had to switch off their cameras or have given up live monitoring because they can no longer afford to maintain an effective CCTV system. Putting plain-clothed police officers in the pubs and clubs to identify vulnerable women and potential perpetrators would not have saved Sarah Everard. Asking a group of people who are themselves the focus of criticism what immediate action should be taken is unlikely to come up with the right answer.

What should we do? We need not just to record offences motivated by sex or gender but to make misogyny a real hate crime, where victims are given enhanced support and courts treat misogyny as an aggravating factor. We must teach young people how to treat each other with dignity and respect. We need a culture change that rejects the authoritarian populism that leads to misogyny, xenophobia and intolerance of diversity. And we need an investigation into whether a Metropolitan Police officer being accused of the kidnap and murder of a woman, another Metropolitan Police officer being accused of sharing sick graphics and jokes at the scene of her murder, and other Metropolitan Police officers being accused of taking selfies with the body of a murdered woman, are signs of serious problems with the culture in the Metropolitan Police. One serving Metropolitan Police officer I know and trust told me in a message on Friday that he is "counting down the years until I can retire and get out of this poisonous organisation."

The Minister of State, Home Office (Baroness Williams of Trafford) (Con) [V]: My Lords, I join the noble Lords, Lord Paddick and Lord Rosser, in expressing our thoughts, condolences and prayers to the family of Sarah Everard. Like the noble Lords, when I saw the pictures on Sunday morning and subsequently in the media, it was not just upsetting but really shocking. That is why the Home Secretary has not only asked for a report from the Metropolitan Police but has asked Her Majesty's Chief Inspector of Constabulary to conduct a review. I can confirm that she had conversations with the commissioner and communicated with her all weekend. In terms of influence, noble Lords will know that the Government do not seek to influence the police. The police are operationally independent of government, and rightly so. I am sure that when the review takes place it will be made public, as the noble Lord, Lord Rosser, asked.

The noble Lord also made a point about men and wider society, and I could not agree more. Our young boys and growing young men are subjected to more and more malign influences, usually online. My noble friend had a discussion last night—and I thank him for that—about online pornography, which we will be dealing with in the online harms Bill. There is also the issue of what a good, healthy sexual relationship looks like, which schools deal with. I reject the point made by the noble Lord, Lord Rosser, that the Government have created this environment. Right from 2010—some 11 years ago—successive Conservative Governments have done so much to end violence against women and girls. We are now considering Report stage of the Domestic Abuse Bill, and I say to the noble Lord, Lord Rosser, that I feel there has been an incredibly collaborative approach across the House, with the Government listening very hard and making many concessions throughout the Bill, acknowledging that we are listening and we can make the legislation better.

The noble Lord talked about a register of stalkers; we had a discussion about that as well. As I said yesterday, where we are seeking to get to is no different; it is how we get there. I explained yesterday that I thought that adding a category to the register without dealing with some of the underlying problems in the processes would not solve the problem, but I do not think we disagree that we need to make sure that all people who are at risk of stalking and sexual offending need to be captured under MAPPA and through ViSOR if necessary.

The noble Lord also asked about the perpetrator strategy. We will be issuing the domestic abuse strategy later this year. Of course, it will contain measures to deal with perpetrators because fundamentally, they are the problem underlying domestic abuse. We will not be having a separate strategy, as noble Lords asked, because it is so linked with domestic abuse that it would be wrong to separate it.

The noble Lord, Lord Paddick, talked about not banning gatherings. We have lived through unprecedented times. One of the reasons why I am not speaking in the House is that I have had to self-isolate. So many people have had to give up their freedoms in pursuit of keeping the number of Covid infections low and preventing deaths, and this is only one of those measures.

The noble Lord asked whether HMICFRS is the right organisation to deal with this. I think it is; it is very experienced in this sort of activity. He also made the point, which I wholeheartedly agree with, about knee-jerk responses being the worst type of responses. It is right that we reflect on what has happened and that the review be undertaken. On timescales, I know that the terms of reference and the scope of the review will be dealt with very quickly.

The noble Lord also talked about making misogyny a hate crime. The Law Commission is looking into what types of crimes should be added to the hate crimes list, and it will be deliberating later on this year.

The last point he made is that we need a fundamental culture change. I totally agree. Women should not feel that they cannot walk home alone. It appears that Sarah Everard was not walking home particularly late. Women should not feel that they have to, as my right honourable friend the Home Secretary said, clutch their keys as they walk along the street. Men should respect women. We need to engender a culture of respect.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): We now come to the 20 minutes allocated for Back-Bench questions. I ask that questions and answers be brief so that I can call as many speakers as possible. I call the noble Baroness, Lady Jenkin of Kennington.

1.37 pm

Baroness Jenkin of Kennington (Con) [V]: My Lords, on 7 March I received an email from a young friend saying "Please help. One of my closest friends from university is missing", but it turned out that we were all absolutely helpless. I send her and all Sarah Everard's friends and relations the greatest possible sympathy.

I welcome the review of the policing of the vigil, as we have to get back to the public trusting the police. I also welcome the extension of the consultation into violence against women and girls, and I am glad that so many additional people have engaged in that exercise. My question, to which the Minister has already responded in part, is: how are we to help and prioritise, so that boys can grow up with a healthy attitude towards girls and with respect for them, given how the internet has changed everything beyond recognition in such a short space of time? We have not kept up with this. Only 15 years ago, boys would have had to reach up to the top shelf; now, they have free access to hard-core porn in their pocket, broadcasting violent and rough sex and the subjugation of women, so that it now seems normal to them.

Baroness Williams of Trafford (Con) [V]: My noble friend and I agree wholeheartedly on this point. The values that you give your children as they are growing up and some of the influences that they see around them shape them as adults. Tragically, there are young boys who grow up now thinking that non-fatal strangulation and violent acts upon women are part of what makes a sexual experience. We all know that sex is bound in love, and you do not show your love towards someone by practically beating them to a pulp or suffocating them. My noble friend is right to raise this question. I am very much looking forward to the online harms Bill, which places on communication services providers

[Baroness Williams of Trafford]
a duty of care for their users. That is one part. The other part is some of what children are taught in school and some of what they see at home. We are in the middle of considering the Domestic Abuse Bill. Sadly, some children think that what they see at home is the norm. We need responsibility from not only parents but online providers and society in general.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): My Lords, we have only 20 minutes for questions and there are 15 more speakers. I know it is difficult, but if we can keep questions and answers brief there are a lot of noble Lords who wish to get in on this important issue.

Lord Harries of Pentregarth (CB) [V]: Surely what is needed, as the Minister suggested, is a fundamental rethinking by men of their attitude to women. I feel every sympathy with those women who justifiably feel vulnerable and angry at the moment. What practical steps are the Government taking to ensure that more is done about this in schools? The law has only a limited effect; there must be a fundamental change of attitudes, and that begins right in the earliest days at school. Is it worth looking, for instance, at what is being taught under the heading of moral and social education? Is some kind of review of that needed?

Baroness Williams of Trafford (Con) [V]: The answer to the noble and right reverend Lord is that we have now made relationship and sex education obligatory in secondary schools, and relationship education is now in primary schools, which is absolutely right. There is more that we could do. This is not just about schools, but perhaps some of the ways that children behave at school reflect what their home lives teach them that relationships and behaviour look like. The education environment is incredibly important for children, but so too is the home environment.

The Lord Bishop of Gloucester [V]: My Lords, I too want to assure Sarah Everard's family and friends of my thoughts and prayers. A couple of times in this House I have mentioned the work being done in Australia, the first country in the world to develop a national framework to prevent violence against women and girls. "Change the Story" identifies gendered drivers of violence and engages people where they live, work, learn and play. Will the Government take a serious look at Australia's work and see what we can learn? Regarding the Police, Crime, Sentencing and Courts Bill, we will not be doing the right service to violence against women and girls unless we also ensure that we address the issue of that large group of women in prison for minor but repeated offences. Many are there because of the violence towards them and they need appropriate trauma-informed, community-based provision. Can the Minister assure the House that the issues about crime and sentencing will be looked at in a rounded and not a disconnected way?

Baroness Williams of Trafford (Con) [V]: I would say yes to the last question. Regarding the first question and what they do in Australia, yes, I am always happy to learn from others.

Baroness Blower (Lab) [V]: My Lords, alas we all know the figures for violent crimes against women. No woman should feel unsafe or in fear in her home, on our streets or in our parks, so in the strategy to protect women and girls how will the Government address the need for major behaviour and culture change among men and boys, including through education and teacher training? Violence against women is a men's problem. It will be long said of Sarah Everard, to whose family I too offer profound condolences, that she was just walking home. Women on Clapham Common on Saturday night were remembering Sarah Everard and it was not for police to manhandle them. The Metropolitan Police got it badly wrong. As advised by the noble Lord, Lord Paddick: do not ban gatherings.

Baroness Williams of Trafford (Con) [V]: On the rights and wrongs of the Metropolitan Police, I have laid out clearly that the Home Secretary has asked it for a report and asked the Chief Inspector of Constabulary to undertake a review. I agree with the noble Baroness: it might be towards men, but a lot of this stems from men. The respect agenda, which lies at the heart of it, is fundamental to what she is talking about.

Baroness Hussein-Ece (LD) [V]: My Lords, I too send my heartfelt thoughts and prayers to Sarah Everard's family and friends on their unimaginable and tragic loss. The scenes of last weekend were extremely shocking. The police force needs to understand the scale of feelings and the loss of confidence by so many. This past week, a survey for UN Women found that 97% of 18 to 24 year-olds have been sexually harassed. Very few report this but almost every woman has experienced it. We need real change and a longer-term strategy to tackle what has been described as the toxic masculinity that is endemic across our society. Misogyny is a hate crime and I was concerned to hear the Minister say that this is to be looked at by the Law Commission. It needs a simple change in legislation. Kerb-crawling needs to become an offence. Will the Government look into this? Rape prosecutions have dropped every year for the past five years and are now at a record low. What has happened to the Government's rape review, established two years ago? Women want to feel safe and be believed when they report an assault or rape. They want to feel secure and supported within our society.

Baroness Williams of Trafford (Con) [V]: The rape review is ongoing and it has not gone away. My right honourable friend the Home Secretary mentioned it yesterday. The noble Baroness made a point about kerb-crawling; I think it could be termed street harassment. Of course, there are stalking, harassment and public order offences which cover that. To go back to the point about knee-jerk reactions, it is right that the Law Commission should opine on misogyny before we start bringing in laws.

Baroness Newlove (Con) [V]: My Lords, watching Sarah Everard's case unfold has been horrific. It brought back many memories for me as my late husband Garry Newlove's murder was national news in horrific circumstances. My thoughts go out to Sarah's family

and friends. It is deeply distressing and traumatic for the family at this stage. We all know that 90% of murderers are men and 90% of sexual offences are committed by men. We know all the figures, so I reiterate to my noble friend that women have had enough of being blamed and their safety needs to be prioritised. We do not need more guidance; guidance alone will change nothing. We need cultural change and a multiagency perpetrator strategy that makes violent and abusive men visible. Can we have serial perpetrators identified, assessed and managed, just like police do with prolific robbers, burglars, car thieves and organised criminals? These men are domestic terrorists and women have had enough of them being allowed to run amok, and harm and kill so many.

Baroness Williams of Trafford (Con) [V]: I thank my noble friend for all the work she has done with me on the Domestic Abuse Bill. I say to her that serial perpetrators are often captured under VISOR because of the violent nature of their activities.

Lord Singh of Wimbledon (CB) [V]: My Lords, the statement of firmer legal action and the announcement of better lighting and more CCTV cameras do little to address the causes of violent and unacceptable behaviour towards women. To me, a placard at last night's vigil for Sarah Everard says it all: "Educate your son". Does the Minister agree that, in our homes and schools, we are failing to teach the boundaries of unacceptable behaviour towards women and girls? Will she further agree that a Sikh injunction at a time of conflict—to treat women and girls as mother, sister or daughter—is a worthy ideal for all of us at all times?

Baroness Williams of Trafford (Con) [V]: The noble Lord talks such sense on these matters, and I agree with that "educate your son" placard. If we, as parents, do not teach our children the boundaries and they do not learn them at school, how will they know what is and is not acceptable, and how will they know what respect is? As the noble Lord says, failing to protect our women in turn fails to protect our children as well.

Lord Davies of Brixton (Lab) [V]: My Lords, I first endorse strongly the sentiments expressed earlier by my noble friends Lord Rosser and Lady Blower. My concern is that the title of the Statement, "Policing and Prevention of Violence against Women", fails to acknowledge the true nature of the problem. We should not just refer to "violence against women"; we must always make it clear that it is really violence by men against women that is the problem. Every opportunity should be taken to emphasise that it is us men who are the problem. As such, I am glad that the Minister has mentioned the importance of culture. Therefore, the question is: what steps are the Government taking to play their part in the required cultural shift by men?

Baroness Williams of Trafford (Con) [V]: The noble Lord makes a very important point: we should not just say "violence against women"—we should say, "violence by men". However, it is not always violence by men; it mostly is but not always. The Government are clearly in the middle of the Domestic Abuse Bill and all the provisions therein. I thank my noble friend Lady Newlove for bringing forward the issue of non-fatal strangulation, which seems to be much more at large in some sexual behaviour and, of course, often leads to death—it is often at the heart of domestic violence. We have done much on forced marriage and female genital mutilation, which are all particularly female-focused, of course. We have done much in the 11 years that we have been in power, and I pay tribute to my right honourable friend Theresa May, who was at the original inception of this.

Baroness Ludford (LD) [V]: My Lords, I agree with all those who have called for a change of culture, attitudes and behaviour and better education for young men and boys—and indeed girls. However, will the planned new strategy on violence against women and girls have a comprehensive plan for how to get those changes? Secondly, in her foreword to the consultation on violence against women, the Home Secretary said:

> "1 in 5 women will experience sexual assault during her lifetime".

As my noble friend Lady Hussein-Ece said, a recent survey found that almost every single young woman in this country—97%—had experienced sexual harassment. Is it not time to adopt towards sexual violence a version of the so-called "broken windows" policing, whereby early intervention aims to deter and prevent more serious crime?

Baroness Williams of Trafford (Con) [V]: The noble Baroness will see some of the things that we have done in relation to perpetrator strategies and approaches, DAPOs, DAPNs and stalking protection orders. These are all measures to nip problems in the bud and prevent them from escalating into what could end up as full-on violence.

Baroness Sanderson of Welton (Con): My Lords, does my noble friend the Minister agree that one of the key things to make a difference to policing and the prevention of violence against women will be the Domestic Abuse Bill? It has been greatly improved by Members across this House, giving police clear new tools and challenging current norms of behaviour. Is it not now imperative that we get it on the statute book?

Baroness Williams of Trafford (Con) [V]: My noble friend is absolutely right, and it has been a pleasure to work with her, given all her experience—of course, she was part of the team that was at the heart of that Bill's inception. It is crucial that we get it on the statute book; she is absolutely right that we have all worked together to achieve it. It has been much improved and, as so many noble Lords have said, it is a landmark Bill.

Lord Berkeley of Knighton (CB) [V]: My Lords, I could not agree more with what we have just heard; it has been a privilege to listen to proceedings on that Bill and the noble Baroness in particular. I will make two points. First, as a nocturnal dog-walker of some decades, I have frequently noticed how walking behind a lone woman or girl is unsettling. The minute I cross the street, I see the shoulders relax; I suggest to my

[Lord Berkeley of Knighton]
male colleagues that we ought to be more aware of that fact. Secondly, many in your Lordships' House, and I include myself, have been pushing the police to come down more trenchantly on people who break the lockdown rules—Cheltenham was only a year ago. While the sensitivity displayed the other day was clearly wrong, we have to be honest and say that the police are damned if they do and damned if they do not. I feel that we have been pushing them to be more proactive in this field.

Baroness Williams of Trafford (Con) [V]: I totally acknowledge the noble Lord's final point. It is also refreshing to hear a man say that he knows how women feel. I feel like that if I go for a run at night, and I thank him—I wish that there were more like him.

Baroness Goudie (Lab) [V]: My Lords, my heart goes out to the family and friends of Sarah Everard—this is a nightmare that every parent has. I support the other speakers today and will ask the Minister about the Tom Winsor inquiry, which she mentioned. First, what are its terms, who else will be involved and what are its timings? It is important that it starts quickly, has short and sharp terms and reports within the next few months. It must not be an inquiry that goes on for years—the public and we would not take it seriously. Secondly, like many Members of this House, I have been on a number of demonstrations over my lifetime, and I have never seen the police behave in the way that they did on Saturday night. What is in the police training, towards men and women, that involves throwing a woman to the ground and jumping on her?

Baroness Williams of Trafford (Con) [V]: My Lords, the inquiry will establish just what did happen and the events that led up to Saturday night. As I said to a previous questioner, the scope and terms of the review will be announced and laid very quickly. I agree with the noble Baroness that it should take place at pace.

The Deputy Speaker (Lord McNicol of West Kilbride) (Lab): My Lords, the time allocated has elapsed. This is a very important issue and there were a number of noble Lords and noble Baronesses who wanted to get in and ask important questions, so I remind people of the importance of brevity for future questions and answers so that we can hear from everyone.

1.58 pm

Sitting suspended.

Arrangement of Business

Announcement

2.03 pm

The Deputy Speaker (Lord Duncan of Springbank) (Con): My Lords, the Hybrid Sitting of the House will now resume. I ask all Members to respect social distancing.

I will call Members to speak in the order listed. During the debate on each group of amendments, I will invite Members, including Members in the Chamber, to email the clerk if they wish to speak after the Minister. I will call Members to speak in the order of request. The groupings are binding. A participant who might wish to press an amendment other than the lead amendment in a group to a Division must give notice in debate or by emailing the clerk. Leave should be given to withdraw amendments. When putting the question, I will collect voices in the Chamber only. If a Member taking part remotely wants their voice accounted for if the question is put, they must make this clear when speaking on the group.

National Security and Investment Bill

Committee (3rd Day)

2.04 pm

Clause 11: Exceptions relating to control of assets

Amendment 38 not moved.

Amendment 39

Moved by ***Lord Lansley***

39: Clause 11, page 7, line 36, at end insert—

"(aa) prescribe circumstances which are not to be regarded as gaining control of a qualifying asset which is the subject of an export control order under the Export Control Act 2002 and related provisions, and"

Member's explanatory statement

This amendment would enable the Secretary of State in regulations to set out where the control of assets under the Export Control Act should not to regarded as gaining control under this Act.

Lord Lansley (Con): My Lords, this first group consists of two amendments, both in my name and both relating to the interaction of the export control regime with the investment screening regime. Amendment 39 would insert into Clause 11, which relates to the exceptions to the general definition of the control of assets, a power for the Secretary of State by regulation to prescribe where the control of a qualifying asset is not to be regarded as controlled under this regime. It would give the Secretary of State freedom to define circumstances where assets that are to be exported and are controlled by the export control regime would not be regarded as controlled for these purposes.

Amendment 87 is a bit more straightforward in that it would introduce a new clause requiring the Secretary of State when making final orders under the Act to take account of the effects of the Export Control Act and related provisions on that qualifying asset. Your Lordships will note in the Bill an interaction with the Competition and Markets Authority regime, but no similar provision is made for the interaction of the export control regime with this regime.

The Bill offers no substantive recognition of the interaction between the export control regime and assets under this regime. That is surprising, because paragraphs 3.85 and 3.86 of 2018 White Paper state—please forgive me, it is a fairly long quote:

"After the introduction of the reforms described in this White Paper, the export control regime will remain the key means of restricting trade in strategic goods where this might raise national

security risks … The Government wishes to ensure that the new reforms are as proportionate as possible, and are not used instead of other, more targeted or proportionate policy levers. As such, where national security concerns relate solely or primarily to the export of goods, the Government expects that the export control regime would remain the primary means of protecting national security."

The purpose of these amendments is to ask whether that is still the Government's policy. If it is, why is it not reflected in the structure of the powers? Should it not be included in the Bill to make that clear?

The Minister may say that since the export control regime is under the control of Ministers, they have all the administrative means at their disposal to bring the two regimes together, whereas there is a separate statutory and independent agency in the Competition and Markets Authority. But that would not be transparent to those affected. I know from talking to people who would be affected that there is a long-standing relationship with the export control unit of the department and an understanding of how its powers are used. To the extent that that transparency and predictability are maintained explicitly, I think it would greatly assist those who are to be affected by these powers.

It is surely the case that Ministers, when making a final order, will take account of where qualifying assets are the subject of an export control order. That being so, I am looking not only for an assurance from the Minister that it is the Government's intention to use the export control regime as the principal means by which the export of qualifying assets is controlled but for a recognition of this in some form in the legislation, to enable all those affected to be aware of the relationship between these two regimes and for it to be transparent. I therefore urge my noble friend to consider the merits of Amendment 87, which would introduce a new clause that simply did that without placing any constraint on Ministers. I beg to move.

Lord Purvis of Tweed (LD): My Lords, I am grateful to the noble Lord for bringing forward these questions in such a characteristically forensic manner. The Committee will be aware that I have not participated in it so far, and I therefore intend to be brief and shall raise only a small number of questions seeking clarification from the Minister on the interaction with the Export Control Act 2002 and on an associated issue.

It has been fascinating listening to the contributions in Committee up to this point about some of the opacity in the interaction with the other legislation and, indeed, how the investment security unit will operate within the department that will cover export control licence applications, which will also make considerations on national security grounds and how they interact. It was interesting to note that in the House of Commons, on the Prime Minister's Statement on the integrated review, Julian Lewis, the chair of the Intelligence and Security Committee, criticised the Prime Minister for not allowing there to be full scrutiny of how the investment security unit will operate. I know that my noble friend Lord Fox will raise this later and will lead on it.

How will that interaction be on the export licence regime? One area where there have been calls for the Government to have annual reports on the operation of this legislation was interesting, given the fact that under the Export Control Act 2002 there are annual reports, and there is clarity as to how many applications and the various different criteria for refusal or putting on hold applications. An interesting aspect of the Export Control Act 2002—and I reread the Explanatory Notes to the legislation after seeing the amendment from the noble Lord, Lord Lansley—is that, on one reading of the Act, which does not go into the same level of detail for defining companies as this legislation, it refers to people being part of the licence, for them and their knowledge and for their providing technical assistance. There certainly can be companies that operate almost exclusively on providing technical assistance, in the technical services industry in particular; they are covered by the Export Control Act for their work that they will then carry out, and the Government take a view as to whether that is something that should be considered as an export.

Secondly, there are companies that operate within hybrid technologies, as the Export Control Act indicated, for technologies and technical assistance, and controls can be imposed for the transfer of technology from the UK and by UK persons, anywhere and by any means. It is interesting that Section 4 of the 2002 Act says that,

"'trade controls' …means the prohibition or regulation of … their acquisition or disposal … their movement",

and associated activities of any goods. The Minister may say that that means specific items, goods or technologies of a company but not the company itself—therefore, this legislation covers the company. It would be helpful if the Minister could indicate something about the interaction.

It struck me that, if any Government indicated that a certain technology or good required prohibition from being exported or their trade in that to be regulated, that would be considered under criterion 5 for national security grounds. What if the interaction of that company is then the subject of a review under this legislation, or indeed that parent company is taken over, or there are shares that meet the trigger requirement? What is the status of the export licences that that company has—because the Government have already indicated that they have sought and maybe made a decision on national security grounds? It is worth pointing out that we know from the annual report that last year there were 80 refusals on national security grounds under criterion 5 in the UK—it indicates for the national security grounds of the UK, the EU and other friendly countries. In the last set of discussions, it was interesting to hear about the interactions with decisions that other friendly countries make. The Export Control Act makes determinations for that.

2.15 pm

The second set of questions that I wanted to ask regarded what would be considered a qualifying asset. I read the Explanatory Notes for this legislation on what qualifying entities and assets were, and wondered whether this was something that could be considered. Is an asset something that, for national security grounds, is a good or service that has already been reviewed for the export licences legislation under criterion 5 on national security grounds? It seems to me slightly odd that, under this legislation, if a company trading in a certain good that has had a review on national security

[Lord Purvis of Tweed]
grounds and has this asset is taken over by another company, that is not a triggering event, as far as I understand it. One would have thought that it should automatically be a triggering event, if a company is exporting goods which would be considered open to national security reviews.

That points to one aspect that my noble friend and others have raised, which also struck me—the concept of proportionality and balance. Paragraph 6 of the Explanatory Notes for the Export Control Act says that there is a principle of proportionality in that Act, which many noble Lords have called for in this legislation. The Act contains provisions that prevent the Secretary of State from prohibiting or regulating certain activities

"unless the interference by the order in the freedom to carry on the activity in question is necessary (and no more than is necessary)."

I wondered where the principle of proportionality that was in our current review of national security grounds has somehow been lost on the way, with regard to how this legislation operates.

Thirdly and finally, when we debated export licences under the Export Control (Amendment) (EU Exit) Regulations 2020 in December, the Government brought forward these provisions. The UK now operates two sets of legal duties, from the UK and the EU. Any company trading in or through Northern Ireland continues to be covered by EU regulations, and the UK now has to operate under the export control regulations for the European Union as well as the United Kingdom. What interaction will there be with the investment security unit in operating under European law with regard to any trade that goes through Northern Ireland? Under this legislation, I could not see that interaction with Northern Ireland, and there could be one very large loophole if any operation wished to trade through Northern Ireland when operating in the EU. Can the Minister clarify those points?

Lord Grantchester (Lab): Amendments 39 and 87, tabled by the noble Lord, Lord Lansley, probe the Minister around the question of the interaction of the NSI regime with the export control regime. The Committee must be assured that this new regime is not buried within the Business Department but works effectively across government, not least in relation to export controls. The Government's response to the sector consultation in the report already mentioned states

"how the NSI regime sits alongside export controls to provide a comprehensive regime protecting our national security capability".

It is not merely a question of sitting alongside, however that may be interpreted, but of interacting and co-ordinating with the Department for International Trade. The Government seem to recognise this in the comment:

"We must ensure that the export control criteria cannot be circumvented by allowing the acquisition of companies that produce such goods, rather than buying the goods themselves, without effective screening."

More clarity and information in the procedures to this eminently sensible statement would be very welcome from the Minister.

The Government responded to the consultation that they intend to capture all materials that are considered likely to give rise to national security concerns and which are contained in the relevant legislation set out in the UK's strategic export control list. I would be grateful if the Minister could provide better information on their intentions, and how and when this will become clear and transparent. Will he provide a guarantee that this will happen—the assurances that the noble Lord, Lord Lansley, has required during the passage of the Bill?

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Callanan) (Con): First, I thank my noble friend Lord Lansley for these two amendments, which seek to ensure seamless integration between the new regime provided for by the Bill and the existing export control regime. I shall take his amendments sequentially.

Amendment 39 seeks to ensure that the Secretary of State can, through regulations, exempt from the regime certain acquisitions of control over qualifying assets that are subject to export control orders. Clause 11 provides for exceptions relating to control of assets. Subsection (1) sets out that acquisitions made by individuals for purposes wholly or mainly outside the individual's trade, business or craft are not to be regarded as gaining control of a qualifying asset and are therefore excluded from the scope of the call-in power. This does not apply in relation to an asset that is either land or subject to certain export controls set out in subsection (2)(b).

Subsection (3) also provides a power for the Secretary of State to amend the list of assets that are outside the scope of this exemption or to prescribe other circumstances in which a person is not to be regarded as gaining control over a qualifying asset. That includes being able to prescribe circumstances in which the acquisition of an asset subject to export control legislation is not to be regarded as gaining control over a qualifying asset. Any use of this power in subsection (3) would, of course, be guided by the operation of the regime in practice and any patterns of activity that are observed. As such, I can therefore assure my noble friend that the Bill already provides for what his amendment intends to achieve.

Amendment 87 would require the Secretary of State to ensure that any interim orders or final orders made in relation to acquisitions of control over assets take into account controls imposed under the Export Control Act 2002 and related provisions. I thank my noble friend for his proposal and commend the intent behind it. It is, of course, very important that the Secretary of State's use of the powers provided for by the Bill is in keeping with the Government's measures under other legislation. The Secretary of State must take into account all relevant factors when making decisions about the use of interim orders and final orders.

The legal tests in the Bill require the Secretary of State, before making an order, to reasonably consider that the provisions of the order are necessary and proportionate for the purpose. In the case of final orders, that purpose is to address a risk to national security, and in the case of interim orders, it is to prevent or reverse an action that might undermine the national security assessment process. Whether controls have been imposed under export control legislation will be relevant to whether the envisaged provisions of

an order are necessary and proportionate. For example, where export controls in relation to an asset are already in place, it may not be necessary or proportionate to make an order under this Bill prohibiting the transfer of the asset overseas, but this will depend on the facts of each case.

Addressing the questions of the noble Lord, Lord Purvis of Tweed, about why we need the Bill when we already have the export control regime, I say that the export control regime is a licencing regime for certain controlled goods. It is an important part of the safeguarding of our national security and it sits well alongside the proposed national security and investment regime. The two regimes are distinct though, and do not perform the same role. For example, the export control regime does not provide the Government with the ability to scrutinise acquisitions of UK companies or direct the use of sensitive assets used in the UK, whereas of course the NSI regime would.

On the noble Lord's points about standard individual export licences if they have been granted for an export, I tell him that a standard individual export licence is granted to one person to export specified items to a named recipient. If the parties involved precisely follow the terms of a standard individual export licence that has already been granted following an assessment of national security risks, it is unlikely that the Secretary of State would reasonably suspect that the export might give rise to national security risks. In this situation, it is unlikely that he would be able to call that export in under the NSI regime. However, it is important to say that any decisions would need to be made on a case-by-case basis. It is important that the Secretary of State retains the ability to call in and scrutinise trigger events involving the export of assets in the event that national security risks are present.

The noble Lord asked about Northern Ireland. Qualifying entities as assets in Northern Ireland sit within the scope of the Bill, and that ensures that there are no loopholes. A trigger event under the Bill is not based on the application of EU law. For completeness, I should also say that the Secretary of State will, in any event, be subject to public law duties requiring him to consider all relevant factors when deciding whether to make an order under the Bill. Therefore, where export controls are relevant, the Secretary of State will need to take them into account when making that order.

I hope that that has explained, for the benefit of the House, the interaction between the two pieces of legislation. With the explanations that I have provided, I hope that my noble friend will feel sufficiently reassured that his concerns have been taken into account, and that he will not press his amendments.

Lord Lansley (Con): My Lords, I am grateful for each of the contributions to the short debate. They were helpful and, indeed, added to the questions. The noble Lord, Lord Purvis of Tweed, referred appropriately to the Export Control Act provisions. I remember that I was on quadrilateral committee in the other place, about 15 or 16 years ago, so I remember how these issues were considered at that time. Indeed, there was a level of parliamentary oversight of the export control regime, which may be something we refer to at a later stage. He raised some good points: I thought the point about the EU export control regime was a very good one. The noble Lord, Lord Grantchester, made an interesting point about the interaction with the Department for International Trade in this context.

If I understand my noble friend correctly, he is more or less saying that the power under Clause 11(3)(b) would enable the Secretary of State to prescribe, by regulation, such circumstances as necessary, so in that sense my Amendment 39 is not necessary. I agree; it is not necessary but certainly the explanation of the interaction between the two regimes is desirable. However, Amendment 87, proposing a new clause, perhaps drafted differently to make it clearer about the interaction between the two regimes—both at the point where a call-in notice has to be considered, as well as the point at which interim and final orders are made—would be very useful. What I have heard from my noble friend suggests that, by administrative means, using the powers in the Bill and under public law requirements, the Secretary of State will have regard to the export control regime when using his powers under this regime. That is undeniably true. I think we all knew that, but there is much more that we put into legislation, particularly with a new system, that helps people who are to be affected by it to look at it and understand how it works.

What I found deeply surprising was that such an important part of the Government's policy intentions—that the export of goods should still be primarily controlled by an export control regime—was not even referred to in the Bill or in the Government's response to the consultation. It is as if it did not exist, but it does exist and it is important, as the Minister's reply suggested. I shall reflect on what he said, but it may well be that there continues to be a "desirable interaction" clause in the Bill that makes it very clear to all those affected that the export control regime plays a significant part in the control of qualifying assets where they are to be exported. However, based on what my noble friend said, I beg leave to withdraw the amendment at this stage.

Amendment 39 withdrawn.

Clause 11, as amended, agreed.

Clause 12: Trigger events: supplementary

Amendment 40 not moved.

Clause 12 agreed.

Clause 13: Approval of notifiable acquisition

Amendments 41 and 42 not moved.

2.30 pm

The Deputy Chairman of Committees (Lord Duncan of Springbank) (Con): We now come to the group beginning with Amendment 43. Anyone wishing to press this or anything else in the group to a Division must make that clear in the debate.

Amendment 43

Moved by ***Baroness Noakes***

43: Clause 13, page 8, line 20, at end insert—

"( ) If an acquisition has been notified under section 14 and the Secretary of State has not issued a call-in notice under section 14(8)(b)(i) within the review period specified in respect of that acquisition, the Secretary of State shall be deemed to have approved the acquisition.

( ) If an acquisition has been notified under section 18 and the Secretary of State has not issued a call-in notice under section 18(8)(b)(i) within the review period specified in respect of that acquisition, the Secretary of State shall be deemed to have approved the acquisition."

Member's explanatory statement

This amendment is to give certainty that if the Secretary of State has not issued a call-in notice in respect of acquisitions notified under the mandatory or voluntary procedures, they can proceed and cannot be voided under Clause 13.

Baroness Noakes (Con): My Lords, I thank the noble Baroness, Lady Bowles of Berkhamsted, for adding her name to Amendment 43. I think it was the noble Lord, Lord Clement-Jones, who commented earlier in one of our Committee sessions that the word that would recur in our deliberations is "certainty", and that is what lies behind my Amendment 43.

If a transaction is a notifiable acquisition, it will be void under Clause 13 unless the Secretary of State has approved it in the ways set out in Clause 13(2). An acquisition subject to the mandatory notification procedure under Clause 14 will give the Secretary of State 30 working days from the time that he accepts the notice either to give a call-in notice or to notify that no further action will be taken. In the latter case, that is treated as an approval for the purposes of Clause 13.

My Amendment 43 attempts to deal with the situation in which a mandatory notification has been made but the Secretary of State has neither called it in nor made a notification that no further action will be taken. Without this amendment or something like it, a transaction could be stranded in no man's land, having been neither called in nor told that no further action will be taken. I am sure that there would be the possibility of some form of legal action to force the Secretary of State to do something, but those involved in transactions should not be put to that sort of expense in terms of time and effort. Clause 13 is so draconian in voiding transactions that the parties involved deserve the clarity of a definitive outcome so that they can proceed with certainty.

My amendment also deals with the similar situation that could arise under Clause 18, where a voluntary notification has been made and, at the end of the review period of 30 days, the Secretary of State has neither issued a call-in notice nor made a notification that no further action will be taken. My amendment seeks the same clarity and certainty for voluntary notifications.

Amendment 67 in this group, in the name of my noble friend Lord Hodgson of Astley Abbotts, would achieve a similar effect in respect of voluntary notifications. I have no particular attachment to my form of drafting, but a solution should be found in this Bill to the problem of both mandatory and voluntary notifications. I beg to move.

Lord Hodgson of Astley Abbotts (Con): My Lords, as my noble friend Lady Noakes said, Amendment 67 deals with Clause 18 on the voluntary notification procedure. I entirely support what she has said and her amendment. Like her amendment, Amendment 67 is to deal with no man's land, but it adds a further wrinkle to no man's land beyond that which she covered in her remarks. I am grateful for the support from the noble Lords, Lord Clement-Jones and Lord Bilimoria, and I have been reliant on the expertise of the Law Society for the detailed drafting.

As I say, this amendment is concerned with voluntary notification procedures. The objective behind the establishment of voluntary notification procedures seems entirely praiseworthy in that it can speed up the investment or divestment process for those involved by seeking in advance a decision by the Government on whether the proposed action will be subject to a call-in notice. If the Secretary of State decides to issue a call-in notice, the clock starts running on the 30-day period for initial assessment.

So far so good, but the Bill as drafted is not clear —as my noble friend made clear—on the time the Secretary of State has in which to decide, following a voluntary notice, whether he or she should issue a call-in notice. The only guide we have is under Clause 18(5):

"As soon as reasonably practicable after receiving the voluntary notice, the Secretary of State must decide"

and so on. This does not give any clear idea of how elongated this process may be. In particular, the use of the word "practicable" is rather strange—practicable for whom and in what circumstances? The solution to this is to redraft the clause so that unless the Secretary of State responds to the voluntary notification, it is deemed to have been accepted. That triggers the 30 working day period, so gives an end date by which the company or the investor will achieve clarity.

Amendment 67 also aims to correct a procedural anomaly in the current drafting, which touches on a point that was the subject of a discussion between myself and my noble friend Lord Lansley on the first day in Committee. I think this point goes beyond where my noble friend's amendment went. It is as follows: the Secretary of State has this 30 working day review period to decide whether to issue a call-in notice or notify the parties that no further action will be taken, but the drafting of Clause 18(9) appears to muddy that clarity when it says that the review period

"does not affect the operation of the time limits in subsections (2) and (4)"

of Clause 2. This was the point raised by my noble friend on our first day. This would appear to mean that the Secretary of State could fail to make a decision within the 30 working days but would still have up to six months from becoming aware of the trigger or five years from the date of the trigger to serve a call-in notice. The same difficulty applies to Clause 18(8)(b), which allows the Secretary of State to inform the parties after considering a voluntary notification that no further action will be taken. Again, it seems overridden by the provisions of Clause 2(2), with the six months or five-year period allowing for further reflection by the Secretary of State.

Amendment 67 aims to cut through this Gordian knot by requiring the Secretary of State to make a decision on the voluntary notification by the end of

the 30-working day period, and the absence of such a decision would be taken as approval. Objectively, that is to give clarity and certainty to investors, as we are trying to do throughout the Bill. Without an amendment such as this, the whole purpose and the advantages of the voluntary notification procedure could be undermined.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I have added my name to the amendment in the name of the noble Baroness, Lady Noakes, and I support everything that she said. I also support what I might call the companion Amendment 67 from the noble Lord, Lord Hodgson, which has been signed by my noble friend Lord Clement-Jones. I also agree with what was said there.

I favour mechanisms to give certainty, and the way the Bill operates at the moment means that, absent a call-in or other response, a business is left in no man's land—as the noble Baroness, Lady Noakes, called it. Indeed, the noble Lord, Lord Hodgson, pointed out that even if you escape from no man's land, there is a piece of elastic that pings you back in again for up to five years.

I realise that with a new system the Government may not know how well it will operate, but many noble Lords have repeatedly expressed concern, and I am coming from the standpoint that it is totally unreasonable to push all the uncertainty on to industry.

We have operated without these measures for a long time—maybe for too long—but to switch to draconian uncertainty overnight does not seem fair. There needs to be a point at which no response is an all clear, even though that itself is unsatisfactory compared with the positive receipt of an all clear notice in your hand.

I have nothing else to add, but I support the amendments. The Government need to take notice and to make this whole process more workable for industry.

Baroness McIntosh of Pickering (Con): My Lords, I am delighted to support Amendment 67 and, by the same token, everything that my noble friend Lady Noakes said in connection with her amendment. The two dovetail nicely together. It will be for the Government to determine which drafting is the best. I welcome my noble friend Lady Bloomfield to her position. I am delighted to be in the Chamber rather than in the virtual Chamber; it is an altogether more pleasant experience.

The consequences of the current drafting of Clause 18, as so ably set out by my noble friend Lord Hodgson of Astley Abbotts, together with Clause 2(2), leave everyone in a very precarious position, as the parties involved would have literally no clarity as to any certainty or finality. My understanding is that the parties would have to proceed to complete the transaction before any time limit started to run. Perhaps my noble friend the Minister could clarify that.

I welcome Amendment 67 in particular as giving clarity. I thank the Law Society for bringing it to our attention and my noble friend Lord Hodgson for bringing it forward, with the able support of the noble Lords, Lord Clement-Jones and Lord Bilimoria. I hope that my noble friend the Minister will look favourably on these amendments. If she is not minded to, will she undertake to bring forward amendments of her own? It would be very unfortunate to leave the parties in what my noble friend Lord Hodgson described as a no man's land, without any degree of clarity or finality.

Lord Naseby (Con) [V]: My Lords, I very much welcome the amendments from my noble friends Lady Noakes and Lord Hodgson. Any of us who has worked in financial services, either before we came into Parliament or while we were in Parliament at certain stages, knows that it is difficult enough to put together a financial situation, but that the worst thing in the world is to not know the date by which something must be concluded.

Indeed, I reflect that London is, and I hope always will be, a leading financial centre in the world. In that context, we need certainty. Noble Lords will know that I have worked in south Asia. There was continually a degree of uncertainty there on some aspects of financial matters. In fact, major companies always had somebody to explain things to them, or to manoeuvre, in the nicest possible way, a situation. We do not want any of that. We really do want certainty and not this no man's land that has been referred to.

I wonder about just one point, though. There might at some point be a situation where circumstances are such that, if these amendments are made or made in a slightly revised form, there must be some reserved power for national security. We have possibly experienced it in the pandemic that we are currently in. Some countries smaller than ours have suffered major power failure, and one could see the whole of the City of London being taken off the grid and everything else due to some unexpected event.

I am very much behind what my noble friends said in their amendments. I hope that the Government will respond to them, because they are needed, but I will understand if there is some national security dimension to the Bill that is not immediately obvious.

2.45 pm

Lord Clement-Jones (LD): The noble Baroness, Lady Noakes, and the noble Lord, Lord Hodgson, have demonstrated exactly why Committee is so important. The way they have teased out the real meaning of these time limits under Clauses 14 and 18 has been revelatory, if we can call it such.

I very much like the no man's land metaphor used by the noble Lord, Lord Hodgson, but, under Clause 18(9), my noble friend Lady Bowles also talked about the piece of elastic that brings you back. It is almost as if this Bill was designed to be deliberately obscure. The reference back to Clause 2(2) and (4) has almost been sneaked in, so that the Secretary of State has the ultimate discretion.

As the noble Baroness, Lady Noakes, said on the one watchword we have throughout the Bill, we are trying to create an investment regime where there is a high degree of certainty, so that people know what the boundaries are. The time limit boundaries seem to be limitless if they apply to the Secretary of State. An ordinary investor will no doubt be absolutely under the cosh if they fail to meet any time limits that apply to them, but the Secretary of State seems to have absolute discretion.

[Lord Clement-Jones]

I do not think I need to add anything further, except to say that we on these Benches strongly support Amendments 43 and 67. I have signed Amendment 67, but both the mandatory and voluntary notification procedures need curing in this respect. I very much hope that the Government will see their way to amending these clauses as we move to the next stage.

Baroness Hayter of Kentish Town (Lab): My Lords, this sounds like a "me too" moment, because we also have tremendous sympathy with the amendments, especially after hearing the concerns of stakeholders in the research sector about the uncertainty around the time for notices to be decided by the Government. As we have heard, their concerns reflect others from business and investors.

Could the Minister explain why a default approval should not be included in the Bill if organisations have not heard back within a particular timeframe? She will probably know about the important process for clinical trials involving medical products prescribed in the Medicines for Human Use (Clinical Trials) Regulations. In that case, where no notice is given or where further information is requested within 60 days, the clinical trial is treated as authorised. I am not suggesting that these are two exact types of decision, but that default authorisation in legislation seems to be one we might look at. I am interested to know whether the Government have looked at a similar default approval to add here. Perhaps the Minister could say what sort of advice the Government have had on whether that would work here.

On Amendment 67, could the Minister indicate whether 30 days is right for such a process? It would be useful to know the Government's thinking on the expected average turnaround time for a call-in notice.

Baroness Bloomfield of Hinton Waldrist (Con): I am grateful to my noble friends Lady Noakes and Lord Hodgson of Astley Abbotts for their amendments, which, I believe with good intention, seek to bring further clarity to the status of acquisitions that have been notified to the Secretary of State after the end of the 30 working- day review period. In particular, they seek to provide that acquisitions notified to the Secretary of State are deemed to be cleared following the review period if the Secretary of State does not issue a call-in notice within that period. Both worry, as other noble Lords have, that such a transaction might be stranded in a so-called no man's land. Amendment 43, from my noble friend Lady Noakes, would apply to both mandatory and voluntary notifications, whereas Amendment 67 from my noble friend Lord Hodgson of Astley Abbotts would apply just to voluntary notifications.

I think we are all agreed it is essential that businesses and investors have the clarity and certainty they need from this regime. That is exactly why we have included statutory timescales for cases—those covered by mandatory notification as well as voluntary notification —to be screened by the investment security unit. That is also why the Secretary of State is already required to give a call-in notice or issue a notification of no further action before the end of the review period in response to both voluntary and mandatory notification. He has no other option, and I hope that noble Lords are reassured by this. The Government consider that this is the right approach as it imposes a legal requirement on the Secretary of State to take a positive action to provide certainty one way or another. I do not believe that the default approval system suggested by the noble Baroness, Lady Hayter, would add to that certainty.

The Government do not think it would be in anyone's interest to leave the situation ambiguous as to whether an acquisition has been cleared or requires further scrutiny, so I am pleased to be able to reassure my noble friends of the Bill's functioning on these matters. Many of the businesses the Government have spoken to about the new regime have emphasised they would not wish to proceed with completing an acquisition without unequivocal confidence that they are cleared to do so. As such, it is not clear to me that my noble friends' amendments would provide greater confidence in the business and investment communities.

For these reasons, I cannot accept the amendment, and I hope that my noble friend Lady Noakes will withdraw it.

Baroness Noakes (Con): My Lords, I thank all noble Lords who have spoken on this group of amendments, especially my noble friend Lord Hodgson of Astley Abbots, who explained the interaction with Clause 2(2) and (4), and his Amendment 67, which I had not appreciated.

Apart from my Front Bench, we are agreed that there is a problem here. My noble friend the Minister explained why a time limit is put in the Bill. We understand that, but the Bill still does not give the certainty required: it does not deal with the position if the Secretary of State does not actually do something. We think the investment community is entitled to that certainty. One possibility is the default approval mechanism that the noble Baroness, Lady Hayter, referred to. We cannot just take it that because the investment community would like the certainty of a positive approval, we should let this Bill off from the ambiguity over what happens if the Secretary of State does nothing.

I shall read carefully what my noble friend has said in *Hansard*, but she should be aware that we will need to return to this on Report, because she has not satisfactorily dealt with the problem we have put to her. With that, I beg leave to withdraw the amendment.

Amendment withdrawn.

Amendment 44 not moved.

Amendment 45

Moved by ***Lord Lansley***

45: Clause 13, page 8, line 21, leave out from "made," to end of line 22 and insert "or in relation to which undertakings under section 26(1)(aa) have been accepted, that is completed otherwise than in accordance with the final order or the undertakings (as applicable), is void."

Member's explanatory statement

This amendment is linked to amendments in Lord Lansley's name to Clause 26 which provide for undertakings to be accepted instead of a final order.

Lord Lansley (Con): My Lords, this group consists of four amendments, all in my name. The few who are watching our proceedings may be slightly confused that all the amendments they have heard have been moved by those on the Conservative Benches. I think three-quarters of the amendments on our Marshalled List today are tabled by Conservative Members. It is because we all support the Bill, and we want to make it work well. I note that our noble friends are commending our intent; I promise them that our intent is positive in all these amendments. Many of them, like those in this group, are about trying to understand the structure of the policy and probing some of the considerations that we thought might go into it.

Amendments 45, 68 and 69 relate essentially to the policy question of whether the Secretary of State should accept undertakings as an alternative either to issuing a final notification, meaning nothing is going to happen, or to making a final order, meaning specific things must be done. Why should the Secretary of State have an intermediate option? The lawyer's answer is that he does not need it. Since the power in Clause 26 is that a final order

"may include … provision requiring a person, or description of person"

to do or not to do particular things, there is no limit to the power conferred under the Act. Therefore, almost by definition, the legal answer to the question of whether the Secretary of State needs this additional power is no.

However, as so often, we come back to the question of what, in practice, works best. In that respect, the Competition and Markets Authority, which works on both merger cases and public interest cases, can seek commitments and accept undertakings in view of making the equivalent of an order. It does that, first, because it can be quicker: a proposal can be accepted much more rapidly than using the process of examination necessary to arrive at a final order. Secondly, it can be structured in a way that is more flexible. It can be purposive—it can set out what the entity or the person controlling the asset would need to do to satisfy the Secretary of State to mitigate or prevent the risks.

Those undertakings could, therefore, be purposive and long lasting, whereas an order must be prescriptive, a bit like legislation. It will have to tell people precisely what they are going to do, or else—I fear that this may too often be the resort of Ministers—put someone in a position to make decisions about an entity or an asset in place of the people who actually control that company or asset. I will come on to that a little later in this group, on Amendment 71.

The potential for a purposive, flexible and speedy reference to undertakings, which has long been established in relation to the merger control and public interest regimes under the Enterprise Act, would be a good way of proceeding. This is not without precedence in other jurisdictions. For example, we have referred in our discussions to the Committee on Foreign Investment in the United States. The number of times the United States resorts to presidential decisions is very modest. The number of times it enters into what is known as a mitigation agreement is much greater. What I am looking for is something a bit like a mitigation agreement.

Amendments 68 and 69 to Clause 26 would insert the ability to accept undertakings. Under Amendment 45, if undertakings were entered into and not adhered to, the notifiable acquisition would become void. Therefore, Amendment 45 is consequential on Amendments 68 and 69. I am looking to find out why Ministers have rejected the option of undertakings, and whether this is something that should be in their armoury, even if they use it rarely.

Amendment 71 relates to the question on Clause 26, which states that the Secretary of State can provide for

"the appointment of a person to conduct or supervise the conduct of activities … with such powers as may be specified or described in the order."

Who is this person? This is purely a probing amendment to find out. Is this person simply a civil servant operating on behalf of the Secretary of State in all circumstances, and would the Government have such persons available with the qualifications and experience necessary to undertake these functions? If they are not civil servants, who are they? Under what circumstances would they be brought in, and with what qualifications would they be equipped? At the moment, as far as I can tell from the policy material issued with the White Paper and the response to consultation, these questions have not been addressed.

3 pm

Lord Fox (LD): My Lords, it is nice to be in the Chamber rather than the glass cubes in which we have been confined. I assure your Lordships, and agree with the noble Lord, Lord Lansley, that noble Lords not only on those Benches but on this side of the House want this Bill to succeed; I think that I can speak for Her Majesty's loyal Opposition as well. However, the measure of that success will be its efficiency, its certainty and the way it manages this important element of investment.

I listened to the answer that the Minister gave to the last set of amendments; I do not expect the noble Lord, Lord Grimstone, as Minister for this set, to comment on that. However, although it is probably irregular, I ask both Ministers to listen back to the answer that was given there and answer the same questions with their departments: how would they manage a company for five years that is still sitting in that kind of limbo? How would they make investment decisions for that business while it is still not approved but not denied? I ask them to think about the management decisions that they would make. When they have come to a conclusion, I think the Ministers will agree with the proposers of those amendments that some degree of certainty needs to be delivered quickly and efficiently—and that brings us to this set of amendments. The noble Lord, Lord Lansley, has eloquently set out an alternative to the—we might say—digital approach that the Bill has taken, with the option of remedies. Businesses are familiar with remedies, I would say, having worked with the CMA and others. The merits as set out by the noble Lord of speed, flexibility and durability are all things to be aspired to.

I know this sounds patronising, but I remind the Government that the title of the Bill includes the words "security and investment"—the investment part should have equal weight to that of security. It is straightforward to stop things happening and tick a security

[Lord Fox]
box; it is harder to make sure that we have a regime that continues to encourage investment. Everything that takes time or injects uncertainty pushes investment away. The Ministers should listen to the wise words of the noble Lord, Lord Lansley, and think about this middle way, which can move things quickly, keep investment in the game and make sure that, at the same time as getting investment, we are also getting the security that the title of the Bill demands.

Baroness Hayter of Kentish Town (Lab): My Lords, there is something going around my mind now about letting foxes out of their glass cubes—I am not sure how dangerous that is.

These amendments would allow for undertakings to be accepted instead of a final order—a case well made by the noble Lord, Lord Lansley. During Committee in the other place, Dr Lenihan from the LSE said:

"There are many cases in which a threat to national security can be mitigated by agreements and undertakings without needing to block a deal."

Perhaps the Minister could inform the House what thought was given to that proposal.

As we have heard, Amendment 71 is in a way a probing amendment to learn more about the type of person the Secretary of State could appoint to supervise a final order. We will be particularly interested to hear the Minister's reply on this. What sort of specialism would be involved? Would the person need to have any relevant training, background or experience? It would be interesting to know how they would be selected and whether the job description would be included in the report that would in any case be made, so that one could see the basis on which the selection happened.

Clause 26(4) states:

"Before making a final order the Secretary of State must consider any representations made".

We are interested in what exactly is meant by the word "consider". Would that be part of a dialogue, perhaps as part of the negotiations, or simply a requirement that representations are in the dossier submitted to the Secretary of State for ratification? Assuming that the representations had not been successful—if there were a final order, that would presumably be against the wishes of the parties—it would be interesting to know whether the reasoning for rejecting them would be noted and reported on elsewhere, possibly to the ISC. It would be important for someone to be able to reflect on the decision-making that had taken place.

The Minister of State, Department for Business, Energy and Industrial Strategy and Department for International Trade (Lord Grimstone of Boscobel) (Con): My Lords, I start by extending my thanks to my noble friend Lord Lansley for these amendments. I also thank other noble Lords who have spoken; all I think welcome the broad thrust of the Bill even if they wish, quite rightly, to probe certain aspects of how it will work.

I begin by addressing Amendments 45, 68 and 69. Amendments 68 and 69 would allow the Secretary of State to accept "undertakings" from the acquirer

"as the Secretary of State deems appropriate to remedy, mitigate or prevent any risk to national security",

rather than issuing a final order or a final notification. Amendment 45 would then, as I read it, make a consequential change to Clause 13 in respect of notifiable acquisitions so that those which are completed otherwise than in accordance with the final order or the agreed undertakings are void.

The Bill as drafted allows the Secretary of State two options once he has exercised his call-in power: first, to issue a "final order", which contains remedies. I would add here that remedies are not necessarily just black and white—they could have a whole set of actions incorporated into them; some noble Lords may not fully have comprehended that. Secondly, the Secretary of State can issue a "final notification", which states that no further action is to be taken under the Bill.

Undertakings proposed by my noble friend in these amendments would come into force when the undertakings were accepted. They could be varied or superseded through the Secretary of State accepting another undertaking, replaced by a final order made by the Secretary of State at any time, or the Secretary of State would be able to release the acquirer from their undertaking.

I am grateful that my noble friend is seeking to expand the options available to the Secretary of State but, as I hope to explain convincingly in just a moment, the Secretary of State does not need these additional options. Undertakings would not be appropriate because the Bill already provides the dual benefit of certainty for parties while giving the Secretary of State the "teeth" needed to enforce a regime built around our national security.

The Bill includes the ability for the Secretary of State to establish the terms of any remedy through the power to make final orders. I emphasise that point again. The terms of a remedy may require someone to dispose of part of something or to do something in relation to one bit of an undertaking but not another. It is a comprehensive term which allows all sorts of matters to be included within it. Indeed, the Bill states in Clause 26(5)(a) that a final order may require a person

"to do, or not to do, particular things".

I am advised that that is a strong statutory footing which the Government consider is both required and sufficient for remedies under this regime.

My noble friend Lord Lansley was right on the button when he said that this gives the Secretary of State all that he requires. The Secretary of State does not need any additional powers because this power gives him all that he might conceivably want to do. Of course, before the Secretary of State determines his final order, he is likely to engage with parties to an acquisition—acquirers and others—to explore potential remedies.

However, it is right for the purposes of national security that these remedies—once they have been considered, and once they might have been discussed and looked at—should then be able to be imposed through a final order rather than assented to by the Secretary of State. We believe that this imposition is necessary because the matters that we are dealing with here are matters of national security. The Bill as drafted provides the Secretary of State with the power to impose remedies through a final order or to take no further action under the Bill, which is all that is required.

With Amendment 71, my noble friend addresses an important part of the Bill; namely, the carrying out of activities pursuant to final orders. The execution of final orders is of course vital to ensure that any remedies imposed by the Secretary of State have their desired effect. There would not be much point in just imposing orders if they were not carried through afterwards. This amendment seeks to make explicit a requirement that anyone who will conduct, or supervise the conduct of, activities mandated by final orders must be "suitably-qualified". While I appreciate the good intention of my noble friend, I do not believe that this amendment would add anything substantial to the Bill.

First, the Secretary of State is unlikely to appoint someone who could not conduct or supervise the conduct of activities mandated under the final order. It would be daft of him to put someone in to do the job who was not qualified to do it. Why would he or she wish to do that? To do so may undermine the Secretary of State's remedy; the remedy may not be carried out in full or in part if the person is not qualified, which would be against the decision that the Secretary of State has made. It is therefore very much in the Secretary of State's own interests that the person appointed has to be "suitably-qualified," even if the Bill does not say that specifically. I take it for granted that that is what the Secretary of State would want to do.

Secondly, the Secretary of State will be subject to public law duties when providing for a person to be appointed. Those public law duties will require him to act reasonably and take into account all relevant considerations. This would include whether the person is suitably qualified to undertake the task. He would be failing in his public law duties if he appointed someone who was not so qualified.

Thirdly, should it be helpful to noble Lords, I am happy to state categorically on the Floor of the Committee that the investment security unit will comprise eminently qualified people of the right skills and experience. For example, if a particular case requires someone qualified in chartered accountancy or in audit, the Secretary of State will appoint somebody who has those qualifications to carry out what is required.

For these reasons, I believe that although noble Lords are trying to be helpful in putting forward the amendments in this group, they are unnecessary. What they seek to do is already covered by the powers that exist in the Bill, and I hope that my noble friend will feel able to withdraw Amendment 45.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): I have received one request to speak after the Minister from the noble Lord, Lord Fox.

3.15 pm

Lord Fox (LD): My Lords, I thank the Minister for his answer. I want to follow up on his last point. There is a certain ambiguity in his answer around where this person would be drawn from. In one sentence the Minister referred to the ISU and in the next sentence he referred to drawing on a particular power. It is not clear: is this a standing group of people who will be set in or will people be seconded from other companies or pulled in from other departments? A little more sense of what the source of these people is would give us more security around this.

Lord Grimstone of Boscobel (Con): My Lords, I thank the noble Lord for that question. It will be horses for courses. It will be either qualified people from inside or, if a person from inside does not have the qualifications, someone will be drawn in from outside and appointed to do it. The test will be to make sure that the person you ask to do the role has the capabilities and the qualifications to do it. I say yet again: why would the Secretary of State wish to do other than to appoint somebody who is qualified to do this task?

Lord Lansley (Con): I am grateful to my noble friend the Minister for his responses to this short debate, and indeed to those who participated in it. It was helpful to elaborate some of the issues, although I am not sure that we solved many of the questions that were posed.

My noble friend correctly deduced that I did not see Amendment 71 as needed. It was designed to find out who these people are. Although my noble friend did not say so, the implication is that they are the staff of the department, working in the investment security unit. In a sense, that tells us already that, when we come on to think about some of the implementation of this and the annual reports and so on, we are dealing not only with a flow of cases through the investment security unit but with a continuing role for the unit in the scrutiny and the conduct of the activities that are the subject of final orders. I hope that we will be dealing with only some dozens of final orders a year, but it will build up over time since many of these final orders in relation to entities will have a continuing relationship.

I did not expect the "suitably-qualified" question to arrive at any other answer than that they are civil servants recruited into or drawn from the department, but if they were other than that, it would be very useful for us to be told. I am assuming that they are not.

On the question of undertakings, as I surmised at the outset, the Secretary of State has all the powers the Secretary of State requires. The point, however, is that when making final orders, it may be flexible from the Secretary of State's point of view, since the Secretary of State can include anything the Secretary of State wishes to include in it. However, it is not necessarily flexible from the point of view of the people affected, since once the order is made, the flexibility has completely disappeared. What is flexible about undertakings is the ability of the acquirers to make commitments at the time they are contemplating an acquisition in order to bring those two things together to enable the acquisition to continue—the noble Lord, Lord Fox, made that point, perfectly reasonably. If we want to promote investment and to assist those who are acquiring entities and assets in the United Kingdom, other foreign direct investment jurisdictions such as the US allow for mitigation agreements. The American one does not impose orders, or rarely does so. There may still be merit in having the flexibility to enter into agreements with acquirers rather than imposing orders

[Lord Lansley]
on them. I am surprised that the Government have simply dismissed that possibility. Having it on the statute book does not mean that Ministers have to use it, but if it is not on the statute book, they cannot do it. That is why we are thinking about it at this stage.

However, in the light of what my noble friend says by way of the powers in the Bill, I suppose that at this stage it is probably best to beg leave to withdraw the amendment.

Amendment 45 withdrawn.

Amendment 46 not moved.

Clause 13 agreed.

Clause 14: Mandatory notification procedure

Amendments 47 and 48 not moved.

Amendment 48A

Moved by ***Lord Hodgson of Astley Abbotts***

48A: Clause 14, page 8, line 37, at end insert "which may include a streamlined form to be used by a person who has previously submitted a notification under subsection (1) or section 18 (2)".

Member's explanatory statement

This amendment seeks to reduce the regulatory burden for persons who have submitted notifications on previous occasions.

Lord Hodgson of Astley Abbotts (Con): My Lords, in moving Amendment 48A, I shall speak to Amendments 67B and 67C, and propose that Clause 30 should not stand part of the Bill.

On the first three amendments, I have been assisted by the Global Infrastructure Investor Association and its legal advisers, Ashurst. The association, as its name suggests, represents major investors who participate in multiple infrastructure projects around the world. The purpose behind these amendments, as with so much of our debate today and on the previous two days in Committee, is to provide clarity, certainty and speed. My noble friend Lady Noakes, the noble Lords, Lord Fox and Lord Clement-Jones, and the noble Baroness, Lady Bowles, all talked about the extraordinary impact of uncertainty and time on companies. Let me give a brief example.

A few years ago, I was a non-executive director of a public company that was the subject of what is known as a dawn raid. My chairman was rung at 8.30 am by the chairman of a major competitor to say that, overnight, it had purchased 28% of our share capital from our investors. It was immediately referred to the Competition and Markets Authority, because these were two quite large companies in the sector, and we had a collective, organisational nervous breakdown. This went on for three or four months. The predator spent the whole time trying to persuade the CMA that there was no reason why the purchase should not go ahead; meanwhile, we in the victim company were trying to preserve morale, keep business going and assure people that their jobs were safe. But there was a degree of uncertainty, because it was not our decision in the end. The Ministers on the Front Bench deal with this in a sort of "it'll be all right on the night" way, but it is very difficult in the real world out there. I give that example having been through this extraordinarily difficult period myself, and seeing how it could arise if we do not get the wording, clarity and speed of the Bill right.

Amendment 48A is the first. It would insert a provision for a more streamlined procedure for those who may be making frequent applications under the provisions of the mandatory notification procedure in Clause 14. Subsection (4) of that clause gives the Secretary of State powers, by regulation, to decide the "form and content" of any mandatory notification. The background to Amendment 48A is that there are many low-risk investors in the UK who currently and regularly invest in sectors that could trigger a notification once the Act comes into force. It would reduce the bureaucratic load if, once an investor had made a notification, or maybe one or two notifications, such an investor could make streamlined notifications, allowing them to avoid submitting the same information repeatedly —always, of course, with a statement that there had been no change in their circumstances in the meantime.

In the debate a few days ago on the group beginning with Amendment 15, the noble Lord, Lord Callanan, talked about the proposal in Clause 6(5), which does not entirely break new ground. It provides for the Secretary of State to make exceptions

"by reference to the characteristics"

of the acquirer. All that Amendment 48A seeks to happen is to move that sensible clarification and proposal into this subsection for this group of investors.

Amendments 67B and 67C are linked and seek to clarify the position of the Secretary of State under the stop-the-clock provisions of the assessment period and to ensure that any such powers are not abused. This is an add-on to the point made by my noble friend Lady Noakes earlier about no man's land; the stop-the-clock provisions can be used to extend the period.

The two amendments relate to Clause 19, which concerns the power to require information, and Clause 24, which concerns the effect of the information notice and attendance notice. It is understandable that the Government may well need, and should be able to seek, further and better particulars for any transaction, but the extent of the power needs to be considered against two factors: first, the context of a regime where the basic assessment period is already quite long—75 working days or 15 working weeks for a national security assessment, or 30 working days or six working weeks for the initial screening process; and, secondly, that this statutory period can be extended by the Secretary of State using the stop-the-clock power. Under this power, the Secretary of State can require further information and must set a time limit by which it must be provided. Without being too cynical, it is perfectly possible for a Secretary of State with a tricky, controversial decision to make frequent requests for more information, stopping the clock on each occasion by imposing an unreasonably short time for the supply of the information. The process by which he or she pushes the pea around the plate could, eventually and ultimately, frustrate the transaction, without the Secretary of State ever having to take a decision at all.

Amendments 67B and 67C attempt to deal with this by a twin-track approach. Amendment 67B proposes that any information notice served under Clause 19 must allow a reasonable period of time for response, which must, in any case, be not less than three days. Without this safeguard, as I have said, the Secretary of State could repeatedly ask for more information, each time stopping the clock almost immediately. In parallel, Amendment 67C amends Clause 24, so that the stop-the-clock powers are discretionary and not automatic. Therefore, if complex questions take longer to answer, the Secretary of State does not have to stop the clock. Such an approach would mirror that followed by Section 34ZB of the Enterprise Act, in granting extensions to the statutory time limits to which the Competition and Markets Authority is subject for merger control purposes.

The final proposal in this group is that Clause 30 should not stand part of the Bill. I had thought about degrouping this, but decided that we have enough groups and should crack on. Clause 30 is entitled "Financial assistance". Its wording can best be described as wide, and the Explanatory Notes are not much more helpful. In principle, there is nothing wrong with the Secretary of State having the power to compensate for the consequences of him or her making a final order under Clause 26. This is a probing amendment to ask my noble friend to provide what I might describe as a stream-of-consciousness description of how these powers are likely to be used.

For example, how is any compensation process to be initiated? Will it be at the request of the party which is the subject of a Clause 26 order or an offer by the Secretary of State? Is there an official or a body that will consider and assess such requests or will the decision flow from the Secretary of State's desk? It may be that the expert person referred to by my noble friend Lord Lansley has a role to play here. What factors will be taken into account? Who decides the quantum of any compensation? Lastly but most important, how long is any process expected to take to complete?

If the subject of a Clause 26 order is a small, fast-growing company in urgent need of additional finance in the form of working capital to fund its expansion and the investment is suddenly blocked, any long delay may well prove terminal for the company as a whole. What about smaller companies where a single individual has spent a lifetime building up the business? Now he or she wishes to retire to enjoy the benefits of years of toil. Such a sale is then blocked on grounds of national security. What compensation or redress is available? It would be helpful if my noble friend could explain how this will work. In the meantime, I beg to move.

3.30 pm

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I support the amendments in this group, which, as usual, the noble Lord, Lord Hodgson, has done a very good job of introducing. I was particularly drawn to the notion of streamlining, as suggested in Amendment 48A. I admit that my interests are probably wider than in this particular instance, but what we are dealing with here is a situation where there may already have been a previous notification and much of the same information might be needed again. If this is thought too wide, in that it goes on for ever so that it is hard to believe that updating might not be required, perhaps the streamlining could be for a certain period and, as the noble Lord, Lord Hodgson, also suggested, on the condition that nothing else has changed or, perhaps as an alternative, that one has to notify only what changes have been made.

This also raises the question of how much record-keeping the Government are going to undertake. I raised a somewhat similar query last week when I was thinking about licences and an investment agreement that covered options for licensing and whether they could be covered at once or, as perhaps this amendment envisages, there could be some kind of streamlining. However, the response from the Minister was that each instance had to be dealt with on its own. That would be a great shame from the industry side of things. That is no way to build up, if you like, intelligence, and for that to work both for the department and industry in helping to make it simpler to get through these notifications and to understand what is going on.

Looking at how a lot of notifications are made on a precautionary basis—much of the interest in the Bill is about making sure that an acquisition is safe—if an acquisition has already been cleared as being not of interest in response to a voluntary notification, for example, is it then sold on again? Is it safe to assume that, if there has been no significant change in activity but it was felt previously to have fallen within the definitions, it is safe to go ahead again with a voluntary activity? That is because again there will otherwise be a temptation to think that safety requires another notification. I would have thought that it was in everyone's interests to cut down on the number of voluntary notifications.

Amendment 67B is self-evident, given that the "reasonable in all circumstances" provision must cover not only any urgency perceived by government but also the facilities at the disposal of the person. One interesting point that I would like to make here, although it goes a little beyond what the amendment is all about, is that Clauses 19 and 20 bear some resemblance to clauses in the Internal Market Act 2020, which were in turn lifted from the CMA information requirements. If the noble Lord, Lord Callanan, was answering this —although it is not—I am sure there would be a recollection that I recalled bitterly that those conditions were inappropriate. It is interesting to see that, in what might be called rather stronger situations, a slightly lighter touch is nevertheless being adopted here; that is, when individuals are involved in something that is necessarily of a security interest. Perhaps that reflects some recognition by the Government that people who have done no wrong should not be subjected to overly coercive requirements as though they were wrongdoers. That is a comment on an aspect of this part of the Bill, rather than in direct relation to the amendments.

I support these amendments. I was not sure what the noble Lord was going to say on the financial clause. Some very good points have been made, but I tend to be of the view that if the Government's requirements have caused disaster to befall a company through delay, there should be a mechanism for compensation. However, how that is to operate needs to be made clear.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Bowles. I shall speak briefly to this group because my focus is solely on the final provision, which is that Clause 30 should not stand part of the Bill. I thank the noble Lord, Lord Hodgson of Astley Abbotts, for drawing our attention to this issue.

The whole subject of government spending, in particular where it relates to contracts but also to government aid, is now a matter of great public interest and concern. It is therefore important that this whole area should be given a great deal more attention and focus. We have seen, through our concern about international trade deals, the way in which companies carrying out their business and taking risks, which is supposed to be our economic model, have sought to attain compensation for, for example, government decisions about environmental matters or public health. We need to be concerned about the links in this, in particular as regards the ISDS arrangements, which I have debated with other Members of your Lordships' House.

I would also ask the Minister if, either today or perhaps in the future, he would spell out how the Government see this working, especially what the mechanisms would be, and put a specific question to him about democracy and transparency. Clause 3 states that this legislation is to cover spending of £100 million or more. How has that figure been arrived at? Given that we are talking about government money, should it not perhaps be lower?

Baroness McIntosh of Pickering (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Bennett. I support the amendments in this group and I am delighted to have the opportunity to speak to the proposal that Clause 30 should not stand part.

The impact assessment sets out graphically what the financial implications of the measures in this Bill will be. It states that the costs are to be found in two main areas where the new regime could incur additional costs, notably additional administrative costs and the potential impact of a new regulatory regime on investment decisions. Of course, what we do not know are the known unknowns of possible investments, particularly in infrastructure, that may be cancelled. I am delighted to see that my noble friend Lord Grimstone is the Minister to reply, given his background with the Trade Bill. However, do the Government have any idea what the implications might be?

I understand that the Government have put a figure in the cost-benefit analysis of the costs to business and the Government together being, on average, between £26.2 million and £73.1 million per year. My understanding was that, when we were in the European Union, we attracted more foreign direct investment than any other EU country, and that, as of 2019, we currently have the seventh highest inward foreign direct investment flow, as the impact assessment tells us. I have some involvement in the OECD and water policy and note that,, in paragraph 168 of the impact assessment, we are told that:

" The National Infrastructure Pipeline details long-term plans to invest over £400 billion (including £190 billion to be invested—"

this year—

"across 700 projects in water, energy and transport infrastructure. A large proportion of this would have been in conjunction with overseas investors."

Water is attracting a high proportion of foreign investment, which the Treasury and the Government have consistently and rightly encouraged.

My noble friend Lord Hodgson, in his remarks on the question on whether Clause 30 stand part of the Bill asked a lot of the right questions regarding who will decide and so on. I should add a few other questions. Are these loan guarantees or indemnities recoverable and, if so, what would be the timeframe within which they would be recovered? I should also be interested to know from which budget the grants, loans and indemnities would come. The clause recognises the financial hit that many of the parties and investors might attract, which is welcome, but, as my noble friend Lord Hodgson identified, we do not find a great deal of information in the clause. There is no supporting schedule that one might normally expect in those circumstances and the Explanatory Notes say little. That is why I welcome the opportunity to ask those questions and I look forward to my noble friend's responses when he sums up.

Baroness Noakes (Con): My Lords, I support my noble friend Lord Hodgson of Astley Abbotts in all his amendments. This House has an obligation to ensure that the Bill does everything possible to ameliorate the practical impact that it will have on business transactions. While most of the transactions will not, by the Government's reckoning, engage national security issues, the fact is that they might do so and will inevitably result in a lot of precautionary notifications. We have to minimise the impact of the processes on ordinary investment decisions.

I particularly wanted to speak in respect of the question on whether Clause 30 stand part of the Bill and support what my noble friend Lord Hodgson said. It is extraordinary that a Bill about stopping certain transactions could have morphed into one whereby the Government will stuff public money into the pockets of one or more of the parties involved, with almost no explanation. As my noble friend Lady McIntosh of Pickering has said, one will find nothing in the Explanatory Notes or any of the other documents around the Bill. There is no comparable power in relation to the activities of the Competition and Markets Authority. That is extraordinary because the Government have taken the decision-making power to themselves in respect of transactions. They can then use public money in almost any way they choose. At the very least, we are entitled to have some clarity on how the Government expect to use the power.

I expect that the other place will claim financial privilege if we try to do anything to the clause, but we should not be deterred because of that.

3.45 pm

Lord Naseby (Con) [V]: My Lords, I am grateful to my noble friend Lord Hodgson for tabling the amendment because what is behind it is absolutely right, as a number of my noble friends have said in the debate. That is fine, particularly in a situation whereby we are hoping to set the environment in which new companies can be created. After the pandemic, we are highly likely to see a number of movements in that area that would not normally happen.

One area on which I have a slight query is the preference to be given to someone who has done it before, particularly if they are not a company but someone who is handling the matter. That gives an advantage over someone who has not done it before. Therefore, regarding the point made by the noble Baroness, Lady Bowles, about a time limit or distance limit in terms of time, there needs to be some stop on that. Otherwise, an unfair advantage is given to one party over another.

Another element that I worry about a little, which covers security matters as much as anything, is that some people out there are enormously creative in terms of manoeuvring and so on. Two things may seem similar but can be yards apart—miles sometimes. Not all that is written on the outside packet of a product or company represents what is happening underneath.

While I support the broad thrust of my noble friend Lord Hodgson, I have those reservations and shall listen carefully to my noble friend on the Front Bench.

Lord Clement-Jones (LD): My Lords, the noble Baroness, Lady Noakes, has coined another phrase that will run through this Bill—notably, "practical impact". It is interesting that among those of us who have taken part in the debates on the Bill many have a practical understanding of what its impact could be. We have been in walks of life that have brought us into the investment community—not least the Minister himself—and we see the potential for major issues arising under the legislation because of the way in which it is drafted. This group of slightly disconnected amendments illustrates that. The noble Baroness, Lady Hodgson, and my noble friend Lady Bowles forensically took us through the amendment and Amendments 67B and 67C. I shall come to the question on whether Clause 30 should stand part of the Bill in a moment.

However, the amendment is definitely the kind of red tape-busting amendment that we need. My noble friend Lady Bowles said that we needed provisions that actually met the needs of the investment community and were tailored to it. The amendment is a classic example of what could be done in terms of making sure that we do not have a situation in which companies have to make notification after notification. The intertwining of the mandatory and the voluntary notification aspects provided for in the amendment is extremely important.

Then we come to Clauses 19 and 24, and Amendments 67B and 67C. The noble Lord, Lord Hodgson, also has a way of coining a phrase, such as "stop the clock" provisions, which again give the Government all the cards and the poor old investor could be stuck for some period of time. As the noble Lord pointed out, the extent of the powers in terms of the periods are already quite long—75 working days or 15 working weeks for a national security assessment, or 30 working days or six working weeks for the initial screening period. We are not talking about modest periods but, rather like the referee in a rugby match, the Government can stop the clock and there is no control over that, as far as I can see. Therefore, we on these Benches firmly support those amendments.

On Clause 30 stand part, I liked the phrase of the noble Baroness, Lady Noakes: "stuff these companies with public money". If that was the case, it would be pretty egregious. Now that noble Lords have drawn our attention to it, we can see that the Explanatory Notes on Clause 30 are vanishingly small. There is virtually nothing in there: there is no control over what the Secretary of State does. He may have to give a report if it is over a mere £100 million—and what is £100 million but small change in the circumstances? The Secretary of State can make more or less any decision and then say, "We have made the decision, but we have plenty of cash that we can stuff into your pocket." It is the opacity, the lack of reporting and any real control in Clause 30 to which the noble Lord, Lord Hodgson, has rightly drawn attention. This is another area where I hope the Minister has something to say that not only gives quite a lot of further assurance but undertakes to create greater control over the powers in that clause.

After a bit, one gets a feeling for a Bill, and this one seems overly weighted in favour of the Secretary of State. The Secretary of State is more or less footloose and fancy free, and it is the poor old investor who will have to bear all the consequences.

Baroness Hayter of Kentish Town (Lab): The lead amendment, Amendment 48A, would introduce a streamlined form for mandatory notification, and Amendment 67B would make any time limit for an information notice not less than three working days. That seemed a sensible—I think the word used was "pragmatic"—proposal.

Turning to the interesting Clause 30, the Minister in the other place said,

"final orders, in exceptional cases … when we are administering taxpayers' money—may bring about financial difficulty for the affected parties",—[*Official Report*, Commons, National Security and Investment Bill, 8/2/20; col. 288.]

which is why Clause 30 allows the Secretary of State to give financial assistance to an entity through a loan guarantee or indemnity as a consequence of making a final order.

It would be interesting to know a little more about the whole of this, as we have heard, and when a potential recipient might know that they were even in line for such help. How early in the process would it be indicated—not the actual decision but that that was a possibility? Or is it like Father Christmas appearing at the end?

As we have heard, the figure of £100 million is interesting, and it is interesting that there is no regulation-making or guidance-providing requirement such that guidance on the use of the power might have to be, if not agreed by Parliament, at least provided and open for debate and scrutiny. Will such guidance exist and how many cases a year are envisaged involving £100 million? Who would make the decision and how, as has been asked, and will it be reported in a timely manner—or, indeed, at all?

If this is the Government's desired outcome, it seems that Clause 30 does not provide for any financial assistance in the case of an interim order. Perhaps the Minister could outline the thinking behind that, given that an interim order could also impose major costs

[Baroness Hayter of Kentish Town]
on a British start-up or prevent an acquirer investing in one if it was thought that that investment might increase the acquirer's level of influence unduly and trigger the next stage. There could also be the loss of a business-critical investment. It would be useful to know the thinking behind making money available to cover one sort of loss but not another. I look forward to hearing more of the thinking behind how this would work in the Minister's response.

Lord Grimstone of Boscobel (Con): My Lords, first, I thank my noble friend Lord Hodgson of Astley Abbotts for tabling Amendments 48A, 67B and 67C. I hope that the transaction he referred to had a happy ending.

Amendment 48A seeks to make it explicit that a streamlined mandatory notification form may be provided for in regulations if a person has previously submitted a mandatory or voluntary notification to the Secretary of State. The Bill requires a mandatory notice to be submitted to, and receive clearance from, the Secretary of State prior to the completion of a notifiable acquisition. Clause 14(4) provides for the Secretary of State to prescribe the form and content of a mandatory notice in regulations.

The amendment would amend the regulation-making power to make it explicit that such regulations could provide for those who have previously submitted either a voluntary or a mandatory notification form to submit a streamlined form. I am pleased to say that we are completely aligned with noble Lords who want the process under the Bill to be as streamlined as possible. As the Minister for Investment, looking to the interests of investors, I completely endorse that. I reassure noble Lords that the regulation power as drafted already provides for that.

In addition, the Government are designing both the voluntary and mandatory notification forms with business in mind, while ensuring that the Secretary of State receives the information that he needs to decide whether to issue a call-in notice in relation to a proposed notifiable acquisition.

I stress that the Government are keen to ensure that all the forms are clear and simple to complete. A draft notification form was published for comment during the Commons passage of the Bill, and the Government continue to engage interested parties to test the ease of completing the forms and the clarity and relevance of the questions.

Amendment 67B seeks to create a floor for the minimum time which the Secretary of State must provide to a party for responding to an information note. The minimum floor proposed is three working days. As noble Lords will be aware, Clause 19 provides for an information note which the Secretary of State may issue to require any person to provide information which is proportionate in assisting the Secretary of State in carrying out his functions.

An information notice may include a time limit for providing the information and the manner in which the information must be provided. An information notice must specify the information sought and the purpose for which it is sought, as well as the possible consequences of not complying with the notice.

It will be in the Secretary of State's interest that any party from whom information is required is provided appropriate time for collecting and providing such information, or else confirming that they do not possess it. Providing insufficient time for doing this will only lead either to incomplete information being provided or to information being provided in a form which is more difficult to analyse. It might also lead to unwelcome outcomes, such as a party undertaking due diligence as to whether they possess the relevant information, but there then being insufficient time for them to establish that with certainty.

It is with these issues in mind that I assume that my noble friend tabled his amendments. I reassure him that the Secretary of State will already have the appropriate incentives to allow appropriate time for a response, and that, more widely, public law duties will require him to take a reasonable approach in setting a time limit for responding to an information notice under the Bill.

4 pm

I shall deal directly with the point made by my noble friend that the Secretary of State might want to waste time. I reassure the Committee that the Secretary of State has absolutely no desire to push his peas around the plate, as my noble friend so graphically illustrated. It is absolutely not the Government's intention. This provision is about helping to make sure that non-compliance with the process does not help hostile actors to get trigger events cleared. That would be truly perverse. The powers to require information or witnesses may be used only in relation to the Secretary of State's functions under the Bill. This means that they have to be relevant to assessing the acquisition and making a decision on it. The Secretary of State will be subject to the usual public law duties when issuing information notices or attendance notices and judicial review will remain the safeguard on how those powers are used.

Amendment 67C would narrow the circumstances in which time would not count towards the assessment period after an information notice or attendance notice has been given. It would give the Secretary of State discretion to disallow days falling between the expiry of any time limit specified in the notice and the day that the Secretary of State informs the parties that he is satisfied that the requirements of the notice have been complied with. This would mean that days could not be disallowed if the notice is never complied with. There would also be no requirement to notify relevant parties that time had been disallowed, and any time that was disallowed could be disallowed only retrospectively; that is, the Secretary of State would have to make the decision while the clock was running.

This would have two unfortunate effects. First, a party could time out the Secretary of State from making an informed decision before the end of the assessment period by not complying with the notice. Secondly, time could be disallowed only retrospectively, once there had been compliance with the notice, which would mean that the assessment period clock would still have been running throughout this time. Therefore, the Secretary of State could already have been timed out by the point that any decision is made to disallow

time. The Bill as drafted prevents this by automatically stopping the clock for the days following the notice being issued until compliance with the notice or, if earlier, the expiry of any time limit for compliance. I reassure the Committee that the Secretary of State has absolutely no motive or desire to make this process anything other than as efficient and streamlined as possible.

Information notices and attendance notices cannot be issued for the purpose of lengthening the assessment period, as I have said before. The Bill explicitly requires—I stress this again—notices to be issued for the purposes of assisting the Secretary of State in carrying out his functions under the Bill. It is clearly not a function of the Secretary of State under the Bill to lengthen the assessment period. In any event, as I said earlier, issuing a notice for such a purpose would be inconsistent with the Secretary of State's public law duties.

I will now set out why Clause 30, which makes provision for financial assistance, must stand part of the Bill. The Government recognise that final orders, in exceptional cases, may bring about financial difficulty for the affected parties. I shall give some specific examples in a moment. 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; for example, in order to mitigate the impacts of a final order. I stress that this is not a general compensation scheme. It relates only to final orders. As well as being used to mitigate the impact of a final order, it might be used where the consequence of a final order in itself might otherwise affect the country's national security interests. I will give an example of that in a moment as well. The cost will be borne by BEIS, but will be, as always, under the beady eye of the Treasury, which will have to give its consent to any monies issued under this clause. Noble Lords will know that such clauses are required to provide parliamentary authority for spending by the Government in pursuit of policy objectives where no existing statutory authority for such expenditure exists. I stress that I am confident that such assistance would be given only in exceptional circumstances when no alternative was available.

I am happy to give my noble friend Lady Noakes the examples she requested, to provide the noble Lord, Lord Clement-Jones, the transparency that he is seeking, and to help the noble Baroness, Lady Hayter, with some examples. For example, the Secretary of State could impose a final order blocking an acquisition of an entity which is an irreplaceable supplier to government, and the imposition of that order subsequently puts the financial viability of that entity in doubt. In such a situation, the Secretary of State, if he or she were so minded, could provide financial assistance to the entity to ensure that it could continue operating while an alternative buyer was found. Such a power naturally requires appropriate safeguards to ensure that public money is appropriately spent. Such spending would, of course, be subject to the existing duty of managing public money and be compliant with any other legal obligations concerning the use of government funds. As the Bill makes clear, in addition, if during any financial year the assistance given under this clause totals £100 million or more, subsection (3) requires the Secretary of State to lay a report of the amount before the other place. Where during any financial year in which such a report has been laid the Secretary of State provides any further financial assistance under this clause, subsection (4) requires that he lays a further report of the amount. Additionally, the annual report under Clause 61 must include the expenditure incurred by giving, or in connection with giving, financial assistance under Clause 30.

I shall give the noble Baroness, Lady Hayter, some more information about why we do not provide support in relation to interim orders. Restricting the power to final orders ensures that the Secretary of State may use it to assist entities only once a national security assessment has been completed and final remedies have been imposed. The purpose is to mitigate the impact of any final order on a company. It would not be an appropriate use of the power to provide aid to an entity that is only temporarily affected by an interim order which will last only for the period of the review, which is unlikely to be more than 30 working days.

I hope that noble Lords will see this clause as necessary and appropriate and have confidence that the Government and future Governments have limited but sufficient freedom to provide financial support under the regime as a result of it. I ask my noble friend to withdraw his amendment.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): I have received two requests so far to speak after the Minister—from the noble Lords, Lord Fox and Lord Clement-Jones.

Lord Fox (LD): My Lords, I thank the Minister for his thorough answers. In his answer on Clause 30, the Minister referred to "affected parties" and did not rule out the aggressor, as well as the target, from potential compensation—or mitigation, as I think the Minister described it. Am I right in assuming that the aggressor might also feel that they are eligible for mitigation?

Secondly, the nature of that mitigation seems to rule out the Government taking a share in a potential company, rather than simply bailing it out. Given that this Government have already spent $500 million taking a 20% share in OneWeb, which was not even strategic, why would they not leave themselves open to taking a share in a company so important that they felt they needed to prop it up?

Lord Grimstone of Boscobel (Con): I thank the noble Lord for that question. I will give him an additional example of where this power or type of power might be used. As I stressed earlier, it is not a general compensation power and will only be used in instances where the public interest, particularly national security interests, require it. As I also said earlier, any financial assistance would be subject to Treasury consent and would have to be shown to provide value for money. For example, if the Government provided a loan, it would normally have to be at market rates. The clause does allow the Secretary of State to bail out any business, either directly or surreptitiously, through soft loans.

Equally, the aim is not for this Bill to cause businesses financial distress, nor do we anticipate it doing so. The Secretary of State—this is the key point—may make a

[Lord Grimstone of Boscobel]
final order only if he "reasonably considers" that it is "necessary and proportionate" to address an identified national security risk.

Let me give an example. A case might arise whereby an asset has to be secured to prevent the national security risk of someone else getting hold of it. The Secretary of State might have imposed a final order that blocked a trigger event of a UK company that was working on unique or world-leading technology. If the company could not immediately find an alternative buyer, and if the collapse of the company could itself pose a national security risk, the Secretary of State could consider using this power. In such a situation, the Secretary of State may decide that he or she wishes to provide financial assistance to ensure that the company could continue operating until an alternative acceptable buyer was found. As such, this power will be used only in very tightly drawn circumstances where doing so is clearly in the national interest.

Lord Clement-Jones (LD): My Lords, I know that the Minister is trying to be as helpful as possible by tying down the way Clause 30 will work. However, "tightly drawn" is not how I would describe its wording, so I assume he is really saying that it is the risk of judicial review hanging over the Secretary of State that keeps him honest in the circumstances. That is not a very good place to be when you are dealing with a Bill of this kind.

The other aspect is transparency. The noble Lord did not really explain the reason for the threshold of £100 million. He said it was for transactions—or compensation, if you like—and financial assistance under £100 million in aggregate would have to be reported for the annual review. However, if it was £99 million, say, that would not apply and it would not be subject to a separate report; it would just be aggregated along with all the financial assistance given over the course of the year. Why?

These powers are very wide; we need to know how they are being used and what direction the financial assistance is going in. Therefore, simply drawing a line at £100 million does not seem to be very satisfactory in the circumstances.

4.15 pm

Lord Grimstone of Boscobel (Con): I thank the noble Lord, Lord Clement-Jones, for his question, and I understand the concerns that he raised.

I will first deal with the £100 million figure. Of course, that is a lot of money for the Government to have to spend without having to report to Parliament. However, I assure noble Lords that, in order to offer this level of financial assistance, the situation would have to be truly extraordinary. The only circumstances I can envisage where the Secretary of State would need to use this power would be for some of the most significant nationally important firms. The significant nature of these firms means that they may be large, so the Government have put in this reasonable cap of £100 million. Personally, I would be very surprised if anything like that were spent. However, of course, any spending under this power will be subject to Treasury consent, as I have said—and the Treasury does not rush forward with money for departments in situations like this.

I have to say—and, in a sense, apologise—that the nature of national security makes it very hard to predict where some of these issues might arise. However, where they do and where national security is an issue, it is important that the power is there, provided that it is only ever used responsibly and respectively.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): As there are no further speakers, I call the noble Lord, Lord Hodgson of Astley Abbotts.

Lord Hodgson of Astley Abbotts (Con): My Lords, I thank all those who have spoken in the debate, as we struggle—that is the only word—to find the balance between national security and investor rights, and do so against a background of what is practical and realistic in the marketplace. I thank my noble friend the Minister for his extensive reply and tell him that I did not have a happy ending: we got taken over after four months, but never mind.

He has made a valiant effort. The noble Lord, Lord Clement-Jones, used the rugby match "stop the clock" analogy; I will use a cricketing analogy. I think the Minister's officials have written him a speech that is a series of forward defensive prods, and it is rather like watching Geoffrey Boycott nought not out at lunch—but he has made a hugely valiant effort along the way.

On Amendment 48A, he says that we are completely aligned because the regulations provide for a streamlined procedure. Of course they do, but it will never happen because, unless something is written there, people will say, "Why go there, Minister? Why not just have the same old procedure we have always had?"

On Amendments 67B and 67C, I am not quite sure what appropriate incentives the Secretary of State had in mind to work the system appropriately. To be candid, it is unrealistic to say that judicial review is a possibility when you are working to the timetable these sorts of things will have to work to: it is not in touch with the reality of the marketplace.

On Clause 31, other noble Lords have made the relevant points. My noble friend the Minister made a determined effort to explain, but the loopholes and opportunities for difficulties with this are great. His example was that, if a firm's takeover were to be blocked, help might have to be given until another buyer could be found. He knows better than any of us that, once a firm is known to be in trouble, any other offers will be very low indeed; the differential between someone selling on the uptick and when they know that the firm is a wounded bird will be very great indeed.

There is a big question to be answered about that, which he is much more familiar with than I am, of trying to meld together the realities of the marketplace with the needs of national security. We have not yet got the balance right. We have been advised by a number of leading law firms, and a number of Members of the Committee have practical experience. I cannot believe that we are wrong in everything that we are saying and that all the law firms are wrong. I cannot believe that some of the things that have been put

forward are not worthy of much closer and further assessment. We are now in the territory of, "Are they fit for purpose?" "Oh yes, they are", "Oh no they're not". I want the opportunity to go away, talk to the people who advised us, see what the Minister and his officials say, and then decide whether we should come back to these and other amendments at the next stage of the Bill.

In the meantime, I thank the Minister for the long speech that he made, and all other noble Lords who have spoken, and I beg leave to withdraw the amendment.

Amendment 48A withdrawn.

Amendment 49

Moved by ***Baroness Noakes***

49: Clause 14, page 9, line 1, leave out "As soon as reasonably practicable" and insert "Within 5 working days"

Member's explanatory statement

This would require the Secretary of State to make a decision on whether to accept a mandatory notification within 5 working days to give more certainty to those who wish to progress notifiable acquisitions.

Baroness Noakes (Con): My Lords, I shall also speak to Amendments 53, 62 and 65. I thank the noble Baroness, Lady Bowles of Berkhamsted, and my noble friend Lord Lansley, for adding their names to all these amendments, and the noble Lord, Lord Grantchester, who has added his name to Amendments 49 and 62.

These amendments address some aspects of the length of time for which transactions might be caught up in the processes under the Bill. They are probing amendments for today, to understand what is driving the approach to the timing of the early stages of this Bill's processes, but they are against a background that parties to transactions must be confident that their transactions will be dealt with speedily and efficiently, whether they are in the mandatory notification category or are voluntarily notified.

I remind my noble friend the Minister that there is much scepticism, around the Committee and outside the House, about the volume of transactions likely to be caught up in these processes when the Bill becomes law. Most of us believe that very large numbers of transactions will be notified, particularly on a precautionary basis under the voluntary procedure. If the UK is to keep its reputation as a good place to invest and do business, we cannot afford to let these processes, set up to protect national security, end up being a major barrier to investment.

A mandatory notice given under Clause 14(5) requires the Secretary of State to decide, as soon as "practicable", whether to accept or reject the notice. Similar wording applies to voluntary notifications by virtue of Clause 18(4). My Amendments 49 and 62 replace

"as soon as reasonably practical"

with "five working days". This should be the easiest part of the notification procedure for the Secretary of State to deal with, and a loose formulation such as

"as soon as reasonably practical"

gives no certainty to the parties to a transaction. The Secretary of State should be able to make the preliminary judgments on whether to reject the notification or trigger the review period, which will result either in a call-in notice or a notification that no further action will be taken.

Amendments 53 and 65 deal with the review period of 30 working days in which the Secretary of State gets to decide whether to issue a call-in notice once he notifies an applicant that he has accepted a notification under the mandatory or voluntary notification procedure. A decision to issue a call-in notice is not the end of the process; it is the start of the process of the Secretary of State deciding whether to approve a transaction. The question is: how long does it take to work out that there are issues which suggest that close examination is required? This review period is not, or should not be, a part of the period of assessment, which is also specified at 30 working days, under Clause 23, with the possibility of an extension of a further 45 working days. The Clause 14 and 18 review periods should be as short as possible. A case has not been made for 30 working days—six whole weeks—just to decide that a transaction should be looked at in more depth under the call-in process.

On our last day in Committee, we had a run around the issues when my noble friend Lord Leigh of Hurley and the noble Lord, Lord Clement-Jones, spoke to amendments which would have introduced a fast-track procedure. My noble friend Lord Grimstone of Boscobel said that the 30 working days was worked out by officials based on

"past cases and mock scenarios".—[*Official Report*, 9/3/21; col. GC 616.]

I hope my noble friend the Minister can tell the Committee how Ministers got comfortable with this. Was it subjected to independent scrutiny or challenge, for example, by using red teaming? My noble friend Lord Grimstone, who is not speaking to this group of amendments, will know from his own career in the Civil Service that there is no incentive for officials to be anything but ultra-cautious on things such as timetables.

My noble friend Lord Grimstone said on the previous Committee day that he expected many transactions to be cleared within a six-week period, and it was not a target. I suspect that my noble friend temporarily forgot what it was like to be a civil servant. There is no reward for speed and no penalty for taking whatever time the law allows. It is fair to say that the investment community will have little faith in the process being speedy with such extraordinary time limits being enshrined in law.

I also draw my noble friend the Minister's attention to the points raised by my noble friend Lord Leigh of Hurley in respect of insolvency: administrators and liquidators must act speedily if they are to preserve value as well as protect viable businesses and jobs. I would add to that situations of corporate financial stress which can occur before formal insolvency remedies are invoked. For example, if a company cannot raise new debt or equity until it can be sure that it can sell a part of its business, a delay of six or more weeks, even assuming that no security issues result in a call-in notice, might in turn be enough to cause the business to go under. My noble friend Lord Grimstone did not answer those points last week; I hope my noble friend Lord Callanan can today. I beg to move.

Lord Lansley (Con): My Lords, I am very grateful to my noble friend Lady Noakes for introducing this group of amendments. She has explained very well how we want to ensure that the greatest possible certainty and the least possible delay intrudes into these processes for investors. I have four amendments in this group. Amendment 51 probably relates to the next group so, if the Minister is content, I do not propose to speak to Amendment 51 now. It is almost consequential on Amendments 50 and 63 in the next group, and is linked to Amendment 50, so I will not refer to it now.

My Amendments 54, 64 and 66 are rather like my noble friend's amendment in trying to explore much more specifically how these timetables work. Amendment 54 relates to mandatory notifications, and Amendment 66 to voluntary notifications, but they would have the same effect. Amendment 54 looks at the review period, which Clause 14(9) says is

"30 working days beginning with the day on which the notification under subsection (8)(a) is given to the person who gave the mandatory notice."

4.30 pm

Let us say that somebody has given a mandatory notice to the Secretary of State; as soon as reasonably practicable after receiving it, the Secretary of State has to decide whether to reject or accept it. My noble friend's amendment questions the phrase

"as soon as reasonably practicable".

Let us say that that notice has been accepted: as soon as practicable after that, the Secretary of State must "notify each relevant person". We do not know how long "as soon as practicable" is in these circumstances —it is another unknown period of time—but the review period does not then begin until that notification has been given back to the original person involved.

In this context, under the terms of Amendment 54, the 30 working days would apply from the point at which the notice was given to the Secretary of State. The amendment begins to create exactly the pressure we should have, and which my noble friend was exerting, by saying that the clock should have its 30 working days, but it should start at the point at which somebody puts the notice in front of the Secretary of State. Let us not have, as the Bill currently does, two indeterminate periods of time during which officials can take as long as they can justify before the review period even starts.

Amendment 64 is in that context in relation to voluntary notifications. If somebody has gone to the trouble of making a voluntary notification, the Secretary of State should reject or accept it very rapidly. Amendment 64 would ensure that, if the voluntary notification were accepted, the Secretary of State would be required to give notification within five working days instead of as soon as practicable. At that point, there is no justification for any significant delay at all. I hope that all these amendments work to secure much more specific timetables for this process.

Baroness Bowles of Berkhamsted (LD) [V]: My Lords, I added my name to the amendments of the noble Baroness, Lady Noakes, as they are yet another way to incrementally reduce the various points of uncertainty. It is notable how many of these can be found as we go through the Bill. As the noble Baroness explained, these amendments relate to the time for accepting a mandatory notice, from which other time periods can also flow, and then shortens the time for deciding whether to issue a call-in notice. As she explained, this is not meant to be part of the assessment and can therefore be short.

Now that the noble Lord, Lord Lansley, has explained his take on solving what is basically the same problem, I wonder whether it is better to look at the whole period, or to keep it cut up into segments so that people know where they are as they go along. As the noble Lord explained, it is very important not to start the process with two "as soon as practicable" requirements, because that just looks like a bottomless pit.

I will not repeat what has been said, and I am sure I can anticipate the Minister's answer, but it seems that at every point in the Bill, the balance of convenience rests with the Secretary of State and the department. It does not make for a good business environment when there is no pressure put on the department. It reminds me of conversations I had not that long ago when I was chairing a regulatory strategy group looking at doing business in China. The repeated refrain from the business side was, "How do we get legal certainty?" The answer was always that you cannot; it is when the party decides. That is where this Bill puts us, and I fear the collateral damage it will create. I regret that I have to use the language of warfare and bombs to bring that home, but this should be made much more business-friendly.

Lord Naseby (Con) [V]: My Lords, I shall be very brief. I am full of admiration for my dear noble friend Lady Noakes for the thoroughness with which she has trawled through the Bill and these particular aspects. I have been in and have knowledge of a situation of a mandatory notice—I make no comment on the other aspect—and my noble friend is absolutely right: we need certainty in life. Whether five working days is the appropriate length of time I personally am not able to judge, but it seems entirely reasonable, and if its sponsors and their experienced colleagues from the City believe in it, I am more than happy to go with it. It does not seem to allow for any wriggle room; the worst thing in politics and making law is to allow for wriggle room, so I am absolutely behind Amendment 49.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, the noble Baroness, Lady Noakes, outlined very clearly what this group is about. She may not be entirely surprised that I am coming from the opposite angle, although we can perhaps agree that this is a question of balancing public good—making decisions about national security—versus private profit and convenience. The financial and other implications that might arise from more time being taken over whether or not to progress are weighed against both the chance of missing something important and using significant public resources, making a fuller assessment unnecessary.

I am here, rather unusually, to defend the Bill against the amendments. Broadly, in this debate we have heard a great deal of uncertainty about how the Bill, once enacted, will work: how the details will play out in practice, how many firms will be involved and what resources will be required. I am not sure how five

days was arrived at as a firm deadline, given that there is such uncertainty about the actual operation of the Bill. As it currently stands, deciding whether to accept a mandatory notification should take as long as it takes; it should not be subject to an arbitrary—a very short—deadline.

Lord Clement-Jones (LD): My Lords, these amendments are very much of a piece with many of the amendments we have heard in Committee—all designed to create a much tighter and less discretionary regime. That is quite right in the case of these amendments, which one would have thought the Government would find extremely straightforward to accept.

Under Clause 14, the Bill currently envisages that the investment security unit will reach an initial decision as to whether to clear a notified transaction or to call it in for a detailed assessment within 30 working days of acceptance of the notification as complete. As the noble Baroness, Lady Noakes, said in her excellent introduction, there will be a significant number of transactions that fall within the scope of the mandatory notification requirements—they are set out in the impact assessment—due to the target's activities being in a specified sector but which clearly do not raise national security concerns.

Timescales for decision-making are currently extremely unpredictable. Even before defined timescales for decision-making kick in, the Secretary of State has an initial period, as has been described, to decide whether a notification has been submitted in the correct form. The Secretary of State must make this decision as soon as reasonably practicable. That is a set of weasel words which suit the convenience of the Secretary of State, not the investor.

This lack of clear timescales creates uncertainty for investors, universities and businesses, making domestic and foreign investment in university spin-outs less attractive, while disincentivising industry partners from engaging in collaborative R&D. These are all the downsides of uncertainty, as we have heard throughout this Committee. In addition, the Secretary of State has 30 days in which to review the notice after acceptance. Especially in circumstances of fast-moving corporate finance transactions, 20 days, as proposed, seems much more proportionate. Similarly, under Clause 18, relating to the voluntary notification procedures, greater certainty would be achieved if these amendments, regarding when a voluntary notice is accepted and setting out how long the review period should be, were included.

The noble Baroness, Lady Noakes, made an extremely good point: these provisions, where the timescales say "as soon as practicable" or 30 days, will be adhered to, to the letter. They are not going to be done speedily. Civil servants are going to interpret them extremely conservatively, as my own profession—the legal profession—would, because the penalties of getting it wrong will be seen to be too high. People will not want to get it wrong, whether they are in the position of giving advice to the Secretary of State or advising investors. That is why we need very clear provisions in the Bill, and we are certainly not there yet.

Lord Grantchester (Lab): I thank the noble Baroness, Lady Noakes, for her Amendment 49, to which I have added my name. It leads this group of probing amendments which focuses on one theme: how long will businesses and organisations have to wait in suspense for responses from the Government concerning the notification procedures? This theme stems in part from the fear that the Government will be swamped by notifications, with the CBI suggesting that the department could have to deal with up to 10,000 of them each year. Some discipline needs to be set up from the outset that will require the Government to keep up.

Of course, we support the aims of the Bill to monitor, guarantee and protect our UK national security, so in this probing group I have not added my name to Amendments 53 or 65, in the name of the noble Baroness, Lady Noakes. This is not because I specifically disagree with her—quite the contrary. However, it can be appreciated that some notifications will take more time than others to review, with some of them likely to raise more concern—alarm, even—thus requiring more extensive considerations and checks. The length of the period is a maximum duration, not a target for delay and procrastination. It should be understood how financial takeovers can become incredibly complex, so it is entirely correct that complexity is reviewed sufficiently and deeply. However, perhaps the Minister could answer as to whether a full six weeks may be needed and whether a four-week period could be maintained.

Overall, it is understood that unnecessary delays can lengthen anxieties that legitimate investments may fall through and exclusivity terms expire, leading to research partnerships breaking down or, in worst-case scenarios, businesses running out of cash and finance facilities. This heightens the requirement for the new unit to be properly and adequately resourced. This could be enforced through transparency about the turnaround times for notifications. These amendments also pair up neatly with Clause 14 on mandatory notifications and Clause 18 on the voluntary notification procedure. As the wording in the Bill is consistent across both alternatives, are the two distinctive categories so similar in importance and workload to require symmetry in their determinations?

With these thoughts, I have added my name to Amendment 62 in the name of the noble Baroness, Lady Noakes, giving the Secretary of State five working days instead of the nebulous "reasonably practicable" length of time. What does "reasonably practicable" actually mean to a Government? It is vague for SMEs and an elastic piece of time for the department. The Law Society has raised concerns, especially on the voluntary notice procedure in Clause 18, as "practicable" implies that a degree of delay will be acceptable and is to be tolerated. How does the Minister react to that? Can he explain whether five working days could be practicable and, if not, why not?

4.45 pm

The Government say that they remain committed to the key principles of the White Paper, including

"providing certainty, transparency and predictability of the regime and ensuring that the UK is a good place to invest in a business."

To achieve this, they need to provide responses in a predictable, decisive and timely manner on mandatory and voluntary procedures. What will the target turnaround time be and does the Minister agree on a consistent symmetry for notifications? Maintaining workmanlike

[Lord Grantchester]
timetables can demonstrate that the regime is being resourced properly from the outset, with transparency provided on turnaround times for notifications.

I thank the noble Lord, Lord Lansley, for his pair of amendments, Amendments 54 and 66, which would enhance the clarity of the procedure under these two clauses. In my interpretation, they would also reduce the overall time available to the Secretary of State, in referring to the period starting on notification rather than acceptance of the notice. I look forward to the Minister's reply to the noble Lord on that point. In general, on these amendments the Minister needs to provide assurances that a culture of lazy engagement does not characterise the Government's treatment of impacted businesses and organisations through vague terminology.

Lord Callanan (Con): I thank all noble Lords who have taken part in this brief debate, particularly my noble friends Lady Noakes and Lord Lansley for their contributions. I will start with Amendments 49, 62 and 64, which for the convenience of the Committee I will take together.

As drafted, the Bill provides that the Secretary of State must decide whether to reject or accept a mandatory or voluntary notice

"as soon as reasonably practicable"

after receiving it. He must then inform relevant parties of his decision as soon as is practicable. Amendment 49 would require the Secretary of State to decide whether to accept or reject a mandatory notice within five working days, as opposed to the current drafting. Amendment 62 would have the same effect, but for voluntary notices. Amendment 64 would require the Secretary of State to notify each relevant person whether a voluntary notice has been accepted within five working days of it being accepted, as opposed to the current drafting of doing so as soon as practicable.

As I am sure noble Lords would agree, mandatory and voluntary notifications should include the necessary information to enable the Secretary of State to determine whether to call in an acquisition for further scrutiny. Once a notification is accepted, the Secretary of State will be required to issue any call-in notice within 30 working days or else clear the acquisition to proceed. It is therefore important that the Secretary of State is able to reject a notification if it does not meet the requirements specified in the legislation. Of course, it is important that all decisions made under this regime by the Secretary of State are made promptly.

I therefore assure the Committee that the Secretary of State will make great efforts to ensure that decisions to accept or reject notifications are made quickly and that parties are notified in a timely way. In fact, one of my officials was keen to point out that the record so far for responding to informal guidance is 19 minutes. Civil servants will of course have different ways of going about it and will pursue different speedy methods, so I am sure that will not always be the case. Nevertheless, we will endeavour to reach these decisions to provide help and guidance to businesses and companies as speedily as possible.

As noble Lords will be aware, the Government intend to lay regulations setting out the form and content of the types of notification soon after Royal Assent. The draft notification form was published alongside the introduction of the Bill to help interested parties understand what information is likely to be required. Parties will therefore have clarity, and certainty about the information that they should provide when notifying the Secretary of State. We therefore expect notifications to be generally of high quality and, where this is the case, the Secretary of State expects to be able to decide quickly and then inform parties of decisions to accept their notices, in many cases, clearly, more quickly than the five working-day limit proposed.

However, it is important that there is scope for flexibility in the relatively rare circumstances where more time may be needed. For example, a hostile actor could intentionally provide very large amounts of unnecessary information that would take many days to read through to establish that important information was missing or incorrect. Or there might be multiple parties involved in a particularly complex acquisition that had all submitted notifications. In the event that the notifications do not match up, more detailed verification may be needed. I would argue that it is better for the Secretary of State to take the time to ensure that he has the information that he needs at the start of the process rather than risk finding gaps in information later on.

I turn to Amendments 51, 54 and 66. I know that my noble friend Lord Lansley did not speak to Amendment 51, but it is in this grouping, so, if he will forgive me, I will address the issue at this point. Clause 14 provides for the mandatory notification procedure, including subsection (6), which sets out the grounds on which the Secretary of State may reject a mandatory notice, and subsection (9), which explains when the 30-working day "clock" for reviewing a mandatory notice begins. These amendments go to the heart of both matters, so let me address each of them briefly.

Amendment 51, to which my noble friend referred although he did not speak to it, would remove the third ground for the Secretary of State to reject a mandatory notice, which is where

"it does not contain sufficient information to allow the Secretary of State to decide whether to give a call-in notice in relation to the proposed notifiable acquisition".

I imagine that noble Lords may well consider that the first two grounds—which enable the Secretary of State to reject a mandatory notice where it does not meet the requirements of this clause or as prescribed in regulations—will cover most bases. However, we must also ensure that an acquirer cannot meet the technical requirements of providing a notice by doing so in a limited way or with incomplete information. Noble Lords will appreciate that if, for instance—in a purely hypothetical example, I was required to fill in the name of my chief executive on a mandatory notice, the ISU would have a pretty good chance of working out who "Boris" was, but in the case of the chief executive of a small start-up company that might have been operating for only a few months, a mandatory notice that had the same information would provide little to go on. I understand that it is an outlandish example, but it illustrates why we must not prevent the Secretary of State rejecting notices from those who plainly look to game the system.

Amendment 54 would adjust the timing for the beginning of the 30-working day review period from, as now, the date on which the Secretary of State confirms acceptance of a mandatory notice to the date on which he received the notice. Amendment 66 would make the equivalent changes in respect of voluntary notices. I can assure my noble friend Lord Lansley and other noble Lords that in the vast majority of circumstances we expect to confirm acceptance quickly and to begin the clock on the review period. However, the process of initially determining whether a valid and complete notice has been submitted is separate from fuller screening of the acquisition itself. Some acquisitions are likely to be complicated and a significant amount of information may be provided as part of the mandatory notice. In these instances, it is conceivable that the investment security unit may need a short time to ascertain that the relevant information has been provided. None the less, the screening will not yet have begun and, accordingly, it is right that the clock does not do so either.

Amendments 53 and 65 would reduce the time available to the Secretary of State to screen mandatory and voluntary notifications from a maximum of 30 working days to 20. I mention "maximum" again because that is exactly what these deadlines represent. In many cases, we expect the Secretary of State to be able to review and clear notifications much more quickly. The question, therefore, is what is appropriate in more complex cases and whether the ISU may need to gather input and expertise from across Whitehall on those acquisitions. The total figure of 30 working days is not arbitrarily chosen by the Government. I apologise to my noble friend Lady Noakes for saying yet again that it reflects detailed work undertaken across Whitehall to test past cases and mock scenarios against the new regime—I repeat that because it is our position. Some acquisitions may involve complicated ownership structures; the technology and activities of the target entity may not be immediately clear, and the format of the acquisition itself may be unconventional. It is vital the Secretary of State has the necessary time to examine an acquisition and to make an informed decision.

I again commend my noble friend's efforts to make the new regime even more nimble and fleet of foot, but I hope she will understand—even if she does not agree with me—why I am unable to accept these and other amendments that I have addressed in this group. Therefore, I hope that both my noble friends will choose not to press their amendments.

The Deputy Chairman of Committees (Lord McNicol of West Kilbride) (Lab): My Lords, I have received no request to speak after the Minister, so I call the noble Baroness, Lady Noakes.

Baroness Noakes (Con): My Lords, I thank all noble Lords who have spoken in this debate. Important issues have been raised. I particularly like the idea behind my noble friend Lord Lansley's Amendments 54 and 66, which would create one period in the initial phase rather than two or more. Taken overall, the various time periods throughout the Bill, including "as soon as reasonably practicable", "30 working days", an additional "45 working days" as well as the ability to stop the clock here and there, represent an extraordinary period of uncertainty to which a business transaction could be exposed. At the end of the day, the transaction might not even raise what are adjudged to be national security issues and many of those who go through the process are likely to end up being cleared. I liked the analogy drawn by the noble Baroness, Lady Bowles of Berkhamsted, with China, and this seeming a bit like "when the Party decides": it is when BEIS decides that a transaction can be dealt with and cleared.

Thirty working days is a long period of time. We talked about it as six weeks. Six weeks is actually 42 working days. If you are in the private sector and doing an acquisition, your processes do not respect weekends. You would expect to be working right the way through, and I am not sure that we should expect any less from those in the Civil Service handling the processes. The new unit being set up may need to be completely re-engineered from the normal Civil Service way of doing things, which is clearly driving the assessment of the time limits involved. My noble friend the Minister again gave me the mock scenarios and detailed analysis by civil servants of the time they would like to take handling these things, but he did not answer my specific question as to whether that had been independently challenged, potentially by using red teaming, and whether the processes had been rethought from the perspective of how we give certainty to the business community, which needs to progress investment decisions.

My noble friend the Minister gave us the example of 19 minutes for informal guidance. That is a complete red herring, because it is informal guidance and not a decision made under any of the provisions of the Bill. Nobody will expect 19 minutes to be the answer for any of the mandatory procedures or voluntary notification procedures taken under this Bill.

I said that my amendments were probing, and I do not intend to take them forward today, but we need to step back and reflect on the cumulative impact of the time periods set out in the Bill on the way in which the UK is perceived as a good place to do business and to invest. If we lose that, we will lose the potential for continuing economic growth. Our economic growth has been boosted considerably by the inward investment that we have been able to attract. If we become a bad place to do business, this country will be hurt in many ways that are worse than might be feared in respect of national security implications. We will need to return to this in one way or another on Report, but, for now, I beg leave to withdraw the amendment.

Amendment 49 withdrawn.

5 pm

Amendment 50

Moved by ***Lord Lansley***

50: Clause 14, page 9, line 6, at end insert "including as to the information required to be provided in relation to the notifiable acquisition."

Member's explanatory statement

The purpose of this amendment is to ensure that the requirement for information to support a decision by the Secretary of State will need to be specified in the Regulations.

Lord Lansley (Con): My Lords, there are just two amendments in this group. They are both to the same purpose. As I explained previously, one relates to mandatory notifications, the other to voluntary notifications. My noble friend the Minister answered on Amendment 51 in his response to the previous group, but for my purposes it is linked to Amendment 50 in any case, so I will touch on it.

Amendments 50 and 63 essentially raise two questions. The first relates to circumstances where somebody gives a notice to the Secretary of State and they meet the requirements in the regulations—they have looked and said, "To give a notice to the Secretary of State, I have to tell the Secretary of State A, B, C, D", or however many pieces of information. That should be specified in the regulations. As the Bill is drafted, the Secretary of State can then come back to them and say, "Yes, you provided all the information required under the regulations, but you didn't provide us this further information, which would enable us to make a decision whether to accept or reject your notice."

The purpose of these amendments is to say that we should not arrive at that situation. Somebody starting this process with a notice should be able to rely on the information specified in the regulations to accompany a notice being sufficient to start the process definitely, one way or the other. That is why Amendments 50 and 63 say what they do. As my noble friend Lord Callanan said in response to the previous group, the two initial points—does it meet the requirements of the section and the requirements prescribed in regulations?—should be enough, but the amendments would add, to make it absolutely clear,

"including as to the information required to be provided in relation to the notifiable acquisition"

or the trigger event in the case of a voluntary notification, so that there is no uncertainty about this. The regulations should say what information has to be provided. If it is provided, then the notice should be rejected or accepted.

The second question that arises from this is on voluntary notifications. Since it is not explained in the Bill, what happens if the Secretary of State receives a voluntary notification, decides that there is insufficient information, rejects it, sends a letter to the person who supplied the voluntary notification saying "You didn't give me additional information X, Y or Z", and the person concerned then decides not to bother? What would the Secretary of State do about this? It is not a notifiable acquisition. If it were the Secretary of State would have a degree of control, but on a voluntary notice there is no such control. I do not see what happens when a notice is rejected under those circumstances.

Perhaps when my noble friend replies on this short group he would also explain why notices should be rejected because people have not supplied the Secretary of State with information that he did not ask for, and what happens if somebody makes a voluntary notification, the Secretary of State rejects it and they then do nothing about it. I beg to move.

Baroness McIntosh of Pickering (Con): I thank my noble friend Lord Lansley for tabling these two amendments. I would like to speak to Amendment 63, which gives me the opportunity to raise an issue raised with me, and I am sure with other noble Lords, by the Law Society of England. I put a direct question to the Minister in summing up this small group of amendments. Can he confirm that the Government have actually considered, and have regard to, the impact of the sheer large numbers of filings that they may receive on the new regime's ability to dispense with these filings in a timely manner? My noble friend has done us a great service here by highlighting the level of information required in the first instance or that may be required at a later date.

The estimated volume of filings stated in the impact assessment, deemed to be between 1,000 and 1,830 transactions notified per year is, in the view of the Law Society, an underestimate. That is because, for reasons that my noble friend gave, there is likely to be a very large number of voluntary filings and requests for informal guidance, especially when the regime is new and businesses are accustoming themselves to its requirements. In my view, the Law Society has raised legitimate concerns, which are reflected in these two amendments. Can I have a reassurance that there will be sufficient resources to deal with the sheer number of requests that are expected to avoid delays and burdens for businesses, which could be avoided in this regard?

Lord Grimstone of Boscobel (Con): My Lords, I extend my thanks to my noble friend Lord Lansley for his Amendments 50 and 63. I shall deal first with a couple of points that have been made. If a voluntary notification is incomplete, it is not effective. That may mean that the Secretary of State may choose to exercise his call-in powers at some point in future in relation to that.

My noble friend Lady McIntosh asked whether we had underestimated the number of transactions that were likely to come before the unit. She referred to the work that the Law Society has done on that. All I can say is that we have thought about this carefully, and I am happy to repeat the assurance that we will make sure that the unit is fully resourced. If the number is greater than we anticipate, the resources of the unit will have to be expanded to cope with those greater numbers.

I extend my thanks again to my noble friend Lord Lansley for Amendments 50 and 63 which both relate to the information that must be provided as part of a notification. Clause 14 sets out the mandatory notification procedure and Clause 18 the voluntary notification procedure. Both clauses provide powers to the Secretary of State, by regulations, to prescribe the form and content of a mandatory notice and a voluntary notice respectively. Both clauses also provide that the Secretary of State may reject a notice where it does not meet the requirements of the clause, or the requirements prescribed by the regulations.

These amendments seek to make it clear that the Secretary of State can reject a mandatory or voluntary notice where information relating to either a notifiable acquisition or a trigger event has not been provided despite being specified as required in regulations. These amendments also seek, as a result, to ensure that any such regulations include a requirement to provide the information about the notifiable acquisition or trigger event needed to make a call-in decision.

I am happy that I can reassure my noble friend, I hope completely, that the Secretary of State absolutely intends to use the regulation-making powers under both these clauses to prescribe both the form and content of mandatory notices and voluntary notices. Indeed, our view is that the regime simply cannot work and will not work without such regulations being made. The primary entry mechanisms into the regime are based on notification, so it is vital that we are clear with businesses and investors about what information they must provide and in what format.

That is why, ahead of Committee in the other place, we published a draft of the information likely to be required as part of a mandatory notice or voluntary notice. I continue to welcome comments from noble Lords about that draft, but I think I can reassure my noble friend that information about notifiable acquisitions and trigger events will certainly form part of such requirements.

With that said, I fear that my noble friend's amendments would therefore be duplicative in this instance. Clause 14(4) and Clause 18(4) allow the Secretary of State to make these regulations. Clause 14(6) and Clause 18(6) allow the Secretary of State to reject a notice where it does not meet the requirements specified in the regulations. The Government consider that this approach provides the powers that the Secretary of State needs to reject a notice where insufficient or the wrong information has been provided, whatever the final notification forms look like.

I hope my noble friend is reassured by my explanation of these clauses and the Government's general approach on this matter, and I hope, therefore, that he feels able to withdraw his amendment.

Lord Lansley (Con): I am grateful to my noble friend. I think he slightly confused two things together at the end, in talking about insufficient or wrong information. If there is wrong information, then clearly a notice can be rejected. The question about the sufficiency of information is the point I am coming back to. My noble friend was quite clear on—and I think it is very clearly set out—what it is the Government expect to be provided by way of information for these notices. The question is: why should they have a power to reject a notice on grounds that they require more information beyond what has been asked for in the material that has already been published? That is the power they are taking.

If the Government say—as my noble friend Lord Callanan said—one must set out who the chief executive is, and someone puts their given name but not their family name, they can reject it. The point is, however, that that was specified in the regulations. The question is: does it require his other information, and what is the other information? People might reasonably say, "You have rejected it because I did not provide the information that you required, but you didn't tell me you required it." That is my problem.

I will go away and think about this a bit more; maybe it is not important enough for us to persist with. For the moment at least, I will make my point and beg leave to withdraw Amendment 50.

Amendment 50 withdrawn.

Amendments 51 to 56 not moved.

Clause 14 agreed.

Clause 15: Requirement to consider retrospective validation without application

Amendments 57 to 59 not moved.

Clause 15 agreed.

Clause 16: Application for retrospective validation of notifiable acquisition

Amendment 60 not moved.

Clause 16 agreed.

Clause 17: Retrospective validation of notifiable acquisition following call-in

Amendment 61 not moved.

Clause 17 agreed.

Clause 18: Voluntary notification procedure

Amendments 62 to 67A not moved.

Clause 18 agreed.

Clause 19: Power to require information

Amendment 67B not moved.

Clause 19 agreed.

Clauses 20 to 23 agreed.

Clause 24: Effect of information notice and attendance notice

Amendment 67C not moved.

Clause 24 agreed.

Clause 25 agreed.

Clause 26: Final orders and final notifications

Amendments 68 and 69 not moved.

Amendment 70

Moved by ***Lord Butler of Brockwell***

70: Clause 26, page 17, line 40, at end insert—

"( ) Before a final order is made, the Secretary of State must share with the Intelligence and Security Committee of Parliament any intelligence relevant to such an order, and a final order shall not be made before the Intelligence and Security Committee has made a report to Parliament on the order."

5.15 pm

Lord Butler of Brockwell (CB): My Lords, the noble Lord, Lord Rooker, has added his name to this amendment, although he is not able to speak today. I shall also speak to other amendments in this group.

Something strange is happening here. The Bill gives the Government extraordinary powers to intervene in, and possibly prevent, private sector commercial transactions. I accept that there may be occasions on which the Government need to protect British industries against incursions from foreign companies, particularly if those companies are under the control of unfriendly states, but these powers are extraordinary and their exercise, and the justification for that exercise, will often depend on intelligence information that the Government cannot, naturally, make public. How then is Parliament going to scrutinise and the Government to justify the use of these powers in those circumstances?

In the Intelligence Services Act 1994, the Conservative Government established a parliamentary mechanism precisely for this purpose, by setting up the Intelligence and Security Committee of Parliament. The coalition Government reinforced the committee's powers in the Justice and Security Act 2013. That committee comprises Members of both Houses of Parliament with experience of intelligence who are admitted within the ring of secrecy so that they can have access to highly classified information and advise the Government and Parliament on its use. I declare an interest, having served on the committee for five years. Yet the Government have refused to provide, in the Bill, for the ISC to have a role in scrutinising the use of the powers in it. It is as if the Government have acquired a watchdog, yet are unwilling to let it bark just when it is needed.

This point was raised by the Opposition parties in the other place, and the Minister produced repeated excuses for denying the ISC an explicit role. Ultimately, the Minister said that the ISC could review the annual report which the investment security unit established by the Bill is required to make to Parliament. That made it necessary for the chairman of the ISC, Dr Julian Lewis, to intervene and say that the annual report would be a public document, which could not, by definition, contain classified information. The Minister's reply to that was that the ISC could subsequently ask the Secretary of State for such classified information.

The noble Baroness, Lady Hayter, with the support of the noble Lord, Lord Fox, and the noble Baroness, Lady Bennett, has tabled Amendment 82, requiring that the Secretary of State should publish a separate annual report to the ISC which can include classified information. The noble Lord, Lord West, who is your Lordships' current representative on the ISC, has put down an amendment, with the support of the noble Lords, Lord Rooker and Lord Campbell of Pittenweem, requiring classified information to be contained in a confidential annexe to the annual report of the investment security unit, to be made available only to the ISC. I will support these amendments if my own amendment is not acceptable, but if I may respectfully say so, an annual report after the event involves examining the operation of the stable door after several horses may have bolted.

My own amendment requires that, when a transaction is called in, any relevant intelligence should be made available to the ISC, and the ISC should make a report to Parliament before the Secretary of State makes a final order. The assessment period of 30 days under the Bill, extendable to 45 days, provides adequate time for the ISC to assess the intelligence provided to it, take evidence and give its opinion to Parliament. It seems to me unlikely that there will be so large a volume of transactions actually called in as to make this an unsustainable burden. In this House, we are used to Select Committees such as the Delegated Powers Committee and the Constitution Committee scrutinising Bills in short order and reporting on them to the House before the Bills go forward. If Parliament is to have any effective scrutiny of the use of the powers in the Bill, this seems preferable—if it is practicable—to an annual report after final orders have been made.

It is a matter for speculation why the Government have been so coy about giving the ISC an explicit role in the Bill. Paragraph 8 of the memorandum of understanding agreed between the Government and the ISC after the 2013 Act, says that

"only the ISC is in a position to scrutinise effectively the work of the Agencies and of those parts of Departments whose work is directly concerned with intelligence and security matters."

Those were the words agreed between the Government and the ISC. The irony is that the ISC's role is potentially helpful to the Government. Only the ISC can have access to the intelligence information justifying the Government's intention to intervene. To give an example, I recall that, when I was a member of the ISC, there was a press story that GCHQ was piggybacking on the American NSA to obtain intelligence that it could not obtain under its own powers. The ISC examined the records and was able to reassure Parliament and the public that the reports were false.

Is the reluctance on the part of the Government a hangover from their embarrassment over publication of the ISC's report on Russian interference before the 2017 election, or is it a result of government pique about the committee's appointment of its own chairman in place of the Government's nominee? Whatever it is, it is difficult to understand what the Intelligence and Security Committee is there for if not to have a role on behalf of Parliament and the public in sensitive matters of this sort. I beg to move.

Lord West of Spithead (Lab): My Lords, I am speaking to my Amendment 78 and will touch on Amendment 70 in the name of the noble Lord, Lord Butler, to which he has just spoken, as well as Amendment 82 in the name of my noble friend Lady Hayter and Amendment 86 in the name of the noble Lord, Lord Lansley. All relate to the same concern and try to resolve it in slightly different ways. I also thank the noble Lords, Lord Campbell of Pittenweem and Lord Rooker, for their support, and the noble Lords, Lord King and Lord Janvrin, for having expressed support for the measure in broad terms. It is rather good that this is the first amendment this afternoon being raised from this side rather than from the Government; that is quite interesting I think.

Noble Lords will be aware it was the Intelligence and Security Committee of Parliament which first raised the fact—and the alarm—that when the Government

were considering major investment decisions, national security concerns were not being taken into account. There are those in this House who served on the committee at that time and should be thanked for their work bringing this issue to light. This was some seven years ago, and noble Lords will know from my previous interventions on this topic that I strongly support the need for this Bill, as I think all of us do in this Chamber.

However, there is a glaring hole in the legislation which the Government have not yet resolved: namely, there is no meaningful oversight. This Bill has national security at its heart, yet the Government will not let anyone oversee this secretive heart. The Minister has said that the ISC—the one body Parliament expressly established to oversee secret matters on its behalf—will not be given proper oversight of this secret activity. The offer that the ISC can scrutinise the public report and ask for any further information it wants is not good enough. The public annual report is just that, as the noble Lord, Lord Butler, said—it is public. Parliament itself can therefore scrutinise it, so there is no role for the ISC, which is designed to look at secret reports, not public ones. The Minister says that the ISC can request further information. But there is no obligation for that information to be provided. The ISC can only require information from those bodies that fall within its remit, and the investment security unit is not one of those bodies.

Without specific provision, there is a possibility that, even if this Government are well intentioned—which I am sure they are—future Governments may refuse to provide such information to the ISC. Consequently, I am afraid the Minister's proposals do not meet the requirement for proper oversight. Worse than that, they represent a step backwards from the current oversight provisions. The unit that currently takes these decisions—the investment security group in the Cabinet Office—is overseen by the ISC. By moving this activity to the investment security unit in BEIS, the Government are actively removing it from ISC oversight. I am sure that this cannot be what the Government intend. This is the glaring hole in the Bill that we must fix, and my amendment does that. I thank the noble Lords, Lord Rooker and Lord Campbell of Pittenweem, for putting their names to this amendment.

Clause 61 mandates the Secretary of State to produce an annual report to Parliament. The information in that report is limited and obviously will not include any sensitive security information. My amendment to Clause 61 will add to that annual report further categories of information: details about the jurisdiction of acquirers; the nature of national security concerns raised; the particular technological or sectoral expertise being targeted; and any other information that the Secretary of State deems instructive on the nature of national security threats uncovered in the new regime.

The amendment then provides a mechanism for the Secretary of State to redact any of this information from the public report, should it be deemed damaging to national security. That information must be moved into a classified annexe, ensuring that, if Parliament cannot scrutinise it, the ISC can, on behalf of Parliament. This is an approach already used by organisations such as the Investigatory Powers Commissioner's Office under the Investigatory Powers Act 2016.

The amendment proposed by the noble Baroness, Lady Hayter, and the noble Lord, Lord Fox, provides for a second separate annual report to the ISC. It seeks to achieve the same outcome as mine—namely, oversight of the security matters at the heart of the Bill. My understanding was that Ministers in the other place had found the annexe solution more palatable, in that it would minimise the reporting burden on the new unit. However, the ISC itself is ambivalent as to whether there is a secret annexe or a separate report; the key is that there is reporting on the security aspects, in whatever form that takes.

This is not a power grab by the ISC—far from it; we have more than enough work to do as it is, and nor do we have any interest in the wider work of BEIS. It is only the intelligence and security work of the new unit, which is, after all, our job. The ISC was expressly established to scrutinise the intelligence and security activities of government—as the noble Lord, Lord Butler, said—initially, within the three intelligence agencies, and then from 2013, throughout the full national security apparatus. That change in 2013 was a result of the Justice and Security Act. The long title of that Act refers to

"activities relating to intelligence or security matters",

and these are set out in a memorandum of understanding under the Act, which was then deemed to be a practical vehicle for listing those bodies overseen by the committee, since it could be easily kept up to date. This was best explained by the then Security Minister, who, during the passage of the Act, said:

"Things change over time. Departments reorganise. The functions undertaken by a Department one year may be undertaken by another the following year."—[*Official Report*, Commons, Justice and Security Bill Committee, 31/1/13; col. 98.]

And that is exactly what has happened.

Under this Bill, intelligence and security activity is moving from the Cabinet Office to BEIS, yet the Government have not updated the MoU to include it. They have not honoured their clearly stated intention that the ISC should have oversight of all government intelligence and security activities, and it is not just this unit; other units have been set up in other departments to carry out national security and they have not yet been added to the ISC's MoU. This is not good enough.

5.30 pm

The ISC can require information from organisations in the MoU—it must be provided—but as the new unit is not part of the MoU, the ISC can only request it. As I have already said, there is no guarantee that it would be provided. It would be simple to update the MoU. A straightforward exchange of letters between the chairman of the committee and the Prime Minister is all that is required, and would be sufficient to provide oversight of this national security activity, in line with the Government's commitment to Parliament during the passage of the Justice and Security Act.

However, thus far, the Minister has declined to provide an assurance that the Prime Minister will update the MoU, that the new investment security unit will be added to it, that oversight equilibrium will be restored, and that Parliament will maintain its sight and sovereignty over a crucial part of national security.

[Lord West of Spithead]
If there is no movement on this—and I find it extraordinary that there has not been—I will have no choice when it comes to Report but to move this amendment and divide the House.

Lord Lansley (Con): My Lords, I will speak briefly to my Amendment 86 in this group and express my support for Amendments 78 and 79, in the name of the noble Lord, Lord West of Spithead. I will not repeat his arguments; I thought they were compelling. Amendment 86 would put the investment security unit of the Department for Business, Energy and Industrial Strategy into the remit of the Intelligence and Security Committee in the Justice and Security Act.

I am grateful to the noble Lord, Lord Fox, for supporting the amendment; I am sure he agrees with me on this. We would not need it if Ministers would permit adding the investment security unit of BEIS to the memorandum of understanding, as part of the remit of the Intelligence and Security Committee. If forced to, it would be better to amend the Act to put it into the remit, rather than to put something in the legislation that directly impacts the memorandum of understanding. That is not the way that the MoU should work.

I remind your Lordships that the memorandum of understanding, which was published with the annual report in 2013-14, said:

"The ISC is the only committee of Parliament that has regular access to protectively marked information that is sensitive for national security reasons: this means that only the ISC is in a position to scrutinise effectively the work of the Agencies and of those parts of Departments whose work is directly concerned with intelligence and security matters."

That is precisely the point being made here: the ISC must complement the other committees, including the BEIS Committee, in its scrutiny of this work. As the footnote to the MoU said:

"This will not affect the wider scrutiny of departments such as the Home Office, FCO and MOD by other parliamentary committees."

It is consistent with scrutiny of activity generally but, for scrutiny relating to intelligence and security matters to happen, confidential material may need to be supplied to the ISC and the ISC needs to have it added to its remit. I hope my noble friend can give us that assurance, if not today, on Report.

Lord Campbell of Pittenweem (LD): My Lords, I too shall begin by declaring an interest, having been a member of the Intelligence and Security Committee for seven years, five of which were enhanced, if I may say, by the presence of the noble Lord, Lord Butler of Brockwell. I have a further advantage because I have been listening, along with other noble Lords, to the three preceding speeches in this debate, which have set out the principles clearly and powerfully against what appears to be intransigence on the part of the Government. At this point, therefore, I shall adopt what has been said by the noble Lord, Lord West of Spithead, with which I agree entirely. I am also influenced to some extent by the fact that your Lordships have been exemplary in the dispatch of business today. I have been watching from the pavilion, as it were, and it seems that the conduct of this Committee stage so far could be recommended or possibly even compelled for the Committee stages of other Bills.

There is nothing that I can usefully add to the arguments put forward by the three preceding speakers, but I can make one further contribution. In advance of the debate today, I consulted the 2013 report of the Intelligence and Security Committee entitled *Foreign Involvement in the Critical National Infrastructure*. The noble Lord, Lord Butler, and I were members of the committee at the time and the chair was Sir Malcolm Rifkind. Among other things, the committee applied its mind to the issue of Huawei, in particular to its entry into the United Kingdom market and the fact that in doing so it entered into contractual arrangements with BT. What happened was that BT did as it was supposed to do and advised the relevant government departments of the position, but the officials then communicated what had been brought to their attention by BT not to any of the Ministers with responsibility for national security but to the then Secretary of State at the Department of Trade and Industry. That was done on the ground that the only thing which appealed to the officials to draw to ministerial attention was the possible impact on British businesses.

That having happened, for quite a long time, Huawei enjoyed not a privileged but certainly an unremarkable position in the British economy. It was only some years later that it became clear that there were other implications to be drawn from its interest in the economy of the United Kingdom. At that point, the Intelligence and Security Committee deemed it appropriate to include it as part of the inquiry whose report I have described. As a consequence, the committee was able, as has been hinted at already, to come to a much better and more informed judgment about Huawei because of its access to intelligence that would not otherwise have been available either to committees or to Parliament itself. I recommend the report as a good illustration of how an inquiry of that kind should be carried out and how profitable, if you like, the consequences are of so doing.

The issue is clear. If, at the stage of the involvement of Huawei in the economy of the United Kingdom it had been understood and perused by those with access to a very high level of classified intelligence, perhaps, since the moment of Huawei's arrival into this economy, there would have been a much greater understanding throughout government of the significance of its entry into the United Kingdom and the implications for security which that has necessarily involved. For these and other reasons that I have indicated previously, I support the amendment tabled by the noble Lord, Lord West of Spithead, to which I have added my name.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I have attached my name to Amendment 82 in this group, tabled by the noble Baroness, Lady Hayter of Kentish Town, and signed by the noble Lord, Lord Fox. It is perhaps unfortunate that the structure of the debate means that neither of them have spoken in favour up to now. Some of the other speakers have briefly outlined what that amendment consists of. As with all the amendments in the group, it is an attempt to ensure proper parliamentary oversight of the operation of the Bill.

This is a classic "prepare a report" amendment and specifies in considerable detail what would be in that report, including the nature of the national security risks posed in transactions for which there were final orders, the particular technological expertise that was being targeted and any other relevant information. I admit that, having listened to the noble Lord, Lord Butler of Brockwell, introduce Amendment 70, which essentially calls for oversight scrutiny to be in real time as decisions are being made, [*Inaudible*], and having listened to the debate, on reflection, that would be the best outcome. If I were to make a case for Amendment 82 in comparison, there would be advantages in having a specified list of what the report contains and making sure that full information is being provided to the ISC. I rather suspect that the ISC would be strong-minded if it thought that it was not getting the information it needed.

It is interesting how support for this group of amendments is coming from all sides of the Committee, and it is clear that there is a real problem for the Bill without some kind of provision on reporting to the ISC. That would ideally be done in real time but there should certainly be some democratic oversight. The noble Lord, Lord Butler, was pre-empting a ministerial suggestion that there would not be enough time. As the noble Lord said that, I thought about sitting in the Chamber of your Lordships' House on 30 December and how much legislation those in both Houses of Parliament were able to get through in that one day. I am sure that the ISC could cope with the level of work required.

The noble Lord, Lord West, put it well. Without one of these amendments, there is no oversight. No one has referred to this yet but about an hour before we met, the integrated review was finally published and I skimmed through it as fast as I could. One matter highlighted in it was the competitive advantage coming from Britain's democracy. I will be raising that issue again later but if we are going to claim competitive advantage from democracy, it would be good to have some of it. We have heard the phrase, "Take back control", a great deal. The structure of our alleged democracy is supposed to rest within Parliament, which is where scrutiny and oversight of the Executive is supposed to happen. I join other noble Lords in saying that we must have some form of reporting to the ISC.

Lord King of Bridgwater (Con) [V]: My Lords, I am delighted to follow the noble Baroness, Lady Bennett, who has bravely intruded in this debate involving an old-school reunion of former members of the ISC. I am delighted to follow two of the promising newer Members, in the shape of the noble Lords, Lord Butler and Lord Campbell. Another, the noble Lord, Lord Janvrin, is still to come.

The examples given by the noble Lords, Lord Butler and Lord West, set out the arguments very clearly. Having been involved, as I was for so long, with the founding of the ISC and its initial seven years of operation, what was carried on subsequently—[*Interruption*]—bugger! I am sorry; excuse my language.

5.45 pm

My Lords, I apologise for that interruption; it was a very amateur performance by me. The integrity of the ISC, which has been very well maintained over the years, means that a very effective instrument is available to government. I wanted to take part in this debate because I have been worried for a long time about the enthusiasm in the commercial side of government for yet more encouragement of inward investment without always paying sufficient attention to national security issues that might arise in that connection. I therefore strongly support the Bill, which I wish we had had earlier. It certainly provides the foundations for a much stronger position, getting a better balance between encouraging our economy while protecting our national security.

I am slightly disappointed—with no disrespect to my noble friend Lord Grimstone—that my noble friend Lord Callanan, who was dealing with these issues before and with whom some of us have had discussions, is unable to respond to the debate, but I will listen with great interest to what my noble friend Lord Grimstone has to say. Like other speakers, I do not quite understand the Government's difficulty. The noble Lords, Lord Butler and Lord West, spelled out ways in which we can make use of the ISC to fill this one gap in the Bill, which has much merit. We need to deal with situations where there is information of such sensitivity that it cannot be put in the public domain, but for which we still need proper accountability and parliamentary oversight in some system or another, which the ISC can provide.

I will listen with great interest to the Minister's response. I assume that it will not be a matter for a Division now, but one that we must address on Report.

Baroness Ritchie of Downpatrick (Non-Afl) [V]: My Lords, it is a pleasure to follow the noble Lord, Lord King of Bridgwater. Unlike him and other noble Lords who have spoken on this issue, I do not have any particular expertise in the ISC or in intelligence and security matters. None the less, it is a privilege to follow the noble Lord, who, as a former Secretary of State for Northern Ireland, was fully aware of many of the intelligence and security issues. I will refer later to one which I think arose during his tenure as Secretary of State for Northern Ireland.

Notwithstanding that, I support the amendments in this group, the context of which was initially addressed at Second Reading by many of their movers: the noble Lords, Lord West of Spithead and Lord Rooker, and the noble Baroness, Lady Hayter. They all revolve around the need for parliamentary oversight and accountability, and thus the involvement of the Intelligence and Security Committee in Parliament.

I am concerned about the impact of inappropriate takeovers and dual ownership of firms that are key to the development of the UK's infrastructure, including the digital sector. The gaping hole in parliamentary scrutiny and oversight needs to be examined and legislative provision made for it. That is where the hole lies in this legislation.

All noble Lords who have spoken have elaborated on the sensitive nature of investment issues involving other countries which may have a strategic or other ulterior interest in the UK. Those need to be subject to parliamentary scrutiny, particularly decisions on notifications that will be taken by BEIS. A strong case was made in the Commons for the Intelligence and

[Baroness Ritchie of Downpatrick]
Security Committee to be given an explicit role in scrutinising the outworking of the Bill, but unfortunately the Government rejected it. I thank noble Lords who have spoken and I agree with them. The Intelligence and Security Committee could do a proper and adequate job if it was given a report on how the powers in the Bill are or are not being used.

There is currently no provision for oversight of national security material on which decisions will be taken, hence my support for these amendments as they would expand the current reporting requirements to include reporting to the ISC, incorporating details of the national security decision-making process into the existing annual report in Clause 61, an issue already referred to by the noble Lord, Lord West of Spithead. It is vital that there is oversight of matters that Parliament cannot itself oversee. Oversight and parliamentary scrutiny are key in this respect.

The ISC was established in 1994. I recall that in 1987-88 a company in Northern Ireland that was allocated a demolition contract for Northern Ireland Electricity Service had its contract and its ability to act as a subcontractor withdrawn on national security grounds. It never found out the nature of those national security grounds. No doubt various views were attributed to it. This case was subject to legal proceedings, and the European Court of Justice eventually sided with the inappropriateness of the actions that the Government had taken. I honestly believe that if the ISC had been established at that time, it would have been able to examine papers associated with that case and to judge the appropriateness of the actions and the company. That parliamentary oversight was unfortunately not available at that time, but it is now available and should be utilised to scrutinise global contracts and notifications within the unit in BEIS.

Parliamentary scrutiny is not something that should be feared. It allows engagement, consultation and a degree of transparency, subject to the rules of confidentiality. I support the amendments in this group.

Lord Janvrin (CB) [V]: My Lords, it is a pleasure to follow the noble Baroness, Lady Ritchie of Downpatrick. I speak as yet another former member of the Intelligence and Security Committee of Parliament. I strongly support the Bill, but there is a scrutiny gap which has been well identified in this short debate. Other speakers have made the key point in support of explicit oversight by the Intelligence and Security Committee of decisions taken under the Bill based on classified evidence from secret intelligence sources, and I strongly endorse those arguments.

I want to underline very briefly the important point of principle underlying these amendments. The ISC is a vital part of the intelligence agencies' licence to operate in a democracy by making the agencies accountable to Parliament. It helps maintain public trust and confidence in the secret activities of the state. This obviously includes maintaining trust in government decisions about the activities of the intelligence community. Those broad decisions are taken in the interests of the nation as a whole, but maintaining public trust will surely be just as important when it comes to government decisions that may be narrower but could directly affect the future of individual British companies and the livelihoods of their employees.

The Bill will set up a regime that could materially change people's lives in the wider interest of national security. However, as drafted, it does so without those people knowing for certain that any decisions based on secret evidence are not automatically subject to scrutiny and examination by the one committee of Parliament specifically set up to be able to do this: the ISC. This seems wrong in principle.

There is then the point of practice. I think we would all argue that effective scrutiny leads to better decision-making. The Minister in another place said that there is nothing to stop the ISC calling for evidence on a specific decision. That may be true, but is it practical? It calls to mind Donald Rumsfeld's "unknown unknowns": how does the ISC know which decisions to examine in detail? I question whether such a hit-or-miss approach to scrutiny would lead to better decision-making.

Amendments 70, 78, 79 and 82 all suggest means to provide effective ISC scrutiny. As has been pointed out, Amendment 70, in the name of my noble friend Lord Butler, has the merit of real-time accountability. This should be examined carefully, but the other amendments ensuring regular and automatic classified reporting to the ISC will, I believe, do much to ensure public trust in the processes of the Bill. As the noble Lord, Lord West, said, without one of these amendments, there would be no effective oversight.

I very much look forward to the Minister's reply, and I hope he will be sympathetic to some kind of movement on this important issue. As I said at the beginning, this is a matter of trust.

Lord Fox (LD): My Lords, it is a huge pleasure to follow such assembled knowledge and experience. I shall do my best to sum up from these Benches.

On a previous Committee day, we debated an amendment, tabled by the noble Baroness, Lady Hayter, on defining national security. In his answer to that amendment, the Minister—the noble Lord, Lord Callanan—responded that enshrining national security in law would be an inflexible response and the Government sought the ability to have a "flexible" response to future threats. I found this reasonably persuasive. However, who in the Government and department is defining, at that point in time, what the threat to national security is? Where does the expertise lie? Herein come the amendments before us—all except for Amendment 90, look towards the ISC for that expertise.

In his speech, the noble Lord, Lord Butler of Brockwell, set out what is at stake. These are extraordinary powers that the Government are taking upon themselves to stop private sector activity. That has been the concern of many of us throughout all the amendments that we have been putting forward. A lot of those powers are being kept very close to the Minister and very flexible, as my noble friend Lord Clement-Jones said when speaking on a previous group today.

One of the problems that has concerned those of us speaking about the investment part of the Bill is mission creep. Having a role for the ISC at the heart of it would ensure that this really is about security, rather than other issues that can creep into the picture.

6 pm

I was persuaded by the noble Lord, Lord Butler, when he said that the committee has sufficient capacity to handle this. I am not sure we yet know what scale of capacity will be required. To be honest, that was my concern about having a day-to-day operational viewpoint.

My other concern is that there is a very important job managing the outward-facing part of the Bill into the investment community and the market. It is clear to me that the investment security unit should be at the forefront of that process, in a sense isolating the ISC from the market part of what is going on. In other words, the market needs to understand what is happening and needs to have it explained. Part of what we have been talking about is having a predictability about how they are dealt with. That would still be the role of the ISU with the ISC sitting in behind.

I very much agree with the noble Lord, Lord West of Spithead, that it is either/or on the different approaches to the annual report. The key is to make sure that the secret element goes before the ISC, whether in a separate report, an annexe or any other means. We can be reasonably agnostic about which way that goes.

What came out through the speech of my noble friend Lord Campbell of Pittenweem is the fact that the ISC can sometimes be ahead of the issue. One thing that is not covered by the amendment of the noble Lord, Lord Butler, is: what if the ISC is identifying an issue that has not been referred to it by this process? What is a mechanism by which, in a sense, the ISC can be more proactive in nipping something in the bud, as my noble friend Lord Campbell explained could have happened with Huawei? As we take this to the next stage, we should think about whether there is a process to be built in, or whether we trust the dialogue between the different elements.

No one has spoken to Amendment 90. I feel that it is a little orphan in this group, so I will say a few words and hope that the noble Baroness, Lady Hayter, who tabled it, will espouse it. It seeks to move the investment security unit from BEIS to the Cabinet Office. In my view—we will wait and see what the noble Baroness has to say—that is no reflection of the quality of BEIS, more a reflection of the nature of the work and the fact that this is so interdepartmental. Putting it in BEIS makes it very bunkerish. From my perspective—again, I will wait to hear what the noble Baroness has to say—the idea is that it would broaden it out to have a pan-government approach. I have a feeling that it would give the unit an ability to walk into a bunch of other departments when it is doing its work.

In his closing remarks, the noble Lord, Lord Butler, rather mischievously suggested that there might be an element of peevishness or punishment about the Government not including the ISC. I am absolutely certain that there is none of that. I am sure that this will come up again on Report, although I hope that it will not have to. I hope that the Minister and colleagues can hear the really knowledgeable voices telling the Government that this is an issue. If they are saying that, it is an issue. The Government need to embrace this and find a way to feed in the expertise, which is at the core of the Bill. The Long Title says:

"Make provision for the making of orders in connection with national security risks".

This is the body that deals with national security risks and it is not written into the Bill. It needs to be there. I hope the Government see sense; if they do not, I hope that we can work together to produce something that reflects the nature of this debate.

Baroness Hayter of Kentish Town (Lab): My Lords, the case has been well made as to why the ISC should, and indeed must, have a role in scrutinising the use of powers contained in the Bill—or maybe if not scrutinising them, then, as the noble Lord, Lord Butler, says, having a role before they have been exercised. As my noble friend Lord West and others have said, we have been clear throughout that we support the need for the Bill. However, when broad powers of intervention are expanded, those using such powers must be held to account by Parliament and through greater transparency, as other noble Lords have said.

In the Commons Public Bill Committee, Professor Martin from Oxford University said that

"there should be accountability and transparency mechanisms, so that there is assurance that"

the powers

"are being fairly and sparingly applied."—[*Official Report*, Commons, National Security and Investment Bill Committee, 26/11/20; col. 81.]

Sir Richard Dearlove said that while the annual report should have as much transparency as possible, it could

"require a secret annexe from time to time"—[*Official Report*, Commons, National Security and Investment Bill Committee, 24/11/20; col. 21.]

such as is now provided for in Amendments 78 and 79.

Amendment 82 in my name and those of the noble Lord, Lord Fox, and the noble Baroness, Lady Bennett of Manor Castle, would put on the face of the Bill the case made convincingly here today but also in the Commons, where the chair of the ISC set out how this oversight fell well within his committee's remit. However, the belt-and-braces approach of Amendment 86 is also welcome, just in case the Government's only answer to a role being given to the ISC is that such scrutiny would go beyond its existing terms of reference. If so, they should amend the terms of reference.

It is important not simply that the ISC has a role, but—to give confidence to this new regime—that everyone, particularly business and researchers, knows that it has such a statutory role. This will be particularly important, as the noble Lord, Lord Janvrin, just said, where a key investment is stopped or voided. Everyone concerned will want reassurance that the security questions that have come into play were indeed properly analysed and assessed.

The power to be used needs reviewing, and it is not sufficient to say—as I have heard said—that the Business Select Committee is equipped for that. It has neither the specialism and expertise nor the clearance to handle and judge such security information. Nor, as the noble Lord, Lord Lansley, said, is it even able to do so, according to the quotes that he gave us. It is also a committee drawn only from the Commons, which would preclude, as the noble Lord, Lord Fox, just said, those in this House being able to have any input into the scrutiny that can take place through the ISC.

As we heard, in the Commons, the Minister said that the ISC could seek information—so clearly there is no problem in it having the information. We simply

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say that it should not have to ask—as was pointed out, it can then be rejected—but it should also not have to ask to see what has gone on. The noble Lord, Lord Janvrin, reminded us about Donald Rumsfeld and his "unknown unknowns". You do not know what you do not know, therefore you do not even know what you should be able to ask. As I pointed out at Second Reading, how do you know what the questions are if you do not know what you have not been told?

Then there is, as has just been referred to, the Bill title. We do not even have to go into the content of it; the words "National Security" are in the title, so it is slightly hard to see why the security committee should be excluded.

Amendment 82 therefore provides for an annual report to the ISC, including certain detailed information in relation to state-owned entities, the expertise being targeted, the jurisdiction of acquirers and other national security threats. We are not wedded to the particular wording—I am sure that we can come to an agreement on what should be there—but it is important for our functioning democracy that new, extensive powers for the Secretary of State go hand in hand with accountability. I would think that the Minister would welcome the expertise—indeed, the challenge—of the expert and experienced members of the Intelligence and Security Committee and the confidence that the knowledge that the committee is looking at it would give to the wider group of stakeholders.

I turn now to what the noble Lord, Lord Fox, called an orphan amendment. Maybe I should have put it into a different group; if so, I apologise. Amendment 90, in my name, and those of the noble Lords, Lord Fox and Lord Rooker, is a probing one, to ask the Government to spell out why they think that BEIS is the correct home for the new unit. We seek assurances that the balance of interests between those concerned with the economy and those with our security have proper channels to have their views heard, and heard in a way that is sufficiently speedy and effective to deal with real or imagined problems.

We have heard a lot, quite rightly, about whether business can get its information handled quickly enough, but the same is true for security: those demands and queries must also be handled in a timely manner. There is a balance between those who are interested in the economy and those who are interested in security—it is the same people, very often—and it is always a challenge to get that balance right. As the ISC noted:

"There is an obvious inherent tension between the Government's prosperity agenda and the need to protect national security."

Locating the unit in the business department is a statement about which they think is the more important. It makes some sense, obviously, because the issues are about investment, but it will be vital that all sorts of intelligence, from across Whitehall, about possible targets and areas of investment are considered.

The Department for Transport will know a lot about where investment is flowing and it and others will have critical infrastructure where they need to be involved. The ISC's Russia report, having reflected on Russia's attempts to influence electoral outcomes in other countries, notes that the Government's defending democracy programme and their work to protect the democratic processes from interference is under the leadership of the Cabinet Office. It would be useful to know whether consideration was given to collocating this new unit also under the Chancellor of the Duchy of Lancaster, or, indeed, how sufficient input from the Cabinet Office will flow into this unit.

More widely, the ISC, reviewing the co-ordination of security policy across Whitehall when it was looking at Russia, noted that responsibility fell to 14 different departments and agencies. The requirements of the Bill may well be similar: it will need tentacles all across those agencies and departments. It would be helpful to have some reassurance that there is a strong and appropriate lead and that the Government are confident that that lead is correctly placed in the business department rather than in the Cabinet Office, which normally does that cross-department work—the cross-Whitehall responsibilities are often put there for exactly that reason of drawing on expertise.

The amendment also suggests an advisory body, but what it is really pointing to, again, is the importance of pulling in all relevant parties and stakeholders with expertise to what will be big decisions. We have heard about the sort of investments that could be stopped by this, so these are big and important decisions. We look forward to some reassurance that all the right expertise will be used.

I turn to what is the main subject of this group, the ISC. I do not know whether it is the intransigence mentioned by the noble Lord, Lord Campbell, or whether it is something else that has turned such a cold shoulder on what we would all expect normally to be involved in this issue—that is, the ISC. We are not asking for much from the Minister today, perhaps just a cast-iron assurance that the MoU will be adopted in the way suggested. I think that that would satisfy most of us. I suggest that he puts the speaking notes that the noble Lord, Lord Callanan, passed to him to one side. What we really want to hear from him is that he has listened to the debate today, that he will take this back to the department and that it will be given serious consideration.

6.15 pm

Lord Grimstone of Boscobel (Con): My Lords, I am grateful to the noble Baroness, Lady Hayter of Kentish Town, the noble Lords, Lord West of Spithead, Lord Rooker and Lord Butler of Brockwell, and my noble friend Lord Lansley for their amendments on the role of the ISC in relation to the national security and investment regime. I assure the noble Baroness that she will hear my own words rather than those of the noble Lord, Lord Callanan.

I start by saying that I have the deepest respect for the expertise and experience of the noble Lords who have spoken in the debate this evening. I have listened to what they have said carefully and with great attention. However, despite the eminence of those who have spoken, I fear that I may disappoint them in this speech.

I assure noble Lords that the Government are committed to publishing information in relation to the regime that properly balances the desire for information with protecting national security. I shall come back

later to the important point about parliamentary scrutiny and accountability. What I am saying also takes account of the existing position in relation to scrutiny of the Department for Business, Energy and Industrial Strategy, BEIS.

These amendments represent a number of approaches to requiring the Secretary of State to provide sensitive information to the ISC. Amendments 78 and 79 would in practice require him to create a confidential annexe to the annual report. Amendment 82 would require an additional, separate confidential report to be provided to the ISC. Amendment 70 would require him to share intelligence relevant to a final order with the ISC and not to make that order until the ISC has reported to Parliament on it.

Amendment 86 would extend the remit of the ISC through amending the Justice and Security Act 2013 to enable the committee to scrutinise the operation of the Investment Security Unit. As we heard, Amendment 90 seeks to relocate the Investment Security Unit, within six months of the Bill becoming law, from the Department for Business, Energy and Industrial Strategy to the Cabinet Office. It would also establish a wide-ranging advisory board to the Investment Security Unit, which should include, but not be limited to, representatives from relevant government departments, security and defence organisations, and business bodies.

I will address Amendments 78, 79 and 82 together. The reports proposed under these amendments would contain very similar information, including in relation to mandatory and voluntary notifications, trigger events that were called in and final orders made. In particular, they would require the Secretary of State to provide details of factors relevant to the assessments made by the regime. These include: the jurisdiction of the acquirer; the nature of national security risks posed in transactions when there were final orders; details of particular technological or sectoral expertise that was targeted; and other national security threats uncovered through reviews undertaken under this Bill. I note that similar proposals were put forward in the other place and it is perhaps not surprising that my views on this align closely with those expressed by the Parliamentary Under-Secretary of State for Business and Industry at the time.

I respectfully draw noble Lords' attention to Clause 61, which requires the Secretary of State to prepare an annual report and to lay a copy of it before each House of Parliament. This clause provides for appropriate scrutiny of the regime. We judge this to be appropriate, because that information does not give rise to national security issues when published at an aggregate level. It will also rightly give a sense of the areas of the economy where activity of the greatest national security concern is occurring.

Of course, it is right that there is also wider scrutiny of the work of BEIS and the work of the unit within BEIS. We therefore intend to follow the existing appropriate government procedures for reporting back to Parliament, including through responding to the BEIS Select Committee, which, I have to say, does an excellent job of scrutinising the work of the department. Indeed, I note that the BEIS Select Committee can and does handle sensitive material; for example, on our civil nuclear programme. The UK's merger control regime under the Enterprise Act 2002 currently includes screening on national security grounds, and this function is overseen by the BEIS Select Committee.

In case there is any doubt of this—and coming back to the specific point that the noble Baroness made—there is no barrier to the BEIS Select Committee handling highly classified material, subject to agreement between the department and the chair of the committee on appropriate handling. The BEIS Select Committee will be able to see all the material that it needs in order to make its assessments within its role.

I argue that it is the right committee to oversee the work of the investment security unit within the broader remit of BEIS. We should not forget that the BEIS Select Committee is as much a part of our structure of parliamentary scrutiny and democratic accountability as the ISC. With great respect, I would not want any of our comments to appear to be disparaging to the work of the BEIS Select Committee and the very valuable scrutiny work that it does.

I believe that the BEIS Select Committee is excellently placed to consider how effectively and efficiently the regime interacts with the business community and investors. It can also ensure that the NSI regime does not create disproportionate impacts on the economy, and, with its business expertise, it is able to scrutinise whether the regime is effective in scrutinising relevant acquisitions of control. I have to say, with deep respect, that I would therefore question some of the narrative I have heard that suggests that the BEIS Select Committee is not well placed to scrutinise the NSI regime.

I turn back to the ISC. There are, of course, no restrictions on the ISC requesting further information from the unit or from the Secretary of State for matters where it falls under the remit of that committee. The Intelligence and Security Committee's remit, however, is clearly defined by the Justice and Security Act 2013, together with the statutory memorandum of understanding. I know that this irritates noble Lords, but that remit does not extend to the oversight of BEIS' work. I therefore welcome and encourage the Intelligence and Security Committee's considerable security-specific expertise and its review of the annual report when it is laid before Parliament.

Before turning to Amendment 86, I will first revisit precisely what the Justice and Security Act 2013 provides for. I remind noble Lords that this Act sets out the role of the Intelligence and Security Committee alongside a memorandum of understanding. The Act sets out that

"the ISC may examine or otherwise oversee the expenditure, administration, policy and operations of … the Security Service … the Secret Intelligence Service, and … the Government Communications Headquarters."

The Act also provides that:

"The ISC may examine or otherwise oversee such other activities of Her Majesty's Government in relation to intelligence or security matters as are set out in a memorandum of understanding"

agreed between the Prime Minister and the committee.

The present memorandum of understanding states that the ISC is, in addition, responsible for overseeing the activities of parts of the Ministry of Defence, parts of the Cabinet Office—including the National Security Secretariat and the Joint Intelligence Organisation—and the Office for Security and Counter-Terrorism. The ISC must report to Parliament annually on the

[Lord Grimstone of Boscobel]
discharge of its functions, and may make such other reports as it considers appropriate concerning any aspect of its functions. Redactions are agreed by the Prime Minister for any material that may prejudice the functions of the intelligence agencies or of other parts of the intelligence and security community.

Extending the remit of the ISC to oversight of the investment security unit would be a substantial amendment. In particular, the Justice and Security Act currently refers only to intelligence agencies, of which the investment security unit is not one. Noble Lords will have seen the strength of feeling in both this House and the other place concerning the role of the investment security unit in relation to the national security and investment regime—I am well aware of this. I understand that this proposed new clause is the result of careful consideration and an attempt to find a compromise, and for that I am grateful to my noble friend. However, for the same reasons that the Government have cautioned against other amendments that seek to provide for a more formal role for the ISC in relation to the NSI regime, I cannot accept it.

Amendment 70 seeks a similar privileged role for the ISC but in a way that, I have to say, would present additional problems. The Bill as currently drafted requires the Secretary of State, as the sole and quasi-judicial decision-maker, to follow clearly and tightly defined timescales and to handle sensitive information from a range of sources. Requiring the ISC to review every final order before it could be made would risk adding substantial delays into this process, harming both national security and business certainty.

The Government have faced amendments seeking for a national security assessment to be completed in one-third less time on large and complex acquisitions, for the purpose of limiting any wait by business. This amendment, however, while at the end of the process—and while final orders will, of course, be more limited in number than national security assessments undertaken—seeks to add potentially significant further delay without a clear benefit. There is also a risk that, depending on how long it takes the ISC to produce its report, the Secretary of State could be timed out of making a final order at all, as the tests for extending the assessment period do not currently allow for an extension due to ISC scrutiny. It would also, I think, be an unprecedented role for a parliamentary committee, although I have no doubt that others such as the noble Lord, as an ex-Cabinet Secretary, will have a much better sense of precedent in this area.

The report laid before Parliament, which this amendment would require, would be based solely on intelligence. It would therefore likely need to be so highly redacted as to make it uninformative. I can instead assure the noble Lord that, in making a final order, the Secretary of State will draw on information and expertise from across government, including the intelligence agencies, to ensure that he has all the information he needs.

6.30 pm

Finally, I turn to Amendment 90, and begin by saying to the noble Baroness that BEIS is in a unique position to host the investment security unit, as it has prosperity and national security expertise, as I said before, based on its significant history of engaging with business, overseeing critical national infrastructure with national security considerations, and responsibility for intervening in mergers under the Enterprise Act 2002. Indeed, the Defence Committee recently state that it was content with the investment security unit sitting within BEIS, in its report into foreign involvement in the defence supply.

Furthermore, much of the investment security unit has been formed through moving expertise across from elsewhere in government. Once fully operational, investment security unit officials will co-ordinate further input from across government to ensure that the Secretary of State can make well-evidenced decisions. It is better to focus on what the unit achieves than where it is located, and noble Lords are doing an excellent job of holding the Government's feet to the fire on that during this Committee.

I turn to the detail of the amendment. It also seeks to set up an advisory board to the investment security unit. This would include representatives and experts from various fields. I am not clear on the exact function of such a board. In the amendment, it appears that the board is established without a clear role, and that the investment security unit would continue providing advice to the relevant Minister. The amendment would also not have an impact on the decision-maker under the Bill, as that would continue to be the Secretary of State. My expectation is that this advisory role was envisaged for the board that would be established through the amendment.

I have set out elsewhere in this Committee the engagement undertaken and planned on the regime, which enables the Secretary of State to have a full and ongoing view of what businesses, including SMEs, think in relation to the regime. In addition, I assure the noble Baroness that new subsection (4)(a) to (d) proposed in the amendment is unnecessary, as representatives from each of these government bodies will be involved either in the assessment process or the wider national security policy process, of which this Bill forms part. At this stage, taken together with all the points that I have made on the location of the ISU, I hope that the noble Baroness feels able not to press the amendment.

For the reasons that I have set out, I am not able to accept these amendments. I hope that noble Lords will agree not to press them.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): I have had four requests to speak after the Minister, from the noble Lords, Lord West and Lord Rooker, the noble Baroness, Lady Hayter, and the noble Lord, Lord Campbell. I will call them in that order. Lord West of Spithead?

Lord West of Spithead (Lab): My Lords, I am a poacher turned gamekeeper, as a fully signed-up member of the rolled-up trouser-leg and funny handshake brigade. For many years in the intelligence world, I hated the thought that government, Parliament or anyone else could look at my intelligence; how much nicer not to give any of that away. I am very glad that system does

not work in this country. We have set up a mechanism whereby Parliament can see that highly sensitive intelligence that all of us involved in that world are immediately nervous when anyone touches. Of course if you have that intelligence, you want to hang on to it and not tell other people about it. It sounds to me as though the BEIS Select Committee will be delighted that it is to be the one making all the decisions based on the intelligence that it has. I do not really like that as a way of going forward. I could say a lot more about the response from the Government because I am not very happy about it.

Can the Minister look again at this debate and what has been asked for, because it seems very sensible for the ISC, which after all was tasked in the Justice and Security Act to do exactly this? The BEIS Committee was not. It is not too much to ask that this is looked at; it sounds very sensible.

Lord Grimstone of Boscobel (Con): I thank the noble Lord for his courteous comments. Of course I will review the contents of this whole debate to see whether there are any lessons that I can learn from it.

Lord Rooker (Lab) [V]: My Lords, I much regret that, due to my own IT incompetence, I was unable to speak today. However, I say to the Minister as politely as I can that he has completely misread the House, and I think he will have to look at this again. The ISC is not a bog-standard Select Committee. I have a question for him, based essentially on the speech of the noble Lord, Lord Janvrin, which I do not think he referred to. How could rumours about government action in respect of a private company which may be market-sensitive be dealt with to public satisfaction unless the ISC has oversight? It would not matter if the ISC reports were redacted; Parliament would accept that; the media would accept it. The Government have a democratic licence to operate only because of Parliament. The Minister should go away and, before Report, explain to those who have spoken and other Peers where the Government's democratic licence to operate is in this respect, having ruled out parliamentary scrutiny in a very precise way.

Lord Grimstone of Boscobel (Con): I thank the noble Lord for his comments. I apologise to noble Lords if they feel that I have misread the mood of the House. The key point that I want to make in response to him is that the BEIS Select Committee—I say it again—is part of our parliamentary scrutiny and has democratic accountability in the other place. The Government are not avoiding scrutiny of the investment security unit; they are putting it somewhere where they believe that the scrutiny will be most effective, looking at the work of the unit in the round. They believe that the most effective overall scrutiny of the ISU will be found in the BEIS Select Committee.

Baroness Hayter of Kentish Town (Lab): I have a couple of questions for the Minister. He said that the remit of the ISC under the 2013 Act does not cover the work of BEIS. If that is the case, that justifies even more an amendment to the Bill to amend the 2013 Act to put in such a provision. If the Government wanted to do it, that would be the way. I do not think that we should use the law as an excuse. The law can be changed; we are making an Act now.

I have just double-checked the names, but can the Minister confirm that the current members of the BEIS Select Committee are not all even privy counsellors and certainly do not have security clearance which goes beyond Privy Council? Can he confirm that there is no House of Lords Member on the BEIS Select Committee? Can he also confirm that nothing that we have done in any of these amendments to give the ISC a role removes the role of the BEIS Select Committee—in other words, it can still look at the industrial or investment parts? We are not taking those away from it, so it would continue to have the role that he has spelt out for it, but we are adding another bit. Can he confirm those three points?

Lord Grimstone of Boscobel (Con): I thank the noble Baroness for those questions. First, I repeat that there is no barrier to the BEIS Select Committee handling highly classified, top-secret material. Appropriate arrangements can be put in hand to ensure that the members of that committee have access, after processes have been gone through, to that material. Secondly, of course, the committee is a committee of the other House —that is self-evident. I come back to my core point. Where the agencies which report to the ISC have done work of relevance to this, the ISC will be able to speak to them about such work, but that is very different from the ISC being responsible for monitoring the work of the ISU, which goes far wider than the responsibilities of the ISC. I have deep respect for the opinions that have been put forward, but I am afraid that I do not agree with them.

Lord Campbell of Pittenweem (LD): My Lords, I am grateful for the opportunity to remedy an omission from my earlier remarks, to some extent stimulated by the response of the Minister. During my time in the other place, I was a member of the Trade and Industry Committee, the Defence Committee and the Foreign Affairs Committee. Unless things have changed very considerably, in my time as a member of these committees we were never admitted to intelligence of the quality which is available on a daily basis to the Intelligence and Security Committee. We were never required to sign the Official Secrets Act, which is an obligation incumbent upon those who wish to serve on the Intelligence and Security Committee.

Since the nominations are made by party leaders, it is not unknown for reservations to be expressed about the reliability of a possible member of the Intelligence and Security Committee, the result being that the leader of the party in question determines to withdraw that nomination. To suggest that the quality of information available is the same in Select Committees on security matters as that available to the Intelligence and Security Committee is to misunderstand the different obligations incumbent on membership.

Lord Grimstone of Boscobel (Con): I thank the noble Lord for these comments and in no way want to second-guess the deep experience that he has on these matters. But I repeat yet again: there seems to be a

[Lord Grimstone of Boscobel]
worry that BEIS Select Committee members will not have sufficient security clearance to be able to do the work required of them. I repeat from this Dispatch Box that there is no barrier to BEIS Select Committee members handling top-secret and other classified material, subject to agreement between the department and the chair of the committee on appropriate handling. I am not sure that I can say more than that, but they will be able to have the information they need to carry out their functions.

Lord Butler of Brockwell (CB): My Lords, I am grateful for this debate. I am afraid that I have to say to the Minister that, while he may have used his own words in answer to the debate, he used the brief that would have been used by the noble Lord, Lord Callanan. I do not want to decry the work of the BEIS Select Committee at all, but the Minister gave the game away when he said that access to highly classified intelligence for the Select Committee would be based on an agreement between the chair and the Secretary of State. The Secretary of State would control it. In that case, Parliament would be in the position of Glendower in "Henry IV", who says:

"I can call spirits from the vasty deep."

So you can, is the reply:

"But will they come when you do call for them?".

Under the memorandum of understanding, the Intelligence and Security Committee has a right to get the intelligence that it needs. A Select Committee of the House of Commons does not have that similar right.

What has run through this debate, from everybody who has spoken apart from the Minister, is that we want one simple thing. We want to make proper use of a tool that is there for Parliament and has been created for this purpose: the Intelligence and Security Committee. There are various ways of doing it, as has been made clear. It could be by annual reports; it could be by changing the terms of reference, which can be done so easily; it could be a transfer to the Cabinet Office, which would bring it within the terms of the ISC.

I suggested that this should be a real-time operation. If I may say so, the Minister misrepresented that. There is no reason why that should extend the time necessary for the assessment. The Intelligence and Security Committee will be looking at one thing—the highly classified intelligence on which the Secretary of State is acting—and reporting on that. That is not a huge job. The ISC could say quite shortly that it was satisfied, and 99 times out of 100, I think, it would say that there were good grounds for the order that the Secretary of State was proposing to be make. I think that could quite easily be done within the 30 days allowed under the Bill for the assessment. It would not even need to make use of the 15-day extension.

6.45 pm

The noble Lord, Lord Fox, said that we need to be satisfied that that is practicable. It is now six years since I served on the Intelligence and Security Committee. If real time is impracticable, I would accept that, but there is an advantage to real time, because it would help catch the case of Huawei that the noble Lord, Lord Campbell, described. Effective action, which was not taken, could have been taken on that. I am afraid that I am not satisfied, and I think that the House is not satisfied, with the Government's reluctance to use the facility of the Intelligence and Security Committee, and I am sure that we will need to return to this on Report. I hope the Government will think again. In the meantime, I beg leave to withdraw my amendment.

Amendment 70 withdrawn.

Amendments 71 and 72 not moved.

Clause 26 agreed.

Clauses 27 to 31 agreed.

Clause 32: Offence of completing notifiable acquisition without approval

Amendments 73 and 74 not moved.

Clause 32 agreed.

Clauses 33 to 52 agreed.

Clause 53: Procedure for service, etc

Amendment 75

Moved by ***Lord Grimstone of Boscobel***

75: Clause 53, page 33, line 6, leave out from "followed" to end and insert "when a provision of or made under this Act requires or allows a notice, order, notification or document of any kind to be given or served."

Member's explanatory statement

This amendment ensures that the power to make regulations in clause 53(1) in relation to the procedure for service of documents extends to cover all of the different types of notices, orders and documents under the Bill.

Amendment 75 agreed.

Clause 53, as amended, agreed.

Clause 54: Disclosure of information

Amendment 76

Moved by ***Lord Lansley***

76: Clause 54, page 34, line 15, leave out "and" and insert—

"( ) whether the United Kingdom has a reciprocal agreement with the country or territory to whose authority the disclosure would be made, and"

Member's explanatory statement

This amendment would require the Secretary of State to take into consideration whether there is a reciprocal agreement in place when deciding to disclose information to an overseas public authority.

Lord Lansley (Con): My Lords, this group should not take us very long. There are just two points in it. Amendment 76 relates to Clause 54, "Disclosure of information," and in that clause, there is a power for the Secretary of State to disclose information

"to a public authority or an overseas public authority."

When deciding whether to disclose information to an overseas public authority, under subsection (7) of that clause, there are two issues the Secretary of State must have regard to: the protection against self-incrimination

in criminal proceedings; and whether the matter in respect of which disclosure is sought is sufficiently serious to justify making that disclosure.

Amendment 76 in my name proposes to add one further matter to which the Secretary of State must have regard—whether there is a reciprocal agreement with the country or territory concerned. It would not mean that where there was no reciprocal agreement the Secretary of State could not make a disclosure to an overseas public authority, but it should be something that he should have in mind.

I am glad that my noble friend is on the Front Bench because he will have fond memories of Amendment 77. It concerns the disclosure of information where a statutory gateway is made and how such a statutory gateway is to be considered alongside the prohibitions to be found in data protection legislation and in the Investigatory Powers Act. The amendment to Clause 57 covers this. My noble friend will recall that under the Trade (Disclosure of Information) Act 2020, where there was a power to disclose information that might contravene the data protection legislation, that would be prevented, but the duty or power in the 2020 Act was to be considered alongside that prohibition. We can see that in Clause 57(2)(a), which makes it clear that the duty to disclose in this legislation would not contravene data protection legislation or the provisions of the Investigatory Powers Act, but that the duty or power in this legislation must be taken into account.

Clause 57 puts that qualification alongside the data protection legislation, but it has not put it alongside the prohibitions in the Investigatory Powers Act; I do not know why. I know why it is there because we went through this on the Trade Bill. It is there because of the 2016 Supreme Court decision in The Christian Institute & Others v The Lord Advocate made it clear that the decision-maker should have in mind both the prohibitions and the powers in the Act, and balance the two together. In Clause 57(2)(a) this legislation enables the Secretary of State to balance the two. The question is: why not in the Investigatory Powers Act? If the answer is that under no circumstances would a prohibition under the Investigatory Powers Act be overridden by reference to the duty or powers in this legislation, I will be content with that. However, otherwise I do not understand why it is not included in Clause 57(2)(b) in the same way as it is in subsection (2)(a). I beg to move.

Lord Fox (LD): My Lords, I rise to beat the rush and clamour to respond to these two amendments. Taking them in turn, from these Benches, Amendment 76 seems to make a relatively straightforward point. I will be interested to hear from the Minister what possible objection there might be to it. My suspicion about Amendment 77 concerns what normally happens to amendments like this tabled by the noble Lord, Lord Lansley. The Minister will say, "We do not need these powers because—". I have looked at the legislation and I cannot find any evidence of where the "because" might be. I shall sit down and wait to find out.

The Deputy Chairman of Committees (Lord Russell of Liverpool) (CB): We have not heard from the noble Baroness, Lady Hayter of Kentish Town, so I call the Minister.

Lord Grimstone of Boscobel (Con): My Lords, I turn to the amendments relating to information sharing and data protection. As always, I am grateful to my noble friend Lord Lansley, who we know examines these Bills with such a critical eye that nothing can escape his eagle gaze. The first amendment relates to Clause 54 and seeks to require the Secretary of State, when deciding whether to disclose information to an overseas public authority, to have regard to whether there is a reciprocal agreement with the country or territory to whose authority the disclosure would be made.

As this clause is about sharing information, I believe that my noble friend is envisaging the reciprocal agreement with another country or territory to be in relation to the sharing of information for a specified purpose, such as facilitating the exercise by the Secretary of State of his functions under the Bill or the prevention or detection of crime. Clause 54(7) specifies certain considerations that the Secretary of State must have particular regard to when deciding whether to disclose information to an overseas public authority. It includes consideration of whether the law of the country or territory to whose authority the disclosure would be made provides protection against self-incrimination in criminal proceedings corresponding to the protection provided in the UK, as well as consideration of whether the matter is sufficiently serious to justify making the disclosure. The clause permits the Secretary of State to disclose information but, I stress, does not require him to do so.

The Secretary of State, as often elsewhere in the Bill, will be subject to public law duties when deciding whether to share information with an overseas public authority under this clause. These duties include a requirement to take all relevant considerations into account, although this will obviously depend on the facts of each case, and whether there is a reciprocal agreement in place. In some circumstances, for example where information is to be shared for the purpose of protecting national security, it may well be appropriate to proceed in the absence of a reciprocal agreement. When deciding whether to disclose information to an overseas public authority, the Secretary of State will also be bound by the data protection legislation provisions, which include certain restrictions in respect of international transfers of personal data and consideration of appropriate safeguards. There is therefore no need to include additional restrictions in the Bill.

I turn to Amendment 77, which relates to Clause 57. It seeks to ensure that when considering whether a disclosure or use of information pursuant to a duty or power under Parts 1 to 4 of the Bill would contravene the Investigatory Powers Act 2016, the duty or power itself would need to be taken into account. A similar provision exists in relation to consideration of whether a disclosure or use of information would contravene the data protection legislation. Clause 57 states that the provisions in Parts 1 to 4 containing a duty or power to disclose or use information do not authorise a contravention of the data protection legislation as defined in the Data Protection Act 2018. The clause also sets out that such a duty or power to disclose or use information does not authorise contravention of Parts 1 to 7, or Chapter 1, Part 9, of the Investigatory

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Powers Act 2016. That Act contains provisions about conducting interception, including restrictions on use and disclosure of intercepted information. These are standard provisions included where legislation concerns the use or disclosure of information.

To reassure my noble friend, there is no call for the Secretary of State to consider the duty or power to disclose or use information under the Bill to determine whether a particular disclosure or use pursuant to it would contravene the Investigatory Powers Act. This will simply require consideration of what the relevant provisions of the Act prohibit, and none of the prohibitions turns on whether a duty or power exists or its terms. In comparison, the data protection legislation provides a framework for processing personal information but allows for other provisions, such as those found in the Bill, to specify more details about the use or sharing of personal information. Therefore, a duty or power to disclose or use information under the Bill will need to be taken into account when considering whether a disclosure or use of personal information pursuant to it would contravene the data protection legislation. As explained, this is not required when considering compatibility with the Investigatory Powers Act, due to the differing nature of the legislation.

Therefore, while I understand the objectives of my noble friend and his desire, as always, to be helpful, for the reasons I have set out, I am not able to accept these amendments, and I hope that my noble friend will agree to withdraw or not move them.

7 pm

Lord Lansley (Con): I am grateful to my noble friend for his response. I will read it carefully, but, if I understand it correctly, I entirely agree with him on the explanation of Clause 57 and the different approach to data protection legislation on the one hand and investigatory powers on the other, so there is no problem there.

To be perfectly honest, I do not understand the argument regarding Amendment 76. If my noble friend is resting his argument on the fact that there is a public law duty and that all relevant considerations must be taken into account, why does that not equally apply to the considerations specified in Clause 54? If they are to be specified there, I do not understand why a reciprocal agreement could not be properly included. It is a matter of policy as to whether it should or should not, and it seems to me that there is a good argument that it should be considered, but I will reflect further on that and, for the moment, I beg leave to withdraw Amendment 76.

Amendment 76 withdrawn.

Clause 54 agreed.

Clauses 55 and 56 agreed.

Clause 57: Data protection

Amendment 77 not moved.

Clause 57 agreed.

Clauses 58 to 60 agreed.

Clause 61: Annual report

Amendments 78 and 79 not moved.

The Deputy Chairman of Committees (Lord Lexden) (Con): At last, we move to the group beginning with Amendment 80.

Amendment 80

Moved by ***Lord Grantchester***

80: Clause 61, page 36, line 33, at end insert—

"( ) the average number of days taken to assess a trigger event called in under the Act,

( ) the average number of days taken for acceptance decisions in respect of mandatory and voluntary notices,

( ) the average staff resource allocated to the operation of reviews of notices made under sections 14 and 18 over the relevant period,

( ) the number and proportion of notices and call-in notices concerning the acquisition of a small or medium-sized enterprise,

( ) in respect of the acquisition of a small or medium-sized enterprise, the sectors of the economy in relation to which call-in notices were given,

( ) the minimum, average and maximum turnaround times for notifications."

Lord Grantchester (Lab): I am pleased to open this group of amendments by moving my Amendment 80, concerning the department's annual report on this legislation. Generally speaking, Governments, regrettably, do not tend to offer widespread information in reports, whether annual or not—except, of course, where they consider that they heap praise on themselves.

Clause 61 can be made to look extensive, comprising as it does a total of 12 mandatory pieces of information—13, should the addition of the noble Lord, Lord Lansley, not be considered unlucky. This list can form the basis of information on the way the Government provide a dashboard to view the new unit. However, in considering how well it is performing and its relationship with and effect on the business community, any audit certainly needs to ask for the additional six listed in my amendment.

My Amendment 80 requires the Secretary of State to report on the time taken to process notices, which was part of our earlier discussion on the resource allocation to the new unit and the extent to which small and medium-sized enterprises are called in under the new regime. The amendment is about requiring a greater degree of accountability from the department regarding the investment security unit's service standards and functions. It states that the report needs to include the aggregate time for decision-making, in both assessments and initial answers, acceptances and rejection notices, providing a measure to ensure that the screening process is working effectively and efficiently for SMEs.

Secondly, on elements of capacity monitoring, the amendment enhances the ability to take stock of the resources behind the unit's work, so that Parliament and the public can appreciate the report as a mechanism

for holding the Government to account for what will be a major new centre for merger investment screening for the security of the UK.

Thirdly, we are keen to maintain a business climate in which SMEs can thrive. It would be beneficial in this respect for the unit to track and monitor the focus of SMEs in its work. Information would be able to highlight any specific concerns and the experiences of the most innovative start-ups in their interactions with the new regime.

The general questions across the Committee regarding how the new unit will operate, be resourced, perform and impact those throughout the economy whom it will affect can be answered in the more comprehensive information that an annual report can offer. In addressing the Commons Committee, David Petrie of the ICAEW wanted to test the capabilities of the regime in an accountant's way by assessing the reasonableness of his assumption that even 1,000 notifications a year amounts to four a day and a considerable workload. How will that work and what information must be provided to check it through the annual report? What will be the annual budget for this regime and what increase for the department will be necessary? Will the new unit be able to request and receive additional funding to meet the challenges it has yet to experience?

I will not steal the thunder of the mighty guns of my noble friend Lord West by saying much at this point about his Amendment 91, which is in this group. He has already spoken authoritatively on security matters. However, we are sympathetic to and support his amendment, as businesses in the defence sector have asked that the impact of the new regime on them be clarified. The amendment reflects the Defence Committee's report on foreign investment, which called for banning investments in the UK's defence supply chain from certain countries, namely, China and Russia. What is the Minister's view on this?

In considering the annual report and the guidance my noble friend seeks for the defence sector, and the other reports undertaken under, for example, Amendment 78 or Amendment 82 in the name of my noble friend Lady Hayter, it would be helpful if the Minister could also outline the relevant interactions, not least with reports from the export control regime, in order to provide a comprehensive assessment. It would be unfortunate to find information disappearing into gaps between them and vulnerability opening up in the security screening process. I beg to move.

Lord Lansley (Con): Noble Lords will be pleased to know that this is the last time they will hear from me in this Committee. My amendment is terribly simple. In so far as the annual report lists the number of final orders made, Clause 27 provides the power for the Secretary of State to vary orders or revoke them. One of the things that one might want an annual report to do is to enable one to understand the stock of orders as well as their flow. Therefore, I have suggested in Amendment 81 that the number of orders varied or revoked should be added to the list of subjects in the annual report.

The Deputy Chairman of Committees (Lord Lexden) (Con): I call the guns of the noble Lord, Lord West of Spithead.

Lord West of Spithead (Lab): My Lords, I am going to be using secondary rather than main armament for this particular amendment.

I see Amendment 91 as more of a probing amendment than anything else. It is in fact a direct recommendation from the HCDC report, *Foreign Involvement in the Defence Supply Chain*, which came out last month:

> "The Ministry of Defence's open and country-agnostic approach to foreign involvement means that the defence supply chain has been open to potentially hostile foreign involvement, with reports of companies being owned and influenced by foreign Governments whose values and behaviours are at odds with our own".

That is, of course, part of the whole point of this Bill. It also said:

> "The Ministry of Defence should publish a list of countries it considers friendly and from whom investment should be encouraged. All those countries falling outside of this list should be barred from investing in the UK's defence supply chain".

The committee's reasoning was that these companies, particularly the SMEs and smaller companies, need to know because they do not have the ability to initially assess the risk of dealing with some of the countries with which they often come into contact, and it was felt that this needed to be made clear. This would mean that time and money would not be wasted pursuing contracts and deals that were not going to be allowed. It all relates to that high degree of certainty to which so many of the amendments discussed today have related. I need say no more than that.

Baroness Smith of Newnham (LD) [V]: My Lords, this is my one foray into the National Security and Investment Bill, and I am speaking to Amendment 91, in the names of the noble Lords, Lord West of Spithead and Lord Alton of Liverpool, and myself.

As the noble Lord, Lord West, pointed out, this is in many ways a probing amendment, but it is very important. The relevance is clear: the HCDC report talks about the presence of Chinese business already in the defence supply chain. It goes slightly wider than that; anyone who has been in the armed services or happens to be in the Armed Forces Parliamentary Scheme might have looked at the labels of the uniforms—the camouflage—and noticed that they were made in China. I have always thought it slightly strange that NATO-issued uniforms should be made in China, but that seems to be the case. That does not necessarily endanger our national security, but it does raise some very odd questions about what we are actually doing and why we are purchasing kit from China. The HCDC notes that seven companies in the defence supply chain have been acquired by Chinese companies; that at least needs to be looked into.

This is a very modest amendment, which asks for a report. It does not go quite as far as the HCDC recommendation, because it does not say that other countries should be barred from investing in the supply chain, but will the Minister consider what signals the current approach to allowing investment in the defence supply chain sends, particularly on the day that the integrated review has been published?

The Deputy Chairman of Committees (Lord Lexden) (Con): The next speaker on the list, the noble Baroness, Lady McIntosh of Pickering, has withdrawn from the debate, so I call the noble Lord, Lord Fox.

Lord Fox (LD): My Lords, I will make two brief points. On Amendment 91, I add in support of the noble Lord, Lord West of Spithead, that, having worked for a business that was both in the defence supply chain and was also a civil supplier, some companies do not even realise that they are selling into the defence supply chain—particularly SMEs, which tend to sell to whomever will buy their product, often across civil and security sectors. Advice on how you know when you are coming into the remit of the Bill is going to be very important.

Speaking to the long list set out in Clause 61, which would become longer should the advice of the noble Lord, Lord Grantchester, be accepted, I have a problem because it is essentially a process. It is "What we have done this year"; it is a list of things we did. The Bill has two purposes: one is to keep the country safe, and the other is to not harmfully impact the flow of investment. It is impossible to infer any of that from these things. If we are going to have an annual report—I am remiss for not having tabled an amendment myself—let us have one that enables us to judge the success of the Bill year on year. What has been the effect—the impact—of the Bill on the investment landscape in this country? Are we still safe? We could have done all the things on this list, and, frankly, all the things on the list of the noble Lord, Lord Grantchester, and the stable door could be wide open, but we would not know it from this annual report.

I have prepared lots of business annual reports: literally thousands of things are reported, none of which is actually useful information about what the business is doing but is required by law. So my suggestion, for what it is worth, is: let us have an annual report that enables us to effectively judge the Bill's success—are we safe and has the investment landscape not been impacted?

7.15 pm

Lord Callanan (Con): I thank those who have taken part in this short debate, in particular my noble friend Lord Lansley and the noble Lords, Lord Grantchester and Lord West, for their considered and thoughtful comments on the amendments. Amendments 80 and 81 seek to add a number of additional areas of information to the annual report, namely around time taken processing cases, the resources of the investment security unit, the extent to which acquisitions involving SMEs are being called in, and the number of final orders being varied or revoked. The aims of these amendments are commendable, and the Government are a strong supporter of SMEs and government transparency.

The first part of Amendment 80, tabled by the noble Lord, Lord Grantchester, seeks the inclusion of the average number of days taken to assess a trigger event which has been called in. Noble Lords will recall that Clause 23 provides statutory time periods for assessment under the regime. The Secretary of State must assess any trigger event that has been called in within a period of 30 working days, as we have discussed in earlier debates, or, if additional time is required, within the additional period of a further 45 working days, or within any further voluntary extension or extensions agreed with the acquirer.

As there are these time limits, and they are as short as we are able to make them while also ensuring there is time for appropriate national security assessment, it does not seem that there would be any additional benefits from including average times in the annual report. Clause 61 sets out the minimum reporting requirements that the Secretary of State must meet in the annual report. The information provided in the annual report will provide Parliament with good insight into how the regime is functioning in practice.

Furthermore, the amendment seeks to add additional reporting on the minimum, average and maximum turnaround times for notifications in the annual report. The Government have laid out clear statutory timelines for responding to voluntary and mandatory notifications in Clause 23, providing investors and businesses with the certainty that they need. However, I would be happy to discuss this proposal further with the noble Lord, Lord Grantchester. The time taken to assess trigger events that are called in will vary on a case-by-case basis; therefore, it would not be helpful to share the average time.

Secondly, on the time taken for deciding whether to accept mandatory and voluntary notices, the Bill requires that the Secretary of State must do so

"as soon as reasonably practicable",

as we discussed, after receiving a notice. In practice, this is likely to be a matter of days, but it is important to retain flexibility so that an accurate assessment of the completeness of the information is undertaken. Additionally, if the Secretary of State decides to reject a notice, he must as soon as practicable provide reasons in writing for that decision to the notifier. Where the decision is to accept a notice, the Secretary of State must as soon as practicable inform the parties of the decision.

Thirdly, where the noble Lord seeks inclusion of the average headcount of the investment security unit in the annual report, I can only repeat what my colleague Minister Zahawi said in the other place: resourcing would, of course, be

"an internal matter for the BEIS permanent secretary."—[*Official Report*, Commons, National Security and Investment Bill Committee, 10/12/20; col. 334.]

I am unsure whether very high numbers would demonstrate appropriate resourcing, or insufficient efficiency. In any case, we have committed to ensuring that the investment security unit is appropriately resourced. I am sure that the Permanent Secretary will make sure that that is the case.

Furthermore, on SMEs, the report is intended to give a sense of the sectors of the economy where the greatest activity of national security concern is occurring. The Secretary of State may include additional information relating to SMEs if he considers that appropriate.

Turning to Amendment 81, tabled by my noble friend Lord Lansley—I am sorry that this is the last occasion we will hear from him—I am pleased to confirm that Clause 29 already places a duty on the Secretary of State to publish notice of the fact that a final order has been made, varied or revoked. This intentionally complements the annual report in Clause 61. We must not encumber the investment security unit with ever greater reporting as this will draw focus away from scrutinising acquisitions and responding to

businesses as soon as possible. Individually, these amendments of greater reporting may seem reasonable, but combined they can be quite burdensome for the unit.

On Amendment 91, in the name of the noble Lord, Lord West of Spithead, I am grateful that this came with only his secondary armament—although I noticed that he had the noble Baroness, Lady Smith, for additional offensive capability. The amendment relates to the provision of guidance for the defence sector. It would require the Secretary of State to publish guidance for businesses in the defence supply chain about the provisions in the Bill, including a list of countries which the Secretary of State considers less likely to give rise to a risk to national security and from which investment is encouraged.

The noble Lord's amendment highlights the importance of the defence sector and its supply chains, which is part of the reason why the defence sector is intended to form part of the Bill's "mandatory notification regime". A robust defence sector is vital to our national security and essential for the development of innovative and first-class military capabilities that enable us to protect our people, territories, values and interests at home and overseas. The defence sector, including businesses in its supply chains, such as those providing emerging technologies, must remain resilient to a wide range of national security risks, including those posed by hostile actors.

We are keen to ensure that the mandatory notification regime works proportionately and provides sufficiently clear parameters to inform businesses and investors of the need to notify and obtain prior approval. That is why we have consulted on the definitions of sectors covered by mandatory notification in the recent public consultation. This approach has enabled experts from the defence sector and its supply chains, along with the legal profession, businesses and investors, to help us refine the final definitions to ensure that the regime is appropriately targeted and provides legal certainty.

The noble Lord's amendment also seeks to require the publication of a list of countries which the Secretary of State considers less likely to give rise to national security risks, and those from which investment is encouraged. As it stands, as I have said before on other amendments, both the mandatory and voluntary notification regimes provided for by the Bill are actor- and nationality-agnostic.

The mandatory notification regime is set based on the risks posed by acquisitions of target entities due to those entities' activities rather than risks posed by the acquirers. The risks posed by an acquirer are then considered on a case-by-case basis by the Secretary of State as part of the particular national security assessment. It would not be appropriate to set out through guidance a variation to the legislation; that would confuse more than it would clarify, and it might give rise to legal challenge.

On whether guidance can be provided more generally for the defence sector on the provisions in the Bill, we must also guard against legislating through guidance. The Government will of course consider what appropriate explanatory material should accompany the regulations to define the sectors subject to mandatory notification, including the defence sector.

I thank all noble Lords and my noble friend for their amendments. For the reasons mentioned, I am afraid I cannot accept them. Therefore, I hope the noble Lord will feel able to withdraw his amendment.

The Deputy Chairman of Committees (Lord Lexden) (Con): I have received no requests to speak after the Minister, so I invite the noble Lord, Lord Grantchester, to conclude the debate on his amendment.

Lord Grantchester (Lab): I thank those who have taken part in this short debate on the annual report, especially the Minister for the tone of his reply. It has been very helpful. The dashboard of information to be provided in an annual report must be extensive enough to provide clarity on the operation of the unit and how it has performed. I have always considered annual reports an excellent opportunity to promote an organisation's credentials and it is surprising to hear that the Minister would not wish to show how the unit has performed effectively against statutory targets. I thank him for expressing the wish to discuss this further and I look forward to doing that with him.

Defence in the supply chain is a particular vulnerability and, on my noble friend's guidance, the need can be found in the government response to the sector consultation. The defence chapter states:

> "Some respondents stated the definition could capture contractors or subcontractors who are providing goods or services unrelated to defence".

This returns the Committee to its considerations regarding clear definitions of national security and how these may be provided. They are certainly important issues to consider further in the light of the Minister's reply. I beg leave to withdraw the amendment at this stage.

Amendment 80 withdrawn.

Amendment 81 not moved.

Clause 61 agreed.

Amendments 82 and 83 not moved.

Amendment 84

Moved by ***Lord Grantchester***

84: After Clause 61, insert the following new Clause—

"Equity stakes and national security review

(1) Within one month of the day on which this Act is passed, the Secretary of State must conduct a review of business loans and grants which have been distributed in response to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) to sectors in relation to which the Secretary of State considers that trigger events are more likely to give rise to a risk to national security.

(2) If loans and grants have been accepted by businesses in these sectors, the Secretary of State must consider converting loans and grants into equity stakes if there is a clear economic and national security rationale for doing so."

Lord Grantchester (Lab): I am glad I am providing balance for the noble Lord, Lord Lansley, before he departs the Committee. This side of the House is tabling amendments and challenging the Government on this legislation. We too want the Bill to work well

[Lord Grantchester]
and consider that it is important that various elements have been fully considered. One of the elements to reflect on concerns the effect on the SME sector. We champion clarity and support for SMEs and innovative start-ups, so often the engine of growth, jobs and prosperity.

SMEs may experience degrees of anxiety about potentially having to engage with a whole series of new regulations under the Bill. Amendment 84 is a probing amendment to ask whether the Government are considering whether the Covid business loans and grants in any sectors under national security screening could be converted into equity stakes should there be a clear economic or national security rationale so to do. The public will generally look back in appreciation of the support provided by the Government to businesses over the pandemic interruptions. That could also mean ensuring that gains from public support—not merely the losses of failure—accrue to the benefit of all of us. Simply, are equity stakes being considered in these circumstances, even if the Government are generally not in favour of taking equity risks, even in terms of securing our national security? What are the recoverabilities of loans and the implications for security of these vulnerabilities? What assessments have the Government given to this?

Amendment 85 would go a long way towards ending uncertainties and anxieties for SMEs, ensuring that the Government act with clarity, competence and care. It would ensure a business climate of appreciation of the SME sector in which it can thrive. SMEs have been inquiring how best to engage with government in the many changes that will apply. We propose that part of the new unit be dedicated to the SME sector, as some 80% of the likely notifications of the new regime and the requirements this will generate will be borne by SMEs. The screenings will also be most challenging for them, especially in regard to SME funding rounds, especially since, for tech start-ups, the necessary speed of response that could be required to the many weeks of inquiries could present insurmountable challenges. SMEs do not generally have deep pockets to fund a comprehensive array of advisers to help them navigate the Government's less than clear process. The unit, and consequently the legislation, need to be aware of the pressure this puts on innovation start-ups, which need the confidence to be able to respond effectively.

A dedicated SME division, as outlined in Amendment 85, would do just that. It would ensure prompt, accessible guidance, as industry experts have been demanding in their briefings, to engage with SMEs prior to formal processes to ease the burden of bureaucracy. Could the Minister outline the specific support that the Government could provide SMEs in assistance targeted on the good working of the new investment unit? How will a focus on SMEs be hard-wired into the new unit? I beg to move.

7.30 pm

The Deputy Chairman of Committees (Lord Lexden) (Con): The noble Baroness, Lady McIntosh of Pickering, whose name is next on the list, has withdrawn from the debate on this amendment. I call the noble Lord, Lord Bilimoria.

Lord Bilimoria (CB) [V]: My Lords, I speak to Amendments 89 and 92. Amendment 89 would require the Secretary of State to undertake a review of the impact of the Act on national security and foreign investment. Ensuring the success of this regime requires formal review. For balance, it is crucial that this review reflects both positive impacts on national security, as well as unintended consequences to foreign investment in the UK. As such, a specified periodic review by the Government would provide industry with reassurance that the regime is being formally monitored and that such consequences will be redressed, should they arise.

Concurrently, formal review would provide the Government with the opportunity to outline any positive impacts that the regime has had. Failure to formally review the regime will leave industry with little understanding of the feedback cycle for the regime. Business is committed to making a success of the regime but, concurrently, wants to know that the Government are willing to review its impact.

Amendment 92, on market guidance notes, would require that:

"Within six months of the passing of this Act, the Secretary of State must publish market guidance notes to provide information to assist with compliance of the Act"

and:

"The market guidance notes must be updated and re-published not more than every six months thereafter."

This would ensure the success of this regime. It requires active engagement from BEIS and other government departments with industry. One critical function that the Government play here is the development and provision of detailed guidance for firms and the wider market to view and act on, ensuring compliance with the legislation. Timely provision and consequent updating of this guidance will allow firms to enter the process of notification with as much information and steer as possible, reducing the likelihood of unnecessary notification but, critically, capturing those transactions that rightly demand scrutiny. Failure to provide guidance, in partnership with key business organisations, could slow the process of notification or, importantly, lead to instances of failure to notify, where it is necessary to do so.

To conclude, the current drafting of the Bill makes its practical application difficult for business. It could lead to additional burden and complexity at a micro level and, potentially, an unintended deterrent to investment at a macro level. The CBI, of which I am president, has heard from a wide range of businesses with concerns about the Bill in its current form—from technology and digital to facilities management, pharmaceuticals, higher education, financial services and defence. As such, the Bill is of concern to a broad subsection of the business community. Although there is no doubt that national security is paramount and the first priority of any Government, we are the second-largest or third-largest recipient of inward investment in the world. Nothing in the Bill should jeopardise that, with Britain continuing to be a magnet for inward investment.

Lord Clement-Jones (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Bilimoria, particularly as I am speaking to the two amendments that he has spoken to, because he speaks with huge authority and considerable backing.

To start with Amendment 85, we on these Benches are very sympathetic to the cause of SMEs. Whether this is the best way of catering for the considerable issues that they will face under the Bill is a matter for debate. I would prefer to see the thresholds altered to accommodate the needs of small businesses, but the heart of Amendment 85 is certainly in the right place.

I turn to Amendment 89. As we have heard, throughout the course of the Bill's passage concerns have been expressed about its impact and the culture of the ISU as it enforces the Bill's provisions. As ever, my noble friend Lord Fox anticipated some of my arguments in the previous group. It is critical that a regular review is undertaken to ensure that the Act is achieving its aims proportionately while not unduly deterring foreign investment.

Other aspects of the Bill include the five-yearly review of the Secretary of State's statement about the exercise of the call-in power under Clause 3 and, of course, the annual report that we have just been talking about, which is inadequate in many ways. It is currently envisaged in Clause 61 and, as we debated in the last group, it does not go nearly far enough. Neither provision makes any reference to the effectiveness of the overall scheme of the legislation, whether it is achieving its objectives and, indeed, whether its overall purpose is being achieved. As my noble friend said, two key questions need answering here—effectively, are we safe and is our investment climate healthy? Where in any of the Bill's provisions is the provision for that to be considered?

Amendment 89 would require the Secretary of State to undertake a review of the Act and report to Parliament every three years. This would involve a cost-benefit analysis of the regime's impact, as set out in proposed subsection(2)(c).

I support Amendment 92 in the name of the noble Lord, Lord Leigh, and have signed it. I am sure that the noble Lord would have introduced it with far greater panache than me. But the Minister—the noble Lord, Lord Callanan—said at Second Reading:

"Noble Lords are entirely reasonable to expect further high-quality guidance from government to help businesses and investors navigate the regime."—[*Official Report*, 4/2/21; col. 2391.]

That is reassuring but, as was made very clear by David Petrie, the head of the Corporate Finance Faculty of the ICAEW—I declare an interest as a member of its advisory board—in the Public Bill Committee on behalf of the members of the ICAEW, and as the noble Lord, Lord Bilimoria, has confirmed, the most effective way of tackling asymmetry of information in the business, investment and advisory communities would be the periodic production by the ISU of meaningful market guidance notes, modelled around the practice statements that accompany the *City Code on Takeovers and Mergers*.

Market guidance notes would be an important way for the ISU to engage closely and on an ongoing basis with businesses, investors and professional advisers. They would signal a culture of professionalism and openness to investment in UK businesses. They would support a necessary communication and awareness campaign of the legislative requirements. By setting out in an accessible way and in consultation with business, professional and sector bodies why and how businesses may be affected, the ISU could ensure that consistent and accurate information reaches the population of businesses and their advisers. Of course, future updates could also be issued in this format.

Beyond raising awareness, issuing market guidance notes over time would help to inform market participants on what they could be doing to make sure that the process works with more certainty, speed, clarity and transparency—all these cultural things that we have been talking about throughout the Bill, things which financial markets and the wider UK economy need to see. There would be a positive impact on productivity as a result; they would help to ease potential resourcing pressures on the ISU by increasing the proportion of notifications being submitted correctly, with all relevant details included.

I hardly need to say that market guidance notes would not form part of the Act and accordingly would not be binding on the Secretary of State. They would be issued to provide informal but meaningful guidance to businesses, investors and professional advisers on matters such as the level of information required in a mandatory or voluntary notification, and they would also provide commentary on the ISU's normal approach to various provisions of the Act and greatly assist market participants seeking to establish the extent to which the Act may apply in a particular case. The ISU can also use them to share insights into trends where this would benefit the process. They would be amended periodically, or withdrawn as necessary, without the need for legislation—so extremely flexible. Each note could indicate the date on which it was issued, and so on.

There are other details that I could provide. There is great enthusiasm for this instrument, and I very much hope that the Bill will provide specifically for these. It would be an extremely useful indicator of the way in which the ISU proposes to operate.

Lord Callanan (Con): I am grateful to the noble Lords, Lord Grantchester, Lord Leigh and Lord Clement-Jones, for their amendments in relation to equity stakes of affected parties, small and medium-sized enterprises, an impact review of the regime, and market guidance.

I first turn to Amendment 84, tabled by the noble Lord, Lord Grantchester. This amendment seeks to require the Secretary of State to analyse the financial support provided by government, as part of Covid-19 support, to sectors considered more likely to give rise to national security risks. It then seeks to require him to consider converting loans and grants to equity stakes when there is a clear economic and national security rationale for doing so.

There is no doubt that the impact of Covid-19 on businesses and livelihoods of people across the country has been truly terrible, and I have a massive amount of sympathy for those affected. I can assure noble Lords that the Government are committed to supporting all UK businesses through the Covid period. The Government continue to provide extensive support to businesses to survive the pandemic, so far totalling over £280 billion, including through furlough, the Self-employment Income Support Scheme and business

[Lord Callanan]
grants. However, I do not think that converting loans into equity stakes necessarily represents the best use of public money. As noble Lords will be aware, Clause 30 provides for the Secretary of State to give financial assistance to, or in relation to, entities in consequence of the making of a final order. However, it is expected that this will be used only in exceptional circumstances. What the noble Lord is proposing would be much wider than this and, while I am sure that it is very well intentioned, is very much a substantive diversion from the main purpose of the Bill.

I turn to Amendment 85, which would require the Secretary of State to create a small and medium enterprise engagement unit within three months of this Bill being passed. This unit would take particular actions in relation to SMEs and their interaction with the regime. I note that this amendment bears a strong similarity to an amendment proposed during Report in the other place, and it will not surprise noble Lords that my views on the subject are closely aligned with those of Nadhim Zahawi, my fellow Minister. The Government strongly support SMEs and so have sought to provide a clear and easy regime for businesses of all sizes to interact with. The Government have been happy to provide support to businesses both large and small through the contact address available on GOV.UK and discussions with BEIS officials. The Government have published fact sheets on GOV.UK which make clear what the measures in the proposed legislation are and, importantly, to whom they apply.

We are also creating a digital portal and a simple notification process to allow all businesses to interact with the regime without the need for extensive support from law firms. Furthermore, there is no fee for filing a notification, unlike many of the regimes operated by our allies. Consequently, we have no reason to believe that this regime will disproportionately affect SMEs or that this new clause is necessary.

7.45 pm

Moving on, Amendment 89 proposes a new clause which seeks to require the Secretary of State to review the regime every three years from the date on which the Bill is passed. The review would have to assess the impact of the Bill on national security and the levels of foreign investment over time in the UK. I am afraid that this amendment raises a number of issues. First, the amendment would require the Secretary of State to assess the benefits to national security of the Bill and to publish that assessment. Assessing such benefits will prove difficult. How would we measure the deterrent effect of hostile investment diverted away from the UK? How would we describe the counterfactual in instances where acquisitions were blocked or in some other way subject to final order, to assess what would have happened if the Government had not acted?

Similarly, establishing the effect of one element of government action on the overall picture of investment in the UK would be extremely difficult. How could we account for wider economic and international trade policy effects, or for wider security policy? This could range from the impact of Covid-19 and the positive benefits of the UK's accession to new trade agreements—which I know the Liberal Democrats are so supportive of—to the global appetite for investment naturally fluctuating across time. It would be very difficult to separate the effect of those situations from the impact of this NSI regime. Furthermore, the information provided in the annual report will provide Parliament with a good insight into how the regime is functioning in practice.

The Secretary of State will in addition be keeping the regime under regular review, including in relation to considering the use of the regulation-making powers under the mandatory notification regime and in relation to the statement regarding the use of the call-in power. I reassure the noble Lord that the interaction of investment and security will feature in the policy discussion on each of these.

Finally, I turn to Amendment 92 in the name of my noble friend Lord Leigh of Hurley and the noble Lord, Lord Clement-Jones. This amendment would require the Secretary of State to publish market guidance notes to assist with compliance on the Bill within six months of Royal Assent and periodically thereafter. The Government are of course committed to providing clarity and predictability for business in the new investment screening regime, as far as is possible on issues of national security. That is why the Bill as drafted requires the Secretary of State to publish, and have regard to, a statement about the call-in power prior to using it. As we have discussed, the purpose of this statement is to provide additional predictability and transparency in relation to the Secretary of State's expected use of the call-in power. The statement will help businesses, investors and their advisers to decide whether to submit a voluntary notification to the Secretary of State. The Bill also requires that the Secretary of State, as a minimum, reviews the statement every five years. However, the Secretary of State may review and revise the statement more frequently if he wishes.

I again should highlight the role of the annual report, required by Clause 61, in assisting parties to understand how the Act is being used. The report must provide a range of information, including on the sectors of the economy in which notifications were made and call-in notices were given. We want the annual report to be as helpful as possible, without sharing any commercially or security-sensitive information. I am unclear what additional information is sought through a market guidance note beyond what will already be included within the statement and annual report.

To conclude this grouping, for all the reasons I have set out I am unable to accept these amendments and hope that noble Lords will feel able to withdraw them.

The Deputy Chairman of Committees (Lord Lexden) (Con): I have received one request to speak after the Minister, and I call the noble Lord, Lord Clement-Jones.

Lord Clement-Jones (LD): My Lords, I should thank the Minister for his response; I am not sure I really want to. I found it rather extraordinary, particularly to Amendment 89. We have a Bill on foot with a purpose in mind but, when it comes to reviewing it, we are told that it is far too sensitive and we cannot possibly review whether it has met its objectives. We can keep it under review—within the department in some shape

or form, I assume—but we cannot possibly undertake a periodic review of any kind. Even a normal post-legislative review process would expect to see whether an Act of Parliament was meeting its objectives. The Minister cannot even say whether that will take place at any stage.

This really adds to one's concerns about this Bill in so many ways. It is a rather furtive creature that, if we are not careful, will be hiding in the dark for quite a long time and will not get reviewed. There is no way of seeing whether it is achieving its purpose other than the kind of review the Minister was talking about, which is purely internal to government and part of the government department's overview. This is not particularly reassuring.

On Amendment 92, the Minister talked about just making statements about the call-in power or having the annual report. I said a set of market guidance notes would do; I did not adumbrate about six points that a set of market guidance notes could set out. They are far more extensive and market friendly than anything that is going to be caught by the call-in power statement or the annual report. We are talking about real guidance to business so that it knows what to expect and the parameters within which the Secretary of State is operating—particularly when it comes to guidance about the kinds of sector that will be caught and the current issues that the Secretary of State believes would give rise to a call-in notice and other aspects dealt with by the ISU. The idea that five years is a reasonable time to adjust a call-in power statement is laughable in the commercial world. The Takeover Panel updates its notes on a regular basis, and that is exactly what the ISU should do with market guidance.

Lord Callanan (Con): I am not sure there were any questions for me there; the noble Lord has made some observations. I understand that he was unhappy with my replies, but I am afraid I cannot agree that the Bill is "furtive" or "hiding in the dark" at all. We are committed to transparency as much as possible. He says he has six additional points on market guidance notes. If he wants to send them to me, I will happily have a look at them and see what we can do. We said a maximum of five years, but of course the Secretary of State has the ability to do earlier reviews if necessary. That is a maximum date, and we could bring that forward. I take on board his points and am sorry if he is disappointed by my replies.

Lord Grantchester (Lab): I thank the noble Lord, Lord Bilimoria, for his amendment in this group proposing a review of the Act and its engagement with businesses. I am sure it will become clear and the appropriate responses will be forthcoming from the department.

I thank the noble Lord, Lord Clement-Jones, for his sympathy. The effect of the regime on SMEs is very relevant, and high-quality guidance for businesses has been recognised in the Minister's replies. I thank him also for his replies on the pandemic and the business environment with the call-in powers of the Secretary of State. He returns to the issue of the annual report, thus giving room for these matters to be considered slightly further. With that in mind, I beg leave to withdraw the amendment.

Amendment 84 withdrawn.

Amendments 85 to 92 not moved.

Amendment 93

Moved by ***Baroness Bennett of Manor Castle***

93: After Clause 61, insert the following new Clause—

"Statement on climate, environment and ecological security

(1) Within six months of the passing of this Act, the Secretary of State must publish a statement on how the provisions contained in this Act will be exercised in relation to national security impacts caused by climate, environment and ecological damage.

(2) The statement must include, but is not limited to—

(a) a review of how damage to climate, environment and ecological impacts affect national security;

(b) an assessment of how climate, environment and ecological damage affects biosecurity risks, including pandemics; and

(c) a list of conditions in which it is likely that the actions or omissions of a qualifying entity or qualifying asset are likely to be deemed as a risk to national security due to their impact on climate, environment and ecology."

Baroness Bennett of Manor Castle (GP) [V]: My Lords, we started this day, the final day of Committee on the National Security and Investment Bill, with an advantage that we have not previously enjoyed: access, finally, to *Global Britain in a Competitive Age: the Integrated Review of Security, Defence, Development and Foreign Policy*—if only just, as it appeared on the Government website about an hour before our debate started. It is particularly useful in presenting this amendment, particularly given our debate thus far, which has often been stuck in a narrow, pre-21st century idea of what delivers "security".

Certainly, the term "cyber" has been thrown around a lot, and there are provisions that address—and we have debated—crucial issues of resilience and the dangers of complex, interlinked technological systems, but it has been noticeable that the answers always seem to involve more complex technology rather than consideration of what technology should and should not be doing, and the dangers it represents. I note the important work in this area of the NGO, Drone Wars.

I have to doubt, with the greatest respect to the participants, the level of expertise in covering these complex, fast-moving and highly technical areas of cybersecurity. It is a pity that we have not seen some of the House's cyber experts in this Committee. I noted in the Financial Services Bill just how thin the debate was, how small the number of Peers participating and how short were many of the debates. I note the adjective "furtive" used by the noble Lord, Lord Clement-Jones, in the debate on the previous group. That is in stark contrast to the debates on the Domestic Abuse Bill, where scores of Members of your Lordships' House are passionately engaged, as is a broad swathe of civil society. That observation applies even more strongly in this Committee. All we can do is what we can do, and in this amendment I am obviously on natural ground for a Green Peer—but, then, as a talk show host said to me recently, "Everyone's talking green now."

[Baroness Bennett of Manor Castle]

I have been skim-reading the integrated review and can confirm just that. In the foreword, the Prime Minister says:

"COVID-19 has reminded us that security threats and tests of national resilience can take many forms."

Yes. The existence of nuclear weapons is clearly a huge security threat. The world cannot be secure until the global ban on these hideous weapons of mass destruction is delivered. That that is a threat we intend to increase is a decision that can be described only as incredibly dangerous, heightening tension in an unstable world. I also remind the Committee that the Trident nuclear replacement has been forecast to cost nearly £200 billion over its lifetime—surely more now if there are more weapons—while the Government's 10-point plan for a green industrial revolution has a budget of £12 billion. Choices are being made, choices that are terrifyingly bad for the security of us all.

Thinking about the Government's decision-making under this Bill, what if a key manufacturer of wind turbine components were to be threatened with takeover by a company wanting to convert it to weapons manufacture pumping out more arms into a world already awash with them? It would be a lose-lose for national security. Amendment 93 addresses one side of that scenario: the climate, environmental and ecological emergencies, fittingly being debated on a day when we are reminded of the dangerously poor state of our natural world, with the disappearance of yet another hen harrier beside a grouse moor.

Before the Whips start questioning what hen harriers have to do with national security, I shall paraphrase a long-term Green saying: there is no security on a dead or dying planet, or in a country with a collapsed natural world. If noble Lords prefer, I shall quote the financial costs identified in the integrated review, which states that

"nature loss could result in a cumulative economic cost of up to $10 trillion between 2011 and 2050".

Should we have—we can but hope—a company making, say, massive strides in restoring a large spread of our carbon-depleted, nature-razed uplands, its takeover by another with intentions to return to driven grouse shooting management would be a security issue for the nation, a climate issue, a biodiversity issue and, very directly, an issue for the flood-threatened communities downstream of it.

The Prime Minister's foreword to the integrated review says that

"Her Majesty's Government will make tackling climate change and biodiversity loss its number one international priority"—

albeit that that is in the final paragraph of the second page of a 2.5-page foreword. I did a little analysis of our Committee's debates thus far, looking for mentions of the climate emergency and excluding occasions when "climate" appeared in the context of "investment climate". On day 1, the word did not come up once. On day 2, it did, when I referred to it. The noble Lord, Lord Grantchester, twice mentioned the net zero carbon target on day 1. As for "nature"—in the biodiversity sense—or "ecology", those did not come up, although I will give credit to the noble Lord, Lord Grimstone of Boscobel, who appears to have a pleasing attachment to offshore wind farms as a case study.

8 pm

I again remind the Committee that tackling climate change and biodiversity loss is, in the Government's own words, the UK's "number one international priority." The integrated review recommends that we establish a whole-society approach to resilience which will allow us to consider threats and hazards in the round. It emphasises the understanding that the best foundation of a successful foreign policy is a cohesive and well-functioning society and environment. What I am seeking to do with this amendment is to help the Government make the Bill fit that political environment by attempting to broaden their understanding of and approach to security. Like the group starting with Amendment 70, this is also an attempt to increase the transparency of the operation of the Bill and its democratic scrutiny—something the Prime Minister's introduction to the integrated review stresses as a competitive advantage of the UK.

I will not be tempted to digress into questioning the focus of the integrated review on competition when what the world needs at COP 15 and COP 26 when tackling pressing issues of poverty, inequality and food insecurity is co-operation. Security is not a zero-sum game. We all gain from more of it. Any noble Lord seeking an alternative approach might like to follow Rethinking Security's three-year alternative security review. It has the objective of changing the way that UK security policy is generated, based on an approach that promotes peace, human well-being and environmental sustainability, which is known in shorthand as the human security approach. To be clear, I mean that in the broad sense used by the United Nations, not the narrow definition more or less interchangeable with the protection of civilians often used by our Armed Forces.

However, like Rethinking Security, the Government agree that democracy in the UK is important and, I think uncontroversially, that transparency and scrutiny are essential to democracy, so that is what Amendment 93 seeks to do. It is fairly typical: publish a statement on how the provisions of this Act will be exercised, focusing, as I have already outlined, on the climate and on environmental and ecological impacts affecting national security. Subsection (2)(c) of the amendment is the most crucial, referring to

"a list of conditions in which it is likely that the actions or omissions of a qualifying entity or qualifying asset are likely to be deemed as a risk to national security".

I return to the offshore wind farms of the noble Lord, Lord Grimstone, and my driven grouse moors. I go to the obvious recent issue of the availability of personal protective equipment and the ongoing issue of the availability of vaccines and the materials to produce them. We could think about the national security implications of decisions already taken or not taken, the selling off of water companies to private firms, the selling off of control of electricity supplies and what might happen with green hydrogen. I could continue coming up with a list off the top of my head, but that is not the point. This amendment aims to ensure that the Government come up with a considered list of criteria and that there is chance for a democratic debate around it.

This is a dangerous world. We are in an age of shocks. Our security is in grave danger. We need to know what the Government's plans are when it comes to investments affecting climate and ecological emergencies. I beg to move.

Lord Fox (LD): My Lords, I feel justifiably aggrieved to have been admonished by the noble Baroness, Lady Bennett, for not being passionate or plentiful enough. Telling people off who are here because there are not enough of us is perhaps a little unfair. Perhaps she could reserve her fire for colleagues who have decided not to be here. There is also a certain symmetry here. During our debate on the first amendment I had the pleasure of speaking on I was roundly admonished by the noble Baroness, Lady Noakes, for using it as a chance to repeat my Second Reading speech—which of course I denied.

The noble Baroness, Lady Bennett, has a point. There is a very important element of security around the climate emergency and she is right to highlight that we need to factor in how climate, environment and ecological damage will affect the future security of this country. When we debated Clause 6 much earlier in this process, we looked at the 17 technologies that had been identified by the department as technologies of concern. That is an area where I think some input on this level could be made, and I would be happy to work with the noble Baroness, Lady Bennett, going forward to look at that list and make some suggestions on whether there are missing technologies related to environmental and ecological damage issues that should be factored in.

I do not like to be self-referential—but I will be anyway. During the Budget debate I made it very clear that one of the things missing from the Budget was a strategy to get to the 2050 net-zero target. It was completely absent. There is no strategy to get there. I would advise that that is where we should focus our energy. The Government, the Opposition and everyone in Parliament should be delivering an integrated strategy to get to what in this case is our public policy for 2050. I know that different parties have different targets, but that process would tease out the technologies, the businesses and the areas of activity that we need to make sure we retain access to in order to move forward and deliver on the strategy.

The noble Baroness, Lady Bennett, is right to bring this issue up, but I am not sure that adding a clause to this Bill is the right route. As I say, however, I would be happy to work with her on the list of technologies, and indeed I am happy to work with everyone to try to deliver the route map to get to net zero.

Lord Grantchester (Lab): My Lords, unlike the noble Lord, Lord Fox, I am not unduly fearful of the noble Baroness, Lady Bennett. I have always thought that being Green does not allow for having a whip. However, I thank the noble Baroness for proposing this new clause to the Bill. I am certainly clear that the climate emergency must hang as a backcloth to every action that we undertake.

The aim of Amendment 93 is completely understood and appreciated. It seeks a Ministerial Statement on how the provisions set out in this Bill will be exercised in relation to the national security impacts caused by climate, environmental or ecological damage. The climate crisis is not only a threat to our way of life in the long term but a threat to national security in the short to medium term. Only last week, Jens Stoltenberg, the NATO Secretary-General, said that

"climate change makes the world more unsafe, so NATO needs to step up and play a bigger role in combating it."

A few weeks ago, even the Prime Minister made a comment that climate change is a threat to our society. How will the new regime take account of this and reflect on his comments?

The Committee has already questions about the list of sectors affected, especially the energy sector, as well as about protecting green infrastructure. I have raised with the Minister the EV infrastructure, solar and wind industries and how their growth should be protected. It is certainly important that we hear more from him on the issue and what the difficulties would be in undertaking to produce the kind of statement being proposed by the noble Baroness, Lady Bennett. If the Government are resistant to producing such a statement, could the issue be included as an integral part of the annual report?

Lord Callanan (Con): My Lords, let me thank the noble Baroness, Lady Bennett, for her amendment and begin by expressing my heartfelt sympathy to the noble Lord, Lord Fox, on being admonished by her. All that I can say is, welcome to the club.

The amendment would require the Secretary of State to publish within six months of the Bill becoming law a statement on how the regime will be exercised in relation to national security impacts caused by climate, environmental and ecological damage. As the noble Baroness, Lady Bennett, knows—we have debated these matters on numerous occasions in this House—this Government are committed to tackling climate change. We are especially looking forward to the COP 26 conference in November, which will highlight our leadership on this issue and promote co-operation on climate action through the UK's G7 presidency, as Alok Sharma MP set out in a speech to the UN on 8 February. Of course, the COP 26 preparations continue to be led by Alok Sharma, who opened Second Reading on the Bill in the other place. I am sure that we all wish him well as he strives to bring the world to ambitious agreements in Glasgow.

The Bill, however, focuses on national security risks arising from acquisitions of control over qualifying entities and assets. If we were to view national security through a particular lens, as the amendment seeks to do through environmental concerns, we would be in some way defining national security. We have deliberately avoided defining it in the Bill, a matter that we have debated previously. We have expounded on that at some length in this House and in the other place.

Without rehearsing those arguments, which I am sure noble Lords are familiar with, I hope they will understand that we cannot accept amendments that seek to define national security in a particular way. The noble Baroness's amendment asks for a statement on how the provisions in the Bill will be exercised. The most fundamental provision is the call-in power. The Bill already requires the Secretary of State to

[Lord Callanan]
publish a statement on how that is expected to be exercised before being able to use the power. A draft of that statement was published on introduction of the Bill in November. The Government would be very pleased to receive comments and have committed to consult on it publicly. The final version of the statement must be laid before Parliament and will be subject to the negative resolution procedure.

Finally, two provisions in the noble Baroness's amendment—proposed new paragraphs 2(a) and 2(b)—address specifically environmental concerns. Laudable as they are, they are not directly connected to the national security and investment regime proposed in the Bill. That is because the regime concerns whether the acquisition of qualifying entities and assets poses a risk to national security, not the actions of those entities or assets themselves. Given the Government's commitment to environmental policies, but recognising that the Bill deliberately avoids defining national security, and given that a statement on how the call-in power is expected to be used is already provided for, I hope that the noble Baroness, in the light of what I have said, is able to withdraw her amendment.

Baroness Bennett of Manor Castle (GP) [V]: My Lords, I thank the Minister for his response and for pointing out how the Committee has taken a neatly circular route, almost like a circular economy, in getting back to more or less where we started—debating definitions of national security. I also note his welcome for comments on the statement on the call-in power, which I certainly hope to pick up and run with.

I should perhaps begin with an apology to the noble Lord, Lord Fox, if he took my comments as being directed at him or anyone taking part in this debate. As is often the case with Greens, I am not concerned with individual behaviour but systems change. It is clear that the systems in your Lordships' House tend to result in a narrow range of Peers taking part in Bills related to financial matters. Yet, in our heavily financialised society, and given that finance is such an important part of security in this instance, we need input from a broader range of sources. I am certainly not blaming the noble Lord for that, although perhaps he could encourage fellow Peers from his party and others to engage on this issue.

I very much thank the noble Lord for his offer to work together, particularly on the list of technologies, which is also something I will be taking up. I understood his suggestion that we should all be focusing on the need for the Government to have an integrated strategy for 2050, but I pick up on the comments of the noble Lord, Lord Grantchester, who said that every action we undertake has to take account of the climate and ecological emergencies. To use a technical term, we are talking about mainstreaming. The climate emergency and ecological crisis must be at the forefront of our minds in every aspect of what the Government and your Lordships' House do.

This is an emergency. Looking at the Chamber now, as I speak remotely, I think back to what it was like in March 12 months ago, when all anyone was thinking about was the Covid emergency, but we are also in a climate emergency and an ecological emergency.

I am aware that this is the final amendment to be debated. I hope we will see more people engaged in this debate when we get to Report. We have made some progress, I think, and so, for now, I beg leave to withdraw the amendment, although I expect I will still be looking at what we may do on Report.

Amendment 93 withdrawn.

Clause 62 agreed.

Clause 63: Regulations under this Act

Amendment 94 not moved.

Clause 63 agreed.

Clause 64 agreed.

Clause 65: Interpretation

Amendments 95 and 96 not moved.

Clause 65 agreed.

Clause 66 agreed.

Schedule 1: Trigger events: holding of interests and rights

Amendments 97 and 98 not moved.

Schedule 1 agreed.

Schedule 2 agreed.

The Deputy Chairman of Committees (Baroness Fookes) (Con): My Lords, that concludes proceedings on the Bill.

House resumed.

Bill reported with amendments.

House adjourned at 8.17 pm.