



National Security and Investment Bill HL Bill 165 of 2019–21

On 4 February 2021, the second reading of the National Security and Investment Bill is scheduled to take place in the House of Lords.

The aim of the bill is to reform the way inward investment in the UK is investigated to ensure hostile governments or other entities do not use this to undermine the UK's national security. This follows calls for reform, including from the Intelligence and Security Committee of Parliament. The bill would give new powers to the secretary of state to “call-in” acquisitions, including takeovers, and to assess any risks to national security. The bill would remove existing business turnover thresholds, meaning small and medium-sized enterprises could be subject to a national security assessment under the new regime.

The bill would also establish a mandatory notification regime for certain sensitive sectors of the economy. Under this new regime, any acquisition would need to be registered with the secretary of state. The bill would also establish a voluntary notification regime, whereby parties to an acquisition not already covered by the mandatory regime would be able to notify the secretary of state about a potential risk to national security. The bill sets out the procedure for how national security assessments would be conducted and resolved.

The Government has argued these powers were necessary because of the resurgence of state-based threats to national security and the risk of UK businesses being controlled by entities with close ties to hostile foreign governments. It has argued the bill strikes the right balance between encouraging inward investment while protecting national security.

During its passage through the House of Commons, both Labour and the SNP supported the bill's overall aim. However, both parties tabled amendments intended to increase parliamentary scrutiny over how the secretary of the state would use powers in the bill. This included a Labour amendment tabled during report stage setting out the criteria to be used by the secretary of state when making decisions about national security under the bill. Chair of the House of Commons Foreign Affairs Committee Tom Tugendhat tabled a similar amendment. He argued his amendment would improve clarity for businesses and investors about how the powers in the bill would be used. Labour and the SNP also tabled amendments at report stage intended to ensure the possible impact on businesses of the new regime were assessed and mitigated. None of these amendments were agreed.

Edward Scott | 28 January 2021

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I. Introduction

The [National Security and Investment Bill](#) is a government bill that would establish a new regime for scrutinising business transactions, such as takeovers, on national security grounds. Currently, takeovers of UK companies are investigated by the Competition and Markets Authority (CMA). The bill would:¹

- Give new powers to the secretary of state to call-in acquisitions of sensitive entities and assets on national security grounds.
- Require businesses to gain the secretary of state's authorisation before completing an acquisition of sensitive entities and assets.
- Establish a voluntary system through which parties in a transaction can notify the Government of concerns the transaction might pose a threat to national security.
- Create various remedies to address risks to national security arising from a particular transaction.
- Establish legal sanctions for noncompliance with the new regime.

The bill extends and applies to the whole of the United Kingdom.²

2. Background

Current arrangements and their review

The current regime was established by the [Enterprise Act 2002](#). Under the act, the CMA can intervene on mergers on grounds of national security if either of the following tests are met:

- the enterprise being taken over has a UK turnover of over £70 million; or
- the merger would result in a 25 percent or more share of sales or purchases in the UK of goods or services of a particular description.³

In 2013, the Intelligence and Security Committee of Parliament published a report on foreign involvement in the UK's critical national infrastructure.⁴ The committee investigated the involvement of the Chinese company Huawei in British Telecoms (BT). Following its investigation, the committee concluded that greater private ownership of the UK's infrastructure and increasing globalisation had resulted in a risk of critical national infrastructure coming under the control of entities with close links to foreign governments. It recommended the current system for investigating foreign direct investment in the UK be reformed.⁵

¹ [Explanatory Notes](#), p 3.

² *ibid*, p 7.

³ Department for Business, Energy and Industrial Strategy, [Enterprise Act 2002: Changes to the Turnover and Share of Supply Tests for Mergers](#), June 2020, p 9.

⁴ Intelligence and Security Committee, [Foreign involvement in the Critical National Infrastructure](#), June 2013, Cm 8629.

⁵ *ibid*, p 10.

In 2015, the Government published its National Security Risk Assessment. This identified the “state-based threats” and “wider state competition” as growing problems over the coming decades.⁶ In 2017, Theresa May’s Government published a national infrastructure investment review green paper.⁷ The green paper stated that, in the light of the threats identified by the 2015 National Security Risk Assessment, foreign control of UK businesses should be viewed as a greater potential risk to national security.⁸ This included in sectors not traditionally seen as part of the UK’s critical national infrastructure, such as in technology and advanced engineering.⁹

The green paper included short-term proposals for reforming the Enterprise Act 2002, lowering the threshold for intervening in investments and takeovers in two specific areas of the UK economy:

- the military and dual use (military and civilian) sector; and
- certain parts of the advanced technology sector.¹⁰

The green paper also set out proposals for longer-term reform. The proposals included granting new powers to the secretary of state to scrutinise a broader range of transactions.¹¹ It also recommended the creation of a mandatory notification regime for foreign investments in specific sectors of the economy. These longer-term proposals were subject to a separate consultation which ran from 17 October 2017 to 9 January 2018.¹² Proposals for legislative reform were subsequently included in the national security and investment white paper, published in July 2018.¹³ This included a proposal for the establishment of broader powers for the Government to call in transactions on grounds of national security.¹⁴

Interim changes to current arrangements

Following the consultation on the short-term proposals in the green paper, the Government introduced two pieces of secondary legislation: the [Enterprise Act 2002 \(Share of Supply Test\) \(Amendment\) Order 2018](#) and the [Enterprise Act 2002 \(Turnover Test\) \(Amendment\) Order 2018](#). These lowered the UK turnover threshold from £70 million to £1 million and removed the share of supply threshold for the military and dual use and advanced technology sectors.

⁶ HM Government, [National Security Strategy and Strategic Defence and Security Review 2015](#), November 2015, Cm 9161, p 15.

⁷ Department for Business, Energy and Industrial Strategy, [‘National security and infrastructure investment review’](#), 17 October 2017.

⁸ Department for Business, Energy and Industrial Strategy, [National Security and Infrastructure Investment Review](#), 17 October 2017, p 21.

⁹ *ibid*, p 23.

¹⁰ Department for Business, Energy and Industrial Strategy, [National Security and Infrastructure Investment Review: Government Response to its Consultation on Short-Term Proposals](#), 15 March 2018.

¹¹ Department for Business, Energy and Industrial Strategy, [National Security and Infrastructure Investment Review](#), October 2017, p 40.

¹² The Government’s response to this consultation and the consultation on the subsequent white paper were published in [National Security and Investment White Paper: Government Response to its Consultation on Proposed Legislative Reforms](#), November 2020, CP 323.

¹³ Department for Business, Energy and Industrial Strategy, [‘National security and investment: Proposed legislative reforms’](#), 24 July 2018.

¹⁴ Department for Business, Energy and Industrial Strategy, [National Security and Investment: A Consultation on Proposed Legislative Reforms](#), July 2018, p 30.

The Government has since passed two further pieces of secondary legislation to amend the Enterprise Act 2002: [the Enterprise Act 2002 \(Share of Supply Test\) \(Amendment\) Order 2020](#) and the [Enterprise Act 2002 \(Turnover Test\) \(Amendment\) Order 2020](#). These lowered the UK turnover threshold to £1 million and removed the share of supply threshold for investigating transactions in the following additional sectors: artificial intelligence, cryptographic authentication technologies and advanced materials.

Announcement of National Security and Investment Bill

The Government's response to the consultations in the white paper was not published until November 2020.¹⁵ At this point, the Government had already announced its intention in the December 2019 Queen's speech to introduce a National Security and Investment Bill.¹⁶ It said this legislation would increase the secretary of state's powers to scrutinise and intervene in takeovers and mergers on national security grounds. The Government said that, in addition to the proposals it had consulted on, it would introduce a new mandatory notification system covering transactions in specified areas of the economy.¹⁷

3. Bill provisions

The bill was published and received first reading in the House of Commons on 11 November 2020.¹⁸ The bill includes the following provisions.

Call-in power

Part 1 of the bill gives the secretary of state the power to begin a national security assessment of an acquisition by issuing a "call-in notice".¹⁹ These notices may be issued up to five years after the point in time when the acquisition took place, referred to in the bill as the "trigger event".²⁰ This power would be retrospective and can apply to trigger events occurring at any point after 12 November 2020 (the day after the bill was introduced in the House of Commons).²¹ The secretary of state would also be able to issue a call-in notice if they reasonably suspected arrangements were "in progress or contemplation" and would result in a trigger event.²²

The bill would remove the turnover and share of supply thresholds for investigations set out in the current regime. However, the following limitations would be placed on the use of the new call-in power:

¹⁵ Department for Business, Energy and Industrial Strategy, [National Security and Investment White Paper: Government Response to its Consultation on Proposed Legislative Reforms](#), November 2020, CP 323. The Government's response to the consultation confirmed measures to strengthen the Government's ability to investigate transactions outlined in the white paper were contained in the National Security and Investment Bill.

¹⁶ Prime Minister's Office, [Queen's Speech 14 October 2019: Background Briefing Notes](#), 14 October 2019, p 71.

¹⁷ Department for Business, Energy and Industrial Strategy, [National Security and Investment White Paper: Government Response to its Consultation on Proposed Legislative Reforms](#), November 2020, CP 323, p 7.

¹⁸ [HC Hansard, 11 November 2020, col 924](#).

¹⁹ National Security and Investment Bill, clause 1.

²⁰ *ibid*, clauses 2 and 5.

²¹ *ibid*, clause 2.

²² *ibid*, clause 1(1)(b).

- The secretary of state must reasonably suspect the trigger event will give rise to a risk to national security.²³
- An acquisition is only notifiable if it results in a person either gaining control of a qualifying entity or increasing their share or voting rights to 15% or more.²⁴ This threshold can be amended by the secretary of state through secondary legislation.

Before the secretary of state could use this call-in power, they must publish a statement on how they expect this power will be used.²⁵ The statement must be put forward for consultation and laid before both Houses.²⁶ It also must be reviewed every five years.²⁷ However, the bill states that nothing in the statement would limit the secretary of state's use of the call-in power.²⁸ The Government published a [draft version of this statement](#) on 20 November 2020.²⁹

Mandatory Notification Regime

Part 2 of the bill would require entities acquiring shares or voting rights in certain sectors of the economy to notify the secretary of state.³⁰ These sectors are not set out in the bill and would be established through secondary legislation. However, a draft list of 17 sectors of the economy and associated activities to be covered by mandatory reporting was published alongside the bill.³¹

The 17 sectors outlined in the consultation are:

- advanced materials;
- advanced robotics;
- artificial intelligence;
- civil nuclear;
- communications;
- computing hardware;
- critical suppliers to government;
- critical suppliers to the emergency services;
- cryptographic authentication;
- data infrastructure;
- defence;
- energy;

²³ National Security and Investment Bill, clause 1(1).

²⁴ *ibid*, clause 6(2)(b). Gaining control of an entity or asset is defined in clauses 8 and 9 of the bill.

²⁵ *ibid*, clause 3.

²⁶ *ibid*, clause 4. The statement will come into force unless either House passes a resolution not to approve it.

²⁷ *ibid*, clause 4.

²⁸ *ibid*, clause 14.

²⁹ Department for Business, Energy and Industrial Strategy, '[National Security and Investment Bill: Statement of policy intent](#)', 20 November 2020.

³⁰ National Security and Investment Bill, clause 13.

³¹ Department for Business, Energy and Industrial Strategy, '[National security and investment: mandatory notification sectors](#)', 11 November 2020.

- engineering biology;
- military and dual use;
- quantum technologies;
- satellite and space technologies; and
- transport.³²

The list was subject to a consultation that closed on 6 January 2021. The Government said it was unable to publish this consultation prior to the introduction of the new bill because this would risk hostile actors completing relevant transactions ahead of the new regime being introduced.³³

Following a notification being made under the bill, the secretary of state would have 30 days to review the acquisition.³⁴ During this period, the secretary of state may trigger an assessment by issuing a call-in notice as described above. If a notifiable acquisition was carried out without notifying the secretary of state, that acquisition would be void.³⁵ However, clauses 14–17 of the bill would enable an entity to apply for retrospective notification.

Voluntary Notification

The bill would also establish a voluntary notification regime.³⁶ Clause 18 would enable businesses and other entities to notify the Government if they believe an acquisition which fell outside the mandatory regime might raise national security concerns.

National security assessment procedure

Clauses 23–4 establish an assessment period of 30 days following the issuing of a call-in notice. This can be extended by an extra 45 days. A further extension is then possible if both parties agree it.

After a call-in notice has been issued, the secretary of state would have the power to require people to provide information and to take evidence from witnesses.³⁷ During the assessment period, the secretary of state may issue an interim order to prevent any pre-emptive action interfering with their ability to investigate the acquisition.³⁸

At the end of the national security assessment, the secretary of state may either issue a ‘final notification’, stating no further action needed to be taken, or a ‘final order’ where the secretary of state considers there is a risk to national security.³⁹ This final order will include measures to either prevent, remedy or mitigate the risk.

³² Department for Business, Energy and Industrial Strategy, [National Security and Investment: Sectors in Scope of the Mandatory Regime](#), 11 November 2020, p 5.

³³ [HC Hansard, 17 November 2020, col 208](#).

³⁴ National Security and Investment Bill, clause 14.

³⁵ *ibid*, clause 13.

³⁶ *ibid*, clause 18.

³⁷ *ibid*, clauses 19–20.

³⁸ *ibid*, clause 25.

³⁹ *ibid*, clause 26.

After the secretary of state has issued a final order, they would be able to give financial assistance to an entity which is affected as a consequence of the order.⁴⁰ If the amount of assistance given in connection with a final order is £100 million or more, the secretary of state must report this to the House of Commons. The bill does not specify in which circumstances providing financial assistance would be necessary. However, Government has said these circumstances would be “very rare”.⁴¹

Offences and judicial review grounds

Clauses 32–6 would establish various new offences, including completing a notifiable acquisition without notifying the secretary of state and not complying with an interim order.⁴² These offences may be subject to either monetary penalties or criminal sanction.⁴³

Clause 49 states that certain decisions made using the new powers in the bill may be subject to judicial review.⁴⁴ Under this clause, claims for judicial review must be made within 28 days after the grounds to make the claim first arose, unless the court considered there were exceptional circumstances. The Government would also be required to present an annual report before Parliament on how the powers in the bill had been used.⁴⁵

4. Investment security unit

In addition to the powers outlined in the bill, the Government also announced that it would be creating a new unit within the Department for Business, Energy and Industrial Strategy, called the investment security unit.⁴⁶ The Government said the new unit would:

[...] provide a single point of contact for businesses wishing to understand the bill and notify the government about transactions.⁴⁷

The Government also said the new unit would:

[...] coordinate cross-government activity to identify, assess and respond to national security risks arising through market activity—providing certainty for businesses that they will not be targeted and exploited by hostile actors.⁴⁸

⁴⁰ National Security and Investment Bill, clause 30.

⁴¹ Department for Business, Energy and Industrial Strategy, [National Security and Investment White Paper: Government Response to its Consultation on Proposed Legislative Reforms](#), November 2020, CP 323, p 34.

⁴² A full list of offences created under the bill and the relevant criminal and civil penalties is listed in the [Explanatory Notes](#), pp 24–7.

⁴³ National Security and Investment Bill, clause 43.

⁴⁴ *ibid*, clause 49.

⁴⁵ *ibid*, clause 61.

⁴⁶ Department for Business, Energy and Industrial Strategy, [‘New powers to protect UK from malicious investment and strengthen economic resilience’](#), 11 November 2020.

⁴⁷ *ibid*.

⁴⁸ *ibid*.

5. Bill stages in the House of Commons

The bill's objectives received cross-party support during its passage through the House of Commons. There was agreement that the current system needed to be reformed. Both the Opposition and the Scottish National Party (SNP) tabled amendments during the bill's Commons stages. Amendments proposed concerned the powers granted to the secretary of state and how the use of these new powers would be scrutinised. Amendments were also tabled that intended to extend greater support to businesses. However, none of these amendments were passed. The bill was therefore passed to the House of Lords without amendment.⁴⁹

5.1 Second reading

During the second reading debate in the House of Commons on 17 November 2020, the then Secretary of State for Business, Energy and Industrial Strategy, Alok Sharma, said the aim of the bill was to ensure proper safeguards were in place to protect national security.⁵⁰ He also said the Government wanted to ensure the UK economy remained open to foreign direct investment.

Mr Sharma argued it was necessary to give the secretary of state greater powers to scrutinise investment in the UK considering technological, economic and geopolitical changes over the past 20 years. He also said that, without the new powers in the bill, the UK could be targeted by potential hostile actors looking to disrupt the UK's national security. He said the UK's partners in the 'five eyes' group of countries had also updated their legal frameworks for addressing national security risks.⁵¹

In an intervention during Mr Sharma's speech, Bob Seely (Conservative MP for the Isle of Wight) asked the secretary of state whether he would commit to adding a definition to the bill of what constituted "national security" in this context.⁵² Similar concerns were raised by other MPs, including Sir Iain Duncan Smith (Conservative MP for Chingford and Woodford Green). Sir Iain argued that, without a definition of national security, there would not be clarity on how and why the secretary of state was using the new powers.⁵³

Responding to these concerns, Mr Sharma said it would not be possible to set out every test that would be applied in the national security assessment.⁵⁴ However, he said that it would be based on information gathered from across government and that any decision could be challenged by the affected entity.

The Shadow Secretary of State for Business, Energy and Industrial Strategy, Ed Miliband, welcomed

⁴⁹ [HL Hansard, 20 January 2021, col 1258.](#)

⁵⁰ [HC Hansard, 17 November 2020, col 205.](#)

⁵¹ The five eyes countries are Australia, Canada, New Zealand, the United Kingdom and the United States. US National Security Agency, '[UKUSA Agreement Release: 1940–56](#)', accessed 27 January 2020. Details of the changes introduced by the United States and Australia are provided in Department for Business, Energy and Industrial Strategy, [National Security and Investment White Paper: Government Response to its Consultation on Proposed Legislative Reforms](#), November 2020, CP 323, p 6.

⁵² [HC Hansard, 17 November 2020, col 210.](#)

⁵³ *ibid*, cols 214 and 219.

⁵⁴ *ibid*, col 210.

the bill, agreeing the legislation was necessary to secure the UK's national security.⁵⁵ However, he raised concerns over how the new system would be implemented. For example, he was concerned the notification process could become burdensome on small to medium sized enterprises who would now fall within the scope of the new regime.⁵⁶ He also said Labour would seek assurances that the new investment security unit would be adequately resourced. Addressing the scope of the bill, Mr Miliband argued the Government needed a wider industrial strategy, enabling the Government to access takeovers on grounds beyond national security.

The SNP Spokesperson for Trade, Stewart Hosie, also welcomed the bill in principle.⁵⁷ However, he raised concerns about the increased number of investigations that would arise from the widening of the secretary of the state's powers and their impact on businesses.⁵⁸ He also discussed the potential risks caused by more types of enterprise falling within the scope of the regime, such as universities when hosting incubators and start-ups.⁵⁹

5.2 Committee stage

The House of Commons public bill committee considered the bill over the course of twelve sittings between 24 November and 10 December 2020. No changes were made to the bill. Labour and the SNP tabled 30 amendments and new clauses.⁶⁰ Of these, 22 were voted on and defeated following a division.

MPs debated several proposed changes that were returned to at report stage. These included:

- New clause 1, tabled by Labour, which would have added a list of criteria to the bill for the secretary of state to consider when making decisions on national security.⁶¹ This was defeated by 9 votes to 5.
- Amendments 4 and 5, tabled by Labour, which would have required the secretary of state to consult with or notify the Intelligence and Security Committee of Parliament on decisions about how different parts of the new regime would operate.⁶² Amendment 4 was not called and amendment 5 was defeated by 10 votes to 6.
- New clause 7, tabled by Labour, would have required the secretary of state to prepare an annual report to be presented to the Intelligence and Security Committee of Parliament.⁶³ This was defeated in a division by 9 votes to 5.
- Amendment 11, tabled by Labour, would have required the secretary of state to publish guidance about the bill, and the regulations made under it, within six months of it being passed. This was defeated in a division by 9 votes to 6.⁶⁴

⁵⁵ [HC Hansard, 17 November 2020, col 211.](#)

⁵⁶ [ibid, col 213.](#)

⁵⁷ [ibid, col 222.](#)

⁵⁸ [ibid, col 223.](#)

⁵⁹ [ibid, col 225.](#)

⁶⁰ House of Commons, [Public Bill Committee Proceedings: National Security and Investment Bill](#), 10 December 2020.

⁶¹ [Public Bill Committee, National Security and Investment Bill, 10 December 2020, session 2019–21, twelfth sitting.](#)

⁶² [Public Bill Committee, National Security and Investment Bill, 1 December 2020, session 2019–21, fifth sitting.](#)

⁶³ [Public Bill Committee, National Security and Investment Bill, 10 December 2020, session 2019–21, twelfth sitting.](#)

⁶⁴ [Public Bill Committee, National Security and Investment Bill, 1 December 2020, session 2019–21, fifth sitting.](#)

The public bill committee also heard evidence from several witnesses. These included the former director of MI6, Sir Richard Dearlove.⁶⁵ Sir Richard argued that the current regime for assessing the national security risks of inward investment was inadequate. He said the UK was vulnerable to entities with close links to foreign states becoming embedded in its economy.

The committee also heard from former diplomat and senior associate fellow at the Royal United Services Institute, Charles Parton.⁶⁶ Both Sir Richard and Mr Parton argued that Chinese inward investment in the UK posed a particular threat to national security. Mr Parton argued that there were close links between the Chinese private sector and the military, describing the Chinese government as pursuing a policy of “civil-military fusion”.

Further information on the committee stage proceedings in the House of Commons is provided in the House of Commons Library briefing, [National Security and Investment Bill 2019–21](#).⁶⁷

5.3 Report stage

Further amendments were debated at report stage on 20 January 2021.⁶⁸ These included proposed changes tabled by the Opposition and other parties concerning:

- the criteria the secretary of state would use to make decisions about national security;
- the extent to which the secretary of state’s use of the new powers would be subject to parliamentary scrutiny; and
- assessing and mitigating the potential impact of the new regime on UK businesses.

Three amendments were voted on and defeated. No amendments were made to the bill.

Decision making on national security

The chair of the House of Commons Foreign Affairs Committee, Tom Tugendhat, tabled new clause 4. This would have added a framework of factors which the secretary of state would have to consider when assessing a risk to national security. The factors listed in the framework would not be exhaustive. Labour tabled a similar clause (clause 5).

New clause 4 was tabled following a Foreign Affairs Committee report recommendation. The report was published the day before report stage in the Commons.⁶⁹ It concluded that the bill, in its current form, did not provide “sufficiently clear guidance on how national security would be understood”.⁷⁰ The committee argued this lack of clarity risked damaging the credibility of the new regime and this could damage UK inward investment.

⁶⁵ [Public Bill Committee, National Security and Investment Bill, 24 November 2020, session 2019–21, first sitting.](#)

⁶⁶ *ibid.*

⁶⁷ House of Commons Library, [National Security and Investment Bill 2019–21](#), 18 January 2021.

⁶⁸ [HC Hansard, 20 January 2021, cols 988–1051.](#)

⁶⁹ House of Commons Foreign Affairs Committee, [Striking the Balance: Protecting National Security through Foreign Investment Legislation](#), 19 January 2021, HC 296 of Session 2019–21. This was an interim report of the committee’s ongoing inquiry.

⁷⁰ *ibid.*, p 15.

Speaking during report stage, Mr Tugendhat said he and the committee supported the bill but that it needed to be improved.⁷¹ He said the approach taken in new clause 4 was not to create a fixed definition of national security but instead to establish a flexible framework. He argued this framework would enable the secretary of state to adapt the way in which decisions were made as the nature of national security challenges changed over time.⁷²

Speaking to Labour's new clause 5, the Shadow Business, Energy and Industrial Strategy Minister, Chi Onwurah, argued businesses needed greater clarity about how decisions concerning national security would be made under the bill.⁷³ Ms Onwurah also welcomed the recommendations by the Foreign Affairs Committee in its report.⁷⁴

Responding at the end of the debate, the Minister for Business and Industry, Nadhim Zahawi, acknowledged the bill did not currently list those factors which would be considered when making national security decisions.⁷⁵ However, he said clause 3 of the bill required the secretary of state to publish a statement on how the call-in powers would be used. He said it was important that the Government had enough flexibility to adapt its approach in protecting national security. However, he also said he agreed with the Foreign Affairs Committee that the secretary of state should provide as much detail as possible about which factors should be considered.⁷⁶

New clause 4 was defeated by 351 votes to 269.⁷⁷ New clause 5 was not called.

Role of Intelligence and Security Committee

New clause 7, tabled by Labour, would have required the secretary of state to publish an annual security report to the Intelligence and Security Committee of Parliament.⁷⁸ This report would need to contain information including which acquisitions had been investigated, whether state-owned entities of other countries had been involved in these acquisitions and the nature of security risks posed by specific acquisitions.

Speaking in support of new clause 7, Chi Onwurah said the change was necessary to ensure that the secretary of state's use of the new powers in the bill was subject to appropriate parliamentary scrutiny.⁷⁹ She also said the report would ensure the Intelligence and Security Committee was kept abreast of threats uncovered by the system for screening transactions.

The chair of the Intelligence and Security Committee of Parliament, Dr Julian Lewis, said the

⁷¹ [HC Hansard, 20 January 2021, col 1002.](#)

⁷² *ibid*, cols 1003–4.

⁷³ *ibid*, col 998.

⁷⁴ *ibid*, cols 999–1000.

⁷⁵ *ibid*, col 1030.

⁷⁶ *ibid*.

⁷⁷ *ibid*, cols 1036–41.

⁷⁸ Further information on the Intelligence and Security Committee of Parliament is provided in the House of Lords Library briefing [Intelligence and Security Committee of Parliament: Recent Work](#), 27 August 2019.

⁷⁹ [HC Hansard, 20 January 2021, col 1000.](#)

committee supported the bill but that there was a “scrutiny gap” arising from it.⁸⁰ He said normally the work of the new investment security unit within the Department for Business, Energy and Industrial Strategy would be scrutinised by the House of Commons Business, Energy and Industrial Strategy Committee.⁸¹ However, that would not be possible in this case as the work of the investment security unit would involve input from intelligence and security agencies which could not be made public. He argued that the Intelligence and Security Committee of Parliament should take on this scrutiny role because it was able to hear confidential evidence from the intelligence and security agencies.

Dr Julian Lewis said he would support new clause 7 if it was the only available option. However, he said his preference would be for the Government to give an undertaking to table its own, “more streamlined”, amendment in the House of Lords.⁸²

Nadhim Zahawi said he understood the grounds on which the Intelligence and Security Committee of Parliament was looking to take on the role of scrutinising the work of the investment security unit and how the new powers in the bill were used.⁸³ However, he said he would not accept new clause 7. Instead, he encouraged the Intelligence and Security Committee of Parliament to review the annual report, which would be laid before Parliament under the bill. Dr Julian Lewis intervened during Mr Zahawi’s speech to say that the annual report would not include any relevant security-sensitive information. In response, Mr Zahawi said that the committee would be able to request such information from the secretary of state.

Clause 7 was moved to a division and defeated by 355 votes to 265.⁸⁴

Assessing and mitigating possible impact on businesses

The following new clauses, and an amendment, were tabled to address concerns about the potential impact of the bill on UK businesses, including small and medium sized enterprises (SMEs):

- New clause 6, tabled by Labour, would have required the secretary of state to set up an SME engagement unit. The unit’s proposed remit would be to provide guidance to SMEs on compliance with the new regime, provide assistance to SMEs during the national security assessment period and monitor the impact of the new regime on the ability of SMEs to access investment.
- Amendment 7, tabled by Labour, would have required the secretary of state to publish a report on how efficiently the new regime was being administered. This would have included reporting on the length of time assessments of a trigger event and acceptance decisions were taking. The secretary of state would also have had to report the number of call-in notices being issued concerning the acquisition of SMEs.
- New clause 1, tabled by the SNP, would have required the secretary of state to report on the impact of the new legislation on academic research spin-off enterprises.

⁸⁰ [HC Hansard, 20 January 2021, col 996.](#)

⁸¹ *ibid*, col 994.

⁸² *ibid*, col 996.

⁸³ *ibid*, col 1034.

⁸⁴ *ibid*, cols 1046–51.

- New clause 2, tabled by the SNP, would have required the secretary of state to report on the impact of the new legislation on SMEs. It would have also required the secretary of state to produce guidance to SMEs on compliance with the new regime.
- New clause 3, tabled by the SNP, would have allowed SMEs a “grace period” during the first six months after the legislation came into force. During this period, SMEs would have a reasonable excuse if they were accused of completing a notifiable acquisition without the secretary of state’s approval.

Speaking in support of new clause 6, Chi Onwurah argued the changes were necessary to mitigate the impact of the legislation on SMEs. He said this would “plug a gap” in the Government’s policy.⁸⁵ She noted that, according to the Government’s impact assessment for the bill, SMEs were expected to make up 80% of the transactions falling under the new regime.⁸⁶ She said SMEs had not received sufficient guidance about the impact of the new proposed regime.⁸⁷ She also argued amendment 7 would ensure the Government faced proper scrutiny of the work of the new investment security unit within the Department for Business, Energy and Industrial Strategy.⁸⁸ She said this new reporting requirement would help establish the extent to which the new unit was providing adequate support to SMEs.⁸⁹

Stewart Hosie, speaking in support of SNP amendments, argued that the Government needed to assess carefully the bill’s impact, given the expected increase in the number of transactions that would be subject to assessment.⁹⁰ He also argued this was important due to the potential impact on SMEs falling within the bill’s scope.

Addressing concerns about the support provided to SMEs, Nadhim Zahawi said the Government did not expect the new regime to affect this type of business disproportionately.⁹¹ However, he told the House the impact on SMEs would be closely monitored. He also said the Government had published factsheets for businesses about the new bill.⁹² He said these provided clarity to businesses on what the new regime would entail. He also argued it was important that SMEs were included within the scope of the bill, as this closed a “substantial loophole” in the current regime.

The House divided on new clause 6 and it was defeated by 355 votes to 263.⁹³ The other clauses and amendment were not called or moved to a division.

Reviewing scope of powers in the bill

The SNP tabled amendments for the Government to review the scope of the powers the secretary of

⁸⁵ [HC Hansard, 20 January 2021, col 998.](#)

⁸⁶ *ibid.*

⁸⁷ *ibid*, col 1000.

⁸⁸ *ibid*, col 1001.

⁸⁹ *ibid.*

⁹⁰ *ibid*, col 992.

⁹¹ *ibid*, col 1035.

⁹² Department for Business, Energy and Industrial Strategy, ‘[National Security and Investment Bill 2020: Factsheets](#)’, 11 November 2020.

⁹³ [HC Hansard, 20 January 2021, cols 1041–6.](#)

state would exercise. These were:

- Amendment 3, which would have required the secretary of state to review their statement about how the call-in power would be used after the first year. The five-yearly review period already in the bill would begin after this initial year-one review.
- Amendment 1, which would have required regulations made by the secretary of state concerning notifiable acquisitions to be subject to a year-one review. This would then be followed by a five-year review.

Speaking in support of these amendments, Stewart Hosie said they were designed to ensure the scope of the new regime was appropriate and that the effect on the UK economy—in particular inward investment—was proportionate.⁹⁴ He urged the Government to keep the new regime under “permanent review”.⁹⁵

Nadhim Zahawi agreed the secretary of state should keep “a constant watch” on the scope of these powers.⁹⁶ However, he said provisions in the bill as currently drafted would be enough to ensure this happened.

Amendments 1 and 3 were not called.

Further Amendments

The SNP tabled further amendments on other aspects of the bill. Stewart Hosie did not speak about these amendments in detail during report stage. However, he said their purpose was like amendments 1 and 3 and that they were intended to improve the bill. These amendments were:

- Amendment 6, which would have brought broadcast, print and social media companies within the scope of the mandatory notification regime.
- Amendment 2, which would have expanded the definition of gaining control of a qualifying entity to include a person becoming the major debt holder or the major supplier.
- Amendment 4, which would have required the secretary of state to produce a report to Parliament if the total amount of financial assistance provided in connection with multiple final orders exceeded £100 million during one calendar year.
- Amendment 5, which would have required the secretary of state to consider specific factors when deciding whether to share information with these authorities. The factors would be: whether the agencies had proper systems in place to ensure the information provided was properly protected; and that the disclosure of this information did not pose a threat to the UK’s national security.

Responding to amendment 6, Nadhim Zahawi argued mandatory notification would be limited to those sectors that were most sensitive in terms of the risk to national security.⁹⁷ He said he did not

⁹⁴ [HC Hansard, 20 January 2021, col 993.](#)

⁹⁵ *ibid.*

⁹⁶ *ibid.*, cols 1032–3.

⁹⁷ *ibid.*, col 1033.

believe that was the case for media companies. Mr Zahawi also rejected amendment 2, saying the Government did not believe issuing loans should be seen automatically as a national security risk.⁹⁸ He also said the call-in powers already in the bill would be enough to address any concerns arising from changes to supply chains. Finally, he argued amendments 4 and 5 were unnecessary as the bill already guarded against misuse of these specific powers by the secretary of state.⁹⁹

None of these amendments were called.

5.4 Third reading

The Secretary of State for Business, Energy and Industrial Strategy, Kwasi Kwarteng, restated the Government's view on why the bill was necessary. Quoting the words of his predecessor, Alok Sharma, he said the UK should be "open for business" but not "open to exploitation".¹⁰⁰ He argued the bill struck the right balance between encouraging inward investment and protecting national security. He said the UK had:

[...] always been a beacon for inward investment and a champion of free trade. The bill does not change that. It does not turn its back on that history, but it feels very apposite for me to say that prosperity and security should go hand in hand. The bill really captures that insight and represents a proportionate approach to the threats we face in today's world.¹⁰¹

Ed Miliband said that Labour continued to support reform.¹⁰² He argued the UK had been "behind the curve" on this issue and a stronger regime was necessary.¹⁰³ However, he said there were three areas where the bill should be improved. He said there needed to be:

- greater clarity on how national security was to be defined for the purposes of the bill;
- wider Government support for businesses to enable them to navigate the new system; and
- adequate resources provided to the new investment security unit.¹⁰⁴

Mr Miliband also argued that further action needed to be taken to protect the UK economy on matters beyond national security.¹⁰⁵ For example, he described the UK's business takeover regime as not fit for purpose and argued the Government needed a new "mission-led industrial policy".¹⁰⁶

⁹⁸ [HC Hansard, 20 January 2021, col 1033.](#)

⁹⁹ National Security and Investment Bill, clause 54.

¹⁰⁰ [HC Hansard, 20 January 2021, col 1051.](#) The Government announced in January 2021 that Alok Sharma would become the full-time President of the UN COP26 climate conference, to be hosted in Glasgow in November 2021 (Prime Minister's Office, '[Alok Sharma becomes full-time COP26 president and Kwasi Kwarteng is appointed as Secretary of State for Business](#)' 8 January 2021).

¹⁰¹ [HC Hansard, 20 January 2021, cols 1052–3.](#)

¹⁰² *ibid*, col 1053.

¹⁰³ *ibid*.

¹⁰⁴ *ibid*, cols 1053–4.

¹⁰⁵ *ibid*, col 1053.

¹⁰⁶ *ibid*, cols 1053–4.

Dr Julian Lewis said he welcomed Nadhim Zahawi's comments made during report stage that the Government would be open to the Intelligence and Security Committee of Parliament scrutinising the new regime established by the bill.¹⁰⁷ However, he argued the Government should take action to ensure this scrutiny role was formalised. This was supported by Kevan Lewis (Labour MP for North Durham) during his speech at third reading.¹⁰⁸

Stewart Hosie said he agreed with other MPs that the bill was necessary and said that reform of the existing regime was overdue.¹⁰⁹ He also argued that the Government needed to ensure appropriate steps were taken quickly "if the impact of the bill [started] to chill vital investment across different areas of the economy".¹¹⁰

¹⁰⁷ [HC Hansard, 20 January 2021, col 1056.](#)

¹⁰⁸ *ibid*, col 1058.

¹⁰⁹ *ibid*, col 1057.

¹¹⁰ *ibid*.