

National Security and Investment Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

[Amendments marked ★ are new or have been altered]

Amendment
No.

Clause 3

LORD LANSLEY

- 1 Page 3, line 9, at end insert –
“() details of the circumstances in which the application to an asset of any export control, transfer control, technical assistance control or trade control imposed under the Export Control Act 2002 and related provisions may affect the Secretary of State’s exercise of the power to give a call-in notice, and”

Clause 6

LORD LANSLEY

- 2 Page 4, line 15, leave out “or (6)” and insert insert “, (6) or (8)”

LORD CALLANAN

- 3 Page 4, line 17, leave out paragraph (b)

Member’s explanatory statement

This amendment has the effect of omitting a category of notifiable acquisitions from the scope of the mandatory notification regime, namely where a person acquires a right or interest in a qualifying entity such that their shareholding or voting rights in the entity increases from less than 15% to 15% or more.

- 4 Page 4, line 22, leave out from “14(1)” to “would” in line 23

Member’s explanatory statement

This amendment and the amendments at page 4, line 42, page 8, line 30 and page 21, line 7 are consequential on the removal of Clause 6(2)(b).

- 5 Page 4, line 42, leave out subsection (8)

Member's explanatory statement

See the explanatory statement to the amendment at page 4, line 22.

LORD FOX
LORD CLEMENT-JONES
LORD GRANTCHESTER
BARONESS BENNETT OF MANOR CASTLE

6 Page 5, line 3, at end insert –

“() In making regulations for the purposes of this section the Secretary of State must have regard to the risk to national security posed by climate change and to the role of qualifying entities and assets in mitigating that risk.”

Member's explanatory statement

This amendment would require the Secretary of State to have regard to the risk to national security posed by climate change when making regulations relating to notifiable acquisitions.

BARONESS BENNETT OF MANOR CASTLE
As an amendment to amendment 6

7★ After “climate change” insert “and biodiversity loss”

Clause 8

LORD HODGSON OF ASTLEY ABBOTTS

8 Page 6, leave out lines 20 to 22 and insert “enable the person to secure or prevent the passage of any resolution in respect of any matter governing the affairs of the entity that is equivalent to a matter that can be passed by way of ordinary resolution or special resolution under the Companies Act 2006.”

Member's explanatory statement

This amendment tightens the scope of the trigger event so that it does not capture minority investor veto rights that would not give rise to national security concerns.

LORD BRUCE OF BENNACHIE
BARONESS MCINTOSH OF PICKERING

9 Page 6, line 38, at end insert –

“() For the purposes of this Act, a person does not gain control of a qualifying entity if the person acquires a right or interest in or in relation to the entity –
(a) solely by way of obtaining security; and
(b) in a situation where they obtain no effective control.”

Clause 14

LORD CALLANAN

10 Page 8, line 30, leave out paragraph (b)

Member's explanatory statement

See the explanatory statement to the amendment at page 4, line 22.

BARONESS NOAKES
LORD HODGSON OF ASTLEY ABBOTTS
LORD CLEMENT-JONES

- 11 Page 9, line 10, leave out “as soon as practicable” and insert “within 5 working days”

Member’s explanatory statement

This amendment imposes a specific time limit on the notification required to be made after the Secretary of State has decided whether to accept or reject a mandatory notification.

- 12 Page 9, line 14, leave out “as soon as practicable” and insert “within 5 working days”

Member’s explanatory statement

This amendment imposes a specific time limit on the notification required to be made after the Secretary of State has decided whether to accept or reject a mandatory notification.

Clause 18

LORD LANSLEY
BARONESS NOAKES
LORD FOX

- 13 Page 12, line 7, leave out from “which” to “but” in line 8 and insert “a notice under subsection (2) is received by the Secretary of State”

Clause 30

BARONESS BENNETT OF MANOR CASTLE

- 14★ Page 20, line 3, leave out “, with the consent of the Treasury,” and insert “by regulations”

Member’s explanatory statement

The amendments to Clause 30 in the name of Baroness Bennett of Manor Castle seek to ensure that Parliament is able to scrutinise financial assistance before the Government is committed to its provision.

BARONESS NOAKES
LORD HODGSON OF ASTLEY ABBOTTS
LORD FOX

- 15 Page 20, line 3, after “may,” insert “if he or she considers that there is a risk to national security and”

Member’s explanatory statement

This amendment probes whether there could be any circumstances beyond a risk to national security which would result in financial assistance being given under Clause 30.

- 16 Page 20, line 6, leave out from “indemnities” to end of line 7

- 17 Page 20, line 7, at end insert –

“() Financial assistance must be provided on arm’s length terms.”

Member's explanatory statement

These amendments probe the nature of financial assistance and in particular whether it can be given in the form of subsidies or on non-commercial terms.

LORD HODGSON OF ASTLEY ABBOTTS
BARONESS NOAKES
LORD CLEMENT-JONES

18 Page 20, line 7, at end insert –

“() Financial assistance may include compensation to any person who has suffered economic harm as a result of actions taken under this Act.”

BARONESS BENNETT OF MANOR CASTLE

19★ Page 20, line 7, at end insert –

“() Regulations under subsection (1) are subject to the affirmative procedure.”

Member's explanatory statement

The amendments to Clause 30 in the name of Baroness Bennett of Manor Castle seek to ensure that Parliament is able to scrutinise financial assistance before the Government is committed to its provision.

20★ Page 20, line 8, leave out subsections (3) to (5)

Member's explanatory statement

The amendments to Clause 30 in the name of Baroness Bennett of Manor Castle seek to ensure that Parliament is able to scrutinise financial assistance before the Government is committed to its provision.

Clause 32

LORD CALLANAN

21 Page 21, line 7, leave out paragraph (b)

Member's explanatory statement

See the explanatory statement to the amendment at page 4, line 22.

Clause 53

LORD CALLANAN

22 Page 33, line 15, after “if” insert “a sender or”

Member's explanatory statement

This amendment clarifies that regulations under Clause 53 may make provision in respect of non-individuals required to give notices and any other documents under the Bill, as well as those in receipt of such documents.

23 Page 33, line 19, after “if” insert “a sender or”

Member's explanatory statement

This amendment clarifies that regulations under Clause 53 may make provision in respect of those outside the United Kingdom required to give notices and any other documents under the Bill, as well as those in receipt of such documents.

Clause 61

LORD WEST OF SPITHEAD
LORD BUTLER OF BROCKWELL
LORD CAMPBELL OF PITTENWEEM
LORD KING OF BRIDGWATER

- 24 Page 36, line 15, at end insert “, except for any confidential annex prepared under subsection (2A)”

LORD CALLANAN

- 25 Page 36, line 22, at end insert –
“(da) the average number of working days –
 (i) from receipt of a mandatory notice to notification of a decision to accept that notice, and
 (ii) from receipt of a mandatory notice to giving written reasons for a decision to reject that notice,”

Member's explanatory statement

This amendment adds a reporting requirement to ensure that the average length of time taken to give notification of a decision to accept or reject a mandatory notice is included in the annual report that must be made by the Secretary of State under Clause 61.

BARONESS NOAKES

- 26 Page 36, line 24, at end insert –
“() the maximum and average time taken between receipt of mandatory notifications and either the provision of reasons for their rejection or notification of their acceptance,
 () the maximum and average time taken between notification of acceptance of mandatory notifications and the issue of call-in notices or notifications that no further action will be taken,”

Member's explanatory statement

This amendment ensures that there is visibility of the time taken for the various stages of examination of transactions covered by this Bill.

LORD CALLANAN

- 27 Page 36, line 26, at end insert –
“(ga) the average number of working days –
 (i) from receipt of a voluntary notice to notification of a decision to accept that notice, and
 (ii) from receipt of a voluntary notice to giving written reasons for a decision to reject that notice,”

Member's explanatory statement

This amendment adds a reporting requirement to ensure that the average length of time taken to give notification of a decision to accept or reject a voluntary notice is included in the annual report that must be made by the Secretary of State under Clause 61.

BARONESS NOAKES

28 Page 36, line 28, at end insert –

“() the maximum and average time taken between receipt of voluntary notifications and either the provision of reasons for their rejection or notification of their acceptance,

() the maximum and average time taken between notification of acceptance of voluntary notifications and the issue of call-in notices or notifications that no further action will be taken,”

Member's explanatory statement

This amendment ensures that there is visibility of the time taken for the various stages of examination of transactions covered by this Bill.

29 Page 36, line 29, at end insert “in respect of mandatory notifications and the number of call-in notices given in respect of voluntary notifications”

Member's explanatory statement

This amendment ensures that there is visibility of the time taken for the various stages of examination of transactions covered by this Bill.

30 Page 36, line 32, at end insert “and the maximum and average time taken between the giving of call-in notices and the giving of final notifications,”

Member's explanatory statement

This amendment ensures that there is visibility of the time taken for the various stages of examination of transactions covered by this Bill.

31 Page 36, line 33, at end insert “and the maximum and average time taken between the giving of a call-in notice and the making of a final order.”

Member's explanatory statement

This amendment ensures that there is visibility of the time taken for the various stages of examination of transactions covered by this Bill.

LORD CALLANAN

32 Page 36, line 33, at end insert –

“(m) the number of final orders varied,

(n) the number of final orders revoked.”

Member's explanatory statement

This amendment adds a reporting requirement to ensure that the number of final orders varied or revoked is included in the annual report that must be made by the Secretary of State under Clause 61.

LORD WEST OF SPITHEAD
 LORD BUTLER OF BROCKWELL
 LORD CAMPBELL OF PITTENWEEM
 LORD KING OF BRIDGWATER

33 Page 36, line 33, at end insert –

“(m) in respect of final notifications given, and final orders made, varied or revoked –

- (i) a summary of the decision of the Secretary of State under section 26(1), and
- (ii) a summary provided by the Security Services of any national security risk assessment provided under section 26(3)(a)(ii) relating to each decision under section 26(1).

(2A) Where the Secretary of State considers that publication of any information listed in paragraph (2)(m) would be contrary to the interests of national security, those details may be excluded from publication and instead must be included in a confidential annex to the report provided to the Intelligence and Security Committee of Parliament on the same day that the rest of the report is laid before each House of Parliament.”

LORD GRANTCHESTER
 LORD CLEMENT-JONES

34★ Page 36, line 33, at end insert –

- “(m) the average staff resource allocated to the operation of reviews of notices made under sections 14 and 18 over the relevant period,
- (n) the number and proportion of notices and call-in notices concerning the acquisition of a small or medium-sized enterprise,
- (o) 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,
- (p) the impact on levels of foreign investment in the United Kingdom brought about under this Act.”

After Clause 61

LORD GRANTCHESTER
 LORD LANSLEY
 LORD CLEMENT-JONES

35 Insert the following new Clause –

“Higher education guidance

- (1) Within three months of the day on which this Act is passed, the Secretary of State must publish guidance for the higher education and research sector in relation to provisions in this Act, which includes, but is not limited to –
- (a) a clear explanation of asset transactions in respect of which higher education institutions must give notice to the Secretary of State;
 - (b) how the provisions of the Act affect contract research, consultancy work, and collaborative research and development;
 - (c) the application of the provisions of the Act to strategic security partnerships and domestic partners.

After Clause 61 - continued

- (2) The Government must consult the higher education and research sector on draft guidance and include feedback in the final publication.”

LORD LEIGH OF HURLEY
LORD CLEMENT-JONES

36 Insert the following new Clause—

“Market guidance notes

- (1) 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.
- (2) The market guidance notes must be updated and re-published not more than every six months thereafter.”

LORD LANSLEY

37 Insert the following new Clause—

“Interaction with functions under the Export Control Act 2002

Before making an interim order or a final order under this Act in respect of a qualifying asset, the Secretary of State must take account of the application to the asset of any export control, technical assistance control or trade control imposed under the Export Control Act 2002 and related provisions.”

BARONESS BENNETT OF MANOR CASTLE

38★ Insert the following new Clause—

“Integrated review statement

- (1) Within 6 months of the passing of this Act the Secretary of State must publish a statement which outlines how provisions in this Act will align with the United Kingdom’s long term security priorities and concerns which have been identified in the Integrated Review of Security, Defence, Development and Foreign Policy.
- (2) The statement must cover how provisions in this Act will respond to emerging threats, new technology, biological weapons, cyber, misinformation and military developments by the United Kingdom’s adversaries, and the impact on international and national efforts to tackle corruption.
- (3) The Secretary of State must lay the statement before Parliament.”

Clause 63

LORD FOX
LORD CLEMENT-JONES

39 Page 37, line 39, at end insert—

- “(6) Before making regulations under section 6(1) the Secretary of State must lay before Parliament—
- (a) the proposed draft of the regulations, and
- (b) a document which explains the proposed draft regulations.

Clause 63 - continued

- (7) Where a proposed draft of the regulations is laid before Parliament under subsection (6), no draft statutory instrument containing the regulations is to be laid before Parliament until after the expiry of the 30-day period.
- (8) The Secretary of State must request a committee of either House whose remit includes industrial strategy, economic affairs, science or technology to report on the proposed draft regulations within the 30-day period.
- (9) In preparing a draft statutory instrument containing the regulations, the Secretary of State must take account of—
 - (a) any representations,
 - (b) any resolution of either House of Parliament, and
 - (c) any recommendations of a committee under subsection (8),made within the 30-day period with regard to the proposed draft regulations.
- (10) If, after the 30-day period, the Secretary of State wishes to make regulations in the terms of the proposed draft or revised draft regulations, they must lay before Parliament a statement—
 - (a) stating whether any representations, resolutions or recommendations were made under subsection (9),
 - (b) giving details of any representations, resolutions or recommendations so made, and
 - (c) explaining any changes made in any revised draft of the regulations.
- (11) The Secretary of State may make a statutory instrument containing the regulations (whether or not revised) if, after laying a statement under subsection (10), a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament as outlined in subsection (5).
- (12) In this section, reference to “the 30-day period” in relation to any draft regulations is to the period of 30 days beginning with the day on which the initial proposed draft regulations were laid before Parliament.
- (13) For the purposes of subsection (12) no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.”

Member’s explanatory statement

This amendment would introduce the super-affirmative procedure for regulations made under section 6(1).

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12 April 2021
