



House of Commons
Foreign Affairs Committee

Striking the balance: Protecting national security through foreign investment legislation

Sixth Report of Session 2019–21

*Report, together with formal minutes relating
to the report*

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Summary

The UK is globally recognised as an open and attractive destination for foreign investors. However, our openness has made us vulnerable to exploitation by foreign actors who do not have our best interests in mind. In light of these concerns, we are conducting an inquiry into the national security risks associated with foreign investment in the UK, and the Foreign, Commonwealth and Development Office's role in the screening process.¹ This interim report presents our critique of the National Security and Investment Bill, which will materially expand the Government's ability to intervene in foreign investments on national security grounds.

The Bill should provide clarity and certainty for UK businesses and their investors, to avoid adversely impacting the UK's economy, global competitiveness and attraction as a forum for inward investment. This will require greater clarity of the underpinning screening criteria to be applied whilst balancing the Government's need for sufficient flexibility and discretion to respond to dynamic changes in the UK's threat environment and security interests, many of which cannot be proscriptively legislated for in a static way, today. It is important to signal to the world that the UK remains open to investment; but will not be exploited by actors seeking to undermine our national security. In order to achieve this, we recommend that the Government provides greater clarity on the meaning of "national security" and we make proposals to achieve this.

¹ This inquiry is titled: *The Foreign, Commonwealth and Development Office's role in blocking foreign asset stripping in the UK.*

1 Introduction

1. On the 11 November 2020, the Government introduced in the House of Commons the National Security and Investment Bill ('the Bill'), the purpose of which is to:

Ensure that the government has the necessary powers to scrutinise and intervene in business transactions, such as takeovers, to protect national security, while providing businesses and investors with the certainty and transparency they need to do business in the UK.²

2. To achieve this objective, the Bill includes the following key provisions:³

- a) **Mandatory notification of transactions in 17 sensitive sectors.** This is designed to ensure that the Government is automatically informed of potential transactions in certain core areas. The Government is currently consulting on the scope of each of these sectors. Failure to notify a relevant transaction may result in criminal penalties, financial sanctions and automatic invalidity of the share transfer in question.
- b) A **voluntary notification system for transactions in sectors not subject to mandatory notification.** This is intended to encourage parties to notify transactions that may raise national security concerns.
- c) **Call-in powers**, which enable the Secretary of State to call in a relevant transaction for review up to five years after it has taken place, provided that this is done within six months of the Secretary of State becoming aware of the transaction⁴ (or trigger event).⁵

3. The Bill establishes a new Investment Security Unit (ISU) that will be responsible for screening transactions on security grounds. The Secretary of State for Business, Energy & Industrial Strategy (BEIS) will act as decision-maker in assessing risks to national security, with all decisions being subject to judicial review. The Secretary of State's assessment will result in either approval of the transaction, prohibition or approval subject to conditions to prevent or mitigate national security risks.⁶

4. This Committee and its predecessors have long argued for greater protection of the UK's assets from potentially hostile foreign investors, for example in the November 2017 report *Defending Democracy in the Age of Autocracies* and the May 2018 *Moscow's Gold* report.⁷ The Bill is the result of slowly evolving policy. It follows the Government's 2017 consultation on proposed legislative reforms to the UK's investment screening process, and the 2018 National Security and Investment White Paper which contained a more

2 Department for Business, Energy and Industrial Strategy (BEIS), [Collection: National Security and Investment Bill](#), accessed 5 January 2021

3 BEIS, [Policy Paper: Overview of the National Security and Investment \(NSI\) Bill Factsheet](#), accessed 5 January 2021 .

4 [Explanatory Notes to the National Security and Investment Bill](#) (Bill 210–EN), p.10, 11 November 2020.

5 A "trigger event" is an acquisition of control over qualifying entities or assets. The Secretary of State may call in such transactions for national security review, regardless of whether or not they have been notified. See: [Explanatory Notes to the National Security and Investment Bill](#) (Bill 210–EN), p.4, 11 November 2020.

6 [Explanatory Notes to the National Security and Investment Bill](#) (Bill 210–EN), p 12, 11 November 2020.

7 Foreign Affairs Committee, Second Report of Session 2019, '[A Cautious Embrace: Defending Democracy in an Age of Autocracies](#)', HC 109; Foreign Affairs Committee, Eighth Report of Session 2017–2019, '[Moscow's Gold: Russian Corruption in the UK](#)', HC 932.

limited set of proposals than those included in the Bill.⁸ The Bill was published during our ongoing inquiry, *The FCDO's role in blocking foreign asset stripping in the UK*, which examines how the FCDO assesses whether a potentially hostile party is seeking to secure significant influence or control over a UK company and in what circumstances Ministers should intervene. The catalyst for this inquiry was the attempted takeover in April 2020 of UK semiconductor and software design company Imagination Technologies by a private equity firm, Canyon Bridge, backed by a Chinese state-owned fund: China Reform Holdings.⁹ This inquiry explores at a more granular level some of the themes outlined in our recent report on the Integrated Review,¹⁰ namely, the trend of foreign powers—in particular China—exploiting the UK's open economy to pursue their own economic and technological dominance for geopolitical reasons.

5. This Bill represents an important part of the Government's response to these global trends. We therefore decided to conduct rapid scrutiny of the Bill's provisions against the backdrop of our wider inquiry, with a view to assessing whether it strikes the correct balance between protecting the UK's national security and facilitating inward foreign investment.

6. During this part of the inquiry, we took oral evidence from national security and technology experts, businesses, legal experts and investors over eight evidence sessions; two of these were held after the introduction of the Bill. To date we have also received 27 submissions of written evidence; we thank these contributors for their engagement. We also thank our Specialist Advisor, Nicole Kar, Head of UK Competition at Linklaters, for her expert advice throughout the course of this inquiry. This interim report focuses specifically on the main provisions of the Bill; it will be followed by a second report covering wider issues, including the implementation of the legislation, which we expect to publish later in the year.

8 Department for Business, Energy and Industrial Strategy (BEIS), *National Security and Investment White Paper: Government response to its consultation on proposed legislative reforms*, [CP 323](#), November 2020.

9 [Qq19–35](#) (Dr Black, Mr Bingham)

10 Foreign Affairs Committee, Fourth Report of Session 2019–21, [‘A Brave New Britain? The Future of the UK's international Policy’](#), *HC 388*, page 6.

2 The challenge

7. The UK is globally recognised as an open, stable and attractive environment for foreign investors, characterised by minimal red tape, high levels of transparency and certainty for businesses and investors resulting from a stable legal system and the rule of law applied by independent judges and courts.¹¹ The UK's tech sector attracts the highest levels of Foreign Direct Investment (FDI) in Europe. Prior to the introduction of the Bill, the UK did not have a standalone investment review regime specifically tailored to address national security concerns;¹² instead, the review mechanism for foreign investment sat within the UK's competition-based merger control legislation (primarily the Enterprise Act 2002), with specified and limited powers of Government intervention in transactions.¹³ In fact, over almost two decades only 12 transactions have been reviewed on national security grounds and no transaction has been formally blocked under the regime. These relatively light barriers to investment, in addition to the factors outlined above, have made the UK an attractive place to invest; OECD data from 2019 showed the UK to be the world's third most significant destination for inward investment, behind the US and China.¹⁴

8. We heard in evidence that the UK's relatively open investment regime, combined with the attractiveness of its businesses, has made it vulnerable to exploitation by foreign entities that do not have interests aligned with those of the UK.¹⁵ Foreign investment is part of the economic toolbox of competitors who are increasingly seeking to gain strategic advantage over the UK and its allies, and to achieve technological dominance in certain strategic sectors,¹⁶ including artificial intelligence, cyber security and quantum technologies.¹⁷

9. In recent years, many countries have reassessed and strengthened their foreign investment regimes in response to the increasing prominence of large investors controlled

11 Deloitte, [Power Up: UK inward investment Key drivers of foreign investment and its value to the UK economy](#), March 2019, p 3.; Evidence received by the Public Bill Committee for the National Security Investment Bill, 24 November 2020, [Col 64](#).

12 [UK Foreign Direct Investment in a post-Covid, post-Brexit world](#), Akin Gump, Jasper Helder, Chiara Klau, Daniel Lund and Isabel Foster, 16 June 2020

13 The UK's merger control legislation is the Enterprise Act 2002 (the Act). Under the Act, final decisions for most mergers are the responsibility of the Competition and Markets Authority (CMA). The Secretary of State has limited powers of intervention on 'public interest' grounds in 'relevant merger situations'; namely, mergers in which two or more enterprises cease to be distinct and that meet specified turnover or share of supply tests that raise concerns on grounds of media plurality, national security, financial stability or public health emergencies. See: Department for Business, Energy and Industrial Strategy, [Enterprise Act 2002 changes to the turnover and share of supply tests for mergers: Guidance 2020](#), June 2020; and [Enterprise Act 2002](#), section 42.

14 Department for International Trade, Press Release: [UK outstrips other EU nations as top investment destination in Europe](#), 29 April 2019

15 Elizabeth Braw noted that "we are fundamentally open, which means that other countries can take advantage of our open society and try to weaken it." Professor Jeffrey Henderson stated that: "[there are] real weakness in the regulatory and screening regime for foreign firm acquisitions in this country... It is in those ways, given the reasonable presence of high-tech related innovation and its associated IP, that Britain compared with equivalent countries is not uniquely vulnerable but certainly very vulnerable." [Q111](#)

16 "As the struggle for power among states is increasingly played out in the economic realm, there is clear evidence that some states try to use the market – and the companies or entities over which they have control or influence – to gain economic and even military power through foreign investment." Dr Lenihan ([BFA0004](#)), para 1. See also: Dr Mackmurdo ([BFA0025](#)), para 5.

17 Professor Chris Hankin ([BFA0012](#)), paras 5–6; [Qq154–155](#)

or influenced by foreign governments.¹⁸¹⁹ Traditional interpretations of national security as limited to the protection of the nation's physical borders are no longer sufficient in a world characterised by high levels of interconnectedness, public-private partnerships in key sectors, and a growing reliance on technologies and digital infrastructure that underpin the functioning of society. In correspondence with the Committee, founder of ARM, Hermann Hauser, stated that

Technology sovereignty is fast becoming the defining issue of the decade.²⁰

Beyond the direct security risks such as espionage, intellectual property (IP) theft and sabotage presented by hostile actors, broader risks are also associated with the loss of strategic technologies to overseas actors, including friendly countries.²¹ Witnesses noted that:

[the UK has] a history of developing innovative, disruptive technologies, and then losing our competitive advantage when those companies are acquired by overseas interests.²²

10. Striking the appropriate balance between protecting the UK's security interests while ensuring that the country's businesses continue to benefit from the valuable foreign investment that enables them to grow, innovate, and access overseas markets, is the critical challenge for the Bill.²³ Future technological and geopolitical developments and other unforeseen black swan events²⁴ necessitate an interpretation of national security that enables the Government to adapt its approach to foreign investment in a timely and pragmatic way.

11. The introduction of the Bill comes at a time of heightened economic uncertainty as UK businesses continue to grapple with the impact of the COVID-19 pandemic, making them more vulnerable to takeovers by foreign companies.²⁵ Following the UK's departure from the European Union Single Market on the 31 December 2020, it is more important than ever to signal to the world that Britain remains open to foreign investment. It is essential that our legislative framework is updated to meet these challenges.

18 The US, Germany, Australia and France, amongst others, have all recently amended their foreign investment regimes to remove or drop thresholds and permit scrutiny of a wider class of transactions. See: ICLG, [Global Developments in FDI Screening in Light of the COVID-19 Pandemic: Foreign Direct Investment Regimes 2021](#), chapter 5. See also: [Q62](#) ; Dr Lenihan ([BFA0004](#)), para 2.

19 In December 2020, China's National Development and Reform Commission introduced broad measures for reviewing foreign investments on national security grounds, which covers foreign investments in military sectors and the acquisition of controlling stakes by foreign investors in sectors including energy, natural resources, agriculture, internet technology and financial services. Reuters, [China issues national security rules on foreign investment](#), accessed 5 January 2021.

20 Dr Hauser ([BFA0018](#))

21 Dr Lenihan ([BFA004](#)). Ciaran Martin also noted that, 'There are areas where the strategic autonomy that some form of technological capability gives you, even with allies, is an important consideration.' [Q159](#)

22 Science and Technology Committee, *UK telecommunications infrastructure and the UK's domestic capability*, Compound Semiconductor Applications Catapult ([UKT0032](#)). Giving evidence to the Foreign Affairs Committee in December 2020, CSA Strategic Development Director Andy Sellars noted that UK technology start-ups "attract VC [venture capital], they scale up, they de-risk over a short period, and they then sell out". [Q237](#)

23 Herbert Smith Freehills LLP ([BFA0015](#)), para 1.4. Dr Roger Barker noted that, "there is no doubt that we have to find a balance between two things: national security, and maintaining an open and welcoming environment for foreign investment." [Q228](#)

24 A black swan event is an unforeseen, unpredictable event that often has unforeseen consequences. Prior to the Covid-19 pandemic, for example, manufacturers of PPE would not have been likely to have been essential suppliers reviewable under foreign investment regimes.

25 Herbert Smith Freehills LLP ([BFA0015](#)), para 1.3.

12. The UK's strategic competitors are becoming more active in their use of foreign investment as a strategic tool. The Government has been relatively slow to respond, and now lags behind many of our friends and competitors who have recently taken measures to strengthen their regimes.²⁶ Some witnesses made the case that long-term, strategic thinking has been largely absent in the Government's approach to foreign investment regulation.²⁷ As a result, the ownership of strategically important and world-leading UK companies has been lost to overseas buyers. The sale of ARM to Softbank in 2016,²⁸ and the loss of the Centre for Integrated Photonics to Huawei,²⁹ are cases in point. It is vital that this trend is does not continue.

13. If the Government is not more coordinated and able to think long-term in its approach to foreign investment, we risk losing our most innovative companies overseas, with harmful consequences for our national security.

26 [Q111](#); Organisation for Economic Co-operation and Development (OECD), '[OECD Policy Responses to Coronavirus \(COVID-19\): Investment Screening in times of COVID-19 and Beyond](#)', 7 July 2020.

27 Sophia Gaston and Rana Mitter, '[After the Golden Age: Resetting UK-China Engagement](#)', British Foreign Policy Group, July 2020; Dr Chris Mackmurdo noted that states with hostile intent towards the UK have hybrid national advantage strategies to achieve strategic dominance and are "in it for the long game, they are much better at it than we are". [Q628](#)

28 [Q282](#), Will Hutton ([BFA0024](#))

29 Ciaran Martin suggested that given the importance of photonics to modern technologies, Huawei's 2012 purchase of the Centre for Integrated Photonics is "not the sort of technology transfer that we would wish to see in the future". [Q157](#)

3 Critique of the National Security and Investment Bill

14. We welcome the introduction of the Bill, which will, via the introduction of a standalone piece of screening legislation with a dedicated review body, bring the UK into line with its major economic competitors and partners. However, the Bill lacks clarity in places, including in relation to the decision-making process and types of transactions that might be captured under the new regime. Witnesses raised a number of concerns about different parts of the Bill.

Lack of transparency about the decision-making process

15. Prior to the publication of the Bill, BT Group emphasised that it should provide for a “clear, transparent, predictable process”.³⁰ Many witnesses argue that the Bill in its current form does not provide this. Dr Roger Barker of the Institute of Directors and Dr Ashley Lenihan of the London School of Economics (LSE) suggested that the Bill should include measures providing greater transparency regarding the basis upon which decisions are made.³¹ Chris Cummings, Chief Executive Officer of the Investment Association, similarly suggested, amongst other things, that “transparent and accountable mechanisms need to be clarified in the Bill, on how that will work in practice, what resources will be in place to measure, monitor and report it and to whom it would report”.³²

Risk of politicisation

16. The term “national security” is not defined in the Bill. This approach recognises the dynamism of the threats faced by the UK and the consequent need for flexibility in responding to them.³³ We accept there is some merit in this approach but note that there is also a downside. Namely, that it allows for interpretations of “national security” in the context of specific investments to be driven or influenced by political or economic considerations. Commenting on the Bill, Founder of Tech London Advocates and Global Tech Advocates Russ Shaw suggested that “*having the Secretary of State as the final arbiter [of investment decisions] can be seen as political*”.³⁴ Former CEO of the Office of Fair Trading, John Fingleton, noted that there is a “huge amount of political lobbying” about which cases get looked at and how they are determined.³⁵ There is precedent for such politicisation: the 2018 takeover of GKN by Melrose³⁶ and the attempted bid for AstraZeneca by Pfizer in 2014 were widely seen as becoming “political footballs”, despite the requirement under

30 BT Group ([BFA0026](#)), para 2.

31 [Qq231 & 234](#) (Dr Barker); Evidence received by the Public Bill Committee for the National Security and Investment Bill, 24 November 2020, [Col 36](#) (Dr Lenihan).

32 Evidence received by the Public Bill Committee for the National Security and Investment Bill, 24 November 2020, [Col 66](#) (Mr Cummings)

33 HC Deb, 17 November 2020, [col 243](#) [Commons Chamber].

34 [Q297](#) (Mr Shaw)

35 [Q146](#)

36 For example, the then Business Secretary actively negotiated to obtain a series of commitments from Melrose (including to maintain its UK stock exchange listing, UK headquarters and minimum levels of spending on R&D) which were separate and distinct to the commitments required to address national security concerns (required by the Ministry of Defence). See: Department for Business, Energy and Industrial Strategy, [Government Response: Government responds to GKN/Melrose takeover](#), 29 March 2019; and Melrose, [Post-offer undertakings in relation to the acquisition of GKN plc \(“GKN”\) by Melrose Industries PLC \(“Melrose”\)](#), 1 April 2019.

the Enterprise Act for transactions to be examined on purely technical grounds against clear criteria.³⁷ Witnesses argued that in many respects, national security is an inherently political matter.³⁸ We believe that placing reasonable limits on the Secretary of State's powers to intervene for reasons other than national security, while also providing a level of flexibility that permits responses to unforeseen events or developments, is what this Bill should aim to achieve in order to protect our security without deterring foreign investment.

Uncertainty created by the five-year 'call-in' period

17. The Bill provides for a five-year 'call-in' period that enables the Secretary of State to call in transactions for review up to five years after a transaction has taken place, (or within six months of becoming aware of the transaction). This time period could span different Governments and different political interests, risking inconsistency in the way the law is applied and creating considerable uncertainty for businesses.³⁹ Founder of Global Tech Advocates, Russ Shaw, stated that five years is "too long", and risks disincentivising investors.⁴⁰ However, others stated that this time period is a necessary safeguard against transactions that could be missed, and is similar to the five-year retrospective provisions of countries such as Germany and France. Other countries such as China, Russia and the US do not place any limit on similar retroactive powers.⁴¹

Volume of notifications

18. Many business, legal and technology experts anticipate that the extensive scope of the Bill, the inherent uncertainty associated with the five-year call-in provision, combined with the risk of financial penalties, criminal sanctions and automatic invalidity of share transfers for failing to notify, may incentivise businesses to notify by default.⁴² This could result in a volume of notifications that the Investment Security Unit (ISU) does not have the capacity to manage or to appropriately triage to ensure transactions raising national security concerns are prioritised for review. In the Bill's Impact Assessment, BEIS stated it expects the ISU to receive between 1,000 and 1,830 notifications per year.⁴³ Businesses and legal experts have indicated it could be many times that and prove unmanageable.⁴⁴ However, BEIS has not changed its initial estimation. During the second reading of the Bill, the then Secretary of State for Business, Energy and Industrial Strategy, Rt Hon Alok Sharma MP, stated that the Government expects that less than one per cent of all transactions in any given year will be called in for review; of these, only about 10% will then be subject to detailed scrutiny.⁴⁵

37 [Q230](#) (Dr Barker)

38 Giving oral evidence to the Committee on the 24th November, M&A lawyer Roger Barron stated that "defence and national security are political in many ways". [Q246](#) ([Mr Barron](#)).

39 [Q297](#) (Ms Moore).

40 [Q297](#) (Mr Shaw)

41 Evidence received by the Public Bill Committee for the National Security and Investment Bill, 24 November 2020, [Col 34](#) (Dr Lenihan).

42 British Venture Capital Association (BVCA) ([BFA0027](#)); [Qq 236, 240, 281](#).

43 Department for Business, Energy and Industrial Strategy, [Impact Assessment for the National Security and Investment Bill](#), 11 November 2020.

44 [Q281](#) (Ms Moore); [Q236](#) (Dr Barker); evidence received by the Public Bill Committee for the National Security and Investment Bill, 24 November 2020, [col 41](#) (Mr Leiter); Cambridge Network, [What you need to know about the new National Security and Investment Bill](#), 30 November 2020.

45 HC Deb, 17 November 2020, [col 207](#) [Commons Chamber].

19. It is evident that some of these concerns can, at least in part, be mitigated by greater clarity on how “national security” is to be understood. A few lines of explanation as to how call in powers might be applied are provided in the Statement of Policy Intent⁴⁶ accompanying the Bill. In our view, this does not go far enough in providing the necessary degree of clarity. Witnesses identified four key risks associated with not providing a definition:

- i) Businesses are likely to voluntarily notify by default out of caution, resulting in a high volume of notifications that the Investment Security Unit (ISU) is not equipped to manage⁴⁷ (see paragraph 18). This would result in costly delays and makes it more likely that high-risk transactions are missed;
- ii) Ambiguity may reduce the attractiveness of the UK to foreign investors. This would reduce inward flows of capital, knowledge and other resources that are needed for UK businesses to flourish and innovate;⁴⁸
- iii) Staff responsible for screening transactions may lack sufficient clarity on what kind of transactions represent a legitimate national security risk, meaning that important transactions are missed or a large number of irrelevant and benign transactions cause delays; and
- iv) An undefined concept of “national security” may allow intervention on economic rather than security grounds; or be subject to political interpretation (see paragraph 16). The absence of a clear distinction between the UK’s national security and its industrial and economic interests, or any perceived politicisation of decisions, is likely to have a chilling effect on inward investment and not be in the national interest.⁴⁹

20. The Bill in its current form does not provide sufficiently clear guidance on how national security should be understood. This is likely to hinder targeted application of the new law, with adverse repercussions for the UK’s national security and economy.

21. We recommend that the new legislation should be as clear as possible about what may or may not constitute a national security risk in the context of foreign investment. Failure to provide greater clarity would be likely to have significant consequences for the credibility of the national security regime and for UK inward investment.

46 The Statement of Policy Intent sets out how the Secretary of State expects to use the call-in power provided in the Bill, and the risk factors that should be considered when deciding whether to use it. The statement will be reviewed every five years (at a minimum) to reflect changing national security considerations; however, in practice it may be reviewed and updated more frequently.

47 British Venture Capital Association (BVCA) ([BFA0027](#)); [Q236](#) (Dr Barker)

48 [Qq216,178,179](#)

49 [Qq149, 231–232, 233](#); LSE Ideas ([BFA0001](#)).

4 Clarifying the meaning of national security in the context of foreign investment

22. As indicated above, uncertainty about the scope of the core underpinning principle of “national security” is at the heart of many concerns relating to the Bill. A key strength of the Bill is its focus on permitting Government intervention on grounds of national security only.⁵⁰ However, insufficient clarity on how this should be understood may prove to be the Bill’s Achilles’ heel. Conversely, an overly specific definition of national security could serve to limit the Government’s ability to protect UK businesses from unforeseen security risks.⁵¹ At the time of publication of this report, no country has enshrined in legislation an exhaustive definition of national security insofar as it relates to foreign investment. The concept is notoriously difficult to define. Giving evidence to the Public Bill Committee, Dr Ashley Lenihan noted that:

If national security is that which seeks to maintain the survival of the state and preserve its autonomy of action within the international system, unfortunately that means that you cannot necessarily define national security in law without binding yourself in an inflexible way.⁵²

23. During the second reading of the Bill the Secretary of State was clear that:

The Government will not be able to use these powers to intervene in business transactions for broader economic or public interest reasons, and we will not seek to interfere in deals on political grounds.⁵³

While setting clear parameters around national security is difficult, it is also important; or the risk is that national security may become “all things to all people that all people will try to exploit for different reasons.”⁵⁴ Just as a hostile actor may use economic investment to further geopolitical strategy,⁵⁵ we acknowledge that there is scope for areas of overlap between the UK’s national security and economic interests; clearly, there are economic drivers of national security risks.⁵⁶ Yet not all foreign investment transactions, and not all economic concerns, necessarily present national security risks.⁵⁷ These economic drivers where they are seen to form part of a geopolitical strategy, should be taken into account when considering the national security risk of a foreign investment. However, there is a need to strike a balance, and in a way that provides as much certainty as possible.

24. A specific set of issues should be taken into account when considering the possible national security risks arising from a foreign investment. This list should not be viewed

50 National Security and Investment Bill Committee, 24 November 2020, [Col 60](#)

51 Highlighting the challenge of achieving this balance, the Centre for Competition Policy stated that, “constraining the definition of national security in advance may be difficult, due to the breadth and unpredictable nature of national security interests; yet the instrument should not become one that can be unduly applied.” Centre for Competition Policy ([BFA0014](#)).

52 National Security and Investment Bill Committee, 26 November 2020, [Col 38](#)

53 HC Deb, 17 November 2020, [col 211](#) [Commons Chamber].

54 [Q242](#)

55 Dr Mackmurdo ([BFA0025](#)), para 8

56 [Q263](#) (Dr Mackmurdo)

57 [Q263](#) (Dr Mackmurdo)

as comprehensive or closed; but instead should provide as much guidance as is reasonably possible both to the Secretary of State and to investors. Experts commenting on the Bill have suggested a range of factors that should be considered when assessing a foreign investment for security risks. From evidence gathered throughout the course of this inquiry, a number of broad themes emerge:

- i) The degree of control the acquiring entity is aiming to gain over the target entity;⁵⁸
- ii) Future possibilities for growth and the future strategic importance of the target entity;⁵⁹
- iii) The intent of the acquiring entity—including the country of origin’s strategic and technological objectives,⁶⁰ and the capability of the acquiring entity to act on this intent in a way that causes direct harm to the UK; for example, by enabling it to intervene in our critical national infrastructure, or to develop advanced weapons to attack us;⁶¹
- iv) The impact of the transaction on the UK’s security of supply in critical sectors;⁶²
- v) The impact on the UK’s bilateral relations and geopolitical interests.⁶³

25. Greater clarity on how “national security” will be characterised in the context of a transaction could be provided through a list of factors designed to support and guide, rather than limit, the Government’s ability to protect the UK’s national security. This could be achieved in one of two ways:

- a) **Amending the Bill to include a clear framework explaining how national security should be understood.** This should specify the set of national security issues that the Secretary of State should take into account when reviewing foreign investments, drawing upon those outlined in paragraph 24. We have tabled an amendment to the Bill to achieve this aim (see Appendix for wording).
- b) **The inclusion of detailed guidance in the Statement of Policy Intent.** The Secretary of State is required to have regard to the Statement of Policy Intent⁶⁴ when exercising the call-in power.⁶⁵ If the House does not agree with our proposed amendment, we recommend that the Statement of Policy Intent required under the Bill provides greater clarity, by including a non-comprehensive list of

58 Will Hutton, [\(BFA0024\)](#)

59 Will Hutton, [\(BFA0024\)](#)

60 Will Hutton, [\(BFA0024\)](#)

61 National Security and Investment Bill Committee, 26 November 2020, [Col 107](#) (Mr Butler)

62 [Q229](#) (Dr Sellars)

63 Will Hutton [\(BFA0024\)](#)

64 The Statement of Policy Intent sets out how the Secretary of State expects to use the call-in power provided in the Bill, and the risk factors that should be considered when deciding whether to use it. The statement will be reviewed every five years (at a minimum) to reflect changing national security considerations; however, in practice it may be reviewed and updated more frequently.

65 Department for Business, Energy and Industrial Strategy, [‘Policy Paper: Statement of Policy Intent’](#), accessed 5 January 2021.

national security concerns that should be taken into account by the Secretary of State. This guidance could be readily amended in light of changes to the nature, source and magnitude of threats facing the UK.

26. Businesses, investors and the Secretary of State and the Investment Security Unit need clarity and guidance on the factors that should be considered as part of national security assessments. *We recommend that the new legislation and accompanying guidance should clearly distinguish between ‘national security’ and the broader ‘public interest’ or ‘solely economic’ concerns that are not within scope, to prevent undue uncertainty for businesses and avoid any misuse of the term ‘national security’.*

Conclusions and recommendations

The challenge

1. If the Government is not more coordinated and able to think long-term in its approach to foreign investment, we risk losing our most innovative companies overseas, with harmful consequences for our national security. (Paragraph 13)

Critique of the National Security and Investment Bill

2. The Bill in its current form does not provide sufficiently clear guidance on how national security should be understood. This is likely to hinder targeted application of the new law, with adverse repercussions for the UK's national security and economy. (Paragraph 20)
3. *We recommend that the new legislation should be as clear as possible about what may or may not constitute a national security risk in the context of foreign investment. Failure to provide greater clarity would be likely to have significant consequences for the credibility of the national security regime and for UK inward investment.* (Paragraph 21)

Clarifying the meaning of national security in the context of foreign investment

4. Businesses, investors and the Secretary of State and the Investment Security Unit need clarity and guidance on the factors that should be considered as part of national security assessments. *We recommend that the new legislation and accompanying guidance should clearly distinguish between 'national security' and the broader 'public interest' or 'solely economic' concerns that are not within scope, to prevent undue uncertainty for businesses and avoid any misuse of the term 'national security'.* (Paragraph 26)

Appendix: Amendment to the National Security and Investment Bill

New Clause—“Framework for understanding national security”

1. When assessing a risk to national security for the purposes of this Act, the Secretary of State must have regard to factors including, but not restricted to—
 - a) the potential impact of the trigger event on the UK’s defence capabilities and interests;
 - b) whether the trigger event risks enabling a hostile actor to:
 - i) gain control or significant influence of a part of a critical supply chain, critical natural infrastructure, or natural resource;
 - ii) conduct espionage via or exert undue leverage over the target entity;
 - iii) obtain access to sensitive sites or to corrupt processes or systems;
 - c) the characteristics of the acquirer, including whether it is effectively directly or indirectly under the control, or subject to the direction, of a foreign government;
 - d) whether the trigger event adversely impacts the UK’s capability and capacity to maintain security of supply or strategic capability in sectors critical to the UK’s economy or creates a situation of significant economic dependency;
 - e) the potential impact of the trigger event on the transfer of sensitive data, technology or potentially sensitive intellectual property in strategically important sectors, outside of the UK;
 - f) the potential impact of the trigger event on the UK’s international interests and obligations, including compliance with UK legislation on modern slavery and compliance with the UN Genocide Convention;
 - g) the potential of the trigger event to involve or facilitate significant illicit or subversive activities, including terrorism, organised crime, money laundering and tax evasion; and
 - h) whether the trigger event may adversely impact the safety and security of UK citizens or the UK.

Formal minutes

Tuesday 12 January 2021

Members present:

Tom Tugendhat, in the Chair

Chris Bryant	Royston Smith
Alicia Kearns	Graham Stringer
Henry Smith	

Draft Report (*Striking the balance: Protecting national security through foreign investment legislation*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 26 read and agreed to.

A paper was appended to the Report.

Summary agreed to.

Resolved, That the Report be the Sixth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Tuesday 19 January at 1.45pm]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 5 May 2020

Sir Hossein Yassaie, Former CEO, Imagination Technologies; **Dr Ron Black**, Former CEO, Imagination Technologies; **John Rayfield**, Chief Technical Officer, Imagination Technologies; **Ray Bingham**, Acting CEO, Co-Founder and Partner, Canyon Bridge, Imagination Technologies [Q1–109](#)

Tuesday 8 September 2020

Elisabeth Braw, Senior Research Fellow, Modern Deterrence Project, Royal United Services Institute (RUSI); **Professor Jeffrey Henderson**, Professor Emeritus of International Development, University of Bristol [Q110–133](#)

Chris Cummings, Chief Executive Officer, The Investment Association; **John Fingleton**, Founder & Chief Executive, Fingleton [Q134–152](#)

Tuesday 13 October 2020

Ciaran Martin, Professor of Practice in the Management of Public Organisations, Blavatnik School of Government, University of Oxford; **Professor Deeph Chana**, Co-Director, Institute for Security Science and Technology, Imperial College London [Q153–170](#)

Matthew Rous, Chief Executive, China-Britain Business Council; **Ting Zhang**, Founder and Chief Executive Officer, Crayfish.io [Q171–188](#)

Tuesday 3 November 2020

Professor Nick Jennings, Former UK Chief Scientific Advisor for National Security; current Vice-Provost for Research and Enterprise, Imperial College London; **Grace Cassy**, Founder and CEO of CyLon [Q189–210](#)

Professor Shaowei He, Associate Professor in International Business, University of Northampton; **Azeem Azhar**, Founder, Exponential View [Q211–226](#)

Tuesday 24 November 2020

Roger Barker, Director of Policy and Corporate Governance, Institute of Directors; **Andy Sellars**, Strategic Development Director, Compound Semiconductor Catapult [Q227–242](#)

Veronica Roberts, Partner, Herbert Smith Freehills; **Roger Barron**, Partner, Paul Hastings [Q243–260](#)

Tuesday 1 December 2020

Christopher Mackmurdo, Former Head of National Security Research, Foreign and Commonwealth Office, Founder, Legatus; **Sophia Gaston**, Director, British Foreign Policy Group [Q261–278](#)

Russ Shaw, Founder, Global Tech Advocates & Tech London Advocates; **Hazel Moore**, Chair and Co-Founder, FirstCapital [Q279–298](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

BFA numbers are generated by the evidence processing system and so may not be complete.

- 1 Arm Ltd ([BFA0017](#))
- 2 BT Group ([BFA0026](#))
- 3 British Private Equity & Venture Capital Association ([BFA0027](#))
- 4 British Private Equity and Venture Capital Association (BVCA) ([BFA0021](#))
- 5 Centre for Competition ([BFA0014](#))
- 6 Department for Business, Energy and Industrial Strategy ([BFA0022](#))
- 7 Foreign and Commonwealth Office ([BFA0006](#))
- 8 Graphcore ([BFA0009](#))
- 9 Hankin, Professor Chris (Professor of Computing Science, Imperial College London) ([BFA0012](#))
- 10 Hauser, Dr Hermann ([BFA0018](#))
- 11 He, Dr Shaowei (Associate Professor, University of Northampton) ([BFA0020](#))
- 12 Herbert Smith Freehills LLP ([BFA0015](#))
- 13 Hutton, Mr Will (Co-Chair , The Purposeful Company (also associate University of Oxford and LSE)) ([BFA0024](#))
- 14 Invest Europe ([BFA0028](#))
- 15 Knoerich, Dr Jan (Senior Lecturer in the Economy of China, King's College London) ([BFA0016](#))
- 16 Lenihan, Dr. Ashley Thomas ([BFA0004](#))
- 17 Mackmurdo, Dr Christopher (Director, Legatus) ([BFA0025](#))
- 18 Merley, Mr Steven ([BFA0007](#))
- 19 Nicole, Dr Denis A ([BFA0005](#))
- 20 Parker, Celia (PhD Candidate – War Studies, King's College London) ([BFA0023](#))
- 21 Photonics Leadership Group ([BFA0013](#))
- 22 Richardson, John (General Counsel, Imagination Technologies Group) ([BFA0002](#))
- 23 Strategies, LSE IDEAS Global ([BFA0001](#))
- 24 The Investment Association ([BFA0008](#))
- 25 Thorley, Martin ([BFA0029](#))
- 26 Vision Semantics ([BFA0010](#))
- 27 U.S. Department of (U.S. Department of the Treasury) ([BFA0019](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2019–21

Number	Title	Reference
1st	Viral Immunity—The FCO's role in building a coalition against COVID-19	HC 239
2nd	Merging success: Bringing together the FCO and DFID	HC 525
3rd	Flying Home: The FCO's consular response to the COVID-19 pandemic	HC 643
4th	A brave new Britain? The future of the UK's international policy	HC 380
5th	No prosperity without justice: the UK's relationship with Iran	HC 415
1st Special Report	A cautious embrace: defending democracy in an age of autocracies: Government Response to the Committee's Second Report of Session 2019	HC 116
2nd Special Report	"Media freedom is under attack": The FCO's defence of an endangered liberty: Government Response to the Committee's Twenty First Report of Session 2017–19	HC 269
3rd Special Report	Viral Immunity—The FCO's role in building a coalition against COVID-19: Government Response to the Committee's First Report	HC 449
4th Special Report	Global Britain and South America: Government Response to Committee's Twentieth Report of Session 2017–19	HC 669
5th Special Report	Responding to irregular migration: A diplomatic route: Government Response to the Committee's First Report of Session 2019	HC 670
6th Special Report	Merging success: Bringing together the FCO and DFID: Government Response to the Committee's Second Report	HC 809
7th Special Report	Flying Home: The FCO's consular response to the COVID-19 pandemic: Government Response to the Committee's Third Report	HC 859
8th Special Report	A brave new Britain? The future of the UK's international policy: Government Response to the Committee's Fourth Report	HC 1088