

HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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35th Report of Session 2019–21

# National Security and Investment Bill

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### *The Delegated Powers and Regulatory Reform Committee*

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
  - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
  - (b) section 7(2) or section 19 of the Localism Act 2011, or
  - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
  - (a) section 85 of the Northern Ireland Act 1998,
  - (b) section 17 of the Local Government Act 1999,
  - (c) section 9 of the Local Government Act 2000,
  - (d) section 98 of the Local Government Act 2003, or
  - (e) section 102 of the Local Transport Act 2008.

### *Membership*

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

[Baroness Andrews](#)

[Lord Blencathra](#) (Chairman)

[Baroness Browning](#)

[Lord Goddard of Stockport](#)

[Lord Haselhurst](#)

[Lord Hendy](#)

[Lord Janvrin](#)

[Baroness Meacher](#)

[Lord Rowlands](#)

[Lord Tope](#)

### *Registered Interests*

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

### *Publications*

The Committee's reports are published by Order of the House in hard copy and on the internet at [www.parliament.uk/hldprrcpublications](http://www.parliament.uk/hldprrcpublications).

### *General Information*

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

### *Contacts for the Delegated Powers and Regulatory Reform Committee*

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103 and the fax number is 020 7219 2571. The Committee's email address is [hldelegatedpowers@parliament.uk](mailto:hldelegatedpowers@parliament.uk).

### *Historical Note*

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

# Thirty Fifth Report

## NATIONAL SECURITY AND INVESTMENT BILL

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1. This Bill had its Second Reading on 4 February. It enables Government to intervene in transactions and acquisitions affecting control of entities and assets, where the change of control may pose a risk to national security. It contains a number of delegated powers and accordingly the Department for Business, Energy and Industrial Strategy has provided a delegated powers memorandum (“the memorandum”).<sup>1</sup>
2. We have considered the Bill and the memorandum and concluded that there is nothing in the Bill to which we would wish to draw the attention of the House. In such cases, it is our usual practice to publish a report that states this without further explanation. On this occasion, however, we took the view that we should offer a short commentary.
3. The Bill confers wide ranging powers on the Secretary of State to “call in” transactions involving a person gaining control of entities or assets, if the Secretary of State reasonably suspects that the change of control may lead to a risk to national security. Following a call-in, the Secretary of State has the power to make an order the purpose of which is to prevent, remedy or mitigate any risk to national security. The kinds of entities and assets which are qualifying entities and assets for the purposes of the Bill are extremely wide. The only pre-condition to the exercise of the call-in powers is the requirement to publish a statement under clause 3 setting out how the Secretary of State expects to exercise the powers.
4. It would have been open to the Government to argue that Parliamentary scrutiny of the statement is inappropriate because it merely indicates how the Secretary of State expects to exercise the call-in powers, without placing any limit on their exercise. However, that is not what the Government have done in providing for the statement to be subject to the negative resolution procedure. In doing so, the Government have accepted that it is appropriate for Parliament to be able to scrutinise the statement.
5. We have considered carefully whether the negative resolution procedure offers an appropriate level of scrutiny for the Secretary of State’s statement under clause 3. We have reached the view that it does given the exceptional circumstances—involving matters of national security, and the fact that the statement is not intended to limit the Government’s exercise of the call-in powers, but merely to provide guidance on how they are expected to be exercised.

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<sup>1</sup> Department of Business, Energy and Industrial Strategy, *Delegated Powers Memorandum*, 20 January 2021: <https://publications.parliament.uk/pa/bills/lbill/58-01/165/5801165-DPM.pdf>

## APPENDIX 1: MEMBERS' INTERESTS

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hregister>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 10 February 2021, no interests were declared.

### Attendance

The meeting was attended by Lord Blencathra, Baroness Browning, Lord Janvrin, Lord Haselhurst, Lord Hendy, Lord Goddard of Stockport, Baroness Meacher, Lord Rowlands and Lord Tope.