



House of Commons
Foreign Affairs Committee

**Striking the balance:
Protecting national
security through
foreign investment
legislation: Government
Response to the
Committee's Sixth
Report**

**Tenth Special Report of Session
2019–21**

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The Foreign Affairs Committee

The Foreign Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Foreign and Commonwealth Office and its associated public bodies.

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The current staff of the Committee are, Lauren Boyer (Clerk), Clare Genis (Committee Operations Manager), Jonathan Hibbert-Hingston (Committee Specialist), James Jennion (Committee Specialist), Danniella Kinder (Committee Support Apprentice), Alice Lynch (Committee Specialist), Antonia McAndrew-Noon (Media and Communications Officer), Chris Shaw (Clerk), Daniela Sindrestean (Committee Operations Officer) and Joe Williams (Media and Communications Manager)

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Tenth Special Report

On 19 January 2021, the Foreign Affairs Committee published its Sixth Report of Session 2019–21, *Striking the balance: Protecting national security through foreign investment legislation* (HC 296). This is an interim report, forming part of the Committee's inquiry into the FCDO's role in blocking foreign asset stripping in the UK. The Government's response was received in the form of a letter from the Minister for Business and Industry on 23 February 2021 and is appended below.

Appendix: Government Response

Letter from Nadhim Zahawi MP, Minister for Business and Industry, Department for Business, Energy and Industrial Strategy, to Tom Tugendhat MP, Chair, Foreign Affairs Committee

Dear Tom,

On 19 January, the Foreign Affairs Committee published *Striking the balance: Protecting national security through foreign investment legislation*. This is a timely report, coming as it does alongside the continued Parliamentary passage of the National Security and Investment Bill. I am grateful to you and your Committee for your work on these important issues. I would also like to pay tribute to you for your valuable contribution to the Report Stage debate on 20 January. I hope my remarks in the House, along with this letter, sufficiently explain the Government's position and why I was unable to accept the amendment you put forward on behalf the Committee. I do, however, look forward to further debate on these matters as the Bill continues its progress through the House of Lords.

As the report itself notes, the Bill is the product of carefully and patiently developed reforms. The Government has taken a deliberately consultative approach, including by publishing Green and White Papers. At every stage we have considered the valuable feedback given by businesses, investors, law firms and others. We have also engaged extensively with our Five Eyes allies and other security partners, many of whom have also been reforming their own powers. It is crucial we get the new investment screening regime right from the beginning – both to ensure that national security is properly protected and that the UK remains firmly open to foreign investment.

Recommendation 1. 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.

As I explained at Report Stage, the Bill does not seek to define 'national security'. That is deliberate as I believe it is right that the government of the day should be able to respond rapidly to technological, economic, geopolitical and any other changes which may affect our national security. The nature of the risks we face will continue to evolve over time and

I do not believe it would be right to set out in the Bill what may or may not constitute a national security risk. That will be determined on a case-by-case basis, taking into account all the relevant facts of the individual case.

Nonetheless, I fully agree that we must provide sufficient clarity to businesses and investors alike about how the new regime will operate. That is why the Government has repeatedly emphasised that the reforms are solely about national security. You will be aware that other countries take a different approach and have regimes that cover broader considerations, including specific 'public interest' or 'net benefit' tests. I am absolutely clear that this is not the approach the UK is taking—a message that has been well received and strongly supported by the businesses and investors that I have met to discuss the Bill. Their continued confidence is vital to keep investment flowing into Britain and to help us build back better from Coronavirus.

Recommendation 2. 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'.

As I have set out above, the Government does not believe that it would be appropriate to define 'national security'. However, the Bill is explicit in its references to 'national security' rather than any broader considerations. For example, the legal tests for the Secretary of State's call-in power, the extension of a national security assessment, and making a final order all refer to 'national security' and these tests must be met before the respective powers can be used.

The right to apply for judicial review of the Secretary of State's decisions is also an important check and balance on the powers in the Bill. This means that parties will be able to challenge through the courts if they believe that the Secretary of State has taken irrelevant considerations into account when applying the term 'national security' or otherwise failed to comply with public law duties. This will ensure that the regime operates in practice as intended – solely concerned with national security, rather than wider public or economic interest.

In addition, I believe that the Statement which the Bill requires the Secretary of State to publish before he is able to exercise the call-in power, and to have regard to when using the power, will be an important source of guidance for businesses and investors. It will explain how the Secretary of State expects to use the call-in power and is intended to detail some of the factors he is likely to consider when making such decisions—namely: the target risk (what is being acquired), the 'trigger event' risk (how control is being acquired), and the acquirer risk (who is doing the acquiring). The contents of the Statement will clearly underline that this regime is solely about national security. A draft of the Statement was published alongside the Bill's introduction and the Government will formally consult on a further version, which will take into account the comments of your Committee and the feedback from other Parliamentarians.

I want to reiterate my gratitude to you and your Committee for your detailed consideration of these matters. It is clear we share the same ambition for the new regime to achieve the right balance between protecting our security and prosperity interests. The UK has a proud and hardwon reputation as one of the most open economies in the world and I

am determined that these reforms, necessary as they are, will do nothing to change that. Indeed, I believe that protecting the security of our country against the small minority of investments which pose risks will strengthen rather than weaken the UK's attractiveness as an investment destination.

It is with much regret, then, that I will be handing over my Ministerial duties on the Bill to my ministerial colleague in the Department for Business, Energy and Industrial Strategy, Paul Scully MP. As you will know, I was appointed Minister for COVID Vaccine Deployment in November 2020 in addition to some of my existing duties. As the pace of the vaccine rollout increases over the coming weeks and months, I will need to devote more of my Ministerial time to this portfolio. I know that Minister Scully will do a wonderful job with its remaining stages, and I will be keeping a close eye on its progress.

I want to thank you and the members of the Foreign Affairs Committee again for your contributions during the Bill's passage.

Yours sincerely,

NADHIM ZAHAWI MP Minister for Business and Industry
22 February 2021