



Department for
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& Industrial Strategy

Lord Callanan
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Dear Baroness Taylor,

I would like to thank you for your letter on behalf of the Constitution Committee in consideration of the National Security and Investment Bill (the Bill).

As you have raised, clause 49 of the Bill provides that claims for judicial review of certain decisions made under the Bill must be brought within 28 days unless the court considers that exceptional circumstances apply, rather than the three-month period for bringing claims for judicial review that is usually the case (subject also to a requirement in England and Wales that claims be brought promptly).

I note your request for further explanation of the necessity of this shorter time limit, but I should first point out that the test that applies under the European Convention on Human Rights is that such a time limit must not impair the very essence of the right of access to the courts, that it must serve a legitimate aim and that there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane v United Kingdom*, no. 8225/78, 28 May 1985, paragraph 57). In laying down such a regulation, the State is also afforded a certain margin of appreciation.

The Government considers that the test is met in this case.

The Bill will establish a new investment screening regime concerned with the protection of national security. Acquisitions that will be subject to screening under the Bill will include mergers, purchases of shares and land, and other commercial transactions and arrangements. Some of these acquisitions may be of considerable size and importance. For example, they may impact on numerous parties.

It is important that parties have a real and effective opportunity to challenge decisions made under the new regime through the courts. In the Government's view, 28 days should allow sufficient time for parties to obtain legal advice and to mount a challenge. At the same time there is a need to avoid prolonged uncertainty over the status of screened acquisitions or the general functioning of the screening regime, which may have a chilling effect on investment in the UK. The shorter time limit has only been applied to decisions under the Bill where there is an especial need for timely certainty on commercial grounds and not, for example, to enforcement decisions under Part 3 of the Bill.

To illustrate the need for a shortened time limit, consider for example a decision by the Secretary of State to clear an acquisition to proceed. Leaving such a decision open to the possibility of legal challenge for up to three months could make it extremely difficult for the parties involved in or affected by the acquisition to proceed in a timely fashion and to securely plan for the future, potentially resulting in significant and widespread commercial uncertainty. It is worth bearing in mind that it would be open to any third party to seek a review of such a decision, and they would be entitled to do so if they have a sufficient interest in the acquisition.

The 28-day time limit is in line with the merger control regime under Part 3 of the Enterprise Act 2002, which currently also includes screening for national security purposes. Applications to the Competition Appeal Tribunal to review a merger decision must be made within four weeks – a time period chosen after a public consultation which initially proposed a three-month time limit. Indeed, some respondents to that consultation called for an even shorter time limit to be adopted to support greater business certainty.

There is also a public interest in timely certainty and finality in relation to final orders made under the Bill as these will contain remedies imposed for the purpose of safeguarding national security. Leaving such orders open to legal challenge for up to three months cannot be in the interests of national security.

Of course, notwithstanding these points, there may be some situations where for very legitimate reasons 28 days is simply not enough. Clause 49 of the Bill provides that the court may entertain proceedings that are sought after the 28-day limit if it considers that exceptional circumstances apply. This may be the case, for example, if new and materially important information came to light after the 28 days had expired.

The shortened time limit for the majority of cases, with the flexibility for the courts to permit late claims in exceptional circumstances, in the Government's view strikes the right balance in providing for timely certainty and finality about the lawfulness of relevant decisions made under the Bill while also ensuring parties have effective access to justice.

I hope that you find this information helpful.

A handwritten signature in blue ink, appearing to read "Martin Callinan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lord Callanan