Dear Julian,

Further to the Joint Defence/Business, Energy and Industrial Strategy Committee evidence session concerning the National Security and Investment White Paper on 30 October, we would like to provide answers to the follow-up questions arising from the session.

Firstly, the committee asked about providing a broad definition of national security to give businesses greater clarity on whether to notify the Government of a potential trigger event. In the White Paper we explain that the new regime is only related to national security and that national security is not the same as the public interest or the national interest. Alongside the White Paper we published a draft statement of policy intent that gave more information to business about where trigger events might give rise to national security concerns and how the senior minister expects to use the call-in power. Whilst the draft statement of policy intent did not define national security, it did explain that national security goes beyond ‘defence of the realm’ and that it relates to all genuine and serious threats to a fundamental interest in society. The draft statement of policy intent also directed businesses to the periodically published “National Security Strategy and Strategic Defence and Security Review” which sets out its well-developed and co-ordinated strategies to protect the UK. The committee will appreciate, however, that it is not the Government’s policy to define national security any further than what is outlined in those strategies.

You asked for some examples of measures or mitigations that might be put in place under the current regime. Since the Enterprise Act 2002 came into force, there have been 8 public interest interventions on the grounds of national security. These were in the cases of General Dynamics and Alvis (2004); Finmeccanica/Agusta Westland (2004); Finmeccanica’s acquisition of parts of the military communication and avionics businesses of BAE Systems (2005); Lockheed Martin/Insys Group (2005); General Electric/Smiths Aerospace (2007); Atlas Elektronik UK’s acquisition of QinetiQ’s Under Water Systems (UWS) division (2009); Hytera/Sepura (2017); and Gardner Aerospace/Northern Aerospace (2018). In 7 of these cases, parties have offered undertakings that have included:
• the maintenance of strategic capabilities, including ensuring continuity of development and/or supply of all goods and services provided by UK companies for Military Programmes;
• the protection of classified information including that all matters relating to Military Programmes and security within the UK companies be maintained in line with UK National Security Regulations;
• the protection of sensitive information and technology;
• the maintenance of UK capabilities in certain services; and
• confidentiality and limitations of use of intellectual property.

Departments, including the MOD, have secured similar commitments, in the form of deeds, from parties in cases judged not to need an intervention under the Enterprise Act.

You asked for further information on the arrangement that primes must inform the MoD immediately regarding any possible change of ownership within their supply chain. All Defence contracts contain a mandatory 'Change of Control of Contractor' clause. This states that the MOD should be informed as soon as practicable, in writing, of any intended, planned or actual change in control of the contractor. For all new contracts from March 2018 this requirement was extended to include notification of any change of control of the contractor's sub-contractors. Since March 2018, the MOD has been notified of 14 changes of control under this clause. The MOD would notify BEIS where a change of control could potentially require intervention on national security grounds.

You asked about the process for deciding which Secretary of State will be designated the Senior Minister. The White Paper was clear that (as in our current regime) there will be a single decision-maker that provides consistency across sectors, acting in a quasi-judicial fashion. We are considering the details of implementation in light of the consultation responses, and work is ongoing across Government to develop the operating model for the regime which will include deciding who the Senior Minister will be. We will make clear who the Senior Minister will be when we legislate in due course. The National Security Council along with the Economy and Industrial Strategy Committee have provided policy clearance at all stages of the policy development process and we will continue to seek their clearance.

As is the case now, whoever the single decision maker is would take representations from other ministers, departments and agencies, as relevant. The Senior Minister would have the responsibility, as part of their quasi-judicial decision, to weigh up all the relevant evidence provided to them, including evidence provided by other ministers, departments and agencies.

In terms of safeguarding against conflicts of interest, as is the case under the current system, the decision-maker will undertake their role in a quasi-judicial capacity and he or she can only consider the relevant information when making the decision. The Senior Minister will need to reach a decision on the facts of a case, based on the evidence, in line with the legal tests set out in the primary legislation. To avoid potential conflicts of interest those proposed legal tests are explicit in their references to national security. Any Government decision would be subject to judicial oversight and scrutiny.

You asked for further information on how we will consult with allies on foreign investment. Where it is in the UK national security interest to do so, the UK does work with overseas allies. We are currently exploring this area with regards to the new regime.
You asked about the timing of the legislation. The Government has committed to taking a considered approach to these complex issues which is why we have published Green Paper and White Paper consultations. However, as you have said, it is important we take the necessary steps to protect national security. We will therefore legislate for the new regime as soon as possible when Parliamentary time allows and commence as soon as practical after that. In the meantime, the Government will continue to use its existing powers to protect against national security risks. This includes continuing to use the powers available under the Enterprise Act 2002, which was recently amended. The amendments enable the Government to intervene in more mergers that raise national security concerns in three areas of the economy.

You asked what the outcome of the Minister for Defence Procurement’s recent meeting with Boeing was. The Minister for Defence Procurement (Min(DP)) met Marc Allen, President of Boeing International, and members of his team in the US on 6 November 2018. They discussed the progress made as part of the Long Term Prosperity Initiative between Boeing and the UK Government. Min(DP) stressed the importance that the MOD places on creating opportunities for UK small and medium-sized enterprises and on Boeing continuing to invest in developing capabilities and skills in the UK. Following the meeting, further work is underway between Boeing and government officials to identify additional activities.

You asked about what measures will need to be put in place to ensure that national security is not compromised by appeals under the new regime. In any issue related to national security, there must be a balance between transparency and ensuring that sensitive material is not improperly disclosed. As such, the proposed legislation will permit the use of Closed Material Proceedings (CMPs) in the appeal process to protect material which, if disclosed, would undermine our national security.

The Government will, as is always the case, only seek to prevent public disclosure where not doing so would undermine national security. It would be for independent courts to assess the Senior Minister’s request and what documents should not be publicly disclosed.

We have discussed this with the Ministry of Justice, but to date no consultation has taken place with the judiciary and courts. Once the Ministry of Justice have receipt of the Justice Impact Test they will engage with the judiciary.

You asked about national security clearances for those working in this policy area. BEIS and the MOD employ a risk management approach to all aspects of protective security, including personnel security. When considering what security vetting is needed, we will weigh up potential vulnerabilities, potential threats, and the damage that could be done to identify the appropriate and proportionate security measures, including any necessary national security vetting.

National security vetting is available to all government departments to allow officials to see classified information as needed. We will ensure we have the necessary resources in place across government, with the necessary security vetting, to operate the proposed regime.

You asked about how the Government will address the potential conflict between the security assessment and employment and prosperity. The Government is determined that the UK will remain an open international trading partner and a global champion of free
trade and investment. We are committed to providing a clear and targeted regime to give certainty to the market on how it will be applied.

The UK welcomes open trade and foreign investment. Intervention is targeted only where national security concerns arise and is proportionate to risk, and this will remain the case under the new proposals. The vast majority of business deals will be unaffected. Global trade has had, and continues to have, an overwhelmingly positive impact on prosperity in the UK and around the world.

We are still considering consultation responses with regards to the statement of policy interest and the matters the impact assessment will address.

You asked about the new regime’s capacity to adapt to new technologies. In the UK, small and innovative businesses are producing world-leading technology, that has the power to transform our economy and our way of life. It is one of the reasons the UK will be able to remain competitive in a global market post Brexit. The Government’s intention is that the power to call-in trigger events could be exercised across the economy and would not be limited to specific sectors.

The draft Statement of Policy Intent is, however, intended to show how the power is expected to be used and the Government has proposed that it will update it as the business and technology landscape evolves (through the affirmative procedure) at least every five years. That would provide a frequent opportunity to add or remove the sectors/parts of sectors within which the acquisition of ownership or significant influence or control over an asset or an entity is considered to be more likely to have national security implications. The Government will continue to work closely with businesses and use the Government’s sector and technical experts to horizon scan for future risks to help inform any changes.

Finally, you asked about a possible negative impact on research and development investment. The UK has a global reputation as a great place to do business and invest. Britain’s prosperity is founded on being an open, liberal free trading economy where businesses can attract investment from around the world. We intend for these reforms to do nothing to change that. The new regime will be transparent and predictable and is designed to deter only the small minority of hostile actors therefore we do not expect this regime to have a significant effect. Strong growth and continued investment relies on stability and these proposals will contribute to maintaining a stable UK economy on which people can depend.

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