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Dear Robin

## NATIONAL SECURITY AND INVESTMENT BILL

Thank you for your contributions to the debate of 2 March in Grand Committee of the National Security and Investment Bill.

### Orders made by the Secretary of State

I said that I would write to you in response to your question about whether pre-emptive action under the new regime will be the subject of a Statutory Instrument, or will be published by the Secretary of State.

Clause 25 of the Bill allows the Secretary of State to make an interim order for the purpose of preventing or reversing pre-emptive action by parties if a legal test is met. In the context of the merger control regime, paragraph 2 of Schedule 7 to the Enterprise Act 2002 currently permits the Secretary of State to make an order for the same purpose, i.e. preventing or reversing pre-emptive action by parties. It was this power that was used to make the pre-emptive action orders you referred to in Grand Committee in the cases of Mettis Aerospace and Gardner Aerospace Holdings.

Under Clause 1 of the Bill the Secretary of State may, if a legal test is met, call in a trigger event whilst it is in progress or contemplation –that is before the event has taken place. Following call-in, the Bill gives the Secretary of State powers to make orders in relation to such trigger events before they take place. Whilst such orders may be perceived as ‘pre-empting’ the trigger event in question, this is not the sense in which the Bill uses the term ‘pre-emptive action’.

Your question asked how “publicity of pre-emptive actions is to be provided.” If I may, I understand that you were asking how interim orders and final orders will be publicised, and whether they will be made by way of statutory instrument.

All remedies under the Bill, whether imposed to prevent or reverse pre-emptive action or not, will need to be imposed through orders made by the Secretary of State.

The Secretary of State will need to publish notice of the fact that a final order has been made, varied, or revoked "as soon as practicable," and, "in such a manner as the Secretary of State considers appropriate," under Clause 29.

The Bill specifies that the publication must:

- a) state the date on which the order, variation, or revocation comes into force, or how that date is to be determined;
- b) state each person, and each description of person, who is required to comply with the order;
- c) describe the trigger event and entity or asset concerned;
- d) include a summary of the order, variation, or revocation, its effect and the reasons for it;
- e) include any other information that the Secretary of State considers it appropriate to include.

The notice may exclude anything that would be likely to prejudice the commercial interests of any person or would be contrary to the interests of national security.

Orders will not be made by way of statutory instrument. Parliament is, of course, able to question the Secretary of State and other Ministers about final orders that have been imposed.

The Bill does not require interim orders to be publicised.

### Notifiable Acquisition Regulations

In addition, I would like to offer clarification on the procedure for and consultation on the notifiable acquisition regulations that the Secretary of State intends to make under clause 6 later this year. During the Bill's Grand Committee session yesterday, I said the Government cares deeply that we get these definitions accurately put into the Bill before it receives Royal Assent.

What I intended to say was that the 17 sectoral definitions will be laid as regulations (a form of secondary legislation) These regulations will be laid under the draft affirmative procedure following Royal Assent to the Bill. The regulations will specify the descriptions of activities of qualifying entities within 17 sectors that would be captured under the Bill's mandatory notification regime. I apologise for this error.

On the 2 March, the Government published its response to the consultation on secondary legislation to define the sectors subject to mandatory notification. Further targeted engagement to refine these definitions will be made in advance of laying draft regulations.

Regulations made under clause 6 are of significance as they define the scope of the mandatory notification regime. The Secretary of State will undertake consultation where appropriate.

Given that both minor and major changes may be made to the mandatory notification regime through notifiable acquisition regulations, it is important that the Bill allows for consultation that is appropriate to the circumstances. For example, the initial notifiable acquisition regulations will cover 17 sectors and the Government has consulted extensively. Given the importance and potential complexity of such definitions, our expectation is that the inclusion of additional sectors in the future would be highly likely to follow an equivalent process.

However, it is also conceivable that minor, technical updates may need to be made to a single, existing sector definition for which a consultation process could be unnecessary. Moreover, there may be compelling national security reasons for the Government to move quickly in order to address known risks to the UK. As such, it is vital that the Secretary of State has sufficient flexibility to act expeditiously where necessary.

Nonetheless, we recognise that notifiable acquisition regulations which seek to fundamentally re-draw the structure of the regime, such as by bringing asset acquisitions or new entity acquisition thresholds in scope of mandatory notification, would constitute major changes. As such, it is difficult to foresee many instances in which consultation of relevant stakeholders will not be a practical necessity to ensure the regime continues to function effectively and efficiently. Accordingly, there is no need to create a requirement in statute to cater for this.

Therefore, I hope this provides further clarify of the procedure for the notifiable acquisition regulations and further consultation.

I hope you have found this further information useful, and I look forward to further debates in the remaining stages of this Bill's passage through the House.

I am copying this letter to all Noble Lords present during the Committee session on 2 March, and I will be placing a copy of this letter in the Libraries of the House.

A handwritten signature in blue ink, appearing to read 'Baroness Bloomfield', is centered on the page.

**Baroness Bloomfield of Hinton Waldrist**