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BY EMAIL ONLY

Chair of the Public Bill Committee
National Security Bill 2022

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Re: Counter Terrorism Policing written evidence in support of the Public Bill Committee for the National Security Bill 2022

Dear Chair,

Thank you for providing me with the opportunity to submit written evidence on behalf of Counter Terrorism Policing (CT Policing) to assist you in legislative scrutiny of the National Security Bill.

There can be little doubt following the murder of Alexander Litvinenko 2006 and the events in Salisbury in 2018, that the threat posed in the United Kingdom from State Threats (ST) is present and real. The investigations which followed those events aptly demonstrate, as far as we are able and wish to place in the public domain at this time, the complexity of national security investigations, perpetrated by suspects who have all the resources and sophistication of a government state behind them. State Threats however take many forms, at the macro level some are threats to our way of life, others are much more directly a threat to the lives of specific individuals or the public at large. In many ways these threats are potentially as impactful as any terrorist attack and every bit as challenging, if not more so, to investigate.

I can only advise on the operational implications of the proposed legislation and the limitations of current statutes, within the context of counter terrorism policing. It is of course for Parliament to resolve the legislation our national security requires. I warmly welcome the introduction of the National Security Bill to overhaul the dated legislation that my investigators currently have available to them. The National Security Bill draws both on the critical lessons of the challenges that we have encountered working in the 21st century with the 20th century legislation, and the utility of modern counter terrorism legislation, which allows us to check high harm threats early. It is therefore a balanced bill refreshing aspects of offences in the current legislation whilst introducing much needed new offences, for example through the introduction of “acts preparatory”, providing policing with much needed utility to intervene earlier and before harms can be realised whilst preserving the prospect of my officers being able to secure a successful conviction at court.

1. Brief Overview of Counter Terrorism Policing

As well as being an Assistant Commissioner for Specialist Operations (ACSO) in the Metropolitan Police Service I am the national police lead for counter terrorism. As such I represent CT Policing in its engagement with Government on operational and policy issues associated with tackling terrorism, but also in relation to counter states threats, which is one of the missions of CT Policing – historically this capability sat within Counter Terrorism Command (SO15) in the Met. My comments are therefore specific to SO15’s role and reflect a view on behalf of the National Police Chiefs’ Council.



CT Policing is a collaboration of UK police forces working in partnership with the UK intelligence community to keep people safe from terrorism and protect our national security, both in the UK and overseas, in doing so it has a responsibility for preventing, deterring and investigating terrorist activity. Our role is not limited to countering all forms of terrorism; CT Policing delivers a unique policing capability as part of a coordinated response to counter state threats in the UK and against UK interests overseas. We do this through discovering, deterring and disrupting the criminal activities of hostile states, acting as a powerful deterrent to those who seek to undermine our security and values. In assisting the UK intelligence community with their statutory functions and supporting the UK government overseas we also make an important contribution to maintaining the UK's strategic advantage.

CT Policing operates by virtue of a collaboration agreement made under Section 22A of the Police Act 1996. Our responsibilities are defined by this agreement and include other national security missions beyond terrorism such as Counter Espionage, Counter Proliferation, Counter Insurgency, Official Secrets Acts and War Crimes.

2. Extant police powers and operational limitations to respond to counter state threat

Policing has a distinct role with regard to public safety and operates with operational independence. In the case of national security CTP provides an effective safeguard through the use of our executive powers whilst maintaining a close working relationship with the UK intelligence community (UKIC). Put plainly, the same legislative tools that we have available to us in order to tackle terrorism are simply not available to us to tackle state threat based activity.

Hostile activity by those acting on behalf of foreign states or entities has been a growing security concern in recent years for CT Policing. The current context is one of increasing threat from hostile state actors, which must be investigated and mitigated. One only has to draw on the scale of the investigative response to the attack in Salisbury and Amesbury in 2018 led by CT Policing, and the local consequence management response led by Wiltshire and Counter Terrorism Policing South East, together with SO15.

When tackling state threats activity, under the current legislative regime, CT Policing must conduct the arrest and initial detention phase utilising the powers available under the Police and Criminal Evidence Act 1984 (PACE) which are the same powers the police have available for all other crime types. Given the evolving nature of the threat and the increasing complexity of investigations, particularly the need to gain access to and make sense of data on personal devices, PACE custody time limits (a maximum of 96 hours detention) prove challenging and places the success of a successful prosecution at risk.

In contrast, under the Terrorism Act 2000, police have enhanced powers to facilitate early disruption and investigation of acts of terrorism and terrorist-related activity. These have proved effective and we consider the risks posed by state threats are similar and justify enhanced powers and tools.

We welcome the measures in Part I and II and the associated schedules of the National Security Bill which create an extensive framework for countering state threats modelled on the counter-terrorism framework established under the Terrorism Act 2000.

These measures will enhance police powers to give us the necessary tools to investigate and respond to state threats activities, preventing damage to UK national security and the safety of those who reside here.



3. Policing Powers in the Bill

(i) Arrest, Investigation and Detention Powers

The police powers in relation to arrest are based on and informed by corresponding legislative provisions in s41 Terrorism Act 2000, i.e. arrest without warrant. They provide that a constable may arrest without a warrant anyone who they reasonably suspect is involved in foreign power threat activity, i.e. commission, preparation or instigation of certain acts of threats which are specified offence under the Act, as well as acts or threats where the foreign power condition is met and the acts (a) involve serious violence against another person, (b) endanger the life of another person, or (c) create a serious risk to the health or safety of the public or a section of the public.

The Bill will allow us to detain without charge an individual suspected of being involved in foreign power threat activity for up to 48 hours initially, with an ability to apply to the courts for a warrant to detain for up to 7 days and to apply for a further extension up to a maximum of 14 days. The judge must be satisfied that there are reasonable grounds to believe further detention is necessary on certain specified grounds and that the investigation in connection with which the person is detained is being conducted diligently and expeditiously. This provides independent and robust judicial oversight.

This increase in detention period will allow us the necessary time to carry out investigations which, in the counter state arena are often complex, difficult and necessarily protracted due to the sophistication of the threat posed. Working with partner agencies and overseas intelligence on highly sensitive evidence can take time; longer than the maximum detention period allowed by PACE. The necessity to apply to the courts for a warrant of further detention and for the detained person to make representations and be legally represented, provides important safeguards to ensure that it is necessary to obtain evidence by questioning the suspect, to preserve evidence and to permit the examination or analysis of evidence. If those reasons no longer apply, the person must be released immediately.

A typical example of how this may be utilised can be evidenced by examination of the events surrounding the Salisbury incident. Had investigators been able to detect and arrest the suspects prior to their fleeing the UK, investigators would have been wholly reliant on our more limited powers of pre-charge detention under PACE. Given the huge complexity of that investigation together with the challenges of managing multiple scenes contaminated with nerve agent, we assess that there would have been little prospect of us completing the necessary lines of enquiry within the time that would have been available.

(ii) Retention of biometric information following arrest

Our collection and use of biometric information has proved vital in all spheres of crime fighting and in particular counter terrorism where it is an indispensable tool in linking suspects to possible offences and in confirming the true identity of those who may be trying to obfuscate, particularly at our borders.



Provisions created in the Protection of Freedoms Act 2012 mean that biometrics obtained from an individual may only be retained indefinitely if that person is convicted of a recordable offence, whether in the UK or overseas. Otherwise they must be destroyed.

Biometrics obtained following an arrest for a terrorism related offence pursuant to s41 Terrorism Act 2000 attracts a three year automatic retention period, regardless of whether the investigation results in no further action or acquittal. This can be extended by a Chief Officer making a National Security Determination that it is necessary and proportionate to retain an individual's biometrics for the protection of national security. Currently non-terrorism related offences do not attract the three year automatic retention period.

Biometrics lawfully held are of clear value in counter state threat work. The nature of the threat, which includes individuals using false identities to seek to enter the UK or violate our borders, relies on biometric data to establish true identity. Evidence other than forensic recovery may be scant.

Providing for a three year retention period for biometrics obtained following arrest for counter state threat offences will match the current position for terrorism related offences, allowing us to use necessary and proportionate means to respond to this threat.

(iii) Search and Seizure Powers

It is vital that my officers are able to gain entry to premises in order to search for and secure the crucial evidence that is required in order to progress and prosecute offences under the bill. Critical to this aspect is being able to use this provision at the earliest point possible to prevent harms from occurring.

Currently, Section 9 of the Official Secrets Act 1911 provides the police with the power to apply for a warrant to search premises where there are reasonable grounds to suspect an offence under that Act has been or is about to be committed.

The existing powers of search and seizure under the Official Secrets Act 1911 are to be repealed and replaced in the National Security Bill. This new provision can apply to new and reformed offences in the Bill, including sabotage, foreign interference and obtaining or disclosing protected information. This robust investigative tool will enable us to continue to act on a reasonable suspicion that a relevant act has been, or is about to be, committed. The power is a highly valuable investigative tool in countering state threats which is not replicated in other general search powers.

This maintenance in threshold, reasonable suspicion, in this revised search provision is vital to enable intervention at an early stage given the harms the offences are proscribing. A failure to maintain this threshold will see us having to fall back on other provisions, most probably search and seizure powers pursuant to PACE, where an officer must have reasonable grounds for believing that the search or seizure is evidence of an indictable



offence which has been committed or has been obtained in consequence of the commission of an offence.

It is my assessment that it is critical that my officers maintain the power to search and secure evidence prior to a ST offence occurring. The reframing of powers in the National Security Bill will therefore enable us to search for and seize material where there are reasonable grounds to suspect that a relevant act has been or is about to be committed. This will allow us to deploy disruptive options where there is insufficient evidence to believe that an offence has been or will be committed but where the totality of the intelligence and open and closed evidence raises the suspicion has been or will be committed.

(iv) Prevention and Investigation Measures

On rare occasions it will not be possible to bring a prosecution or other disruptive actions against an individual involved in state threats activity. State Threats Prevention and Investigation Measures (STPIMs) will provide a suite of restrictive measures which can be used, where necessary and proportionate. They are designed to prevent, restrict, and disrupt an individual's involvement in state threats activity in cases where prosecution and other disruptive action is not a realistic prospect.

STPIMs largely replicate the current regime of Terrorism Prevention and Investigations Measures (TPIMs) and are imposed by the Home Secretary. Activity which would fall in scope would be that relating to an offence of espionage, sabotage, obtaining trade secrets, foreign interference, entering a prohibited place for a purpose prejudicial to the UK, assisting a foreign intelligence service or serious violence where the foreign power condition is met. Such measures would, as with TPIMs, I anticipate, be used sparingly and as a measure of last resort to mitigate the immediate threat an individual poses while they continue to be investigated. Imposition and variation of a STPIM will require the Home Secretary to obtain permission from the court.

The specific role of my officers in relation to STPIMs is in regard to their enforcement. The Bill will provide us with the necessary powers to support enforcement activity as required and draws on our experience in this space when working with TPIMs.

The measures include restricting an individual, e.g. where the individual resides, association measure; their ability to leave the UK or areas within the UK and – crucially - enforcement measures, for example the ability for police to retain a photo of the individual and the requirement for an individual to report to a police station, which will give my officers the means they need to ensure that the STPIM's are being complied with.

I acknowledge this is a powerful tool at the disposal of the UK national security apparatus. It is however, a last resort and for use only when a prosecution would not be possible i.e. where there is not sufficient evidence to meet the criminal standard of proof of an offence; or where disclosure of relevant evidence as required in a criminal trial would be damaging to national security.

In such circumstances, the ability to disrupt the activity may prevent significant damage to the UK from being carried out. The Home Secretary must first consult with the police on whether prosecution is possible and the Chief Officer of the relevant force is under a



statutory duty to consult the relevant prosecuting authority to ensure that there is not a realistic prospect of prosecution. The Chief Officer has a continuing duty to review this. STPIMs will be subject to detailed scrutiny by a court.

As with TPIMs, the imposition of a STPIM immediately triggers an automatic appeal to the court. I note this as an additional useful safeguard.

(v) Prohibited places regime

The Bill will modernise the way in which the law protects the UK's most sensitive sites, providing greater scope to respond to new tactics and technology, and deter those who would violate the security of the places vital to UK national security. The current prohibited places provisions fall under the espionage offence within s1 Official Secrets Act 1911. The methods which hostile actors can use to enter and inspect sensitive sites have evolved significantly since then. Existing legislation does not include bespoke powers for the police to protect prohibited places which may leave them vulnerable.

The creation of new police powers to counter harmful activity around sites that are critical to the safety of interests of the United Kingdom. The Bill confers on a police officer powers to protect a prohibited place if they reasonably believe the use of these powers to protect the safety or interests of the UK.

The Bill also provides new offences and police powers to deter, capture and prosecute harmful activity in and around prohibited places.

(vi) Power to designate a cordoned area to secure defence aircraft

This provision provides very specific powers to assist us supporting military colleagues to protect technical information and equipment which may be exposed following a crash of one of our military aircraft.

It provides power to a constable to put in place a cordon around an area of a crashed military aircraft to protect sensitive technologies from interference or surveillance. In the event of an aircraft crashing, sensitive material may potentially be dispersed over a wide radius, a cordon around these sites therefore will ensure that this material can be sufficiently protected until the point where removal has been completed. A cordon can last no longer than 28 days.

The police have similar powers to protect a site cordoned under these provisions as they do a prohibited place.

The power includes a reasonable excuse defence to safeguard those who may have a legitimate reason to enter into a cordon, for example land owners.

4. Other provisions

Schedule 3 of the Counter-Terrorism and Border Security Act 2019 provides the power for a constable (plus designated immigration and customs officers) to examine a person at a port, including the examination of material that may be being carried by that person, to



establish if they have been involved in hostile activity. These powers are similar to those that we also employ under Schedule 7 of the Terrorism Act 2000 for the purposes of detecting terrorism.

The bill proposes an important amendment to Schedule 3 specifically, the definition of “protected material” in a way which will bring Schedule 3 into line with Schedule 7. Under the current Schedule 3 powers, the definition of “confidential business material” falls within the definition of “protected material” and includes material that has been acquired in the course of a trade and is held in confidence.

As such, when my officers discover material that appears to have been acquired in the course of a trade they are required to treat it as “protected material” meaning that authorisation is required from the Investigatory Powers Commissioner to retain and use copies of that material. Officers frequently encounter such material in the course of Schedule 7 examination and this can result in significant delays of up to six weeks in order to apply for authorisation and receive a direction from IPCO as to whether the copy should be destroyed or can be retained and used. Consequently there is an impact on and to the pace of national security investigations.

The amendment replicates the ways of working in Schedule 7 examinations by replacing the requirement for an authorisation by IPCO with a requirement for a superintendent authorisation. This has proven to be an effective safeguard under Schedule 7 and one that avoids delay to our national security investigations. Applying the superintendent authorisation process to Schedule 3 codes of practice will therefore bring significant efficiencies while still providing a highly effective safeguard.

Financial Investigation Powers - Whilst not currently featured within the bill, we have requested financial investigation powers to support our investigations in this space.

To this end we have articulated a clear requirement to emulate various investigatory powers within TACT which centre on financial investigations as well as examination of material which can be used for investigatory purposes. We are assured that these will be introduced by way of a forthcoming amendment. If so, this will further ensure that we have the tools required to successfully investigate and disrupt ST activity.

This is particularly pertinent with the introduction of new offences in the National Security Bill such as espionage, where we have been clear that we would greatly benefit from the inclusion of measures that we judge to be required in order to effectively investigate these reformed offences, as well as the proposed new criminal offence of being funded by a Foreign Intelligence Service, also to be introduced later by way of amendment.

Unlike terrorism investigations, we do not have any specific powers of financial investigation into national security offences and therefore these investigations must be conducted under current provisions, in particular the Police and Criminal Evidence Act 1984 (PACE). As I have noted, the complex and evolving nature of ST and the significant technical and financial resources providing the capability for sustained hostile activity, it can be difficult for my officers to conduct effective investigations with the current powers and tools available. I am therefore supportive of the inclusion of Account Monitoring, Customer Information and Disclosure Orders.

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Account Monitoring Orders - will enable investigators to obtain information relating to an account or accounts held with a specified financial institution in real-time (a matter of hours) in order to identify and act upon disruptive opportunities related to ST activity. An account monitoring order will have the effect of requiring a financial institution to provide specified information in relation to an account providing investigators with real-time information that can be used to react quickly and intervene if necessary, potentially stopping the ST activity from taking place.

This is similar to the provisions that are afforded us under Section 38A and Schedule 6A of TACT which can be used in pursuit of a terrorism investigation.

Customer Information Orders - will enable investigators to identify accounts in relation to ST investigations e.g. where a foreign agent may be paying others to conduct state threats activity in the UK and police need to identify the agent's account, or where an individual is using a covert account under a false identity to receive funds to use for the purposes of state threats.

Schedule 6 of TACT provides for an order requiring a financial institution to provide customer information. This is similar to provisions within the Proceeds of Crime Act both however, neither are available for use in a ST based investigation.

Disclosure Orders - in the course of complex investigations investigators may be pursuing multiple lines of enquiry involving multiple organisations, all of which may require multiple requests for information over the course of that investigation. In such cases investigators would benefit from a streamlined process whereby one order is available to cover separate requests for information from multiple organisations without the need to return to court, in cases whereby organisations are unwilling to share information to police without a court order.

These could be applied for in ST investigations in order to access information (other than legally privileged or excluded material), by compelling individuals or organisations to provide this to police.

Currently in relation to terrorism investigations a disclosure order can be made, under Schedule 5A TACT, by a judge in relation to a terrorist financing investigation, which is an investigation into offences under s15-18 (terrorist finance offences) or into the identification of terrorist property or its movement or use.

I trust that this assists your enquiry. If you require any further detail I would be happy to provide further evidence upon request and / or facilitate a private briefing at New Scotland Yard.

Yours sincerely

A handwritten signature in black ink, appearing to read "Matt Jukes".

Matt Jukes QPM
National Policing Lead for Counter Terrorism