

# NATIONAL SECURITY BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the National Security Bill as brought from the House of Commons on 17 November 2022 (HL Bill 68).

- These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The threat of hostile activity against the UK's interests from foreign states is growing. States are becoming increasingly assertive in how they advance their own objectives and undermine the safety and interests of the UK, operating covertly in an attempt to interfere with the UK's national security, economy, and democracy.
- 2 Threats to the UK from foreign states are persistent and take many forms, including espionage, foreign interference in the UK's political system, sabotage, disinformation, cyber operations, and even assassinations. Collectively these are referred to by the Government as state threats.
- 3 The Government is determined to deter, detect, and disrupt those state actors who seek to harm the UK by covertly targeting the UK's national interests, sensitive information, trade secrets and democratic way of life.
- 4 The threat has evolved since the last time the UK substantively legislated on this issue. The Official Secrets Act 1911 and subsequent acts in 1920 and 1939 were primarily focused on the threat posed by early 20th Century Germany. Since then, the global landscape has changed significantly, with collaboration between states offering benefits in a wide range of areas. The traditional way of viewing states as hostile and non-hostile often overlooks the complexity of modern international relations in an interconnected world, including complex international trade and supply chains.
- 5 In addition, new technologies and their widespread commercial availability have created new opportunities and significant vectors for attack, lowering the cost and risk to states to conduct espionage. Accordingly, while only a small number of states show the full range of capabilities and a willingness to use them, a large number of countries have both the capability and intent to conduct hostile activity against the UK, in some form.
- 6 The focus, first and foremost, needs to be on the hostile activity being conducted and the UK's ability to counter it. The Bill brings together a suite of new measures and will further protect the UK's national security, the safety of the British public and the UK's vital interests from the hostile activities of foreign states by:
  - Ensuring that the UK's law enforcement and intelligence agencies have the modern tools, powers, and protections they need to counter those who seek to do the UK harm. With updated investigative powers and capabilities, those on the front line of the UK's defence will be able to do even more to counter state threats.
  - Keeping the UK safe by making this country an even harder target for those states who seek to conduct hostile acts against the UK, steal information for commercial advantage, or interfere in UK society covertly.
  - Strengthen the resilience of the UK political system against covert foreign influence and provide greater assurance around the activities of specified foreign powers or entities.
- 7 Together these powers are intended to form a new baseline in the UK's counter state threats toolkit and ensure the UK is a hard operating environment for those who wish to cause the UK harm.
- 8 The Bill also prevents the exploitation of the UK's civil legal aid and civil damage systems by convicted terrorists. This will prevent public funds from being given to those who could use it to support terror.

## Policy background

- 9 The Bill is in four parts. Parts 1 and 2 contain legislative provisions to counter state threats as well as an amendment to the Serious Crime Act 2007. Part 3 contains measures in relation to the Foreign Influence Registration Scheme. Part 4 contains measures in relation to damages and legal aid connected to terrorism. Part 5 provides general provisions for the Bill on which this section does not comment further.

### Measures to counter state threats (Parts 1 and 2)

- 10 In 2015, the Cabinet Office and the Ministry of Justice commissioned the Law Commission to examine the Official Secrets Acts as part of a wider review of the Protection of Official Data. The genesis of this Review was prompted by increased concern about the impact of unauthorised disclosures of official information, and the speed and scale of global communications enabled by the internet.
- 11 During their Review, the Law Commission consulted widely on potential legislative proposals. The Government engaged with the Law Commission during their consultation process in 2017, as did a wide number of interested parties, including media and legal organisations, academics, non-governmental organisations, and individual members of the public.
- 12 The Commission's final Report was published on 1 September 2020. In preparing this Bill, the Government has taken into account that report, in particular the aspects relating to the Official Secrets Acts 1911, 1920 and 1939.
- 13 In parallel to the ongoing Law Commission review, the then Prime Minister announced in 2018 that the Government would be taking a number of steps to address the threat posed to the UK by the hostile activities of foreign states. This included introducing a new power to allow police to stop those suspected of conducting hostile activity on behalf of a foreign state at the border and, in slower time, conducting a comprehensive review of the tools and powers available to counter the threat. The former was delivered through the Counter Terrorism and Border Security Act 2019 and came into force in 2020.
- 14 On 21 July 2020, the Intelligence and Security Committee published their Russia Report, which made several recommendations for legislation to counter state threats. This included the view that 'the Official Secrets Act regime is not fit for purpose and the longer this goes unrectified, the longer the security and intelligence community's hands are tied. It is essential that there is a clear commitment to bring forward new legislation to replace it'. It also recommended that there be 'a new statutory framework to tackle espionage'.
- 15 From 13 May 2021 to 22 July 2021, the Government ran a public consultation on Legislation to Counter State Threats. The consultation set out the Government's proposals and sought input to inform the final policy and legislative proposals to counter state threats with a view to ensuring the new framework is comprehensive, effective, workable, and balanced the protection of national security with the rights and values important to the British people.

### Part 1 – Espionage, sabotage and persons acting for foreign powers

- 16 Part 1 replaces the existing offence of espionage, and other measures contained in the Official Secrets Acts 1911, 1920 and 1939 with a suite of new offences and accompanying powers. Through a 'foreign power condition' and definitions of a 'foreign power' and 'foreign power threat activity' the Bill takes a consistent approach to determining when harmful activity is carried out for or on behalf of, or with the intention to benefit, a foreign power and applies the supporting measures accordingly. The measures:
  - a. Reform the espionage offences to reflect the evolving threat and the interconnected nature of the modern world. The existing legislation has a focus on espionage through

more 'traditional' methods. Espionage is tackled by new offences in the Bill that are designed to capture modern methods of spying, and provide the ability to impose penalties reflecting the serious harm that can arise;

- b. Establish a standalone regime for protecting sensitive sites from espionage and other state threats, modernising the list of protected sites (referred to in the 1911 Act and the Bill as "prohibited places") and creating new offences and accompanying police powers to capture harmful activity around sites that are critical to the safety or interests of the United Kingdom;
- c. Establish a new offence to protect against the theft of trade secrets. The offence will target state-linked, illicit acquisition, retention, or disclosure of "trade secrets" that protect sensitive industrial, commercial, or economic information;
- d. Explicitly criminalise assisting a foreign intelligence service in carrying out activities in the UK, or overseas where such conduct is prejudicial to UK safety and interests;
- e. Establish a new offence of sabotage designed to capture state-linked saboteurs who act in a way that is prejudicial to the UK's safety or interests by causing damage, including through cyber-attacks, to assets (including critical infrastructure, electronic systems, and information);
- f. Establish a new offence of foreign interference where conduct is intended to have a specified negative effect and certain conditions are satisfied. The Government is also increasing the maximum custodial penalties for certain election-related offences that are carried out for or on behalf of, or with the intention to benefit, a foreign power;
- g. Reform the existing acts preparatory offence under the Official Secrets Act 1920, to ensure that it can effectively target harmful preparatory state threats activity. This will provide a key tool which will prevent threats to the UK's national security by criminalising preparatory conduct before serious and potentially irreversible harm occurs;
- h. Create a new state threats aggravating factor to ensure that where individuals commit offences other than those in this Bill with a proven link to a foreign power, the state threat link is appropriately recognised;
- i. Ensure that the police have the appropriate powers needed to intervene earlier in an investigation and to enable the successful prosecution of cases; and
- j. Amend Schedule 3 to the Counter-Terrorism and Border Security Act 2019 to allow counter-terrorism police officers to retain copies of confidential business material (material acquired in the course of a trade or business that is held in confidence) without the authorisation of the Investigatory Powers Commissioner. This will allow counter-terrorism police to progress operations and investigations into state threats activity<sup>1</sup> at the required pace and reflects the position in Schedule 7 to the Terrorism Act 2000 (on which the power in Schedule 3 was modelled).

## Part 2 – Prevention and investigation measures

17 Part 2 provides for a new regime of state threats prevention and investigation measures (ST-PIMs) that may be imposed by the Secretary of State on individuals believed to be involved in state threat activity. Notwithstanding the range of offences and accompanying measures in

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<sup>1</sup> 'The term Hostile State Activity, which is used in Schedule 3 to the Counter-Terrorism and Border Security Act 2019, covers the similar activity as that set out in paragraphs 1-5 of this document'.



Part 1, there will remain cases that cannot be prosecuted or otherwise disrupted. The Government anticipates such measures will be used sparingly and as a measure of last resort to mitigate the immediate threat an individual poses while they continue to be investigated. The proposed ST-PIMs framework largely replicates that of Terrorism Prevention and Investigation Measures (TPIMs Act 2011).

- 18 Part 2 also provides for civil legal aid to be made available for ST-PIMs.

## **Amendment to the Serious Crime Act 2007**

- 19 Clause 28 amends Schedule 4 of the SCA to disapply the offences of encouraging or assisting offences overseas when the activity is deemed necessary for the proper exercise of any function of an intelligence service or the armed forces. It will provide better protection to those discharging national security functions on behalf of His Majesty's Government, to enable more effective joint working and to improve operational agility, all of which are essential to UKIC and MOD's work to counter threats to UK national security.

## **Foreign Activities and Foreign Influence Registration Scheme (Part 3)**

- 20 Part 4 introduces measures relating to the Foreign Influence Registration Scheme. The scheme delivers a key recommendation of the Intelligence and Security Committee's 2020 *Russia Report*. Similar schemes have been implemented in the U.S. (the Foreign Agent Registration Act 1938) and Australia (the Foreign Influence Transparency Scheme Act 2018).
- 21 The Foreign Influence Registration Scheme is created to deter foreign power use of covert arrangements, activities and proxies. It does this by requiring greater transparency around certain activities that foreign powers direct, as well as where those activities are directed or carried out by entities established overseas or subject to foreign power control.
- 22 Governments around the world, including the UK, seek to advance their interests through the lobbying and influencing of other states. There is no intention to interfere with, or deter, the legitimate work of Governments, civil society and those involved in campaigning for positive change. Where influencing activity is conducted openly and transparently, it plays a vital part in our democracy and public debate, as well as being essential to the proper functioning of international relations and civil society.
- 23 The scheme's requirements will apply to any person, regardless of nationality, and will be enforced through a range of offences and penalties, as well as powers to request information. The scheme will require the registration of 'political influence activities' where they are to be carried out within the UK at the direction of any foreign power or foreign entity (a foreign principal); or where they are to be carried out by a foreign entity itself. Certain registered information will be made available to the public via a scheme website, similar to the schemes of our Australian and U.S. partners.
- 24 The scheme will also require a person acting within the UK at the direction of a specified foreign power or entity subject to foreign power control to register with the scheme. It would also require a specified entity to register activities they intend to carry out within the UK with the scheme. Use of the power to specify a foreign power or entity will be subject to Parliamentary approval. The scheme will not require registration from, or otherwise provides explicit exemption for, individuals to whom privileges and immunities apply in international law as provided by, for example, the Vienna Convention on Diplomatic and Consular Relations; legal services, as well as information subject to legal professional privilege; domestic and foreign news publishers (foreign influence tier only), including confidential journalistic material and sources; and arrangements which the UK is party to.
- 25 The scheme has also been designed to uphold the letter and spirit of the Belfast (Good Friday) Agreement. To that end, any arrangement with Ireland, or with a body incorporated or

association under the laws of Ireland, will be exempt from registration – as are activities to be carried out by such entities. This will avoid interference with the right of citizens in Northern Ireland to identify as Irish, as well as the activities of cross-border entities and institutions.

## Persons Connected With Terrorism: Damages And Legal Aid (Part 4)

### Damages – Quantum

- 26 Part 4 also introduces measures to require a court, in proceedings relating to national security where the Crown makes an application, to consider whether it is appropriate to reduce an award of damages to reflect relevant wrongdoing of the claimant of a terrorist nature.
- 27 Although courts already have discretion under their inherent jurisdiction and in statute to ensure awards are just in all the circumstances, it is necessary to have a proper procedure so that all matters relevant in the context of terrorism are properly taken into account.
- 28 In appropriate cases, the Crown will make an application to the court. The court will consider whether the claimant’s wrongdoing arising from their involvement in terrorism is relevant to the conduct of the Crown complained of and the factual matrix the terrorist element engendered and determine whether the appropriate outcome is for damages to be reduced or withheld altogether.
- 29 The reform is not being pursued in relation to human rights claims, brought under Section 8 of the Human Rights Act 1998, as separate consideration is being given to the award of damages under that legislation as part of proposed wider human rights reforms which have been the subject of consultation.<sup>2</sup>

### Damages – Freezing and Forfeiture Orders

- 30 At present, when a claimant associated with terrorism makes a claim, including against UK intelligence agencies, departments or ministers, there is no mechanism within the proceedings to prevent payment of the sum of damages they are considered entitled to in compensation, irrespective of any assessment of the risk that that sum will be used to fund or support acts of terror.
- 31 Part 4 introduces measures to reduce the risk of court damages paid out in compensation being used to fund terrorist activities. The powers of a court will arise where it is established, on a balance of probabilities, that there is a real risk, established on the balance of probabilities, that the funds would be used to support terrorism.
- 32 These provisions introduce a new freezing order which may be made for an initial period of 2 years and renewed once for a further period of 2 years.
- 33 If, after a renewal of the freezing order, the court concludes that the risk continues, the court will have the discretion to permanently withhold the damages by making a forfeiture order.

### Legal Aid

- 34 Part 3 introduces a restriction on access to civil legal aid for convicted terrorists, which will narrow the range of circumstances in which individuals convicted of specified terrorism offences can receive civil legal services. To be able to enforce the restriction on civil legal aid, the Bill also provides the lawful basis for the sharing and processing of criminal conviction data for the purposes of making decisions on legal aid funding.

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<sup>2</sup> Ministry of Justice. *Human Rights Act Reform: A Modern Bill of Rights*. December 2021. CP 588.

# Legal background

## Measures to counter state threats (Parts 1 and 2)

### Part 1 – Criminal offences

- 35 As set out in paragraph 16 the provisions in Part 1 of the Bill replace the existing offences in the Official Secrets Acts 1911, 1920 and 1939. The relevant parts of these Acts are as follows.
- 36 Section 1 of the Official Secrets Act 1911 creates three distinct offences:
- (1) Section 1(1)(a) – makes it an offence for a person, for any purpose prejudicial to the safety or interests of the state to approach, inspect, pass over, be in the neighbourhood of, or enter any prohibited place as that term is defined in the Act.
  - (2) Section 1(1)(b) – makes it an offence for a person for any purpose prejudicial to the safety or interests of the state to make any sketch, plan, model or note which is calculated to be, or might be, or is intended to be directly or indirectly useful to an enemy.
  - (3) Section 1(1)(c) – makes it an offence for a person for any purpose prejudicial to the safety or interests of the state to obtain, collect, record, publish, or communicate to any other person, any secret official code word, or pass word, or any sketch, plan, model, article, note, or other document or information which is calculated to be, or might be or is intended to be directly or indirectly useful to an enemy.
- 37 The maximum available penalty for this offence is 14 years. The territorial jurisdiction is limited to British citizens.
- 38 The offence in section 1 has been considered by the Courts on a number of occasions. The lead case is *Chandler v DPP* [1964] 1 AC 763. It concerned the prosecution of persons taking part in protests by the Campaign for Nuclear Disarmament that sought to disable a military airbase. In its ruling the House of Lords made three important points.
- 39 First, it confirmed that the offence in section 1 was not limited to spying but could encompass other activity that fell within its different limbs including behaviour that might be characterised as sabotage. Second, the Lords considered the meaning of “purposes prejudicial to the safety or interests of the state”. On this point the judgment decided that the question to be considered was whether the defendants “immediate purpose” (here to prevent aircraft taking off) was prejudicial to the safety or interests of the state and that their long-term purpose or motivation (nuclear disarmament) was irrelevant. Third, the Lords considered the meaning of the term “safety or interests of the State” finding in summary that it meant the objects of state policy determined by the Crown on the advice of Ministers.
- 40 A number of the offences in Part 1 of the Bill are a modernisation of the different elements of the section 1 offence. Some incorporate a concept of “prejudice to the safety or interest of the UK” using the term “UK” for clarity but reflecting on the interpretation in *Chandler*.
- 41 Further, references to the term “enemy” have been removed, and the Bill instead focusses predominantly on activity that is for or on behalf of, or intended to benefit, a foreign power.
- 42 Section 3 of the 1911 Act provides a definition of prohibited place for the purposes of the espionage offence in section 1 of that Act. This aspect of the Act is replaced by regime set out in paragraph 16(b).

- 43 Section 7 of the Act provides for a number of offences that are collectively titled “harbouring spies”. A number of offences in the Bill address the relevant elements of this offence, including the offences of assisting a foreign intelligence service and the acts preparatory offence.
- 44 Section 9 of the Act provides a power of search and seizure in relation to investigations under any of the Official Secrets Acts. This provision is being repealed and replaced with modernised powers in clause 21.
- 45 Section 7 of the Official Secrets Act 1920 provides a number of inchoate offences in respect of the principal offences under the Official Secrets Acts 1911 and 1920. These inchoate offences include attempting, inciting, aiding and abetting, or doing an act that is preparatory to, a principal offence. With the exception of the preparatory act offence, these inchoate offences are largely provided by other statutory provisions or by the common law (e.g., section 1 of the Criminal Attempts Act 1981 or the provisions of the Serious Crime Act 2007 that provide the offence of assisting or encouraging other offences), as well as the approach to the construction of the Bill offences that, where appropriate, catch elements of this conduct (e.g. through clause 3). There is no need for specific provision to replace these aspects of the previous legislation.
- 46 The Court of Appeal considered the meaning of the term “act preparatory to the commission of an offence” in *R v Bingham* [1973] QB 870, finding that an individual will commit an offence under section 7 of the Official Secrets Act 1920 if he or she does an act that “opens the door to the commission of an offence” with the necessary intent. This offence under section 7 is replaced by the provisions set out in paragraph 16(g).

## Part 1 – Police Powers etc

- 47 The police powers clauses in Part 1 and related Schedules as referred to in paragraph 16(i) above are in part based on, and informed by, corresponding legislative provisions that give powers in respect of terrorism and in some cases proceeds of crime. These include:
- Arrest powers - Section 41 Terrorism Act 2000 (arrest without warrant).
  - Search and seizure powers - Schedule 5 Terrorism Act 2000 (terrorism investigations – information). The provisions in this Bill replace the effect of the powers previously conferred by section 9 of the Official Secrets Act 1911, extended to a wider set of harmful activity.
  - Detention powers - Schedule 8 Terrorism Act 2000 (Detention).
  - Disclosure orders – Schedule 5A Terrorism Act 2000 & sections 357-362 Proceeds of Crime Act 2002.
  - Customer information orders – Schedule 6 Terrorism Act 2000 & sections 397-403 Proceeds of Crime Act 2002.
  - Account monitoring orders – Schedule 6A Terrorism Act 2000 & sections 370-375b Proceeds of Crime Act 2002.

## Part 1 – Border Security

- 48 The powers under Schedule 3 to the Counter-Terrorism and Border Security Act 2019 allows examining officer to stop, question and, when necessary, detain and search, individuals and goods travelling through the UK port and border area for the purpose of determining whether the person appears to be someone who is, or has been, engaged in hostile state activity. This includes giving Examining Officers the ability to access confidential material, which is subject to the authorisation of the Investigatory Powers Commissioner.

## Part 2 – Measures to prevent and investigate foreign power threat activity

- 49 The provisions in Part 2 are similar to the provisions in the Terrorism Prevention and Investigation Measures Act 2011, including a new paragraph in Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (which is inserted by the Bill).

## Amendment to the Serious Crime Act 2007

- 50 Part 2, sections 44 to 46 of the Serious Crime Act 2007 contain three offences of encouraging or assisting another person to commit an offence or offences. Section 47 contains provisions for proving the offences under Part 2, including the *mens rea* requirements in relation to the principal offence. Section 50 contains a defence of acting reasonably. Section 52(1) and schedule 4 provide for broad territorial application of the offences.

## Foreign Activities and Foreign Influence Registration Scheme (Part 3)

- 51 The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 makes provision in three areas:
- a. It establishes a register of consultant lobbyists and a Registrar of consultant lobbyists to monitor and enforce the registration requirements.
  - b. It changes the legal requirements for people or organisations who campaign in relation to elections but are not standing as candidates or as a registered political party.
  - c. It changes the legal requirements in relation to trade unions' obligations to keep their list of members up to date.
- 52 This Act was not designed to deal with the threat from state actors, nor does the Government consider it appropriate to adapt it for the Government's purposes. Its focus is very specifically towards increasing transparency around the activities of consultant lobbyists. The Foreign Influence Registration Scheme (FIRS), however, is designed as a tool to counter state threats activity by focusing on arrangements with foreign principals. While there may be some limited overlap, the scope of FIRS is necessarily much wider, and the offences and penalties reflect the seriousness of the threat context.
- 53 The Elections Act 2022 makes new provision to ensure that UK elections remain secure, fair, modern, inclusive and transparent. The requirement to register political influence activities is designed to capture and increase transparency around a wider range of conduct that has been commissioned by foreign principals and not limited to election periods.

## Persons Connected With Terrorism: Damages and Legal Aid (Part 4)

- 54 Damages in civil claims are payable pursuant to court orders to compensate for loss. Though all the relevant circumstances must be taken into account in quantification of those damages, prevention of terrorism involves unique factors and often the utilisation of special proceedings, such as closed material procedures under the Justice and Security Act 2013 and Part 82 of the Civil Procedure Rules 1998. Clauses 82 to 85 set out new specific procedures for the assessment of damages in national security proceedings against the Crown in.
- 55 There are also a variety of powers available to seize and forfeit terrorist property such as in section 1 of, and Schedule 1 to, the Anti-terrorism, Crime and Security Act 2001. However, none of those provisions are specifically designed to address court awards of damages before they are paid to those who are at risk of using the funds for terrorist purposes. Clause 86 of, and Schedule 15 to, the Bill set out new powers that courts may employ to achieve this.
- 56 Clauses 87 and 88 of the Bill amend Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act"), which provides for the availability of civil legal services,

to create limits on the availability of those services in general cases for individuals convicted of terrorism offences and provide for associated data sharing. Part 1 of Schedule 1 to the 2012 Act describes the civil legal services that are to be available in general cases and Clause 89 of the Bill clarifies the existing availability of those services for Terrorism Prevention and Investigation Measures proceedings, by bringing all services under the same paragraph.

## Territorial extent and application

- 57 Clause 94 sets out the extent of the Bill in the United Kingdom, that is the jurisdiction in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. In some cases, different clauses of the Bill or paragraphs of Schedules are used to create similar effect in different parts of the United Kingdom.
- 58 The Bill extends to England and Wales, Scotland, and Northern Ireland in all cases, except where an amendment or repeal made by the Bill is to a provision that does not extend to the whole of the United Kingdom. In the case of such provisions, the amendment or repeal has the same extent as the provision being amended or repealed. This is relevant in the following cases:
- a. Clause 17 (aggravating factor where foreign power condition met: England and Wales) amends the Sentencing Code, which extends to England and Wales.
  - b. Clause 20 (aggravating factor where foreign power condition met: armed forces) amends section 238 of the Armed Forces Act 2006, which extends to the United Kingdom.
  - c. Clause 27 (border security) amends paragraph 12 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019, which extends to the United Kingdom.
  - d. Clause 28 (offences under Part 2 of the Serious Crime Act 2007) amends schedule 4 to the Serious Crime Act 2007, which extends to England and Wales and Northern Ireland.
  - e. Clause 85 (legal aid in relation to Part 2 notices) amends provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which extends to England and Wales.
  - f. Clauses 87, 88 and 89 amend provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which extend to England and Wales.
  - g. Part 2 of Schedule 1 to the Bill (foreign interference in elections), makes amendments to—
    - i. Section 65 of the Representation of the People Act 1983, which extends to the United Kingdom,
    - ii. Section 168 of the Representation of the People Act 1983, which extends to the United Kingdom,
    - iii. Section 176 of the Representation of the People Act 1983, which extends to the United Kingdom,
    - iv. Section 147 of the Political Parties, Elections and Referendums Act 2000, which extends to the United Kingdom,
    - v. Section 150 of the Political Parties, Elections and Referendums Act 2000, which extends to the United Kingdom.

- h. Schedule 16 to the Bill (minor and consequential amendments)—
  - i. Repeals the Official Secrets Acts 1911, 1920, and 1939, which extend to the United Kingdom.
  - ii. Amends the Police and Criminal Evidence Act 1984, relevant provisions of which extend to England and Wales.
  - iii. Amends the Police and Criminal Evidence (Northern Ireland) Order 1989, which extends to Northern Ireland.
  - iv. Amends the Official Secrets Act 1989, relevant provisions of which extend to the United Kingdom.
  - v. Amends the Criminal Procedure (Scotland) Act 1995, which extends to Scotland.
  - vi. Amends the Protection of Freedoms Act 2012, relevant provisions of which extend to the United Kingdom.
- 59 Consequential powers at Clause 91 enable the Secretary of State to make provision by regulations in consequence of the Bill that amend, repeal, or revoke any enactment, including Acts of the Scottish Parliament, Measures or Acts of Senedd Cymru and Northern Ireland legislation.
- 60 See the table at Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.
- 61 In respect of territorial extent and application outside the United Kingdom:
  - a. Clause 20 extends to the Isle of Man and the British Overseas Territories, except Gibraltar,
  - b. The power under section 348 of the Armed Forces Act 2006 as amended by clause 20 may be exercised as to make amendments that extend outside the United Kingdom in specified circumstances.
  - c. The power in section 15(3) of the Official Secrets Act 1989 may be exercised outside the United Kingdom in relation to any amendment or repeal made by the Bill in specified circumstances.
  - d. The power in section 415 of the Sentencing Act 2020 may be exercised outside the United Kingdom in relation to any amendment or repeal made by the Bill in specified circumstances.

# Commentary on provisions of Bill

## Part 1: Espionage, sabotage and persons acting for foreign powers

### Espionage etc

#### Clause 1: Obtaining or disclosing protected information

62 Subsection (1) provides that an offence is committed if a person obtains, copies, records, retains, or discloses protected information in circumstances where the person knows, or ought reasonably to know, their conduct is prejudicial to the safety or interests of the UK and where the foreign power condition is met (see clause 29). The term safety or interests of the UK is not defined but case-law has interpreted it as meaning, in summary, the objects of state policy determined by the Crown on the advice of Ministers (see the Court's view in *Chandler v Director Public Prosecutions* (1964) AC 763).

Hypothetical examples of where these conditions are met can be found below.

#### Example (1): where conduct is carried on for a foreign power

A person working for the police is asked by representatives of a foreign state to provide information to them on the identity of police officers who work with UK security and intelligence services and agrees to do so, and discloses the names, in return for a financial reward.

#### Example (2): where the person intends the conduct to benefit a foreign power

A person working for a UK intelligence agency has information on intelligence officers operating in a foreign state and offers to provide this information to that foreign state in return for a substantial financial sum. The foreign state does not commission or buy the information and, in fact, notifies the UK authorities who intervene and arrest the individual.

#### Example (3): where the person intends to disclose information for financial gain or due to dissatisfaction

A person working as a contractor for the Ministry of Defence discloses classified information on a defence system that they retained from their work on it to a foreign state. Their act is motivated by past grievances and dissatisfaction with the UK. In disclosing this information, they understand that it would harm the UK's safety and interests, and that it would benefit a foreign state.

63 Subsection (2) defines "protected information" for the purpose of the offence in subsection (1). The term means any information (e.g., raw data), document (e.g., a report for a committee), or other article (e.g., a prototype, model, or memory stick), which either is, or could reasonably be expected to be, subject to any type of restriction of access for the purpose of protecting the safety and interests of the UK. Protected information includes, but is not limited to, classified material. Other types of protected information include non-classified information only accessible in a building with security measures or restricted access (e.g., a government building), or information that is password protected or encrypted.

64 Under this provision, it is not necessary that access to the information, document or other article is restricted, it is sufficient that it is reasonable to expect that it is restricted. This means that the protection of the offence is not limited where reasonable protective and safety



standards have for some reason failed (e.g., if against departmental guidelines a government contractor has failed to take appropriate care of sensitive information).

- 65 Subsection (3) provides that this offence captures activity both in the UK or elsewhere. This means that the offence applies to, for example, UK personnel working for the Government abroad, locally engaged staff working for the Government abroad and people who use cyber means to access protected information remotely.
- 66 Subsection (4) provides the maximum available penalty applicable on conviction of the offence: namely imprisonment for life or a fine (or both). The inclusion of a fine is in recognition that the offence can be committed by bodies corporate and other similar entities (see clause 33).
- 67 Subsection (5) defines the activity that constitutes “retaining” or “disclosing” protected information as outlined within the offence with subsection (1)(a).

## Clause 2: Obtaining or disclosing trade secrets

- 68 Clause 2 creates an offence of obtaining or disclosing trade secrets. Subsection (1) provides that a person commits an offence if, without authorisation, they obtain, copy, record, retain, disclose, or provide access to a trade secret. The person must know, or ought reasonably to know, that their conduct in respect of the trade secret is unauthorised, and the foreign power condition (clause 29) must also be met.
- 69 A person’s conduct is unauthorised if they are not entitled to determine whether they may engage in the conduct, and they do not have the consent from a person who is so entitled (subsection (3)). For example, if the trade secret is obtained by unauthorised access to a computer system, or if a person breaches the terms of their employment to retain the information after they have left an organisation.
- 70 For the purposes of this clause, a person retains a trade secret if they retain it in their possession or under their control and disclosing a trade secret includes parting with possession (see subsection (9), this mirrors the provision in subsection (5) of clause 1).
- 71 Subsection (2) defines a “trade secret” and three criteria must be satisfied for it to be classed as such.
- a. It must be information which is not generally known by, or available to, persons with knowledge of, or expertise in, the field to which it relates, (subsection (2)(a)). A trade secret will not be generally known or accessible to those in circles that normally deal with the information in question.
  - b. The information must have actual or potential industrial, economic, or commercial value which would be, or could reasonably be expected to be, adversely affected if the information became generally known by, or available to, such persons (subsection (2)(b)). The value of a trade secret is linked to its secrecy and that value would be diminished were it to become generally known. Potential value could include an idea in the early stages of development without an immediate commercial value.
  - c. Finally, the information must be of a kind that could reasonably be expected to be subject to measures to prevent it becoming generally known by, or available to, such persons (whether or not it is actually subject to such measures) (subsection (2)(c)).
- 72 References to a trade secret include an article from which such information may be derived.
- 73 The offence applies whether the person’s conduct takes place in the United Kingdom or elsewhere (subsection (4)), however conduct which takes place wholly outside the United Kingdom constitutes an offence only if the trade secret is in the possession or under the control of a UK person (subsection (5)).

- 74 Subsections (6) and (7) define a “UK person” and “United Kingdom national” (one form of “UK person”) respectively.
- 75 Subsection (8) sets out the maximum penalty for the offence. On indictment, the maximum penalty is a term of imprisonment not exceeding 14 years or a fine (or both). The inclusion of a fine is in recognition that the offence can be committed by bodies corporate and other similar entities (see clause 33).

#### Example (1): where a person is approached by a foreign power

Person A is approached by Person B, who works for a foreign power. At B’s request, A intentionally discloses a trade secret relating to sensitive artificial intelligence technology, known only by a few people in their company, to B. The information is highly sought after by foreign powers and A is not permitted to disclose the information under the terms of their employment. A knows that B is being directed by a foreign power to obtain this company’s trade secrets and, in disclosing the trade secret, intends for this information to benefit the foreign power in question. Both A and B have committed an offence.

#### Example (2): where a person approaches a foreign power

Person C is a disgruntled former employee of a UK company with expertise in civil nuclear technology known only by three other people. C travels to a country with an intention to benefit the foreign power through disclosing their retained trade secret information, despite it being prohibited by their former employer and the information being subject to protective measures. Person C has committed an offence.

#### Example (3): where a person provides access to information

Person D discloses access codes to a sensitive plan for a new clean energy technology (a trade secret), to Person E, whom D knows is working for a foreign power. With these codes, E is able to access the plans from overseas, sharing them widely in their organisation. The plans were kept locked, and the access codes were not widely known, as the plans had future commercial value. Both D and E have committed an offence.

### Clause 3: Assisting a foreign intelligence service

- 76 Clause 3 creates two offences of assisting a foreign intelligence service. An offence is committed in subsection (1) where a person engages in conduct, which they intend will materially assist a foreign intelligence service in carrying out UK-related activities. Under subsection (2), a person commits an offence if they know or reasonably ought to know that it is reasonably possible that their conduct may materially assist a foreign intelligence service in carrying out UK-related activities. An example of materially assisting a foreign intelligence service could include an undeclared intelligence officer carrying out intelligence activities in the UK.
- 77 Subsection (10) defines a foreign intelligence service as any person whose functions include carrying out intelligence activities for or on behalf of a foreign power. The Government expects this to include an intelligence agency of a foreign state, or the military intelligence branches of a foreign army. However, this may also include a private contractor who is employed to provide security and intelligence services for a foreign power.
- 78 Subsection (3) provides that conduct which may materially assist a foreign intelligence service includes providing, or providing access to: goods, for example supplying surveillance and recording equipment to a foreign intelligence service, with the intention of materially assisting their activities; services, for example providing IT services knowing this would materially

assist a foreign intelligence service; financial benefits, for example providing ready access to cash to support UK-related activities; information, such as personal details, that could be used as compromising material, which is useful to a foreign intelligence service, about an individual. Financial benefit is defined in subsection (9) as money or money's worth.

#### Example (1): where conduct includes funding a FIS

Person A sets up a shell company to provide funds to a company acting as cover for a foreign intelligence service. A knows these funds will ultimately assist a foreign intelligence service in carrying out activities in the UK. These UK-related activities include intelligence reconnaissance and purchasing eavesdropping equipment.

#### Example (2): where the conduct includes information gathering

Person B is being paid by Person C to carry out surveillance activities in the UK, including monitoring sensitive sites and buildings. B knows that C, who is an undeclared intelligence officer running a covert UK-based operation, is associated with a foreign intelligence service and is aware that their surveillance is likely to be used by that intelligence service. Both B and C have committed an offence.

#### Example (3): where the person intends to benefit a FIS

Person D has two acquaintances, Person E and Person F. D knows that E is a foreign intelligence officer, and that F is an influential businessperson in a sector which is relevant to E's foreign intelligence work. E asks D to make arrangements for them to meet F. D introduces E to F knowing that this might be beneficial to the foreign intelligence service. D could be charged with assisting a foreign intelligence service. F could not be charged with assisting a foreign intelligence service unless they were aware that their conduct would, or was likely to, materially assist a foreign intelligence service.

- 79 Subsection (4) defines "UK-related activities" as activities which take place in the UK or activities taking place outside the United Kingdom which are prejudicial to the safety or interests of the UK. Subsection (5) says that for subsections (1) and (2) to apply, a specific foreign intelligence service does not have to be identified. This could apply where someone believes they are materially assisting one foreign intelligence service but are instead materially assisting a different one without their knowledge, or where a person seeks to sell information to a foreign intelligence service and is shopping around for a buyer.
- 80 Subsection (6) states that subsections (1) and (2) apply to conduct outside the United Kingdom, but only where the person engaging in the conduct is a UK person (defined in clause 2) or a person who acts for or on behalf of, or holds office under, the Crown, or is in Crown employment (whether or not they engage in the conduct in that capacity). The references to the Crown are necessary to ensure subsections (1) and (2) can be applied to those working in or with British embassies overseas.
- 81 Subsection (7) provides a defence to ensure that legitimate conduct that is within the UK's interests is not caught within the offence. A person may raise a defence under this clause if the person engages in the conduct in question in any of the circumstances set out at subsection (7)(a) – (c). These are conduct in compliance with a legal obligation under the law of the United Kingdom, excluding obligations under private law (subsection (7)(a)); in the case of a person having functions of a public nature under the law of the United Kingdom, for the purposes of those functions (subsection (7)(b)); or in accordance with an agreement or arrangement to which the United Kingdom or any person acting for or on behalf of, or holding office under, the Crown is (in that capacity) a party (subsection (7)(c)).

- 82 Subsection (9) sets out the maximum penalty for the offence. On indictment, the maximum penalty is a term of imprisonment not exceeding 14 years or a fine (or both). The inclusion of a fine is in recognition that the offence can be committed by bodies corporate or other similar entities (see clause 33).
- 83 Subsection (10) defines terms used in clause 3.

#### Clause 4: Entering etc. a prohibited place for a purpose prejudicial to the UK

- 84 Subsection (1) provides that a person commits a criminal offence if they engage in specified conduct in relation to a prohibited place for a purpose they know, or ought reasonably to know, is prejudicial to the safety or interests of the United Kingdom.
- 85 Subsection (1)(a)(i) describes the full range of conduct that will be captured under this offence. This includes entering and inspecting a prohibited place. Subsection 4(1)(a)(ii) makes provision for when the activity is carried out via an unmanned vehicle or device in order to capture modern-day methods of conducting harmful activity in and around sites designated as prohibited places.
- 86 Subsection (2) makes clear that inspecting can include the taking of photographs, videos or other media recordings of a prohibited place, and the inspection of photographs, videos, or other recordings of a prohibited place.

##### Example (1): Carrying out inspection

A person taking photographs of staff members as they enter or leave a prohibited place would commit the offence if they did so with a purpose that they knew, or ought reasonably to know, is prejudicial to the safety or interests of the United Kingdom.

- 87 Subsection (3) provides that a person can carry out the conduct within subsection (1) in person or by electronic or remote means.

##### Example (1): Carrying out conduct in person

A person seeking to unlawfully enter a prohibited place uses wire cutters to cut through the fence surrounding the perimeter of the site. They then proceed to enter the prohibited place.

##### Example (2): Carrying out conduct electronically

A person hacks into the CCTV network of a prohibited place. From here they can inspect the site electronically and cause further harm by using the information gained from within the prohibited place to commit further hostile activity like espionage.

##### Example (3): Carrying out conduct remotely

A person some distance from a prohibited place launches a remote-controlled aerial drone and proceeds to operate it over the site. The drone passes over the site and conducts harmful surveillance.

- 88 Subsection (4) provides for extra-territorial jurisdiction for this offence. This means that it can be committed by persons located both within and outside the United Kingdom. An example of this type of activity is noted below:

### Example (1): Carrying out conduct in relation to a UK prohibited place from outside the UK

A person seeking to gain access to a prohibited place that is within the United Kingdom chooses to remotely enter the site from outside of the United Kingdom. Located outside of the UK's territorial waters, they operate a drone over this site to conduct harmful surveillance. Without extra-territorial jurisdiction, this type of damaging activity would not be caught under these provisions.

- 89 Subsection (5) outlines the maximum penalty for committing an offence under Clause 4. Subsection (6) defines a vehicle for the purposes of this Part.

### Clause 5: Unauthorised entry etc. to a prohibited place

- 90 Subsection (1) provides that a person commits a criminal offence if – without authorisation – they engage in specified conduct in respect of a prohibited place and they know, or reasonably ought to know, that their conduct is unauthorised. The relevant conduct is accessing, entering, inspecting, or passing over or under a prohibited place. Like clause 4, this applies whether the conduct is committed in person, remotely, electronically or via an unmanned vehicle or device.
- 91 A person's conduct is unauthorised if the person is not entitled to determine whether they may engage in the conduct and does not have consent to engage in the conduct from a person who is entitled to give it. There is no requirement that the person have a purpose prejudicial to the safety or interests of the United Kingdom to commit this offence. This ensures action can be taken in cases where a person is knowingly carrying out unauthorised conduct, such as trespassing, at a prohibited place.
- 92 Subsection (3) makes clear that inspecting can include the taking of photographs, videos, or other media recordings of a prohibited place. In particular, inspecting under this clause does not include inspecting photographs, videos, or recordings of the prohibited place.
- 93 Subsection (4) provides that a person can carry out the conduct within subsection (1)(a) in person or by electronic or remote means.
- 94 Subsection (5) outlines the penalties on summary conviction for the offence.

### Clause 6: Powers of police officers in relation to a prohibited place

- 95 Subsections (1) and (2) set out the powers that a police officer can exercise to protect a prohibited place. These powers include ordering a person to cease their activity or move away from the site and arranging for the removal of a vehicle from a prohibited place or area adjacent to it.
- 96 Subsection (3) provides that the constable must reasonably believe the use of these powers to be necessary to protect the safety or interests of the United Kingdom. This includes the prevention of activity that could harm or disrupt the operations or functioning of a prohibited place in a way that could jeopardise the safety or interests of the United Kingdom.
- 97 Subsection (4) creates an offence where a person knowingly contravenes a direction given by a police officer under this clause. On conviction that person is liable to be imprisoned for a term not exceeding 3 months and/or a level 4 fine.

### Clause 7: Meaning of “prohibited place”

- 98 This clause defines a prohibited place for the purposes of clauses 4 to 8. It includes Crown land and vehicles used for defence purposes, land or buildings used for weapons invention,

development, production, operation, storage or disposal, land or buildings used by the UK Intelligence Services, and land, buildings or vehicles designated by regulations made under clause 8.

- 99 Crown land outlined in subsection (1)(a) is limited to land and buildings within the United Kingdom or in the Sovereign Base Areas of Akrotiri and Dhekelia. The places referred to in subsection (1)(c) are also limited to those within the United Kingdom and Sovereign Base Areas of Akrotiri and Dhekelia.
- 100 Crown land used for the purposes of UK defence and the defence of a foreign country or territory under subsection 1(a)(i) and (iii) covers defence sites such as barracks, bases, naval dockyards, military headquarters etc.
- 101 A vehicle used for defence purposes under subsection (1)(b) includes military transportation that is either sensitive in itself (for example, aircraft, vessels, submarines, tanks) or used for the purposes of transporting sensitive technology, equipment, or weaponry (i.e., trains or convoys transporting weaponry).
- 102 Subsection (1)(d) sets out that land or buildings owned or controlled by, and used for the functions of, the United Kingdom's Intelligence Services are prohibited places. In order to mirror the other provisions relating to land or buildings in subsection (1), this provision specifies that it is limited to any such land or buildings situated within the United Kingdom or the Sovereign Base Areas of Akrotiri and Dhekelia.
- 103 Subsection (2) defines use for "UK defence purposes" in subsection (1).
- 104 Subsection (3) defines use for the purposes of the "defence of a foreign country or territory" in subsection (1).
- 105 Subsection (4) defines Crown land and "foreign country or territory" for the purposes of this clause. It clarifies that references to "building" include any part of a building.

#### Clause 8: Power to declare additional sites as prohibited places

- 106 This clause provides that the Secretary of State may declare additional sites as prohibited places by way of secondary legislation. This ensures that additional sites that are vulnerable to state threat activity can be designated where considered necessary in the future.
- 107 Subsection (2) provides the test that must be met in order for land, buildings, or vehicles to be designated as prohibited places. This requires that the Secretary of State reasonably considers that the designation is necessary to protect the safety or interests of the United Kingdom. Subsection (3) provides the matters to which the Secretary of State must have regard as part of that decision; namely, the purpose for which the place is used, the nature of any information held, stored, or processed on the land or in the building or vehicle, and the nature of any technology, equipment or material that is located on the land or in the building or vehicle.
- 108 Subsections (4) and (5) provide that the power can be exercised in relation to part of a building and to descriptions of land, buildings or vehicles, not just particular land, buildings, or vehicles.

#### Clause 9: Power to designate a cordoned area to secure defence aircraft

- 109 This clause provides a power for the police to create a cordoned area around a military aircraft crash site. In the event of an aircraft crashing, sensitive material may potentially be dispersed over a wide radius. A cordon around these sites will ensure that this material can be sufficiently protected until the point where removal has been completed.
- 110 Under subsection (2) a constable may only designate an area under the cordon power in subsection (1) if they consider it expedient for the purposes of securing an aircraft, or part of

an aircraft, used for military purposes or equipment relating to that aircraft. This cordon power will not be applicable to aircraft other than those used for military purposes.

- 111 Subsections (3) to (6) describe the process for designating a cordoned area under this power. This includes ensuring that a written record of the designation is made and that the boundary of the cordoned area is appropriately indicated.

### Clause 10: Duration of cordon

- 112 This clause describes the duration for which a cordon can remain in place under this power. Subsection (2) states that the designation under clause 9 must not end later than 14 days from the date on which it was made.
- 113 Subsections (3) to (4) permit a constable to extend the period of time for which the designation of a cordoned area has effect. This will likely take place in instances where the removal of material from a crash site area takes, or is expected to take, longer than the initial 14-day period. An extension cannot provide for the cordon to remain in place for longer than 28 days from the date on which the designation under clause 9 was made.

### Clause 11: Powers of police in relation to a cordoned area

- 114 Subsections (1) and (3) outline the powers the police will have in relation to a cordoned area. These include the powers to require a person not to carry out specified conduct, such as entering the cordoned area; to require a person to leave a cordoned area immediately; and to arrange for the movement or removal of a vehicle from a cordoned area.
- 115 Subsection (2) clarifies that inspection of a cordoned area can be undertaken by way of taking or procuring photos, videos, and other recordings.
- 116 Subsection (4) provides that it is an offence to fail to comply with an order under subsection (1). On conviction, the person is liable to be imprisoned for a term not exceeding 3 months and/or a level 4 fine, as described in subsection (6). The defence of reasonable excuse is available under subsection (5), protecting for instance those who have legitimate reason to be within a cordoned area.
- 117 Subsection (7) defines a “cordoned area” for the purposes of this clause.

## Sabotage

### Clause 12: Sabotage

- 118 Clause 12 creates an offence of sabotage. Subsection (1) provides that an offence is committed where a person engages in conduct that results in damage to any asset (subsection (1)(a)) and the person intends their conduct to, or is reckless as to whether their conduct will, result in damage to an asset (subsection (1)(b)). In addition, the person’s conduct must be for a purpose that they know, or ought reasonably to know, is prejudicial to the safety or interests of the United Kingdom (subsection (1)(c), and the foreign power condition is met in relation to the person’s conduct (subsection (1)(d)). Clause 29 sets out the foreign power condition, which includes if a person is tasked directly or indirectly by a foreign power to cause damage, or if the person intends their conduct that results in damage to benefit a foreign power. Foreign power is defined in clause 30.
- 119 Subsection (2) provides that the offence applies whether the person’s conduct takes place in the United Kingdom or elsewhere and whether the asset is in the United Kingdom or elsewhere. Extra-territorial jurisdiction is necessary because there are important assets overseas, damage to which could be prejudicial to the safety or interests of the UK.
- 120 Subsection (3) defines the terms “asset” and “damage”. An asset can be tangible or intangible and includes real and personal property, electronic systems, and information. “Damage” is

not defined exhaustively, but includes destruction, alteration, contamination, interference, loss of or reduction in access or availability or loss of or reduction in function, utility, or reliability. This applies whether the damage is temporary or permanent. The offence of sabotage does not specify a level of damage, nor does it protect specific assets likely to be targeted, given the requirements for the foreign power condition to be met and for a purpose prejudicial to the safety or interests of the UK.

#### Example (1): where conduct involves a cyber intrusion

A person is directed by a foreign power to release malware into a water treatment facility. The malware results in damage by altering the operability of the facility's safety functions (as the malware was designed to do), but it also results in further damage to the facility's systems by releasing chemicals into the water, causing the site to shut down. As a result, millions of people are left without clean water.

#### Example (2): where the conduct takes place overseas / involves physical damage

A covert unit of people working for a foreign power blow up a gas pipeline which supplies the UK. This results in the alteration of supply to the UK and has serious consequences for UK homes and businesses.

#### Example (3): where the conduct involves an omission

A person working as a contractor for a nuclear energy company agrees to work for a foreign power. They are instructed to not implement compulsory safety protocols which result in the site they are working on being shut down due to a suspected radiation leak. This results in delays to a critical nuclear technology being developed as well as wide-spread grid damage. Millions of people are left without power.

121 The offence will be triable on indictment only. Subsection (4) provides for a penalty of life imprisonment or a fine (or both).

## Foreign interference

### Clause 13: Foreign interference: general

122 Clause 13 creates an offence of foreign interference.

- a. Subsection (1)(a) provides that a person must intend to cause an effect stipulated within subsection (2), whether or not their conduct, or a course of their conduct, has that actual effect, provided they intended to cause one or more of those effects.
- b. Subsection (1)(b) provides that there must be a link to a foreign power (clause 29). This link is made when the conduct concerned is carried out for or on behalf of a foreign power, or with the intention to benefit a foreign power.
- c. Subsection (1)(c) requires that the person's conduct meets either Condition A in subsection (4), and/or Condition B in subsection (5), and/or Condition C in subsection (6).

123 All three limbs of the offence must be met in order for a person to have committed an offence.

124 Subsection (2) provides the list of effects relevant to subsection (1)(a).

- a. Subsection (2)(a) provides for an effect of interfering with the exercise of a Convention Right by a particular person, as provided under the laws of the United Kingdom. The meaning of a Convention Right is explained in subsection (13).



- b. Subsection (2)(b) makes provision for affecting the exercise by any person of their public functions. The meaning of public functions is set out in subsection (13).
- c. Subsection (2)(c) makes provision for an effect of manipulating whether, or how, any person makes use of services provided in the exercise of public functions. The meaning of public functions is set out in subsection (13).
- d. Subsection (2)(d) makes provision for an effect of manipulating whether, or how, any person participates in political processes under the law of the United Kingdom. The law of the United Kingdom is defined in subsection (13). A political process could include, but is not limited to, a vote concerning governmental institutions, such as a general election, local authority election, mayoral elections, or police and crime commissioner elections. As well as elections, a political process could include a vote in the proceedings of either House of Parliament, the Scottish Parliament, the Northern Ireland Assembly or Senedd Cymru. A political process could also include the proceedings of a UK parliamentary party or a decision by a governing party in the United Kingdom.
- e. Subsection (2)(e) makes provision for an effect of manipulating whether, or how, any person participates in a legal process under the law of the United Kingdom. Legal processes are expected to cover things such as jury service, or participation in Court proceedings. The law of the United Kingdom is defined in subsection (13).
- f. Subsection (2)(f) makes provision for an effect of prejudicing the safety or interests of the United Kingdom.
- g. Subsection (3) makes provision for subsection (2)(b) to apply regardless of whether an individual is exercising a specific public function with regard to their role, or their public functions generally.

125 With regard to conditions: A, B, and C referenced in subsection (1)(c):

- a. Subsection (4) provides for Condition A: where a person’s conduct constitutes a criminal offence. Given that, per subsection (8), the offence of foreign interference applies to conduct that takes place outside the UK, subsection (4) also provides that conduct that takes place outside the UK will amount to an offence the purposes of satisfying Condition A if it would constitute an offence if took place in any part of the United Kingdom.
- b. Subsection (5) provides for Condition B: where a person’s conduct involves coercion of any kind. Coercion is not exhaustively defined, but is expressed to include the following conduct to the extent that such conduct does not already amount to a criminal offence within the meaning of Condition A:
  - i. using or threatening to use violence against a person;
  - ii. damaging or destroying, or threatening to damage and destroy, a person’s property;
  - iii. damaging or threatening to damage a person’s reputation;
  - iv. causing or threatening to cause financial loss to a person.
  - v. causing spiritual injury to, or placing undue spiritual pressure on, a person;

126 The conduct that constitutes coercion can be targeted at a person other than the person on whom it is intended to have the effect within subsection (2). By way of example, conduct can

meet this condition if, for example, a person “A” communicates to person “B” a threat to harm person “C” if B does not accede to A’s demands.

127 Subsections (6) to (9) provide for Condition C, where a person’s conduct involves making a misrepresentation.

128 Subsection (7) states that a misrepresentation is a representation that a reasonable person would consider to be false or misleading in a way that is relevant to the effect within subsection (2) that it is intended to have.

129 Subsection (8) provides that a representation may include making a statement or by any other kind of conduct and may be either express or implied. Subsection (9) is not an exhaustive list, but states that a misrepresentation may include

- a. a misrepresentation as to the person’s identity or purpose;
- b. presenting information in a way which amounts to a misrepresentation, even if some or all of the information is true.

130 Subsection (10) sets out the territorial extent of the offence and says that subsection (1) applies regardless of whether a person’s conduct takes place in the United Kingdom or elsewhere.

131 Subsection (11) provides that the course of conduct in which a person may participate (see subsection (1)(a)) may be engaged in by the person alone or together with one or more others.

132 Subsection (12) provides the penalty for the offence: up to 14 years imprisonment on conviction, or a fine, or both imprisonment and a fine.

133 Subsection (13) provides the meaning of “convention rights”, “the law of the United Kingdom”, and “public functions”. For the purposes of this offence:

- a. “Convention rights” has the meaning given by section 1 of the Human Rights Act 1998;
- b. the “law of the United Kingdom” includes the law of any part of the United Kingdom;
- c. “public functions” means functions of a public nature exercisable in the United Kingdom, or exercisable in a country or territory outside the United Kingdom by a person acting on behalf of, or holding office under, the Crown.

**Example (1): where conduct is intended have the effect in subsection (2)(a)**

Person A, working for a foreign power, is instructed to threaten members of that foreign power’s diaspora community in the UK. Person A infiltrates a community cultural organisation after posing as a businessman and targets Person B. Person B is deliberately targeted because they are vocal in their views which are contrary to the foreign power’s foreign policy. Person A goes on to threaten to hurt Person B and their family if they do not return to their country and renounce their views.

**Example (2): where conduct is intended have the effect in subsection (2)(b)**

Person C works for a UK-based business that is owned by a foreign power and is instructed to cultivate relationships with members of Parliament. This work, which can be traced directly to a foreign intelligence agency, involves cultivating relationships to obtain sensitive information on MPs. Once that sensitive information is obtained, the foreign power ensures Person C uses this as leverage, through coercive means, to ensure MPs distort legitimate debates in relation to

that foreign power and ensure they vote and speak on particular issues in ways that are favourable to that foreign power.

**Example (3): where conduct is intended have the effect in subsection (2)(c)**

A foreign power runs a covert unit of state actors operating a ‘troll farm’. A troll farm is an organisation employing people to make deliberately offensive or provocative online posts to cause conflict or manipulate public opinion. They use a variety of tools to spread disinformation and engage in other harmful online activity designed to manipulate public opinion to sow discord within society and undermine public confidence in HMG. The troll farm uses coordinated inauthentic behaviour and online manipulation to create and amplify disinformation about the effectiveness and supposed side effects of children’s vaccines. The state-backed troll farm uses misrepresentations and false identities to infiltrate legitimate debate. In doing so, the foreign power seeks to undermine the take-up of public health services by amplifying an existing ‘wedge’ issue to fragment societal cohesion

**Example (4): where conduct is intended have the effect in subsection (2)(d)**

Person D is foreign national living in the UK and, through funding from his home country, has become influential within the diaspora community in the UK. During an election campaign D deliberately spreads false information about a legitimate political candidate amongst members of that community, with the intention of undermining the candidate’s election chances. Alongside spreading false information, Person D pressures members of the diaspora community to vote for Person E instead who is known to have strong links to the foreign power and is reportedly a former member of that country’s foreign intelligence service. As a result of individuals being misled and pressured to vote in a particular way, based on a foreign power’s agenda, their ability to legitimately engage in political processes is undermined.

**Example (5): where conduct is intended have the effect in subsection (2)(e)**

Person F is standing trial for a criminal offence in the UK. Person G, with links to a foreign power is tasked by that foreign power to infiltrate the court case to provide a more favourable outcome for the foreign power. Person G deliberately targets Person H, a member of the jury, by gaining sensitive information about them. Person G then ensures that Person H engages in conduct designed to sway the outcome of the court case in favour of the foreign power.

## Clause 14: Foreign Interference in elections

134 This clause makes provision for substantially increased maximum penalties in respect of certain existing electoral offences if the foreign power condition in clause 29 is met in relation to the person’s conduct. For the increased maximum penalty to apply both conditions in subsection (1) must be met: a person must commit a “relevant electoral offence” and the conduct constituting the offence must meet the foreign power condition (see clause 29).

135 Subsection (2) states that the list of “relevant electoral offences” can be found in column 1 of the table in Part 1 of Schedule 1. These offences are drawn from the Representation of the People Act 1983 (RPA) and the Political Parties, Elections and Referendums Act 2000 (PPERA). Under these Acts, there are criminal offences for interfering or adversely affecting an election or referendum or failing to comply with donation rules to a political party.

136 Offences in column 1 of the table in Part 1 of Schedule 1 include offences in the RPA for unduly influencing an individual to vote a certain way or not vote at all, bribing a person to vote, tampering with ballot or nomination papers, and personating a voter and voting multiple times where not applicable. Specific offences under the PERA include offences for donating to a political party where not allowed.

137 Subsection (3) and (4) together state that a person who commits an offence under this clause is triable on indictment and reference the maximum penalties set out in column 2 of the table at Schedule 1.

138 Subsection (5) references amendments set out in Part 2 of the table in Schedule 1. These amendments concern existing provisions in the Representation of the People Act 1983 and the Political Parties, Elections and Referendums Act 2000 as they apply to the provisions of this clause.

#### Example 1 (an offence in the Representation of the People Act 1983)

Person A uses false identities to cast multiple proxy votes in a general election as part of a campaign by a foreign power to interfere with the result of an election in a UK constituency. Person A is acting under the direction of a foreign power and is guilty of an offence relating to applications for postal and proxy votes.

#### Example 2 (an offence in the Political Parties, Elections and Referendums Act 2000)

A foreign power uses influential members of its diaspora community to interfere in UK democracy. To do this, they seek to finance a political party in the UK in order to gain influence in the UK political system. Person B makes a donation to a political party through a third party but is not permitted to do so. They are working on behalf of the foreign power who have provided funds to attempt to influence the political party. Person B conceals their identity in order to deceive the third party and obfuscate their true origins.

### Clause 15: Obtaining etc material benefits from a foreign intelligence service

139 Clause 15 creates two offences related to obtaining material benefits from a foreign intelligence service.

140 Subsection (1) makes provision for an offence where a person obtains, accepts or retains a material benefit which is not an excluded benefit, or where a person obtains or accepts the provision of such a benefit to another person; the benefit is or was provided by, or on behalf of, a foreign intelligence service; and the person must know or ought reasonably to know that this is the case. This could include obtaining a benefit directly from a foreign intelligence service, such as a gift of payment, or where you accept a benefit on someone's behalf (whether or not they know that the benefit has come from a foreign intelligence service).

141 Subsection (2) makes provision for an offence where: a person agrees to accept a material benefit which is not an excluded benefit, or where a person agrees to accept the provision of such a benefit to another person; The benefit is to be provided by or on behalf of a foreign intelligence service; and the person must know or ought reasonably to know that this is the case. This could include instances where the benefit is yet to be provided, but could form part of an agreement for payment at a later date.

142 Subsection (3) provides a non-exhaustive list of what constitutes a material benefit. A material benefit may include financial benefits, anything which has the potential to result in a financial benefit, and information. A financial benefit may be money or a gift with a monetary value. This could include, but is not limited to, a beneficial contract or a direct cash payment.

143 Subsection (4) sets out when a material benefit is an excluded benefit. A material benefit is an excluded benefit if it is provided as reasonable consideration for the provision of goods or services, and the provision of those goods or services does not constitute an offence. Subsection (5) states that a benefit may be provided by or on behalf of a foreign intelligence service directly or indirectly, such as through one or more companies.

- 144 Subsection (6) sets out the territorial extent of the offences in subsections (1) and (2). Both apply to conduct outside the United Kingdom, but only apply to conduct wholly outside of the United Kingdom where:
- a. The material benefit is or was, or is to be, provided in or from the United Kingdom;
  - b. In any case, the person engaging in the conduct is a UK person (defined in clause 2) or acts for or on behalf of, or holds office under, the Crown, or is in Crown employment (whether or not they engage in the conduct in that capacity).
- 145 For the offence of retaining a material benefit in Subsection (1), the defence provided for in subsection (7) states that it is a defence to show that the person had a reasonable excuse for retaining the benefit.
- 146 Subsections (8) and (9) make provision for a further defence applicable to all offences under subsections (1) and (2). A person does not commit an offence if the person engages in the conduct in question in any of the circumstances set out at subsection (8)(a) – (c) while meeting the requirements in subsection (9).
- 147 These circumstances are conduct in compliance with a legal obligation, excluding under private law, under the law of the United Kingdom (subsection (8)(a)); in the case of a person having functions of a public nature under the law of the United Kingdom, for the purposes of those functions (subsection (8)(b)); or in accordance with an agreement or arrangement to which the United Kingdom or any person acting for or on behalf of, or holding office under, the Crown is (in that capacity) a party (subsection (8)(c)).
- 148 Subsection (10) sets out the maximum penalty available for the offence in subsection (1), which is 14 years or a fine, or both.
- 149 Subsection (11) sets out the maximum penalty available for the offence in subsection (2), which is 10 years or a fine, or both.
- 150 Subsection (12) is a list of terms which all have the same meaning as those in clause 3 of this Bill.

#### Example 1 (Obtaining a benefit for yourself)

Person A is a UK-based individual who works as an estate agent in a part of the UK with a significant military presence. A is eventually approached by an officer of a foreign intelligence service, Person B, who declares their line of work to A, and asks A to supply details of his clients. These clients are likely to include personnel whose roles are sensitive. In return, B pays for A to send his children to a private school that he could not otherwise afford. These payments are evidenced; however, the information about the supply of A's clients' contact details to B cannot be recovered evidentially.

#### Example 2 (accepting the provision of a benefit for another )

Person C works for weapons manufacturer with sensitive public sector contracts. C meets someone he knows is an officer of a foreign intelligence service at a charity function, and the officer gives him a cheque in favour of C's charity, saying there could be more to come if C agrees to assist them in ways that will be explained at a future date; C says OK and goes off to bank the cheque. C hasn't yet committed an offence of assisting a Foreign Intelligence Service in clause 3, or himself obtained a material benefit, or agreed to accept anything for himself, but he has committed an offence by taking and banking the cheque accepted the provision of a benefit to his charity

### Example 3 (agreeing to accept a benefit for yourself)

Person D is a contact of a UK scientist working in the nuclear sector. D is approached by a person who identifies himself as a foreign intelligence officer and who offers D a reward if D will introduce him to the scientist. D agrees to receive a substantial sum of money in return for arranging the meeting, with the payment to be made after the meeting has taken place.

## Preparatory conduct

### Clause 16: Preparatory conduct

151 Subsection (1) provides that it is an offence to engage in preparatory conduct with the intention that an act specified under subsection (3) will be committed. The offence is committed if, in carrying out the conduct a person intends that they, or another person, will commit the relevant act or acts, and that the conduct is preparatory to such acts. There is no requirement that the relevant act or acts are subsequently committed.

152 Subsection (2) is included to confirm that a person commits the offence if they engage in conduct either with the intention that it is preparatory to specific acts (within subsection (3)) or to acts (within subsection (3)) in general. The conduct does not have to be carried out with the intention that a specific identifiable act will be committed, if the person intends that acts in general will be committed. Where a person intends their conduct to be preparatory to a number of acts, the offence will be committed even if the person, or another person, has yet to choose which of those acts they will subsequently commit.

### Example (where the ultimate outcome of the preparatory conduct is unclear)

Person X is tasked by a foreign intelligence service to drop an infected USB stick inside a sensitive government site. Person X intends for the USB stick to be plugged into a sensitive government system and that information on the system will be compromised as a result. The person is arrested before the USB stick is plugged into the system. At the point of arrest, it is unclear whether the compromise would have led to an act of sabotage or the obtaining or disclosing of protected information, but the person's intention is that either of those offences will be committed.

153 The acts in subsection (3) include acts which constitute the following offences in this Bill - obtaining or disclosing protected information (clause 1), obtaining, or disclosing trade secrets (clause 2), entering etc a prohibited place for a purpose prejudicial to the UK (clause 4) and sabotage (clause 12).

154 Subsection (3)(b) and (4) bring into scope a range of broader acts where the foreign power condition applies – namely serious violence against a person, endangering the life of another person or creating a serious risk to the health and safety of the public.

155 Subsection (5) provides that this offence captures conduct that is carried out both in the UK or elsewhere. However, there must be a connection between the act that the conduct is preparatory to and the UK. If the act constitutes an offence listed in subsection (3)(a), preparatory conduct that takes place outside of the UK will be caught only to the extent that the relevant offence applies to conduct that occurs outside of the UK. If the act in question is one listed in subsection (4), preparatory conduct that takes place outside of the UK will be caught only to the extent that the act is directed against a person or the public in the UK.

156 Subsection (6) provides that the maximum available penalty applicable on conviction of the offence: namely imprisonment for life or a fine (or both). The inclusion of a fine is in recognition that the offence can be committed by bodies corporate.

## Acting for a foreign power as aggravating factor in sentencing

### Clause 17: Aggravating factor where foreign power condition met: England and Wales

157 Clause 17 inserts a new section 69A into the Sentencing Code to provide a new aggravating factor for sentencing where the foreign power condition is met in relation to an offence (see clause 29 for the foreign power condition). Under new subsections 69A(1) and (2), a court in England and Wales considering a person's sentence for any offence which is not an offence under this Bill (or an inchoate offence in relation to such an offence) must, if it appears the foreign power condition is or may be met in relation to the offence, make a determination (on the criminal standard of proof) as to whether it is met or not.

158 The court will make this determination on the basis of the usual information before it for the purposes of sentencing. This may include the evidence heard at trial, or evidence heard at a Newton hearing (if necessary) following a guilty plea, whilst also taking into account any representations by the prosecution or defence. A Newton hearing is where the judge hears evidence from both the prosecution and defence and comes to his or her own conclusion on the facts, applying the criminal standard of proof. If the court determines that the foreign power condition is met in relation to conduct which constitutes the offence, it must treat that as an aggravating factor when sentencing the offender and must state in open court that the offence is so aggravated (new subsection 69A(3)).

159 The requirements for the foreign power condition to be met are provided at clause 29.

160 New subsection 69A(1)(a) provides that this statutory aggravating factor in sentencing will only apply in relation to offences committed on or after commencement. The aggravating factor cannot be applied to any offences under the National Security Act 2022 (new subsection 69A(2)).

### Clause 18: Aggravating factor where foreign power condition met: Northern Ireland

161 Clause 18 makes corresponding provision to that in Clause 17, for sentences to be aggravated where the foreign power condition is met in relation to offences in Northern Ireland (see clause 29 for the foreign power condition).

### Clause 19: Aggravating factor where foreign power condition met: Scotland

162 Clause 19 makes corresponding provision to that in Clause 17, for sentences to be aggravated where the foreign power condition is met in relation to offences in Scotland (see clause 29 for the foreign power condition). Subsection (3) requires a court imposing an aggravated sentence for this reason to state the extent of and reasons for the difference between the sentence it imposed and that it would have imposed had the foreign power condition not been met in relation to the offence. Subsection (4) provides that evidence from a single source is sufficient to prove this aggravating factor – which is different from the usual position under the law in Scotland where corroboration is required.

### Clause 20: Aggravating factor where foreign power condition met: armed forces

163 Clause 20 amends the Armed Forces Act 2006 to make corresponding provision to that in clause 17 for service courts considering the seriousness of a service offence for the purposes of sentencing.

## Powers of investigation etc.

### Clause 21: Powers of search etc.

164 Clause 21 introduces Schedule 2 which provides for powers of entry, search, and seizure in relation to specified investigations.

## Schedule 2: Powers of entry, search and seizure

### **Part 1: England, Wales and Northern Ireland**

- 165 Paragraph 1 sets out that Part 1 of the Schedule applies in England and Wales and in Northern Ireland. These powers of entry, search and seizure are available where there are reasonable grounds to suspect that a relevant act, as defined here, has been or is about to be committed.
- 166 Paragraph 2 outlines the circumstances in which a justice of the peace or lay magistrate can issue a warrant to enter a premises and search for, seize and retain material believed to be of relevance to the investigation of a relevant act. The warrant may authorise a constable to search relevant premises and any person found there, and to seize and retain material found in that search which is likely to be evidence of a relevant act. A warrant under this paragraph does not allow the seizure of confidential material.
- 167 Paragraph 3 provides for production orders in respect of confidential material. A constable can apply to a judge for an order to require a person to produce confidential material or provide access to it for seizure and retention by a constable. It may also require a person to state to the best of their knowledge the material's location. This paragraph provides the conditions that must be satisfied for an order to be granted. The order must be complied with within 7 days, or such other period that is specified in the order.
- 168 Paragraph 4 provides for production orders in respect of confidential material that is likely to come into existence within 28 days of the order being issued. Subsection (8) requires the person specified in the application notify a named constable as soon as is reasonably practicable after any material to which the order relates comes into the person's possession, custody, or control. The order requires that the material be produced, or access given to a constable, within 7 days of the notification or such other period specified in the order. There is a requirement for the specified person to state to the best of their knowledge or belief the location of material to which the order relates that is not in, and will not come into, their possession, custody, or control within 28 days of the order being made.
- 169 Paragraph 5 makes supplementary provision for the production orders in paragraphs 3 and 4. An order does not require the person to produce, or grant access to, material subject to legal privilege. A production order takes effect despite restrictions imposed on disclosure imposed by virtue of an enactment or otherwise. These supplementary provisions also explain how to produce or provide access to material in compliance with the order if it is stored electronically.
- 170 Paragraph 6 provide that production orders can be made in relation to material in the possession of government departments.
- 171 Paragraph 7 outlines the conditions that must be met for a judge to issue a warrant to authorise a constable to enter a premises and search for, seize and retain confidential material. This does not include material subject to legal privilege. An application may be granted if a judge is satisfied that an order under paragraphs 3 or 4 has not been complied with or the conditions specified are met. Conditions 1 to 4 are the same as for a production order under paragraph 3. Condition 5 relates only to warrants and is primarily concerned with instances in which a production order would have been impractical or could have prejudiced the investigation. Condition 6 relates to applications for all premises warrants.
- 172 Paragraph 8 provides for a constable to apply for an order to require a person to give an explanation of the material that has been seized or produced pursuant to warrants or orders under Part 1 of this Schedule. It outlines that the order cannot require the disclosure of information that a person would be entitled to refuse to disclose on grounds of legal



professional privilege in the High Court. An order may require a lawyer to provide the name and address of a client. An explanation under this paragraph may be given orally or in writing and can only be used as evidence against the person in a prosecution for the offence in paragraph 9.

173 Paragraph 9 makes it an offence for a person to knowingly or recklessly make a statement that is false or misleading as to a material particular when purportedly complying with an order under paragraph 8.

174 Paragraph 10 permits a police officer of at least the rank of superintendent to give any constable authority that is equivalent to a warrant under paragraphs 2 or 7. To give such authority, the officer must have reasonable grounds to believe that the case is one of great emergency and immediate action is necessary. The officer must be satisfied as to the same conditions as for a warrant under paragraphs 2 or 7. Where such authority is given, the Secretary of State must be notified as soon as reasonably practicable. Paragraph 10 also makes clear that an order that gives the authority of a warrant under paragraph 7 does not authorise a constable to retain confidential journalistic material. It is an offence to wilfully obstruct a search undertaken under this authority.

175 Paragraph 11 provides that if a search under paragraph 10 results in the seizure of confidential journalistic material, a constable must apply for a warrant of retention as soon as reasonably practicable unless the confidential journalistic material is not to be retained. A judge may grant an application if they are satisfied that conditions 1 to 3 are met. These conditions are similar to those for a warrant under paragraph 7 and ensure equivalent judicial scrutiny for confidential journalistic material obtained during an urgent search.

176 Paragraph 12 specifies the circumstances in which a police officer can give notice to a person requiring an explanation of material seized in a search authorised by paragraph 11. Paragraph 12 makes it an offence to fail to comply with a notice given under it. A defence of reasonable excuse is available.

177 Paragraph 13 concerns the application of the Police and Criminal Evidence Act 1984 and Police and Criminal Evidence (Northern Ireland) Order 1989.

178 Paragraph 14 allows for the making of procedural rules relevant to proceedings in respect of warrants and orders made in Part 1 of this Schedule.

179 Paragraph 15 defines terms used within Part 1 of this Schedule. This includes a definition of confidential material, which comprises both confidential journalistic material and protected material. Subsection (3) provides that confidential journalistic material has the meaning given at section 264 Investigatory Powers Act 2016. Protected material is explained at subsection (4).

## **Part 2: Scotland**

180 Paragraph 16 provides that Part 2 of the Schedule applies in Scotland. The same meaning of relevant act is given as in paragraph 1 of Part 1.

181 Paragraphs 17-21 outline the conditions, effect, and procedure for production orders in Scotland equivalent to those described for England and Wales and Northern Ireland in Part 1.

182 Paragraph 22 outlines the process under which a Sheriff can issue a warrant to enter a premises and search for, seize and retain material believed to be of relevance to the investigation of a relevant act. The conditions for granting a warrant are equivalent to those in paragraph 7 of Part 1.

183 Paragraph 23 allows for an order equivalent to that in paragraph 9 of Part 1 to be made by a Sheriff.

184 Paragraph 24 provides a power to give authority such as that of a warrant under paragraph 22 in cases of great emergency, where immediate action is necessary, in equivalent terms to paragraph 10 of Part 1. It makes it an offence to wilfully obstruct a search under said authority.

185 Like paragraph 11 of Part 1, paragraph 25 requires a constable to obtain a warrant to retain confidential journalistic material seized under paragraph 24 and sets out the conditions to be satisfied for the grant of said warrant.

186 Paragraph 26 makes equivalent provision to paragraph 12 of Part 1 in respect of written notices to explain material seized under paragraph 24.

187 Paragraph 27 makes supplementary provision for Part 2 of the Schedule. Subsection (1) maintains protections from disclosure on the ground of confidentiality afforded by any rule of law for (a) communications between a professional legal adviser and their client, and (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings. This paragraph also relates to the opening of lockfast places by a constable and the conduct of personal searches.

## Clause 22 Disclosure orders

188 Clause 22 introduces Schedule 3 which makes provision for disclosure orders.

## Schedule 3: Disclosure orders

189 Schedule 3 enables investigators to apply for a disclosure order. Disclosure orders enable investigators to give a notice to individuals or organisations, compelling them to provide information, produce documents, and/or answer questions relevant to an investigation to identify property related to foreign power threat activity.

## **Part 1: England, Wales and Northern Ireland**

190 Paragraph 1 sets out that Part 1 of the Schedule applies in England and Wales and in Northern Ireland and defines relevant terminology, including making clear that an appropriate officer is either a constable or an NCA officer.

191 Paragraph 2 sets out the process for applying for a disclosure order. An appropriate officer may apply to a judge for a disclosure order. Paragraph 2 provides the conditions which must be met for the disclosure order to be granted and outlines how an appropriate officer can obtain relevant information from a person when a disclosure order has been granted. As per subsection (10), an application must be made by either a senior officer or an appropriate officer authorised to do so by a senior officer.

192 Paragraph 3 provides supplementary detail about types of information that an appropriate officer cannot ask for using a disclosure order, including information subject to legal privilege. Paragraph 3 also sets out the power of an appropriate officer to take and retain copies of documents obtained through a disclosure order.

193 Paragraph 4 provides that an application for a disclosure order can be made without notice to a judge in chambers.

194 Paragraph 5 provides that an application may be made to the court to discharge or vary a disclosure order. Subparagraph (1) sets out that this can be made either by the applicant for the order or any person affected by the order. If the applicant was a police officer, a different police officer may so apply. If the applicant was an NCA officer, a different NCA officer may make the application. Both must be a senior officer or authorised to make the application by a senior officer.

195 Paragraph 6 sets out that rules of court can make provision as to the practice and procedure of proceedings relating disclosure orders.

196 Paragraph 7 concerns the offences and penalties linked to disclosure orders. These include non-compliance with a requirement under a disclosure order without reasonable excuse, and providing false or misleading information under a requirement imposed by a disclosure order.

197 Paragraph 8 provides that, where a person makes a statement as a result of a disclosure order, such a statement cannot be used in evidence against that person in criminal proceedings except for proceedings concerning the offences listed at sub-paragraph (2). Paragraph 9 defines terminology relevant to Part 1 of the Schedule, including the meaning of “senior officer”.

## **Part 2: Scotland**

198 Paragraph 10 provides that this Part of the Schedule applies in Scotland and notes certain key terms which have the same meaning as in Part 1. Part 2 makes equivalent provision to Part 1.

199 The process set out in paragraphs 11 to 18 mirrors Part 1, paragraphs 2 to 9, albeit with differences to reflect the processes, procedures and different offices within the justice system of Scotland. In Scotland, the Lord Advocate may apply for a disclosure order from the High Court of Justiciary.

200 A hypothetical example of the use of a disclosure order would include:

### **Hypothetical example (use of a disclosure order requiring a company to provide information)**

The police suspect that a person is purchasing a specialist piece of computer equipment to use in the commission of a sabotage offence by rendering inoperable a UK Government security system, and suspect that the equipment has been purchased from one of a small number of possible companies.

A single disclosure order is sought which enables the police to seek information relating to the purchase of this specialist computer equipment by the suspect from the companies in question. The order results in the acquisition of further evidence to support the investigation into the state threats offence.

## **Clause 23 Customer information orders**

201 Clause 23 introduces Schedule 4 which makes provision for customer information orders.

### **Schedule 4: Customer information orders**

202 Schedule 4 provides for the court to make an order that enables investigators to give notice to a financial institution requiring it to provide any customer information it has in relation to a person subject to an investigation into foreign power threat activity, who is specified on application for the order. Customer information is defined as having the same meaning in England, Wales and Northern Ireland as section 364 of the Proceeds of Crime Act 2002. In Scotland, the definition of customer information is the same as section 398 of that Act. This definition includes things such as account name or numbers, the person’s full name, date of birth and most recent address and any previous addresses. In all parts of the UK, the definition of financial institution is the same as in Schedule 6 to the Terrorism Act 2000, and includes credit unions, the National Savings Bank and a person carrying on a relevant regulated activity such as managing investments.

203 Paragraph 1 provides for applications to a judge for customer information order. It sets out that an appropriate officer – a constable or an NCA officer in England and Wales or Northern

Ireland, or the procurator fiscal in Scotland – may apply for a customer information order, and that this may be granted if the judge is satisfied that the order is sought for the purposes of an investigation into foreign power threat activity and that it will enhance the effectiveness of the investigation. The paragraph goes on to specify what an application must state, the extent of the authority an order gives to an appropriate officer and what is required from a financial institution upon receiving a customer information order.

204 Paragraph 2 is a supplementary provision to paragraph 1. It provides that an order has effect despite any other restrictions on the disclosure of information, for example data protection legislation.

205 Paragraph 3 provides that an application can be made without notice to a judge in chambers.

206 Paragraph 4 provides that an application may be made to the court to discharge or vary a customer information order. Subparagraph (1) sets out that this can be made either by the applicant for the order or any person affected by the order. Where the application for the order was made by a police or NCA officer, the application may be made by a different police or NCA officer respectively. In England & Wales and Northern Ireland, an application must be made by a senior police officer or a police officer authorised to so apply by a senior police officer.

207 Paragraph 5 sets out that rules of court can make provision as to the practice and procedure of proceedings relating to customer information orders.

208 Paragraph 6 sets out that it is an offence for a person to fail to comply with a requirement imposed under a customer information order without reasonable excuse. Subparagraph (2) provides that this is punishable by imprisonment (for no longer than the specified maximum term) or a fine (or both).

209 Paragraph 7 provides that where a person makes a statement as a result of a requirement imposed under a customer information order, such a statement cannot be used as evidence against that person in criminal proceedings unless sub-paragraphs (2) and (3) apply.

210 Paragraph 8 defines terminology relevant to Schedule 4, including the meanings of “customer information” which is defined by reference to the Proceeds of Crime Act 2002, and “financial institution”, which is defined by reference to the Terrorism Act 2000. Accordingly any updates to the definitions in those Acts will automatically apply to these provisions.

211 A hypothetical example of the use of a customer information order would include:

#### **Hypothetical example (use of a customer information order to identify accounts linked to the financing of state threats activity)**

A foreign agent based in the UK is paying UK academics working in sensitive defence research areas to provide intelligence regarding UK defence capabilities and the police apply for a customer information order to identify from relevant financial institutions where the agent’s UK account is held to assist their investigation.

The customer information order requires relevant institutions where the agent holds an account to provide customer information that they hold. On this occasion a financial institution holds the current address of the agent and previous addresses they have resided at in the UK which are provided to police. This provides police with further information about the agent who is suspected of conducting UK espionage activity, which provides police with further investigative leads to progress the investigation.

## Clause 24 Account monitoring orders

212 Clause 24 introduces Schedule 5 which makes provision for account monitoring orders.

### Schedule 5: Account monitoring orders

213 Schedule 5 provides for the making of applications for account monitoring orders. These orders require financial institutions to provide specified information relating to accounts. The definition of financial institution is the same as in Schedule 6 to the Terrorism Act 2000, and includes credit unions, the National Savings Bank and a person carrying on a relevant regulated activity such as managing investments.

214 Paragraph 1 outlines the grounds and requirements of an application for an account monitoring order, including what information must be in the application. It sets out that an appropriate officer – a constable or an NCA officer in England and Wales or Northern Ireland, or the procurator fiscal in Scotland – may apply to a judge for an account monitoring order, and that this may be granted if judge is satisfied that the order is sought for the purposes of an investigation into foreign power threat activity and that it will enhance the effectiveness of the investigation. Sub-paragraph (6) sets out the requirements imposed on a financial institution under an account monitoring order, which must provide specified information how, when and where specified. As set out in sub-paragraph (7), the period for which the information is required under the order can be longer than 90 days from the day on which the order is made.

215 Paragraph 2 provides that an application for an account monitoring order can be made without notice to a judge in chambers.

216 Paragraph 3 provides that an application may be made to the court to discharge or vary an account monitoring order. Subparagraph (1) sets out that this can be made either by the applicant for the order or any person affected by the order. Where the application for the order was made by a police officer or NCA officer, this application may be made by a different police officer or NCA officer respectively.

217 Paragraph 4 sets out that rules of court can make provision as to the practice and procedure of proceedings relating to account monitoring orders.

218 Paragraph 5 provides that account monitoring orders have effect as if they were an order of the court and in spite of any restriction imposed on the disclosure of information found in legislation or otherwise.

219 Paragraph 6 provides that, where a person makes a statement in response to an account monitoring order, such a statement cannot be used as evidence against that person in criminal proceedings unless sub-paragraphs (2) and (3) apply. It may be used in relevant proceedings for contempt of court.

220 Paragraph 7 defines terminology relevant to Schedule 5, including the meaning of “financial institution” which is defined by reference to that in Schedule 6 Terrorism Act 2000. Accordingly any updates to the definition in that Acts will automatically apply to these provisions.

221 A hypothetical example of the use of an account monitoring order would include:

#### Hypothetical example (use of an account monitoring order to investigate the financing of a suspect by a foreign power)

The police are investigating an individual for foreign interference in elections and have intelligence to suggest that once the suspect has been paid by a foreign power, they will then commit the relevant electoral offence in return for payment.

The police apply for an account monitoring order to monitor in real-time when the money is paid into the suspect's bank account. The order successfully allows police to be alerted when the money has been paid into the account, which signals that the interference offence is about to take place. The police are then able to successfully disrupt the suspect from committing the offence. As well as disrupting the activity, the account monitoring order provides police with key evidence linking the suspect to the foreign power to aid in establishing the foreign power condition in a subsequent prosecution.

## Clause 25: Arrest without warrant

- 222 Clause 25 and Schedule 6 provide a power of arrest and provisions about subsequent detention. These provisions are modelled on those at section 41 and Schedule 8 of the Terrorism Act 2000. Clause 25(1) provides that a constable may arrest without a warrant anyone who they reasonably suspect is involved in foreign power threat activity. Clause 30 defines involvement in foreign power threat activity, covering commission, preparation or instigation of certain acts or threats, which are specified offences under the Act (clause 30(3)(a)) as well as acts or threats where the foreign power condition is met (see clause 29) 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. In addition, involvement in foreign power threat activity would include conduct which facilitates or gives support or assistance to those involved in commission, preparation, or instigation of such acts of threat (clause 30(1)(b) and (c).
- 223 Subsection (3) provides that a person must be released not later than 48 hours after arrest. If the person was already detained under another power, the 48 hours is taken from the time they were detained under that other power. The other powers of detention are listed in subsection (4) as section 24 of the Police and Criminal Evidence Act 1984, Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989, section 41 of and Schedule 7 to the Terrorism Act 2000, section 1 of the Criminal Justice (Scotland) Act 2016, and Part 1 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019.
- 224 Part 5 of schedule 6 covers the requirement for reviews of detention to be carried out. Clause 25 (5) provides that a person arrested must be released if, following such a review, the review officer does not authorise continued detention. The provision does not apply if the person is detained awaiting an application or decision on further detention, as set out in subsections (6) and (7).
- 225 Paragraphs 38 and 45 of Schedule 6 provide that a judicial authority can issue a warrant of further detention and may extend or further extend a person's detention. Clause 56 (6) and (7) make clear that a person may be detained pending the making of an application for such a warrant or whilst awaiting the outcome of the proceedings on an application.
- 226 Where a warrant of further detention or extension or further extension has been granted, clause 25 subsection (8) indicates that the person may be detained for the period of time specified in the warrant. This is subject to the conditions on detention in paragraph 46 of Schedule 6 which provide that a person must be released if the matters on which the judicial authority authorised further detention no longer apply.
- 227 Subsection (9) provides that where an application to extend detention is refused, a person can continue to be detained in accordance with this clause (i.e., for up to 48 hours).
- 228 Subsection (10) provides that if a person is removed to hospital for medical treatment, any time during which the person is being questioned in hospital or on the way there or back for the purpose of obtaining relevant evidence is to be included in detention time calculations.

Any other time is not to be included. “Relevant evidence” is defined in subsection (12) as evidence which indicates that the detained person is, or has been, involved in foreign power threat activity.

229 Subsection (13) provides that any person who has the powers of a constable in one part of the United Kingdom can exercise their power of arrest under subsection (1) in any part of the United Kingdom.

## Schedule 6: Detention under Section 25

### **Part 1: Treatment of persons detained under section 25**

230 Paragraph 1 provides a power for the Secretary of State to designate places where an arrestee may be detained following arrest. Only land or a building in the UK which is owned or under the control of one of the police forces in Paragraph 27 of the schedule can be designated. The reference to land in the UK ensures that where the exercise area or similar facility of a place of detention is not directly connected to the detention building, it legally will form part of the designated place of detention. Paragraph 1 makes clear that whilst an arrestee is detained in an area of the UK, the law relating to that area applies to the person detained at the time. For example, if an arrestee is arrested and detained in Scotland, but then subsequently moved to England, whilst in Scotland the Scottish law applies and whilst in England English laws apply.

231 Paragraph 2 indicates that a constable, a prison officer, or a person authorised by the Secretary of State may take steps that are reasonably necessary for photographing, taking measurements (such as height and weight), and identifying the detained person, for example searching police databases. This clause does not provide police with powers to take fingerprints or any samples from the arrestee.

232 Paragraph 3 requires video recording with sound of interviews undertaken by a constable at a police station. The Secretary of State must issue a code of practice about the video recording of interviews. The draft code of practice must be laid before Parliament before being brought into operation by regulations.

### **Part 2: Rights of persons detained under section 21: England, Wales and Northern Ireland**

233 Paragraph 6 indicates that upon arrest, a person has the right to have one named person (such as a friend or relative) informed of their detention and the police must inform them of this right. If the detained person requests to do so, the named person must be informed by police as soon as is reasonably practicable. If the detainee is moved to another place of detention, they are able to exercise this right again to have a named person informed of this.

234 Paragraph 7 makes clear that the person detained must be informed on first being detained that they have the right to consult a solicitor as soon as is practicable, in private and at any time. If a request is made by the detainee, the time of the request must be recorded by police. After the person detained has made a request to consult a solicitor, or whilst they are in consultation with their solicitor, paragraph 8 indicates that a senior police officer may direct that they may not consult the chosen solicitor or must cease consultation. The officer can only do so if they have reasonable grounds to believe that any of the consequences of paragraph 8(4) will apply which include that there will be interference with or harm to evidence of an indictable offence or interference with gathering of information about a person’s involvement in foreign power threat activity. In addition, the officer may have reasonable grounds for believing that the person has benefitted from their criminal conduct, as defined in Part 2 of the Proceeds of Crime Act 2002 and that unless he directs otherwise, the arrestee’s consultation with the solicitor may hinder the police’s ability to recover the value of the property (paragraph 8(3)(b)).

235 Paragraph 9 permits a senior police officer to authorise a delay in informing the named person of the arrestee's detention or in permitting the detainee to consult a solicitor if the officer has reasonable grounds for believing that any of the consequences of paragraph 8(4) will apply, or if the officer believes that the arrestee has benefitted from their conduct and unless a delay is authorised, the recovery of the property will be hindered. The authorisation must be recorded in writing and the detained person must be told of the reason for it.

236 Paragraphs 10-14 deal with the taking of fingerprints and samples when an arrestee is detained under these provisions. Paragraph 10 provides that fingerprints and a non-intimate sample (such as saliva) may be taken with the consent of the detained person. If the detained person does not consent, fingerprints or a non-intimate sample can be taken if a senior police officer authorises that the samples can be taken, or if it is known that the person has previously been convicted of a recordable offence. An intimate sample may only be taken with appropriate consent from the detained person and if authorised by a senior police officer. A senior police officer can only authorise the taking of fingerprints or samples if they reasonably suspect that the detained person has been involved in foreign power threat activity and they reasonably believe that the collection of the sample will confirm or disprove the person's involvement (paragraph 10(6)). The police officer can also authorise that fingerprints are taken without consent if the officer is satisfied that the fingerprints will help determine the person's identity either because the person has refused to identify themselves or the officer has reasonable grounds to suspect that the person is not who they claim to be (paragraph 10(7)).

237 Paragraph 11 states that before fingerprints or a sample are taken, the detained person must be informed that the relevant authorisations have been given and the grounds for doing so, as well as the nature of the offence or conduct that they are suspected of being involved in. These facts must be recorded by police as soon as reasonably practicable.

238 If two or more non-intimate samples are taken from the detained person which prove insufficient and the detainee has already been released, an intimate sample may be taken from the person if they provide consent in writing, and a senior police officer authorises the sample to be taken (Paragraph 12). Paragraph 13 indicates that if the person does not consent without good cause, in any subsequent proceedings, the court may draw such inferences they deem proper due to this refusal. A sample may be deemed insufficient as if it is damaged, contaminated, or the use of the whole or part of the sample for an analysis produced no results, or unreliable results.

### **Part 3: Rights of persons detained under section 21: Scotland**

239 Paragraph 15 states that a person detained in Scotland is entitled to have a named person (such as a friend or relative) informed of their detention and where they are being held. If the detainee is moved to another place of detention, they are able to exercise this right again. The detained person is entitled to consult a solicitor, in private, at any time, without delay (Paragraph 15(6)). The person must be informed of both of these rights on first being detained.

240 Paragraph 16 indicates that a senior police officer may direct that the detained person may not consult the chosen solicitor or must cease consultation if it has begun. This can only be done if it appears to the officer to be necessary on one of the grounds mentioned in sub-paragraph (3), for example that it is in the interests of the investigation or prevention of crime. The direction can also be made if the officer has reasonable grounds for believing that the person has benefitted from their criminal conduct (as defined in Part 3 of the Proceeds of Crime Act 2002) and that unless he directs otherwise, the arrestee's consultation with the solicitor, or the informing of the named person, may hinder the police's ability to recover the value of the property (paragraph 16(4)). Where a delay is authorised, this must be recorded, and the detained person must be informed of this as soon as is reasonably practicable (16(6)).



- 241 If the detained person appears to be a child, (defined as a person under 16 years of age) the named person who is informed of the detention must be their parent whether the detained person requests so or not (Paragraph 17). Additionally, section 40 of the Criminal Justice (Scotland) Act 2016 (right of under 18s to have access to other person) applies to the detention.
- 242 Paragraph 18 modifies section 18 Criminal Procedure (Scotland) Act 1995 (regarding the procedure for taking certain fingerprints and samples). It substitutes a power into section 18 for a constable to take relevant physical data (such as fingerprints or other prints or impressions), if the constable reasonably suspects that the person has been involved in foreign power threat activity and believes the relevant data will confirm or disprove the person's involvement in that activity. The constable may also take fingerprints if satisfied that the fingerprints will help determine the suspect's identity and the person's identity has not been verified either because the person has refused to identify themselves or the constable has reasonable grounds to suspect that the person is not who they claim to be.

#### **Part 4: Dealing with fingerprints and samples etc: United Kingdom**

- 243 Paragraph 19 applies to fingerprints, DNA profiles derived from a non-intimate or intimate sample and relevant physical data taken under the powers in the schedule. Thereafter, such fingerprints, samples and physical data are referred to as "paragraph 19 material". Paragraph 19 material must be destroyed if it appears to a chief officer of police that it was obtained unlawfully or at a time when an arrest was unlawful or based on mistaken identify (sub paragraph (2)). Paragraph 19 (3) indicates that otherwise paragraph 19 material must be destroyed unless it is retained under another power provided for in paragraphs 20 or 21. However, this does not prevent a relevant search being carried out if a senior police officer considers it desirable. Such a search can be carried out by police to check the relevant material against other lawful material held by police (see paragraph 19(6)). For example, a DNA profile may be cross-checked against other DNA profiles held in police databases, which may have been taken following arrests made under powers in other pieces of legislation.
- 244 Paragraphs 20 and 21 set out the powers for retention of paragraph 19 material. When detained under section 21, the material may be retained for 3 years, beginning on the date on which the fingerprints, physical data or sample was provided or derived. A senior police or NCA officer may apply to the courts to extend the retention period for 2 years further (paragraph 20(4)-(6)). Paragraph 20 (7) and (8) provides for an appeal process whereby the person from whom the material was taken, or a senior police or NCA officer may appeal to the court if the order is granted or denied. In Scotland, the appeal must be made within 21 days of the court's initial decision. Paragraph 20(9) states that if an individual is arrested again under the state threats arrest power and relevant material is again taken upon arrest, a new retention period may begin from when the second arrest occurred.
- 245 Paragraph 21 provides for the ability to make a national security determination regarding paragraph 19 material. A national security determination is when a senior police officer determines that it is necessary to retain any material for up to 5 years if the retention of that data is for the purposes of national security. A national security determination can be renewed indefinitely.
- 246 Paragraph 22 provides for a constable to make a determination to retain a second set of fingerprints from a detained person for the same retention period as a first set, if both the conditions at sub-paragraph (3) and (4) are met. This ensures there are not multiple retention periods.
- 247 Paragraph 24 states that DNA samples taken from a person must be destroyed as soon as the DNA profile has been derived from the sample or 6 months from when the sample was taken. This paragraph provides for police to apply for a court to retain a sample beyond this date if

the sample was taken in relation to the investigation of a qualifying offence and if the sample is likely to be needed in criminal proceedings.

248 Paragraph 25 restricts the purposes for which material may be used.

249 Paragraph 27 is self-explanatory and provides definitions of terms used in the Schedule.

#### **Part 5: Review of detention under section 21**

250 Part 5 provides for the process by which a detained person's detention must be reviewed by police and the Court. A review officer, who must be a police officer of at least the rank of inspector and who has not been directly involved in the investigation, must review a person's detention as soon as reasonably practicable after arrest, and must continue to carry out subsequent reviews at least every 12 hours, unless a warrant under Part 6 has been issued (paragraph 28). The review may be postponed in certain circumstances, including if the detainee is being questioned or a review officer is not readily available. Paragraph 30(1) provides for the grounds on which a review officer may authorise continued detention, but only if the investigation or process is being conducted diligently and expeditiously (paragraph 30(2) and (3)). Before making a decision, the review officer must give the detained person or their solicitor the opportunity to make representations about the detention, either orally or in writing (paragraph 33). The review officer must inform the detained person of any rights that the person has not yet exercised and any delay in the exercise of rights, as well as reconsidering the reasons for such a delay (paragraph 34). Under paragraph 35, the review officer must make a written record of the outcome of the review and inform the detained person.

#### **Part 6: Extension of detention under section 21**

251 Part 6 provides for police and prosecutors to apply to the Courts for a warrant of further detention. Without such a warrant, a detained person must be released after 48 hours in accordance with clause 25(3). The warrant must state the specified period that the detained person can be further detained for, up to 7 days beginning with the time of the initial arrest or detention in accordance with clause 25(3) (paragraph 36(3)). Under paragraph 43, an application for the extension or further extension of a warrant can be made and authorised for an additional 7 days, up to a total maximum of 14 from the initial arrest or detention. The application for a warrant must be made to the Court within 54 hours of the initial arrest (paragraph 37(1)), and the Court must dismiss the application if it considers that it would have been practical for the application to have been made during the first 48 hours of detention. The grounds on which the judicial authority may grant a warrant of further detention are provided for at paragraph 39 and include if it is necessary to obtain evidence by questioning the suspect, to preserve evidence and to permit the examination or analysis of evidence. Paragraph 44 indicates that if the reasons for which the authorisation of continued detention were made no longer apply, the person must be released immediately. References to judicial authorities who authorise detention under this Part is a reference to the formal job title and applies to the current office holder regardless of their gender.

252 Paragraph 40 provides for the right of the detained person to be given the opportunity to make representations to the court regarding their application and be legally represented at the hearing if requested. The court has the power to exclude the detained person or their representative from any part of the hearing under paragraph 40(3). Under paragraph 41(1) an application may be made to the court to withhold certain information on which the application is based from the detained person and their representative. The judicial authority may make such an order if any of the conditions at paragraphs 41(2) or 41(3) are satisfied, which includes that the prevention of foreign power threat activity would be made more difficult as a result of a person being alerted.

## **Part 7: Emergency power when Parliament dissolved etc. for temporary extension of maximum period for detention under section 21**

253 This part provides an emergency power for the Secretary of State, when Parliament is dissolved, (or Parliament has met after a dissolution, but the first King’s Speech of the Parliament has not yet taken place) to temporarily increase, for 3 months, the maximum period of detention under schedule 6 from 14 days to 28 days. The Secretary of State must consider its necessary to do so by reason of urgency and to make the extension by way of statutory instrument. The relevant requirements of Schedule 6 would continue to apply, including the requirement to apply to a judicial authority for a warrant of further detention or extension of such a warrant. The Secretary of State can revoke the regulations at any point if they consider it appropriate to do so (paragraph 45(6)). Clause 92(7)-(10) covers the procedure for regulations made under paragraph 44, including that the statutory instrument will cease to have effect if Parliament does not approve it within 20 days of its return.

### **Clause 26: Use of reasonable force**

254 Clause 26 provides that a constable may use reasonable force if necessary when exercising a police power under Part 1. These include powers in relation to prohibited places and cordoned areas within clauses 6 and 11 respectively, the powers of search and seizure within clause 21 and Schedule 2 and the arrest and detention powers within clause 26 and Schedule 6.

255 Subsection (1) clarifies that the powers provided for in Part 1 of the Bill are additional to any existing powers of the police and should not be taken to affect those powers.

256 Subsection (2) provides that reasonable force may be used by a constable in the exercise of powers under Part 1 should it be necessary.

#### **Hypothetical example (use of reasonable force to take biometric data)**

Under the powers within Schedule 6, the police seek to take fingerprints from a detained person who they reasonably suspect is involved in foreign power threat activity. This person is uncooperative and does not give consent for their biometrics to be taken. In the absence of consent, a superintendent authorises the taking of the fingerprints as the officer reasonably believes the fingerprints will confirm or disprove the person’s involvement in the activity. The person is informed that authorisation has been given to take their fingerprints without their consent, but the person remains uncooperative. The police therefore use reasonable force to take fingerprints.

### **Clause 27: Border security**

257 Clause 27 amends Schedule 3 to the Counter-Terrorism and Border Security Act 2019 in order to allow for the retention of copies of confidential business material (material acquired in the course of a trade or business that is held in confidence) without the authorisation of the Investigatory Powers Commissioner.

258 Paragraph 17 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019 gives examining officers the power to make and retain copies of confidential material with the authorisation of the Investigatory Powers Commissioner. The definition of confidential material includes “protected material” as set out in paragraph 12(11) of Schedule 3, which includes confidential business material. While an examining officer believes that it is necessary in the interests of national security, in the interests of the economic well-being of the United Kingdom so far as those interests are also relevant to the interests of national security, for the purpose of preventing or detecting an act of serious crime, or for the purpose of preventing death or significant injury, a copy can be retained. On retaining a copy which consists of or includes confidential material on those grounds, the Commissioner must be

notified as soon as reasonably practicable and must then either authorise the retention and use of the copy or direct that the copy is destroyed.

259 Clause 27 amends paragraph 12(11) of Schedule 3 by omitting the references to the definition of confidential business material from the definition of “protected material”, therefore removing the requirement for the Commissioner to authorise the retention of copies of material acquired in course of a trade or business that is held in confidence.

### Clause 28: Offences under Part 2 of the Serious Crime Act 2007

260 Sections 44 to 46 of the Serious Crime Act 2007 (SCA) set out the inchoate offences of encouraging or assisting crime. Clause 28 amends Schedule 4 of the SCA which provides for the offences to apply when the act capable of encouraging or assisting relates to the commission of an offence overseas. The amendment will disapply extra-territorial application when the activity is deemed necessary for the proper exercise of any function of an intelligence service or the armed forces.

261 Clause 28 inserts paragraph 5 into Schedule 4. Sub paragraph 1(a) states that paragraphs 1, 2 and 3 of Schedule 4 do not apply if any relevant behaviour of D’s was necessary for the proper exercise of any function of the Security Service, the Secret Intelligence Service or GCHQ. This ensures that those working for or on behalf of the intelligence agencies would not be liable for support they provided to activities overseas, including in support of international partners, where that support was deemed necessary for the exercise of the intelligence agencies’ functions.

262 Paragraph 5(1)(b) inserted into schedule 4 contains a similar provision where any relevant behaviour of D’s was necessary for the proper exercise of any function of the armed forces. This ensures those working for or on behalf of the armed forces in support of activities overseas would not be liable for the offences under sections 44 to 46.

263 Paragraph 5(2) inserted into schedule 4 provides a definition of armed forces and GCHQ.

## Foreign power condition and foreign power threat activity

### Clause 29: The foreign power condition

264 This clause provides for the foreign power condition, to which a number of provisions of the Bill refer. Subsection (1) provides that the condition is met if a person’s conduct (or a course of conduct) is carried out for or on behalf of, or with the intention to benefit, a foreign power. In addition, for the condition to be met, the person must know, or reasonably ought to know, that the conduct has that relationship to the foreign power.

265 The above reference to a course of conduct is intended to confirm that the condition is met in circumstances where the foreign power has tasked the person to carry out conduct in general but has not tasked them to carry out a particular act.

266 Subsection (2) sets out a non-exhaustive list of different types of relationship between the foreign power and the person engaging in the conduct which would result in a person being considered to be acting for or on behalf of the foreign power.

267 Subsection (3) provides that the relationship can be a direct or indirect one – and provides an illustrative example of an indirect relationship through one or more companies. Such an example might include a situation where the foreign power uses a third party, such as a company, a group of companies or a chain of companies, to task a person to carry out activity. When considering an indirect relationship involving a company, it may be relevant to consider whether the company is under significant control by the foreign power.

268 Subsection (4) confirms that the references in clause 29 to a course of conduct include a course of conduct that a person engages in with one or more other persons (as well as a course of conduct that they engage in alone).

269 Subsection (5) provides that the foreign power condition is also made out if a person intends their conduct to benefit a foreign power.

270 Subsection (6) provides that it is not necessary to identify a particular foreign power that the person intends to benefit. This provision is intended to cover cases where a person engages in conduct with the intention that a foreign power will benefit but has not determined the particular foreign power; for example, a person who engages in conduct with the intention that they will obtain future payment from any foreign power that is willing to provide payment.

271 A person may intend to benefit a foreign power even if their conduct is motivated by financial gain, or a desire to cause harm to the UK as a result of a grievance. Provided that the person is aware that their conduct will benefit the foreign power and chooses to engage in that conduct with this knowledge, the test will be met.

272 Subsection (7) is intended to confirm that the foreign power condition can be met in relation to conduct that is engaged in by officers and employees of the foreign power, in addition to persons who are not part of the foreign power.

### Clause 30: Meaning of ‘foreign power’

273 This clause defines a foreign power for the purpose of the foreign power condition. Subsection (1) sets out the persons and bodies that comprise a foreign power.

274 Subsection (2) provides the definition of a governing political party for subsection (1). Subsection (3) excludes a governing political party of the Republic of Ireland that is also a registered political party in the United Kingdom from that definition. This exclusion is included in recognition of the fact that there are political parties that contest elections in the Republic of Ireland and in the United Kingdom.

275 Subsection (4) defines a number of other terms as part of the foreign power definition.

### Clause 31: Foreign power threat activity and involvement in that activity

276 This clause creates a definition of foreign power threat activity (including involvement in foreign power threat activity). This definition is used to set the scope and applicability of the powers of arrest without a warrant, financial and property investigation powers and prevention and investigation measures.

277 Subsection (1) defines foreign power threat activity as being the commission, preparation, instigation, facilitation or the giving of support or assistance to the acts or threat set out in subsection (3). This ensures the provisions are available to counter activity for or on behalf of, or with the intention to benefit, a foreign power at an early stage and to take action against all those involved in that activity.

278 Subsection (2) provides that activity is considered to be foreign power threat activity both in cases where a person is conducting a specific act or threat set out in subsection (3) or relevant acts and threats more generally. This ensures that the security and intelligence agencies can intervene at an early stage in a course of conduct where the individual’s final goal may not yet be apparent.

279 The acts in subsection (3) include acts which constitute the following offences in this Bill - obtaining or disclosing of protected information (clause 1), obtaining, or disclosing trade secrets (clause 2), assisting a foreign intelligence service (clause 3), entering etc a prohibited

place for a purpose prejudicial to the UK, sabotage (clause 12), foreign interference: general (clause 13) and obtaining material benefits from a foreign intelligence service (clause 15).

280 Subsection (3) and (4) also bring into scope a range of broader acts or threats where the foreign power condition applies – namely serious violence against the person, endangering the life of another person or creating a serious risk to the health and safety of the public. This ensures the powers are applicable in relation to serious activities where the foreign power condition is met. The inclusion of threats of violence against the person, threats to endanger the life of a person and threats to create a serious risk to the health and safety of the public ensure the relevant provisions cover harmful activity such as a person threatening violence against a person to control their activities for or on behalf of a state.

## Supplementary provision

### Clause 32: Interpretation

281 This clause defines a number of terms used in this part.

### Clause 33: Offences by a body corporate etc.

282 Subsection (1) provides that where a body (e.g., a partnership or a body corporate such as a company) commits an offence under Part 1 of the Bill, an officer of the body, as well as the body, will be guilty of the offence if it is attributable to the officer's consent, connivance, or neglect.

283 Subsection (2) defines what is meant by "body" and "officer of a body" in this clause and subsection (3) defines what is meant by "director".

284 Subsection (4) outlines how these provisions should be applied if a body corporate is managed by its members, rather than a director.

285 Subsection (5) provides that the secretary of state may make regulations to modify this section in relation to its application to a body corporate or unincorporated association formed or recognised under the law of a country or territory outside the UK.

### Clause 34: Offences committed outside the United Kingdom

286 Subsection (1) provides that where an offence under Part 1 may be committed by conduct outside the UK, it may be committed by any person, regardless of their nationality, and any legal person other than an individual (e.g., a body corporate) regardless of where it is formed or recognised.

287 Subsection (2) disapplies subsection (1) in relation to the offences of assisting a foreign intelligence service in clause 3. Subsections (3) to (5) make provision for proceedings for offences committed abroad to be tried in the UK.

### Clause 35: Consents to prosecutions

288 Clause 35 provides that the consent of the Attorney General (in the case of proceedings instituted in England and Wales) or Advocate General for Northern Ireland (in the case of proceeding instituted in Northern Ireland) is required for prosecutions under Part 1, other than in relation to offences under clauses 5, 6, 11 and schedule 6.

289 In considering whether to grant consent for a prosecution in Northern Ireland, the Advocate General for Northern Ireland will have particular regard to the rights and freedoms enshrined in the Belfast (Good Friday) Agreement.

## Clause 36: Power to exclude the public from proceedings

290 Clause 36 provides that a court may, in the interests of national security, exclude the public from any part of proceedings for offences under Part 1, or for proceedings in relation to the aggravation of sentencing for other offences where the foreign power condition applies.

291 The public cannot be excluded from the passing of the sentence.

## Part 2: Prevention and Investigation Measures

### Imposition of prevention and investigation measures

#### Clause 37: Power to impose prevention and investigation measures

292 Subsection (1) provides that the Secretary of State may by notice (a Part 2 notice) impose specified prevention and investigation measures on a person if Conditions A to E of clause 37 are met.

293 Subsection (2) defines “prevention and investigation measures” as requirements, restrictions and other provision which may be made in relation to an individual by virtue of Schedule 7. Subsection (3) provides that the term “specified” in this clause and in Part 1 to Schedule 7 means specified in the Part 2 notice.

294 Subsection (4) provides that the Secretary of State must publish factors that the Secretary of State considers are appropriate to take into account when deciding whether to impose restrictions in paragraph 2 of Schedule 7 (travel measure). Factors could include: proximity to airports; prohibited associates; and variety or number of services within the restricted area.

### Schedule 7: Prevention and Investigation Measures

#### Part 1: Measures

295 This schedule sets out an exhaustive list of the types of measures which may be imposed on an individual under this Part. The Secretary of State may impose any or all of the measures that he or she reasonably considers necessary, for purposes connected with preventing or restricting the individual’s involvement in foreign power threat activity. There could therefore, in practice, be a considerable variation in the number and severity of measures that are imposed on different individuals according to the foreign power threat activity risk that they are assessed to present.

296 Paragraph 1 allows the Secretary of State to require the individual to reside at or within a specified residence – either his or her own residence or a residence provided by the Secretary of State – and to remain there for any such hours as are specified. This measure is only available for use where the Secretary of State reasonably believes that the individual is, or has been, involved in acts or threats to carry out acts within clause 31(4). The Secretary of State may either agree with an individual a locality in which that individual must reside or require an individual to live in a residence in a locality that the Secretary of State otherwise considers appropriate. If there are premises that are the individual’s own residence at the time when the Part 2 notice is imposed, the Secretary of State may only require the individual to live in a residence that is more than 200 miles from those premises if the individual agrees.

297 Under this measure the individual could be required to remain wholly within the residence during the specified hours (that is, the individual would be required to remain behind his or her front door) or the individual might also be permitted access to any gardens or communal areas within the outer boundary of the property. The hours between which the individual must remain within the residence must be specified by the Secretary of State in the Part 2 notice. This period is subject to the overriding restrictions on length of curfews established by

caselaw relating to Article 5 of the European Convention on Human Rights, but could (for example) be longer than overnight if considered necessary in a particular case.

- 298 The Secretary of State may also require the individual to give notice of the identity of others who live at the specified residence – including if another person moves into the individual’s residence. In relation to this, the individual would have to comply with the requirements in relation to giving notice in paragraph 18 of Schedule 7.
- 299 Subparagraphs (8), (9) and (10) provide that, where the Secretary of State imposes a requirement to remain at or within the specified residence for specified hours, he or she must include provision allowing the individual to seek permission to be away from the residence on occasion during that period. If granted, such permission can be made subject to conditions (in accordance with paragraph 17(7) of Schedule 7). Such conditions may include that the individual stay at or within agreed premises (if the individual has requested an overnight stay at premises other than the specified residence) and that the individual remain at or within such premises between specified hours. Such permission may also include other conditions restricting the individual’s movements while away from the specified residence. This provision could be used, for example, to allow the individual to stay overnight with a friend or relative (subject to conditions imposing, for example, alternative monitoring or reporting requirements). It could also be used, for example, to allow the individual to attend a particular event on a particular occasion (when he or she would normally be required to remain at or within the residence for that part of the day), provided the individual only attends that event and abides by certain other conditions (such as restrictions on the company the individual keeps and the route they take to attend the event).
- 300 Paragraph 2 allows the Secretary of State to impose restrictions on an individual leaving the United Kingdom, or any area within the United Kingdom if that is his or her place of residence. The restrictions imposed may include a requirement not to leave the specified area without receiving permission from or, as the case may be, giving notice to the Secretary of State, and a prohibition on the individual possessing passports or international travel tickets without permission from the Secretary of State.
- 301 Paragraph 3 allows the Secretary of State to impose restrictions on an individual entering specified areas or places, which could include particular streets, localities, or towns (for example the City of London, which would make it harder for the individual to form relationships within the parliamentary estate) or types of areas or places (for example military sites or sites of critical national infrastructure). The Secretary of State may require the individual to obtain permission or, as the case may be, give notice before entering a specified area or place and may impose conditions in relation to the individual’s access to such an area or place. For example, the Secretary of State may require the individual to be escorted by a constable or other person while they are in the specified area or place.
- 302 Paragraph 4 allows the Secretary of State to provide that the individual must comply with directions in relation to his or her movements given by a constable. The direction must be given for the purpose of (a) securing the individual’s compliance with other specified measures (for example requiring the individual to be escorted to his or her specified residence for the purposes of fitting him or her with an electronic tag – in accordance with a requirement imposed under paragraph 15) or (b) where the individual is being escorted by a constable as part of a condition imposed under this Part. Directions given under a movement directions measure may last for as long as the constable considers necessary up to a maximum of 24 hours
- 303 Paragraph 5 allows the Secretary of State to provide for restrictions on the individual’s access to financial services. The Secretary of State may, in particular, require an individual to hold no



more than one nominated financial account without the permission of the Secretary of State and to comply with conditions associated with that nominated account (for example, a requirement to provide copies of account statements and related documents). The nominated account must be at a bank (the definition of which in subparagraph (4) includes a building society) in the United Kingdom. The Secretary of State may also require the individual not to hold more than a specified amount of cash, which for this purpose includes a range of financial instruments as well as notes and coins.

- 304 Paragraph 6 allows the Secretary of State to impose a measure relating to the individual's property under which the Secretary of State may, for example, place restrictions on an individual's ability to transfer money or other property outside the United Kingdom without permission or, as the case may be, without giving notice. The Secretary of State may impose conditions in relation to the transfer of property to or by the individual. The Secretary of State may also require the individual to disclose the details of any property of a specific description in which he or she has an interest or over which he or she may exercise any right. The definition of "property" for the purposes of this provision allows the imposition of a requirement to notify the Secretary of State in advance of the individual, for example, hiring a car.
- 305 Paragraph 7 allows the Secretary of State to prohibit an individual from possessing firearms, offensive weapons, or explosives. Existing powers already require the police to assess whether someone is a "fit person" to have a firearms or explosives licence. However, this measure would introduce a specific criminal sanction for breaching this requirement and would provide additional assurance that subjects may not possess these items.
- 306 Paragraph 8 allows the Secretary of State to impose a measure in relation to electronic communications devices under which the Secretary of State may, in particular, prohibit (subject to subparagraph (3)) an individual from possessing or using electronic communications devices without permission, and impose conditions on the possession or use of any permitted devices. The Secretary of State may also impose requirements on the individual in relation to other persons' possession or use of devices within the individual's residence. 'Electronic communications devices' are explained in subparagraphs (5) and (6) and include computers, telephones, any device which is capable of transmitting, receiving, or storing electronic information and any related devices and their components. A non-exhaustive list of examples of the type of conditions that may be specified is found in subparagraph (4). This includes a requirement to allow specified descriptions of people (for example constables) access to the residence for the purpose of monitoring any devices.
- 307 Where the Secretary of State imposes an electronic communications device measure it must, as a minimum, allow the individual to possess and use a fixed line telephone, a computer with internet access via a fixed line and a mobile phone which does not provide access to the internet (subparagraph (3)).
- 308 Paragraph 9 allows the Secretary of State to impose restrictions on the individual's association or communication with other persons, under which the Secretary of State may, in particular, impose a requirement not to associate or communicate with specified persons or persons of specified descriptions (for example persons living outside the UK) without the permission of the Secretary of State. The Secretary of State may for example impose a requirement that the individual may not associate with a list of named individuals (without permission), and that if they wish to associate with others, they must first give notice to the Secretary of State. Permission to associate or communicate with a specified person may be subject to conditions (see subparagraph (2)(c) and paragraph 17(7)), for example that the individual is escorted by a constable or someone else. This measure relates to association or communication by any means and whether directly or indirectly. If, on being notified that the individual wishes to associate with a named person, the Secretary of State believes that prohibiting such

association is necessary to prevent or restrict the individual's involvement in foreign power threat activity, the Secretary of State may vary the measure to provide that person as a specified person with whom the individual may not associate without permission (see clause 46(1) which allows for the variation of measures by the Secretary of State).

- 309 Paragraph 10 allows the Secretary of State to impose restrictions on the individual's work or studies under which, in particular, an individual could be prohibited from undertaking certain specified types of work or studies without the permission of the Secretary of State (for example work which develops military technology or studies involving research into nuclear technology). The individual could be required to give notice to the Secretary of State before undertaking any other work or studies and to comply with conditions in connection with any work or studies. This measure relates to any business or occupation (paid or unpaid) and any course of education or training. Again, if on being notified that the individual intends to commence employment of a particular nature, the Secretary of State considers it necessary to prohibit such employment, he or she may vary the Part 2 notice accordingly under clause 46(1).
- 310 Paragraph 11 allows the Secretary of State to require an individual to report to a particular police station at a time and in a manner notified to him or her in writing, and to comply with directions given by a constable in relation to that reporting.
- 311 Paragraph 12 allows the Secretary of State to impose a requirement on an individual who is subject to a Part 2 notice to participate in a polygraph examination for the purposes of: (i) monitoring their compliance with their other measures; and (ii) assessing whether variation of those other measures is necessary for purposes connected with preventing or restricting the individual's involvement in foreign power threat activity. Polygraphy is a means of measuring certain physiological responses that may be associated with deception. The availability of polygraph as a measure provides a potential additional source of information about individuals who are of a concern due to their engagement in foreign power threat activity which can assist with the management of subjects. The results of the polygraph examination could be used to vary the individual's measures. This might take the form of a relaxation (for example removing or easing a measure), or adding a further restriction, provided it is necessary and proportionate to do so.
- 312 Subparagraph 2 provides a power for the Secretary of State to make regulations governing the conduct of polygraph testing.
- 313 Subparagraph 4 provides that the information gleaned during the polygraph test (either by way of admission, or by physiological reaction) will not be used in evidence against the individual for the prosecution of a criminal offence.
- 314 Paragraph 13 allows the Secretary of State to require an individual to attend meetings with such persons as the Secretary of State may specify, at such locations and at such times as the Secretary of State may by notice require. The specified person(s) may also choose the time and place of the meeting
- 315 Paragraph 14 allows the Secretary of State to require an individual to have his or her photograph taken.
- 316 Paragraph 15 allows the Secretary of State to require an individual to cooperate with specified arrangements for enabling his or her movements, communications, and other activities to be monitored. This may include a requirement to wear, use or maintain for example an electronic tag and associated apparatus, to comply with associated directions and to grant access to the residence for these purposes.
- 317 Paragraph 16 allows the Secretary of State to require an individual to provide details of their address. This could be required, for example, if the individual has not been relocated and

moves house during the life of the measures. Where an individual resides in a multiple occupancy property, they may be required to give precise details about which room they live in. Subparagraph 2 provides a power for the Secretary of State to specify other conditions in connection with the disclosure of the address information. This power could be relied upon to require an individual to give relevant notice a certain time ahead of a planned move.

## **Part 2: Permission and Notices**

- 318 Several of the measures described in Part 1 of Schedule 7 include requirements for an individual subject to a Part 2 notice not to do certain things without the permission of the Secretary of State. Paragraph 17 provides that the Secretary of State may by notice specify, in relation to each measure, the information that the individual must supply when applying for permission and the time by which the application must be made. Where the Secretary of State receives an application for permission, the Secretary of State may by notice request further information and need not consider the application further until the information requested is provided in accordance with the notice. The Secretary of State may grant permission by giving notice to the individual. Permission may be granted subject to conditions set out in the notice; for example, a condition that certain information is provided or that the individual is escorted by a constable or other restrictions on movements are complied with.
- 319 Several of the measures described in Part 1 include requirements for an individual not to do certain things without first giving notice to the Secretary of State, known for this purpose as a ‘Schedule 7 notice’. Paragraph 18 provides that the Secretary of State may by notice specify, in relation to each measure, the information that the individual must supply in a Schedule 7 notice and the time by which the Schedule 7 notice must be given. Where the Secretary of State receives a Schedule 7 notice, the Secretary of State may by notice request further information. The individual will not have complied with the requirement to give a Schedule 7 notice until the Secretary of State has notified him or her that the Schedule 7 notice has been received and that no further information is required.
- 320 Paragraph 19 provides that the Secretary of State may vary or revoke a notice he or she gives under this Schedule – for example the Secretary of State may vary the conditions attached to a permission.

## **Clause 38: Conditions A to E**

- 321 Subsections (1) to (5) of clause 38 set out the conditions on which the power to impose measures on an individual is dependent. Condition A (subsection (1)) specifies that the Secretary of State must reasonably believe that the individual is or has been involved in foreign power threat activity (see clause 30).
- 322 Condition B (subsection (2)) requires that some or all of the relevant activity (on the basis of which the test in condition A is satisfied) must be new foreign power threat activity. Subsection (7) defines “new foreign power threat activity” in a number of ways depending on the circumstances of the case.
- 323 Condition B, when read together with subsection (7) and clause 39 (which specifies that a Part 2 notice may only be extended annually four times – so that it lasts up to a maximum of five years), has the effect of ensuring that, if a person has already been subject to a Part 2 notice for a total of five years, a further Part 2 notice can be imposed on that person only if he or she has re-engaged in further foreign power threat activity since the Part 2 notice that marked the start of that five year period. (The five-year period is not necessarily consecutive – as the Part 2 notice may, for example, have been revoked and then revived at a later date; time only counts towards the five-year period if the individual is subject to measures imposed by the Part 2 notice during that time. See clause 39 and its interaction with clauses 47 and 48 below.)

324 Conditions C (subsection (3)) and D (subsection (4)) set out the two limbs of the necessity test for imposing measures on a person. The Secretary of State must reasonably consider it necessary for purposes connected with protecting the United Kingdom from a risk of acts or threats within clause 31 to impose measures on the individual (Condition C). The Secretary of State must also consider it necessary, for purposes connected with preventing or restricting the individual's involvement in foreign power threat activity, to impose the specific measures contained in the Part 2 notice on the individual (Condition D).

325 Condition E (subsection (5)) requires the Secretary of State to have obtained the court's permission under clause 40 before imposing measures (subsection (5)(a)) or to reasonably consider that there is a need for measures to be imposed urgently, without first obtaining permission (subsection (5)(b)). In such a case of urgency, the Secretary of State must refer the case to the court immediately after imposing the measures – see clause 41 and Schedule 8.

326 Subsection (6) clarifies that the prevention and investigation measures under paragraph 1 of Schedule 7 (residence measure) can only be used in relation to acts or threats within clause 31(3)(b) or (c).

## Five-year limit on imposition of measures

### Clause 39: Five-year limit for Part 2 notices

327 This section makes provision for when a Part 2 notice comes into force, how long it will remain in force and for how long it can be extended. Subsection (1)(b) specifies that a Part 2 notice remains in force for a year, and subsection (1)(a) that the year begins from the date on which it is served or from a later date which may be specified in the notice. The purpose of subsection (1)(a) is to ensure that the one-year period does not begin before the measures imposed by the notice have effect on the individual. An example might be a case in which a Part 2 notice is prepared in contingency, or for other reasons in advance of its service, or in which it is served in advance of the time when it is intended to come into force. An example of when a Part 2 notice might be prepared (and permission sought) on a contingency basis is where a law enforcement agency speaks to someone engaged in foreign power threat activity to inform them that they are being directed by a foreign power and to understand whether they were aware of this. In a situation where the person refuses to engage with the law enforcement agency or acknowledge the information provided, it may be necessary to rely on a Part 2 notice and serve a notice right away.

328 Subsections (2) and (3) provide that the Secretary of State may, after a Part 2 notice has been in force for a year, extend it for a further year (but may only do so up to a maximum of four times). The notice may only be extended if the Secretary of State continues to: reasonably believe that the individual is or has been involved in foreign power threat activity (condition A); and reasonably considers both that it is necessary to impose measures on the individual (condition C) and that it is necessary to impose the measures specified in the Part 2 notice (condition D).

329 Subsection (4) provides that the operation of the five-year time limit is subject, in particular, to the exceptions and provisions in clauses 47 and 48 relating to revocation and revival of a Part 2 notice and to replacement of a Part 2 notice. As noted above, this clause also interacts with condition B in clause 38.

## Court scrutiny of imposition of measures

### Clause 40: Prior permission of the court

330 This clause sets out the function (subsection (3)) and powers (subsections (7), (8) and (9)) of the court on an application by the Secretary of State to obtain permission from the court before imposing measures on an individual as required under condition E of clause 38.

331 Subsection (4) provides that the court may consider the Secretary of State’s application without the individual on whom the measures would be imposed being aware of the application or having the opportunity to make representations. This is intended to avoid giving an individual advance warning of the Secretary of State’s intention to impose a Part 2 notice on him or her, and to avoid a risk of the individual absconding before the measures can be imposed. The individual will subsequently have the opportunity to make representations about the imposition of the measures: clause 42 requires the court, if it gives permission, also to give directions for a full, substantive review of the imposition of measures on the individual and clause 43 makes provision for that review.

332 Subsection (6) provides that the court must apply the principles applicable on an application for judicial review.

333 Subsections (7), (8) and (9) provide for the powers of the court in various scenarios. The court may not give permission if it finds that the Secretary of State’s decisions that conditions A (involvement in foreign power threat activity), B (the relevant activity is new foreign power threat activity) or C (necessity of measures) are met were obviously flawed. If the court finds that the Secretary of State’s decision that condition D (necessity of specific measures in the Part 2 notice) is met was obviously flawed – that is, that although the decision to impose measures was not obviously flawed, the decision to impose one or more of the specific measures was obviously flawed – the court is not required to refuse permission altogether. In this case, the court may instead give directions to the Secretary of State in relation to the measures to be imposed (this would allow the court to give guidance about the considerations which the Secretary of State must take into account when deciding which measures to impose), whilst otherwise granting permission.

#### Clause 41: Urgent cases: reference to the court etc

334 This clause gives effect to Schedule 8.

#### Schedule 8: Urgent cases: reference to the court etc

335 This schedule makes provision relating to a case in which the Secretary of State imposes measures on an individual without first obtaining the permission of the court, (in accordance with condition E (clause 38(5)(b))). Schedule 8 places a duty on the Secretary of State to include a statement in the Part 2 notice confirming his or her reasonable belief as to the urgency of the case, and immediately to refer the case to the court after the imposition of measures on the individual. The court’s consideration of the case must begin within seven days of service of the Part 2 notice.

336 The schedule makes provision for the function and powers of the court on these proceedings. The function of the court is to consider whether the relevant decisions (as set out in paragraph (6)(2)) of the Secretary of State were obviously flawed, including the decision that the urgency condition was met. The court must quash the Part 2 notice if it determines that certain aspects of the Secretary of State’s decisions were obviously flawed. If it determines that the specified measures are obviously flawed, but otherwise the Part 2 notice was properly imposed, it must quash those measures and otherwise confirm the Part 2 notice. Paragraph 4(4) provides that, if the court decides that the Secretary of State’s decision that the urgency condition is met was obviously flawed, it must make a declaration to that effect (as well as quashing or confirming the Part 2 notice in accordance with the other provisions of that paragraph).

#### Clause 42: Directions hearing

337 Subsections (1) and (2) of this clause provide that, on giving the Secretary of State permission to impose measures (or – in an urgent case – on confirming measures already imposed), the court must give directions for a directions hearing. Those directions must not be served on the individual in a case where permission has been granted (rather than the urgency procedure

used) until the Part 2 notice has been served (subsection (3)). This is because permission may be granted to the Secretary of State in the absence of the individual, so as not to alert that individual to the imminent imposition of measures on him or her, and the service of the directions should only follow the service of the notice (which may take place some time after permission is granted) for the same reason. At the directions hearing, directions must be given for a further hearing (a “review hearing”) to be held for the court to review the imposition of the measures as soon as practicable (subsections (4) and (5)). (Clause 43 makes provision in relation to this review hearing.) Subsections (2) and (6) ensure that the individual has the opportunity to make representations at a directions hearing, which is to be held, unless the court directs otherwise, within seven days of the Part 2 notice being served (or, in a case using the urgency procedure, within seven days of the court confirming the notice).

### Clause 43: Review hearing

338 Subsection (1) provides that the function of the court is to review the decisions of the Secretary of State that the relevant conditions for imposing measures on an individual (defined by subsection (8) as conditions A, B, C and D as set out in clause 38) were met and continue to be met.

339 This review must apply the principles applicable on an application for judicial review (subsection (2)).

340 Subsections (3) and (4) specify that the court must discontinue the proceedings if the individual requests this (for example if he or she does not wish to contest the case against him or her); and that it may discontinue the proceedings in any other circumstances, but in such other circumstances both the Secretary of State and the individual subject to the measures must first have the opportunity to make representations.

341 Subsections (5), (6) and (7) set out the powers of the court on the review. The court may quash the Part 2 notice itself; quash particular measures specified in the Part 2 notice; or give directions to the Secretary of State for the revocation of the Part 2 notice or in relation to the variation of any of the measures. If the court does not exercise its power to quash the Part 2 notice or to direct its revocation, it must decide that the notice should continue in force (whether or not it quashes – or makes directions concerning the variation of – any measure imposed under it).

## Consultation requirements

### Clause 44: Criminal investigations into foreign power threat activity

342 Subsections (1), (2) and (3) set out a requirement on the Secretary of State to consult the chief officer of the police force which is investigating or would investigate any offence, acts or threats within clause 31(3) which could fall to have been committed by the individual, on whether there is evidence that could realistically be used to prosecute the individual. The Secretary of State must do so before imposing a Part 2 notice in an urgent case or before seeking the court’s permission to do so in all other cases.

343 Subsections (5), (6) and (7) place duties on the relevant chief officer of police (‘police force’ and ‘chief officer of police’ are defined in subsection (10)). On being consulted by the Secretary of State under subsection (1), the chief officer is under a statutory duty to consult the relevant prosecuting authority (for example in England and Wales the Director of Public Prosecutions – in other words the Crown Prosecution Service). The chief officer must also keep the investigation of the individual’s conduct under review, with a view to bringing a prosecution for an offence, acts or threats within clause 31(3) and must report on this to the Secretary of State while the Part 2 notice remains in force. In relation to this continuing duty of review, the chief officer must consult the relevant prosecuting authority as appropriate.

## Review of ongoing necessity

### Clause 45: Review of ongoing necessity

344 This clause places a duty on the Secretary of State to keep under review the necessity of a Part 2 notice, and the measures imposed under it, while the notice is in force. This is the position taken in relation to Terrorism Prevention and Investigation Measures (the ‘TPIM’ Act 2011) following case law in the context of control orders whereby the Court of Appeal held in *Secretary of State for the Home Department v MB* [2006] EWCA Civ 1140, that “it is the duty of the Secretary of State to keep the decision to impose the control order under review, so that the restrictions that it imposes, whether on civil rights or Convention rights, are no greater than necessary”. The Government concludes the same safeguards should therefore apply in the context of these prevention and investigation measures.

## Changes concerning Part 2 notices

### Clause 46: Variation of measures

345 This section makes provision for the measures imposed under a Part 2 notice to be varied in a number of different circumstances.

346 Subsection (2) makes it possible for the Secretary of State to vary a relocation measure (which is only available as part of the residence measure for use where activity under clause 31(3) (b) or (c) is concerned) in a Part 2 notice if considered necessary for reasons concerned with the efficient and effective use of resources in relation to the individual. A non-exhaustive example of when this power might be relied on is as follows: a subject is relocated away from his home address to a residence in area X. During the life of the measure, police resources in area X become stretched or more specialist resources are available elsewhere, so the relocation measure is varied to provide for a new residence in area Y, and the subject is required to move there. This power will only apply where the individual has already been relocated away from his home address, and where the justification for requiring relocation still exists.

347 Subsection (4) provides that the individual subject to the Part 2 notice may apply – in writing (subsection (6)) – to the Secretary of State for any measure imposed under his or her Part 2 notice to be varied. The Secretary of State is under a duty to consider any such application (subsection (5)). Subsections (7) and (8) provide that the Secretary of State may request further information in connection with the application, which must be provided within a specified period of time. The Secretary of State will not be required to consider the application further unless and until that information is received.

348 Subsection (10) clarifies that the Secretary of State is able to exercise the power to vary the imposed measures (as provided for by subsection 1) at any time and whether or not the individual has made an application for a variation under subsection (4). This includes the power to vary the measures without the consent of the individual if the Secretary of State reasonably considers that variation to be necessary for the purposes of preventing or restricting the individual’s involvement in foreign power threat activity.

349 Subsections (11) and (12) provide that the Secretary of State may exercise these powers to vary measures in relation to a Part 2 notice that has expired without being renewed, or that has been revoked, before that notice is revived under clause 47. These subsections also provide that in such circumstances the consideration of the necessity of the measures (by both the Secretary of State and the court) relates to the revived notice as varied. In short, these provisions allow the Secretary of State, when reviving a Part 2 notice under clause 47, to vary the measures specified in that notice from those that were contained in it prior to its expiry or revocation.

## Clause 47: Revocation and revival of Part 2 notices

- 350 Subsection (3) provides an individual subject to a Part 2 notice with the right to request that the Secretary of State revokes that notice, and the Secretary of State is under a duty to consider that request (subsection (4)). Subsection (1) provides the power for the Secretary of State to revoke a Part 2 notice at any time by serving a revocation notice (whether or not in response to a request by the individual (subsection (5))). The Secretary of State may exercise this power where the Secretary of State considers that it is no longer necessary for the Part 2 notice and the measures imposed under it to remain in force.
- 351 In some such cases, although the measures may no longer be necessary at the time that the Part 2 notice is revoked (for example because the individual has been detained in prison), they may subsequently become necessary again (when the same individual is released from prison, perhaps following an unsuccessful prosecution for a criminal offence). Subsection (6)(b) therefore provides a power for the Secretary of State to revive a previously revoked notice, where he or she continues to reasonably believe that the individual is or has been involved in foreign power threat activity (condition A) and where he or she reasonably considers that both the Part 2 notice (condition C) and the measures specified in it (condition D) are necessary. Subsection (7) specifies that the Secretary of State can do this whether or not the Part 2 notice has been extended under clause 39 or has previously been revoked and revived.
- 352 An exception to this power is provided by subsection (8), which specifies that the Secretary of State may not revive a Part 2 notice that has been revoked on the direction of the court. But see clause 48, which allows for the imposing of a new Part 2 notice in such cases (which requires the permission of the court in addition to the other conditions for imposing measures to be met).
- 353 Subsection (6)(a) also provides a power for the Secretary of State to revive a notice – for a period of a year – that has previously expired without being extended (after being in force for one of the five years permitted by clause 39 without evidence of new foreign power threat activity).
- 354 The Part 2 notice may be revived at any time after its expiry or its revocation.
- 355 Subsection (9) makes provision for the duration of a revived Part 2 notice. The purpose of this provision is to ensure that the overall five-year time limit to the period an individual can be subject to a Part 2 notice (without further evidence of involvement in foreign power threat activity) is not exceeded. The ‘counting’ of the five-year period for which an individual can be subject to a Part 2 notice stops at the point at which the notice expires without extension or is revoked. If the Part 2 notice is subsequently revived at any time, the ‘counting’ starts again at that point – the five years continues to run from the time the revived notice comes into force. On service of a revived Part 2 notice, the individual will be informed of the period for which he or she will remain subject to that notice (see clause 58).

## Clause 48: Replacement of a Part 2 notice that is quashed etc

- 356 This clause makes provision for circumstances in which a Part 2 notice is quashed or directed to be revoked as a result of court proceedings. Such a decision by the court may be as a result of technical deficiencies in the Secretary of State’s use of his or her powers. In these circumstances, the Secretary of State may impose a replacement Part 2 notice, subject to certain provisions that ensure the replacement notice interacts in the same way as did the quashed or revoked notice (“the original notice”) with the provisions relating to time limits and new foreign power threat activity.
- 357 Subsections (2) and (3) have the effect that the replacement Part 2 notice may only be in force for the same period of time as the original notice would have been; including that the



replacement notice may not be extended if the original notice had already been extended (and therefore could not have been further extended because of the five-year time limit provided by clause 41).

358 Similarly, subsections (4) and (5) provide that the quashing or revocation of the Part 2 notice, and its subsequent revival, does not alter the status of activity that was new foreign power threat activity in relation to the original notice. Reasonable belief of foreign power threat activity post-dating the imposition of the original notice is not therefore required in order to impose a replacement notice. And if foreign power threat activity occurs after the imposition of the original notice, that may be relied on as “new” activity, allowing for the imposition of a further Part 2 notice at the end of the replacement notice.

359 Subsection (6) has the effect that if there is evidence that the individual engaged in further foreign power threat activity since the imposition of the overturned Part 2 notice, the Secretary of State may (instead of being bound by the rules set out above) impose a new Part 2 notice which triggers a new five-year time limit. The reason for this is that the policy throughout the Part is that foreign power threat activity which occurs since the imposition of measures on an individual allows the Secretary of State to impose measures on that individual beyond the five-year time limit.

### Clause 49: Other provision relating to the quashing of Part 2 notice

360 This clause makes various provisions in relation to a case in which the courts quash a Part 2 notice, or a measure imposed under a Part 2 notice, or the extension or revival of a Part 2 notice.

361 Subsection (1) provides a power for the courts to stay such a decision until a specified time or pending the outcome of an appeal against the decision. This provision is required because in the normal course of events, a quashing would take immediate effect. Subsection (2) provides that the court’s decision does not affect the Secretary of State’s power subsequently to impose measures on the same individual, or to do so on the basis of foreign power threat activity previously relied on to exercise such powers.

362 Subsection (3) provides that Schedule 9 has effect.

### Schedule 9: Appeal against convictions

363 This schedule provides that an individual subject to a Part 2 notice, who is convicted of an offence under clause 55 (contravention without reasonable excuse of any measure specified in the Part 2 notice), has a right of appeal against that conviction if the Part 2 notice (or the measure to which the conviction related) is subsequently quashed. The court must allow such an appeal.

## Appeals and court proceedings

### Clause 50: Appeals

364 This clause sets out the rights of appeal of a person subject to a Part 2 notice, and the function of the court in relation to such appeals. (These appeal rights are in addition to the provision under clause 43 for an automatic review by the court of the imposition of measures). Rights of appeal exist against a decision of the Secretary of State to extend or revive a Part 2 notice or to vary measures specified in a Part 2 notice without the individual’s consent. There are also rights of appeal against any decision by the Secretary of State in relation to the individual’s application for the revocation or variation of the Part 2 notice or for permission in relation to a measure specified in the Part 2 notice.

365 Subsection (7) sets out that the only powers available to the court on an appeal falling under this section are to quash the extension or revival of the Part 2 notice; quash measures specified

in the Part 2 notice; give directions to the Secretary of State for the revocation of the Part 2 notice or in relation to the variation of the measures specified in the Part 2 notice; and to give directions to the Secretary of State in relation to permission (for the purposes of a measure specified in the Part 2 notice) or conditions to which such permission is subject. If the court does not exercise any of these powers, it must dismiss the appeal (subsection (8)).

366 This review must apply the principles applicable on an application for judicial review (subsection (6)).

### Clause 51: Jurisdiction in relation to decisions under this Part

367 This clause provides that decisions in relation to this Part may only be questioned – including for the purposes of section 7 of the Human Rights Act 1998 where it is claimed that such a decision breaches a right under the ECHR – in proceedings in the court as defined by clause 61(1), or on appeal from such proceedings.

368 Subsection 3(d) provides that instructions given to subjects by polygraph operators are "decisions relating to a Part 2 notice" and so cannot be questioned in legal proceedings other than in the High Court (or, in Scotland, the Outer House of the Court of Session) (or, in Northern Ireland, the High Court in Northern Ireland).

### Clause 52: Proceedings relating to measures

369 This clause makes further provision for court proceedings in relation to decisions taken under this Part.

370 Subsection (1) provides that an appeal may only be brought from a determination in relevant proceedings on a point of law. The effect of subsection (2) is that an individual subject to a Part 2 notice (or any person other than the Secretary of State) may not bring an appeal on a determination of the court in relation to an application by the Secretary of State for permission to impose a Part 2 notice or a reference to the court under the urgency procedure.

371 Subsection (3) gives effect to Schedule 10.

### Schedule 10: Proceedings relating to prevention and investigation measures

372 This schedule makes provision relating to prevention and investigation measure proceedings including a power to make rules of court and certain requirements that specified matters must be secured by the rules that are made.

373 In practice, the court proceedings in these cases will have both 'open' and 'closed' elements. The individual concerned and his or her chosen legal representatives can be present at the open hearings and see all the open material used in those hearings. He or she cannot be present at the closed parts of the proceedings or see the closed material. Closed material is sensitive material that it would not be in the public interest to disclose to the individual concerned (for example because disclosure is contrary to the interests of national security, the international relations of the United Kingdom or the detection and prevention of crime).

374 After service of a Part 2 notice, the individual will be provided with the open case against him or her. The open case must contain as much material as possible, subject only to legitimate public interest concerns. Paragraph 10 of Schedule 10 provides for the appointment of a special advocate in relation to any closed proceedings. A special advocate attends all parts of the proceedings (both open and closed) and, like the judge, sees all the material – including the closed material not disclosed to the individual. The role of the special advocate is to act in the individual's interests in relation to the closed material and closed hearings. Part of the function of special advocates is to ensure that the closed material is subject to independent scrutiny and adversarial challenge – including making submissions (in closed session) on whether or not the closed material should in fact be disclosed to the individual.

375 In particular, the schedule makes provision that rules must secure that, with the permission of the court, the Secretary of State may not disclose certain material other than to the court and a special advocate where this would be contrary to the public interest. It also makes provision in relation to the summarising of sensitive material. The rules may provide for the court to make an anonymity order in relation to an individual subject to a Part 2 notice.

376 Paragraph 5 of Schedule 10 provides that nothing in this provision, or in Rules of Court made under it, is to be interpreted as requiring the court to act in a way inconsistent with Article 6 of the ECHR. In other words, the individual's Article 6 right to a fair hearing takes precedence over anything in the legislation – in particular the provision about withholding information from the individual. This provision reflects the House of Lords' judgment in *Secretary of State for the Home Department v MB & AF* [2007] UKHL 46 ("MB & AF"). In that judgment, the Law Lords found that in rare cases the provisions of the Prevention of Terrorism Act 2005 might lead to a breach of Article 6 (civil) but concluded that it was possible to read down the provisions so they could be operated compatibly with Article 6 in all cases. They therefore read down the provisions under the 2005 Act requiring the court to withhold closed material from the controlled person, such that material must only be withheld if it was compatible with Article 6 to do so. The wording in paragraph 5 gives effect to the read down in MB & AF.

377 Subsequent to the MB & AF judgment, the Law Lords handed down a further judgment (*Secretary of State for the Home Department v AF and others* [2009] UKHL 28 ("AF (No. 3)")) on the compatibility of control order proceedings in Article 6, which took into account the (then) recent ECtHR decision in *A & Others v United Kingdom* [2009] ECHR 301. In brief, the AF (No. 3) judgment held that, in relation to the control order proceedings before the Law Lords, the controlled person must be given sufficient information about the allegations against him or her to enable him or her to give effective instructions to the special advocate in relation to those allegations. The disclosure obligations required by the judgment in AF (No. 3) will be applied as appropriate by the courts in these proceedings as it is in TPIM proceedings.

## Other safeguards

### Clause 53: Reports on exercise of powers under this Part

378 This clause places a duty on the Secretary of State to report to Parliament on a quarterly basis on the exercise of certain powers under this Part.

### Clause 54: Reviews of operation of this Part

379 This clause places a duty on the Secretary of State to appoint an "independent reviewer" to prepare an annual report on the operation of this Part, and to lay that report before Parliament.

## Enforcement

### Clause 55: Offence

380 This clause provides for an offence of contravening, without reasonable excuse, any measure specified in a Part 2 notice. Subsection (1) makes it clear that in cases where the Secretary of State grants permission under Schedule 7 for the individual to do something which the notice prohibits that individual from doing without such permission, if the individual does that thing other than in accordance with the terms of the permission, this will amount to a contravention of the relevant measure. Therefore, if the individual, without reasonable excuse, fails to adhere to the terms of the permission, including complying with any conditions attached to the permission, that will constitute an offence. The individual will also commit an offence if he or she is required by a measure in a Part 2 notice to give notice to the Secretary of State before doing something and the individual does that thing without receiving

confirmation from the Secretary of State that sufficient notice has been given (see paragraph 18(5) of Schedule 7).

381 Subsection (2) provides that an individual subject to a travel measure under paragraph 2 of Schedule 7 who leaves the United Kingdom or travels outside the United Kingdom will not be able to rely upon a defence of “reasonable excuse”. Subsection (4) increases the custodial penalty on conviction on indictment of contravening the travel measure from a term not exceeding five years imprisonment to one not exceeding ten years imprisonment.

382 The maximum penalties for the offence are, on conviction on indictment: five years’ imprisonment and 10 years imprisonment for contravening the travel measure; or a fine (of up to £5000 in England, Wales, and Northern Ireland and £10000 in Scotland); or both. And on summary conviction: six months’ imprisonment (in Northern Ireland); 12 months’ imprisonment (in Scotland); and in England and Wales six months’ imprisonment prior to commencement of section 154(1) of the Criminal Justice Act 2003 (“the 2003 Act”), and 12 months’ imprisonment after that section has been commenced; or a fine (of up to £5000 in England, Wales, and Northern Ireland and £10000 in Scotland); or both. Section 154(1) of the 2003 Act has the effect of increasing the maximum sentence available on summary conviction in England and Wales from six months to 12 months’ imprisonment. The differences in maximum penalty on summary conviction arise because the section reflects the normal position in each jurisdiction within the United Kingdom in relation to summary offences.

### Clause 56: Powers of entry

383 This clause gives effect to Schedule 11.

### Schedule 11: Powers of entry, search, seizure, and retention

384 This schedule provides for powers of entry, search, seizure, and retention in a number of scenarios relating to Part 2 notices. These include, without a warrant: entry and search of premises to locate an individual for the purpose of serving a Part 2 notice (or other specified notices) on that individual; search of an individual or premises at the time of serving a Part 2 notice for the purpose of discovering anything that might breach any measure specified in the Part 2 notice; search of premises on suspicion that an individual subject to a Part 2 notice has absconded; and search of an individual subject to a Part 2 notice for public safety purposes. And, with a warrant: search of an individual or premises for purposes of determining whether the individual is complying with the measures specified in the Part 2 notice.

### Clause 57: Fingerprints and samples

385 This clause gives effect to Schedule 12.

### Schedule 12: Fingerprints and samples

386 This schedule makes provision for the taking and retention of biometric material from individuals subject to a Part 2 notice.

387 Paragraph 1 makes provision for England, Wales and Northern Ireland relating to the taking of fingerprints and non-intimate samples from individuals subject to a Part 2 notice.

388 “Fingerprints” and “non-intimate samples” have the same meaning as that given in section 65 of the Police and Criminal Evidence Act 1984 (“PACE”). That is, “fingerprints” include palm prints and “non-intimate samples” means a sample of hair other than pubic hair; a sample taken from a nail or from under a nail; a swab taken from any part of a person’s body including the mouth but not any other body orifice; saliva and a footprint or a similar impression of any part of a person’s body other than a part of his or her hand.

- 389 Paragraph 2 provides that a constable in England, Wales and Northern Ireland may only take the fingerprints or samples from an individual once under the same Part 2 notice, unless there is a technical deficiency with material taken previously taken under the same notice.
- 390 Paragraph 3 provides a constable in England, Wales, and Northern Ireland with powers to require a person who is subject to a Part 2 notice to attend a police station (on notice) for the purposes of having his or her fingerprints and/or non-intimate samples taken. In the event that such a request is not complied with, the person may be arrested without a warrant. This is in line with the general provision allowing constables to require specified individuals to attend a police station for the purposes contained in Schedule 2A to PACE, which was inserted by section 6 of the Crime and Security Act 2010.
- 391 Paragraph 4 makes provision for Scotland relating to the taking of relevant physical data and samples from an individual subject to a Part 2 notice. In line with current procedures in Scotland, constables would need authorisation from an officer of the rank of inspector or above to take certain types of non-intimate samples (non-pubic hair or nail samples and external body fluid samples) from individuals subject to a Part 2 notice. A constable does not require such authorisation to take fingerprints, palm prints, other external body prints and saliva samples. In contrast, current procedures in England, Wales and Northern Ireland allow constables to take fingerprints and all non-intimate samples when individuals are arrested under PACE or the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACE NI”) without such authorisation. The differences in the approach in Scotland – and the differing definitions of the material to be taken – arise because the provisions in this Schedule are intended to be in line with existing police procedures and legislation in each country.
- 392 Paragraph 5 provides a power to check the biometric material of an individual subject to a Part 2 notice against other such material held under a variety of powers.
- 393 Paragraphs 6 to 11 make provision relating to the destruction and retention of material taken from individuals subject to a Part 2 notice by virtue of the powers conferred on constables in the previous paragraphs. Where an individual has no relevant previous convictions, fingerprints and DNA profiles may only be kept for six months after the Part 2 notice ceases to be in force. This is subject to the provision that, in the event that the Part 2 notice is quashed, the material may be retained until there is no further possibility of an appeal against the quashing. In addition, should the Part 2 notice be revived or a new Part 2 notice imposed during the six month period following the cessation of the Part 2 notice that was in force when the material was taken, or within or immediately after the end of the period during which any appeal may be made, the material may be retained for a further six months after the revived or subsequent Part 2 notice ceases to be in force (or until there is no further possibility of an appeal against any quashing of that Part 2 notice).
- 394 As provided in the Protection of Freedoms Act for material for example taken under PACE or that is subject to the Counter-Terrorism Act 2000 or the Counter-Terrorism Act 2008, the material need not be destroyed if a chief officer of police (or chief constable in Scotland or Northern Ireland) determines that it is necessary to retain that material for purposes of national security. In such circumstances it may be retained for up to five years; it is open to that chief officer to renew a national security determination in respect of the same material to extend further the retention period by up to two years at a time. The independent Commissioner for the Retention and Use of Biometric Material (provided for under the Protection of Freedoms Act) will keep under review such national security determinations and the uses to which material so retained is put.
- 395 Paragraph 12 covers the uses to which material taken and retained under the previous paragraphs can be put. These are the same as those set out in relation to material taken under PACE, PACE NI, the Counter-Terrorism Act 2000, and the Counter-Terrorism Act 2008.

## Supplementary provisions

### Clause 58: Notices

396 This clause makes provision about the service of notices under this Part. In particular, it provides that a confirmation notice must be served on an individual who is served with a Part 2 notice, a revival notice or an extension notice, setting out the period for which (including dates) the individual will remain subject to the Part 2 notice (unless the Part 2 notice is quashed or revoked before its expiry). A Part 2 notice, a revival notice or a notice of a variation which is neither a relaxation or removal of measures or is a variation without consent must be served in person on the individual for it to have effect. An extension notice must be served in person on the individual and served before the Part 2 notice to which it relates would otherwise expire for it to have effect. This requirement is supported by the entry and search power in paragraph 5 of Schedule 11. The other notices listed in subsection (4) may be served on the individual via his or her solicitor.

### Clause 59: Contracts

397 This clause grants the Secretary of State authority to purchase services in relation to any form of monitoring in connection with measures specified in Part 2 notices. This would include, for example, electronic monitoring of compliance with the residence requirement provided for in Schedule 7.

### Clause 60: Legal aid in relation to Part 2 Notices

398 This clause inserts a new paragraph in Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012) to enable individuals subject to Part 2 Notices to receive civil legal services in relation to those Notices.

399 Sub-paragraph 2 of new paragraph 45B sets out that sub-paragraph 1 is subject to two exclusions. The effect of the exclusion of Part 2, with the exception of paragraph 18, is to ensure that legal representation for proceedings on Part 2 Notices fall within new paragraph 45B for the purposes of making a decision on legal aid funding. The effect of the exclusion of Part 3 is to permit advocacy in proceedings on Part 2 Notices.

### Clause 61: Interpretation etc

400 This clause sets out the meaning of various terms used throughout this Part and makes certain provisions for the application of other clauses. In particular, subsection (3) has the effect that where a new Part 2 notice is imposed on an individual who has already been subject to measures for five years, the Secretary of State may take into account evidence he or she relied on in relation to the imposition of the previous Part 2 notice. But there would also need to be evidence of foreign power threat activity which post-dated the imposition of the earlier Part 2 notice for the Secretary of State to have the power to impose the new notice (see subsections (2) and (7) of clause 38)

401 Subsection (4) provides that where the definition of “new foreign power threat activity” in clause 33(7) refers to a Part 2 notice being in force in relation to an individual, a notice that is revived (under clause 47(6)) is to be treated as the same Part 2 notice as the notice previously revoked or expired. In other words, if a Part 2 notice has been revived under clause 47(6), when considering whether there is “new” foreign power threat activity which could found the imposition of measures on the individual beyond 5 years, that “new” activity must take place at some point after the original imposition of the measures (not necessarily after the revival of the measures).

## Part 3 Foreign Influence Registration Scheme

### Clause 62: Requirement to register foreign activity arrangements

402 Clause 62 establishes the first of two ‘enhanced’ registration requirements under the Foreign Influence Registration Scheme (FIRS). The second is at clause 65.

403 Subsection (1) defines a ‘foreign activity arrangement’ for the purposes of the scheme, as an arrangement between a person (“P”) and a specified person, pursuant to which the specified person directs P to carry out activities in the United Kingdom, or to arrange for activities to be carried out within the UK. P is considered to be ‘directed’ if they have a formal or informal arrangement with a specified person. For example, a formal arrangement may be where a specified person has contracted P, or is paying P, to deliver a service. An informal arrangement may be where P has been requested to act by a specified person in exchange for future payment, benefit or favourable treatment. The requirement for P to register where they have arranged for activities to be carried out is to address a situation where the person seeks the services of a third party to deliver the required activity. Without such a requirement, it may not be obvious to the Government that the third party’s activities relate to a foreign activity arrangement and this could create a means of avoiding the registration obligations.

404 Subsection (2) clarifies that where P makes a foreign activity arrangement, they must register the arrangement with the Secretary of State before the end of the period of 10 days, which begins on the day P made the arrangement. P can be an individual or an entity and the requirement to register applies regardless of nationality. The period of 10 days has been included to provide the government with notice of the activity prior to it taking place and also offers an opportunity to enforce the requirements to register to reduce the risk of covert activity being carried out.

405 Subsection (3) establishes an offence for non-compliance with subsection (1). This means an offence will be committed where the person (a) knows, or (b) ought reasonably to know, that the arrangement in question is a foreign activity arrangement. This knowledge test is important as it is to guard against the risk that a person who is unwittingly acting for a specified power could be prosecuted for not complying with the scheme. Hypothetical examples of registerable and non-registerable foreign activity arrangements are provided below Clause 63.

### Clause 63: Meaning of “specified person”

406 Clause 63(1) defines a ‘specified person’ as either a foreign power specified by the Secretary of State in regulations, or a person that is not a foreign power (subject to subsection (2)) where specified by the Secretary of State in regulations. Where the power is used to specify a foreign power, it may be that only part of a foreign power is specified, for example an individual department or agency.

407 Subsection (2) sets the circumstances in which a person can be specified in regulations when they are not a foreign power. A person can only be specified if they are not an individual and if the Secretary of State reasonably believes the person is controlled by a foreign power.

408 Subsection (3) introduces Schedule 13 which makes provision about where a person is controlled by a foreign power in accordance with subsection (4)(b).

409 Subsection (4) establishes that the Secretary of State may only make regulations specifying a foreign power or person other than a foreign power if the Secretary of State considers it to reasonably necessary to protect the safety or interests of the United Kingdom. The regulations will require the approval of Parliament in accordance with the affirmative procedure.

410 Subsection (5) provides that regulations specifying a foreign power, or a person other than a foreign power, may apply Clause 62(1) with modifications specified in the regulations, before the regulations come into force. In some circumstances, for example, it may not be necessary or proportionate to require the registration of an arrangement relating to all activities which are to be carried out, or arranged to be carried out, within the UK at the direction of the specified person.

#### Example (1): Establishment of a foreign activity arrangement (entity)

Company A is a company incorporated under the laws of the UK. Many of Company A's projects are directly funded and supported by Country O. The government of Country O has recently been specified by the Secretary of State.

Government officials of Country O discuss the terms of funding with Company A for the next financial year. Officials request Company A to target a proportion of the funding at acquiring specialist expertise for future projects. They direct Company A to hold a series of networking and collaboration events in the UK over the course of the next year to promote the projects and raise their profile with UK industry specialists.

Company A would be required to register the arrangement (the direction to hold a series of networking and collaboration events) under FIRS. There is no requirement for each individual employee who may be engaged in the running of the events to register, as it is the responsibility of the company.

The arrangement must be registered with the scheme within 10 days of it being made, or before activities are carried out (if due to commence within the 10-day period) by virtue of clause 62.

#### Example (2): Establishment of a foreign activity arrangement (individual)

The Department of Cultural Affairs (DCA) of the government of Country P has been specified by the Secretary of State to protect the safety or interests of the UK.

Person A is a high-profile entrepreneur who resides in London with substantial wealth and a large UK based social media following. An official working for the DCA in the UK Embassy of Country P meets with person A and offers them a substantial amount of money to actively promote a number of cultural programmes being run by UK academic institutions. No formal contract is put in place, but Person A accepts the offer and expresses willingness to act at the direction of the DCA official.

Person A would be required to register the arrangement (acceptance of the request to carry out activities to promote the cultural programmes of the DCA in return for money).

The arrangement must be registered with the scheme within 10 days of it being made, or before activities are carried out (if due to commence within the 10-day period) by virtue of clause 62.

#### Example (3): Arranging a third party to carry out activities in the United Kingdom

All security and defence-related departments of the government of Country Q are specified by the Secretary of State to protect the safety or interests of the UK.

An official of the Ministry of Defence (MoD) of Country Q meets with Person B, a businessperson based in Country Q who is due to attend a conference in the UK. The conference is designed to bring together academia and business in a number of specialist subject areas. The MoD official requests Person B to use their UK business network to facilitate



a number of experts in certain fields, who are attending the conference, to be approached and invited to present at a future event in Country Q. In return, Person B would be rewarded.

Person B would be required to register the arrangement (the direction to arrange to carry out recruitment activities at the conference in the UK). As part of registration, the Government intends that regulations regarding what information should be registered will require Person B to name those in their UK network that they intend to use to facilitate the engagement with the identified experts.

The arrangement must be registered with the scheme within 10 days of it being made, or before activities are carried out (if due to commence within the 10-day period) by virtue of clause 62.

#### Example (4): Registration not required

The government of Country R is specified by the Secretary of State to protect the safety or interests of the UK.

A UK-based charity receives frequent donations from the government of Country R. Although the donations support the work and cause of the charity, it is not being directed to spend this funding in a particular way. There is therefore no requirement for the charity to register with the scheme.

#### Example (5): Registration not required

Company L (an overseas university) is specified by the Secretary of State to protect the safety or interests of the UK as it is controlled by Country S.

A small number of research institutions within the UK are involved in collaborative projects Company L as part of an initiative led by an international NGO.

As the terms of the initiative are set by the international NGO and not by Company L, there is no requirement for the UK-based research institutions to register their activity in the UK. They are not in a directive arrangement with Company L.

Company L would need to register any activities it conducts in the UK with FIRS

### Schedule 13: Control of a person by a foreign power

411 This Schedule is introduced by Clause 63 to provide the circumstances in which a person (who is not an individual) will be considered as subject to the control of a foreign power. Paragraph 1 explains that a person is controlled by a foreign power if the foreign power (1) has the right to direct or control, or actually directs or controls the person's activities (in whole or in part); (2) directly or indirectly holds more than 25% of the shares in the person; (3) directly or indirectly holds more than 25% of the voting rights in the person; or (4) directly or indirectly has the right to appoint or remove an officer of the person. Condition 5 covers trusts, partnerships, unincorporated associations or other entities and applies the conditions 1-4 to those such bodies. Only one of the conditions 1-4 needs to be met to evidence control.

412 Paragraph 2 defines an 'officer' as referenced under Paragraph 1(d)(a) in relation to a body corporate, as a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity; (b) in relation to a partnership, as a partner or person purporting to act as a partner; (c) in relation to an unincorporated association other than a partnership, as a person who is concerned in the management or control of the association or purports to act in the capacity of a person so concerned.

413 Part 2 covers how part 1 should be interpreted and gives further details on conditions 1-4. Part 3 allows the Secretary of State to amend this schedule when one of the following conditions applies: (1) to change the percentages that apply in conditions 1-4; (2) to add to circumstances where a similar level of control to conditions 1-4 exists but is not currently covered by these conditions; or (3) where conditions are to be amended, this is reflected by changing or supplementing Part 2 of the Schedule.

#### Clause 64: Offence of carrying out activities under an unregistered foreign activity arrangement

414 Clause 64 establishes an offence for carrying out an activity, or arranging for the activity to be carried out, pursuant to a foreign activity arrangement which has not been registered. This offence supports the overall intention of the scheme by reducing the chances that activities pursuant to an unregistered arrangement with a specified person will be carried out. It also provides an important means of disrupting all levels of an entity that has been identified as being engaged in a covert arrangement with a specified person. In many cases, for example where the registrant is an entity (a company or organisation), there may be several people involved in the activity but only one person responsible for submitting the required information on behalf of that entity (e.g. an individual in the legal compliance department of a company). While the offence in Clause 62 focusses on failure to comply with the requirement to register an arrangement and allows for prosecutions against an entity and its directing mind, this offence is focused on the activity pursuant to the arrangement and allows for a prosecution to be brought at any level.

415 Subsection (1) provides that an offence will be committed where a person (whether P or another person) carries out an activity, or arranges for an activity to be carried out, in the United Kingdom pursuant to an unregistered foreign activity arrangement which is required to be registered under Clause 62(1); where the person knew, or ought reasonably to have known, that they were acting under the direction of a specified person. The knowledge test is included to guard against the prosecution of individuals who couldn't have known they were being directed by a specified person, and so could not be expected to take steps to check whether their activity is pursuant to an unregistered arrangement before carrying it out.

416 Subsection (1A) clarifies that "P" has the same meaning as Clause 62 (Requirement to register foreign activity arrangements).

#### Example (1): How the offence would apply in relation to example 1 under Clause 62

If Company A had not registered the arrangement with government officials of Country O, employees of Company A that are engaging in the delivery of the networking and collaboration events could be liable to prosecution. This would only be the case if the employee knew, or ought reasonably to know, the networking and collaboration events were being delivered at the direction of Country O. Whether an employee ought reasonably to know will ultimately depend on the position they are in the company and the information that they are privy to.

#### Example (2): How the offence would apply in relation to example 2 under Clause 62

In this example, Person A is party to the arrangement with the DCA (a 'specified person') and so must register that arrangement within 10 days of it being made. If, however, person A was to begin carrying out activities pursuant to that arrangement within the 10-day period and had not registered the arrangement, they would risk committing an offence

under Clause 63 (carrying out activities under an unregistered foreign activity arrangement) even if the offence under 61 hadn't yet been committed.

### Example (3): How the offence would apply in relation to example 3 under Clause 62

If Person B had not registered the arrangement with the MoD official of Country Q, those individuals who are part of Person B's UK network and approaching experts at the UK conference could be liable to prosecution. This would only be the case if the individuals knew, or ought reasonably to have known, their recruitment activities had originated from a direction of an MoD official of Country Q.

## Clause 65: Requirement to register activities of specified persons

417 Clause 65 establishes the second of two 'enhanced' registration requirements under FIRS. The combined effect of clause 62, 63, 64 and 65 is to provide greater assurance around activities which are directed by, or carried out by, specified persons. Clause 64 focusses on activities conducted by specified entities themselves rather those they might be directing through an arrangement that would need to be registered under clause 61.

418 Subsection (1) prohibits a specified person who is not a foreign power from carrying out activities in the UK unless the specified person has registered the activities with the Secretary of State. Subsection (2) clarifies that this prohibition also applies to that specified person's employees or members of staff.

419 Subsection (3) prohibits a person who holds office in or under, or is an employee or other member of staff of, a specified person who is a foreign power from carrying out activities in the UK in that capacity if, or to the extent that, (a) the person makes a misrepresentation about their activities or the capacity in which they act, whether generally or to a particular person, and (b) the specified person has not registered the person's activities with the Secretary of State. Subsections (4)-(6) describe a misrepresentation as a representation that a reasonable person would consider to be false or misleading in a material way, which could include a statement or other conduct, whether express or implied. This could also include where they have misrepresented their identity or purpose, or presented information in a way which amounts to a misrepresentation, even if some or all of the information is true.

420 Subsection (7) creates an offence for breaching a prohibition under subsection (1) or (2) where the person knows, or ought reasonably to know, that the activities in question are not registered with the Secretary of State. Subsection (8) creates an offence for breaching a prohibition under subsection (3) where the person knows, or ought reasonably to know that paragraph (a) or (b) of that subsection applies.

## Clause 66: Requirement to register foreign influence arrangements

421 Clause 66 introduces the first of two 'primary' registration requirements under FIRS. The second is at clause 69.

422 Subsection (1) defines a 'foreign influence arrangement' as an arrangement between a person ("P") and a foreign principal pursuant to which the foreign principal directs P to carry out political influence activities in the United Kingdom, or to arrange for such activities to be carried out in the United Kingdom. A person is considered to be 'directed' in the same circumstances to those described at the equivalent subsection under Clause 62.

423 Subsection (2) clarifies that were P makes a foreign influence arrangement, P must register the arrangement with the Secretary of State before the end of the period of 10 days, which begins on the day the arrangement was made. As with Clause 62, a person can be an individual or an

entity and the requirement would apply regardless of nationality. The period of 10 days has been included to provide the public and government with notice of the activity prior to it taking place and also offers an opportunity to enforce the requirements to register to reduce the risk of covert influence activity being carried out.

424 Subsection (3) provides a grace period of three months beginning with the day on which the section comes into force. This means that a person who has an existing arrangement, to which subsection (1) would apply, will be granted an extended period (beyond the usual ten-day period) to ensure the registration of that arrangement. This is to provide time to sectors to familiarise themselves with the scheme's requirements and their new obligations.

425 Subsection (4) establishes an offence for a person failing to comply with subsection (1) where the person knows that the arrangement in question is a foreign influence arrangement. The knowledge test of this offence is designed to apply to those who are intentionally seeking to avoid compliance with the scheme's requirements.

### Clause 67: Meaning of "foreign principal"

426 Subsection (1) defines a 'foreign principal' as: (a) a foreign power (as defined at Clause 30 of the National Security Bill); (b) a body incorporated under the law of a country or territory outside the United Kingdom; or (c) an unincorporated association formed under the law of a country or territory outside the United Kingdom, other than an association of persons where each person qualifies as an overseas elector under section 1A of the Representation of the People Act. The definition of 'foreign principal' reflects that foreign powers deploy their influence through seemingly private or independent entities. This can be achieved through formal links with such entities, which may include shares, subsidies, financing or voting rights, or through other obligations to collaborate with the state. It can also be achieved through informal links, such as understandings or verbal agreements that do not amount to 'control' for the purposes of the 'enhanced' requirement. There are also entities which are ostensibly private, yet nonetheless act to further a foreign power's interests.

427 Subsection (2) clarifies the persons who will not be considered as a 'foreign principal' for the purposes of a foreign influence arrangement. These include a specified person (under Clause 62), a body corporate under the law of the Republic of Ireland or an unincorporated association formed under the law of the Republic of Ireland, or an international organisation. Excluding a person specified under Clause 62 will ensure that it is the enhanced requirements that will apply where a person is directed by a specified person to carry out, or arrange to carry out, political influence activities. The exclusion of entities established under the law of the Republic of Ireland is necessary to uphold the letter and spirit of the Belfast (Good Friday) Agreement. This will avoid interference with the right of citizens in Northern Ireland to identify as Irish, as well as the activities of cross-border entities and institutions. Finally, the exclusion of 'international organisations' is to avoid interference with obligations relating to the UK's relationship with multilateral organisations.

428 Subsection (3) defines an "international organisation" as a person (other than an individual) which is set up by, or on the basis of an agreement between two or more countries and which is governed by international law; or is recognised under an agreement between two or more countries and is specified by the Secretary of State in regulations (Subsection (4) clarifies that these regulations may specify a person or a description of persons). This regulation-making power may be used to ensure that the important work of international entities that might not otherwise meet the definition in 9(a) and 9(b) are not affected by the scheme's registration requirements. Hypothetical examples of foreign influence arrangements are provided below.

429 Subsection (5) clarifies, for the purposes of subsection (1)(c), that at any time before section 14 of the Elections Act 2022 comes into force, the reference to section 1A of the Representation of the People Act 1985 is to be read as a reference to section 1(2) of that Act.

### Example (1): Establishment of a foreign influence arrangement (lobbying)

A cultural committee of a foreign political organisation contracts a UK-based lobbyist to meet with a member of a UK political party's governing body. The foreign political organisation requests the lobbyist to influence the formulation of the party's electoral manifesto for an upcoming election.

The lobbyist would be required to register the arrangement (the direction as part of the contract with a foreign entity to communicate with the member of the UK political party) as a purpose of the activity is to influence the conduct of an election in the UK.

The arrangement must be registered with the scheme within 10 days of it being made, or before political influence activities are carried out (if due to commence within the 10-day period) by virtue of clause 66.

### Example (2): Establishment of a foreign influence arrangement (public communication)

A foreign charity which runs UK operations, hires a public relations (PR) firm to produce a communications campaign to promote policy change in the UK in response to a recent UK government announcement.

The PR firm is asked to disseminate a series of impactful social media videos and leaflets in the UK without attribution to the work of the charity.

In the absence of it being reasonably clear from the videos and leaflets that they are made at the direction of a foreign entity, the PR firm would be required to register the arrangement (the direction as part of the contract with a foreign entity to make a public communication), as a purpose of the activity is to influence a decision of the government in the UK.

The arrangement must be registered with the scheme within 10 days of it being made, or before political influence activities are carried out (if due to commence within the 10-day period) by virtue of clause 66.

### Example (3): Establishment of a foreign influence arrangement (distribution)

A UK-subsiary ('Company F) is requested by its parent company ('Company N') to provide funding to a UK-based think tank to support an academic critique of the UK Government's foreign policy relating to the region in which Company N is based. Company N hopes the critique will add weight to a rethink of government policy on the affairs of the region. Company N instructs Company F to make clear that funding is solely to support the critique and amplify key messages to the UK Government.

The UK-based subsidiary, Company F, would be required to register the arrangement. This is because Company N is in a position to direct Company F by virtue of its relationship as a parent company. Company F has been directed by a foreign entity to distribute money to a UK person to influence a decision of the government of the UK.

The arrangement must be registered with the scheme within 10 days of it being made, or before political influence activities are carried out (if due to commence within the 10-day period) by virtue of clause 66.

### Example (4): Political influence activities of a foreign principal

A high-profile non-governmental organisation (NGO) based overseas is to visit the UK on invitation to attend a meeting of an All Party Parliamentary Group. The NGO intends to

take the opportunity to advocate for changes to be made to new laws that have been announced by the UK Government.

The NGO would be required to register attendance at the meeting before it takes place. This is because it is a foreign entity, and therefore a foreign principal, which is to carry out activities involving communication with Members of Parliament for a purpose of influencing those Members.

#### Example (5): Registration not required

Representatives of a foreign academic institution visit a UK campus to give a series of lectures on the impact of recent UK Government decisions relating to the relationship between the UK and their country.

The lectures are popular with the student-base and the representatives distribute a range of academic materials, including papers, to enable the students to educate themselves further after the event.

While this example involves a foreign entity (a foreign principal) making and disseminating information in the UK, thereby making a public communication, it is not carried out for a registerable purpose, as it is providing commentary on a government decision, rather than seeking to alter that decision.

#### Example (6): Registration not required

A foreign business is to provide a donation to a UK-based charity.

The foreign business, while privately supportive of the cause of the charity, does not indicate how the donation should be used with regard to the specific activities of the charity.

While this example involves a foreign entity carrying out a distribution, it would not be required to register as it is not clear that it is for a purpose listed in clause 65(3) (to influence a listed matter or person).

#### Example (7): Registration not required

A foreign charity commences a communication campaign in the UK, involving a series of lectures, digital materials and leaflets. The purpose of the campaign, which is clearly stated, is to raise awareness and put pressure on the UK Government to reverse a policy decision. All communication materials are disseminated in the name of the foreign charity.

This activity would not be registerable. As the communication materials are disseminated in the name of the foreign charity, there is no doubt that the activities are being carried out for a foreign principal.

### Clause 68: Meaning of “political influence activity”

430 Clause 68 provides a definition of “political influence activity” for the purposes of the scheme’s primary registration requirements under clauses 66 and 70.

431 Subsection (1) clarifies that an activity is a “political influence activity” if it is an activity listed at subsection (2) and where the purpose, or one of the purposes of the activity is to influence a matter or person listed within subsection (3). The requirement that at least one of the purposes of the activity is to influence a relevant matter or person is to prevent incidental or unintended influence from falling within scope.

432 Subsection (2)(a) provides that a “political influence activity” includes the making of any communication to: (a) a Minister of the Crown, a Northern Ireland Minister, a Scottish

Minister or a Welsh Minister, (b) a Member of either House of Parliament, the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru, or an employee or other member of staff of such a Member, (c) an officer, trustee or agent of a UK registered political party or a member of such a party who exercises executive functions on behalf of the party, (d) a candidate at an election for a relevant elective office or a relevant Scottish elective office, (e) a senior official or a special adviser, or (vi) a person within a description of persons exercising functions on behalf of the Crown which is specified in regulations made by the Secretary of State. The persons listed have been identified as those most likely to be of use to foreign powers in affecting change in the UK's political system or proceedings. The regulation-making power, which is subject to the affirmative procedure, is to ensure the scheme is capable of adapting to trends and behaviours following its implementation.

- 433 Subsection (2)(b) provides that making a public communication is also to be considered a political influence activity, except where it is reasonably clear from the communication that it is made at the direction of the foreign principal. Subsection (4) clarifies that making a public communication is to include the publication or dissemination of information, a document or other article, or the production of information, a document or other article for publication or dissemination. This requirement is intended to ensure that the public are aware of who is behind a communication that may influence the way they exercise their rights the UK, or the way they engage with the UK's political system.
- 434 Subsection (2)(c) provides that distributing money, goods or services to UK persons is also to be considered a political influence activity. The term 'UK persons' is defined at section 2 to include a UK national, a body incorporated under the law of a part of the UK and an unincorporated association formed under the law of a part of the UK. As with public communications, targeted incentives can be a key method of deploying influence. This requirement is intended to ensure greater public visibility of how such influence is being deployed by foreign principals.
- 435 Subsection (3) provides a list of the matters and persons which, if a purpose is to influence them (by virtue of subsection (1)(b), would make an activity within subsection (2) registerable. These include: a) the conduct of an election or referendum in the United Kingdom, (b) a decision of the government of the United Kingdom, a Northern Ireland Minister or Northern Ireland Department, the Scottish Ministers or the Welsh Ministers, (c) the proceedings of either House of Parliament, the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru, (d) the proceedings of a UK registered political party, or (e) a Member of either House of Parliament, the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru.
- 436 Subsection (5) clarifies a number of terms used within this clause. The reference to a "Northern Ireland Minister" includes the First Minister, the Deputy First Minister and a junior Minister. The "relevant elective office" and "relevant Scottish elective office" are to be interpreted as per the meaning provided in section 37 of the Elections Act 2022. A "senior official" refers to a member of the Senior Civil Service, or of the Northern Ireland Civil Service, or a member of the Senior Management Structure of His Majesty's Diplomatic Service. A "special adviser" is a person who serves the government in a position in the civil service of the State and whose appointment to that position meets the requirements applicable to that position set out in section 15(1) of the Constitutional Reform and Governance Act 2010. It also means a person appointed to a position in the Northern Ireland Civil Service by a Northern Ireland Minister and whose appointment to that position meets the conditions set out in section 1(3) and (4) of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 (c.8(N.I.)). A "UK person" is defined as per section 2. A "UK registered political party" is a political party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000. A "Welsh minister" includes the First Minister, the Counsel General to the Welsh Government and a Deputy Welsh Minister."

## Clause 69: Offence of carrying out political influence activities pursuant to unregistered foreign influence arrangement

437 Clause 69 establishes an offence for carrying out a political influence activity, or arranging for the activity to be carried out, pursuant to a foreign influence arrangement which has not been registered. This is the equivalent offence for the primary registration requirements to that of clause 64 for the enhanced registration requirements, for which the rationale is described above.

438 Subsection (1) provides that an offence will be committed where a person (whether P or another person) carries out an activity, or arranges for an activity to be carried out, in the United Kingdom pursuant to an unregistered foreign influence arrangement; where the person knew that the arrangement wasn't registered. The knowledge test is included to ensure that a person who intentionally acts pursuant to an unregistered arrangement is liable to prosecution.

439 Subsection (1A) clarifies that "P" has the same meaning as in Clause 66 (Requirement to register foreign influence arrangements).

## Clause 70: Requirement to register political influence activities of foreign principals

440 Clause 70 establishes the second of two 'primary' registration requirements under FIRS. The combined effect of clauses 66, 67, 68 and 69 is to strengthen the resilience of the UK against covert political influence.

441 Subsection (1) prohibits a foreign principal who is not a foreign power from carrying out political influence activities in the United Kingdom unless the foreign principal has registered the activities with the Secretary of State. Subsection (2) clarifies that this prohibition also applies to that foreign principal's employees or members of staff.

442 Subsection (3) prohibits a person who holds office in or under, or is an employee or other member of staff of, a foreign principal who is a foreign power from carrying out activities in the UK in that capacity if, or to the extent that, (a) the person makes a misrepresentation about their activities or the capacity in which they act, whether generally or to a particular person, and (b) the specified person has not registered the person's activities with the Secretary of State. Subsections (4)-(6) describe a misrepresentation as a representation that a reasonable person would consider to be false or misleading in a material way, which could include a statement or other conduct, whether express or implied. This could also include where they have misrepresented their identity or purpose, or presented information in a way which amounts to a misrepresentation, even if some or all of the information is true.

443 Subsection (7) creates an offence for breaching a prohibition under subsection (1) or (2) where the person knows, or ought reasonably to know, that the activities in question are not registered with the Secretary of State. Subsection (8) creates an offence for breaching a prohibition under subsection (3) where the person knows, or ought reasonably to know that paragraph (a) or (b) of that subsection applies.

## Clause 71: General Exemptions

444 Clause 71 introduces the Schedule (Exemptions) which makes provision in relation to exemptions.

## Schedule 14 (Exemptions)

445 Paragraph 1 (1) establishes that a person will not be required to register a foreign influence or foreign activity arrangement where the arrangement is a UK arrangement.

446 Paragraph 1(2) sets out that it will not be an offence for a specified person to carry out unregistered activity in the UK or for a foreign principal to carry out unregistered political



influence activity in the UK where the activity is carried out as part of a UK arrangement or UK agreement.

447 Paragraph 1(3) defines what a UK arrangement or UK agreement means for the purposes of paragraph 1(1) and (2). This is defined as any agreement or arrangement to which the United Kingdom is a party. While not defined on the face of the legislation, it is intended that this is an arrangement/agreement to which the UK Government (such as Ministers and civil servants acting on behalf of the UK Government) are party.

448 It also exempts from registration any arrangement or agreement to which any person acting for or on behalf of, or holding office under, the Crown is (in that capacity) a party. This includes Ministers of the devolved administrations, members of the Armed Forces of the UK and those acting on behalf of the Royal family where these individuals are acting in their official capacity.

449 Paragraph 2 disapplies a number of the registration requirements and prohibitions in FIRS to foreign powers. This includes the requirement to register a foreign activity or foreign influence arrangement, the offence of carrying out activities under unregistered foreign activity or foreign influence arrangement and the offence of carrying out activities tainted by false information.

450 Paragraph 3(1) provides an exemption from registering a foreign activity arrangement with a specified person with FIRS where the purpose of the arrangement relates to providing goods and services that are reasonably necessary to support the efficient functioning of a diplomatic mission, consular post or UK based international organisation. This exemption does not apply to registering a foreign influence arrangement as political influence activity is not considered to be reasonably necessary to support the functioning of a mission, post or international organisation.

451 Paragraph 3(2) establishes that a person will not need to register a foreign activity or foreign influence arrangement where they are a family member that forms part of the household of a principal person who is a member of staff of a diplomatic mission, consular post or UK based international organisation. This exemption will only apply where the arrangement is for the purpose of conducting activity that is related to activity carried out by the member of staff in their official capacity. This exemption reflects the nature of diplomatic work and the role of family members in supporting a relevant member of staff based on the UK.

452 Paragraph 3 (3) and (4) clarifies what is meant by a “principal person” as it relates to a member of staff of a diplomatic mission, consular post, or the permanent mission of a UK-based international organisation of a country which is a member of the organisation. It also clarifies that a member of the principal person’s family, forming part of their household, includes their partner in an enduring family relationship. This is to acknowledge the contribution to the functioning of the mission that can be provided by unmarried partners. Paragraph 3 (5) clarifies what is meant by a member of staff.

453 Paragraph 3(6) defines a range of terms used in paragraph 3, such as consular post and diplomatic mission.

454 Paragraph 4(1) clarifies that a number of the registration requirements and prohibitions in FIRS do not apply to a recognised news publisher. This includes the requirement to register foreign influence arrangements, the prohibition on foreign principals carrying out unregistered activities, the offence of carrying out activities under unregistered foreign influence arrangements and the offence of carrying out political influence activities tainted by false information.

455 Paragraph 4(2) ensures that the prohibition on employees of a foreign principal carrying out unregistered activities does not apply to employees or other members of staff of a recognised news publisher where they are acting in their capacity as an employee.

456 Paragraph 4(3) clarifies that a number of the registration requirements and prohibitions in FIRS do not apply where the arrangement in question is a news-related foreign influence arrangement. This includes the requirement to register foreign influence arrangements, the offence of carrying out activities under an unregistered foreign influence arrangement and the offence of carrying out political influence activities tainted by false information.

457 Paragraph 4(4) defines what is meant by a news-related foreign influence arrangement.

458 Paragraph 4 (5) provides definitions for the terms used in paragraph 4, including “news related material” and “recognised news publisher”.

459 Paragraph 5(1) clarifies that the requirement to register foreign activity arrangements and foreign influence arrangements does not apply to the extent that the arrangement relates to the carrying on of legal activity by a lawyer.

460 Paragraph 5(2) disapplies the prohibition on specified persons carrying out unregistered activities and foreign principals carrying out unregistered political influence activities to the carrying on of legal activity by a lawyer.

461 Paragraph 5(3) defines a lawyer.

462 Paragraph 5(4) defines legal activity.

463 Paragraph 6(1) ensures that where an entity is exempt, the employees of that entity are also exempt when they are acting in that capacity as an employee. It also allows the Secretary of State to exempt someone where they reasonably consider that the person is exercising functions on behalf of the entity that is exempt.

464 Paragraph 6(2) clarifies that paragraph 6(1) does not apply where the person makes a misrepresentation about their activities or the capacity in which they are acting.

465 Paragraphs 6(3), 4) and (5) clarify what is meant by a misrepresentation.

466 Paragraph 7 gives the Secretary of the State the power to implement further exemptions by regulation.

467 Hypothetical examples of some of the exemptions in this schedule are provided below.

#### Example (1): A UK ‘arrangement’

The UK government launches a joint research project with another foreign government on combatting the effects of climate change. The foreign government and the UK invite a number of academic researchers to participate in a policy-making discussion with individuals such as UK senior civil servants or a Government Minister - for example, discussing draft legislation, or a policy proposal related to climate change – the exemption would apply such that the academic researchers would not be required to register the arrangement. While they are in an arrangement with a foreign government, the UK is party to this arrangement.

#### Example (2): A UK ‘agreement’

The UK government enters into an agreement with a foreign government to provide overseas aid. The foreign government enters into a subsequent arrangement with a UK-based non-government organisation (NGO) to present analysis to the UK government on what the overseas aid should be spent on.

While this could constitute a registerable foreign influence arrangement (as the NGO is directed by a foreign government to communicate with a UK Government Minister to influence a decision of the government), the NGO would not need to register this arrangement with the scheme. This is because the activity is pursuant to the original agreement between the UK and the foreign government.

#### Example (3): An arrangement which relates to the provision of legal services

A UK-based law firm makes an arrangement with a foreign company to provide legal representation in a case against a department of the UK government. As part of this arrangement, the law firm is directed to send correspondence setting out the particulars of the case and requesting that the UK government drop proceedings against the foreign company.

Although the arrangement concerns a direction to communicate with senior officials of the department for a matter listed at clause 65(3) (to influence a decision of the government), the UK law firm would not need to register this arrangement. This is because it concerns the provision of legal activity by lawyers.

#### Example (4): An arrangement which relates to the provision of goods or services which are reasonably necessary to support the efficient functioning of a diplomatic mission, consular post, or a permanent mission to a UK-based international organisation

The government of country T has recently been specified by the Secretary of State to protect the safety or interests of the UK. The foreign diplomatic mission of country T, based in London, enters into an agreement with a UK based roofing company to repair a leak in the mission's roof.

Although the roofing company is in an arrangement with a specified government – country T's diplomatic mission in London, as it is undertaking activities that are considered essential to the functioning of the mission, it is not required to register its activity. If at any point the roofing company undertook other activities beyond the scope of the roofing repairs, it may have to register its arrangement with the diplomatic mission.

#### Example (5): Arrangements which relate to members of the family of a principal person forming part of the principal person's household

The government of country U asks its Ambassador to the UK to host a dinner at the Ambassador's residence. The dinner will discuss UK trade relations with country U and will have UK Cabinet Ministers and the Ambassador's Spouse in attendance.

Although the arrangement involves lobbying Cabinet Ministers, both the Ambassador and his spouse will be exempt from registering the arrangement. The Ambassador is exempt as he is acting in his official capacity as an employee of a foreign power. Foreign powers do not need to register self-directed activity with FIRS so will not be required to register this activity either. The spouse will also be exempt from registration as the activity is connected to activity being carried out by the Ambassador in his official capacity.

## Clause 72: Registration Information

468 Clause 72 concerns the information which registrants must provide under the scheme.

469 Subsection (1) allows the Secretary of State to make regulations to outline the information required from a person to comply with their registration obligations under the scheme. A

person is required to provide information on (a) a foreign activity arrangement under section 65 (Requirement to register foreign activity arrangements); (b) an activity under section (Requirement to register activities of specified persons); (c) a foreign influence arrangement under section (Requirement to register foreign influence arrangements); or (d) a political influence activity under section (Requirement to register political influence activities of foreign principals).

- 470 Subsection (2) provides that the regulations under subsection (1) may require the person to provide information about any arrangements made by the person pursuant to the arrangement or activity which is required to be registered.
- 471 Subsection (3) provides the requirement to notify the Secretary of State where there is a material change to any information provided under this section or section 70 (information notices) when this information relates to a registered arrangement or a registered activity. The person who registered the arrangement or activity must inform the Secretary of State of this change within 14 days of the period beginning on the day on which the change takes effect. This is to ensure the integrity of the registration scheme and prevent information from becoming false or misleading.
- 472 Subsection (4) allows the Secretary of State to make regulations to make provision about the information which must be provided under subsection (3). The Secretary of State may also issue guidance on what may or may not constitute a 'material change' under subsection (3).
- 473 Subsection (5) clarifies that the provision made by regulations under this section will include provisions about the form in which the information is to be provided.
- 474 Subsection (6) establishes an offence for failing to comply with subsection (3), where, as a result of said failure, the information provided to the Secretary of State is false, inaccurate, or misleading in a material way.

### Clause 73: Information Notices

- 475 Subsection (1) provides the Secretary of State with the ability to issue an information notice to: a) a person who is party to a registered foreign activity arrangement; b) a person the Secretary of State reasonably believes to be party to a foreign activity arrangement which is required to be, but is not, registered; c) a person (who is a specified person) who has registered activities they are to carry out in the United Kingdom; ca) a person the Secretary of State reasonably believes to be carrying out activities registered under that section; or d) a person (who is a specified person) the Secretary of State reasonably believes to be carrying out activities in the United Kingdom which are not registered.
- 476 Subsection (2) provides the Secretary of State with the ability to issue an information notice to: a) a person who is party to a registered foreign influence arrangement; b) a person the Secretary of State reasonably believes to be party to a foreign influence arrangement which is required to be, but is not, registered; c) a person (who is a foreign principal) who has registered political influence activities; ca) a person the Secretary of State reasonably believes to be carrying out activities registered under that section; or d) a person (who is a foreign principal) the Secretary of State reasonably believes to be carrying out political influence activities in the United Kingdom which are not registered.
- 477 Subsection (3) clarifies that an information notice is a notice requiring the person to whom it is given to supply the information specified in the notice. The power to issue an information notice is intended to provide a tool by which the Secretary of State can be assured that persons are meeting their registration obligations.
- 478 Subsection (4) states that an information notice must specify both the form of information that a person should provide and the date by which this information should be supplied.

- 479 Subsection (5) the Secretary of State with the power to cancel an information notice by writing to the person it was provided to. For example, if it has been issued in error.
- 480 Subsection (6) provides the Secretary of State with the power to make regulations about several matters connected to an information notice, including the period of time given to respond to a notice or the cancellation of notices.
- 481 Subsection (7) creates an offence of not complying with an information notice without a reasonable excuse. An example of a reasonable excuse would be if the person could not have complied with the notice in the specified timeframe, for example if they were not in the UK and/or were not able to receive or consider the notice.
- 482 Subsection (8) prohibits the Secretary of State from being able to give an information notice to a foreign power. Hypothetical examples of when information notices can be given are provided below.

#### Example (1): A person who is party to a foreign influence arrangement registered under section 64

A UK company registers a foreign influence arrangement concerning political influence activities to be carried out at the direction of a foreign entity. The description of the activities to be carried out are so vague that the UK public cannot meaningfully benefit from the information provided and the transparency objectives of the scheme are undermined.

The scheme management unit, on behalf of the Secretary of State, issues an information notice to the UK company to gather further information about the activities, the target audience and the intended purpose.

#### Example (2): A person the Secretary of State reasonably believes to be carrying out a political influence activity in breach of the prohibition

Representatives of a foreign business visit the UK to meet with a group of Parliamentarians to discuss upcoming government legislation. The representatives seek to encourage Parliamentarians to support the legislation.

A tip-off is received by the scheme management unit about the meeting, which concerns the carrying out of registerable political influence activities that have not been registered.

The scheme management unit, on behalf of the Secretary of State, issues an information notice to the foreign business, requesting information about their activities in the UK and the meeting with Parliamentarians. The foreign business provides the requested information, registers the activities with the scheme and no further action is taken by the scheme management unit. The transparency objective has been achieved.

### Clause 74: Confidential Material

- 483 Subsection (1) provides that a person cannot be required to disclose information that is protected by legal professional privilege (LPP) (or its equivalent in Scotland - confidentiality of communications) as part of complying with obligations under FIRS. This is to ensure that FIRS will not undermine the UK's legal obligation to protect such material.
- 484 Subsection (2) provides that a person cannot be required to disclose confidential journalistic material, or to identify or confirm a source of journalistic information as part of complying with obligations under FIRS. This aligns with existing UK legal precedent for protecting this material to provide protections for journalists and their sources.

485 Subsection (3) clarifies that “confidential journalistic material” and “source of journalistic information” are to take the meaning provided by the Investigatory Powers Act 2016.

### Clause 75: Offence of providing false information

486 Clause 75 creates an offence of providing false or misleading information under the primary or enhanced registration requirements or in response to an information notice. These offences are intended to reduce the risk of registrants undermining the scheme by providing information which is false or misleading

487 Subsection (1) makes it an offence for a person to provide information to the Secretary of State under clauses 72 (registration of information) or 70 (information notices), which relate to a foreign activity arrangement, and is false, misleading or inaccurate in a material way.

488 Subsection (2) makes it an offence for a person to provide information to the Secretary of State under clauses 72 (registration information) or 70 (information notices), which relate to the requirement to register activities of specified persons, and is false, inaccurate or misleading in a material way.

489 Subsection (3) makes it an offence for a person to provide information to the Secretary of State under sections 69 (registration of information) or 70 (information notices), which relate to a foreign influence arrangement, and where the person knows, or ought reasonably to know, that the information is false, inaccurate, or misleading in a material way.

490 Subsection (4) makes it an offence for a person to provide information to the Secretary of State under sections 69 (registration information) or 70 (information notices), which relate to the requirement to register political influence activities of foreign principals, and where the person knows, or ought reasonably to know, that the information is false, inaccurate or misleading in a material way.

### Clause 76: Offence of carrying out activities under arrangements tainted by false information

491 Clause 76 creates offences for carrying out activities, or arranging for activities to be carried out, under a registerable arrangement where false or misleading information has been provided in connection with the arrangement. These offences will allow for enforcement action to be taken against those who are acting pursuant to a falsely registered arrangement and are either complicit, or in a position where they ought reasonably to know that the arrangement has been registered falsely.

492 Subsection (1) creates an offence for carrying out an activity, or arranging for an activity to be carried out, in the United Kingdom pursuant to a foreign activity arrangement which is required to be registered under section 61(1) (requirement to register foreign activity arrangements), where information has been provided by the person, or another person, (either through registration or in response to an information notice) that is false, inaccurate or misleading in a material way. Subsection (1)(c) clarifies that for the offence to be committed, the person must know or ought reasonably to know that information has been provided which is false, inaccurate or misleading in a material way.

493 Subsection (2) creates an offence for carrying out political influence activities, or arranging for such activities to be carried out, in the United Kingdom pursuant to a foreign influence arrangement which is required to be registered under section 64(1) (requirement to register foreign influence arrangements), where information has been provided by the person, or another person, (either through registration or in response to an information notice) that is false, inaccurate or misleading in a material way. Subsection (2)(c) clarifies that for the offence to be committed, the person must know or ought reasonably to know that information has been provided which is false, inaccurate or misleading in a material way.

### Example (1): How the offence would apply in relation to example 1 under Clause 62

If Company A had registered the arrangement with government officials of Country O using tainted or false information, employees of Company A that are engaging in the delivery of the networking and collaboration events could be liable to prosecution. This would only be the case if the employee knew, or ought reasonably to know, the arrangement with Country O had been registered with false information. Whether an employee ought reasonably to know will ultimately depend on the position they are in the company and the information that they are privy to.

### Clause 77: Publication and copying of information

494 Clause 77 allows the Secretary of State to make regulations to provide for the publication (subsection (1)(a)) or copying (subsection (1)(b)) of information provided in compliance with FIRS obligations (either when registering or responding to an information notice). Subsection (2) clarifies that the power under subsection (1) includes the power to describe information or material which is not to be published.

495 The power at subsection (1)(a) is an important feature of the scheme for realising the objective of strengthening the resilience of the UK political system against covert foreign influence by increasing transparency around political influence activities. The power at subsection (1)(b) will ensure data can be managed by the scheme management unit as well as shared with other enforcement agencies where necessary. The handling of data will be managed in accordance the Data Protection Act 2018 and the UK General Data Protection Regulation.

### Clause 78: Offences – Penalties

496 Clause 78 establishes the penalties for offences under FIRS.

497 Subsection (1) establishes that a person who commits a foreign activity offence will be liable on indictment, to imprisonment for term of up to five years, a fine or both imprisonment and a fine. On summary conviction in England and Wales, a person will be liable for imprisonment for a term not exceeding the general limit in a magistrates court, a fine, or both imprisonment and a fine. On summary conviction in Northern Ireland, a person will be liable to imprisonment for a term of up to six months, a fine not exceeding the statutory maximum or both imprisonment and a fine. On summary conviction in Scotland, a person will be liable to imprisonment of up to twelve months or a fine not exceeding the statutory minimum or both imprisonment and a fine. The penalties reflect the seriousness of a persons conduct in seeking to hide or obfuscate arrangements or activities carried out at the behest of a foreign power, and which the Secretary of State has identified as necessary to specify in order to protect the safety or interests of the state.

498 Subsection (2) defines a “foreign activity offence”, which includes any offence relating to the enhanced registration requirements of the scheme.

499 Subsection (3) establishes that a person who commits a foreign influence offence is liable on conviction on indictment, to imprisonment for up to two years, a fine, or both imprisonment and a fine. On summary conviction in England and Wales, a person will be liable to imprisonment for a term not exceeding the general limit in a magistrates court, a fine, or both imprisonment and a fine. On summary conviction in Northern Ireland, to imprisonment of up to six months, a fine or both imprisonment and a fine. On summary conviction in Scotland, to imprisonment of up to twelve months, a fine or both imprisonment and a fine.

500 Subsection (4) defines a “foreign influence offence”, which includes any offence in relation to the primary registration requirements of the scheme.

### Clause 79: Offences – supplementary provisions

501 Subsection (1) extends the application of section 28 to the offences under this part, meaning that the officers of bodies corporate and other bodies may be held liable for offences committed by those bodies.

502 Under subsection (2) the application of section 29 is extended to an offence under this Part, which is capable of being committed outside of the UK. This will relate to circumstances where a foreign activity arrangement or foreign influence arrangement has been made outside the UK but has not been registered within the requisite ten-day period. While the activity pursuant to the arrangement must take place in the UK, the offence for failing to register can be committed overseas.

503 Subsection (3) allows the courts to exercise their statutory power to exclude the public from proceedings relating to FIRS, when doing so would be in the interests of national security. This does not include the passing of a sentence.

### Clause 80: Annual Report

504 Clause 80 requires the Secretary of State to lay an annual report before Parliament with details of the operation of FIRS from the previous year.

505 Subsection (1) specifies that the Secretary of State must, as soon as is practicable after the end of each relevant period, prepare a report in relation to that period and lay a copy of the report before Parliament.

506 Subsection (2) sets out the details which the report must provide, and these are: (a) the total number of foreign activity and foreign influence arrangements registered under FIRS; (b) the number of foreign activity and foreign influence arrangements registered with the Secretary of State over the previous year; (c) the total number of specified persons and foreign principals who have registered activities with the Secretary of State; (d) the number of specified persons and foreign principals who have registered activities with the Secretary of State during the relevant period; (e) the number of information notices issued during the relevant period; (f) the number of persons charged with an offence under this Part during the relevant period; and (g) the number of persons convicted of an offence under this part during the relevant period.

507 Subsection (3) defines “relevant period” as a period of twelve months, beginning with the day on which this section comes into force and each subsequent period of twelve months.

### Clause 81: Interpretation

508 Subsection (1) defines a variety of terms used throughout this Part of the Bill.

509 Subsection (2) clarifies that references to a foreign State, or a foreign country or territory, do not include the Republic of Ireland for the purposes of FIRS. This is to ensure the scheme upholds the letter and spirit of the Belfast (Good Friday) Agreement and avoids interference with the rights of citizens in Northern Ireland who identify as Irish. This means that the Republic of Ireland cannot be specified on the enhanced requirement and that there will not be a requirement for those in an arrangement with the Republic of Ireland, or an entity established under the laws of the Republic of Ireland, to carry out political influence activities, to register with FIRS.

510 Subsection (2A) clarifies that for the purposes of FIRS, references to an “arrangement” do not include an arrangement between a person (“P”) and their employees or members of staff, or a



person the Secretary of State reasonably considers to be exercising functions on behalf of P as if they were an employee or member of staff.

## Part 4 Persons Connected With Terrorism: Damages And Legal Aid

### Damages in national security proceedings

#### Clause 82: National security proceedings

511 Clause 82 sets out the scope of this reform: the legislation will apply to cases brought against the Crown, after Royal Assent and which relate to matters of national security. Claims under section 7(1)(a) of the Human Rights Act 1998 are excluded. Cases relating to national security include those where evidence is presented or submissions are made thereon or relates to from the Regulation of Investigatory Powers Act 2000, the activities of the intelligence services in the United Kingdom or overseas or activities of similar services overseas and investigations or other activities in connection with terrorism offences or terrorism-related activity.

#### Clause 83: Duty to consider reduction in damages payable by the Crown

512 Clause 83 provides for a duty on the court, in such cases, to consider a reduction, in part or to nil, of damages otherwise payable, consequent upon the national security factors. Those factors are as to the claimant's wrongdoing of a terrorist nature, the connection between the conduct of the claimant and of the Crown complained of the risk of harm the Crown sought to prevent or limit and the limitations on the Crown in doing so, such the conduct having occurred overseas or being carried out in conjunction with a third party.

513 Clause 83(1) provides that the duty applies where the liability of the Crown has been established, the court may appoint damages in respect of it, the Crown has applied, and the court has not refused the application.

514 Clause 83(4) prevents the court considering a reduction in damages it would award under section 8 of the Human Rights Act 1998.

515 Clause 83(5) provides that the procedural requirements in Clause 61, do not prevent the court considering the national security factors of its own motion or affects any other power of the court to reduce or refuse damages as a consequence of the Claimant's wrongdoing, failure to mitigate any harm suffered of their contribution to that harm or affects any other rules of law otherwise limiting the Crown's liability.

#### Clause 84: Section 58: supplementary

516 Clause 84 sets out procedural requirements. An application must be made but may be made at any time before the final disposal of the proceedings. The application must set out, with reasons, the Crown's view of the relevant national security factors and the extent to which the Crown believes the damages should be reduced. It must be made in accordance with rules of court. The court may refuse the application if it would cause unreasonable delay or unreasonably prejudice another party to the proceedings. Clause 59(4) contains a power to make rules of court to give effect to the provisions.

#### Clause 85: Sections 57 to 59: interpretation

517 Clause 85 contains provisions on interpretation including the meaning of "intelligence service" and "terrorism offence".

## Freezing and forfeiture of damages

### Clause 86: Damages at risk of being used for the purposes of terrorism

518 Clause 86 introduces Schedule 15 which includes provision relating to damages at risk of being used for the purposes of terrorism.

### Schedule 15: Damages at risk of being used for the purposes of terrorism

519 Paragraph 1 of Schedule 15 makes provision that, on application by a Minister of the Crown in a civil claim, where damages are awarded and where there is a real risk that such damages would be used for the purposes of terrorism, the court may make a freezing order for all or part of the damages. A freezing order requires that the damages are paid into court and not to the claimant. An application can be made at any time before the end of the period for appealing and if made after an order for an award of damages the court may suspend that order pending determination of the application.

520 A freezing order will be for an initial period of two years.

521 Paragraph 2 of Schedule 15 makes provision for the power to extend the initial freezing period, upon application by a Minister of the Crown before that period ends, for a further period of 2 years. The court must be satisfied that there is a real risk that the damages, if paid to the claimant, will be used for the purposes of terrorism. The damages remain in court until that application is determined.

522 Paragraph 3 of Schedule 15 makes provision for a forfeiture order. The court may, on application by a Minister of the Crown before the expiry of the extended freezing period, order that some or all of the damages in court are forfeited if there is a real risk that, if paid to the claimant, they will be used for terrorist purposes. Money forfeited must be paid into the Consolidated Fund. Where the application is not decided before the expiry of the extended freezing period, the damages will remain in court until its determination.

523 Paragraph 4 of Schedule 15 contains the interpretation provisions.

## Legal aid

### Clause 87: Legal aid for individuals convicted of terrorism offences

524 This clause amends the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012) by inserting a new section 9A which will restrict access to civil legal aid for convicted terrorists.

525 Subsection (3) contains the details on how the restriction on civil legal services described in Part 1 of Schedule 1 to LASPO 2012 will work. New section 9A is framed as the circumstances when the restriction on accessing civil legal aid will not apply, and so if one or more of the conditions A-F are met, then an application for civil legal aid can be granted by the Director of Legal Aid Casework.

526 The restriction on accessing civil legal aid will not apply where one of the conditions listed within new section 9A has been met. The conditions are A) where date of conviction is before 19 February 2001; B) the convicted terrorist was under 18 when they applied for civil legal aid; C) the date of conviction was more than 30 years before the application for civil legal aid; D) the individual was under 18 on the date of their conviction and the date of the conviction was more than 15 years before the application for civil legal aid; E) where the convicted terrorist applied for civil legal aid before the commencement date of the National Security Bill 2022 or prior to their actual conviction; and F) where the convicted terrorist qualifies for civil legal services via the exceptional case funding scheme set out in section 10 of LASPO 2012.

527 Subsection (3) also defines what a terrorism offence is for the purposes of this new section 9A, and which terrorism offence is relevant for the purposes of the restriction where a terrorist has been convicted of multiple terrorism offences. Subsection 3 creates a power for the Lord Chancellor to specify when an individual has applied for civil legal aid for the purposes of the new section 9A.

528 Subsection (4) amends section 12 of LASPO 2012. The effect of this is to allow for the Lord Chancellor to also make regulations relating to the making and withdrawal of determinations of civil legal aid for the purposes of the new section 9A, as has already been done for section 9 and section 10 of LASPO 2012.

### Clause 88: Legal aid for individuals convicted of terrorism offences: data sharing

529 This clause amends the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) by inserting a new section 9B to allow information to be shared and processed in order to enforce the restriction on civil legal aid as inserted by new section 9A.

530 New section 9B confirms that information on an individual's criminal conviction(s) can be requested by the Director of Legal Aid Casework from a competent authority who holds that criminal conviction data, and that the competent authority can release that data to the Director of Legal Aid Casework.

531 The data on criminal convictions can only be used for the purpose of identifying whether an applicant for legal aid has been convicted of a terrorism offence, so as to ascertain whether the restriction on civil legal aid applies.

532 New section 9B sets out what type of information may be requested, including an individual's name, date of birth and the dates of any convictions.

533 New section 9B also defines relevant terminology within this section with reference to the Data Protection Act 2018.

### Clause 88: Legal aid in relation to terrorism prevention and investigation measures

534 This clause makes a minor amendment to clarify how civil legal aid is available for Terrorism Prevention and Investigation Measures (TPIM) proceedings heard on judicial review principles. The effect of this clause is to bring all TPIM services under the same paragraph of Part 1 to LASPO to reduce unnecessary complexity in the administration of the legal aid scheme.

535 Subsections (2) and (4) amend paragraph 45 of Part 1 of Schedule 1 to LASPO 2012 by removing reference to control orders proceedings. Control orders and control order proceedings no longer exist as they have been replaced by TPIMs.

536 Subsection (3) amends the exclusions in sub-paragraph (3) of paragraph 45. The effect of the exclusions of Part 2 (excepting paragraph 18 of that Part) and Part 3 of Schedule 1 is that decisions on legal aid funding for legal representation in all TPIM proceedings will fall within paragraph 45 of Schedule 1, and to ensure that advocacy is available in those TPIM proceedings.

## Part 5 General Provisions

### General provisions

#### Clause 90: Minor and consequential amendments

537 This clause introduces schedule 16, which makes minor and consequential amendments to other legislation.

## Schedule 16: Minor and consequential amendments

538 Paragraphs 1-3 repeal the Official Secrets Acts 1911, 1920 and 1939.

539 Paragraph 4 provides for the amendments needed to the Police and Criminal Evidence Act 1984 (PACE) as a result of the provisions within clause 21 and schedule 3. This paragraph amends PACE to make certain National Security Bill offences ‘qualifying offences’ by adding them to section 65A PACE. Certain periods of retention of biometric data (fingerprints and DNA profiles) apply in relation to qualifying offences. If someone is arrested and charged with one of these offences but not convicted, their biometric data is automatically retained for 3 years. The amendments also mean if a suspect is arrested for a national security-related qualifying offence but not charged, the biometric data can be retained for 3 years. ‘National security-related qualifying offence’ is defined by reference to section 26(3)(a). Paragraph 5 provides for the equivalent amendments to the Police and Criminal Evidence (Northern Ireland) Order 1989.

540 Paragraph 6 makes consequential amendments to the Official Secrets Act 1989 following the repeal of the Official Secrets Acts 1911 and 1920.

541 It amends section 5(6) of that Act so that the offence of disclosing information obtained by espionage applies to the relevant provisions in this legislation that replace the offence in s1 of the 1911 Act.

542 The paragraph also provides that the search and seizure powers in schedule 2 to this Bill are available in relation to specified offences in the Official Secrets Act 1989 following the repeal of the search power in section 9 of the Official Secrets Act 1911. It also makes direct provision for the public to be excluded from proceedings under the Act, in the interests of national security, in place of previous reliance on provision under the Official Secrets Act 1920.

543 Paragraph 7 amends the Criminal Procedure (Scotland) Act 1995 in relation to the restrictions on the use of biometric data, to include investigating foreign power threat activity. It makes equivalent provision for Scotland as is contained in paragraph 25 of schedule 3.

544 Paragraph 8 amends the Protection of Freedoms Act 2012 to add to the statutory functions of the Biometrics Commissioner, to provide for the Commissioner to review the retention of material under this Act and every national security determination made under this Act.

545 Paragraph 9 amends the Modern Slavery Act 2015 to provide that the defence set out in section 45 of the Act is not available in the case of certain offences in the Bill. Subsection (1) amends Schedule 4 of the Act (offences to which defence in section 45 does not apply). Subsection 2 lists the relevant offences to be added to Schedule 4 and therefore exempted from the section 45 defence.

## Clause 91: Power to make consequential amendments

546 This clause provides that the Secretary of State may, by regulations, make amendments to other legislation, including primary legislation, as a consequence of the provisions in this Bill.

## Clause 92: Regulations

547 This clause makes provision in relation to the powers to make regulations under the Bill, including the various parliamentary procedures applicable to the regulations made in exercise of those powers

## Clause 93: Crown application

548 This clause sets out that the Bill binds the Crown, subject to the exception that the Crown itself cannot be criminally liable under this Bill (although that does not affect the criminal liability of persons in the service of the Crown).

### Clause 94: Extent in the United Kingdom

549 This clause provides that the Act generally extends to the United Kingdom subject to clause 95.

### Clause 95: Extent outside the United Kingdom

550 This clause makes provision in relation to the extent of specified provisions of the Bill outside the UK.

### Clause 96: Commencement

551 This clause is self-explanatory.

### Clause 97: Transitional and saving provision

552 This clause provides that the Secretary of State may, by regulations, make transitional or savings provision in connection to the coming into force of the Act.

### Clause 98: Short title

553 This clause is self-explanatory.

## Commencement

554 The provisions of the Bill except clauses 91-98 come into force on a date specified in regulations.

555 Clauses 91-98 come into force on the day the Act is passed.

## Financial implications of the Bill

556 The main public sector financial implications of parts 1 and 2 of the Bill will fall to criminal and civil justice agencies (including the police, prosecutors, HM Courts and Tribunals Service and HM Prison and Probation Service) and to the security and intelligence agencies. The estimated annual cost of the measures in the Bill are comprised of initial one-off transition costs and ongoing costs. One-off transition costs are estimated to be between £12.7 and £24.3 million, with a central estimate of £13.9 million. The ongoing annual costs of the measures in the Bill lie in the range of £8.5 and £34.3 million, with a central estimate of £18.6 million per year. Ongoing annual operational benefits (or cost-savings) of these provisions lie between £0.12 and £0.13 million with a central estimate of £0.12 million per year. These figures are estimated based on a number of assumptions.

557 The estimated transition costs to businesses lie in the range of £0.3 million and £11.9 million, with a central estimate of £1.5 million per year.

558 Further details of the costs and benefits of the provisions, both monetised and unmonetised, are set out in the impact assessments published alongside the Bill.

## Parliamentary approval for financial costs or for charges imposed

559 Part 2 of the Bill confers on the Secretary of State the power to impose prevention and investigation measures on individuals suspected of involvement in foreign power threat activity and makes provision in relation to such the measures. Operating Part 2 will incur expenditure. This is a new head of expenditure which will need to be authorised by way of a money resolution.

*These Explanatory Notes relate to the National Security Bill as brought from the House of Commons on 17 November 2022 (HL Bill 68)*

560 The following provisions of Part 2 make particular provision for specified payments which will need to be authorised by a money resolution:

- a. clause 54(6) provides for payment of expenses and an allowance to a person appointed by the Secretary of State to review the operation of Part 2;
- b. clause 59 provides that the Secretary of State may enter into contracts and other arrangements with third parties for the purposes of any monitoring required as a result of measures imposed under Part 2;
- c. paragraph 8(4) of Schedule 10 provides for the payment of remuneration, expenses, and allowances by the Lord Chancellor to advisors appointed for the purposes of that paragraph;
- d. paragraph 10(1) of Schedule 10 provides for the appointment of a person to represent the interests of any party excluded from relevant proceedings (within the meaning of clause 61(1)) or appeals to those proceedings.

561 In Part 3, paragraph 3(4) of Schedule 15 provides for damages which are forfeited to be paid into the Consolidated Fund. Accordingly, the money resolution will also need to authorise the making of these payments in the Consolidated Fund.

## Compatibility with the European Convention on Human Rights

562 Lord Sharpe of Epsom has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

"In my view the provisions of the National Security Bill are compatible with the Convention rights."

563 The Government has published a separate ECHR memorandum which explains its assessment of the compatibility of the Bill's provisions with the Convention rights; the memorandum is available [on the Home Office website].

## Environmental Law for the purposes of the Environment Act 2021

564 Lord Sharpe of Epsom is of the view that the Bill as introduced into the House of Lords does not contain provision, which, if enacted would be environmental law for the purposes of Section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

## Related documents

565 The following documents are relevant to the Bill/Act and can be read at the stated locations:

- Law Commission Report – Protection of Official Data: <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/09/6.6798-Protection-of-Official-Data-Report-web.pdf>
- Law Commission – Protection of Official Data, A Consultation Paper: [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/02/cp230\\_protection\\_of\\_official\\_data.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/02/cp230_protection_of_official_data.pdf)
- Legislation to Counter State Threats (Hostile State Activity): Government Consultation:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/986013/Consultation Document - Legislation to Counter State Threats.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986013/Consultation_Document_-_Legislation_to_Counter_State_Threats.pdf)
- Intelligence and Security Committee of Parliament Report ‘Russia’:  
[https://isc.independent.gov.uk/wp-content/uploads/2021/01/20200721\\_HC632\\_CCS001\\_CCS1019402408-001\\_ISC\\_Russia\\_Report\\_Web\\_Accessible.pdf](https://isc.independent.gov.uk/wp-content/uploads/2021/01/20200721_HC632_CCS001_CCS1019402408-001_ISC_Russia_Report_Web_Accessible.pdf)
- Government Response to the Intelligence and Security Committee of Parliament Report ‘Russia’:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/902342/HMG\\_Russia\\_Response\\_web\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902342/HMG_Russia_Response_web_accessible.pdf)
- Global Britain in a Competitive Age: the Integrated Review of Security, Defence, Development and Foreign Policy:  
<https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy>
- House of Lords Decision – Chandler and others v Director of Public Prosecutions:  
<https://www.bailii.org/uk/cases/UKHL/1962/2.html>
- Code of Practice: Examining Officers and Review Officers under Schedule 3 to the Counter-Terrorism and Border Security Act 2019:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/909015/CCS001\\_CCS0720968588-001\\_Examining Officers and Review Officers Sch3\\_print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/909015/CCS001_CCS0720968588-001_ExaminingOfficersandReviewOfficersSch3_print.pdf)
- Legal Aid, Sentencing and Punishment of Offender Act 2012:  
<https://www.legislation.gov.uk/ukpga/2012/10/schedule/1>

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## Annex A – Territorial extent and application in the United Kingdom

566 The Bill extends to the whole of the United Kingdom. This is subject to the exception that amendments and repeals have the same extent as the enactment to which they relate, which means that some provisions in the Bill extend to only parts of the United Kingdom (see Territorial extent and application above for further detail).

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1: Espionage, Sabotage and Persons Acting for Foreign Powers								
Clauses 1-14	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 15	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 16	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 17	Yes	Yes	No	No	N/A	N/A	N/A	No
Clause 18	No	No	No	Yes	N/A	N/A	N/A	No
Clause 19	No	No	Yes	No	N/A	N/A	N/A	No
Clauses 20	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 21-27	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 2: Part 1	Yes	Yes	No	Yes	N/A	N/A	N/A	No
Schedule 2: Part 2	No	No	Yes	No	N/A	N/A	N/A	No
Schedule 3: Part 1	Yes	Yes	No	Yes	N/A	N/A	N/A	No
Schedule 3: Part 2	No	No	Yes	No	N/A	N/A	N/A	No
Schedule 4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 6: Part 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 6: Part 2	Yes	Yes	No	Yes	N/A	N/A	N/A	No
Schedule 6: Part 3	No	No	Yes	No	N/A	N/A	N/A	No
Clause 28	Yes	Yes	No	Yes	N/A	N/A	N/A	No
Clauses 29-36	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

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Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 2: Prevention and Investigation Measures								
Clauses 37-59	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 60	Yes	Yes	No	No	N/A	N/A	N/A	No
Clause 61	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 7	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 8	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 9	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 10	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 11	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 12	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 13	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 3: Foreign Activity and Foreign Influence Registration Scheme								
Clause 62 – 81	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 14	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 4: Persons Connected with Terrorism: Damages and Legal Aid								
Clauses 82-86	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 87-89	Yes	Yes	No	No	N/A	N/A	N/A	No
Schedule 15	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 5: General Provisions								
Clause 90	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 16	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 91-98	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

## Subject matter and legislative competence of devolved legislatures

567 There is a convention (“the Sewel Convention”) that the UK Parliament will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. In relation to Scotland and Wales, this convention is enshrined in law (see section 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006).

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568 None of the provisions in the Bill involve the UK Parliament legislating for a matter that is within the legislative competence of a devolved legislature, and so the consent of devolved legislatures is not required under the Sewel Convention. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

# NATIONAL SECURITY BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the National Security Bill as brought from the House of Commons on 17 November 2022 (HL Bill 68).

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