

## DELEGATED POWERS AND REGULATORY REFORM COMMITTEE

### NATIONAL SECURITY BILL

#### Introduction

1. This Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the National Security Bill. The Bill was introduced in the House of Commons on 11 May 2022. The memorandum identifies the provisions of the Bill which confer powers to make delegated legislation. It explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.
2. Each provision of the Bill that creates delegated powers is addressed individually.

#### Overview of the Bill

3. The National Security Bill (the “Bill”) includes the following categories of measures:
  - a. **Counter State Threats (CST) measures.** The focus of the Bill is on replacing the existing espionage legislation with a comprehensive suite of new offences, alongside a range of supporting tools and powers, in order to create a new legislative baseline for countering state threats in and against the UK.
  - b. **Amendments to the Serious Crime Act 2007.** These provide better protection to those discharging national security functions on behalf of Her Majesty’s Government, to enable more effective joint working with international partners and to improve operational agility, all of which are essential for work to counter threats to UK national security.
  - c. **Foreign Influence Registration Scheme.** This has been 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.
  - d. **Ministry of Justice Legal Reforms.** These restrict convicted terrorists from accessing civil legal aid and create new measures to combat the risk of public money being used to fund terrorism, as well as seeking to reduce damages paid to such claimants.

#### Summary of the measures

4. The Bill contains the following measures and achieves the following:
  - a. Reforms the approach to espionage to reflect the evolving threat and the interconnected nature of the modern world. The existing offence contained in the Official Secrets Act 1911 has a focus on espionage through more ‘traditional’ methods. The reformed approach captures more modern methods of spying and provides the ability to impose penalties reflecting the serious harm that can arise.

- b. Establishes a standalone regime for protecting sensitive sites from espionage and other state threats, modernising the list of protected sites 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. Establishes a new offence to protect against the theft of trade secrets. The offence will target state-linked, illicit acquisition or disclosure of “trade secrets” that protect sensitive, commercial or economic information.
- d. Establishes new offences of assisting a foreign intelligence service and obtaining a material benefit from a foreign intelligence service. These provisions are designed to deter and disrupt hostile foreign intelligence activities in the UK, or overseas where such conduct is prejudicial to UK safety and interests.
- e. Establishes a new offence of sabotage designed to capture saboteurs who, acting with a link to a state, intend to undermine the UK’s national security by causing damage, including through cyber-attacks, to infrastructure, systems and information in the UK.
- f. Establishes a new offence of foreign interference where conduct is intended to have a specified negative effect and certain conditions are satisfied. We are also increasing the maximum custodial penalties for certain election-related offences where the foreign power condition is met;
- g. Modernises the existing acts preparatory offence under the Official Secrets Act 1920 and broaden it to target harmful activity in preparation for the commission of relevant acts. Relevant acts include acts that constitute certain offences in the Bill and other specified egregious acts where there is a clear link to a foreign power. This will provide a key disruptive tool allowing the police to intervene before serious and potentially irreversible harm occurs.
- h. Creates a new state threats aggravating factor to ensure a state threats intent or objective are appropriately recognised at the point of sentencing where individuals commit offences other than those in this Bill.
- i. Creates new and modernised police powers to ensure that the police can have the powers needed to intervene earlier in an investigation and to enable the successful prosecution of cases.
- j. Amends 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 hostile state activity<sup>1</sup> at the required pace and bring parity between Schedule 3 and the power it was modelled on, Schedule 7 to the Terrorism Act 2000.
- k. Disapplies the extra-territorial provisions of the offences of encouraging or assisting crime at schedule 4 of the Serious Crime Act 2007 when activity is carried out for the functions of the intelligence services and armed forces.

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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 1-4 of this document.

- l. 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 in the bill, there will remain cases that cannot be prosecuted or otherwise disrupted. We anticipate such measures to 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).
- m. Establishes the Foreign Influence Registration Scheme which seeks 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 of subject to foreign power control. 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.
- n. Introduces provisions to achieve the correct quantum in national security claims by taking account of the Claimant's own terrorist conduct.
- o. Introduces powers to freeze and forfeit damages where there is a risk they will be used to fund terrorism.
- p. Makes Civil Legal Aid available to those subject to ST-PIMs.
- q. Narrows the range of circumstances in which individuals convicted of specified terrorism offences are eligible to receive Civil Legal Aid.
- r. Ensures that the new data-sharing and data-processing powers are available to enforce the restriction on access to Civil Legal Aid for those convicted of specified terrorism offences.
- s. Clarifies how Civil Legal Aid is available for Terrorism Prevention and Investigation Measures (TPIMs) proceedings heard on judicial review principles.

### **Territorial coverage**

- 5. All measures in the Bill extend to the United Kingdom.

### **Devolution**

- 6. The Bill does not create any powers that are exercisable in areas of devolved competence.

### **Delegated powers conferred under Part 1 of the Bill**

#### **Clause 8: Power to specify additional sites as prohibited places**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

## *Parliamentary procedure: Negative resolution*

### *Context and purpose*

7. Clause 4 creates the offence of accessing, entering, inspecting etc. a prohibited place, if such conduct is for a purpose that the person knows, or ought reasonably to know, is prejudicial to the safety or interests of the UK. Clause 7 provides the definition of a prohibited place. In summary a prohibited place means Crown land that is used for defence purposes (or certain connected purposes), a vehicle used for defence purposes, land or buildings used for the purposes of invention, development, production, storage or operation etc. of weapons etc. that are used for defence purposes, and land or buildings owned or controlled by, and used for the functions of, the UK intelligence services. A prohibited place also means land or buildings (or part of a building), or a vehicle, designated under the power provided by clause 8.
8. Clause 8 confers the power to make regulations to designate land, buildings that are situated in the UK or the Sovereign Base Areas of Akrotiri and Dhekelia, or a vehicle, as a prohibited place. This power may be exercised only if the Secretary of State reasonably considers it necessary in order to protect the safety or interests of the United Kingdom. The Secretary of State must have regard to (i) the purpose for which the land, buildings or vehicle are used, and/or (ii) the nature of any information, technology, equipment or material held, processed, stored or otherwise located on the land or in the buildings or vehicle.
9. The clause 4 offence replaces, and modernises, the existing offence relating to prohibited places under section 1(1)(a) of the Official Secrets Act 1911 (“OSA 1911”). Section 3(c) of that Act provides a similar definition of prohibited place to that detailed above, and includes a power for the Secretary of State to declare a site as a prohibited place by way of Order.

### *Justification for the power*

10. The principal justification for this power is to ensure that the Secretary of State is able to move swiftly to amend the list of prohibited places to which the offences apply, in order to safeguard the UK’s national security and related interests.
11. There are circumstances where the safety or other interests of the UK will require new sites to become prohibited places. For example, where there has been a change in use of land etc, or where new technology has been developed, or is being developed at a site, and that technology relates to national security.
12. In addition, there may be circumstances where the Secretary of State concludes that it is no longer in the safety or other interests of the UK for a site, or part of a site, to remain designated as a prohibited place.
13. It is essential that such changes can be made swiftly. If prohibited places were to be specified only in primary legislation, it is likely that there would be a considerable gap between the need for the protection of the site arising and the application of the offence to

hostile activities relating to that site. Equally, it would be highly undesirable if the offence continued to apply in relation to a site which was no longer being used for a sensitive purpose.

14. Designating land etc. by way of regulations will enable prohibited places to be specified with greater precision than is likely to be the case through primary legislation alone. It will, for example, enable the Secretary of State to designate prohibited places either by way of category of site or by reference to individual sites.
15. The scope of the power is constrained by the conditions that must be satisfied before it can be used. The power may be used only in connection with the protection of sites that have that clear connection to the safety or interests of the UK.

#### *Justification for the procedure*

16. In reaching the decision that the designation of a prohibited place is reasonably considered necessary to protect the safety or interests of the United Kingdom, the Secretary of State will draw on the specialist, technical expertise of the defence and intelligence sectors. The reasons for designation are likely to be sensitive in nature and, at times, urgent designation may be necessary. There will be sufficient parliamentary scrutiny of the use of the power through Parliament's ability to pass a resolution to annul the instrument.

### **Clause 33: Offences by bodies corporate**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Negative resolution*

#### *Context and purpose*

17. Clause 33 provides that if offences provided by Part 1 of the Bill are committed by a body corporate, an officer of that body corporate is guilty of the offence if it is committed with their consent or connivance, or due to any neglect on their part. The clause includes provision to define both "body" and "officer of a body" for these purposes.
18. The provision has been included to ensure that, if hostile activity is carried out using bodies corporate, officers of the company may be liable for those actions for which they have responsibility. Without this provision those engaged in hostile activity against the UK might seek to engage in conduct through bodies corporate in order to seek to evade criminal liability.

19. Subsection (5) provides that the Secretary of State may make regulations to modify any provision of clause 33 in its application to a non-UK body corporate or unincorporated association.

*Justification for the power*

20. This power will allow for the modification of clause 33 in so far as it applies to bodies corporate that are established in non-UK jurisdictions. This may be required as a result of differences in the nature of bodies corporate, their structures or terminology, under the laws of foreign jurisdictions. It will thereby ensure that the relevant offences apply to foreign bodies corporate in the same way as they apply to UK bodies.

21. This power is considered appropriate as modifications will be technical in nature and therefore well-suited to secondary legislation. It is also possible that the need for modifications may emerge over time, and that modifications may need to be amended from time to time, so the flexibility provided by the power to make delegated legislation is desirable.

22. It may be necessary to apply modifications in urgent circumstances. For example, if a jurisdiction outside of the UK were to amend provisions of its law to create a new type of body, such a body might fall outside of the reach of the provisions. This in turn might create opportunities for hostile actors to evade criminal liability by involving such entities in the conduct of their activities.

*Justification for the procedure*

23. The Government considers that the negative resolution procedure is appropriate given that the regulations will involve modifications of a technical nature.

24. Section 341(7) of the Gambling Act 2005 and section 36(5) of the National Security and Investment Act 2021 provide precedents of similar powers which are subject to the negative resolution procedure.

**Paragraph 14 of Schedule 2: Power to make rules of court for proceedings relating to a warrant or order**

*Proceedings in England and Wales:*

*Power conferred on: Criminal Procedure Rule Committee*

*Power exercisable by: Rules contained in Statutory Instrument*

*Parliamentary procedure: Negative resolution*

*Proceedings in Northern Ireland:*

*Power conferred on: Magistrates' Courts Rules Committee & Crown Court Rules Committee*

*Power exercisable by: Northern Ireland Statutory Rules*

*Parliamentary procedure: Affirmative resolution (excepted matters)*

*Negative resolution (Department of Justice): other matters)*

*Context and purpose*

25. Clause 21 and Schedule 2 confer powers of entry, search and seizure. Search warrants can be obtained for both non-confidential and confidential material and production orders can be obtained for access to confidential material.
26. This provision has been included to ensure that the rules of court applicable to the court considering an application for a warrant or production order may include provisions relating to the practice and procedure to be followed in such proceedings.

*Justification for the power*

27. Rules of court may make provision at a level of detail that is not appropriate to be made in primary legislation. The power in paragraph 14 of Schedule 2 does not affect the existing powers to make rules for each court or the applicable procedure. These procedures have been decided by the relevant legislature in relation to each court and it is not considered that proceedings relating to search warrants or production orders require a departure from the existing procedures for making rules for the relevant court.

*Justification for the procedure*

28. Rules for the Crown Court of England and Wales are made by the Criminal Procedure Rules Committee under section 69 of the Courts Act 2003. Section 72(6) of that Act provides that a statutory instrument containing such rules is subject to the negative procedure.
29. Rules of court are statutory rules for the purposes of the Statutory Rules (Northern Ireland) Order 1979. Rules of court in relation to the Crown Court in Northern Ireland ("Crown Court rules") are made by the Crown Court Rules Committee in accordance with section 53A of the Judicature (Northern Ireland) Act 1978. Under section 56(1) of that Act, as applied by section 53(3), Crown Court rules submitted to the Lord Chancellor are subject to affirmative resolution (which deal (or would deal) with an excepted matter), or otherwise Crown Court rules submitted to the Department of Justice are subject to negative resolution. Rules of court in relation to the magistrates' court in Northern Ireland ("magistrates' courts rules") are made by the Magistrates' Courts Rules Committee in accordance with Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981. Under Article 13A of that Order, magistrates' courts rules submitted to the Lord Chancellor are subject to affirmative resolution (which deal (or would deal) with an

excepted matter), or otherwise magistrates' courts rules submitted to the Department of Justice are subject to negative resolution.

## **Paragraph 21 of Schedule 2: Power to make provision for proceedings in relation to production orders in Scotland**

*Power conferred on: High Court of Justiciary*

*Power exercisable by: Acts of Adjournal (Scotland Statutory Instrument)*

*Parliamentary procedure: None specified*

*Context and purpose*

30. Clause 21 and Schedule 2 confer powers of entry, search and seizure. Paragraphs 17 and 18 of Schedule 2 provide for Production orders to be made by a sheriff in Scotland in relation to material relevant to certain suspected state threat activity.

31. Paragraph 21 has been included to ensure that the rules of court applicable to an application for a production order may include provisions relating to the practice and procedure to be followed in such proceedings.

*Justification for the power*

32. Rules of court may make provision at a level of detail that is not appropriate to be made in primary legislation. The power in paragraph 21 to make provision by act of adjournal in relation to production orders relate to procedures that have been decided by the relevant legislature in relation to the court and it is not considered that proceedings relating to production orders in Scotland require a departure from the existing procedures for making proceedings for the criminal court.

*Justification for the procedure*

33. Acts of adjournal are made by the High Court of Justiciary in Scotland under section 305 of the Criminal Procedure (Scotland) Act 1995 and are applicable in the criminal courts in Scotland. Section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that an act of adjournal is a Scottish Statutory Instrument. Acts of adjournal that prescribe matters which relate to the practice and procedure of the Scottish Courts are not subject to parliamentary scrutiny, but must be laid before the Scottish Parliament as soon as is practicable after it is made.

## **Paragraph 6 of Schedule 3; Paragraph 5 of Schedule 4; and paragraph 4 of Schedule 5: Power to make rules of court for proceedings in relation to disclosure orders, customer information orders and account monitoring orders**

*Proceedings in England and Wales:*



*Power conferred on: Criminal Procedure Rule Committee*

*Power exercisable by: Rules contained in Statutory Instrument*

*Parliamentary procedure: Negative resolution*

*Proceedings in Northern Ireland:*

*Power conferred on: Crown Court Rules Committee*

*Power exercisable by: Northern Ireland Statutory Rules*

*Parliamentary procedure: Affirmative resolution (excepted matters)*

*Negative resolution (Department of Justice: other matters)*

*Context and purpose*

34. Clause 22 and Schedule 3 provide the ability to obtain a disclosure order. Disclosure orders enable investigating authorities to obtain information which is relevant to certain investigations under the Bill.
35. Clause 23 and Schedule 4 provide for customer information orders. Customer information orders enable investigating authorities to obtain certain customer information from financial institutions.
36. Clause 24 and Schedule 5 cover account monitoring orders. An order requires a financial institution to provide certain information on accounts held by a person specified.
37. These provisions have been included to ensure that the rules of court applicable to the court considering applications for these orders may include provisions relating to the practice and procedure to be followed in such proceedings.

*Justification for the power*

38. Rules of court may make provision at a level of detail that is not appropriate to be made in primary legislation. The powers do not affect the existing powers to make rules for each court or the applicable procedure. These procedures have been decided by the relevant legislature in relation to each court and it is not considered that proceedings relating to these orders require a departure from the existing procedures for making rules for the relevant court.

*Justification for the procedure*

39. Rules for the Crown Court of England and Wales are made by the Criminal Procedure Rules Committee under section 69 of the Courts Act 2003. Section 72(6) of that Act provides that a statutory instrument containing such rules is subject to the negative procedure.
40. Rules of court are statutory rules for the purposes of the Statutory Rules (Northern Ireland) Order 1979. Rules of court in relation to the Crown Court in Northern Ireland (“Crown Court rules”) are made by the Crown Court Rules Committee in accordance with section 53A of the Judicature (Northern Ireland) Act 1978. Under section 56(1) of that Act, as applied by section 53(3), Crown Court rules submitted to the Lord Chancellor are subject to affirmative resolution (which deal (or would deal) with an excepted matter), or otherwise Crown Court rules submitted to the Department of Justice are subject to negative resolution.

**Paragraph 15 of Schedule 3; Paragraph 5 of Schedule 4; and paragraph 4 of Schedule 5: Power to make provision for rules of court regarding disclosure orders, customer information orders and account monitoring orders in Scotland.**

*Power conferred on: High Court of Justiciary*

*Power exercisable by: Act of adjournal (Scotland Statutory Instrument)*

*Parliamentary procedure: None specified*

*Context and purpose*

41. Clause 22 and Schedule 3 provide the ability to obtain a disclosure order. Disclosure orders enable investigating authorities to obtain information which is relevant to certain investigations under the Bill.
42. Clause 23 and Schedule 4 provide for customer information orders. Customer information orders enable investigating authorities to obtain certain customer information from financial institutions.
43. Clause 24 and Schedule 5 cover account monitoring orders. An order requires a financial institution to provide certain information on accounts held by a person specified.
44. These paragraphs have been included to ensure that the rules of court applicable to an application for these orders may include provisions relating to the practice and procedure to be followed in such proceedings.

*Justification for the power*

45. Rules of court may make provision at a level of detail that is not appropriate to be made in primary legislation. The powers to make provision by act of adjournal in relation to these orders relate to procedures that have been decided by the relevant legislature in relation to the court and it is not considered that proceedings relating to these orders in Scotland

require a departure from the existing procedures for making proceedings for the criminal court.

*Justification for the procedure*

46. Acts of adjournal are made by the High Court of Justiciary in Scotland under section 305 of the Criminal Procedure (Scotland) Act 1995 and are applicable in the criminal courts in Scotland. Section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that an act of adjournal is a Scottish statutory instrument. Acts of adjournal that prescribe matters which relate to the practice and procedure of the Scottish Courts are not subject to parliamentary scrutiny, but must be laid before the Scottish Parliament as soon as is practicable after it is made.

**Paragraph 1 of Schedule 6: Power to designate additional places of detention**

*Power conferred on: Secretary of State*

*Power exercisable by: Designation by certificate to the chief officer in charge of a facility published by Home Office Circular*

*Parliamentary procedure: None*

*Context and purpose*

47. Those arrested under clause 25 must be taken, as soon as reasonably practicable, to the police station which the constable considers is most appropriate (paragraph 1(4) of Schedule 6). In practice, those arrested under clause 25 will be taken to an enhanced custody suite (commonly referred to as a "TACT suite") for detention and questioning, as such suites are likely to be the most appropriate facilities for detaining that individual. TACT suites are designed to hold suspects for longer periods of time and address their specific personal needs, as well as being designed to take into account operational requirements for handling suspects in relation to terrorism offending. For example, the suites are bigger in size and ensure that where multiple arrests have been made, suspects cannot communicate with each other. The staff will also be specially trained to deal with these types of suspects. If no TACT suite is available, for example the arrest takes place too far away from the nearest suite, or all suites are full, then police will take the suspect to an alternative police station which has been deemed suitable for detention of suspects.

48. Paragraph 1 of Schedule 6 provides a power for the Secretary of State to designate places other than police stations where someone may be detained after arrest for foreign power threat activity under clause 25. This power means that if bespoke custody suites or other

suitable facilities are built or identified in the future outside of a police station, they can be designated as a place of detention by the Secretary of State.

*Justification for the power*

49. Chief officers of police have the power to designate police stations in their area for detention (section 35 Police and Criminal Evidence Act 1994). Under paragraph 1 of Schedule 8 to the Terrorism Act 2000 (TACT), the Secretary of State shall designate places of detention for persons arrested for terrorism. This power in TACT has been used to designate all police stations as places of detention for those arrested for terrorism. Currently all TACT suites are located inside police stations, and are therefore covered under that designation as places of detention. The National Security Bill is drafted slightly differently to TACT as police stations can be used as places of detention (see paragraph 1(3) and (4) of Schedule 6) without requiring further designation. The power in paragraph 1 of Schedule 6 is required in the event that bespoke custody suites or other suitable facilities are built or identified in the future which are separate from a police station, they can be designated as a place of detention by the Secretary of State. Whilst all custody facilities are currently part of police stations, including TACT suites, the power ensures that if facilities are identified or built in the future specifically to deal with suspects arrested under clause 25, the facilities could be used for detention of suspects even if not located in a police station. Importantly, under paragraph 1(2) of Schedule 6 such a facility can only relate to land or a building owned or controlled by a police force.

*Justification for the procedure*

50. The Secretary of State will issue a certificate to the chief officer in charge of a facility to affirm its accreditation. The designation will be published via a routine Home Office Circular update, so will be publicly available to view. In order for a facility to be designated by the Secretary of State, it must meet the technical standards of enhanced custody suites, which are set by the Home Office and Ministry of Justice who will work with the relevant police force in charge of operationalising the facility to ensure that the suite meets these technical standards. The Secretary of State would then be advised that the standards have been met in order to issue the designation.

**Paragraphs 3 and 4 of Schedule 6: Code of practice for video recording of interviews**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Affirmative resolution*

*Context and purpose*

51. Paragraphs 3 and 4 of Schedule 6 confer two, connected powers, on the Secretary of State in relation to the video recording of interviews taking place in a police station of persons who have been arrested under the power that is conferred by clause 25.

52. Paragraph 3(2)(a) requires the Secretary of State to issue a code of practice about the video recording of such interviews, and paragraph 3(2)(b) requires the Secretary of State to make regulations requiring that the interviews are in accordance with the code of practice. Paragraph 3(3) requires that these regulations specify that the video recordings are with sound.
53. Paragraph 4(1) requires that prior to issuing the code of practice under paragraph 3, the Secretary of State must publish it in draft, and consider any representations that are made in response. If the Secretary of State considers that any amendments to the draft are required in light of any representations, she must modify the draft accordingly.
54. The draft code must be laid before Parliament (paragraph 4(2)), after which the Secretary of State may bring it into operation by regulations paragraph 4(3).

*Justification for the power*

55. It is appropriate that a code of practice be provided in relation to the video recording of interviews, and appropriate that regulations will require the video recording of interviews to which the paragraph applies to take place in accordance with that code of practice. It is also right that Parliament is given the opportunity to consider and approve the code being brought into operation. The code of practice will provide a level of operational detail that would not ordinarily be included in primary legislation and such codes are used extensively and effectively to ensure the right balance is struck between giving the police sufficient powers to combat crime while protecting the rights of the public.

*Justification for the procedure*

56. The power to make regulations to require that video recording of relevant interviews is in accordance with the code of practice is exercisable by way of the affirmative procedure. The power to bring the code into operation by regulations is by way of the affirmative procedure. It is appropriate that Parliament is given the opportunity to afford this level of scrutiny to the code to ensure that parliament have a say in any changes to the parameters for which video interviews are conducted, and to ensure the procedure is equivalent to that which operates for the equivalent terrorism code of practice.

**Paragraph 46 of Schedule 6: temporary extension of maximum period of pre-charge detention under clause 25**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Regulations must be approved by affirmative resolution within 20 days of being made (regulations revoking temporary extension regulations are not subject to any procedure)*

### *Context and purpose*

57. Clause 25 confers a power to arrest a person if that person is reasonably suspected of being, or having been, involved in foreign power threat activity (clause 31 provides a definition of foreign power threat activity and what it means to be involved in such activity).
58. Clause 25(3) provides that a person who is arrested under these powers must be released within 48 hours of their arrest. However, that period may be extended through the grant of a warrant for further detention under paragraph 37 of Schedule 6. Such a warrant may authorise detention for up to 7 days from the time of arrest (paragraph 37(3)). Paragraph 44 of Schedule 6 provides that a warrant that has been granted under paragraph 37 may be extended for a further period of 7 days – so that the maximum period of pre-charge detention is 14 days.
59. Paragraph 46(1) of Schedule 6 enables the Secretary of State to make temporary extension regulations to increase, for a temporary period of three months, the maximum period of pre-charge detention under clause 25, to 28 days. Temporary extension regulations may only be made in cases of urgency and during the period when Parliament is dissolved or in the short interval between a new Parliament convening and the first King's Speech of the Parliament.
60. The power is intended to apply in emergency situations where there is an urgent need to provide for a longer period of detention, but there is no means to obtain emergency legislation.
61. Paragraph 46(3) provides the modifications that apply to paragraph 44 for the period during which the temporary extension regulations are in force.
62. Paragraph 46(6) confers a power on the Secretary of State to make regulations to revoke the temporary extension regulations if he or she considers it appropriate to do so.
63. Paragraph 38 of Schedule 8 to TACT 2000 provides an equivalent power, enabling the Secretary of State to make a temporary extension order to extend, from 14 days to 28 days, the period during which a person may be held under pre-charge detention under section 41 of TACT 2000. That power was inserted following an amendment to Schedule 8 by s58 of the Protection of Freedoms Act 2012<sup>2</sup>.

### *Justification for the power*

64. The Government recognises that the decision to increase the limit on pre-charge detention above 14 days is, in normal circumstances, properly a matter for Parliament to decide by passing primary legislation. However, there may be circumstances where it is necessary for the limit on pre-charge detention to be increased at short notice, including in

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<sup>2</sup> The justification for including the power in TACT 2000 when Parliament is dissolved can be found here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/238124/8220.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/238124/8220.pdf)

circumstances where suspects who have been involved in foreign power threat activity are already in detention and the 14 day clock is running.

65. For example, a foreign power might seek to take advantage of the dissolution of Parliament and an ongoing election campaign to launch a campaign of hostile acts against the UK. Such a campaign may result in the arrest of a number of persons who have been involved in foreign power threat activity. There may be circumstances which mean there is a pressing national security need to be able to detain such persons for longer than 14 days, for example because of the complexity of the investigation if persons have covert identities, there is a requirement to analyse encrypted devices, or there is a complex network linking the persons to a foreign state
66. The Government's expectation and hope is that the circumstances will never arise where the need for the use of this power will arise (as has been the case with the equivalent power under Schedule 8 to TACT 2000). However, it considers that it is justified to have the power for circumstances where it is not possible for Parliament to pass legislation to provide for an increase in the powers.
67. The regulation-making power includes a number of additional safeguards. In particular, further to an order being made, any applications for warrants of further detention which would take the total detention time of an individual beyond 14 days, must be made with the personal consent of the Director of Public Prosecutions (DPP) in England and Wales, the Lord Advocate in Scotland and the DPP in Northern Ireland; and any such application is then subject to approval by a senior judge.

#### *Justification for the procedure*

68. By definition, as Parliament will have been dissolved, it is not possible for such a temporary extension order to be subject to the draft affirmative procedure. Instead, clause 92(8) provides that both Houses must approve a temporary extension order within 20 days of the order being made. By virtue of clause 92(9), in calculating the 20-day period no account is to be taken of any time during which Parliament is dissolved or prorogued.
69. There is no procedure in relation to regulations made under paragraph 46 of Schedule 6 to revoke the temporary extension regulations. If the situation of emergency that justified the need for the extended period of detention is no longer present, it is desirable that the regulations should be revoked as swiftly as possible and persons in detention by virtue of the extension regulations should be released immediately (paragraph 46(8)).

### **Delegated powers conferred under Part 2 of the Bill**

#### **Paragraph 12 of Schedule 7: Conduct of polygraph sessions for persons subject to Part 2 notices**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Negative Resolution*

*Context and purpose*

70. Paragraph 12 of Schedule 7 permits the Secretary of State to impose a polygraph measure on an individual who is subject to a Part 2 notice. If imposed, the person subject to the notice will be required to undertake a polygraph examination.
71. Paragraph 12(2) confers on the Secretary of State the power to make regulations governing how polygraph sessions are conducted.
72. Answers given during the polygraph examination will not be used in criminal proceedings against the person (paragraph 12(4)). Instead, the information will be used to assess whether the person is complying with the other measures imposed by the Part 2 notice, and whether it is necessary to make any changes to the package of measures as a result.
73. An equivalent of this power is to be found in paragraph 10ZA of Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011.

*Justification for the power*

74. Guidance as to the conduct of the polygraph sessions is appropriately a matter for secondary legislation. Polygraphing is a relatively new area of risk management. Regulation and management of polygraph testing is essential to the sustainability of the tool in the context of the management of those of national security concern. Best practice in this area is currently issued by the American Polygraph Association, and is constantly developing.
75. Providing the detail in regulations enables it to be readily updated to take account of advances in good practice and operational experience.
76. Making provision about the conduct of polygraph sessions in secondary legislation is also consistent with the scheme for polygraphing certain offenders released on licence. Section 29(6) and (7) of the Offender Management Act (OMA) 2007 provide for rules to be made regulating the conduct of polygraph sessions.

*Justification for the procedure*

77. These regulations are subject to the negative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given the procedural matters to be dealt with in the regulations; and given the fact that Parliament would have provided the power to impose such measures in the Bill.



78. This is also consistent with the negative procedure that applies to the polygraph rules made under section 29 of the OMA 2007 or paragraph 10ZA(2) of Schedule 1 to the TPIM Act 2011.

**Clause 52 and Schedule 10: Power to make Rules of Court for regulating the proceedings relating to Part 2 notices**

*Power conferred on: (a) for Initial exercise of the power in England and Wales and Northern Ireland: Lord Chancellor, (b) in all other cases: Civil Procedure Rule Committee (England and Wales), Lord President (Scotland) or Northern Ireland Supreme Court Rule Committee (Northern Ireland)*

*Power exercised by: Rules of Court made by way of Statutory Instrument*

*Parliamentary Procedure: (a) initial exercise of the power in England, Wales and Northern Ireland: affirmative resolution (approval by both Houses within 40 days of making), (b) in all other cases: negative resolution*

*Context and purpose*

79. Schedule 10 to the Bill (given effect to by clause 52) provides a rule-making power in relation to Part 2 proceedings and appeals from such proceedings to the Court of Appeal or (in Scotland) the Inner House of the Court of Session.

80. Paragraph 2(1) of Schedule 10 provides that the person making the Rules must have regard to the need to secure that decisions are properly reviewed. It also provides that regard must be had to the need to secure that disclosures of information are not made where they would be contrary to the public interest. However, the latter provision, together with the rest of the provisions in paragraphs 2 to 4 which relate to closed proceedings in which evidence may be withheld from the individual and their legal adviser, is subject to paragraph 5 of Schedule 10. This incorporates the “read down” under section 3 of the Human Rights Act 1998 made by the House of Lords in *Secretary of State for the Home Department v MB; Secretary of State for the Home Department v AF* [2007] UKHL 46 and provides that nothing in those paragraphs or in the Rules made under them is to be read as requiring the court to act in a manner inconsistent with Convention rights (which includes in particular the article 6 right to a fair hearing).

81. Paragraph 2(2) of Schedule 10 provides an illustrative list of the matters about which the Rules may make provision. This includes the mode of proof, the conduct of proceedings in the absence of the individual and his legal advisers, and the function of special advocates.

82. Paragraphs 3 and 4 make 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.

83. Paragraph 6 of Schedule 10 provides that the Rules may provide for the court to make an anonymity order in respect of an individual in the context of Part 2 proceedings.

84. An equivalent of the powers conferred by Schedule 10 is found in Schedule 4 to the TPIM Act 2011.

*Justification for the power*

85. It is appropriate to take this power because Rules of Court may make provision at a level of detail which is not appropriate to include in primary legislation. In addition, should procedural changes be required in the regulation of Part 2 proceedings, Rules may be amended, subject to the relevant procedural safeguards, more easily and quickly than primary legislation.

*Justification for the procedure*

86. The initial exercise of the Rule-making power in England, Wales and Northern Ireland is to be by the Lord Chancellor rather than by the usual Rule-making body for Rules of Court, namely the Civil Procedure Rules Committee (in England and Wales) and the Northern Ireland Supreme Court Rules Committee (in Northern Ireland). This is because the Rules need to be in force at the same time as the provisions within Part 2 of the Bill come into force as Part 2 proceedings may arise immediately where the Secretary of State applies for permission to impose a Part 2 notice on an individual.. It would be very difficult for the Rules Committees to make the Rules on the initial exercise of the powers to align precisely with such a timetable and it is considered that the Lord Chancellor is best placed to make the Rules initially. In Scotland, the Lord President will make the Rules in the usual way. The Lord President is able to make the Rules swiftly and so the issue above as to timing does not apply. Although the Rules for Scotland are not subject to formal Parliamentary approval, they are subject to Parliamentary scrutiny.

87. Before making the Rules, the Lord Chancellor is required to consult with the Lord Chief Justice of England and Wales or the Lord Chief Justice of Northern Ireland as appropriate.

88. After the Rules are made they must be laid before Parliament and approved by resolution of both Houses within 40 days (not counting time during which Parliament is adjourned for more than 4 days or is dissolved or prorogued), failing which the Rules will cease to have effect. The Government considers that this affirmative procedure provides the appropriate level of parliamentary scrutiny of the Rules, while allowing the Rules to be made and come into force swiftly.

89. After the initial exercise of the powers, should the Rules need amendment, the usual rule-making procedure in the Civil Procedure Act 1997 (for England and Wales) and in the Judicature (Northern Ireland) Act 1978 (for Northern Ireland) will be followed. This is the negative resolution procedure, but the Rules will be made by the relevant Rules Committee and following the usual consultation requirements.

## Delegated powers conferred under Part 3 of the Bill

### **Clause 63: Power to specify a foreign power or person**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative Resolution*

#### *Context and purpose*

90. Clause 62(2) requires that a person (that is neither an individual (e.g. a company) nor a foreign power) entering into an arrangement with a specified person to either carry out activities in the UK, or arrange for them to be carried out, must register that arrangement with the Secretary of State within 10 days. Clause 63(1) defines “specified person” as a foreign power specified in regulations, or a person, who is not a foreign power, who is specified. A person who is not a foreign power can only be specified if they are not an individual and the Secretary of State reasonably believes that they are controlled by a foreign power (clause 63(2)). Foreign power is defined in clause 30. Schedule 13 sets out when a person is controlled by a foreign power.

91. The Secretary of State may only specify a foreign power if she considers it is reasonably necessary to do so to protect the safety or interests of the UK (clause 63(4)).

92. Under clause 63(5) the regulations made under clause 63 may provide for the requirement to register in section 62(2) to apply, with modifications specified in the regulations, in relation to arrangements made with foreign powers before the regulation specifying a person or foreign power come into force.

#### *Justification for the power*

93. This power allows the Secretary of State to specify a foreign power or person in circumstances where she reasonably considers it is necessary to do so to protect the safety or interests of the United Kingdom. Use of the power will require a consideration of the particular circumstances that exist when that power is to be exercised.

94. Further, foreign powers may change their approach to activities that mean that it is appropriate to specify them, or a person they control (e.g. potentially changing activities to another person they control or taking over control of a new company) when it was not previously necessary.

95. For these reasons, it is right that the power is exercisable by statutory instrument to allow the legislation to adapt while still providing Parliament a proper opportunity to scrutinise the decision.

### *Justification for the procedure*

96. These regulations are subject to the affirmative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given the potential diplomatic, economic or social impacts in specifying a foreign power or foreign power-controlled entity. Impacts could be wide-ranging from affecting a bilateral relationship between the UK and a foreign power to placing additional burden to those in arrangements with the specified person. It is right that, the costs and benefits be debated and voted on in Parliament.

### **Clause 67(3)(b): Power to specify an international organisation that is not to be regarded as a “foreign principal” for the purposes of clause 67(1)**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Negative Resolution*

### *Context and purpose*

97. Clause 66(2) requires a person to register a foreign influence arrangement with the Secretary of State before the end of the period of 10 days beginning with the day on which the person makes the arrangement. A ‘foreign influence arrangement’ is defined at 66(1) as an arrangement with a foreign principal pursuant to which the foreign principal directs the person to carry out, or arrange to carry out, political influence activities in the United Kingdom. Clause 67(2)(c) clarifies that an international organisation cannot be a foreign principal.

98. Clause 67(3)(a) clarifies that an international organisation, for the purpose of these clauses, is a person other than an individual that is set up by, or on the basis of, an agreement between two or more countries and is governed by international law. This includes organisations such as the United Nations and the North Atlantic Treaty Organisation and ensures that the scheme does not undermine the UK’s obligations relating to the UK’s relationships with multilateral organisations.

### *Justification for the power*

99. This power allows the Secretary of State to specify an international organisation that is recognised under an agreement between two or more countries, which is not governed by international law, so that it is not regarded as a foreign principal for the purposes of clause 67.

100. While we anticipate that the majority of international organisations would meet the criteria set out in Clauses 67(3)(a), it is possible that others that are constituted slightly differently ought to be considered as akin to organisation that would meet those criteria and that they should also not be treated as a foreign principal. It is not possible to accurately predict the status of future international organisations and this power allows an

appropriate level of flexibility to ensure that the wider provision can adapt to relevant circumstances.

*Justification for the procedure*

101. These regulations are subject to the negative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given the fact that Parliament has provided the power to acknowledge an agreement between two countries as an international organisation in the Bill.

**Clause 68(2)(vi): regulations specifying a person within a description of persons exercising functions on behalf of the Crown**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative Resolution*

*Context and purpose*

102. Clause 68 defines “political influence activity” for the purposes of the primary registration requirements under clauses 66 and 70 of FIRS. Such activity includes (as defined under clause 68(2)(a)) where a communication is made to listed persons. Those listed include HMG and devolved Ministers; Members of the legislature; officers, trustees or agents of a UK registered political party; candidates at national, devolved or local elections; and senior officials or special advisers.

103. Those persons listed under this amendment have been identified as those most likely to be of use to foreign powers in affecting change in our political system or proceedings. As well as holding those persons to high standards while in public office or service, or engaging in our proceedings and elections, the primary registration requirement under FIRS will seek to protect them from those who would seek to influence them covertly.

*Justification for the power*

104. Clause 68(2)(a)(vi) provides the ability for the Secretary of State, by way of regulations, to add to the list of listed persons under 68(2)(a) through a description of persons exercising functions on behalf of the Crown. This will allow the scheme to adapt to trends and behaviours observed in response to the scheme’s implementation. For example, foreign powers may seek to target covert lobbying activity at persons exercising functions under the Crown who are not currently listed.

*Justification for the procedure*

105. These regulations are subject to the affirmative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given the potential impacts of widening the scope of the registration requirements to cover communications made to

additional persons. It is right that the costs and benefits be debated and voted on in Parliament.

### **Clause 63 and paragraph 15 of Schedule 13: power to amend thresholds etc**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative Resolution*

#### *Context and purpose*

106. Paragraph 15 of Schedule 13 permits the Secretary of State to amend schedule 13 for a permitted purpose. Schedule 13 makes provision in relation to control of a person by a foreign power. A person controlled by a foreign power may, if all relevant conditions are met, be specified in regulations made under the power in clause 63. The permitted purposes to amend schedule 13 are: to change references to percentage figures given in the schedule (e.g. the percentage of share of voting rights a foreign power has in the company for the company to be deemed to be controlled by a foreign power); to change or supplement Part 1 of the schedule so as to include circumstances that give a foreign power a level of control over a person broadly similar to the level of control given by the conditions in paragraph 1 of the schedule; and in consequence of the preceding purpose.

#### *Justification for the power*

The power is necessary to allow for amendment, if needed in the future, to take account of different means and structures of control that are not currently covered in paragraph 1 but which later become apparent are being used by foreign powers to exercise control over entities. These would be essential amendments to ensure the scheme's objectives could continue to be met and foreign powers, using entities as proxies, are not able to circumvent registration. These will be structures of control that equate to a broadly similar level of control that currently exist in paragraph 1, for example a change to the control thresholds in response to patterns of foreign power behaviour. State threats are constantly evolving, and it is vital for the national security objectives of the scheme that the appropriate level of agility to respond to the threat is maintained. This power will provide flexibility to respond should foreign powers seek to circumvent legislative provisions that define control in schedule 13.

#### *Justification for the procedure*

107. As this power allows schedule 13 to the Bill to be amended, it is right that it is subject to the affirmative procedure to allow appropriate parliamentary scrutiny of any such amendments.

**Clause 71 and Schedule 14: Power to make provision for further cases to which registration requirements or prohibitions under Part 3 do not apply**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative Resolution*

*Context and purpose*

108. Schedule 14 to the Bill (given effect to by clause 71) contains the proposed exemptions from the requirements to register under the scheme. These are necessary to ensure the scheme's requirements do not undermine existing obligations protected by international law, or fundamental principles such as the confidentiality of legal advice and representation.

*Justification for the power*

109. Paragraph 7 of Schedule 14 provides the Secretary of State with the power to make provision for further cases to which registration requirements or prohibitions do not apply. This will ensure that where further exemptions are needed, these can be added in a timely manner while still enabling Parliamentary scrutiny.

*Justification for the procedure*

110. These regulations are subject to the affirmative procedure. The consequence of providing further exemptions to the scheme's requirements for the UK public will be a reduction of the transparency benefits around certain activities and arrangements which would otherwise be registerable under the scheme. It is therefore important that Parliament has the opportunity to consider and debate the merit of any future exemption weighed up against the need to encourage transparency in accordance with the scheme's objectives.

**Clause 72(1): Power to make provision about the information to be provided to the Secretary of State when registering under Part 3**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Negative Resolution*

*Context and purpose*

111. To fulfil the registration requirements under clauses 62, 65, 66 and 70, information will need to be provided to the Secretary of State within the established timeframes. Clause 72(1) provides the Secretary of State the ability to make regulations to outline the

information required from a person as they comply with their registration obligations under the scheme.

*Justification for the power*

112. The power is necessary to ensure that the information required by the Secretary of State in relation to a registration can be clearly set out. We consider it appropriate for this level of detail to be outlined through regulations, rather than the primary legislation, noting that the application process will be largely administrative in nature. If amendment needs to be made to the information required from registrants, for example if it transpires that other identifying information is required to meet the objectives of the scheme where it was not previously part of the registration, the ability to do so through regulations will ensure it can be done quickly and without need of further primary legislation.

*Justification for the procedure*

113. These regulations are subject to the negative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given that Parliament will already have set the parameters for what constitutes a registerable arrangement or activity in passing the primary legislation. Information required through registration will necessarily relate to the arrangements and activities which Parliament has, as part of the wider scheme set out in the Bill, agreed should be registerable.

**Clause 72(4): Power to make provision about the information to be provided to the Secretary of State when there is a material change to a matter required to be registered.**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Negative Resolution*

*Context and purpose*

114. To fulfil the registration requirements under clauses 62, 65, 66 and 70, information will need to be provided to the Secretary of State within the established timeframes. Clause 72(1) provides the Secretary of State the ability to make regulations to outline the information required from a person as they comply with their registration obligations under the scheme.

*Justification for the power*

115. It is possible that information provided under 72(1) in relation to an arrangement or activity may become out of date. For example, an arrangement or an activity may change in a material way. In such a case, to ensure the accuracy and integrity of the register, it is necessary to impose an obligation on registrants to notify the Secretary of State when this



becomes the case. That is why clause 72(4) provides the power to the Secretary of State to make provision about the information to be provided when there is a material change.

*Justification for the procedure*

116. These regulations are subject to the negative procedure. As with the power to outline information required through registration, the Government considers the negative procedure affords an appropriate level of parliamentary scrutiny given that Parliament will already have set the parameters for what constitutes a registerable arrangement or activity in passing the primary legislation. Information required through registration will necessarily relate to the arrangements and activities which Parliament has, as part of the wider scheme set out in the Bill, agreed should be registerable.

**Clause 73(6): Power to make provision about the minimum period between the date on which an information notice may be given and the date by which information must be supplied, other matters specified in the notice and the cancellation of notices.**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Negative Resolution*

*Context and purpose*

117. Clause 73 provides powers to the Secretary of State to give an information notice if certain conditions are met. On receipt of an information notice, the person will be required to provide the information requested within the specified timeframe. Failure to do so, without a reasonable excuse, will be an offence. The power to issue an information notice provides an important tool to allow the Secretary of State to seek assurance that individuals are meeting their registration obligations. g

118. Clause 73(6) provides the power to make provision about the procedural aspects of the information notice through regulations. These include the minimum period between the date on which an information notice may be given and the date by which information notices must be supplied, as well as other matters specified in the notice and the cancellation of notices.

*Justification for the power*

119. The power is necessary to ensure that these procedural aspects can be clearly set out. We consider it appropriate for this level of detail to be outlined through regulations, rather than the primary legislation, because it is largely administrative in nature. If amendment needs to be made to the procedure – for example, because implementation of the provisions identifies that changes are needed - the ability to do so through regulations will ensure it can be done quickly and without the need for further primary legislation.

*Justification for the procedure*

120. These regulations are subject to the negative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given that Parliament will already have set the parameters for when an information notice can be issued.

**Clause 77: Power to make provision about the publication or copying of information provided to the Secretary of State under part 3**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Negative Resolution*

*Context and purpose*

121. Clause 77 allows the Secretary of State to make regulations about the publication or copying of information provided through registration.

122. The ability to publicise certain information registered with the scheme is vital to delivering the aims of the scheme by ensuring that the influence and activities of foreign powers and entities is open and transparent.

123. The ability to copy information provided through registration is important as it will ensure data can be managed by the scheme management unit as well as shared with other enforcement agencies where necessary. Data will be managed in accordance the Data Protection Act 2018 and the UK General Data Protection Regulation.

*Justification for the power*

124. The power at clause 77(1) is necessary to ensure that the information that is to be made publicly available in support of the transparency and national security objectives of the scheme can be clearly set out, as well as the conditions that would exempt information from appearing publicly. Similarly, the power is necessary to ensure that the conditions under which information can be copied are clear.

125. Again, we consider it appropriate for this level of detail to be outlined through regulations. If amendments need to be made to what information needs to be published or copied in order to meet the objectives of the scheme, the ability to do so through regulations will ensure it can be done quickly and without need of further primary legislation.

*Justification for the procedure*

126. These regulations are subject to the negative procedure. The transparency objective of this part of the scheme is only served if a certain amount of information is made publicly available. As such, we consider that these Regulations shall simply be giving effect to the

already established wishes of Parliament in agreeing to this power. For this reason, the Government considers that the negative procedure is appropriate. Further, a policy statement is currently being prepared and will be available to support scrutiny at Lords Committee stage. This will demonstrate that only such information that is necessary for the public to know the identity of those who influence political decision-making in the UK shall be published, such as names of organisations, the nature and dates of the arrangements and activities, and the foreign entity that has directed the activity. Reasonable exclusions to publication will be available where publication may threaten national security or personal safety or for reasons of commercial sensitivity.

### **Delegated powers conferred under Part 4 of the Bill**

#### **Clause 87(3): individuals deemed to have applied for a general case determination**

*Power conferred on: Lord Chancellor*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative resolution*

#### *Context and purpose*

127. The Bill introduces limits on access to civil legal services for individuals convicted of terrorism offences by stipulating that to be eligible to receive general case services, one or more conditions must be met alongside a determination made by the Director of Legal Aid Casework that the individual qualifies for general case services.

128. The purpose of clause 87(3) includes the creation of a new power under subsection (8) the new section 9A of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO') to enable the making of specific regulations specifying when an individual's application for civil legal aid is considered to have been made or, where relevant, has not been made.

#### *Justification for taking the powers*

129. In order to provide for those cases in which the restriction does not apply to a convicted terrorist because their circumstances satisfy an available condition, it is necessary to set out in regulations when an individual is deemed to have made an application. The restriction will apply to new applications for general case services according to the relevant dates for each condition, and not the provision of general case services that are ongoing on those dates. Accordingly, a new application must be distinguished from an application to amend or vary ongoing services, and from a further application for services made in relation to an ongoing matter. Account must also be taken of the differing procedure between applications for Controlled Work services and Licensed Work services, including the respective administrative roles served by legal aid providers and the Legal Aid Agency.

Given the level of detail required, it is appropriate to set out these provisions in regulations rather than on the face of the primary legislation.

*Justification for the procedure*

130. The negative procedure will apply to regulations made under the powers contained in the clause. This procedure applies to existing regulation-making powers under section 12 of LASPO in relation to determinations under section 9.

131. The negative procedure is appropriate because the new power replicates existing delegated powers of the Lord Chancellor and the regulations will specify procedural aspects of the application process for civil legal aid determinations, and so are considered to be primarily administrative and technical in nature.

**Clause 87(4): Making and withdrawal of determinations in relation to individuals convicted of terrorism offences**

*Power conferred on: Lord Chancellor*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative resolution*

*Context and purpose*

132. The Bill introduces limits on access to civil legal services for individuals convicted of terrorism offences by stipulating that to be eligible to receive general case services, one or more conditions must be met alongside a determination made by the Director of Legal Aid Casework that the individual qualifies for general case services. The purpose of Clause 87(4) is to create a new power under section 12 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO') to enable the making of specific regulations in regard to the making, review and withdrawal of determinations that individuals convicted of terrorism offences qualify for general case services.

*Justification for delegation*

133. In order to administer the limits on access to civil legal services for individuals convicted of terrorism offences, it is necessary to set out in regulations the procedures according to which determinations may be made, reviewed and withdrawn in relation to these individuals. This will ensure that civil legal services are provided only to those eligible to receive them.

*Justification for the procedure*

134. The negative procedure will apply to regulations made under the powers contained in the clause. This procedure applies to existing regulation-making powers in section 12 of LASPO.

135. The negative procedure is appropriate because the new power replicates existing delegated powers of the Lord Chancellor and the regulations will specify procedural aspects of the determination process, and so are considered to be primarily administrative and technical in nature.

### **Delegated powers conferred under Part 5 of the Bill**

#### **Clause 91: powers to make consequential amendments**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Negative resolution, but affirmative procedure for instruments that amend primary legislation*

136. Clause 91 provides powers to make regulations to provide for consequential amendments, including the power to amend primary legislation. For the purposes of this provision, “primary legislation” is defined in subsection (3) as an Act of Parliament, a Measure of Act of Senedd Cymru, an Act of the Scottish Parliament, Northern Ireland legislation or retained direct principal EU legislation, whenever passed or made.

137. In accordance with the usual practice, the Parliamentary procedure for these regulations is the negative procedure, save in cases where an amendment to primary legislation is being made.

138. The Bill makes provision for some minor and consequential amendments (schedule 16), which have been prioritised for inclusion in the Bill. However, it is considered necessary to make provision to allow for further consequential amendments to be made to ensure that the provisions of the legislation operate effectively in their interaction with other legislation.

139. The Bill repeals the Official Secrets Acts 1911-39, which provide the existing framework to address espionage and related harmful conduct. The principal offences and majority of the provisions in those Acts are over 100 years old and interact with a variety of other legislation, which has developed over the intervening century. It will take time to ensure that all necessary consequential amendments have been properly addressed.

140. The Bill also creates a new framework for prevention and investigation measures, and a new foreign influence registration scheme, both of which will require the interaction with existing and future legislative provisions. While we have anticipated the effects on other legislative provisions as far as we can at this stage, it is prudent to allow for consequential provisions to be possible where a new need is established in future.

141. Even if future legislation attempts to take account of the effect of the Bill, there is a clear risk that the need to make consequential amendments to future legislation could slip through unnoticed, particularly noting the diverse range of ways in which state threats may manifest and be relevant and the ways that hostile state actors may diversify and adapt to create an evolving threat to national security. Accordingly, it is appropriate that the power permits amendments to primary legislation whenever passed or made, with appropriate Parliamentary scrutiny (affirmative procedure).

**Clause 97(1): transitional and saving provision**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations*

*Parliamentary Procedure: No procedure*

142. Clause 97(1) provides a standard power to make regulations to make transitional or savings provision in connection with the coming into force of the Bill. This includes a power to make different provision for different purposes or areas.

143. In accordance with the usual practice, there is no Parliamentary procedure for such regulations.

**Clause 96(3): commencement**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations*

*Parliamentary Procedure: No procedure*

144. Clause 96(3) provides a standard power to make regulations to appoint a date, or dates, for the commencement of provisions of the Act. Subsection (3) confirms that the power to appoint includes a power to appoint different dates for different purposes.

145. In accordance with the usual practice, there is no Parliamentary procedure for such regulations.