

# National Security Bill

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AMENDMENT  
TO BE MOVED  
ON REPORT

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**After Clause 38**

LORD MARKS OF HENLEY-ON-THAMES

After Clause 38, insert the following new Clause –

**“Public interest defence**

- (1) For any offence under sections 1 to 5 of this Act or section 5(6) of the Official Secrets Act 1989, as amended by paragraph 6 of Schedule 17 to this Act, it is a defence for the accused to show that the conduct alleged to constitute the offence was carried out in the public interest.
- (2) Where a defence under subsection (1) is raised, it is for the accused to establish, on the balance of probabilities, that the conduct was in the public interest.
- (3) Whether such conduct was in the public interest is determined by having regard to –
  - (a) the nature of the alleged conduct;
  - (b) the harm caused by the alleged conduct;
  - (c) whether the manner in which the person engaged in the alleged conduct was in the public interest;
  - (d) whether the person engaged in the alleged conduct in good faith;
  - (e) whether the person engaged in the alleged conduct for personal gain;
  - (f) the availability of any other effective authorised procedures for achieving the purpose of the alleged conduct and whether any such procedures were exercised, and if any such procedures were not exercised, the reasons why they were not so exercised;
  - (g) any other relevant feature of the alleged conduct.”

***Member's explanatory statement***

*This amendment provides for a public interest defence to the offences under Clauses 1 to 5 of the Bill and to offences under Section 5(6) of the Official Secrets Act 1989.*

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*1 February 2023*

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