



EXPLANATORY NOTES

National Security Act 2023

Chapter 32



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NATIONAL SECURITY ACT 2023

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the National Security Act 2023 which received Royal Assent on 11 July 2023 (c. 32).

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

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Overview of the Act

- 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 of conducting 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 Act brings together a suite of new measures and further protects 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 our 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.
- 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 Act prevents the exploitation of the UK's civil legal aid and civil damage systems by convicted terrorists. This prevents public funds from being given to those who could use them to support terror. The Act also makes a number of changes to the Terrorism Act 2000 to either strengthen existing or introduce new safeguards, or implement recommendations made by the Independent Reviewer of Terrorism Legislation.

Policy background

- 9 The Act is in six 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 to establish an independent reviewer. Part 4 contains measures in relation to the Foreign Influence Registration Scheme. Part 5 contains measures in relation to terrorism. Part 6 provides general provisions for the Act and as such, is not covered further in this overview.

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 Act, the Government took 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 was comprehensive, effective, workable, and balanced the protection of national security with the rights and values important to the British people. The Government response to this consultation was published on 12 July 2022.

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 Act 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 Act 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 this Act 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 targets 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 the UK’s 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 Act also increases 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. Replace the existing acts preparatory offence under the Official Secrets Act 1920 with a new offence to ensure that it can effectively target harmful preparatory state threats activity. This provides a key tool which prevents 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 Act 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. A new Counter-Terrorism Police authorisation procedure will be set out in the Code of Practice,

which will require an officer of at least the rank of superintendent to authorise access to such material. allows counter-terrorism police to progress operations and investigations into state threats activity¹ 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).

Amendment to the Serious Crime Act 2007

- 17 Section 30 inserts an additional defence into Part 2 of the Serious Crime Act 2007 (SCA) which applies in the extra-territorial circumstances provided for in Schedule 4 of that Act. This ensures that individuals working for the Security Service, the Secret Intelligence Service, GCHQ, and individuals carrying out intelligence functions in the Armed Forces, have a specific defence against the offences of encouraging or assisting crime in sections 44 to 46 of the SCA.

State Threats Prevention and investigation measures (Part 2)

- 18 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 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 contained in the Terrorism Prevention and Investigation Measures Act 2011.

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

Review of the Operation of State Threats Legislation (Part 3)

- 20 Part 3 requires the appointment of an independent reviewer of state threats legislation. The independent reviewer is required to carry out an annual review of the use of offences and powers in Part 1, the Prevention and Investigation Measures in Part 2 and the operation of Schedule 3 to the Counter-Terrorism and Border Security Act 2019. Annual reviews must in particular consider the use of the detention powers under Part 1 of the Act. The Secretary of State must lay reports by the independent reviewer before Parliament.

Foreign Influence Registration Scheme (Part 4)

- 21 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).
- 22 The Foreign Influence Registration Scheme has been created to 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.

¹ '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'.

- 23 Governments around the world, including the UK, seek to advance their interests through the lobbying and influencing of other states. We continue to welcome open and transparent engagement from foreign governments and entities, and the scheme will not prevent this. It will play a critical role in encouraging transparency, while simultaneously deterring foreign powers that wish to pursue their aims covertly.
- 24 The scheme's requirements 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 requires the registration of 'political influence activities' where they are to be carried out within the UK at the direction of any foreign power. 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.
- 25 The scheme also contains a power to specify a foreign power, part of a foreign power, or an entity subject to foreign power control, where the Secretary of State considers it necessary to protect the safety or interests of the UK. It requires 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 requires a specified entity to register activities they intend to carry out within the UK with the scheme. There is also a power which may be used to make modifications to the types of activities requiring registration under this tier. Use of these powers is subject to Parliamentary approval.
- 26 The scheme does 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 (political influence tier only), including confidential journalistic material and sources; and arrangements which the UK is party to.
- 27 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 is exempt from registration.

Terrorism Provisions (Part 5)

Damages – Quantum

- 28 Part 5 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.
- 29 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.
- 30 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.

31 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.²

Damages - Freezing and Forfeiture Orders

32 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.

33 Part 5 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 that the funds would be used to support terrorism.

34 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.

35 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

36 Part 5 introduces a restriction on access to civil legal aid for convicted terrorists, which narrows the range of circumstances in which individuals convicted of specified terrorism offences can receive civil legal aid services. To be able to enforce the restriction on civil legal aid, the Act also provides the lawful basis for the sharing and processing of criminal conviction data for the purposes of making decisions on legal aid funding.

Amendments to the Terrorism Act 2000

37 The Act makes a number of changes to the Terrorism Act 2000 to either strengthen existing or introduce new safeguards, or implement recommendations made by the Independent Reviewer of Terrorism Legislation.

² 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

- 38 As set out in paragraph 16 the provisions in Part 1 of the Act replace the existing offences in the Official Secrets Acts 1911, 1920 and 1939. The relevant parts of these Acts are as follows.
- 39 Section 1 of the Official Secrets Act 1911 which 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.
- 40 The maximum available penalty for these offences is 14 years and their application is limited to British citizens.
- 41 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.
- 42 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 “purpose 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.
- 43 A number of the offences in Part 1 of the National Security Act are a modernisation of the different elements of the section 1 1911 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*.
- 44 Further, references to the term “enemy” have been removed, and the National Security Act instead focusses predominantly on activity that is for or on behalf of, or intended to benefit, a foreign power.

These Explanatory Notes relate to the National Security Act 2023 which received Royal Assent on 11 July 2023 (c. 32).

- 45 Section 3 of the 1911 Act provides a definition of a prohibited place for the purposes of the espionage offence in section 1 of that Act. This aspect of the Act is replaced by the regime set out in paragraph 16(b).
- 46 Section 7 of the National Security Act provides for a number of offences that are collectively titled “harbouring spies”. A number of offences in the Act address the relevant elements of this offence, including the offences of assisting a foreign intelligence service and the preparatory conduct offence.
- 47 Section 9 of the National Security 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 section 24 and Schedule 2.
- 48 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 covered by other statutory provisions or by the common law (e.g., section 1 of the Criminal Attempts Act 1981 or the Serious Crime Act 2007 which provides for offences of assisting or encouraging other offences). In addition, certain of the offences in the Act catch elements of this conduct (e.g. the section 3 offence of assisting a foreign intelligence service). There is no need for specific provision to replace these aspects of the previous legislation.
- 49 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

- 50 The police powers sections 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 investigations. 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 Act 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

- 51 The powers under Schedule 3 to the Counter-Terrorism and Border Security Act 2019 allow an 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

- 52 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 Act).

Amendment to the Serious Crime Act 2007

- 53 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.

Review of the Operation of State Threats Legislation (Part 3)

- 54 Under section 36 of the Terrorism Act 2006 an independent reviewer for terrorism was created. The Independent Reviewers of Terrorism Legislation have scrutinised the operation of terrorism legislation and produced a number of reports since the role was established. The reviewer to be appointed under Part 3 is modelled on that provision and will perform a similar role for State Threats legislation.
- 55 Paragraph 62 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019 provides for the Investigatory Powers Commissioner to review the operation of the powers under that Schedule. The Act will transfer these review functions to the new independent reviewer to be appointed under Part 3.

Foreign Influence Registration Scheme (Part 4)

- 56 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.
- 57 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 powers. 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.

58 The Elections Act 2022 makes new provision to ensure that UK elections remain secure, fair, modern, inclusive and transparent. In the National Security Act, the requirement to register political influence activities is designed to capture and increase transparency around a wider range of conduct that has been directed by foreign powers and not limited to election periods.

Terrorism Provisions (Part 5)

- 59 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. Sections 81 to 84 set out new specific procedures for the assessment of damages in national security proceedings against the Crown.
- 60 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. Section 85 of, and Schedule 15 to, the Act set out new powers that courts may employ to achieve this.
- 61 Sections 86 and 87 of the Act 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 Section 88 of the Act clarifies the existing availability of those services for Terrorism Prevention and Investigation Measures proceedings, by bringing all services under the same paragraph.
- 62 The Terrorism Act 2000 provides powers for the arrest and detention of any person who is reasonably suspected to be a terrorist. Section 41 of that Act covers the calculation of the period for which a person can be held in detention including when they have previously been detained under other specific powers (section 41(3)(b)) and circumstances in which a person who is detained requires medical treatment (section 41(8A) and (8B)). Schedule 5 to the Terrorism Act 2000 covers a number of police powers in relation to investigations, including powers of search wholly or partly within cordoned areas, and the power of a police officer of at least the rank of superintendent, in cases of great emergency and when immediate action is necessary, to give by written order signed by him to any constable the authority which may be given by a search warrant under paragraph 1 or 11 of Schedule 5 to that Act.

Territorial extent and application

- 63 Section 99 sets out the extent of the Act in the United Kingdom, that is the jurisdiction in which the Act forms part of the law. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect. In some cases, different sections of the Act or paragraphs of Schedules are used to create similar effect in different parts of the United Kingdom.
- 64 The Act extends to England and Wales, Scotland, and Northern Ireland in all cases, except where an amendment or repeal made by the Act 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. Section 19 (aggravating factor where foreign power condition met: England and Wales) amends the Sentencing Code, which extends to England and Wales.
 - b. Section 22 (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. Section 29 (border security) amends paragraph 12 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019, which extends to the United Kingdom.
 - d. Section 30 (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. Section 84 (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. Sections 86, 87 and 88 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 Act (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 Act (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.
- 65 Consequential powers at Section 95 enable the Secretary of State to make provision by regulations in consequence of the Act that amend, repeal, or revoke any enactment, including Acts of the Scottish Parliament, Measures or Acts of Senedd Cymru and Northern Ireland legislation.
- 66 In respect of territorial extent and application outside the United Kingdom:
- a. Section 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 section 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 Act 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 Act in specified circumstances.
- 67 As provided in section 7, a “prohibited place” may be located within the Sovereign Base Areas of Akrotiri and Dhekelia (SBAs). Similarly, section 8 allows for the further designation of land and buildings situated within the SBAs as “prohibited places”. The provisions that relate to prohibited places (see sections 4 to 6) only extend to the United Kingdom and an offence in relation to a prohibited place in the SBAs will only be an offence under UK law. Section 99 allows for provisions within the Act to be extended, with or without modification, to the SBAs by way of an Order in Council. The exercise of this power would result in provisions extending to the SBAs and forming part of SBA law.
- 68 References to the SBAs are in accordance with the 1960 Treaty Concerning the Establishment of the Republic of Cyprus, do not affect the status of the SBAs as defined in that Treaty, and will not in any way undermine its provisions. This Act does not indicate a change in UK policy towards the governance of the SBAs.

Commentary on provisions of the Act

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

Espionage etc

Section 1: Obtaining or disclosing protected information

- 69 Subsection (1) provides that an offence is committed if a person obtains, copies, records, retains, discloses or provides access to protected information in circumstances where the person knows, or having regard to other matters known to them 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 section 32). 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*).
- 70 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.

- 71 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. Section 34 makes clear that information includes information about tactics, techniques and procedures.
- 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).

- 72 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.
- 73 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 section 36).
- 74 Subsection (5) defines the activity that constitutes “retaining” or “disclosing” protected information as outlined within the offence with subsection (1)(a).

Section 2: Obtaining or disclosing trade secrets

- 75 Section 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 having regard to other matters known to them, ought reasonably to know that their conduct in respect of the trade secret is unauthorised, and the foreign power condition (section 32) must also be met.
- 76 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.
- 77 For the purposes of this section, 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 section 1).
- 78 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)).
- 79 References to a trade secret include an article from which such information may be derived.

- 80 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)).
- 81 Subsection (6) defines a “UK person”, which includes an individual who lives in the United Kingdom, and subsection (7) defines “United Kingdom national” (one form of “UK person”).
- 82 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 section 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.

Section 3: Assisting a foreign intelligence service

- 83 Section 3 makes provision for 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.
- 84 An offence is committed in subsection (2) where a person engages in conduct that is likely to materially assist a foreign intelligence service in carrying out UK-related activities, and knows or, having regard to other matters known to them, ought reasonably to know that the conduct is likely to materially assist a foreign intelligence service. An example of materially assisting a foreign intelligence service could include being an undeclared intelligence officer carrying out intelligence activities in the UK.
- Subsection (3) provides that conduct which may be likely to 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.

Example (1): where the person intends to benefit a FIS under section 3(1)

Person D has two acquaintances, Person E and Person F. D knows that E is a foreign intelligence officer based in the UK, and that F is an influential businessperson in a sector which is relevant to E's foreign intelligence work. D is known to be sympathetic to E's country. E asks D to make arrangements for them to meet F in the UK. D introduces E to F and D knows this introduction would be beneficial to the foreign intelligence service. D is likely to be guilty of intentionally assisting a foreign intelligence service. F is unlikely to be guilty of assisting a foreign intelligence service unless F knew, or having regard to other matters known to them ought reasonably to have known, that their conduct was likely to materially assist a foreign intelligence service in carrying out UK-related activity.

Example (2): an offence committed under section 3(2)

Person A sets up a shell company for an acquaintance, whom he suspects works at an embassy, asking no questions. The purpose of the shell company is to provide funds to another company which is acting as cover for a foreign intelligence service. Based on everything A knows about this acquaintance, A ought reasonably to know that A's conduct is likely to assist the foreign intelligence service in carrying out activities in the UK.

Example (3): where the material assistance includes information gathering under section 3(2)

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

85 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, when considering whether an offence may have been committed under subsection (1) or (2), it is not necessary to identify a particular foreign intelligence service. This enables the offence to accommodate circumstances in which someone has been misled and believes they are materially assisting one particular foreign intelligence service but are instead materially assisting another, or where a person seeks to sell information to any foreign intelligence service and is shopping around for a buyer.

86 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 section 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.

87 Subsection (7) and subsection (8) together provide for a number of defences.

- Subsection (7) provides for defences to ensure that certain conduct is not caught by the offences. A person may raise a defence under this section if the person engages in the conduct in question in any of the circumstances set out at subsection (7)(a) – (d). 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, conduct for the purposes of those functions (subsection (7)(b)); conduct as a lawyer carrying on a legal activity (subsection (7)(c)); or conduct that is in accordance with, or in relation to, UK-related activities carried out in accordance with an agreement or arrangement. The agreement or arrangement must be one to which either the United Kingdom was a party, or any person acting for or on behalf of, or holding office under, the Crown was (in that capacity) a party (subsection (7)(d)).

88 Subsection (8) provides that the burden of proof in relation to the defences in subsection (7) is an evidential one.

89 Subsection (9) sets out the maximum penalty for the offence. The offence is triable only on indictment, and 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 section 33).

90 Subsection (10) defines terms used in section 3 (many of which are also used in section 17). 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.

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

91 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 having regard to other matters known to them ought reasonably to know, is prejudicial to the safety or interests of the United Kingdom.

- 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.

92 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 having regard to other matters known to them ought reasonably to know, is prejudicial to the safety or interests of the United Kingdom.

- 93 Subsection (3) provides that a person can carry out the conduct within subsection (1)(a) 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.

- 94 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.

- 95 Subsection (5) outlines the maximum penalty for committing an offence under Section 4. On indictment, the maximum penalty is a term of imprisonment not exceeding 14 years or a fine (or both). Subsection (6) defines a vehicle for the purposes of this Part.

Section 5: Unauthorised entry etc. to a prohibited place

- 96 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 having regard to other matters known to them ought reasonably to know, that their conduct is unauthorised. The relevant conduct is accessing, entering, inspecting, or passing over or under a prohibited place. Like section 4, this applies whether the conduct is committed in person, remotely, electronically or via an unmanned vehicle or device.

- 97 Subsection (2) provides that 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.
- 98 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 section does not include inspecting photographs, videos, or recordings of the prohibited place.
- 99 Subsection (4) provides that a person can carry out the conduct within subsection (1)(a) in person or by electronic or remote means.
- 100 Subsection (5) outlines the penalties on summary conviction for the offence. For summary conviction in England and Wales, the maximum penalty is the maximum term for summary offences or a fine (or both). For summary conviction in Scotland and Northern Ireland, the maximum penalty is a term of imprisonment of 6 months or a level 5 fine on the standard scale (or both).

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

- 101 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.
- 102 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.
- 103 Subsection (4) creates an offence where a person knowingly contravenes a direction given by a police officer under this section.
- 104 Subsection (5) provides that on conviction a person is liable to be imprisoned for a term not exceeding 3 months and/or a level 4 fine.

Section 7: Meaning of "prohibited place"

- 105 This section defines a prohibited place for the purposes of sections 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 section 8.
- 106 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 land or buildings referred to in subsection (1)(c) are also limited to those within the United Kingdom and Sovereign Base Areas of Akrotiri and Dhekelia.
- 107 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.
- 108 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).

109 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.

110 Subsection (2) defines use for "UK defence purposes" in subsection (1).

111 Subsection (3) defines use for the purposes of the "defence of a foreign country or territory" in subsection (1).

112 Subsection (4) defines "Crown land" and "foreign country or territory" for the purposes of this section. It clarifies that references to "building" include any part of a building.

Section 8: Power to declare additional sites as prohibited places

113 This section 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.

114 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 land or building or vehicle 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.

115 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. Designating a type of place by a description (e.g. Crown land used for defence purposes), rather than listing each particular place individually, means that all sites under that type can be designated as prohibited places under one clear definition. In some cases, this may be more practical than listing many places individually and will ensure that the most sensitive sites are not publicly listed.

Section 9: Power to designate a cordoned area to secure defence aircraft

116 This section provides a power for the police to create a cordoned area around a military aircraft. For example, in the event of a military 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.

117 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.

118 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.

Section 10: Duration of cordon

119 This section describes the duration for which a cordon can remain in place under this power. Subsection (2) states that the designation under section 9 must not end later than 14 days from the date on which it was made.

120 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 section 9 was made.

Section 11: Powers of police in relation to a cordoned area

121 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.

122 Subsection (2) clarifies that inspection of a cordoned area can be undertaken by way of taking or procuring photos, videos, and other recordings.

123 Subsection (4) provides that it is an offence to fail to comply with an order under subsection (1). On conviction, a person is liable to be imprisoned for a term not exceeding 3 months and/or a level 4 fine, as described in subsection (7).

124 The defence of reasonable excuse is available under subsection (5), protecting for instance those who have legitimate reason to be within a cordoned area. Subsection (6) clarifies how the burden of proof (an evidential burden) may be satisfied in relation to the defence in subsection (5).

125 Subsection (8) defines a “cordoned area” for the purposes of this section.

Sabotage

Section 12: Sabotage

126 Section 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, having regard to other matters known to them 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)). Section 32 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 section 33.

127 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.

128 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.

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

Foreign interference

Section 13: Foreign interference: general

130 Section 13 makes provision for three offences of foreign interference. There are four concepts that are common to all three offences: interference effects (section 14); prohibited conduct (section 15); the foreign power condition (section 32), and conduct and courses of conduct (see subsection (4) to (6)).

131 Subsection (1) provides that a person commits an offence of foreign interference if: the person engages in conduct that is prohibited conduct intending the prohibited conduct, or a course of conduct which it forms part, to have an interference effect. The foreign power condition must be met in relation to the prohibited conduct.

132 Subsection (2) provides that a person commits an offence if: the person engages in conduct that is prohibited conduct, and is reckless as to whether the prohibited conduct, or a course of conduct which it forms part, will have an interference effect. The foreign power condition must be met in relation to the prohibited conduct.

133 Subsection (3) provides for an offence in which a person engages in a course of conduct with one or more others. This offence does not require the person to engage in prohibited conduct, for which subsection (1) or (2) are available. Instead, someone other than the person must engage in prohibited conduct, and the person must intend or believe that that will happen. It is also necessary for the foreign power condition to be met in relation to the person's conduct (not the prohibited conduct), and for the person to intend the course of conduct to have an interference effect. This ensures that a person can commit a foreign interference offence where the person does not carry out the prohibited conduct themselves, but has others do so.

134 Subsection (4) provides that for the purposes of subsections (1)(c) and (2)(c) a course of conduct includes a course of conduct engaged in by the person alone, or by the person and one or more other persons. Subsections (5) and (6) makes clear when conduct outside the UK will be relevant.

135 Subsection (7) states that the maximum penalty available for an offence under this section is 14 years.

136 Subsection (8) states that “interference effect”, has the meaning given by section 14, and that “prohibited conduct” has the meaning given by section 15.

Section 14: Foreign interference: meaning of “interference effect”

137 Subsection (1) provides the list of “interference effects” for the purposes of the offence contained within Section 13.

- a. Subsection (1)(a) provides for an effect of interfering with the exercise by a particular person of a Convention Right in the United Kingdom. The meaning of a Convention Right is set out in subsection (5).
- b. Subsection (1)(b) makes provision for affecting the exercise by any person of their public functions. The meaning of public functions is set out in subsection (5).
- c. Subsection (1)(c) makes provision for an effect of interfering with 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 (5).
- d. Subsection (1)(d) makes provision for an effect of interfering with whether, or how, any person (other than in the exercise of a public function, with which subsection (1)(b) is concerned) participates in relevant political processes or makes political decisions. A relevant political process is defined in subsection (3) and includes an election or referendum in the United Kingdom. This is designed to protect the UK’s democratic processes and institutions from interference and is not designed to infringe on political debate and campaigning. Political decisions are defined in subsection (4).
- e. Subsection (1)(e) makes provision for an effect of interfering with whether, or how, any person (other than in the exercise of a public function, with which subsection (1)(b) is concerned) participates in a legal process under the law of the United Kingdom. The law of the United Kingdom is defined in subsection (5). Legal processes are expected to include things such as jury service or participation in Court proceedings.
- f. Subsection (1)(f) makes provision for an effect of prejudicing the safety or interests of the United Kingdom.

138 Subsection (2) makes provision for subsection (1) to apply whether an interference effect relates to a specific instance mentioned in subsection (1), or to the matter generally.

139 Subsection (3) defines what is meant by relevant political processes. As well as an election or referendum, it means the proceedings of a local authority, the proceedings of a UK registered political party, and the activities of an informal group consisting of or including members of the UK’s legislatures. An informal group under this section would include all party parliamentary groups.

140 Subsection (4) defines what is meant by a political decision and means a decision of the UK parliament, devolved legislatures and their relevant Ministers, and those of a local authority.

141 Subsection (5) provides for a list of definitions of terms within this section.

Section 15: Foreign interference: meaning of “prohibited conduct”

142 Section 15 sets out what is meant by prohibited conduct in section 13.

143 Conduct is prohibited conduct if: it constitutes a criminal offence (subsection (1)); it involves coercion of any kind (subsection (2)), or it involves making a misrepresentation (subsection (3)).

144 Subsection (1)(b) provides that conduct that takes place outside the UK will be prohibited conduct if it would constitute an offence if it took place in any part of the UK.

145 Subsection (2) provides that the conduct can involve coercion of any kind and sets out an indicative list of means by which coercion may be carried out:

- 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;

146 Subsection (2) also makes clear that the coercion can be directed at a person other than the person to whom the interference effect relates. For example, A can threaten to use violence against B in order to coerce C.

147 Subsections (3) to (6) are concerned with prohibited conduct that involves making a misrepresentation.

148 Subsection (4) sets out two-part test to determine whether a representation is a misrepresentation. The first limb is an objective test: would a reasonable person consider the representation to be false or misleading in a way that is material to the interference effect. The second limb is a subjective one: did the person making the representation know or intend it to be false or misleading in a way material to the interference effect.

149 Subsection (5) provides that a representation may include making a statement or by any other kind of conduct and may be either express or implied. Subsection (6) states that a misrepresentation may include

- a. a misrepresentation as to a 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.

150 Subsection (7) states that "interference effect" has the meaning given by section 14.

Example (1): where P is reckless as to whether their conduct will have the effect in section 14(1)(a)

Person A, working for a foreign power solely for financial gain, is instructed to threaten members of a 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. As part of this, there is a risk that Person B would have to also renounce their views.

Example (2): where P is reckless as to whether their conduct will have the effect in section 14(1)(b)

Person C works for a UK-based business that is owned by a foreign power. This work, which can be traced directly to a foreign intelligence service, 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 that particular MPs distort legitimate debates and vote and speak on particular issues in ways that

are favourable to that foreign power. C is instructed to cultivate relationships with members of Parliament and this is their only intention. C is aware that their conduct could have an interference effect.

Example (3): where conduct is intended have the effect in section 14(1)(c)

A foreign power runs a ‘troll farm’ that employs people to make deliberately offensive or provocative online posts to cause conflict or to manipulate public opinion. The troll farm uses a variety of tools to spread disinformation and engages in other harmful online activity designed to manipulate public opinion, to sow discord within society, and to 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 troll farm uses misrepresentations and false identities to infiltrate legitimate debate. Through its use of the troll farm, 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 section 14(1)(d)

Person D is a 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 candidate amongst members of that community, with the intention of undermining the candidate’s election chances. Alongside spreading false information, Person D threatens members of the diaspora community to vote for Person E instead – Person E is known publicly to have strong links to the foreign power and is reportedly a former member of that country’s intelligence service. As a result of individuals being misled and threatened to vote in a way that is intended to benefit a foreign power, their ability to engage legitimately in the election is undermined.

Example (5): where conduct is intended have the effect in section 14(1)(e)

Person F, a suspected agent of a foreign power, is standing trial for a criminal offence in the UK. Person G, with links to the same foreign power, is tasked by that foreign power to influence 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 intimidating 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.

Section 16: Foreign Interference in elections

151 This section makes provision for substantially increased maximum penalties in respect of certain existing electoral offences if the foreign power condition in section 32 is met in relation to the person’s conduct which constitutes the offence. 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 section 32).

152 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.

153 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 PPERA include offences relating to the evasion of restrictions on the source of donations.

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

155 Subsection (5) states that where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (1) to have been committed on the first of those days.

156 Subsection (6) 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 section.

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 is a UK citizen and registered UK elector, and as such a permissible donor. The foreign power (which is an impermissible donor) provides Person B with funds and instructs them to use those funds to make a donation to a political party. When making the donation, Person B does not declare that they are making the donation on behalf of a foreign power, and simply provide their own details, because they know the foreign power would be an impermissible donor. In doing so Person B has committed an offence relating to the evasion of restrictions on donations.

Section 17: Obtaining etc material benefits from a foreign intelligence service

157 Section 17 creates two offences related to obtaining material benefits from a foreign intelligence service.

158 Subsection (1) makes provision for an offence where a person either obtains, accepts or retains a material benefit (other than an excluded benefit – see subsection (4)) for themselves, or obtains or accepts the provision of such a benefit to another person. In both cases The benefit must be or have been provided by or on behalf of a foreign intelligence service, and the person must know or, having regard to other matters known to them, ought reasonably to know that. This offence could include circumstances where a person obtains a benefit directly from a foreign intelligence service, such as a gift of payment, or where a person accepts a benefit on someone's behalf.).

159 Subsection (2) makes provision for an offence where a person either agrees to accept a material benefit (other than an excluded benefit – see subsection (4)), or agrees to accept the provision of such a benefit to another person. This is different to the offence in subsection (1) because the benefit has not yet been obtained, accepted, or retained. As with the offence in

subsection (1), the benefit must be a benefit that is to be provided by or on behalf of a foreign intelligence service, and the person must know or, having regard to other matters known to them, ought reasonably to know that this is the case. This offence would include instances where a person has agreed to cooperate with a foreign intelligence service in reliance on a promise to receive some future benefit.

160 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.

161 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.

162 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.

163 Subsection (6) makes clear when conduct outside the UK will be relevant. Both subsections (1) and (2) 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 section 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).

164 Subsection (7) to (9) set out a number of defences.

165 For the offence of retaining a material benefit in subsection (1), subsection (7) states that it is a defence to show that the person had a reasonable excuse for retaining the benefit.

166 In respect of the offences in both subsection (1) and (2), subsection (8) provides that it is a defence for a person to show that they engaged in the conduct in question in any of the circumstances set out at subsection (8)(a) – (c)

167 These circumstances are: conduct in compliance with a legal obligation under the law of the United Kingdom, excluding obligations under private law (subsection (8)(a)); in the case of a person having functions of a public nature under the law of the United Kingdom, conduct for the purposes of those functions (subsection (8)(b)); or conduct that is in accordance with, or in relation to, UK-related activities carried out in accordance with an agreement or arrangement. The agreement or arrangement must be one to which either the United Kingdom was a party, or any person acting for or on behalf of, or holding office under, the Crown was (in that capacity) a party (subsection (8)(c)).

168 Subsection (9) provides that the burden of proof in relation to the defences in subsections (7) and (8) is an evidential one.

169 Subsection (10) sets out the maximum penalty available for the offence in subsection (1), which is 14 years or a fine, or both.

170 Subsection (11) sets out the maximum penalty available for the offence in subsection (2), which is 10 years or a fine, or both.

171 Subsection (12) is a list of terms which all have the same meaning as those in section 3 of this Act.

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 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 banks the cheque. C hasn't yet committed an offence of assisting a foreign intelligence service in section 3, or himself obtained a material benefit, or agreed to accept anything for himself. However, by taking and banking the cheque, he has 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 arrange the meeting in anticipation of receiving a substantial sum of money in return, with the payment to be made after the meeting has taken place.

Preparatory conduct

Section 18: Preparatory conduct

172 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.

173 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.

- 174 The acts in subsection (3) include acts which constitute the following offences in this Act - obtaining or disclosing protected information (section 1), obtaining, or disclosing trade secrets (section 2), entering etc a prohibited place for a purpose prejudicial to the UK (section 4) and sabotage (section 12).
- 175 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.
- 176 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.
- 177 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

Section 19: Aggravating factor where foreign power condition met: England and Wales

- 178 Section 19 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 section 31 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 Act (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 the offence, make a determination (on the criminal standard of proof) as to whether it is met or not.
- 179 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)).
- 180 The requirements for the foreign power condition to be met are provided at section 31.
- 181 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 2023 (new subsection 69A(2)).

Section 20: Aggravating factor where foreign power condition met: Northern Ireland

- 182 Section 20 makes corresponding provision to that in Section 20, for sentences to be aggravated where the foreign power condition is met in relation to offences in Northern Ireland (see section 31 for the foreign power condition).

Section 21: Aggravating factor where foreign power condition met: Scotland

183 Section 21 makes corresponding provision to that in Section 19, for sentences to be aggravated where the foreign power condition is met in relation to offences in Scotland (see section 31 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.

Section 22: Aggravating factor where foreign power condition met: armed forces

184 Section 22 amends the Armed Forces Act 2006 to make corresponding provision to that in section 19 for service courts considering the seriousness of a service offence for the purposes of sentencing.

Powers of search etc.

Section 23: Powers of search etc.

185 Section 23 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

186 Paragraph 1 sets out that Part 1 of the Schedule applies in England and Wales and in Northern Ireland. By virtue of paragraphs 2(3), 3(3), 4(3), 9(4) and 13(5) 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.

187 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.

188 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.

189 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 to 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.

- 190 Paragraph 5 provides that an application for a production order under paragraphs 3 or 4 may be made without notice to a judge in chambers. This means that in certain cases, for example, where it could harm an investigation, an application may be made without notifying the defendant.
- 191 Paragraph 6 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.
- 192 Paragraph 7 provides that production orders can be made in relation to material in the possession of government departments.
- 193 Paragraph 8 provides that a production order under paragraphs 3 or 4 has effect as if it were an order of the court. This means that if a person fails to comply with the requirements of the order, they can be treated as being in contempt of court.
- 194 Paragraph 9 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 where a lack of immediate access to the material may have seriously prejudiced an investigation. Condition 6 relates to applications for all premises warrants.
- 195 Paragraph 10 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 provides that an application for an explanation order may be made without notice to a judge in chambers. It also 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 11. An explanation order has effect as if it were an order of the court.
- 196 Paragraph 11 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 10. On indictment, the maximum penalty is a term of imprisonment not exceeding 2 years or a fine (or both). On summary conviction in England and Wales, the maximum penalty is a term of imprisonment not exceeding the general limit in a magistrate's court or a fine (or both). Summary conviction in Northern Ireland is a maximum penalty of a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).
- 197 Paragraph 12 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 9. 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 9. Where such authority is given, the Secretary of State must be notified as soon as reasonably practicable. Paragraph 12 also makes clear that an order that gives the authority of a warrant under paragraph 9 does not authorise a constable to retain confidential journalistic material. It is an offence to wilfully obstruct a

search undertaken under this authority. The maximum penalty for this offence is imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale (or both).

198 Paragraph 13 provides that if a search under paragraph 12 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 9 and ensure equivalent judicial scrutiny for confidential journalistic material obtained during an urgent search.

199 Paragraph 14 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 12. Paragraph 14 makes it an offence to fail to comply with a notice given under it. A defence of reasonable excuse is available.

200 Paragraph 15 concerns the application of the Police and Criminal Evidence Act 1984 and Police and Criminal Evidence (Northern Ireland) Order 1989.

201 Paragraph 16 allows for the making of procedural rules relevant to proceedings in respect of warrants and orders made in Part 1 of this Schedule.

202 Paragraph 17 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). What is meant by “items subject to legal privilege” is explained at subsection (5). Judge is defined at subsection (6).

Part 2 - Scotland

203 Paragraph 18 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.

204 Paragraphs 19-24 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.

205 Paragraph 25 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 9 of Part 1.

206 Paragraph 26 allows for an order equivalent to that in paragraph 10 of Part 1 to be made by a Sheriff.

207 Paragraph 27 provides a power to give authority such as that of a warrant under paragraph 25 in cases of great emergency, where immediate action is necessary, in equivalent terms to paragraph 12 of Part 1. It makes it an offence to wilfully obstruct a search under said authority. The maximum penalty for this offence is imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale (or both).

208 Like paragraph 13 of Part 1, paragraph 28 requires a constable to obtain a warrant to retain confidential journalistic material seized under paragraph 27 and sets out the conditions to be satisfied for the grant of said warrant.

209 Paragraph 29 makes equivalent provision to paragraph 14 of Part 1 in respect of written notices to explain material seized under paragraph 27. A person who fails to comply with a notice under this paragraph commits an offence. A person who is found guilty is liable on summary conviction to imprisonment for a maximum of 6 months or a fine.

210 Paragraph 30 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 lock fast places by a constable and the conduct of personal searches.

Section 24 Disclosure orders

211 Section 24 introduces Schedule 3 which makes provision for disclosure orders.

Schedule 3: Disclosure orders

212 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

213 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.

214 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.

215 Paragraph 3 provides supplementary detail about types of information that can be obtained under a disclosure order, including that an order cannot require a person to answer questions or provide material which is subject to legal privilege. However, a lawyer may be required to provide the name and address of a client. A disclosure order takes effect despite any other restrictions imposed on disclosure. Paragraph 3 also sets out the power of an appropriate officer to take and retain copies of documents obtained through a disclosure order.

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

217 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.

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

219 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. The maximum penalty for this offence on summary conviction in England Wales is imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both). In Northern Ireland, on summary conviction the maximum term is imprisonment not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

220 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).

221 Paragraph 9 defines terminology relevant to Part 1 of the Schedule, including the meaning of “senior officer”.

Part 2 - Scotland

222 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.

223 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.

224 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 offence.

Section 25 Customer information orders

225 Section 25 introduces Schedule 4 which makes provision for customer information orders.

Schedule 4: Customer information orders

226 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.

227 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. Subparagraph (9) sets out that an application for a customer information order must be made, or authorised, by a senior officer. This does not apply in relation to Scotland given applications are made by the procurator fiscal rather than a police officer (subparagraph 10).

228 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.

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

230 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 officer 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. Subparagraph (4) sets out that unless they are a senior officer, or authorised by a senior officer, an appropriate officer should not make an application to discharge or vary a customer information order. Again, this does not apply in relation to Scotland.

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

232 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).

233 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.

234 Paragraph 8 defines terminology relevant to Schedule 4. 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. Accordingly, any updates to the definitions in those Acts will automatically apply to these provisions.

235 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. 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. 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.

Section 26 Account monitoring orders

236 Section 26 introduces Schedule 5 which makes provision for account monitoring orders.

Schedule 5: Account monitoring orders

237 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.

238 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.

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

240 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.

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

242 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.

243 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.

244 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 Act will automatically apply to these provisions.

245 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 the 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.

Section 27: Arrest without warrant

246 Section 27 introduces Schedule 6 which makes provisions for the power of arrest without warrant.

Schedule 6: Arrest without warrant

247 Section 27 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. Section 27(1) provides that a constable may arrest without a warrant anyone who they reasonably suspect is involved in foreign power threat activity. Section 33 defines involvement in foreign power threat activity, covering commission, preparation or instigation of certain acts or threats, which are specified offences under the Act (section 33(3)(a)) as well as acts or threats where the foreign power condition is met (see section 31) 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 includes conduct which facilitates or gives support or assistance to those involved in commission, preparation, or instigation of such acts of threat (section 33(1)(b) and (c)).

248 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.

249 Part 5 of schedule 6 covers the requirement for reviews of detention to be carried out. Section 27 (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).

250 Paragraphs 37 and 44 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. Section 27 (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.

251 Where a warrant of further detention or extension or further extension has been granted, section 27 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 45 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. Subsection (9) provides that where an application to extend detention is refused, a person can continue to be detained in accordance with this section (i.e., for up to 48 hours).

252 Subsections (10) and (11) 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.

253 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 27

Part 1: Treatment of persons detained under section 27

254 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 28 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.

255 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 section does not provide police with powers to take fingerprints or any samples from the arrestee.

256 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.

257 Paragraph 5 notes that a detained person is to be treated as being in legal custody throughout the period of their detention.

Part 2: Rights of persons detained under section 28: England, Wales and Northern Ireland

- 258 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.
- 259 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 also direct that the person detained may not consult the chosen solicitor or must cease consultation if they 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 the arrestee's consultation with the solicitor may hinder the police's ability to recover the value of the property (paragraph 8(3)(b)).
- 260 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.
- 261 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)).
- 262 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.

263 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 28: Scotland

264 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.

265 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 subparagraph (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 they direct 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)).

266 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.

267 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

268 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 22. 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.

269 Paragraphs 20 and 21 set out the powers for retention of paragraph 19 material. Material under paragraph 19 may be retained indefinitely if the person has previously been convicted of a recordable offence, or in Scotland, an offence which is punishable by imprisonment. Otherwise, when detained under section 27, the material may be retained for 3 years, beginning on the date on which the fingerprints, physical data or sample was provided or derived. The responsible or specified chief officer of police or NCA may apply to the courts to extend the retention period for 2 years further (paragraph 20(6)-(8)). Paragraph 20 (9) and (10) provides for an appeal process whereby the person from whom the material was taken, or the responsible or specified chief officer of police or NCA 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(11) states that if an individual is arrested again under the section 28 arrest power and relevant material is again taken upon arrest, a new retention period may begin from when the second arrest occurred.

270 Paragraph 22 provides for the ability to make a national security determination regarding paragraph 19 material. A national security determination is when a chief officer of police 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.

271 Paragraph 23 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.

272 Paragraph 25 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.

273 Paragraph 26 restricts the purposes for which material may be used.

274 Paragraph 28 is self-explanatory and provides definitions of terms used in the Schedule.

Part 5: Review of detention under section 27

275 Part 5 provides for the process by which a detained person's detention must be reviewed by police and the Court. Paragraph 29 provides that 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 30 provides that the review may be postponed in certain circumstances, including if the detainee is being questioned or a review officer is not readily available. Paragraph 31(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 31(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 35 outlines that 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 which has been authorised, as well as reconsidering the reasons for such a delay. Under paragraph 36, 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 27

276 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 section 28(3). Paragraph 37 provides that a 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 section 27(3). Under paragraph 44, 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. Paragraph 38 provides that the application for a warrant must be made to the Court within 54 hours of the initial arrest, 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.

277 The grounds on which the judicial authority may grant a warrant of further detention are provided for at paragraph 40 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.

278 Paragraph 41 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 41(3). Under paragraph 42(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 42(2) or 42(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.

279 Paragraph 45 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 are a reference to the formal job title and applies to the current office holder regardless of their gender.

Part 7: Emergency power when Parliament dissolved etc. for temporary extension of maximum period for detention under section 27

280 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 it necessary to do so by reason of urgency and to make the extension by way of statutory instrument. The relevant requirements of Schedule 6 continue to apply, including the requirement to apply to a judicial authority for a warrant of further detention or extension of such a warrant. Paragraph 46(6) provides that the Secretary of State can revoke the regulations at any point if they consider it appropriate to do so. Section 95(7)-(10) covers the procedure for regulations made under paragraph 46, including that the statutory instrument will cease to have effect if Parliament does not approve it within 20 days of its return.

Section 28: Use of reasonable force

281 Section 28 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 sections 6 and 11 respectively, the powers of search and seizure within section 23 and Schedule 2 and the arrest and detention powers within section 27 and Schedule 6.

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

283 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.

Section 29: Border security

284 Section 29 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.

285 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.

286 Section 29 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.

Section 30: Offences under Part 2 of the Serious Crime Act 2007

287 Section 30 inserts an additional defence into Part 2 of the Serious Crime Act 2007 (SCA) which applies in the extra-territorial circumstances provided for in Schedule 4 of that Act. This ensures that individuals working for the Security Service, the Secret Intelligence Service,

GCHQ, and individuals carrying out intelligence functions of the Armed Forces, have a specific defence against the offences of encouraging or assisting crime in sections 44 to 46 of the SCA.

288 Section 50 A(1) SCA (as inserted) restricts the defence to circumstances in which offences might be committed due to the extra-territorial application provided for at Schedule 4 of the SCA. The defence is available where, for example, the UK Intelligence Community (UKIC) or the Armed Forces shared intelligence to assist the overseas activity of a trusted partner.

289 Section 50A(2) and (3) make clear that the individual would have to raise evidence that their act was necessary for the proper exercise of a function of an intelligence service or the proper exercise of the functions of the Armed Forces relating to intelligence. Once the defence is raised, the prosecution would have the legal burden to disprove it.

290 Under Section 50A(4), the head of each intelligence service is required to have arrangements in place to ensure that any conduct of its members, which would otherwise amount to an offence by virtue of Schedule 4 of the SCA, is necessary for the proper exercise of its functions. A similar requirement is placed on the Defence Council under section 50A(5) in relation to acts of a member of the Armed Forces or a civilian subject to service discipline (as defined in the Armed Forces Act 2006). The Secretary of State must consider such arrangements are satisfactory (section 50A(6)).

291 Subsection 50A(7) provides relevant definitions for the purposes of the defence.

Foreign power condition and foreign power threat activity

Section 31: The foreign power condition

292 This section provides for the foreign power condition, to which a number of provisions of the Act 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 having regard to other matters known to them ought reasonably to know, that the conduct has that relationship to the foreign power.

293 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.

294 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.

295 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.

296 Subsection (4) confirms that the references in section 32 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).

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

298 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.

299 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.

300 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.

Section 32: Meaning of ‘foreign power’

301 This section 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.

302 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.

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

Section 33: Foreign power threat activity and involvement in that activity

304 This section 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 (under Part 1 of the Act) and the prevention and investigation measures (under Part 2 of the Act).

305 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 threats set out in subsection (3). Subsection (1)(c) makes it clear that support or assistance must be in relation to the conduct covered by Section 33(1)(a), rather than support or assistance to unrelated activity. 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.

306 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.

307 The acts in subsection (3) include acts which constitute the following offences in this Act - obtaining or disclosing of protected information (section 1), obtaining, or disclosing trade secrets (section 2), assisting a foreign intelligence service (section 3), entering etc a prohibited place for a purpose prejudicial to the UK (section 4), sabotage (section 12), foreign interference: general (section 13) and obtaining material benefits from a foreign intelligence service (section 17).

308 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

Section 34: Interpretation

309 This section defines a number of terms used in this part.

Section 35: Offences by a body corporate etc.

310 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 Act, 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.

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

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

313 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.

Section 36: Offences committed outside the United Kingdom

314 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.

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

Section 37: Consents to prosecutions

316 Section 37 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 sections 5, 6, 11, schedule 2, 3 and 4.

317 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.

Section 38: Power to exclude the public from proceedings

318 Section 38 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.

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

Part 2: Prevention and Investigation Measures

Imposition of prevention and investigation measures

Section 39: Power to impose prevention and investigation measures

- 320 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 section 40 are met.
- 321 Subsection (2) defines prevention and investigation measures as requirements, restrictions and other provision which may be made in relation to an individual as set out in Schedule 7.
- 322 Subsection (4) requires the Secretary of State to publish factors that should be taken into account when deciding whether to impose travel restrictions. Factors could include: proximity to airports; prohibited associates; and the variety or number of services within a restricted area.

Schedule 7: Prevention and Investigation Measures

Part 1: Measures

- 323 This schedule sets out an exhaustive list of the types of measures which may be imposed on an individual. The Secretary of State may impose any 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.
- 324 Paragraph 1 allows the Secretary of State to require an individual to reside at a specified residence – either their 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 section 33(4). The Secretary of State may either agree with the current 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. The Secretary of State may only require the individual to live in a residence that is more than 200 miles from their home location if the individual agrees.
- 325 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 within the property 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.
- 326 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 give notice in accordance with paragraph 18 of Schedule 7.
- 327 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).

328 Paragraph 2 allows the Secretary of State to impose restrictions on an individual leaving the United Kingdom, or any area within the United Kingdom. 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.

329 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 area of Westminster, 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.

330 Paragraph 4 allows the Secretary of State to provide that the individual must comply with directions in relation to their 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 their 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 the Act. Directions given under a movement directions measure may last for as long as the constable considers necessary up to a maximum of 24 hours.

331 Paragraph 5 allows the Secretary of State to provide for restrictions on the individual's access to financial services. This can include a requirement to hold only one nominated financial account and to comply with conditions associated with that account (for example, a requirement to provide copies of account statements and related documents). 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.

332 Paragraph 6 allows the Secretary of State to impose measures relating to the individual's property, for example, to place restrictions on an individual's ability to transfer money or other property outside the United Kingdom. The Secretary of State may impose conditions in relation to the transfer of property to or by the individual and may also require the individual to disclose the details of any property of a specific description in which they have an interest or right. The definition of "property" for the purposes of this provision (see paragraph 6, (3)) allows the imposition of a requirement to notify the Secretary of State in advance of the individual, for example, hiring a car.

- 333 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.
- 334 Paragraph 8 allows the Secretary of State to impose a measure in relation to electronic communications devices, for example, prohibiting 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 the possession or use of devices within the individual's residence by other persons. Electronic communications devices include computers, telephones, and equipment capable of connecting to the internet. Restrictions can be placed on possession or use, including those set out in subparagraph (4), such as a requirement to allow specified people (for example constables) access to the residence for the purpose of monitoring any devices.
- 335 Where the Secretary of State imposes an electronic communications device measure it must, as a minimum, allow (subject to any conditions on such use as may be specified under subparagraph (2)(b)) 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)).
- 336 Paragraph 9 allows the Secretary of State to impose restrictions on the individual's association or communication with other persons. 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 covers association or communication by any means 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 section 48(1) which allows for the variation of measures by the Secretary of State).
- 337 Paragraph 10 allows the Secretary of State to impose restrictions on the individual's work or studies, for example not to undertake work which develops military technology or studies involving research into nuclear technology without permission. 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. 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, and the Secretary of State considers it necessary to prohibit such employment, they may vary the Part 2 notice accordingly under section 48(1).
- 338 Paragraph 11 allows the Secretary of State to require an individual to report to a particular police station and to comply with directions given by a constable in relation to that reporting.
- 339 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 the requirements for doing so are met.

- 340 Subparagraph 2 provides a power for the Secretary of State to make regulations governing the conduct of polygraph testing.
- 341 Subparagraph 4 provides that the information gleaned during the polygraph test (either by way of statement or physiological reaction) will not be used in evidence against the individual for the prosecution of a criminal offence.
- 342 Paragraph 13 allows the Secretary of State to require an individual to attend meetings with such persons, as the Secretary of State may specify. The specified person(s) may also choose the time and place of the meeting.
- 343 Paragraph 14 allows the Secretary of State to require an individual to have their photograph taken.
- 344 Paragraph 15 allows the Secretary of State to require an individual to cooperate with arrangements for enabling their movements, communications, and other activities to be monitored. This may include a requirement to wear, use or maintain an electronic tag and associated apparatus, to comply with associated directions and to grant access to the residence for these purposes.
- 345 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

- 346 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. The Secretary of State may grant permission which may be 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 that other restrictions on movements are complied with.
- 347 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 them that the Schedule 7 notice has been received and that no further information is required.

348 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.

Section 40: Conditions A to E

349 Subsections (1) to (5) of section 40 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 section 32).

350 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.

351 Condition B, when read together with subsection (7) and section 42 (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 section 41 and its interaction with sections 50 and 51 below.

352 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 section 33 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).

353 Condition E (subsection (5)) requires the Secretary of State to have obtained the court’s permission under section 43 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 section 43 and Schedule 8.

354 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 section 33(3)(b) or (c).

Five-year limit on imposition of measures

Section 42: Five-year limit for Part 2 notices

355 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.

356 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).

357 Subsection (4) provides that the operation of the five-year time limit is subject, in particular, to the exceptions and provisions in sections 49 and 50 relating to revocation and revival of a Part 2 notice and to replacement of a Part 2 notice. As noted above, this section also interacts with condition B in section 40.

Court scrutiny of imposition of measures

Section 42: Prior permission of the court

358 This section 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 section 40.

359 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: section 44 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 section 45 makes provision for that review.

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

361 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, whilst otherwise granting permission. 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.

Section 44: Urgent cases: reference to the court etc

362 This section gives effect to Schedule 8.

Schedule 8: Urgent cases: reference to the court etc

- 363 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 (section 40(5)(b))). Schedule 8 places a duty on the Secretary of State to include a statement in the Part 2 notice confirming their 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.
- 364 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.

Section 44: Directions hearing

- 365 Subsections (1) and (2) of this section 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)). (Section 45 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).

Section 45: Review hearing

- 366 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 section 40) were met and continue to be met.
- 367 This review must apply the principles applicable on an application for judicial review (subsection (2)).
- 368 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.

369 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

Section 46: Criminal investigations into foreign power threat activity

370 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 section 33(3) which may 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.

371 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 section 33(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

Section 47: Review of ongoing necessity

372 This section 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 Terrorism Prevention and Investigation Measures 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".

Changes concerning Part 2 notices

Section 48: Variation of measures

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

374 Subsection (2) makes it possible for the Secretary of State to vary a relocation measure in a Part 2 notice if considered necessary for reasons concerned with the efficient and effective use of resources in relation to the individual. The relocation measure is only available as part of the residence measure, for use where activity under section 33(3) (b) or (c) is concerned. A non-exhaustive example of when this power to vary 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.

375 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 their 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.

376 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.

377 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 section 49 (see next section of these notes on revival of notices). 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 section 49, to vary the measures specified in that notice from those that were contained in it prior to its expiry or revocation.

Section 49: Revocation and revival of Part 2 notices

378 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.

379 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 section 41 or has previously been revoked and revived.

380 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 section 50, 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).

381 Subsection (6)(a) also provides a power for the Secretary of State to revive a notice – for up to a period of a year – that has previously expired without being extended (after being in force for one of the five years permitted by section 41 without evidence of new foreign power threat activity).

382 The Part 2 notice may be revived at any time after its expiry or its revocation.

383 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 section 59).

Section 50: Replacement of a Part 2 notice that is quashed etc

384 This section 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.

385 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. This ensures a replacement notice cannot be used to circumvent the five-year time limit provided by section 41.

386 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 part 2 notice is not therefore required in order to impose a revival notification. 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 new Part 2 notice at the end of the 5 year period.

387 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.

Section 51: Other provision relating to the quashing of Part 2 notice

388 This section 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.

389 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.

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

Schedule 9: Appeal against convictions

391 This schedule provides that an individual subject to a Part 2 notice, who is convicted of an offence under section 56 (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

Section 52: Appeals

392 This section 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 section 45 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.

393 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. Permission is where the Secretary of State has agreed to create an exception to conditions on the STPIM subject due to extenuating circumstances. For example, permission to leave their inclusion boundary for the purpose of attending work. If the court does not exercise any of these powers, it must dismiss the appeal (subsection (8)).

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

Section 53: Jurisdiction in relation to decisions under this Part

395 This section 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 section 63(1), or on appeal from such proceedings.

396 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).

Section 54: Proceedings relating to measures

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

398 Subsection (1) provides that an appeal may only be brought from a determination of the Court 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 in relation to an application by the Secretary of State for permission to impose a Part 2 notice or permission to impose under the urgent cases procedure.

399 Subsection (3) gives effect to Schedule 10.

Schedule 10: Proceedings relating to prevention and investigation measures

400 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.

401 In practice, the court proceedings in these cases will have both ‘open’ and ‘closed’ elements. The individual concerned and their 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).

402 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.

403 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.

404 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.

405 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

Section 55: Reports on exercise of powers under this Part

406 This section 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.

Enforcement

Section 56: Offence

407 This section 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).

408 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.

409 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.

Section 57: Powers of entry

410 This section gives effect to Schedule 11.

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

411 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.

Section 58: Fingerprints and samples

412 This section gives effect to Schedule 12.

Schedule 12: Fingerprints and samples

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

414 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.

415 “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 their hand.

416 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.

417 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 their 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.

418 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.

419 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.

420 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).

- 421 As per similar provisions in PACE and the Terrorism Act 2000, 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 2012) will keep under review such national security determinations and the uses to which such material is put.
- 422 Paragraph 12 provides for a police officer 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. Paragraph 13 sets out the requirement to destroy DNA samples. Paragraph 14 specifies the uses to which material taken can be put.

Supplementary provisions

Section 59: Notices

- 423 This section makes provision about the service of notices. 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 their solicitor.

Section 60: Contracts

- 424 This section 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.

Section 61: Legal aid in relation to Part 2 Notices

- 425 This section 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.
- 426 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.

These Explanatory Notes relate to the National Security Act 2023 which received Royal Assent on 11 July 2023 (c. 32).

Section 62: Interpretation etc

427 This section sets out the meaning of various terms used throughout this Part and makes certain provisions for the application of other sections. In particular, subsection (2) 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 section 40).

428 Subsection (4) provides that where the definition of “new foreign power threat activity” in section 35(7) refers to a Part 2 notice being in force in relation to an individual, a notice that is revived (under section 49(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 section 49(6), when considering whether there is “new” foreign power threat activity which could form the basis of 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: Review of the operation of Parts 1 and 2 etc

Section 63: Reviews: general

429 Section 63 creates the requirement for the role of ‘independent reviewer’ for state threats legislation. Subsection (1) outlines that the role of the reviewer is to review the operation of Part 1, which covers offences and powers of investigation, and Part 2, the Prevention and Investigation Measures. They will also review the operation of Schedule 3 to the Counter-Terrorism and Border Security Act 2019, which covers border security powers in relation to hostile state activity. The review of Schedule 3 does not cover the functions exercised by the Investigatory Powers Commissioner under that Schedule.

430 Subsection (2) and (3) provide that the independent reviewer must carry out an annual review which must be completed as soon as reasonably practicable after the calendar year to which it relates.

431 Under subsection (2)(b) the reviewer can also carry out other reviews as they consider appropriate and, under subsection (4), must inform the Secretary of State of any extra, discretionary reviews they wish to carry out in that year.

432 Under subsection (5), a report on each review must be sent to the Secretary of State as soon as reasonably practicable after its completion.

433 Subsection (6) requires the Secretary of State to lay the report before Parliament along with a statement as to whether any material has been removed. Subsection (7) outlines the specific conditions under which the Secretary of State may remove material after consulting with the independent reviewer.

Section 64: Reviews of detention under Part 1

434 Section 64 provides that the annual review by the independent reviewer must consider compliance with relevant requirements related to persons detained under a warrant of further detention. Subsection (2) outlines the relevant requirements.

435 Subsection (3) requires that the independent reviewer ensures that a review is carried out in any instances where a warrant of further detention of a person is granted for longer than 14 days following their arrest. As per subsection (4), any such review can be conducted by the

independent reviewer personally or by another person. A report on the outcome of the review must be sent to the Secretary of State as soon as reasonably practicable after the review's completion. The Secretary of State must lay the report before Parliament with any necessary redactions (subsection 6).

Part 4: Foreign Activities and Foreign Influence Registration Scheme

Section 65: Requirement to register foreign activity arrangements

436 Sections 65-68 relate to the "enhanced tier" of the Foreign Influence Registration Scheme (FIRS).

437 Section 65 introduces a requirement to register a "foreign activity arrangement".

438 Subsection (1) sets out the meaning of a "foreign activity arrangement". It states that it is an agreement or arrangement between a person, "P", and a specified person where a "specified person" directs "P" to carry out relevant activities in the UK, or arrange for others to carry out relevant activities in the UK. Activities in the UK will, for example, include where communication is sent from overseas to the UK, as well as where activities take place entirely in the UK.

439 A "specified person" is defined in section 66.

440 "Directs" is not defined in the legislation. However, the natural meaning of "direction" is an order or instruction to act. This could be delivered in the language of a request, but only where there is a power relationship between the person and the specified person which adds an element of control or expectation to the request; for example through a contract, payment, coercion or the promise of a future compensation or favourable treatment.

441 Subsection (2) provides that "relevant activities" in this section means all activities, unless regulations made under subsection (3) make provision otherwise. The requirement to register all activities by default will enable greater assurance about the full range of activities carried out for, or at the direction of, specified persons.

442 Subsection (3) gives the Secretary of State a power to make provision about the activities which constitute "relevant activities" and therefore trigger registration requirements. This power could be used to exclude certain activities or categories of activities from the scope of the registration requirement, whether in the case of a particular specified person or in respect of all specified persons.

443 Subsection (4) provides that where "P" makes a "foreign activity arrangement", "P" must register the arrangement (with the Secretary of State) within 10 days, beginning with the day on which the arrangement is made. For example, if an arrangement is made on 1st January, it must be registered on or before 10th January. The registration requirements fall upon "P", irrespective of whether P carries out the relevant activities, or arranges for others to carry out the activities.

444 P can be an individual or a legal entity (for example, a limited company) and the requirement to register applies regardless of nationality or where the entity is incorporated or based; the key factor is whether the activities are to be carried out in the UK.

445 Subsection (5) makes it an offence for P to fail to register a "foreign activity arrangement" within 10 days, if P knows or, having regard to other matters known to them, ought reasonably to know that the arrangement is a "foreign activity arrangement". This knowledge test ensures that where P does not know that their arrangement is with a specified person, for instance P has been misled, they are not guilty of an offence. Penalties for offences in this part are set out at section 80.

Section 66: Meaning of "specified person"

446 Section 66 sets out the meaning of "specified person" and the powers given to the Secretary of State in relation to the enhanced tier of the scheme.

- 447 Subsection (1) defines a “specified person” as either a foreign power or a person (other than a foreign power), specified by the Secretary of State in regulations. A foreign power is defined at section 32 of the Act (although the term is modified for the purpose of Part 4 of the Act by section 83). Where the power is used to specify a foreign power, it may be that, for example, only part of a foreign government is specified, such as an individual department or agency.
- 448 Subsection (2) provides that a person other than a foreign power can only be specified if the person is not an individual and the Secretary of State reasonably believes the person is controlled by a foreign power.
- 449 Subsection (3) introduces Schedule 13, which sets out when a person is controlled by a foreign power any may therefore be specified under subsection (2).
- 450 Subsection (4) provides that the Secretary of State may make regulations specifying a foreign power or a “person” other than a foreign power only if the Secretary of State considers it reasonably necessary to do so protect the safety or interests of the UK. For example, the Secretary of State may decide to specify a foreign government or an entity controlled by a foreign power that is assessed to be engaged in activities that present a risk to national security.
- 451 Subsection (5) provides that the regulations specifying a foreign power or person subject to foreign power control may make provision for the registration requirement at section 66 to apply with modifications where a foreign activity arrangement was already in existence prior to the scheme coming into force. For example, the regulations could allow a longer period of time than 10 days to register an existing arrangement.

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

A company is directly funded and supported by a foreign government, which has recently been specified by the Secretary of State to protect the safety or interests of the UK.

Government officials from the specified foreign government discuss the terms of funding with the company for the next financial year. Officials direct the company to target a proportion of the funding at acquiring specialist expertise in the UK for future projects, through activities in the UK and other countries. They ask the company 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.

The company (“P”) would be required to register the arrangement (the direction to target a proportion of the funding at acquiring specialist expertise for future projects in the UK) 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, and before any activities are carried out under the arrangement.

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

The Department of Cultural Affairs (DCA) of a foreign country has been specified by the Secretary of State to protect the safety or interests of the UK.

A high-profile entrepreneur, who resides in London with a large UK-based social media following, is approached by an official from the DCA, who offers him 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 the entrepreneur accepts the offer and expresses willingness to act at the direction of the DCA official.

The entrepreneur (“P”) would be required to register the arrangement (acceptance of the tasking 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, and before any activities are carried out under the arrangement.

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

The Ministry of Security (MoS) of a foreign country has been specified by the Secretary of State to protect the safety or interests of the UK.

An official of the MoS meets with an entrepreneur based abroad, 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 MoS official tasks the entrepreneur 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. The MoS official is clear that in return, the entrepreneur would be rewarded although it isn’t specified how.

The entrepreneur (“P”) would be required to register the arrangement (the direction to arrange to carry out recruitment activities at the conference in the UK). The arrangement must be registered with the scheme within 10 days of it being made, any before any activities are carried out under the arrangement.

Example (4): Registration not required

A foreign government is specified by the Secretary of State to protect the safety or interests of the UK. A UK-based charity receives frequent donations from this specified foreign government. Although the donations support the work and cause of the charity, it is not being directed, whether expressly or implicitly, 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

An overseas university, which is controlled by a foreign government, is specified by the Secretary of State to protect the safety or interests of the UK. A small number of research institutions within the UK are involved in collaborative projects with the overseas university 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 the overseas university, 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 the university). The university would, however, need to register any activities that it conducts itself in the UK with FIRS (including its activities with the UK institutions) – see section 68.

Schedule 13: Control of a person by a foreign power

452 This Schedule is introduced by subsection (3) of section 66. Part 1 of the Schedule provides the circumstances in which a person is controlled by a foreign power, and may therefore be specified by the Secretary of State.

453 Paragraph 1 sets out that a person (which cannot be an individual – see section 66(2)(a)) is controlled by a foreign power if one of five conditions is met.

454 Conditions 1 to 4 are provided by sub-paragraphs (1) to (4), and are: (1) the foreign power has the right to direct or control, or actually directs or controls the person's activities (in whole or in part); (2) the foreign power directly or indirectly holds more than 25% of the shares in the person; (3) the foreign power directly or indirectly holds more than 25% of the voting rights in the person; or (4) the foreign power directly or indirectly has the right to appoint or remove an officer of the person.

455 Condition 5 (provided by sub-paragraph (6)) makes provision for the circumstances in which an entity that is not a legal person, whether a trust, partnership, unincorporated association or other entity, is taken to be controlled by a foreign power. The person is subject to such control if: (a) the trustees (in the case of a trust) or the members (in the case of other types of entities) meet one of Conditions 1 to 4; or (b) if the foreign power has the right to direct or control the activities of the trust or entity, or actually does direct or control the activities.

456 Paragraph 2 defines an 'officer' for the purposes of Schedule 13. It defines an officer: (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.

457 Part 2 of this Schedule covers how Part 1 should be interpreted and gives further details on conditions 1-4.

458 Part 3 provides the Secretary of State with a power to amend Schedule 13 for certain permitted purposes.

Section 67: Offence of carrying out etc relevant activities pursuant to unregistered foreign activity arrangement

459 Section 67 provides offences for those who carry out activities pursuant to unregistered arrangements under the enhanced tier. These complement the offence provided for by section 65(5), which relates to failure to comply with registration requirements. The effect of this section is that while P has 10 days to register the arrangement, the activities cannot begin until the arrangement has been registered.

460 Subsections (2) and (3) provide that an offence is committed if: a person carries out a relevant activity, or arranges for others to carry out such an activity, pursuant to an unregistered foreign activity arrangement; and the person knows, or having regard to other matters known to them ought reasonably to know, that they are acting pursuant to a "foreign activity arrangement". This knowledge test ensures that a person unwittingly acting pursuant to an unregistered foreign activity arrangement does not commit an offence; for example, where a person has been deceived into believing that they are acting for someone other than a specified person. Subsection (2) applies in relation to "P" and subsection (3) applies in relation to any other person who is acting pursuant to the foreign activity arrangement.

461 Subsection (4) provides a potential defence to the offence under subsection (3) (i.e. for persons other than P). This defence is available where the person has taken all steps reasonably practicable to determine whether the foreign activity arrangement that they are acting pursuant to was or was not registered, and having taken such steps, reasonably believed that it was registered. This could include being able to show they have requested and received the confirmation of registration the registrant has received from the scheme.

462 Subsection (5) sets out that a person is considered to have shown a matter mentioned in subsection (4) if there is sufficient evidence to raise an issue with respect of it, and the contrary is not proved beyond reasonable doubt. It will be for a defendant to provide evidence that the defence applies, following which it will be for the prosecution to prove beyond reasonable doubt that the person did not take all reasonably practicable steps, or that they did not hold a reasonable belief that the arrangement was registered.

463 Subsection (6) provides that references to “relevant activity” in section 67 have the meaning given by section 65 (see section 65(2)).

Example (1): How the offence would apply in relation to example 1 under section 66

If the company had not registered the arrangement with the foreign government officials, employees of the company that are engaging in the delivery of the networking and collaboration events may be committing an offence. This would only be the case if the employee knew, or ought reasonably to have known (considering other matters known to them), that the networking and collaboration events were being delivered at the direction of a foreign power. Whether an employee ought reasonably to know about a foreign activity arrangement will vary from case-to-case. However, key factors will include: the role that the person has within the company, the information that they are privy to, and the extent of their knowledge of the company’s links to the specified person.

Example (2): How the offence would apply in relation to example 2 under section 66

In this example, the entrepreneur 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, the entrepreneur was to begin carrying out activities pursuant to that arrangement within the 10-day period and had not registered the arrangement, they would be committing an offence under section 67(2) because they would be carrying out activities under an unregistered foreign activity arrangement, even if the offence under 66(5) had not yet been committed.

Example (3): How the offence would apply in relation to example 3 under section 66

If the entrepreneur had not registered the arrangement with the MoS official, those individuals who are part of the entrepreneur’s UK network and approaching experts at the UK conference could be committing an offence. This would only be the case if the individuals knew, or ought reasonably to have known when considering other matters known to them, that their recruitment activities had originated from a direction of an MoS official.

Section 68: Requirement to register relevant activities of specified persons

464 Section 68 provides a second set of ‘enhanced tier’ registration requirements under FIRS. The combined effect of sections 65-67 is to provide greater assurance around activities which are directed by, or carried out by, specified persons. Section 68 focusses on activities conducted by specified persons themselves, rather those that they are directing through an arrangement that would need to be registered under section 65. Specified persons who are foreign powers are not required to register their activities, unless a misrepresentation is made.

465 Subsection (1) provides that specified persons who are not foreign powers must not carry out relevant activities in the UK unless they have registered them with the Secretary of State.

- 466 Subsection (2) extends the prohibition in subsection (1) to office-holders, employees and staff members of specified persons who are not foreign powers. It sets out that, when acting in their capacity as an employee or staff member, they must not carry out relevant activities in the UK unless the specified person has registered them with the Secretary of State.
- 467 Subsection (3) sets out similar, though distinct, prohibitions for office-holders, employees and staff members of specified persons who are foreign powers. It sets out that an employee etc. who is acting in that capacity must not carry out relevant activities in the UK if: (a) such activities involve the person making a misrepresentation about the activities or the capacity in which they act; and (b) the activities are not registered with the Secretary of State by the specified foreign power. This provision is designed to prevent undeclared foreign agents who are misrepresenting their identity, for example as a businessman rather than a foreign government employee, relying on the foreign power exemption from registration. A misrepresentation might include one made to a particular individual (for example, in the case of an individual lying about who they work for in an individual meeting), or more generally (for example, presenting themselves in a different capacity to their whole range of stakeholders). There is no general requirement for employees etc., or the specified foreign power, to register activities that do not involve a misrepresentation (see Schedule 15).
- 468 Subsection (4) provides that “relevant activities” in this section means all activities, unless regulations made under subsection (5) state otherwise. The requirement to register all activities by default will enable greater assurance about the full range of activities carried out by specified entities. The “relevant activities” for the purposes of this section can be different to the “relevant activities” of section 65; this allows registration requirements to be tailored. For example, the regulations may require specified entities to register a narrower range of “relevant activities” if they carry them out themselves, rather than if they direct someone else to carry them out. Subsection (5) provides that the Secretary of State may by regulations make provisions about the activities which are “relevant activities” for the purpose of this section. These provisions may be made in relation to specific specified persons, or in relation to all specified persons.
- 469 Subsection (6) provides that a misrepresentation is a representation that a reasonable person would consider to be false or misleading in a material way.
- 470 Subsection (7) provides that a misrepresentation may be made by making a false or misleading statement; or may also be made by any other kind of conduct, including an omission (for example, an individual failing to mention details which means they represent themselves in a misleading way). The subsection also provides that a misrepresentation may be made either explicitly or implicitly.
- 471 Subsection (8) sets out non-exhaustive circumstances that may constitute a misrepresentation. They include a misrepresentation as to the person’s identity or purpose; or the presentation of information in a way that amounts to a misrepresentation (even if some of the information is true).
- 472 Subsection (9) provides that those who breach the prohibitions at subsections (1) or (2) commit an offence.
- 473 Subsection (10) provides that those who breach the prohibition at subsection (3) commit an offence if the person knows, or having regard to other matters known to them ought reasonably to know, that they are making a misrepresentation about their activities or the capacity in which they act.
- 474 Subsection (11) provides a potential defence to the offences under subsections (9) and (10). This defence is available to a person who has taken all steps reasonably practicable to determine whether the activities in question are or are not registered, and having taken such steps, reasonably believes that they are registered.

475 Subsection (12) sets out that a person is considered to have shown a matter mentioned in subsection (11) if there is sufficient evidence to raise an issue with respect of it, and the contrary is not proved beyond reasonable doubt. It will be for a defendant to provide evidence that the defence applies, following which it will be for the prosecution to prove beyond reasonable doubt that the person did not take all reasonably practicable steps, or that they did not hold a reasonable belief that the activities were registered.

Example (1): Activities carried out by specified persons

A state-owned enterprise from a foreign country has been specified by the Secretary of State in order to protect the safety and interests of the UK.

The UK-based office of that state-owned enterprise launches a marketing campaign to sell its products to UK consumers. The state-owned enterprise is required to register this campaign prior to carrying it out.

Example (2): Activities carried out by a specified foreign power involving the making of a misrepresentation

The Ministry of Foreign Affairs of a foreign country has been specified by the Secretary of State in order to protect the safety and interests of the UK.

An official of the Ministry of Foreign Affairs falsely presents himself as a senior consultant within the oil and gas industry. He sets up a LinkedIn account with this as his job title and distributes business cards accordingly. He uses this misrepresentation to gain access to a wide range of contacts within the industry and is subsequently invited to make a speech at a conference on the use of fossil fuels. He does not register this activity.

Whilst foreign powers and employees are exempt from registering their own activity, as the official of the Ministry of Foreign Affairs is seeking to hide the foreign agency involvement by misrepresenting the capacity in which he is acting, he is not permitted to use the exemptions for foreign powers and employees and risks prosecution for failing to register any UK activity that involve this misrepresentation, including the speech at the conference.

Section 69: Requirement to register foreign influence arrangements

476 Sections 69-72 relate to the political influence tier of the Foreign Influence Registration Scheme.

477 Section 69 provides a requirement to register a “foreign influence arrangement” made with a foreign power.

478 Subsection (1) provides the meaning of a “foreign influence arrangement”. It is an agreement or arrangement between a person, “P”, and a foreign power under which a foreign power directs “P” to carry out political influence activities in the UK, or arrange for others to carry out political influence activities in the UK. Activities in the UK will, for example, include where communication is sent from overseas to the UK, as well as activities which take place entirely in the UK.

479 “Directs” is not defined in the legislation. However, the natural meaning of “direction” is an order or instruction to act. This could be delivered in the language of a request, but only where there is a power relationship between the person and the specified person which adds an element of control or expectation to the request; for example through a contract, payment, coercion or the promise of a future compensation or favourable treatment.

These Explanatory Notes relate to the National Security Act 2023 which received Royal Assent on 11 July 2023 (c. 32).

480 Subsection (2) provides that if a foreign power is a specified person, an arrangement is not a foreign influence arrangement to the extent that it relates to political influence activities that are relevant activities for the purposes of section 65. In effect, this means that where, or to the extent that, an arrangement is registerable under the requirements of section 65, it is not required to be registered under section 69 as well.

481 Subsection (3) provides that where P makes a foreign influence arrangement, they must register the arrangement within 28 days, beginning with the day on which the arrangement is made. For example, if an arrangement is made on 1st January, it must be registered on or before 28th January. The registration requirements fall upon “P”, irrespective of whether P carries out the political influence activities, or arranges for others to carry out the activities. P can be an individual or an entity and the requirement to register applies regardless of nationality or where the entity is incorporated or based: the key factor is whether the activities are to be carried out in the UK.

482 In contrast to the position under the enhanced tier, political influence activities may be carried out during the 28-day registration period even if the arrangement has not yet been registered (see section 71).

483 Subsection (4) applies subsection (3) to pre-existing foreign influence arrangements which continue to have effect after the requirements of subsection (3) come into force; but amends the time period in which registration of these arrangements is required. Pre-existing arrangements must be registered within 3 months of section 69 coming into force. This provides individuals and organisations with a 3-month grace period to register pre-existing arrangements.

484 Subsection (5) makes it an offence for P to fail to register a foreign influence arrangement where P knows or, having regard to other matters known to them, ought reasonably to have known, that the arrangement is a “foreign influence arrangement”. This knowledge test ensures that where a person is not aware, or could not have reasonably known, that their arrangement is with a foreign power, they are not guilty of an offence for failing to register it. Penalties for offences in this part are set out at section 80.

Section 70: Meaning of “political influence activity”

485 Section 70 defines “political influence activity”.

486 Subsections (1) provides that an activity is political influence activity if it meets both of two conditions: (a) it is of a type of activity that is listed in subsection (2); and (b) the purpose, or one of the purposes, for which it is carried out is to influence a matter (for example, a decision), or a person, listed within subsection (3).

487 Subsection (2) lists activities that are capable of being “political influence activity”. These activities are: (a) making a communication to an individual in a role that is listed in Schedule 14; (b) making a public communication, except where it is reasonably clear from the communication that it is made by or at the direction of a foreign power; or (c) distributing money, goods or services to UK persons. Subsection (5) provides that the term ‘UK person’ has the same meaning as given by section 2(6).

488 Subsection (3) lists the matters and persons that the activity must seek to influence in order to be “political influence activity”. The matters or persons are any of the following: a) an election or referendum in the UK (such as the outcome of a general election); b) a decision of a Minister of the Crown (as defined in the Ministers of the Crown Act 1975), a UK government department, a Northern Ireland Minister or department, the Scottish Ministers, or the Welsh Ministers; c) the proceedings of a UK registered political party (such as their manifesto commitments); or d) a Member of either House of Parliament, the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru when acting in their capacity as such. Activities which seek to influence these individuals in their personal capacity are not considered political influence activities.

489 Subsection (4) sets out that the publication or dissemination of information, a document or other article, or production of the same for publication or dissemination, constitutes “making a public communication” under subsection (2).

490 Subsection (5) defines a “Northern Ireland minister”, “UK person”, “UK registered political party” and “Welsh minister”, for the purposes of this section.

Example (1): Establishment of a foreign influence arrangement (communication)

A diplomat posted at a UK-based embassy of a foreign government makes contact with a well-established consultant, who has a wide range of senior contacts within the UK Civil Service. The diplomat hosts the consultant at a reception at the ambassador’s residence, and asks him to present a case to senior civil servants for nationals of the foreign country to be granted visa-free status to visit the UK. In return he offers an invitation to attend an all-expenses-paid conference organised by his country’s government, helping the consultant to build his profile among high-ranking businessmen in that country.

The consultant sends an email to a senior civil servant within the Home Office setting out the case for visa-free status for nationals of the foreign country and arranges a follow-up meeting.

The consultant (“P”) would be required to register his arrangement with the diplomat (the direction to communicate with senior civil servants to influence the decision of a UK government department) within 28-days, as it involves political influence activities to be carried out at the direction of a foreign power.

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

A UK-based lobby firm enters into a contract with a government department from a foreign country, which hopes to persuade the UK government to impose tougher regulation on the fossil fuel industry.

As part of the contract, the lobby firm is directed by the foreign government department to prepare and publish articles which outline loopholes in an environment focussed Bill which is currently being considered by Parliament. They make suggestions for amendments which MPs should table, and clauses in which MPs should vote against the government.

As the lobby firm (“P”) is making public communications at the direction of a foreign power in order to influence MPs, they would be required to register the arrangement (the direction to make public communications to influence MPs) within 28 days of entering into the contract with the foreign government department.

Example (3): Establishment of a foreign influence arrangement (disbursement)

An entrepreneur in the UK is contacted by the Foreign Affairs Office of a foreign country and asked to leverage relationships to influence legislation on trade matters which will affect investment from the foreign country in the UK. The Foreign Affairs Office offer him substantial amounts of money for doing so, which he invests into the construction of a new cultural centre, which has been a long-standing ambition of the local MP. The entrepreneur intends that, by doing so, he will nurture a relationship with the MP in order to influence voting on the matters which concern the foreign country in the legislation, in line with the direction given by the foreign power.

As the entrepreneur (“P”) is carrying out disbursement activities in response to a direction from a foreign power to influence an MP, P is required to register the arrangement (the direction to leverage relationships to influence an MP).

Example (4): Registration not required

The UK-based embassy of a foreign country contracts a conference facilitator to organise an event with UK businesses in the financial services industry in order to discuss how to prevent future financial crises.

The conference facilitator organises the event, providing networking facilities and catering services to UK businesses.

Whilst the conference facilitator is providing services to UK businesses at the direction of a foreign power, it is not intended to influence a matter which would trigger a registration requirement, and therefore does not require registration.

Example (5): Registration not required

A state-owned enterprise, which is 25% funded by a foreign government, attends a conference in the UK, which is attended by UK ministers and special advisers. At the conference, the state-owned enterprise speaks to a UK Minister and highlights an issue in UK regulation which adversely impacting the enterprise. Whilst the company is carrying out a political influence activity, it is not doing so at the direction of a foreign power and is therefore not required to register. Being state-owned, or partially funded, by a foreign government does not in itself indicate a direction by a foreign power.

Schedule 14: Public officials

491 This Schedule lists the types of public officials, communications to whom would be in scope of section 70(2)(a).

492 Paragraphs 1-4 sets out that a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975), a Northern Ireland Minister (within the meaning of section 70), a Scottish Minister, or a Welsh Minister (within the meaning of section 70) are in scope of section 70(2)(a).

493 Paragraphs 5-9 sets out that members of either House of Parliament, the Northern Ireland Assembly, the Scottish Parliament, the Senedd Cymru or an employee or staff member of one of these members, are in scope of section 70(2)(a).

494 Paragraphs 10-11 set out that the Mayor of London or a Mayor of a combined authority area (as established by section 103 of the Local Democracy, Economic Development and Construction Act 2009) are in scope of section 70(2)(a).

495 Paragraphs 12-13 sets out that officers, trustees or agents of UK registered political parties, or members who exercise executive functions on behalf of the party, are in scope of section 70(2)(a).

496 Paragraphs 14-15 set out that candidates at an election for a relevant elective office, or candidates at an election for a relevant Scottish elective office (within the meaning of section 37 of the Elections Act 2022) are in scope of section 70(2)(a).

497 Paragraph 16(1) sets out that members of the Senior Civil Service, the Northern Ireland Senior Civil Service and the Senior Management Structure of His Majesty's Diplomatic Service are in scope of section 70(2)(a).

498 Paragraph 16(2) sets out that special advisers are in scope of section 70(2)(a), where they serve the government in a position in the civil service of the State, and where their appointment meets the requirements applicable to that position that are set out in section 15(1) of the Constitutional Reform and Governance Act 2010.

- 499 Paragraph 16(3) sets out that special advisers of the Northern Ireland Civil Service (having been appointed by a Northern Ireland Minister – within the meaning provided by section 70(5) are in scope of section 70(2)(a), where their appointment 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.)).
- 500 Paragraph 17 sets out that officers subject to service law (as defined in section 374 of the Armed Forces Act 2006) who are of or above the rank of commodore, brigadier or air commodore, are in scope of section 70(2)(a).
- 501 Paragraphs 18-26 set out the types of police personnel who are in scope of section 70(2)(a). These include chief constables of a police force maintained under section 2 of the Police Act 1996, police and crime commissioners, the Commissioner, Deputy Commissioner, Assistant Commissioner or Deputy Assistant Commissioner of the Police of the Metropolis, the Commissioner or Assistant Commissioner of Police for the City of London, and the chief constables or deputy chief constables of the Police Service of Northern Ireland, Police Service of Scotland, Ministry of Defence Police, British Transport Police Force and the Civil Nuclear Constabulary.
- 502 Paragraph 27(1) provides the Secretary of State with a power to make regulations listing further individuals exercising public functions, communications to whom would be in scope of section 70(2)(a). Paragraph 27(2) clarifies that “public functions” means functions of a public nature exercisable in the United Kingdom, or outside of the United Kingdom by a person acting for or on behalf of, or holding office under, the Crown.

Section 71: Offence of carrying out etc political influence activities pursuant to unregistered foreign influence arrangement

- 503 Section 71 provides offences for those who carry out, or arrange for others to carry out, activities pursuant to unregistered foreign influence arrangements. These complement the offence imposed by section 69(5), which relates to failure to comply with registration requirements.
- 504 Subsection (1) sets out the circumstances in which the section applies: where a person (“P”) makes a foreign influence arrangement that is required to be registered under section 69(3).
- 505 Subsections (2) and (3) provide that an offence is committed if a person carries out an activity, or arranges for others to carry out an activity, pursuant to an unregistered foreign influence arrangement, after the registration period (see subsection (4) for the meaning of registration period) has ended.
- 506 The offence is committed if the person knows, or having regard to other matters known to them ought reasonably to know, that they are acting pursuant to a “foreign influence arrangement”. This knowledge test ensures that where a person is not aware, or could not reasonably have known, that their arrangement is with a foreign power they are not guilty of an offence. Subsection (2) applies in relation to “P” (i.e. the person who has made the foreign influence arrangement) and subsection (3) applies in relation to any other person (for example, a person whom P has tasked to arrange for other persons to carry out political influence activities).
- 507 Subsection (4) sets the meaning of “registration period” by referring to sections 69(3) and (4). As set out above, in circumstances where a new arrangement is made after the requirements have come into force, this registration period is 28 days, beginning on the day on which the arrangement is made. In circumstances where an arrangement was made prior to the requirements coming into force and continues to have effect, the registration period is 3 months, beginning on the day on which the requirements come into force.
- 508 Subsection (5) provides a potential defence to the offence under subsection (3). This defence is available to a person who has taken all steps reasonably practicable to determine whether the activities in question are or are not registered, and having taken such steps, reasonably believes that they are registered.

509 The defence is not available in respect of the subsection (2) offence, because P will know whether or not they have registered the arrangement.

510 Subsection (6) sets out that a person is considered to have shown a matter mentioned in subsection (5) if there is sufficient evidence to raise an issue with respect of it, and the contrary is not proved beyond reasonable doubt. It will be for a defendant to provide evidence that the defence applies, following which it will be for the prosecution to prove beyond reasonable doubt that the person did not take all reasonably practicable steps, or that they did not hold a reasonable belief that the arrangement was registered.

Example (1): How the offence would apply in relation to example 1 under section 70

If the consultant were to make communications to the senior civil servants after the 28-day registration period without first registering the arrangement, they would be committing an offence.

During the 28-day registration window, these communications may take place without prior registration (the political Influence tier differs from the enhanced tier in this respect). However, the consultant will still have to register the arrangement with the foreign power (the diplomat) within 28 days, and may be required to provide details about the communications that took place prior to registration (see section 74(3)).

Example (2): How the offence would apply in relation to example 2 under section 70

If the lobby firm were to publish the articles (or carry out other registrable activity) after the 28-day registration window without complying with registration requirements, they would be committing an offence.

During the 28-day registration window, these articles may be published without prior registration. However, the lobby firm will still have to register the arrangement with the foreign government department within 28 days, and may be required to provide details about the political influence activities that took place prior to registration.

Example (3): How the offence would apply in relation to example 3 under section 70

If the entrepreneur were to invest the money into the construction of the cultural centre without registering within 28 days of the arrangement being made, they would commit an offence.

The investment and construction project may commence during the 28-day registration period without requiring prior registration. However, the entrepreneur would still have to register their arrangement with the Foreign Affairs Office within 28 days, and may be required to provide details of any parts of the project which had been completed during the registration window.

Section 72: Requirement to register political influence activities of foreign powers

511 Section 72 provides a second set of 'political influence tier' registration requirements. The combined effect of sections 69-72 is to ensure transparency around political influence activities carried out for foreign powers. Section 72 focusses on certain circumstances where political influence activities are conducted by foreign powers themselves, rather those that they are directing through an arrangement that would need to be registered under section 69.

512 Section 72 provides requirements for foreign powers to register political influence activities which they conduct themselves in certain specified circumstances.

- 513 Subsection (1) provides that employees or staff members of foreign powers, when acting in their capacity as such, must not carry out unregistered political influence activities in the UK while making a misrepresentation about the activities or the capacity in which they act. This provision is designed to prevent undeclared foreign agents who are misrepresenting their identity, for example as a businessman rather than a foreign government employee, relying on the foreign power exemption from registration. A misrepresentation might include one made to a particular individual (for example, in the case of an individual lying about who they work for in an individual meeting), or more generally (for example, presenting themselves in a different capacity to their whole range of stakeholders). There is no general requirement for employees etc., or the specified foreign power, to register activities that do not involve a misrepresentation (see Schedule 15).
- 514 Subsection (2) provides that if the foreign power is a specified person and the political influence activities constitute relevant activities under section 68, the prohibition in subsection (1) does not apply. In these circumstances, a person would only be required to comply with the provisions of section 68.
- 515 Subsection (3) provides that a misrepresentation is a representation that a reasonable person would consider to be false or misleading in a material way.
- 516 Subsection (4) provides that a misrepresentation could be made by making a false or misleading statement (for example, an individual lying about who they work for). It could also be made by any other kind of conduct, including an omission (for example, an individual failing to mention details which means they represent themselves in a misleading way). The subsection clarifies that this misrepresentation may be made either explicitly or implicitly.
- 517 Subsection (5) sets out some illustrative examples of actions that may constitute a misrepresentation. They include where an individual misrepresents their identity or purpose, or where they present information in a way that amounts to a misrepresentation (even if some of the information is true).
- 518 Subsection (6) provides that a person who breaches the prohibition at subsection (1) commits an offence if the person knows, or having regard to other matters known to them ought reasonably to know, that they are making a misrepresentation about their activities or the capacity in which they act.
- 519 Subsection (7) provides a potential defence to the offence under subsection (6). This defence is available to a person who has taken all steps reasonably practicable to determine whether the activities in question are or are not registered, and having taken such steps, reasonably believes that they are registered.
- 520 Subsection (8) provides that a person is considered to have shown a matter mentioned in subsection (7) if there is sufficient evidence to raise an issue with respect of it, and the contrary is not proved beyond reasonable doubt. It will be for a defendant to provide evidence that the defence applies, following which it will be for the prosecution to prove beyond reasonable doubt that the person did not take all reasonably practicable steps, or that they did not hold a reasonable belief that the activities were registered.

Example: Political influence activities carried out by a foreign power while making a misrepresentation

A government official of a foreign country visits the UK and presents himself as a leading academic in the field of artificial intelligence (AI). He approaches an MP's office and introduces himself using this misrepresentation.

The foreign official meets with the MP in order to discuss the UK's approach to AI regulation and seeks to persuade them to introduce a Private Members' Bill on the issue. He does not register this activity.

Whilst foreign powers are exempt from registering their own activity, as the official is carrying out political influence activities while acting under a misrepresentation and seeking to advance the foreign government's interests, they risk prosecution for failure to register the political influence activity.

Section 73: Exemptions

521 Section 73 introduces Schedule 15 (Exemptions) which makes provision for certain exemptions to the requirements imposed by Part 4.

Schedule 15: Exemptions

UK arrangements and agreements

522 Paragraph 1(1) provides that the requirements to register a foreign activity arrangement or foreign influence arrangement do not apply where the arrangement is a UK arrangement. This exemption seeks to ensure that the registration requirements do not disrupt routine activity involving the UK government where the links to foreign powers or specified persons will already be transparent.

523 Paragraph 1(2) provides that the provisions of sections 68(1)-(3) and 72(1) do not apply where activities are carried out as part of a UK arrangement or UK agreement.

524 Paragraph 1(3) defines what a UK arrangement means for the purposes of paragraph 1(1) and (2).

Example: 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 Government Ministers. This might, for example, involve discussing draft legislation, or a policy proposal related to climate change. In this situation 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.

Foreign powers

525 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 an unregistered foreign activity or foreign influence arrangement and the offence of carrying out activities tainted by false information.

526 This exemption (and those provided by paragraph 3) are designed to protect privileges and immunities which apply in international law as provided by, for example, the Vienna Conventions on Diplomatic and Consular Relations. They have also been designed to ensure that they do not interfere with the ability of the UK government to maintain bilateral or multilateral relationships with foreign powers.

Diplomatic missions etc

- 527 Paragraph 3(1) provides an exemption from the requirement to register a foreign activity arrangement with a specified person 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 the permanent mission to a UK-based international organisation of a country which is a member of the organisation.
- 528 Paragraph 3 gives the examples of the provision of catering or maintenance services as ones that intended to benefit from this exemption.
- 529 Paragraph 3(2) provides that the requirements to register a foreign activity arrangement or foreign influence arrangement do not apply where the person making the arrangement is a family member that forms part of the household of a principal person, and where they make an arrangement for the purpose of conducting activity that is related to activity carried out by the principal person 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 in the UK.
- 530 Paragraph 3(3) provides that "principal person" means a member of staff of a diplomatic mission, consular post, or the permanent mission to a UK-based international organisation of a country which is a member of the organisation.
- 531 Paragraph 3(4) provides that a member of the principal person's family, forming part of their household, includes their partner who is living with them in an enduring family relationship. This is to acknowledge the contribution to the functioning of the mission that can be provided by unmarried partners.
- 532 Paragraph 3(5) provides the definition of "member of staff" for these purposes. These are defined by reference to the Vienna Convention on Diplomatic Relations.
- 533 Paragraph 3(6) defines the following terms that are used in paragraph 3; consular post, diplomatic mission and UK-based international organisation.

Example (1): 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 (depending on the nature of those activities).

Example (2): 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 her spouse will be exempt from registering the arrangement. The Ambassador is exempt as she is acting in her official capacity. The spouse will also be exempt from registration as the activity is connected to activity being carried out by the Ambassador in her official capacity.

Recognised news publishers

534 Paragraph 4(1) provides that a number of the registration requirements and prohibitions in the political influence tier (sections 69-72) do not apply to a recognised news publisher (see below for the definition of the term). These are: the requirement to register foreign influence arrangements, the offence of carrying out activities under unregistered foreign influence arrangements, and the offence of carrying out political influence activities tainted by false information. This exemption supports freedom of the press. This exemption does not extend to the enhanced tier (sections 65-68).

535 Similarly, paragraph 4(2) provides an additional exemption for persons who are not recognised news publishers, but who enter into arrangements that are news-related foreign influence arrangements (see below). As with paragraph 4(1), this exemption does not extend to the enhanced tier.

536 Paragraph 4(3) defines a news-related foreign influence arrangement.

537 Paragraph 5(1) defines “recognised news publisher”, for the purpose of paragraph 4. It specifies that a recognised news publisher is any of the following:

- a. The British Broadcasting Corporation;
- b. Sianel Pedwar Cymru;
- c. The holder of a licence under the Broadcasting Act 1990 or 1996 who publishes news-related material in connection with the broadcasting activities authorised under the licence; and
- d. Any other entity which (i) meets all of the conditions in subparagraph (2), and (ii) is not an excluded (see subparagraph (3)) or (iii) a sanctioned (see subparagraph (4)) entity.

538 Paragraph 5(2) set out the conditions that are referred to in subparagraph 1(d)(i). Where an entity meets all of these conditions, they are considered a recognised news publisher, unless they are an excluded or sanctioned entity.

539 Paragraph 5(3) sets out that an “excluded entity” is one which is proscribed under the Terrorism Act 2000, or one whose purpose is to support such a proscribed entity.

540 Paragraph 5(4) sets out that a “sanctioned entity” is one which is designated by name through regulation-making powers under Section 1 of the Sanctions and Anti-Money Laundering Act 2018, which authorise the Secretary of State or the Treasury to designate persons for the purposes of the regulations or of any provisions of the regulations. It also includes a person designated under any provision in such regulations by virtue of section 13 of the Sanctions and Anti-Money Laundering Act 2018 (persons named by or under UN Security Council Resolutions).

541 Paragraph 5(5)(a) sets out the circumstances in which news-related material is “subject to editorial control”, for the purpose of subparagraph 5(2).

542 Paragraph 5(5)(b) sets out the meaning of “control”, for the purpose of subparagraph 5(5)(a).

543 Paragraph 5(6) defines “news-related material”, “publish” and “standards code”.

Legal activities

544 Paragraph 6(1) provides 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 out of legal activity by a lawyer (the meaning of “legal activity” and of “lawyer” are discussed below). This exemption ensures that confidentiality of legal advice and representation are upheld, which may in turn support fundamental rights such as the right to a fair trial. Where a lawyer forms an arrangement for the purpose of carrying out other non-legal activities, they do not benefit from this exemption and may still be subject to registration requirements.

545 Paragraph 6(2) disapplies the prohibition on specified persons carrying out unregistered activities and foreign powers carrying out unregistered political influence activities (see sections 68(1) to (3) and 72(1) for the relevant prohibitions) to the carrying on of legal activity by a lawyer. The relevant prohibitions still apply to lawyers if they carry out other non-legal activities pursuant to an arrangement which is required to be registered.

546 Paragraph 6(3) defines a lawyer for the purpose of paragraph 6(2).

547 Paragraph 6(4) defines legal activity for the purpose of paragraph 6(2).

Example: An arrangement which relates to the provision of legal services

A UK-based law firm makes an arrangement with a specified foreign entity to provide legal representation in a case against a department of the UK government. No modifications are stipulated in regulations as to the types of activity requiring registration, and thus all activities conducted pursuant to this arrangement would ordinarily require registration.

However, as the arrangement relates to the provision of legal services by a lawyer, the UK law firm would not need to register this arrangement.

Employees etc

548 Paragraph 7(1) provides that where an exemption is conferred on a Person (“P”), the following persons also benefit from that exemption: a person who holds office under P, a person who is an employee or other member of staff of P, or a person the Secretary of State reasonably considers to be exercising functions on behalf of P. This exemption ensures that employees and staff members benefit from the same exemptions as the entities for whom they work.

549 Paragraph 7(2) clarifies that where the person makes a misrepresentation about their activities or the capacity in which they are acting, and “P” is a foreign power, the person does not benefit from the exemption provided by paragraph 7(1)(a) (i.e. and therefore do not benefit from any exemption that is available to P).

550 Paragraph 7(3) provides that a misrepresentation is a representation that a reasonable person would consider to be false or misleading in a material way.

551 Paragraph 7(4) provides that a misrepresentation could be made by making a false or misleading statement. It could also be made by any other kind of conduct, including an omission (for example, an individual failing to mention details which means they represent themselves in a misleading way). The subsection sets out that this misrepresentation may be made either explicitly or implicitly.

552 Paragraph 7(5) sets some illustrative examples of actions that may constitute a misrepresentation. They include a misrepresentation as to the person’s identity or purpose, or presenting information in a way that amounts to a misrepresentation (even if some of the information is true).

553 Paragraph 8 gives the Secretary of the State the power to create further exemptions to any part of the Scheme, by regulation.

Section 74: Registration information

554 Section 74 concerns the information which registrants must provide under the scheme.

555 Subsection (1) provides that the Secretary of State may make regulations about the information required from a person when registering under a requirement imposed by Part 4.

556 Subsection (2) clarifies 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. For example, where “P” arranges for another person to carry out activities pursuant to their arrangement with a foreign power or specified person, regulations may require details of the arrangement between “P” and that other person (for example, details of the relationship between the two persons).

557 Subsection (3) provides that regulations may require a person to provide information about political influence activities which took place pursuant to a foreign influence arrangement during the registration period.

558 Subsection (4) clarifies that “registration period” has the same meaning as section 71.

559 Subsection (5) provides a requirement to notify the Secretary of State where there is a material change to any information provided during registration, or in response to 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 material change taking effect. This is to ensure the integrity of the registration scheme and prevent information from becoming false or misleading. A material change could include, for example, a change in the activities carried out under an arrangement, a change in the person carrying out those activities or a change in the form of an arrangement.

560 Subsection (6) provides the Secretary of State with a power to make regulations about the information which must be provided under subsection (5). It also provides that the Secretary of State may also issue guidance on what may or may not constitute a ‘material change’ under subsection (5).

561 Subsection (7) provides that regulations made under this section may include provisions about the form in which the information is to be provided.

562 Subsection (8) provides an offence for failing to comply with the information requirement imposed by subsection (5), where, as a result of that failure, the information provided to the Secretary of State is false, inaccurate, or misleading in a material way.

Section 75: Information notices

563 Subsection (1) provides the Secretary of State with the power to issue an information notice to a number of different persons under the enhanced tier of the scheme. These persons are as follows:

- 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 the Secretary of State reasonably believes is carrying out relevant activities, or arranging for others to carry out these activities, pursuant to a foreign activity arrangement which is required to be, but is not, registered;

- d. a person (who is a specified person) who has registered relevant activities they are to carry out in the United Kingdom;
- e. a person the Secretary of State reasonably believes to be carrying out activities registered under section 68; or
- f. a person (who is a specified person) the Secretary of State reasonably believes to be carrying out activities in the United Kingdom in breach of a prohibition under section 68.

564 Subsection (2) provides the Secretary of State with the power to issue an information notice to a number of different persons under the political influence tier of the scheme. These persons are:

- 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 the Secretary of State reasonably believes is carrying out political influence activities, or arranging for others to carry out these activities, pursuant to a foreign influence arrangement (whether it is registered or not);
- d. a person (who is a foreign power) who has registered political influence activities;
- e. a person the Secretary of State reasonably believes to be carrying out activities registered under section 72; or
- f. a person the Secretary of State reasonably believes to be carrying out political influence activities in the United Kingdom in breach of a prohibition under section 72.

565 Subsection (3) sets out 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.

566 Subsection (4) sets out that an information notice may only require information which the Secretary of State considers is relevant to an arrangement or activity under subsections (1) and (2).

567 Subsection (5) 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.

568 Subsection (6) provides 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.

569 Subsection (7) provides the Secretary of State with the power to make regulations about the minimum period of time given to respond to a notice, other matters which may be specified in a notice or about the cancellation of notices.

570 Subsection (8) provides 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 due to serious illness.

571 Subsection (9) prohibits the Secretary of State from being able to give an information notice to a foreign power.

572 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 69

A UK company registers a foreign influence arrangement concerning political influence activities to be carried out at the direction of a foreign power. 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 a prohibition

An individual works at a consultancy firm established in a foreign country. They visit the UK and meet with a group of parliamentarians to discuss upcoming legislation, seeking to encourage them to oppose it.

Information received by the scheme management unit suggests that the individual's consultancy firm has entered into a contract with a foreign government, which has long been opposed to the legislation.

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

Section 76: Confidential Information

573 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 does not interfere with this important right.

574 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.

575 Subsection (3) sets out that "confidential journalistic material", and "source of journalistic information", have the meaning provided by the Investigatory Powers Act 2016.

Section 77: Offence of Providing False Information

576 This section creates an offence of providing false or misleading information as part of registration 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.

577 Subsection (1) makes it an offence for a person to provide information to the Secretary of State under sections 74 (registration of information) or 75 (information notices), which relate to a foreign activity arrangement, and is false, misleading or inaccurate in a material way. This could be the case if, for example, a registrant only referred to one type of activity in their registration, when in fact they were carrying out multiple types of activities under their arrangement).

578 Subsection (2) makes it an offence for a person to provide information to the Secretary of State under sections 74 (registration information) or 75 (information notices), which relate to the requirement to register activities of specified persons, and is false, inaccurate or misleading in a material way.

579 Subsection (3) makes it an offence for a person to provide information to the Secretary of State under sections 74 (registration information) or 75 (information notices), which relate to a foreign influence arrangement, where the person knows, or having regard to other matters known to them ought reasonably to know, that the information is false, inaccurate, or misleading in a material way.

580 Subsection (4) makes it an offence for a person to provide information to the Secretary of State under sections 74 (registration information) or 75 (information notices), which relate to the requirement to register political influence activities of foreign powers, where the person knows, or having regard to other matters known to them ought reasonably to know, that the information is false, inaccurate or misleading in a material way.

Section 78: Offence of carrying out activities under arrangements tainted by false information

581 Section 78 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.

582 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 65(4) (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, and the person knows, or having regard to other matters known to them ought reasonably to know, that the information provided is false, inaccurate or misleading in a material way.

583 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 69(4) (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, and the person knows, or having regard to other matters known to them ought reasonably to know, that the information provided is false, inaccurate or misleading in a material way.

Example (1): How the offence would apply in relation to example 1 under section 66

If the company had registered the arrangement with the foreign government officials using tainted or false information, employees of the company 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 when considering other matters known to them, that the arrangement with the foreign country had been registered with false information.

Section 79: Publication and disclosure of information

584 Section 79 provides that the Secretary of State may make regulations to provide for the publication (subsection (1)(a)) or disclosure (subsection (1)(b)) of information provided in compliance with FIRS obligations (either when registering or responding to an information notice). Subsection (2) sets out that the power under subsection (1) includes the power to describe information or material which is not to be published.

585 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.

Section 80: Offences – Penalties

586 Section 80 establishes the penalties for offences under FIRS.

587 Subsection (1) sets out the maximum penalties for a foreign activity offence. On indictment, the maximum penalty is a term of imprisonment not exceeding 5 years or a fine (or both). On summary conviction in England and Wales, the maximum penalty is the maximum term for summary offences or a fine (or both). On summary conviction in Northern Ireland, the maximum penalty is imprisonment for a term not exceeding 6 months or to a fine (or both). On summary conviction in Scotland the maximum penalty is a term of imprisonment of 12 months or a fine on (or both). The penalties reflect the seriousness of a person's conduct in seeking to hide or obfuscate arrangements or activities carried out at the direction of a foreign power or foreign power-controlled entity which the Secretary of State has identified as necessary to specify in order to protect the safety or interests of the state.

588 Subsection (2) defines a "foreign activity offence", which includes any offence relating to the enhanced tier of the scheme.

589 Subsection (3) sets out the maximum penalties a foreign influence offence. On indictment, the maximum penalty is a term of imprisonment not exceeding 2 years or a fine (or both). On summary conviction in England and Wales, the maximum penalty is the maximum term for summary offences or a fine (or both). On summary conviction in Northern Ireland, the maximum penalty is imprisonment for a term not exceeding 6 months or to a fine (or both). On summary conviction in Scotland the maximum penalty is a term of imprisonment of 12 months or a fine on (or both).

590 Subsection (4) defines a "foreign influence offence", which includes any offence in relation to the political influence tier of the scheme.

Section 81: Offences – Supplementary Provision

591 Subsection (1) extends the application of section 35 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.

592 Under subsection (2) the application of section 36(1) and (3)-(5) 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 required time period. While the activity pursuant to the arrangement is to take place in the UK, the offence for failing to register can be committed overseas.

593 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.

Section 82: Annual Report

594 Section 82 requires the Secretary of State to lay an annual report before Parliament with details of the operation of FIRS from the previous year.

595 Subsection (1) sets out 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.

596 Subsection (2) sets out the details which must be provided in this report.

597 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.

Section 83: Interpretation

598 Subsection (1) defines a variety of terms used throughout this Part of the Act.

599 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. This means that the Republic of Ireland (or an entity controlled by 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 a foreign power within the Republic of Ireland to carry out political influence activities, to register with FIRS.

600 Subsection (3) 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 5: Terrorism

Damages in national security proceedings

Section 85: National security proceedings

601 Under section 85, these provisions apply to proceedings that relate to national security and are brought against the Crown after Royal Assent, save for those brought under section 7(1)(a) of the Human Rights Act 1998.

602 Under section 85(2), proceedings relate to national security where evidence is presented or submissions are made relating to it, or where they relate to the use of investigatory or surveillance powers under the Regulation of Investigatory Powers Act 2000, or the use of similar powers overseas in the interests of national security. Proceedings also relate to national security where the evidence or submissions relate to the activities of the intelligence services in the United Kingdom or overseas, or activities of similar services overseas, or to the investigation or other activities in connection with terrorism offences or terrorism-related activity, whether in the United Kingdom or overseas.

Section 86: Duty to consider reduction in damages payable by the Crown

603 Section 86 establishes a duty on the court in such cases to determine the appropriate remedy by applying the national security factors set out therein.

604 Under section 86(1), that duty arises where, in these national security proceedings, the liability of the Crown to the claimant has been established, the court is otherwise entitled to award damages against it with respect to that liability, the Crown has made an application to the court for it to consider the national security factors and the court has not refused the application.

605 Those national security factors are set out in sections 86(3) and (4). Firstly, they require the court to consider whether the claimant has committed wrongdoing of a terrorist nature that has a connection to the conduct of the Crown complained of in the proceedings. Such wrongdoing is that which involves the commission of a terrorism offence or involves other terrorism-related activity.

606 Secondly, where those matters have been established, the court is required to consider the extent of the wrongdoing of the claimant, its connection to the conduct of the Crown complained of, the risk of harm the Crown sought to prevent or limit and any limitations on the Crown in doing so, such as the conduct having occurred overseas or being carried out in conjunction with a third party.

607 Under section 86(5), after the application of the national security factors, the court must consider whether it is appropriate to reduce the damages otherwise payable. The reduction may be to nil.

608 However, section 86(6) prevents the court considering a reduction in damages it would otherwise award under section 8 of the Human Rights Act 1998.

609 Section 86(7) makes it express that nothing in section 86 prevents the court from 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, their failure to mitigate any harm suffered, or their contribution to that harm, nor does it affect any other rules of law otherwise limiting the Crown's liability.

Section 87: Section 86: supplementary

610 Section 87 sets out specific procedural requirements. The application by the Crown under section 86(1) may be made any time before the final disposal of the proceedings and must set out, with reasons, the Crown's view of how the national security factors apply and the extent to which it considers the damages should be reduced as a consequence. That application must be made in accordance with rules of court.

611 Section 87(3) permits the court to reject the application if to admit it would cause unreasonable delay in the proceedings or unreasonable prejudice to another party to the proceedings.

Section 88: Sections 85 to 87: interpretation

612 Section 88 contains provisions on interpretation, including the meaning of "involvement in terrorism related activity", "intelligence service" and "terrorism offence".

Freezing and forfeiture of damages

Section 89: Damages at risk of being used for the purposes of terrorism

613 Section 89 and Schedule 16 make provision for a power for courts to make freezing and forfeiture orders in civil claims for damages where those damages are at risk of being used for the purposes of terrorism.

Schedule 16: Damages at risk of being used for the purposes of terrorism

614 Paragraph 1 of Schedule 16 provides that, on application by a Minister of the Crown in civil proceedings where an order for damages is made, the court may make a freezing order, freezing all or part of the damages. The court may only do so where there is a real risk that such damages would be used for the purposes of terrorism. Such an application may be made at any time

during the proceedings but no later than the expiry of the period permitted for appealing the damages order. If made after the damages order, the court may suspend that order pending determination of the application. Civil proceedings are defined as any proceedings that are not criminal or family proceedings.

615 A freezing order will require that the damages are paid into court, and not to the claimant, and remain there until the end of the freezing period. A freezing order will be for an initial period of two years.

616 Paragraph 2 of Schedule 16 permits the court, upon application by a Minister of the Crown before the freezing order has expired, to extend it for a further period of 2 years. For that extension the court must continue to 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 will remain in court until that application is determined.

617 Paragraph 3 of Schedule 16 provides a power for the court, on application by a Minister of the Crown before the expiry of the period of the extended freezing order, to make a forfeiture order, forfeiting the claimant's entitlement to all or part of the money subject to that freezing order. Where the period of extension of the freezing order expires before determination of the application for a forfeiture order, the money must remain in court until determination of that application. A forfeiture order may only be made if the court is satisfied that if the damages were paid to the claimant there would be a real risk that they will be used for terrorist purposes. Any money forfeited under a forfeiture order must be paid into the Consolidated Fund.

618 Paragraph 4 of Schedule 16 contains the interpretation provisions.

Legal aid

Section 90: Legal aid for individuals convicted of terrorism offences

619 This section 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.

620 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-G are met, then legal aid can be made available.

621 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; F) where the convicted terrorist qualifies for civil legal services in accordance with exceptional case funding scheme set out in section 10 of LASPO 2012; and G) where the convicted terrorist applies for specific civil legal services relating to domestic violence and housing where they were at any time in the five years preceding their application, or at any time after their application, victims of domestic violence, or are at risk of being victims of domestic violence.

622 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. In addition, subsection 90(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.

623 Subsection (4) amends section 12 of LASPO 2012. The effect of this is to allow the Lord Chancellor to make regulations relating to the making and withdrawal of legal aid determinations under the new section 9A, as can be done for determinations under section 9 and section 10 of LASPO 2012.

Section 91: Legal aid for individuals convicted of terrorism offences: data sharing

624 This section 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.

625 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.

626 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.

627 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.

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

Section 92: Legal aid in relation to terrorism prevention and investigation measures

629 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.

630 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.

631 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.

Amendments of Terrorism Act 2000

Section 93 and Schedule 17 Amendments of Terrorism Act 2000

632 This section introduces schedule 16, which makes amendments to the Terrorism Act 2000.

633 Paragraph 1(2) and (3) of Schedule 16 amends section 41 of the Terrorism Act 2000 which provides a power of arrest without a warrant of a person who is suspected of being a terrorist. The amendment means that time initially detained under a separate provision, as listed in new section 41(3A) and which includes the power of arrest under section 24 of the Police and Criminal Evidence Act 1984, will count towards the 'detention clock' if the individual is re-arrested under section 41.

634 Paragraph 1(4) and (5) amend section 41 of the Terrorism Act 2000 to make clear that the 'detention clock' does not start to run when an individual is arrested in hospital, provided they are not being questioned for the purposes of obtaining relevant evidence.

635 Paragraph 2(2) amends paragraph 3 of Schedule 5 to the Terrorism Act 2000 so that the power to search premises within a cordoned area can only be exercised in urgent cases. Finally, paragraphs 2(3) to (11) amend paragraph 5 of Schedule 5 to the Terrorism Act 2000 which provides a power for a police officer of at least the rank of superintendent to give authorisation for a search, which would otherwise require a search warrant, where the case is one of great emergency and immediate action is necessary. The amendments in this schedule create a requirement for judicial authorisation through a warrant if the police wish to retain confidential journalistic material seized during an urgent premises search.

Part 6: General Provisions

Section 93: Intelligence and Security Committee: memorandum of understanding

636 Section 93 creates a duty on the Prime Minister and the Intelligence and Security Committee to consider if any amendments to the Memorandum of Understanding between the Prime Minister and the Committee, as outlined in section 2 of the Justice and Security Act 2013, are required as a result of the changes arising out of the National Security Act. The consideration must commence within six months of the Act coming into force.

Section 94 and Schedule 18: Minor and consequential amendments

637 This section introduces schedule 18, which makes minor and consequential amendments to other legislation.

638 Paragraphs 1-3 of schedule 18 repeal the Official Secrets Acts 1911, 1920 and 1939.

639 Paragraph 4 provides for the amendments needed to the Police and Criminal Evidence Act 1984 (PACE) as a result of the provisions within section 21 and schedule 3. This paragraph amends PACE to make certain National Security Act 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 34(3)(a) of the National Security Act. Paragraph 5 provides for the equivalent amendments to the Police and Criminal Evidence (Northern Ireland) Order 1989.

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

641 It amends section 5(6) of that Act so that the offence of disclosing information obtained by espionage applies to the relevant offences in this legislation that replace the offence in section 1 of the 1911 Act.

642 The paragraph also provides that the search and seizure powers in schedule 2 to this Act 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.

643 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.

644 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.

645 Paragraph 9 amends the Modern Slavery Act 2015 to provide that the defence set out in section 45 of that Act is not available in the case of certain offences in this Act. Subsection (1) amends Schedule 4 of the Modern Slavery Act 2015 (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.

646 Paragraph 10 amends Schedule 3 to the Investigatory Powers Act 2016 (IPA). That schedule provides exemptions to section 56 of the IPA which excludes from legal proceedings any material that has come from interception or any material that suggests intercepted-related conduct has occurred. Schedule 3 to the IPA lists a number of exceptions to section 56. Paragraph 10(2) of this schedule adds an exception for proceedings under Part 2 of this Act (Prevention and Investigation Measures). Paragraph 10(3) adds the offences under sections 1, 3 and 12 and 19 (in relation to offences under section 1 and 12) of this Act to the list of offences to which section 56(1) of the IPA does not apply.

647 Paragraph 11 amends paragraph 62 of Schedule 3 to the Counter Terrorism and Border Security Act 2019, which currently provides for the operation of Schedule 3 of that Act to be reviewed by the Investigatory Powers Commissioner. Those powers will be covered by the independent reviewer appointed under Part 3 of the National Security Act. Therefore this paragraph removes the relevant provisions of paragraph 62 that cover reviews by the Investigatory Powers Commissioner.

Section 95: Power to make consequential amendments

648 This section 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 Act.

Section 96: Regulations

649 This section makes provision in relation to the powers to make regulations under the Act, including the parliamentary procedure required.

Section 97: Crown application

650 This section sets out that the Act binds the Crown, subject to the exception that the Crown itself cannot be criminally liable under this Act (although that does not affect the criminal liability of Crown servants).

Section 98: Extent in the United Kingdom

651 This section provides that the Act generally extends to the United Kingdom subject to section 100.

Section 99: Extent outside the United Kingdom

652 This section makes provision in relation to the extent of specified provisions of the Act outside the UK. Subsection (2) allows for an Order in Council to be made to extend provisions within the Act to the Sovereign Base Areas of Akrotiri and Dhekelia.

Section 100: Commencement

653 Other than those sections mentioned in section 100(2), this section provides for the Secretary of State to make regulations bringing the provisions of the Act into force on a certain day or different days.

Section 101: Transitional and saving provision

654 This section provides that the Secretary of State may, by regulations, make transitional or saving provision in connection with the coming into force of the Act.

Section 102: Short title

655 This section is self-explanatory.

656 Commencement.

Related documents

657 The following documents are relevant to the 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
- 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
- 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
- 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_Examining_Officers_and_Review_Officers_Sch3_print.pdf)
- Legal Aid, Sentencing and Punishment of Offender Act 2012: <https://www.legislation.gov.uk/ukpga/2012/10/schedule/1>

These Explanatory Notes relate to the National Security Act 2023 which received Royal Assent on 11 July 2023 (c. 32).

Annex A – Territorial Extent and application in the United Kingdom

658 The Act 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 Act 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?
Sections 1-18	Yes	Yes	Yes	Yes
Section 19	Yes	Yes	No	No
Section 20	No	No	No	Yes
Section 21	No	No	Yes	No
Section 22-29	Yes	Yes	Yes	Yes
Section 30	Yes	Yes	No	Yes
Section 31-36	Yes	Yes	Yes	Yes
Section 37	Yes	Yes	No	Yes
Section 38-60	Yes	Yes	Yes	Yes
Section 61	Yes	Yes	No	No
Section 62-88	Yes	Yes	Yes	Yes
Section 89-91	Yes	Yes	No	No
Section 92 - 102	Yes	Yes	Yes	Yes
Schedule 1	Yes	Yes	Yes	Yes
Schedule 2: Part 1	Yes	Yes	No	Yes
Schedule 2: Part 2	No	No	Yes	No
Schedule 3: Part 1	Yes	Yes	No	Yes
Schedule 3: Part 2	No	No	Yes	No
Schedule 4	Yes	Yes	Yes	Yes
Schedule 5	Yes	Yes	Yes	Yes
Schedule 6: Part 1	Yes	Yes	Yes	Yes
Schedule 6: Part 2	Yes	Yes	No	Yes

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Annex B - Hansard References

659 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	11 May 2022	Vol. [714] Col. [148-149]
Second Reading	06 June 2022	Vol. [715] Col. [568]
Public Bill Committee	07 July 2022	Vol. [NS Bill Public Committee] Col. [1 - 438]
Report and Third Reading	16 November 2022	Vol. [722] Col. [722 - 793]
<i>House of Lords</i>		
Introduction	17 November 2022	Vol. [825] Col. [1033]
Second Reading	06 December 2022	Vol. [826] Col. [108-158]
Grand Committee	19 December 2022 21 December 2022 11 January 2023 16 January 2023 18 January 2023	Vol. [826] Col. [1844 – 1871, 1892-1918, 1636 – 1690, 1439-1482, 1493-1514, 1143-1172, 1203-1216, 955-1018]
Report	01 March 2023	Vol. [828] Col. [298-344, 248-344]
Third Reading	13 March 2023	Vol. [828] Col. [1089-1095]
Commons Consideration of Lords Amendments	03 May 2023	Vol. [732] Col. [120-156]
Lords Consideration of Commons Amendments	21 June 2023	Vol. [831] Col. [226-252]
Commons Consideration of Lords Amendments		Vol. [735] Col. [97-116]
Lords Consideration of Commons Amendments	4 July 2023	Vol. [831] Col. [1124-1136]
Royal Assent	11 July 2023	House of Lords Vol. [831] Col. [1633]

These Explanatory Notes relate to the National Security Act 2023 which received Royal Assent on 11 July 2023 (c. 32).

Annex C - Progress of Bill Table

660 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 9	Clause 9	Clause 9	Clause 9	Clause 9	Clause 9
Section 10	Clause 10	Clause 10	Clause 10	Clause 10	Clause 10
Section 11	Clause 11	Clause 11	Clause 11	Clause 11	Clause 11
Section 12	Clause 12	Clause 12	Clause 12	Clause 12	Clause 12
Section 13	Clause 13	Clause 13	Clause 13	Clause 13	Clause 13
Section 14				Clause 14	Clause 14
Section 15				Clause 15	Clause 15
Section 16	Clause 14	Clause 14	Clause 14	Clause 16	Clause 16
Section 17		Clause 15	Clause 15	Clause 17	Clause 18
Section 18	Clause 15	Clause 16	Clause 16	Clause 18	Clause 19
Section 19	Clause 16	Clause 17	Clause 17	Clause 19	Clause 20
Section 20	Clause 17	Clause 18	Clause 18	Clause 20	Clause 21
Section 21	Clause 18	Clause 19	Clause 19	Clause 21	Clause 22
Section 22	Clause 19	Clause 20	Clause 20	Clause 22	Clause 23
Section 23	Clause 20	Clause 21	Clause 21	Clause 23	Clause 24
Section 24		Clause 22	Clause 22	Clause 24	Clause 25
Section 25		Clause 23	Clause 23	Clause 25	Clause 26
Section 26		Clause 24	Clause 24	Clause 26	Clause 27
Section 27	Clause 21	Clause 25	Clause 25	Clause 27	Clause 28
Section 28			Clause 26	Clause 28	Clause 29
Section 29	Clause 22	Clause 26	Clause 27	Clause 29	Clause 30
Section 30	Clause 23	Clause 27	Clause 28	Clause 30	Clause 31
Section 31	Clause 24	Clause 28	Clause 29	Clause 31	Clause 32
Section 32	Clause 25	Clause 29	Clause 30	Clause 31	Clause 33

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 33	Clause 26	Clause 30	Clause 31	Clause 32	Clause 34
Section 34	Clause 27	Clause 31	Clause 32	Clause 33	Clause 35
Section 35	Clause 28	Clause 32	Clause 33	Clause 34	Clause 36
Section 36	Clause 29	Clause 33	Clause 34	Clause 35	Clause 37
Section 37	Clause 30	Clause 34	Clause 35	Clause 36	Clause 38
Section 38	Clause 31	Clause 35	Clause 36	Clause 37	Clause 39
Section 39	Clause 32	Clause 36	Clause 37	Clause 38	Clause 40
Section 40	Clause 33	Clause 37	Clause 38	Clause 39	Clause 41
Section 41	Clause 34	Clause 38	Clause 39	Clause 41	Clause 42
Section 42	Clause 35	Clause 39	Clause 40	Clause 42	Clause 43
Section 43	Clause 36	Clause 40	Clause 41	Clause 43	Clause 44
Section 44	Clause 37	Clause 41	Clause 42	Clause 44	Clause 45
Section 45	Clause 38	Clause 42	Clause 43	Clause 45	Clause 46
Section 46	Clause 39	Clause 43	Clause 44	Clause 46	Clause 47
Section 47	Clause 40	Clause 44	Clause 45	Clause 47	Clause 48
Section 48	Clause 41	Clause 45	Clause 46	Clause 48	Clause 49
Section 49	Clause 42	Clause 46	Clause 47	Clause 49	Clause 50
Section 50	Clause 43	Clause 47	Clause 48	Clause 50	Clause 51
Section 51	Clause 44	Clause 48	Clause 49	Clause 51	Clause 52
Section 52	Clause 45	Clause 49	Clause 50	Clause 52	Clause 53
Section 53	Clause 46	Clause 50	Clause 51	Clause 53	Clause 54
Section 54	Clause 47	Clause 51	Clause 52	Clause 54	Clause 55
Section 55	Clause 48	Clause 52	Clause 53	Clause 55	Clause 56
Section 56	Clause 50	Clause 54	Clause 55	Clause 57	Clause 57
Section 57	Clause 51	Clause 55	Clause 56	Clause 58	Clause 58
Section 58	Clause 52	Clause 56	Clause 57	Clause 59	Clause 59
Section 59	Clause 53	Clause 57	Clause 58	Clause 60	Clause 60
Section 60	Clause 54	Clause 58	Clause 59	Clause 61	Clause 61
Section 61	Clause 55	Clause 59	Clause 60	Clause 62	Clause 62
Section 62	Clause 56	Clause 60	Clause 61	Clause 63	Clause 63
Section 63					Clause 64
Section 64					Clause 65
Section 65		Clause 61	Clause 62	Clause 64	Clause 66
Section 66			Clause 63	Clause 65	Clause 67

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 67		Clause 62	Clause 64	Clause 66	Clause 68
Section 68		Clause 63	Clause 65	Clause 67	Clause 69
Section 69		Clause 64	Clause 66	Clause 68	Clause 70
Section 70		Clause 65	Clause 68	Clause 70	Clause 71
Section 71		Clause 66	Clause 69	Clause 71	Clause 72
Section 72		Clause 67	Clause 70	Clause 72	Clause 73
Section 73		Clause 68	Clause 71	Clause 73	Clause 74
Section 74		Clause 69	Clause 72	Clause 74	Clause 75
Section 75		Clause 70	Clause 73	Clause 75	Clause 76
Section 76		Clause 71	Clause 74	Clause 76	Clause 77
Section 77		Clause 72	Clause 75	Clause 77	Clause 78
Section 78		Clause 73	Clause 76	Clause 78	Clause 79
Section 79		Clause 74	Clause 77	Clause 79	Clause 80
Section 80		Clause 75	Clause 78	Clause 80	Clause 81
Section 81		Clause 76	Clause 79	Clause 81	Clause 82
Section 82		Clause 77	Clause 80	Clause 82	Clause 83
Section 83		Clause 78	Clause 81	Clause 83	Clause 84
Section 84	Clause 57	Clause 79	Clause 82	Clause 84	Clause 85
Section 85	Clause 58	Clause 80	Clause 83	Clause 85	Clause 86
Section 86	Clause 59	Clause 81	Clause 84	Clause 86	Clause 87
Section 87	Clause 60	Clause 82	Clause 85	Clause 87	Clause 88
Section 88	Clause 61	Clause 83	Clause 86	Clause 88	Clause 89
Section 89	Clause 62	Clause 84	Clause 87	Clause 89	Clause 90
Section 90	Clause 63	Clause 85	Clause 88	Clause 90	Clause 91
Section 91	Clause 64	Clause 86	Clause 89	Clause 91	Clause 92
Section 92					Clause 93
Section 93					Clause 94
Section 94	Clause 65	Clause 87	Clause 90	Clause 92	Clause 95
Section 95	Clause 66	Clause 88	Clause 91	Clause 93	Clause 96
Section 96	Clause 67	Clause 89	Clause 92	Clause 94	Clause 97
Section 97	Clause 68	Clause 90	Clause 93	Clause 95	Clause 98
Section 98	Clause 69	Clause 91	Clause 94	Clause 96	Clause 99
Section 99	Clause 70	Clause 92	Clause 95	Clause 97	Clause 100
Section 100	Clause 71	Clause 93	Clause 96	Clause 98	Clause 101
Section 101	Clause 72	Clause 94	Clause 97	Clause 99	Clause 102

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 102	Clause 73	Clause 95	Clause 98	Clause 100	Clause 103
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3		Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4		Schedule 4	Schedule 4	Schedule 4	Schedule 4
Schedule 5		Schedule 5	Schedule 5	Schedule 5	Schedule 5
Schedule 6	Schedule 3	Schedule 6	Schedule 6	Schedule 6	Schedule 6
Schedule 7	Schedule 4	Schedule 7	Schedule 7	Schedule 7	Schedule 7
Schedule 8	Schedule 5	Schedule 8	Schedule 8	Schedule 8	Schedule 8
Schedule 9	Schedule 6	Schedule 9	Schedule 9	Schedule 9	Schedule 9
Schedule 10	Schedule 7	Schedule 10	Schedule 10	Schedule 10	Schedule 10
Schedule 11	Schedule 8	Schedule 11	Schedule 11	Schedule 11	Schedule 11
Schedule 12	Schedule 9	Schedule 12	Schedule 12	Schedule 12	Schedule 12
Schedule 13			Schedule 13	Schedule 13	Schedule 13
Schedule 14				Schedule 14	Schedule 14
Schedule 15			Schedule 14	Schedule 15	Schedule 15
Schedule 16	Schedule 10	Schedule 13	Schedule 15	Schedule 16	Schedule 16
Schedule 17					Schedule 17
Schedule 18	Schedule 11	Schedule 14	Schedule 16	Schedule 17	Schedule 18

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