

# NATIONAL SECURITY BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the National Security Bill as introduced in the House of Commons on 11 May 2022 (Bill 7).

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

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## Overview of the Bill

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

## Policy background

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

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

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

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

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

of the modern world. The existing legislation has a focus on espionage through more 'traditional' methods. Espionage is tackled by new offences in the Bill that are designed to capture modern methods of spying, and provide the ability to impose penalties reflecting the serious harm that can arise;

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

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

in Schedule 3 was modelled).

## Part 2 – Prevention and investigation measures

17 Part 2 provides for a new regime of state threats prevention and investigation measures (ST-PIMs) that may be imposed by the Secretary of State on individuals believed to be involved in state threat activity. Notwithstanding the range of offences and accompanying measures in Part 1, there will remain cases that cannot be prosecuted or otherwise disrupted. The Government anticipates such measures will be used sparingly and as a measure of last resort to mitigate the immediate threat an individual poses while they continue to be investigated. The proposed ST-PIMs framework largely replicates that of Terrorism Prevention and Investigation Measures (TPIMs Act 2011).

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

## Amendment to the Serious Crime Act 2007 (Part 1)

19 Clause 23 amends Schedule 4 of the SCA to disapply the offences of encouraging or assisting offences overseas when the activity is deemed necessary for the proper exercise of any function of an intelligence service or the armed forces. It will provide better protection to those discharging national security functions on behalf of Her Majesty's Government, to enable more effective joint working and to improve operational agility, all of which are essential to UKIC and MOD's work to counter threats to UK national security.

## Persons Connected With Terrorism: Damages And Legal Aid (Part 3)

### Damages – Quantum

20 Part 3 also introduces measures to require a court, in proceedings relating to national security where the Crown makes an application, to consider whether it is appropriate to reduce an award of damages to reflect relevant wrongdoing of the claimant of a terrorist nature.

21 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.

22 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.

23 The reform is not being pursued in relation to human rights claims, brought under Section 8 of the Human Rights Act 1998, as separate consideration is being given to the award of damages under that legislation as part of proposed wider human rights reforms which have been the subject of consultation.<sup>2</sup>

### Damages - Freezing and Forfeiture Orders

24 At present, when a claimant associated with terrorism makes a claim, including against UK

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

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.

- 25 Part 3 introduces measures to reduce the risk of court damages paid out in compensation being used to fund terrorist activities. The powers of a court will arise where it is established, on a balance of probabilities, that there is a real risk, established on the balance of probabilities, that the funds would be used to support terrorism.
- 26 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.
- 27 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

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

# Legal background

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

### Part 1 – Criminal offences

- 29 As set out in paragraph 16 the provisions in Part 1 of the Bill replace the existing offences in the Official Secrets Acts 1911, 1920 and 1939. The relevant parts of these Acts are as follows.
- 30 Section 1 of the Official Secrets Act 1911 creates three distinct offences:
- (1) Section 1(1)(a) – makes it an offence for a person, for any purpose prejudicial to the safety or interests of the state to approach, inspect, pass over, be in the neighbourhood of, or enter any prohibited place as that term is defined in the Act.
  - (2) Section 1(1)(b) – makes it an offence for a person for any purpose prejudicial to the safety or interests of the state to make any sketch, plan, model or note which is calculated to be, or might be, or is intended to be directly or indirectly useful to an enemy.
  - (3) Section 1(1)(c) – makes it an offence for a person for any purpose prejudicial to the safety or interests of the state to obtain, collect, record, publish, or communicate to any other person, any secret official code word, or pass word, or any sketch, plan, model, article, note, or other document or information which is calculated to be, or might be or is intended to be directly or indirectly useful to an enemy.
- 31 The maximum available penalty for this offence is 14 years. The territorial jurisdiction is limited to British citizens.
- 32 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.

- 33 First, it confirmed that the offence in section 1 was not limited to spying but could encompass other activity that fell within its different limbs including behaviour that might be characterised as sabotage. Second, the Lords considered the meaning of “purposes prejudicial to the safety or interests of the state”. On this point the judgment decided that the question to be considered was whether the defendants “immediate purpose” (here to prevent aircraft taking off) was prejudicial to the safety or interests of the state and that their long-term purpose or motivation (nuclear disarmament) was irrelevant. Third, the Lords considered the meaning of the term “safety or interests of the State” finding in summary that it meant the objects of state policy determined by the Crown on the advice of Ministers.
- 34 A number of the offences in Part 1 of the Bill are a modernisation of the different elements of the section 1 offence. Some incorporate a concept of “prejudice to the safety or interest of the UK” using the term “UK” for clarity but with the aim of building on the interpretation in *Chandler*.
- 35 Further, references to the term “enemy” have been removed, and the Bill instead focusses predominantly on activity that is for or on behalf of, or intended to benefit, a foreign power.
- 36 Section 3 of the Act provides a definition of prohibited place for the purposes of the espionage offence in section 1 of the Act. This aspect of the Act is replaced by regime set out in paragraph 16(b)
- 37 Section 7 of the Act provides for a number of offences that are collectively titled “harbouring spies”. A number of offences in the Bill address the relevant elements of this offences, including the offences of assisting a foreign intelligence service and the acts preparatory offence.
- 38 Section 9 of the Act provides a power of search and seizure in relation to investigations under any of the Official Secrets Acts. This provision is being repealed and replaced with modernised powers in clause 20.
- 39 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 provided by other statutory provisions or by the common law (e.g., section 1 of the Criminal Attempts Act 1981 or the provisions of the Serious Crime Act 2007 that provide the offence of assisting or encouraging other offences), and there is no need for specific provision to replace these aspects of the previous legislation.
- 40 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

- 41 The police powers clauses in Part 1 and related Schedules as referred to in paragraph 16(i) above are in part based on, and informed by, corresponding legislative provisions that give powers in respect of terrorism. These include:
- Arrest powers - Section 41 Terrorism Act 2000 (arrest without warrant).
  - Search and seizure powers - Schedule 5 Terrorism Act 2000 (terrorism investigations –

information). The provisions in this Bill replace the effect of the powers previously conferred by section 9 of the Official Secrets Act 1911, extended to a wider set of harmful activity.

- Detention powers - Schedule 8 Terrorism Act 2000 (Detention).

### Part 1 – Border Security

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

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

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

### Amendment to the Serious Crime Act 2007 (Part 2)

- 44 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.

### Persons Connected With Terrorism: Damages and Legal Aid (Part 3)

- 45 Damages in civil claims are payable pursuant to court orders to compensate for loss. Though all the relevant circumstances must be taken into account in quantification of those damages, prevention of terrorism involves unique factors and often the utilisation of special proceedings, such as closed material procedures under the Justice and Security Act 2013 and Part 82 of the Civil Procedure Rules 1998. Clauses 57 to 60 set out new specific procedures for the assessment of damages in national security proceedings against the Crown in.
- 46 There are also a variety of powers available to seize and forfeit terrorist property such as in section 1 of, and Schedule 1 to, the Anti-terrorism, Crime and Security Act 2001. However, none of those provisions are specifically designed to address court awards of damages before they are paid to those who are at risk of using the funds for terrorist purposes. Clause 61 of, and Schedule 10 to, the Bill set out new powers that courts may employ to achieve this.
- 47 Clauses 62 and 63 of the Bill amend Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the 2012 Act”), which provides for the availability of civil legal services, to create limits on the availability of those services in general cases for individuals convicted of terrorism offences and provide for associated data sharing. Part 1 of Schedule 1 to the 2012 Act describes the civil legal services that are to be available in general cases and Clause 64 of the Bill clarifies the existing availability of those services for Terrorism Prevention and Investigation Measures proceedings, by bringing all services under the same paragraph.

## Territorial extent and application

- 48 Clause 69 sets out the extent of the Bill in the United Kingdom, that is the jurisdiction in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect. In some cases, such as clauses 17 and 18, different clauses of the Bill or paragraphs of Schedules, are used to create similar effect in different parts of the United Kingdom.
- 49 The Bill extends to England and Wales, Scotland, and Northern Ireland in all cases, except where an amendment or repeal made by the Bill is to a provision that does not extend to the whole of the United Kingdom. In the case of such provisions, the amendment or repeal has the same extent as the provision being amended or repealed. This is relevant in the following cases:
- a) Clause 16 (aggravating factor where foreign power condition met: England and Wales) amends the Sentencing Code, which extends to England and Wales.
  - b) Clause 19 (aggravating factor where foreign power condition met: armed forces) amends section 238 of the Armed Forces Act 2006, which extends to the United Kingdom.
  - c) Clause 22 (border security) amends paragraph 12 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019, which extends to the United Kingdom.
  - d) Clause 23 (offences under Part 2 of the Serious Crime Act 2007) amends schedule 4 to the Serious Crime Act 2007, which extends to England and Wales and Northern Ireland.
  - e) Clause 55 (legal aid in relation to Part 2 notices) amends provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which extends to England and Wales.
  - f) Clauses 62, 63 and 64 amend provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which extend to England and Wales.
  - g) Part 2 of Schedule 1 to the Bill (foreign interference in elections), makes amendments to—
    - i. Section 65 of the Representation of the People Act 1983, which extends to the United Kingdom,
    - ii. Section 168 of the Representation of the People Act 1983, which extends to the United Kingdom,
    - iii. Section 176 of the Representation of the People Act 1983, which extends to the United Kingdom,
    - iv. Section 147 of the Political Parties, Elections and Referendums Act 2000, which extends to the United Kingdom,
    - v. Section 150 of the Political Parties, Elections and Referendums Act 2000, which extends to the United Kingdom.
  - h) Schedule 11 to the Bill (minor and consequential amendments)—
    - i. Repeals the Official Secrets Acts 1911, 1920, and 1939, which extend to the United Kingdom.
    - ii. Amends the Police and Criminal Evidence Act 1984, relevant provisions of which extend to England and Wales.
    - iii. Amends the Police and Criminal Evidence (Northern Ireland) Order 1989, which extends to Northern Ireland.
    - iv. Amends the Official Secrets Act 1989, relevant provisions of which extend to the

United Kingdom.

- v. Amends the Criminal Procedure (Scotland) Act 1995, which extends to Scotland.
  - vi. Amends the Protection of Freedoms Act 2012, relevant provisions of which extend to the United Kingdom.
- 50 Consequential powers at Clause 66 enable the Secretary of State to make provision by regulations in consequence of the Bill that amend, repeal, or revoke any enactment, including Acts of the Scottish Parliament, Measures or Acts of Senedd Cymru and Northern Ireland legislation.
- 51 See the table at Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.
- 52 In respect of territorial extent and application outside the United Kingdom:
- a) Clause 19 extends to the Isle of Man and the British Overseas Territories, except Gibraltar,
  - b) The power under section 348 of the Armed Forces Act 2006 as amended by clause 19 may be exercised as to make amendments that extend outside the United Kingdom in specified circumstances.
  - c) The power in section 15(3) of the Official Secrets Act 1989 may be exercised outside the United Kingdom in relation to any amendment or repeal made by the Bill in specified circumstances.
  - d) The power in section 415 of the Sentencing Act 2020 may be exercised outside the United Kingdom in relation to any amendment or repeal made by the Bill in specified circumstances.

# Commentary on provisions of Bill

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

### Espionage etc

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

53 Subsection (1) provides that an offence is committed if a person obtains, copies, records, retains, or discloses protected information in circumstances where the person knows, or ought reasonably to know, their conduct is prejudicial to the safety or interests of the UK and where the foreign power condition is met (see clause 24). The term safety or interests of the UK is not defined but case-law has interpreted it as meaning, in summary, the objects of state policy determined by the Crown on the advice of Ministers (see the Court's view in *Chandler v Director Public Prosecutions (1964) AC 763*).

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

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

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

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

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

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

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

54 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.

- 55 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).
- 56 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.
- 57 Subsection (4) provides the maximum available penalty applicable on conviction of the offence: namely imprisonment for life or a fine (or both). The inclusion of a fine is in recognition that the offence can be committed by bodies corporate and other similar entities (see clause 28).
- 58 Subsection (5) defines the activity that constitutes “retaining” or “disclosing” protected information as outlined within the offence with subsection (1)(a).

## Clause 2: Obtaining or disclosing trade secrets

- 59 Clause 2 creates an offence of obtaining or disclosing trade secrets. Subsection (1) provides that a person commits an offence if, without authorisation, they obtain, copy, record, retain, disclose, or provide access to a trade secret. The person must know, or ought reasonably to know, that their conduct in respect of the trade secret is unauthorised, and the foreign power condition (clause 24) must also be met.
- 60 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.
- 61 For the purposes of this clause, a person retains a trade secret if they retain it in their possession or under their control and disclosing a trade secret includes parting with possession (see subsection (9), this mirrors the provision in subsection (5) of clause 1).
- 62 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)).

- 63 References to a trade secret include an article from which such information may be derived.
- 64 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)).
- 65 Subsections (6) and (7) define a "UK person" and "United Kingdom national" (one form of "UK person") respectively.
- 66 Subsection (8) sets out the maximum penalty for the offence. On indictment, the maximum penalty is a term of imprisonment not exceeding 14 years or a fine (or both). The inclusion of a fine is in recognition that the offence can be committed by bodies corporate and other similar entities (see clause 28).

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

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

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

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

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

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

### Clause 3: Assisting a foreign intelligence service

- 67 Clause 3 creates two offences of assisting a foreign intelligence service. An offence is committed in subsection (1) where a person engages in conduct, which they intend will materially assist a foreign intelligence service in carrying out UK-related activities. Under subsection (2), a person commits an offence if they know or reasonably ought to know that conduct that they are engaged in is of a kind that it is reasonably possible may materially assist a foreign intelligence service in carrying out UK-related activities. An example of materially assisting a foreign intelligence service could include an undeclared intelligence officer carrying out intelligence activities in the UK.
- 68 Subsection (9) defines a foreign intelligence service as any person working for, or on behalf of, an organisation with a foreign power link that carries out intelligence activities. 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.

- 69 Subsection (3) provides that conduct which is likely to materially assist a foreign intelligence service includes providing, or providing access to: goods, for example supplying surveillance and recording equipment to an undeclared agent of 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; information, such as personal details, that could be used as compromising material, about an individual. Subsection (3) provides that conduct which is likely to materially assist a foreign intelligence service includes providing, or providing access to: goods, for example supplying surveillance and recording equipment to an undeclared agent of 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; information, such as personal details, that could be used as compromising material, about an individual. Financial benefit is defined in subsection (9) as money or money's worth.

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

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

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

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

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

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

- 70 Subsection (4) defines "UK-related activities" as activities which take place in the UK or activities taking place outside the United Kingdom which are prejudicial to the safety or interests of the UK. Subsection (5) says that for subsections (1) and (2) to apply, a specific foreign intelligence service does not have to be identified. This could apply where someone believes they are materially assisting one foreign intelligence service but are instead materially assisting a different one without their knowledge, or where a person seeks to sell information to a foreign intelligence service and is shopping around for a buyer.
- 71 Subsection (6) states that subsections (1) and (2) apply to conduct outside the United Kingdom, but

only where the person engaging in the conduct is a UK person (defined in clause 2) or a person who acts for or on behalf of, or holds office under, the Crown, or is in Crown employment (whether or not they engage in the conduct in that capacity). The references to the Crown are necessary to ensure subsections (1) and (2) can be applied to those working in or with British embassies overseas.

- 72 Subsection (7) sets out exceptions to the offence to ensure that legitimate conduct that is within the UK's interests is not caught within the offence. A person does not commit an offence under this clause if the person engages in the conduct in question in any of the circumstances set out at subsection (7)(a) – (c). These are conduct in compliance with a legal obligation under the law of the United Kingdom (subsection (7)(a)); in the case of a person having functions of a public nature under the law of the United Kingdom, for the purposes of those functions (subsection (7)(b)); or in accordance with an agreement or arrangement to which the United Kingdom or any person acting for or on behalf of, or holding office under, the Crown is (in that capacity) a party (subsection (7)(c)).
- 73 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 or other similar entities (see clause 28).
- 74 Subsection (9) defines terms used in clause 3.

## Entering and inspecting places used for defence etc

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

- 75 Subsection (1) provides that a person commits a criminal offence if they engage in specified conduct in relation to a prohibited place for a purpose they know, or ought reasonably to know, is prejudicial to the safety or interests of the United Kingdom.
- 76 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.
- 77 Subsection (2) makes clear that inspecting can include the taking of photographs, videos or other media recordings of a prohibited place, and the inspection of photographs, videos, or other recordings of a prohibited place.

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

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

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

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

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

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

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

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

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

- 79 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.

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

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

- 81 Subsection (1) provides that a person commits a criminal offence if – without authorisation – they engage in specified conduct in respect of a prohibited place and they know, or reasonably ought to know, that their conduct is unauthorised. The relevant conduct is accessing, entering, inspecting, or passing over or under a prohibited place. Like clause 4, this applies whether the conduct is committed in person, remotely, electronically or via an unmanned vehicle or device.
- 82 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.

83 Subsection (3) makes clear that inspecting can include the taking of photographs, videos, or other media recordings of a prohibited place. In particular, inspecting under this clause does not include inspecting photographs, videos, or recordings of the prohibited place.

84 Subsection (4) provides that a person can carry out the conduct within subsection (1)(a) in person or by electronic or remote means.

85 Subsection (5) outlines the penalties on summary conviction for the offence.

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

86 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.

87 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.

88 Subsection (4) creates an offence where a person knowingly contravenes a direction given by a police officer under this clause. On conviction that person is liable to be imprisoned for a term not exceeding 3 months and/or a level 4 fine.

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

89 This clause defines a prohibited place for the purposes of clauses 4 to 8. It includes Crown land and vehicles used for defence purposes, places used for weapons invention, development, production, operation, storage or disposal, and land, buildings or vehicle designated by regulations made under clause 8.

90 Crown land outlined in subsection (1)(a) is limited to land within the United Kingdom or in the Sovereign Base Areas of Akrotiri and Dhekelia. The places referred to in subsection (1)(c) are also limited to those within the United Kingdom and Sovereign Base Areas of Akrotiri and Dhekelia.

91 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.

92 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).

93 Subsection (2) defines use for “UK defence purposes” in subsection (1).

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

95 Subsection (4) defines Crown land and “foreign country or territory” for the purposes of this clause.

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

96 This clause provides that the Secretary of State may declare additional sites as prohibited places by way of secondary legislation. This ensures that additional sites that are vulnerable to state threat activity can be designated where considered necessary in the future.

97 Subsection (2) provides the test that must be met in order for land, buildings, or vehicles to be designated as prohibited places. This requires that the Secretary of State reasonably considers that

the designation is necessary to protect the safety or interests of the United Kingdom. Subsection (3) provides the matters to which the Secretary of State must have regard as part of that decision; namely, the purpose for which the place is used, the nature of any information held, stored, or processed on the land or in the building or vehicle, and the nature of any equipment, technology or material that is located on the land or in the building or vehicle.

98 Subsections (4) and (5) provide that the power can be exercised in relation to part of a building and to descriptions of land, buildings or vehicles, not just particular land, buildings, or vehicles.

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

99 This clause provides a power for the police to create a cordoned area around a military aircraft crash site. In the event of an aircraft crashing, sensitive material may potentially be dispersed over a wide radius. A cordon around these sites will ensure that this material can be sufficiently protected until the point where removal has been completed.

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

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

### Clause 10: Duration of cordon

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

103 Subsections (3) to (4) permit a constable to extend the period of time for which the designation of a cordoned area has effect. This will likely take place in instances where the removal of material from a crash site area takes, or is expected to take, longer than the initial 14-day period. An extension cannot provide for the cordon to remain in place for longer than 28 days from the date on which the designation under clause 9 was made.

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

104 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.

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

106 Subsections (4) and (5) provide that it is an offence to fail to comply with an order under subsection (1). On conviction, the person is liable to be imprisoned for a term not exceeding 3 months and/or a level 4 fine, as described in subsection (6). The defence of reasonable excuse is available, protecting for instance those who have legitimate reason to be within a cordoned area.

107 Subsection (7) defines a “cordoned area” for the purposes of this clause.

## Sabotage

### Clause 12: Sabotage

108 Clause 12 creates an offence of sabotage. Subsection (1) provides that an offence is committed

where a person engages in conduct that results in damage to any asset (subsection (1)(a)) and the person intends their conduct to, or is reckless as to whether their conduct will, result in damage to an asset (subsection (1)(b)). In addition, the person's conduct must be for a purpose that they know, or ought reasonably to know, is prejudicial to the safety or interests of the United Kingdom (subsection (1)(c), and the foreign power condition is met in relation to the person's conduct (subsection (1)(d)). Clause 24 sets out the foreign power condition, which includes if a person is tasked directly or indirectly by a foreign power to cause damage, or if the person intends their conduct that results in damage to benefit a foreign power. Foreign power is defined in clause 25.

109 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.

110 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.

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

## Foreign interference

### Clause 13: Foreign interference: general

112 Clause 13 creates an offence of foreign interference.

- a. Subsection (1)(a) provides that a person must intend to cause an effect stipulated within subsection (2), whether or not their conduct, or a course of their conduct, has that actual effect, provided they intended to cause one or more of those effects.
- b. Subsection (1)(b) provides that there must be a link to a foreign power (clause 24). This link is made when the conduct concerned is carried out for or on behalf of a foreign power, or with the intention to benefit a foreign power.
- c. Subsection (1)(c) requires that the person's conduct meets either Condition A in subsection (4), and/or Condition B in subsection (5), and/or Condition C in subsection (6).

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

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

- a. Subsection (2)(a) provides for an effect of interfering with the exercise of a Convention Right by a particular person, as provided under the laws of the United Kingdom. The meaning of a Convention Right is explained in subsection (13).
- b. Subsection (2)(b) makes provision for affecting the exercise by any person of their public functions. The meaning of public functions is set out in subsection (13).
- c. Subsection (2)(c) makes provision for an effect of manipulating whether, or how, any person makes use of services provided in the exercise of public functions. The meaning of public functions is set out in subsection (13).
- d. Subsection (2)(d) makes provision for an effect of manipulating whether, or how, any person participates in political processes under the law of the United Kingdom. The law of the United Kingdom is defined in subsection (13). A political process could include, but is not limited to, a vote concerning governmental institutions, such as a general election, local authority election, mayoral elections, or police and crime commissioner elections.
- e. Subsection (2)(e) makes provision for an effect of manipulating whether, or how, any person participates in a legal process under the law of the United Kingdom. Legal processes are expected to cover things such as jury service, or participation in Court proceedings. The law of the United Kingdom is defined in subsection (13).
- f. Subsection (2)(f) makes provision for an effect of prejudicing the safety or interests of the United Kingdom.

115 Subsection (3) makes provision for subsection (2)(b) to apply regardless of whether an individual is exercising a specific public function with regard to their role, or their public functions generally.

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

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

- iii. damaging or threatening to damage a person's reputation;
- iv. causing or threatening to cause financial loss to a person;
- v. causing spiritual injury to, or placing undue spiritual pressure on, a person;

117 The conduct that constitutes coercion can be targeted at a person other than the person on whom it is intended to have the effect within subsection (2). By way of example, conduct can meet this condition if, for example, a person "A" communicates to person "B" a threat to harm person "C" if B does not accede to A's demands.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Clause 14: Foreign Interference in elections

125 This clause makes provision for substantially increased maximum penalties in respect of certain existing electoral offences if the foreign power condition in clause 24 is met in relation to the person's conduct. For the increased maximum penalty to apply both conditions in subsection (1) must be met: a person must commit a "relevant electoral offence" and the conduct constituting the offence must meet the foreign power condition (see clause 24).

126 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.

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

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

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

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

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

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

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

## Preparatory conduct

### Clause 15: Preparatory conduct

130 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.

131 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.

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

133 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.

134 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.

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

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

### Clause 16: Aggravating factor where foreign power condition met: England and Wales

136 Clause 16 inserts a new section 69A into the Sentencing Code to provide a new aggravating factor for sentencing where the foreign power condition is met in relation to an offence (see clause 24 for the foreign power condition). Under new subsections 69A(1) and (2), a court in England and Wales considering a person's sentence for any offence which is not an offence under this Bill (or an inchoate offence in relation to such an offence) must, if it appears the foreign power condition is or may be met in relation to the offence, make a determination (on the criminal standard of proof) as to whether it is met or not.

137 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)).

138 The requirements for the foreign power condition to be met are provided at clause 24.

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

### Clause 17: Aggravating factor where foreign power condition met: Northern Ireland

140 Clause 17 makes corresponding provision to that in Clause 16, for sentences to be aggravated where the foreign power condition is met in relation to offences in Northern Ireland (see clause 24 for the foreign power condition).

### Clause 18: Aggravating factor where foreign power condition met: Scotland

141 Clause 18 makes corresponding provision to that in Clause 16, for sentences to be aggravated where the foreign power condition is met in relation to offences in Scotland (see clause 24 for the foreign power condition). Subsection (3) requires a court imposing an aggravated sentence for this reason to state the extent of and reasons for the difference between the sentence it imposed and that it would have imposed had the foreign power condition not been met in relation to the offence. Subsection (4) provides that evidence from a single source is sufficient to prove this aggravating factor – which is different from the usual position under the law in Scotland where corroboration is required.

### Clause 19: Aggravating factor where foreign power condition met: armed forces

142 Clause 19 amends the Armed Forces Act 2006 to make corresponding provision to that in clause 16 for service courts considering the seriousness of a service offence for the purposes of sentencing.

## Powers of investigation etc.

### Clause 20: Powers of search etc.

143 Clause 20 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**

144 Paragraph 1 sets out that Part 1 of the Schedule applies in England and Wales and in Northern Ireland. These powers of entry, search and seizure are available where there are reasonable grounds to suspect that a relevant act, as defined here, has been or is about to be committed.

145 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.

146 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.

147 Paragraph 4 provides for production orders in respect of confidential material that is likely to come into existence within 28 days of the order being issued. Subsection (8) requires the person specified in the application notify a named constable as soon as is reasonably practicable after any material to which the order relates comes into the person's possession, custody, or control. The order requires that the material be produced, or access given to a constable, within 7 days of the notification or such other period specified in the order. There is a requirement for the specified person to state to the best of their knowledge or belief the location of material to which the order relates that is not in, and will not come into, their possession, custody, or control within 28 days of the order being made.

148 Paragraph 5 makes supplementary provision for the production orders in paragraphs 3 and 4. An order does not require the person to produce, or grant access to, material subject to legal privilege. A production order takes effect despite restrictions imposed on disclosure imposed by virtue of an enactment or otherwise. These supplementary provisions also explain how to produce or provide access to material in compliance with the order if it is stored electronically.

149 Paragraph 6 provide that production orders can be made in relation to material in the possession of government departments.

150 Paragraph 7 outlines the conditions that must be met for a judge to issue a warrant to authorise a constable to enter a premises and search for, seize and retain confidential material. This does not include material subject to legal privilege. An application may be granted if a judge is satisfied that an order under paragraphs 3 or 4 has not been complied with or the conditions specified are met. Conditions 1 to 4 are the same as for a production order under paragraph 3. Condition 5 relates only to warrants and is primarily concerned with instances in which a production order would have been impractical or could have prejudiced the investigation. Condition 6 relates to applications for all premises warrants.

151 Paragraph 8 provides for a constable to apply for an order to require a person to give an explanation of the material that has been seized or produced pursuant to warrants or orders under Part 1 of this Schedule. It outlines that the order cannot require the disclosure of information that a person would be entitled to refuse to disclose on grounds of legal professional privilege in the High Court. An order may require a lawyer to provide the name and address of a client. An explanation under this paragraph may be given orally or in writing and can only be used as evidence against the person in a prosecution for the offence in paragraph 9

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

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

154 Paragraph 11 provides that if a search under paragraph 10 results in the seizure of confidential

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

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

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

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

158 Paragraph 15 defines terms used within Part 1 of this Schedule. This includes a definition of confidential material, which comprises (i) confidential journalistic material and (ii) protected material. Subsection (1) provides that confidential journalistic material has the meaning given at section 264 Investigatory Powers Act 2016. Protected material is explained at subsection (2).

## **Part 2 - Scotland**

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

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

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

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

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

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

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

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

## **Clause 21: Arrest without warrant**

167 Clause 21 and schedule 3 provide a power of arrest and provisions about subsequent detention.

These provisions are modelled on those at section 41 and Schedule 8 of the Terrorism Act 2000. Clause 21(1) provides that a constable may arrest without a warrant anyone who they reasonably suspect is involved in foreign power threat activity. Clause 26 defines involvement in foreign power threat activity, covering commission, preparation or instigation of certain acts or threats, which are specified offences under the Act (clause 26(3)(a)) as well as acts or threats where the foreign power condition is met (see clause 24) and the acts (a) involve serious violence against another person, (b) endanger the life of another person, or (c) create a serious risk to the health or safety of the public or a section of the public. In addition, involvement in foreign power threat activity would include conduct which facilitates or gives support or assistance to those involved in commission, preparation, or instigation of such acts of threat (clause 26(1)(b) and (c)).

168 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.

169 Part 5 of schedule 3 covers the requirement for reviews of detention to be carried out. Clause 21 (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).

170 Paragraphs 38 and 45 of schedule 3 provide that a judicial authority can issue a warrant of further detention and may extend or further extend a person's detention. Clause 21 (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.

171 Where a warrant of further detention or extension or further extension has been granted, clause 21 subsection (8) indicates that the person may be detained for the period of time specified in the warrant. This is subject to the conditions on detention in paragraph 46 of Schedule 3 which provide that a person must be released if the matters on which the judicial authority authorised further detention no longer apply.

172 Subsection (9) provides that where an application to extend detention is refused, a person can continue to be detained in accordance with this clause (i.e., for up to 48 hours).

173 Subsection (10) provides that if a person is removed to hospital for medical treatment, any time during which the person is being questioned in hospital or on the way there or back for the purpose of obtaining relevant evidence is to be included in detention time calculations. Any other time is not to be included. "Relevant evidence" is defined in subsection (12) as evidence which indicates that the detained person is, or has been, involved in foreign power threat activity.

174 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 3: Detention under Section 21](#)

#### **Part 1: Treatment of persons detained under section 21**

175 Paragraph 1 provides a power for the Secretary of State to designate places where an arrestee may be detained following arrest. It also 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.

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

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

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

178 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.

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

180 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.

181 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)).

182 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.

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

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

184 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.

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

186 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.

187 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**

188 Paragraph 19 applies to fingerprints, DNA profiles derived from a non-intimate or intimate sample and relevant physical data taken under the powers in the schedule. Thereafter, such fingerprints, samples and physical data are referred to as "paragraph 19 material". Paragraph 19 material must be destroyed if it appears to a chief officer of police that it was obtained unlawfully or at a time when an arrest was unlawful or based on mistaken identify (sub paragraph (2)).

Paragraph 19 (3) indicates that otherwise paragraph 19 material must be destroyed unless it is retained under another power provided for in paragraphs 20 or 21. However, this does not prevent a relevant search being carried out if a senior police officer considers it desirable. Such a search can be carried out by police to check the relevant material against other lawful material held by police (see paragraph 19(6)). For example, a DNA profile may be cross-checked against other DNA profiles held in police databases, which may have been taken following arrests made under powers in other pieces of legislation.

189 Paragraphs 20 and 21 set out the powers for retention of paragraph 19 material. When detained under section 21, the material may be retained for 3 years, beginning on the date on which the fingerprints, physical data or sample was provided or derived. A senior police officer may apply to the courts to extend the retention period for 2 years further (paragraph 20(4)-(6)). Paragraph 20 (7) and (8) provides for an appeal process whereby the person from whom the material was taken, or a senior police officer may appeal to the court if the order is granted or denied. In Scotland, the appeal must be made within 21 days of the court's initial decision. Paragraph 20(9) states that if an individual is arrested again under the state threats arrest power and relevant material is again taken upon arrest, a new retention period may begin from when the second arrest occurred.

190 Paragraph 21 provides for the ability to make a national security determination regarding paragraph 19 material. A national security determination is when a senior police officer determines that it is necessary to retain any material for up to 5 years after the automatic retention period if the retention of that data is for the purposes of national security. A national security determination can be renewed indefinitely.

191 Paragraph 22 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.

192 Paragraph 24 states that DNA samples taken from a person must be destroyed as soon as the DNA profile has been derived from the sample or 6 months from when the sample was taken. This paragraph provides for police to apply for a court to retain a sample beyond this date if the sample was taken in relation to the investigation of a qualifying offence and if the sample is likely to be needed in criminal proceedings.

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

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

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

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

detained person.

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

196 Part 6 provides for police and prosecutors to apply to the Courts for a warrant of further detention. Without such a warrant, a detained person must be released after 48 hours in accordance with clause 21(3). The warrant must state the specified period that the detained person can be further detained for, up to 7 days beginning with the time of the initial arrest or detention in accordance with clause 21(3) (paragraph 36(3)). Under paragraph 43, an application for the extension or further extension of a warrant can be made and authorised for an additional 7 days, up to a total maximum of 14 from the initial arrest or detention. The application for a warrant must be made to the Court within 54 hours of the initial arrest (paragraph 37(1)), and the Court must dismiss the application if it considers that it would have been practical for the application to have been made during the first 48 hours of detention. The grounds on which the judicial authority may grant a warrant of further detention are provided for at paragraph 39 and include if it is necessary to obtain evidence by questioning the suspect, to preserve evidence and to permit the examination or analysis of evidence. Paragraph 44 indicates that if the reasons for which the authorisation of continued detention were made no longer apply, the person must be released immediately.

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

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

198 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 Queen's Speech of the Parliament has not yet taken place) to temporarily increase, for 3 months, the maximum period of detention under schedule 3 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 3 would continue to apply, including the requirement to apply to a judicial authority for a warrant of further detention or extension of such a warrant. The Secretary of State can revoke the regulations at any point if they consider it appropriate to do so (paragraph 45(6)). Clause 67(7)-(10) covers the procedure for regulations made under paragraph 44, including that the statutory instrument will cease to have effect if Parliament does not approve it within 20 days of its return.

### **Clause 22: Border security**

199 Clause 22 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.

200 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.

201 Clause 22 amends paragraph 12(11) of Schedule 3 by omitting the references to the definition of confidential business material from the definition of “protected material”, therefore removing the requirement for the Commissioner to authorise the retention of copies of material acquired in course of a trade or business that is held in confidence.

### Clause 23: Offences under Part 2 of the Serious Crime Act 2007

202 Sections 44 to 46 of the Serious Crime Act 2007 (SCA) set out the inchoate offences of encouraging or assisting crime. Clause 23 amends Schedule 4 of the SCA which provides for the offences to apply when the act capable of encouraging or assisting relates to the commission of an offence overseas. The amendment will disapply extra-territorial application when the activity is deemed necessary for the proper exercise of any function of an intelligence service or the armed forces.

203 Clause 23 inserts paragraph 5 into Schedule 4. Sub paragraph 1(a) states that paragraphs 1, 2 and 3 of Schedule 4 do not apply if any relevant behaviour of D’s was necessary for the proper exercise of any function of the Security Service, the Secret Intelligence Service or GCHQ. This ensures that those working for or on behalf of the intelligence agencies would not be liable for support they provided to activities overseas, including in support of international partners, where that support was deemed necessary for the exercise of the intelligence agencies’ functions.

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

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

## Foreign power condition and foreign power threat activity

### Clause 24: The foreign power condition

206 Clause 24 provides for the foreign power condition, to which a number of provisions of the Bill refer. Subsection (1) provides that the condition is met if a person’s conduct (or a course of conduct) is carried out for or on behalf of, or with the intention to benefit, a foreign power. In addition, for the condition to be met, the person must know, or reasonably ought to know, that the conduct has that relationship to the foreign power.

207 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.

208 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.

209 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.

210 Subsection (4) confirms that the references in clause 24 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).

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

212 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.

213 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.

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

### Clause 25: Meaning of ‘foreign power’

215 Clause 25 defines a foreign power for the purpose of clause 24. Subsection (1) sets out the persons and bodies that comprise a foreign power.

216 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.

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

### Clause 26: Foreign power threat activity and involvement in that activity

218 Clause 26 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 (clause 21) and prevention and investigation measures (part 2).

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

220 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.

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

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

## Supplementary provision

### Clause 27: Interpretation

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

### Clause 28: Offences by a body corporate etc.

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

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

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

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

### Clause 29: Offences committed outside the United Kingdom

228 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.

229 Subsection (2) disapplies subsection (1) in relation to the offences of assisting a foreign intelligence service in clause 3.

Subsections (3) to (5) make provision for proceedings for offences committed abroad to be tried in the UK.

### Clause 30: Consents to prosecutions

230 Clause 30 provides that the consent of the Attorney General (in the case of proceedings instituted in England and Wales) or Advocate General for Northern Ireland (in the case of proceeding instituted in Northern Ireland) is required for prosecutions under Part 1, other than in relation to offences under clauses 5, 6, 11 and schedule 2.

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

## Clause 31: Power to exclude the public from proceedings

232 Clause 31 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.

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

## Part 2: Prevention and Investigation Measures

### Imposition of prevention and investigation measures

#### Clause 32: Power to impose prevention and investigation measures

234 Subsection (1) provides that the Secretary of State may by notice (a Part 2 notice) impose specified prevention and investigation measures on a person if Conditions A to E of clause 33 are met.

235 Subsection (2) defines “prevention and investigation measures” as requirements, restrictions and other provision which may be made in relation to an individual by virtue of Schedule 4. Subsection (3) provides that the term “specified” in this clause and in Part 1 to Schedule 4 means specified in the Part 2 notice.

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

### Schedule 4: Prevention and Investigation Measures

#### Part 1: Measures

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

238 Paragraph 1 allows the Secretary of State to require the individual to reside at or within a specified residence – either his or her own residence or a residence provided by the Secretary of State – and to remain there for any such hours as are specified. This measure is only available for use where the Secretary of State reasonably believes that the individual is, or has been, involved in acts or threats to carry out acts within clause 26(4). The Secretary of State may either agree with an individual a locality in which that individual must reside or require an individual to live in a residence in a locality that the Secretary of State otherwise considers appropriate. If there are premises that are the individual’s own residence at the time when the Part 2 notice is imposed, the Secretary of State may only require the individual to live in a residence that is more than 200 miles from those premises if the individual agrees.

239 Under this measure the individual could be required to remain wholly within the residence during the specified hours (that is, the individual would be required to remain behind his or her front door) or the individual might also be permitted access to any gardens or communal areas within the outer boundary of the property. The hours between which the individual must remain within the residence must be specified by the Secretary of State in the Part 2 notice. This period is subject to the overriding restrictions on length of curfews established by caselaw relating to Article 5 of the European Convention on Human Rights, but could (for example) be longer than

overnight if considered necessary in a particular case.

240 The Secretary of State may also require the individual to give notice of the identity of others who live at the specified residence – including if another person moves into the individual’s residence. In relation to this, the individual would have to comply with the requirements in relation to giving notice in paragraph 18 of Schedule 4.

241 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 4). 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).

242 Paragraph 2 allows the Secretary of State to impose restrictions on an individual leaving the United Kingdom, or any area within the United Kingdom if that is his or her place of residence. The restrictions imposed may include a requirement not to leave the specified area without receiving permission from or, as the case may be, giving notice to the Secretary of State, and a prohibition on the individual possessing passports or international travel tickets without permission from the Secretary of State.

243 Paragraph 3 allows the Secretary of State to impose restrictions on an individual entering specified areas or places, which could include particular streets, localities, or towns (for example the City of London, which would make it harder for the individual to form relationships within the parliamentary estate) or types of areas or places (for example military sites or sites of critical national infrastructure). The Secretary of State may require the individual to obtain permission or, as the case may be, give notice before entering a specified area or place and may impose conditions in relation to the individual’s access to such an area or place. For example, the Secretary of State may require the individual to be escorted by a constable or other person while they are in the specified area or place.

244 Paragraph 4 allows the Secretary of State to provide that the individual must comply with directions in relation to his or her movements given by a constable. The direction must be given for the purpose of (a) securing the individual’s compliance with other specified measures (for example requiring the individual to be escorted to his or her specified residence for the purposes of fitting him or her with an electronic tag – in accordance with a requirement imposed under paragraph 15) or (b) where the individual is being escorted by a constable as part of a condition imposed under this Part. Directions given under a movement directions measure may last for as long as the constable considers necessary up to a maximum of 24 hours

245 Paragraph 5 allows the Secretary of State to provide for restrictions on the individual’s access to financial services. The Secretary of State may, in particular, require an individual to hold no more than one nominated financial account without the permission of the Secretary of State and to comply with conditions associated with that nominated account (for example, a requirement to provide copies of account statements and related documents). The nominated account must be at

a bank (the definition of which in subparagraph (4) includes a building society) in the United Kingdom. The Secretary of State may also require the individual not to hold more than a specified amount of cash, which for this purpose includes a range of financial instruments as well as notes and coins.

- 246 Paragraph 6 allows the Secretary of State to impose a measure relating to the individual's property under which the Secretary of State may, for example, place restrictions on an individual's ability to transfer money or other property outside the United Kingdom without permission or, as the case may be, without giving notice. The Secretary of State may impose conditions in relation to the transfer of property to or by the individual. The Secretary of State may also require the individual to disclose the details of any property of a specific description in which he or she has an interest or over which he or she may exercise any right. The definition of "property" for the purposes of this provision allows the imposition of a requirement to notify the Secretary of State in advance of the individual, for example, hiring a car.
- 247 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.
- 248 Paragraph 8 allows the Secretary of State to impose a measure in relation to electronic communications devices under which the Secretary of State may, in particular, prohibit (subject to subparagraph (3)) an individual from possessing or using electronic communications devices without permission, and impose conditions on the possession or use of any permitted devices. The Secretary of State may also impose requirements on the individual in relation to other persons' possession or use of devices within the individual's residence. 'Electronic communications devices' are explained in subparagraphs (5) and (6) and include computers, telephones, any device which is capable of transmitting, receiving, or storing electronic information and any related devices and their components. A non-exhaustive list of examples of the type of conditions that may be specified is found in subparagraph (4). This includes a requirement to allow specified descriptions of people (for example constables) access to the residence for the purpose of monitoring any devices.
- 249 Where the Secretary of State imposes an electronic communications device measure it must, as a minimum, allow the individual to possess and use a fixed line telephone, a computer with internet access via a fixed line and a mobile phone which does not provide access to the internet (subparagraph (3)).
- 250 Paragraph 9 allows the Secretary of State to impose restrictions on the individual's association or communication with other persons, under which the Secretary of State may, in particular, impose a requirement not to associate or communicate with specified persons or persons of specified descriptions (for example persons living outside the UK) without the permission of the Secretary of State. The Secretary of State may for example impose a requirement that the individual may not associate with a list of named individuals (without permission), and that if they wish to associate with others, they must first give notice to the Secretary of State. Permission to associate or communicate with a specified person may be subject to conditions (see subparagraph (2)(c) and paragraph 17(7)), for example that the individual is escorted by a constable or someone else. This measure relates to association or communication by any means and whether directly or indirectly. If, on being notified that the individual wishes to associate with a named person, the Secretary of State believes that prohibiting such association is necessary to prevent or restrict the individual's involvement in foreign power threat activity, the Secretary of State may vary the measure to provide that person as a specified person with whom the individual may not associate without permission (see clause 41(1) which allows for the variation of measures by the Secretary of State).

251 Paragraph 10 allows the Secretary of State to impose restrictions on the individual's work or studies under which, in particular, an individual could be prohibited from undertaking certain specified types of work or studies without the permission of the Secretary of State (for example work which develops military technology or studies involving research into nuclear technology). The individual could be required to give notice to the Secretary of State before undertaking any other work or studies and to comply with conditions in connection with any work or studies. This measure relates to any business or occupation (paid or unpaid) and any course of education or training. Again, if on being notified that the individual intends to commence employment of a particular nature, the Secretary of State considers it necessary to prohibit such employment, he or she may vary the Part 2 notice accordingly under clause 41(1).

252 Paragraph 11 allows the Secretary of State to require an individual to report to a particular police station at a time and in a manner notified to him or her in writing, and to comply with directions given by a constable in relation to that reporting.

253 Paragraph 12 allows the Secretary of State to impose a requirement on an individual who is subject to a Part 2 notice to participate in a polygraph examination for the purposes of: (i) monitoring their compliance with their other measures; and (ii) assessing whether variation of those other measures is necessary for purposes connected with preventing or restricting the individual's involvement in foreign power threat activity. Polygraphy is a means of measuring certain physiological responses that may be associated with deception. The availability of polygraph as a measure provides a potential additional source of information about individuals who are of a concern due to their engagement in foreign power threat activity which can assist with the management of subjects. The results of the polygraph examination could be used to vary the individual's measures. This might take the form of a relaxation (for example removing or easing a measure), or adding a further restriction, provided it is necessary and proportionate to do so.

254 Subparagraph 2 provides a power for the Secretary of State to make regulations governing the conduct of polygraph testing.

255 Subparagraph 4 provides that the information gleaned during the polygraph test (either by way of admission, or by physiological reaction) will not be used in evidence against the individual for the prosecution of a criminal offence.

256 Paragraph 13 allows the Secretary of State to require an individual to attend meetings with such persons as the Secretary of State may specify, at such locations and at such times as the Secretary of State may by notice require. The specified person(s) may also choose the time and place of the meeting

257 Paragraph 14 allows the Secretary of State to require an individual to have his or her photograph taken.

258 Paragraph 15 allows the Secretary of State to require an individual to cooperate with specified arrangements for enabling his or her movements, communications, and other activities to be monitored. This may include a requirement to wear, use or maintain for example an electronic tag and associated apparatus, to comply with associated directions and to grant access to the residence for these purposes.

259 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**

260 Several of the measures described in Part 1 of Schedule 4 include requirements for an individual subject to a Part 2 notice not to do certain things without the permission of the Secretary of State. Paragraph 17 provides that the Secretary of State may by notice specify, in relation to each measure, the information that the individual must supply when applying for permission and the time by which the application must be made. Where the Secretary of State receives an application for permission, the Secretary of State may by notice request further information and need not consider the application further until the information requested is provided in accordance with the notice. The Secretary of State may grant permission by giving notice to the individual. Permission may be granted subject to conditions set out in the notice; for example, a condition that certain information is provided or that the individual is escorted by a constable or other restrictions on movements are complied with.

261 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 4 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 4 notice and the time by which the Schedule 4 notice must be given. Where the Secretary of State receives a Schedule 4 notice, the Secretary of State may by notice request further information. The individual will not have complied with the requirement to give a Schedule 4 notice until the Secretary of State has notified him or her that the Schedule 4 notice has been received and that no further information is required.

262 Paragraph 19 provides that the Secretary of State may vary or revoke a notice he or she gives under this Schedule – for example the Secretary of State may vary the conditions attached to a permission.

## **Clause 33: Conditions A to E**

263 Subsections (1) to (5) of clause 33 set out the conditions on which the power to impose measures on an individual is dependent. Condition A (subsection (1)) specifies that the Secretary of State must reasonably believe that the individual is or has been involved in foreign power threat activity (see clause 26).

264 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.

265 Condition B, when read together with subsection (7) and clause 34 (which specifies that a Part 2 notice may only be extended annually four times – so that it lasts up to a maximum of five years), has the effect of ensuring that, if a person has already been subject to a Part 2 notice for a total of five years, a further Part 2 notice can be imposed on that person only if he or she has re-engaged in further foreign power threat activity since the Part 2 notice that marked the start of that five year period. (The five-year period is not necessarily consecutive – as the Part 2 notice may, for example, have been revoked and then revived at a later date; time only counts towards the five-year period if the individual is subject to measures imposed by the Part 2 notice during that time. See clause 34 and its interaction with clauses 42 and 43 below.)

266 Conditions C (subsection (3)) and D (subsection (4)) set out the two limbs of the necessity test for imposing measures on a person. The Secretary of State must reasonably consider it necessary for purposes connected with protecting the United Kingdom from a risk of acts or threats within clause 26 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).

267 Condition E (subsection (5)) requires the Secretary of State to have obtained the court's permission under clause 35 before imposing measures (subsection (5)(a)) or to reasonably consider that there is a need for measures to be imposed urgently, without first obtaining permission (subsection (5)(b)). In such a case of urgency, the Secretary of State must refer the case to the court immediately after imposing the measures – see clause 36 and Schedule 5.

268 Subsection (6) clarifies that the prevention and investigation measures under paragraph 1 of Schedule 4 (residence measure) can only be used in relation to acts or threats within clause 26(3)(b) or (c).

## Five-year limit on imposition of measures

### Clause 34: Five-year limit for Part 2 notices

269 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.

270 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).

271 Subsection (4) provides that the operation of the five-year time limit is subject, in particular, to the exceptions and provisions in clauses 42 and 43 relating to revocation and revival of a Part 2 notice and to replacement of a Part 2 notice. As noted above, this clause also interacts with condition B in clause 33.

## Court scrutiny of imposition of measures

### Clause 35: Prior permission of the court

272 This clause sets out the function (subsection (3)) and powers (subsections (7), (8) and (9)) of the court on an application by the Secretary of State to obtain permission from the court before imposing measures on an individual as required under condition E of clause 33.

273 Subsection (4) provides that the court may consider the Secretary of State's application without the individual on whom the measures would be imposed being aware of the application or having the opportunity to make representations. This is intended to avoid giving an individual advance warning of the Secretary of State's intention to impose a Part 2 notice on him or her, and to avoid a

risk of the individual absconding before the measures can be imposed. The individual will subsequently have the opportunity to make representations about the imposition of the measures: clause 37 requires the court, if it gives permission, also to give directions for a full, substantive review of the imposition of measures on the individual and clause 38 makes provision for that review.

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

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

### Clause 36: Urgent cases: reference to the court etc

276 This clause gives effect to Schedule 5.

### Schedule 5: Urgent cases: reference to the court etc

277 This schedule makes provision relating to a case in which the Secretary of State imposes measures on an individual without first obtaining the permission of the court, (in accordance with condition E (clause 33(5)(b)). Schedule 5 places a duty on the Secretary of State to include a statement in the Part 2 notice confirming his or her reasonable belief as to the urgency of the case, and immediately to refer the case to the court after the imposition of measures on the individual. The court's consideration of the case must begin within seven days of service of the Part 2 notice.

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

### Clause 37: Directions hearing

279 Subsections (1) and (2) of this clause provide that, on giving the Secretary of State permission to impose measures (or – in an urgent case – on confirming measures already imposed), the court must give directions for a directions hearing. Those directions must not be served on the individual in a case where permission has been granted (rather than the urgency procedure used) until the Part 2 notice has been served (subsection (3)). This is because permission may be granted to the Secretary of State in the absence of the individual, so as not to alert that individual to the imminent imposition of measures on him or her, and the service of the directions should only follow the service of the notice (which may take place some time after permission is granted) for

the same reason. At the directions hearing, directions must be given for a further hearing (a “review hearing”) to be held for the court to review the imposition of the measures as soon as practicable (subsections (4) and (5)). (Clause 38 makes provision in relation to this review hearing.) Subsections (2) and (6) ensure that the individual has the opportunity to make representations at a directions hearing, which is to be held, unless the court directs otherwise, within seven days of the Part 2 notice being served (or, in a case using the urgency procedure, within seven days of the court confirming the notice).

### Clause 38: Review hearing

280 Subsection (1) provides that the function of the court is to review the decisions of the Secretary of State that the relevant conditions for imposing measures on an individual (defined by subsection (8) as conditions A, B, C and D as set out in clause 33) were met and continue to be met.

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

282 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.

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

## Consultation requirements

### Clause 39: Criminal investigations into foreign power threat activity

284 Subsections (1), (2) and (3) set out a requirement on the Secretary of State to consult the chief officer of the police force which is investigating or would investigate any offence, acts or threats within clause 26(3) which could fall to have been committed by the individual, on whether there is evidence that could realistically be used to prosecute the individual. The Secretary of State must do so before imposing a Part 2 notice in an urgent case or before seeking the court’s permission to do so in all other cases.

285 Subsections (5), (6) and (7) place duties on the relevant chief officer of police (‘police force’ and ‘chief officer of police’ are defined in subsection (10)). On being consulted by the Secretary of State under subsection (1), the chief officer is under a statutory duty to consult the relevant prosecuting authority (for example in England and Wales the Director of Public Prosecutions – in other words the Crown Prosecution Service). The chief officer must also keep the investigation of the individual’s conduct under review, with a view to bringing a prosecution for an offence, acts or threats within clause 26(3) and must report on this to the Secretary of State while the Part 2 notice remains in force. In relation to this continuing duty of review, the chief officer must consult the relevant prosecuting authority as appropriate.

## Review of ongoing necessity

### Clause 40: Review of ongoing necessity

286 This clause places a duty on the Secretary of State to keep under review the necessity of a Part 2 notice, and the measures imposed under it, while the notice is in force. This is the position taken

in relation to Terrorism Prevention and Investigation Measures (the 'TPIM' Act 2011) following case law in the context of control orders whereby the Court of Appeal held in *Secretary of State for the Home Department v MB* [2006] EWCA Civ 1140, that "it is the duty of the Secretary of State to keep the decision to impose the control order under review, so that the restrictions that it imposes, whether on civil rights or Convention rights, are no greater than necessary". The Government concludes the same safeguards should therefore apply in the context of these prevention and investigation measures.

## Changes concerning Part 2 notices

### Clause 41: Variation of measures

- 287 This section makes provision for the measures imposed under a Part 2 notice to be varied in a number of different circumstances.
- 288 Subsection (2) makes it possible for the Secretary of State to vary a relocation measure (which is only available as part of the residence measure for use where activity under clause 26(3) (b) or (c) is concerned) in a Part 2 notice if considered necessary for reasons concerned with the efficient and effective use of resources in relation to the individual. A non-exhaustive example of when this power might be relied on is as follows: a subject is relocated away from his home address to a residence in area X. During the life of the measure, police resources in area X become stretched or more specialist resources are available elsewhere, so the relocation measure is varied to provide for a new residence in area Y, and the subject is required to move there. This power will only apply where the individual has already been relocated away from his home address, and where the justification for requiring relocation still exists.
- 289 Subsection (4) provides that the individual subject to the Part 2 notice may apply – in writing (subsection (6)) – to the Secretary of State for any measure imposed under his or her Part 2 notice to be varied. The Secretary of State is under a duty to consider any such application (subsection (5)). Subsections (7) and (8) provide that the Secretary of State may request further information in connection with the application, which must be provided within a specified period of time. The Secretary of State will not be required to consider the application further unless and until that information is received.
- 290 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.
- 291 Subsections (11) and (12) provide that the Secretary of State may exercise these powers to vary measures in relation to a Part 2 notice that has expired without being renewed, or that has been revoked, before that notice is revived under clause 42. These subsections also provide that in such circumstances the consideration of the necessity of the measures (by both the Secretary of State and the court) relates to the revived notice as varied. In short, these provisions allow the Secretary of State, when reviving a Part 2 notice under clause 42, to vary the measures specified in that notice from those that were contained in it prior to its expiry or revocation.

### Clause 42: Revocation and revival of Part 2 notices

- 292 Subsection (3) provides an individual subject to a Part 2 notice with the right to request that the Secretary of State revoke 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.

293 In some such cases, although the measures may no longer be necessary at the time that the Part 2 notice is revoked (for example because the individual has been detained in prison), they may subsequently become necessary again (when the same individual is released from prison, perhaps following an unsuccessful prosecution for a criminal offence). Subsection (6)(b) therefore provides a power for the Secretary of State to revive a previously revoked notice, where he or she continues to reasonably believe that the individual is or has been involved in foreign power threat activity (condition A) and where he or she reasonably considers that both the Part 2 notice (condition C) and the measures specified in it (condition D) are necessary. Subsection (7) specifies that the Secretary of State can do this whether or not the Part 2 notice has been extended under clause 34 or has previously been revoked and revived.

294 An exception to this power is provided by subsection (8), which specifies that the Secretary of State may not revive a Part 2 notice that has been revoked on the direction of the court. But see clause 43, 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).

295 Subsection (6)(a) also provides a power for the Secretary of State to revive a notice – for a period of a year – that has previously expired without being extended (after being in force for one of the five years permitted by clause 34 without evidence of new foreign power threat activity).

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

297 Subsection (9) makes provision for the duration of a revived Part 2 notice. The purpose of this provision is to ensure that the overall five-year time limit to the period an individual can be subject to a Part 2 notice (without further evidence of involvement in foreign power threat activity) is not exceeded. The ‘counting’ of the five-year period for which an individual can be subject to a Part 2 notice stops at the point at which the notice expires without extension or is revoked. If the Part 2 notice is subsequently revived at any time, the ‘counting’ starts again at that point – the five years continues to run from the time the revived notice comes into force. On service of a revived Part 2 notice, the individual will be informed of the period for which he or she will remain subject to that notice (see clause 53).

### Clause 43: Replacement of a Part 2 notice that is quashed etc

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

299 Subsections (2) and (3) have the effect that the replacement Part 2 notice may only be in force for the same period of time as the original notice would have been; including that the replacement notice may not be extended if the original notice had already been extended (and therefore could not have been further extended because of the five-year time limit provided by clause 36).

300 Similarly, subsections (4) and (5) provide that the quashing or revocation of the Part 2 notice, and its subsequent revival, does not alter the status of activity that was new foreign power threat activity in relation to the original notice. Reasonable belief of foreign power threat activity post-dating the imposition of the original notice is not therefore required in order to impose a replacement notice. And if foreign power threat activity occurs after the imposition of the original

notice, that may be relied on as “new” activity, allowing for the imposition of a further Part 2 notice at the end of the replacement notice.

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

#### Clause 44: Other provision relating to the quashing of Part 2 notice

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

303 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.

304 Subsection (3) provides that Schedule 6 has effect

#### Schedule 6: Appeal against convictions

305 This schedule provides that an individual subject to a Part 2 notice, who is convicted of an offence under clause 50 (contravention without reasonable excuse of any measure specified in the Part 2 notice), has a right of appeal against that conviction if the Part 2 notice (or the measure to which the conviction related) is subsequently quashed. The court must allow such an appeal.

### Appeals and court proceedings

#### Clause 45: Appeals

306 This clause sets out the rights of appeal of a person subject to a Part 2 notice, and the function of the court in relation to such appeals. (These appeal rights are in addition to the provision under clause 38 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.

307 Subsection (7) sets out that the only powers available to the court on an appeal falling under this section are to quash the extension or revival of the Part 2 notice; quash measures specified in the Part 2 notice; give directions to the Secretary of State for the revocation of the Part 2 notice or in relation to the variation of the measures specified in the Part 2 notice; and to give directions to the Secretary of State in relation to permission (for the purposes of a measure specified in the Part 2 notice) or conditions to which such permission is subject. If the court does not exercise any of these powers, it must dismiss the appeal (subsection (8)).

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

#### Clause 46: Jurisdiction in relation to decisions under this Part

309 This clause provides that decisions in relation to this Part may only be questioned – including for

the purposes of section 7 of the Human Rights Act 1998 where it is claimed that such a decision breaches a right under the ECHR – in proceedings in the court as defined by clause 56(1), or on appeal from such proceedings.

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

#### Clause 47: Proceedings relating to measures

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

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

313 Subsection (3) gives effect to Schedule 7.

#### Schedule 7: Proceedings relating to prevention and investigation measures

314 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.

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

316 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 7 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.

317 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.

318 Paragraph 5 of Schedule 7 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.

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

## Other safeguards

### Clause 48: Reports on exercise of powers under this Part

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

### Clause 49: Reviews of operation of this Part

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

## Enforcement

### Clause 50: Offence

322 This clause provides for an offence of contravening, without reasonable excuse, any measure specified in a Part 2 notice. Subsection (1) makes it clear that in cases where the Secretary of State grants permission under Schedule 4 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 4).

323 Subsection (2) provides that an individual subject to a travel measure under paragraph 2 of Schedule 4 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.

324 The maximum penalties for the offence are, on conviction on indictment: five years' imprisonment and 10 years imprisonment for contravening the travel measure; or a fine (of up to £5000 in England, Wales, and Northern Ireland and £10000 in Scotland); or both. And on summary

conviction: six months' imprisonment (in Northern Ireland); 12 months' imprisonment (in Scotland); and in England and Wales six months' imprisonment prior to commencement of section 154(1) of the Criminal Justice Act 2003 ("the 2003 Act"), and 12 months' imprisonment after that section has been commenced; or a fine (of up to £5000 in England, Wales, and Northern Ireland and £10000 in Scotland); or both. Section 154(1) of the 2003 Act has the effect of increasing the maximum sentence available on summary conviction in England and Wales from six months to 12 months' imprisonment. The differences in maximum penalty on summary conviction arise because the section reflects the normal position in each jurisdiction within the United Kingdom in relation to summary offences.

## Clause 51: Powers of entry

325 This clause gives effect to Schedule 8.

## Schedule 8: Powers of entry, search, seizure, and retention

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

## Clause 52: Fingerprints and samples

327 This clause gives effect to Schedule 9.

## Schedule 9: Fingerprints and samples

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

329 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.

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

331 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.

332 Paragraph 3 provides a constable in England, Wales, and Northern Ireland with powers to require a person who is subject to a Part 2 notice to attend a police station (on notice) for the purposes of having his or her fingerprints and/or non-intimate samples taken. In the event that such a request is not complied with, the person may be arrested without a warrant. This is in line with the general provision allowing constables to require specified individuals to attend a police station for the purposes contained in Schedule 2A to PACE, which was inserted by section 6 of the Crime and Security Act 2010.

333 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.

334 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.

335 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).

336 As provided in the Protection of Freedoms Act for material for example taken under PACE or that is subject to the Counter-Terrorism Act 2000 or the Counter-Terrorism Act 2008, the material need not be destroyed if a chief officer of police (or chief constable in Scotland or Northern Ireland) determines that it is necessary to retain that material for purposes of national security. In such circumstances it may be retained for up to two years; it is open to that chief officer to renew a national security determination in respect of the same material to extend further the retention period by up to two years at a time. The independent Commissioner for the Retention and Use of Biometric Material (provided for under the Protection of Freedoms Act) will keep under review such national security determinations and the uses to which material so retained is put.

337 Paragraph 12 covers the uses to which material taken and retained under the previous paragraphs can be put. These are the same as those set out in relation to material taken under PACE, PACE NI, the Counter-Terrorism Act 2000, and the Counter-Terrorism Act 2008.

## Supplementary provisions

### Clause 53: Notices

338 This clause makes provision about the service of notices under this Part. In particular, it provides that a confirmation notice must be served on an individual who is served with a Part 2 notice, a revival notice or an extension notice, setting out the period for which (including dates) the individual will remain subject to the Part 2 notice (unless the Part 2 notice is quashed or revoked before its expiry). A Part 2 notice, a revival notice or a notice of a variation which is neither a relaxation or removal of measures or is a variation without consent must be served in person on the individual for it to have effect. An extension notice must be served in person on the individual and served before the Part 2 notice to which it relates would otherwise expire for it to have effect.

This requirement is supported by the entry and search power in paragraph 5 of Schedule 8. The other notices listed in subsection (4) may be served on the individual via his or her solicitor.

### Clause 54: Contracts

339 This clause grants the Secretary of State authority to purchase services in relation to any form of monitoring in connection with measures specified in Part 2 notices. This would include, for example, electronic monitoring of compliance with the residence requirement provided for in Schedule 4.

### Clause 55: Legal aid in relation to Part 2 Notices

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

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

### Clause 56: Interpretation etc

342 This clause sets out the meaning of various terms used throughout this Part and makes certain provisions for the application of other clauses. In particular, subsection (3) has the effect that where a new Part 2 notice is imposed on an individual who has already been subject to measures for five years, the Secretary of State may take into account evidence he or she relied on in relation to the imposition of the previous Part 2 notice. But there would also need to be evidence of foreign power threat activity which post-dated the imposition of the earlier Part 2 notice for the Secretary of State to have the power to impose the new notice (see subsections (2) and (7) of clause 33)

343 Subsection (4) provides that where the definition of “new foreign power threat activity” in clause 33(7) refers to a Part 2 notice being in force in relation to an individual, a notice that is revived (under clause 42(6)) is to be treated as the same Part 2 notice as the notice previously revoked or expired. In other words, if a Part 2 notice has been revived under clause 42(6), when considering whether there is “new” foreign power threat activity which could found the imposition of measures on the individual beyond 5 years, that “new” activity must take place at some point after the original imposition of the measures (not necessarily after the revival of the measures).

## Part 3 Persons Connected With Terrorism: Damages And Legal Aid

### Damages in national security proceedings

#### Clause 57: National security proceedings

344 Clause 57 sets out the scope of this reform: the legislation will apply to cases brought against the Crown, after Royal Assent and which relate to matters of national security. Claims under section 7(1)(a) of the Human Rights Act 1998 are excluded. Cases relating to national security include those where evidence is presented or submissions are made thereon or relates to from the Regulation of Investigatory Powers Act 2000, the activities of the intelligence services in the United Kingdom or overseas or activities of similar services overseas and investigations or other activities in connection with terrorism offences or terrorism-related activity.

## Clause 58: Duty to consider reduction in damages payable by the Crown

345 Clause 58 provides for a duty on the court, in such cases, to consider a reduction, in part or to nil, of damages otherwise payable, consequent upon the national security factors. Those factors are as to the claimant's wrongdoing of a terrorist nature, the connection between the conduct of the claimant and of the Crown complained of the risk of harm the Crown sought to prevent or limit and the limitations on the Crown in doing so, such the conduct having occurred overseas or being carried out in conjunction with a third party.

346 Clause 58(1) provides that the duty applies where the liability of the Crown has been established, the court may appoint damages in respect of it, the Crown has applied, and the court has not refused the application.

347 Clause 58(4) prevents the court considering a reduction in damages it would award under section 8 of the Human Rights Act 1998.

348 Clause 58(5) provides that the procedural requirements in Clause 61, do not prevent the court considering the national security factors of its own motion or affects any other power of the court to reduce or refuse damages as a consequence of the Claimant's wrongdoing, failure to mitigate any harm suffered of their contribution to that harm or affects any other rules of law otherwise limiting the Crown's liability.

## Clause 59: Section 58: supplementary

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

## Clause 60: Sections 57 to 59: interpretation

350 Clause 60 contains provisions on interpretation including the meaning of "intelligence service" and "terrorism offence".

## Freezing and forfeiture of damages

### Clause 61: Damages at risk of being used for the purposes of terrorism

351 Clause 61 introduces Schedule 10 which includes provision relating to damages at risk of being used for the purposes of terrorism.

### Schedule 10: Damages at risk of being used for the purposes of terrorism

352 Paragraph 1 of Schedule 10 makes provision that, on application by a Minister of the Crown in a civil claim, where damages are awarded and where there is a real risk that such damages would be used for the purposes of terrorism, the court may make a freezing order for all or part of the damages. A freezing order requires that the damages are paid into court and not to the claimant. An application can be made at any time before the end of the period for appealing and if made after an order for an award of damages the court may suspend that order pending determination of the application.

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

354 Paragraph 2 of Schedule 10 makes provision for the power to extend the initial freezing period, upon application by a Minister of the Crown before that period ends, for a further period of 2 years. The court must be satisfied that there is a real risk that the damages, if paid to the claimant,

will be used for the purposes of terrorism. The damages remain in court until that application is determined.

355 Paragraph 3 of Schedule 10 makes provision for a forfeiture order. The court may, on application by a Minister of the Crown before the expiry of the extended freezing period, order that some or all of the damages in court are forfeited if there is a real risk that, if paid to the claimant, they will be used for terrorist purposes. Money forfeited must be paid into the Consolidated Fund. Where the application is not decided before the expiry of the extended freezing period, the damages will remain in court until its determination.

356 Paragraph 4 of Schedule 10 contains the interpretation provisions.

## Legal aid

### Clause 62: Legal aid for individuals convicted of terrorism offences

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

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

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

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

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

### Clause 63: Legal aid for individuals convicted of terrorism offences: data sharing

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

363 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.

364 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.

365 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.

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

#### Clause 64: Legal aid in relation to terrorism prevention and investigation measures

367 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.

368 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.

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

## Part 4 General Provisions

### General provisions

#### Clause 65: Minor and consequential amendments

370 This clause introduces schedule 11, which makes minor and consequential amendments to other legislation.

#### Schedule 11: Minor and consequential amendments

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

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

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

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

375 The paragraph also provides that the search and seizure powers in schedule 2 to this Bill are

available in relation to specified offences in the Official Secrets Act 1989 following the repeal of the search power in section 9 of the Official Secrets Act 1911. It also makes direct provision for the public to be excluded from proceedings under the Act, in the interests of national security, in place of previous reliance on provision under the Official Secrets Act 1920.

376 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.

377 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.

### Clause 66: Power to make consequential amendments

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

### Clause 67: Regulations

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

### Clause 68: Crown application

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

### Clause 69: Extent in the United Kingdom

381 This clause provides that the Act generally extends to the United Kingdom subject to clause 70.

### Clause 70: Extent outside the United Kingdom

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

### Clause 71: Commencement

383 This clause is self-explanatory.

### Clause 72: Transitional and saving provision

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

### Clause 73: Short title

385 This clause is self-explanatory.

## Commencement

386 The provisions of the Bill except clauses 66-73 come into force on a date specified in regulations.

387 Clauses 66-73 come into force on the day the Act is passed.

## Financial implications of the Bill

388 The main public sector financial implications of parts 1 and 2 of the Bill will fall to criminal and civil justice agencies (including the police, prosecutors, HM Courts and Tribunals Service and HM Prison and Probation Service) and to the security and intelligence agencies. The estimated annual cost of the measures in the Bill are comprised of initial one-off familiarisation costs and ongoing costs. One-off familiarisation costs are estimated to be between £0.03 and £0.04 million. The annual costs of the measures in the Bill lie in the range of £0.5 and £3.8 million, with a central estimate of £1.5 million per year. Annual operational benefits (or cost-savings) of these provisions lie between £0.12 and £0.13 million with a central estimate of £0.12 million per year. These figures are estimated based on a number of assumptions.

389 The main public sector financial implications of part 3 of the Bill will fall to the Legal Aid Agency and the security and intelligence services. The annual costs of these measures are estimated to be £0.1 million.

390 Further details of the costs and benefits of the provisions are set out in the impact assessments published alongside the Bill.

## Parliamentary approval for financial costs or for charges imposed

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

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

- a) clause 49(6) provides for payment of expenses and an allowance to a person appointed by the Secretary of State to review the operation of Part 2;
- b) clause 54 provides that the Secretary of State may enter into contracts and other arrangements with third parties for the purposes of any monitoring required as a result of measures imposed under Part 2;
- c) paragraph 8(4) of Schedule 7 provides for the payment of remuneration, expenses, and allowances by the Lord Chancellor to advisors appointed for the purposes of that paragraph;
- d) paragraph 10(1) of Schedule 7 provides for the appointment of a person to represent the interests of any party excluded from relevant proceedings (within the meaning of clause 56(1)) or appeals to those proceedings.

393 In Part 3, paragraph 3(4) of Schedule 10 provides for damages which are forfeited to be paid into the Consolidated Fund. Accordingly, the money resolution will also need to authorise the making of these payments in the Consolidated Fund.

# Compatibility with the European Convention on Human Rights

394 The Home Secretary, the Rt Hon Priti Patel MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

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

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

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

396 The Secretary of State is of the view that the Bill as introduced into the House of Commons does not contain provision, which, if enacted would be environmental law for the purposes of Section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

## Related documents

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

- Law Commission Report – Protection of Official Data:  
<https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/09/6.6798-Protection-of-Official-Data-Report-web.pdf>
- Law Commission – Protection of Official Data, A Consultation Paper:  
[https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/02/cp230\\_protection\\_of\\_official\\_data.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/02/cp230_protection_of_official_data.pdf)
- Legislation to Counter State Threats (Hostile State Activity): Government Consultation:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/986013/Consultation\\_Document\\_-\\_Legislation\\_to\\_Counter\\_State\\_Threats.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986013/Consultation_Document_-_Legislation_to_Counter_State_Threats.pdf)
- Intelligence and Security Committee of Parliament Report 'Russia':  
[https://isc.independent.gov.uk/wp-content/uploads/2021/01/20200721\\_HC632\\_CCS001\\_CCS1019402408-001\\_ISC\\_Russia\\_Report\\_Web\\_Accessible.pdf](https://isc.independent.gov.uk/wp-content/uploads/2021/01/20200721_HC632_CCS001_CCS1019402408-001_ISC_Russia_Report_Web_Accessible.pdf)
- Government Response to the Intelligence and Security Committee of Parliament Report 'Russia':  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/902342/HMG\\_Russia\\_Response\\_web\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902342/HMG_Russia_Response_web_accessible.pdf)
- Global Britain in a Competitive Age: the Integrated Review of Security, Defence, Development and Foreign Policy:  
<https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy>

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- 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>

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

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

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1: Espionage, Sabotage and Persons Acting for Foreign Powers								
Clauses 1-14	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 15	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 16	Yes	Yes	No	No	N/A	N/A	N/A	No
Clause 17	No	No	No	Yes	N/A	N/A	N/A	No
Clause 18	No	No	Yes	No	N/A	N/A	N/A	No
Clauses 19-20	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 2: Part 1	Yes	Yes	No	Yes	N/A	N/A	N/A	No
Schedule 2: Part 2	No	No	Yes	No	N/A	N/A	N/A	No
Clause 21	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 3: Part 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 3: Part 2	Yes	Yes	No	Yes	N/A	N/A	N/A	No
Schedule 3: Part 3	No	No	Yes	No	N/A	N/A	N/A	No
Schedule 3: Parts 4-8	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 23	Yes	Yes	No	Yes	N/A	N/A	N/A	No
Clauses 24-31	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

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Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 2: Prevention and Investigation Measures								
Clauses 34-54	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 55	Yes	Yes	No	No	N/A	N/A	N/A	No
Clause 56	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 6	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 7	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 8	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 9	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 10	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Part 3: Persons Connected with Terrorism: Damages and Legal Aid								
Clauses 57-61	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 62-64	Yes	Yes	No	No	N/A	N/A	N/A	No
Part 4: General Provisions								
Clause 65	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 11	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 66-73	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

## Subject matter and legislative competence of devolved legislatures

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

400 None of the provisions in the Bill involve the UK Parliament legislating for a matter that is within the legislative competence of a devolved legislature, and so the consent of devolved legislatures is

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not required under the Sewel Convention. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

# NATIONAL SECURITY BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the National Security Bill as introduced in the House of Commons on 11 May 2022 (Bill 7).

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