

NATIONAL SECURITY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the National Security Bill as brought from the House of Lords on 14 March 2023.
- 2 These Explanatory Notes have been prepared by the Home Office and the Ministry of Justice in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 68 the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 1 to 21, 23 to 59, 61 to 95, 97 to 121 and 123 to 174 were tabled in the name of the Minister.
- 6 Lords Amendment 22 was tabled by Lord Carlile of Berriew and was opposed by the Government.
- 7 Lords Amendment 122 was tabled by Lord Coaker and was opposed by the Government.
- 8 Lords Amendment 60 was tabled by Lord Anderson of Ipswich and was accepted by the Government.
- 9 Lords Amendment 96 was tabled by Lord Anderson of Ipswich and was accepted by the Government.
- 10 In the following Commentary, an asterisk (*) appears in the heading of any paragraph that deals with a non-Government amendment.

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Commentary on Lords amendments

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

Lords Amendment to Clause 1: Obtaining or disclosing protected information

Lords Amendment 1

- 1 This amendment would clarify the meaning of “ought reasonably to know” in relation to the offence of obtaining or disclosing protected information.

Lords Amendment to Clause 2: Obtaining or disclosing trade secrets

Lords Amendment 2

- 2 This amendment would clarify the meaning of “ought reasonably to know” in relation to the offence of obtaining or disclosing trade secrets.

Lords Amendments to Clause 3: Assisting a foreign intelligence service

Lords Amendments 3, 5, 6

- 3 These amendments would change the test for when a person commits an offence under Clause 3 (2). Amendment 6 is consequential to these amendments.

Lords Amendment 4

- 4 This amendment would clarify the meaning of “ought reasonably to know” in relation to the offence of assisting a foreign intelligence service.

Lords Amendments 7, 8, 9

- 5 These amendments would create a defence to the offence in Clause 3 for lawyers carrying out legal activities and would clarify that the defence in subsection (7)(c) applies where a person assists a foreign intelligence service carrying out UK-related activities in accordance with an agreement with the UK.

Lords Amendments to Clauses 4 to 11: Entering and inspecting places used for defence

Lords Amendments 10, 11

- 6 These amendments would clarify the meaning of “ought reasonably to know” in relation to the offences in Clauses 4 and 5.

Lords Amendments 12, 13

- 7 These amendments would clarify that “Crown interest” includes interests belonging to a government department of the United Kingdom only and includes interests held in trust for His Majesty for the purposes of a government department of the United Kingdom only.

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Lords Amendments 14, 15

- 8 These amendments would reduce the burden of proof on the defendant from a legal burden to an evidential burden and clarify how the burden of proof may be satisfied in relation to the defence in subsection (5).

Lords Amendment to Clause 12: Sabotage

Lords Amendment 16

- 9 This amendment would clarify the meaning of "ought reasonably to know" in relation to the offence of sabotage.

Lords Amendments to Clause 13: Foreign interference

Lords Amendment 17

- 10 This amendment would introduce two additional ways in which an offence of foreign interference can be committed through subsections (2) and (3).
- 11 It would provide for an offence whereby a person must engage in prohibited conduct, intend their prohibited conduct to have an interference effect, and the foreign power condition must also be met in relation to their prohibited conduct.
- 12 Subsection (2) would introduce an offence of foreign interference whereby a person must engage in prohibited conduct, be reckless as to whether their prohibited conduct will have an interference effect, and the foreign power condition must also be met in relation to their prohibited conduct.
- 13 Subsection (3) would introduce an offence whereby a person, "P", must be engaged in a course of conduct with one or more other persons. The foreign power condition must be met in relation to conduct of P which forms part of that course of conduct. P must intend for the course of conduct to have an interference effect. A person other than P must engage in prohibited conduct and P must intend, or believe, that as part of the course of conduct a person other than P will engage in prohibited conduct.
- 14 Subsections (5) and (6) would replace what was subsection (10) and set out the territorial extent of the offences in subsections (1), (2), and (3) of the Clause.

Lords Amendment 18

- 15 This amendment would remove an amendment to the Online Safety Bill which makes an offence under Clause 13 a priority offence.

Lords Amendment 19

- 16 This amendment would amend the definitions in Clause 13 in consequence of amendments 17, 20 and 21.

Lords Amendment 20

- 17 This amendment would define the term "interference effect", which appears in Clause 13. It would move what was subsection (2) of the previous Clause 13 into a new Clause. This amendment would also introduce a definition for the term "political processes". It would introduce and define the term "political decisions".
- 18 Subsection (1) of the clause set out in this amendment contains the "interference effects". Subsection (1)(c) to (e) now use "interfering" not "manipulating" to accommodate the addition of an offence for reckless foreign interference in subsection (2) in the new Clause 13.

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- 19 Subsection (3) defines the term “political processes” as an election or referendum in the United Kingdom, the proceedings of a local authority, the proceedings of a UK registered political party and the activities of an informal group made up of or including members of either House of Parliament or the Devolved Administrations.
- 20 Subsection (4) defines the term “political decisions” as a decision of Ministers within the United Kingdom government and Devolved Administrations as well as United Kingdom government and Northern Ireland departments and the Executive Committee of the Northern Ireland Assembly. It also covers decisions of, a local authority.
- 21 Subsection (5) provides a further list of definitions for terms in this Clause.

Lords Amendment 21

- 22 This amendment would define the term “prohibited conduct”, which appears in Clause 13. This new Clause would replace and mirror what are Conditions A, B, and C in the current Clause 13.
- 23 The amendment would see subsection (1) of the new Clause replicate Condition A, subsection (2) would replicate Condition B, and subsections (4) to (6) would replicate Condition C. This amendment would see a “misrepresentation” restricted to deliberate misrepresentations by virtue of the new subsection (4)(b).

Lords Amendment 22*

- 24 This amendment would introduce further transparency measures on UK-registered political parties, which has the same meaning as set out in Part 2 of the Political Parties, Elections and Referendums Act 2000, in respect of donations received from “foreign powers”.
- 25 Subsection (1) would require a UK-registered political party, to publish a policy statement to ensure the identification of donations from a foreign power within three months of the passing of this Act, and to keep that policy updated in accordance with guidance issued under subsection (2).
- 26 Subsection (2) would require the Secretary of State to publish guidance on the provisions of this section within 3 months of the passing of this Act.
- 27 Subsection (3) would require a party to provide the Electoral Commission with an annual statement of risk management that identifies how risks relating to donations from a foreign power have been managed, and what measures have been put in place by the party to such effect.

Lords Amendments to Clause 15: Obtaining material benefits from a foreign intelligence service

Lords Amendments 23, 24

- 28 These amendments would clarify the meaning of “ought reasonably to know” in relation to the offence of Clause 15.

Lords Amendment 25

- 29 This amendment would incorporate into Clause 15 a definition of “Crown employment” (by reference to Clause 3).

Lords Amendment to Clause 28: Offences under Part 2 of the

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Serious Crime Act 2007

Lords Amendment 26

- 30 This amendment would replace the Clause and insert an additional defence into Part 2 of the Serious Crime Act 2007 (SCA) which would apply in the extra-territorial circumstances provided for in Schedule 4 of that Act. This amendment would ensure that individuals working for the Security Service, the Secret Intelligence Service, GCHQ, and the Armed Forces would have a specific defence against the offences of encouraging or assisting crime in sections 44 to 46 of the SCA provided their act was necessary for the proper exercise of those organisations' functions.
- 31 The amendment would insert section 50A into the SCA. Section 50A(1) would restrict the territorial application of the defence to the extra-territorial jurisdiction provided for at Schedule 4 of that Act. That would mean that the defence would be available where, for example, UKIC or the Armed Forces shared intelligence to assist the overseas activity of a trusted partner.
- 32 Section 50A(2) and (3) would make clear that the person would have an evidential burden of showing their act was necessary for the proper exercise of a function of an intelligence service or the armed forces. Once the defence was raised, the prosecution would have the legal burden to disprove it.
- 33 The head of each intelligence service would be required under section 50A (4) to ensure that the service had in place arrangements designed to ensure that the conduct of a member of the service that would otherwise amount to an offence by virtue of Schedule 4 of the SCA was necessary for the proper exercise of the functions.
- 34 A similar requirement would be placed on the Defence Council under section 50A(5) in relation to acts of a member of the armed forces or a civilian subject to service discipline (as defined in the Armed Forces Act 2006).
- 35 Section 50A(6), would require the relevant Secretary of State to consider that those arrangements were satisfactory.
- 36 Subsection 50A(7) would provide relevant definitions for the purposes of the defence.

Lords Amendment to Clause 29: The foreign power condition

Lords Amendment 27

- 37 This amendment would clarify the meaning of "ought reasonably to know".

Lords Amendment to Clause 31: Foreign power threat activity

Lords Amendment 28

- 38 This amendment would clarify that conduct is only within Clause 31(1)(c) if it is for the purpose of giving support or assistance to conduct within 31(1)(a).

Lords Amendment to Clause 32: Interpretation

Lords Amendment 29

- 39 This amendment clarifies that the term "information" includes information about tactics, techniques and procedures.

Lords Amendment to Clause 34: Offences committed outside the United Kingdom

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Lords Amendment 30

- 40 This amendment would provide that Clause 34(1) is subject to specific provisions in clauses 3 and 15 about when conduct taking place outside the UK can constitute an offence under those clauses.

Lords Amendment to Clause 35: Consents to prosecutions

Lords Amendment 31

- 41 This amendment would add offences under Schedules 3 and 4 to the list of offences to which the powers in Part 2 of Schedule 2 do not apply.

Lords Amendment to Clause 54: Reviews of operation of this Part

Lords Amendment 32

- 42 This amendment would remove the existing requirement for an Independent Reviewer of Part 2 of the Bill.

Lords Amendments after Clause 61: Oversight

Lords Amendments 33, 34

- 43 These amendments would replace Clause 54 to provide for independent review of Parts 1 and 2 of the Bill (except Clause 28), Schedule 3 to the Counter-Terrorism and Border Security Act 2019, and would make provision about independent reviews of the powers of detention in Part 1 of the Bill.

Lords Amendments to Part 3: Foreign Activities and Foreign Influence Registration Scheme

Lords Amendments to Clause 62: Requirement to register foreign activity arrangements

Lords Amendments 35 to 39

- 44 Clause 62 establishes the first of two 'enhanced' registration requirements under the Foreign Influence Registration Scheme (FIRS). The second requirement is at Clause 65.
- 45 Subsection (1) defines a 'foreign activity arrangement' for the purposes of the scheme, as an arrangement between a person ("P") and a specified person, pursuant to which the specified person directs P to carry out relevant activities in the United Kingdom, or to arrange for such activities to be carried out within the UK.
- 46 Lords Amendment 35 would clarify that agreements can be foreign activity agreements. Lords Amendments 36 and 37 would clarify that subsection (1) relates to relevant activities.
- 47 Lords Amendment 38 would create two new subsections (1A), to provide for the meaning of "relevant activities" in relation to a foreign activity arrangement, and (1B), in relation to relevant activities, would allow the Secretary of State to make regulations specifying which activities of a specified person are subject to the provisions about foreign activity arrangements. This power could be used to exempt certain activities or categories of activities from the scope of the registration requirement, whether in the case of a particular specified person or in respect of all specified persons.
- 48 Subsection (2) requires that where P makes a foreign activity arrangement, they must register the arrangement with the Secretary of State before the end of the period of 10 days, which begins on the day P made the arrangement. P can be an individual or an

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entity and the requirement to register applies regardless of nationality.

- 49 Subsection (3) establishes an offence for non-compliance with subsection (2). This means an offence will be committed where the person (a) knows, or (b) ought reasonably to know, that the arrangement in question is a foreign activity arrangement. This knowledge test is important as it is to guard against the risk that a person who is unwittingly acting for a specified power could be prosecuted for not complying with the registration requirement.
- 50 Lords Amendment 39 ensures that there is consistency with subsections (1) and (2) of Clause 62, which refer to the person who makes the arrangement as "P". It would also clarify the meaning of "ought reasonably to know".

Lords Amendments to Clause 64: Offence of carrying out activities under an unregistered foreign activity arrangement

Lords Amendments 40 to 43

- 51 Clause 64 establishes an offence for carrying out an activity, or arranging for the activity to be carried out, pursuant to a foreign activity arrangement which has not been registered.
- 52 Subsection (1) provides that an offence will be committed where a person (whether P or another person) carries out an activity, or arranges for an activity to be carried out, in the United Kingdom pursuant to an unregistered foreign activity arrangement which is required to be registered under Clause 62(2); where the person knew, or ought reasonably to have known, that they were acting under the direction of a specified person. The knowledge test is included to guard against the prosecution of individuals who couldn't have known they were being directed by a specified person, and so could not be expected to take steps to check whether their activity is pursuant to an unregistered arrangement before carrying it out.
- 53 Lords Amendment 40 would in effect confine the offence in Clause 64(1) to the person ("P") who makes a foreign activity arrangement with a specified person. Lords Amendment 41 is consequential on Lords Amendment 40 and would clarify the meaning of "ought reasonably to know".
- 54 Lords Amendment 42 would clarify the mens rea where P acts pursuant to a foreign activity arrangement.
- 55 Lords Amendment 43 would delete subsection (2) of Clause 64 and replace it with new subsections (2) to (5), which would clarify the applicable defence to an offence where a person other than P carries out the activities in question or arranges for them to be carried out. The Lords Amendment would provide such a person with a defence to the offence where they can demonstrate that they took all steps reasonably practicable to determine whether the activities were registered, and that they reasonably believed that the activities were registered. In practice, this is likely to mean checking the public register, or receiving evidence of registration from an employer, in the form of confirmation from the Scheme's registration portal. It will be for a defendant to provide evidence that the defence applies, following which it will be for the prosecution to prove beyond reasonable doubt that the person did not take all reasonably practicable steps, or that they did not hold a reasonable belief that the arrangement was registered.

Lords Amendments to Clause 65: Requirement to register activities

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of specified persons

Lords Amendments 44 to 54

- 56 Clause 65 provides the second of two ‘enhanced’ registration requirements under FIRS. The combined effect of Clauses 62 to 65 is to provide greater assurance around activities which are directed by, or carried out by, specified persons. Clause 65 focusses on activities conducted by specified persons themselves rather than those they might be directing through an arrangement that would need to be registered under Clause 62. Specified persons who are foreign powers are not required to register their activities unless those activities are being misrepresented.
- 57 Lords Amendments 45, 47 and 49 would clarify that activities being carried out must be registered at the time they are carried out.
- 58 Lords Amendments 44, 46, and 48 would clarify that the activities that must be registered are relevant activities.
- 59 Lords Amendment 50 would provide the meaning of relevant activities and would allow the Secretary of State to make regulations specifying which activities of a specified person are subject to Clause 65.
- 60 Lords Amendment 51 would remove the requirement for knowledge that an activity is not registered from the offence in Clause 65(7). Knowledge of registration would then be dealt with in the defence inserted by Lords Amendment 54.
- 61 Lords Amendment 52 would clarify the meaning of "ought reasonably to know" in subsection (8).
- 62 Lords Amendment 53 would adjust the test for committing an offence under Clause 65 in relation to subsection (3).
- 63 Lords Amendment 54 would provide a defence to an offence under Clause 65(7) and (8). The amendment would provide a person with a defence if they can demonstrate that they took all steps reasonably practicable to determine whether the activities were registered, and that they reasonably believed that the activities were registered.

Lords Amendments to Clause 66: Requirement to register foreign influence arrangements

*Lords Amendments 55 to 62

- 64 Clause 66 introduces the first set of registration requirements under the 'political influence' tier of FIRS. The second set is at Clause 70.
- 65 Subsection (1) defines a ‘foreign influence arrangement’ as an arrangement between a person (“P”) and a foreign principal pursuant to which the foreign principal directs P to carry out political influence activities in the United Kingdom, or to arrange for such activities to be carried out in the United Kingdom. A person is considered to be ‘directed’ in the same circumstances as those described in the equivalent subsection under Clause 62.
- 66 Lords Amendment 55 would clarify that agreements can be "foreign influence arrangements".
- 67 Lords Amendments 56 and 57 would restrict the definition of foreign influence arrangements to arrangements with foreign powers, removing the references to foreign

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principals.

- 68 Lords Amendment 58 would prevent overlap between foreign activity arrangements required to be registered under Clause 62 and foreign influence arrangements required to be registered under Clause 66. This amendment would have the effect of not requiring registration of an arrangement under Clause 66 (the political influence tier) if the arrangement must be registered under Clause 62 (the enhanced tier).
- 69 Lords Amendment 59 would have the effect of increasing the time limit for registering a foreign influence agreement after it has been made from 10 to 28 days. Lords Amendment 61 is consequential on Lords Amendment 59.
- 70 *Lords Amendment 60 would clarify that foreign influence arrangements that have ceased to have effect at the point at which Clause 66 has come into force will not need to be registered.
- 71 Lords Amendment 62 would ensure consistency with subsections (1) and (2) of Clause 66, which refer to the person who makes an arrangement as "P".

Lords Amendment to Clause 67: Meaning of “foreign principal”

Lords Amendment 63

- 72 Lords Amendment 63 would have the effect of leaving out Clause 67. Clause 67 provides for a definition of a "foreign principal", which would no longer be required as Lords Amendments 56 and 57 along with other consequential amendments, would restrict the registration of foreign influence arrangements to arrangements with foreign powers, not foreign principals.

Lords Amendments to Clause 68: Meaning of “political influence activity”

Lords Amendments 64 to 74

- 73 Clause 68 provides a definition of “political influence activity” for the purposes of the scheme’s political tier registration requirements. Subsection (1) clarifies that an activity is a “political influence activity” if it is an activity listed at subsection (2) and where the purpose, or one of the purposes of the activity is to influence a matter or person listed within subsection (3). The requirement that at least one of the purposes of the activity is to influence a relevant matter or person is to prevent incidental or unintended influence from falling within scope.
- 74 Subsection (2)(a) provides that a “political influence activity” includes the making of any communication to: (a) a Minister of the Crown, a Northern Ireland Minister, a Scottish Minister or a Welsh Minister, (b) a Member of either House of Parliament, the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru, or an employee or other member of staff of such a Member, (c) an officer, trustee or agent of a UK registered political party or a member of such a party who exercises executive functions on behalf of the party, (d) a candidate at an election for a relevant elective office or a relevant Scottish elective office, (e) a senior official or a special adviser, or (vi) a person within a description of persons exercising functions on behalf of the Crown which is specified in regulations made by the Secretary of State. The persons listed have been identified as those most likely to be of use to foreign powers in affecting change in the UK’s political system or proceedings. The regulation making power, which is subject to the affirmative procedure, is to ensure the scheme is capable of adapting to trends and

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behaviors following its implementation.

- 75 Lords Amendment 64 would have the effect of inserting a reference to a new Schedule (Public officials) after Schedule 13.
- 76 Lords Amendment 65 would have the effect of removing the list of persons in Clause 68(2)(a). Those persons would then be listed (with additional persons) in the new Schedule that would be inserted after Schedule 13.
- 77 Subsection (2)(b) provides that making a public communication is also to be considered a political influence activity, except where it is reasonably clear from the communication that it is made at the direction of the foreign principal. Subsection (4) clarifies that making a public communication is to include the publication or dissemination of information, a document or other article, or the production of information, a document or other article for publication or dissemination. This requirement is intended to ensure that the public are aware of who is behind a communication that may influence the way they exercise their rights the UK, or the way they engage with the UK's political system.
- 78 Lords Amendment 66 would provide that public communications are not within Clause 70(2) if it is reasonably clear they are made by a foreign power.
- 79 Lords Amendment 67 would replace "principal" with "power" and is consequential to the amendments to Clause 68(1).
- 80 Subsection (3) provides a list of the matters and persons which, if a purpose is to influence them (by virtue of subsection (1)(b)), would make an activity within subsection (2) registerable. These include: a) the conduct of an election or referendum in the United Kingdom, (b) a decision of the government of the United Kingdom, a Northern Ireland Minister or Northern Ireland Department, the Scottish Ministers or the Welsh Ministers, (c) the proceedings of either House of Parliament, the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru, (d) the proceedings of a UK registered political party, or (e) a Member of either House of Parliament, the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru.
- 81 Lords Amendment 68 would leave out "the conduct of" (an election or referendum) in subsection (3)(a).
- 82 Lords Amendment 69 would replace "the government of the United Kingdom" with "a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975), a United Kingdom government department", which would have the effect of clarifying that the matters within Clause 68(3) include a decision of a Minister of the Crown or a government department. Lords Amendment 69 would clarify the persons whose decisions are caught by Clause 68(3) and would avoid giving a meaning to the terms "Scottish Ministers", "Welsh Ministers" and "Northern Ireland Minister" that is different to the meaning of those terms given in the devolution Acts.
- 83 Lords Amendment 70 would remove the reference to the proceedings of Parliament, the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru, as persons in these assemblies are caught by other paragraphs in subsection (3).
- 84 Lords Amendment 71 would clarify in relation to paragraph (e) that the conduct of Members of Parliament, the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru is relevant only when those persons are acting in that capacity.

- 85 Lords Amendments 72 and 74 are consequential on Lords Amendment 69.
- 86 Lords Amendment 73 would have the effect of removing definitions that are no longer needed in Clause 68 because the terms they define would have been removed by the Lords Amendment 65.

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

Lords Amendments 75 to 78

- 87 Clause 69 establishes an offence for carrying out a political influence activity, or arranging for the activity to be carried out, pursuant to a foreign influence arrangement which has not been registered. This is the equivalent offence for the primary registration requirements to that of Clause 64 for the enhanced registration requirements.
- 88 Subsection (1) provides that an offence will be committed where a person (whether P or another person) carries out an activity, or arranges for an activity to be carried out, in the United Kingdom pursuant to an unregistered foreign influence arrangement; where the person knew that the arrangement was not registered.
- 89 Lords Amendments 75 to 78 would make separate provision for an offence under Clause 69 depending on whether the political influence activities in question are carried out by P (a person required to register under Clause 66(2) or another person. Lords Amendment 75 would also provide that an offence under subsection (1) cannot be committed before the period for registering the arrangement has expired.
- 90 Lords Amendments 76 is consequential on Lords Amendment 75.
- 91 Lords Amendment 77 would adjust the test in Clause 71(1)(c) to ensure that P can only commit the offence at Clause 69 where they know, or having regard to other matters known to them ought reasonably to know, that they are acting pursuant to a foreign influence arrangement. It would also remove the requirement that P knows the arrangement is not registered before they can commit the offence. This element of the test is unnecessary because the registration requirement falls on P, and they will therefore know whether or not the arrangement is registered.
- 92 Lords Amendment 78 would clarify the applicable mens rea where the Clause 69 offence is committed by a person other than P, and insert subsections (2) to (5). Subsections (2) and (3) would provide the circumstances in which a Person other than P would commit an offence of carrying out political influence activities pursuant to a foreign influence arrangement. Subsections (4) and (5) would clarify the applicable defence to an offence where a person other than P carries out the activities in question or arranges for them to be carried out. Such a person will have a defence where they can demonstrate that they took all steps reasonably practicable to determine whether the activities were registered, and that they reasonably believed that the activities were registered. It will be for a defendant to provide evidence that the defence applies, following which it will be for the prosecution to prove beyond reasonable doubt that the person did not take all reasonably practicable steps, or that they did not hold a reasonable belief that the arrangement was registered.

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

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Lords Amendments 79 to 86

- 93 Clause 70 establishes the second of two 'political influence tier' registration requirements.
- 94 Lords Amendments 79 to 81 are consequential on the amendments made to Clause 68 which would restrict the registration of foreign influence arrangements to arrangements with foreign powers, not foreign principals.
- 95 Lords Amendment 82 would prevent overlap between the offence in Clause 65 and the offence in Clause 70.
- 96 Lords Amendment 83 is consequential on Lords Amendment 79.
- 97 Lords Amendment 84 would clarify the meaning of "ought reasonably to know".
- 98 Subsection (3) of Clause 70 prohibits a person who holds office in or under, or is an employee or other member of staff of, a foreign principal who is a foreign power, from carrying out political influence activities in the UK in that capacity if: (a) they make a misrepresentation about their activities or the capacity in which they act and (b) the activities are not registered with the Secretary of State. Subsection 8 provides that a person who breaches the prohibition in subsection 3 commits an offence if, the person knows or ought reasonably to know that (a) or (b) of subsection (3) applies. Lords Amendment 85 would adjust the test in subsection (8) so that only paragraph (a) of subsection (3) applies.
- 99 Lords Amendment 86 would make a defence available where a person who commits an offence under subsection 8 shows they took all steps reasonably practicable to determine whether the activities were registered, and reasonably believed that the activities were registered.

Lords Amendments to Clause 72: Registration information

Lords Amendments 87, 88

- 100 Clause 72 concerns the information which registrants must provide under the scheme. Lords Amendment 87 would be a consequential change to the Lords Amendments which would clarify the definition of a foreign activity arrangement in Clause 64.
- 101 Lords Amendment 88 would create an additional two new subsections (2A) and (2B) that would clarify the breadth of the regulation-making power in clause 72(1), and is consequential on the Lords Amendment to Clause 69, which would allow for political influence activities to be carried out during the registration period. The amendment would ensure information notices can be used in relation activities arranged or carried out during the registration period.

Lords Amendments to Clause 73: Information notices

Lords Amendments 89 to 96

- 102 Clause 73 concerns information notes and specifies the circumstances in which the Secretary of State is able to issue an information notice. Lords Amendment 89 would allow for the Secretary of State to give an information notice to persons carrying out relevant activities pursuant to a foreign activity arrangement who are not themselves a party to the arrangement.
- 103 Lords Amendments 90 to 92 would clarify that the activities are "relevant activities", which is a consequential change to the Lords Amendments which would clarify the

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definition of a foreign activity arrangement in Clause 62.

104 Lords Amendment 93 would allow the Secretary of State to give an information notice to persons carrying out political influence activities pursuant to a foreign influence arrangement who are not themselves party to the arrangement. This amendment would ensure information can be gathered from those carrying out the political influence activities, such as a sub-contractor, as well those in a registerable arrangement with a foreign power.

105 Lords Amendments 94 and 95 would create consistency with other subsections by referring to political influence activities.

106 *Lords Amendment 96 would clarify the information which may be specified in an information notice given by the Secretary of state under the Scheme. The amendment would clarify that only information which the Secretary of State considers may be relevant to an arrangement or activity may be specified in an information notice.

Lords Amendments to Clause 75: Offence of providing false information

Lords Amendments 97, 98, 99

107 Lords Amendments 97 would be a consequential change on the Lords Amendments which would clarify the definition of a foreign activity arrangement in Clause 62.

108 Lords Amendments 98 and 99 would clarify the meaning of "ought reasonably to know".

Lords Amendments to Clause 76: Offence of carrying out activities under arrangements tainted by false information

Lords Amendments 100 to 103

109 Clause 76 creates offences for carrying out activities, or arranging for activities to be carried out, under a registerable arrangement where false or misleading information has been provided in connection with the arrangement.

110 Lords Amendments 100 and 101 would be a consequential change on the Lords Amendments which would clarify the definition of a foreign activity arrangement in Clause 62.

111 Lords Amendments 102 and 103 would clarify the meaning of "ought reasonably to know".

Lords Amendments to Clause 77: Publication and copying of information

Lords Amendments 104, 105

112 Clause 77 allows the Secretary of State to make regulations to provide for the publication (subsection (1)(a)) or copying (subsection (1)(b)) of information provided in compliance with FIRS obligations (either when registering or responding to an information notice).

113 Lords Amendment 104 would leave out "copying" and insert "the disclosure" of information, which would clarify that the power in Clause 77(1)(b) relates to the onward disclosure of information provided to the Secretary of State under Clause 72 or 73.

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114 Lords Amendment 105 would clarify that Clause 77(2) only relates to the power in Clause 77(1)(a).

Lords Amendments to Clause 78: Offences: penalties

Lords Amendments 106, 107

115 Clause 78 establishes the penalties for offences under FIRS. Subsection (2) defines a “foreign activity offence”, which includes any offence relating to the enhanced registration requirements of the scheme.

116 Lords Amendment 106 is consequential on the change to the definition of foreign activity arrangement in Clause 64.

117 Subsection (4) defines a “foreign influence offence”, which includes any offence in relation to the primary registration requirements of the scheme. Lords Amendment 107 would remove an offence under section 72(2) from the meaning of a foreign influence offence, which is consequential on the Lords Amendment to remove Clause 72(7).

Lords Amendments to Clause 80: Annual report

Lords Amendments 108, 109

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

119 Lords Amendments 108 and 109 would replace "principals" with "powers" and is consequential on the Lords Amendments to Clause 66(1).

Lords Amendment to Clause 81: Interpretation

Lords Amendment 110

120 Lords Amendment 110 would omit the definition of "foreign principal" and is consequential on the Lords Amendments to Clause 66(1).

Lords Amendments to Part 4: Persons connected with terrorism: Damages and Legal Aid

Lords Amendments to Clauses 82 to 86: Damages in National Security proceedings

Lords Amendments 111 to 116

121 Part 4 requires a court to consider a reduction in damages in national security cases with respect to a claimant’s involvement in terrorist wrongdoing.

122 These amendments will mean that the scope of that duty is narrowed, and the intention of the provisions is clarified.

123 The effect of this will be that the requirement to consider a reduction in damages will only arise if there is a connection between the terrorist wrongdoing of the claimant and the conduct of the Crown complained of in the proceedings. The principal amendment achieving that is amendment 111. Amendments 112 to 116 are consequential on that amendment .

124 Those changes will also increase the clarity of the policy intent by specifying the conduct of the claimant that is necessary for the operation of the provisions.

Lords Amendments to Clauses 87 to 89: Legal aid

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Lords Amendments 117 to 120

125 These amendments would clarify that the Director has to determine that one or more of the additional conditions is met in order for civil legal services to be available to terrorist offenders.

126 The remainder of this group of amendments would create an exception to the restriction whereby the restriction will not apply to terrorist offenders who are domestic abuse victims seeking civil legal aid in relation to certain family and housing matters.

Lords Amendments to Part 5: General Provisions

Lords Amendments after Clause 89

Lords Amendment 121

127 This amendment would introduce a schedule containing changes to the Terrorism Act 2000 (TACT).

Lords Amendment 122*

128 This amendment would require the Prime Minister to revise the memorandum of understanding between the Intelligence and Security Committee (ISC) and the Prime Minister to reflect any changes to the intelligence and security activities of the Government as a result of this legislation. Subsection (2) requires that any revision be mutually agreed between the Prime Minister and the ISC. Subsection (3) would require this process to begin within a 6-month period of the passage of this legislation.

Lords Amendments to Clauses 92

Lords Amendments 123 to 129

129 Lords Amendment 123 would provide for the affirmative procedure to apply to regulations under Clause 62(1B), which would be inserted by the Lords Amendment R89.

130 Lords Amendment 124 would provide that regulations under Clause 63 would attract the affirmative procedure only if they specify a foreign power or other person not already specified. Regulations revoking a specification would be subject to the negative procedure.

131 Lords Amendment 125 would provide for the affirmative procedure to apply to regulations under Clause 65(3B), which would be inserted by the Lords Amendment R100.

132 Lords Amendment 126 would provide for the affirmative procedure to apply to regulations under Clause 77(1)(a) (provision about the publication of information provided to the Secretary of State under Clause 72 or 73).

133 Lords Amendment 127 is consequential on the Lords Amendment which omits the regulation making power in Clause 68.

134 Lords Amendment 128 would provide for the affirmative procedure to apply to regulations under the new Schedule (Public Officials), which would be inserted by the Lords Amendment 64.

135 Lords Amendment 129 is consequential on the additional regulation making powers in relation to specified persons.

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Lords Amendment to Clauses 95

Lords Amendment 130

136 This amendment would create the power to extend the Bill, with the exception of section 20, to the Sovereign Base Areas of Akrotiri and Dhekelia (SBAs) in Cyprus.

Lords Amendments to Schedule 2

Lords Amendments 131, 141

137 These amendments would add offences under Schedules 3 and 4 to the list of offences to which the powers in Part 1 of Schedule 2 do not apply.

Lords Amendments 132, 137, 142, 147

138 These amendments would provide that an application for a production order may be made without notice to a judge or sheriff in chambers.

Lords Amendments 133, 138

139 These amendments would provide that a production order has effect as if it were a court order. This means that failure to comply can be dealt with as contempt of court.

Lords Amendments 134, 135, 136

140 These amendments would adjust the test for the grant of a warrant under paragraph 25, to align with paragraph 29 of Schedule 5 to the Terrorism Act 2000.

Lords Amendments 139, 140,

141 These amendments would adjust the drafting of the definition of “judge” for consistency with Schedules 3 to 5.

Lords Amendment 143

142 This amendment would clarify that an Act of Adjournal made under paragraph 24(1) of Schedule 2 would be made by the High Court of Justiciary and would be without prejudice to the general power in section 305 of the Criminal Procedure (Scotland) Act 1995.

Lords Amendments 144, 145

143 These amendments would adjust the test for the grant of a warrant under paragraph 9, to align with paragraph 12 of Schedule 5 to the Terrorism Act 2000.

Lords Amendment 146

144 This amendment would adjust the test for the grant of a warrant under paragraph 25, to align with paragraph 29 of Schedule 5 to the Terrorism Act 2000.

Lords Amendments to Schedule 6 and Schedule 12

Lords Amendment 148

145 This amendment would correct the definition of “relevant appeal court” in relation to appeals in Scotland.

Lords Amendment 149 to 152

146 These amendments would add a reference to Northern Ireland legislation to a defined term in both Schedule 6 and Schedule 12.

Lords Amendment before Schedule 14: Public officials

Lords Amendment 153

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147 Lords Amendment 153 would insert a new Schedule (Public officials) after Schedule 13. This new Schedule would expand the list of persons, communication with whom is capable of being a political influence activity. It would include the persons previously listed in Clause 68(2)(a), and additional persons.

Lords Amendments to Schedule 14: Exemptions

Lords Amendments 154 to 168

148 Lords Amendment 154 would have the effect of clarifying that the exemption for UK arrangements applies to agreements and arrangements within the meaning of "foreign activity arrangement" or "foreign influence arrangement".

149 Lords Amendment 155 is consequential on Lords Amendment 157.

150 Lords Amendments 156, 161 162 and 168 is consequential on the amendments to omit Clause 70(1) and (2).

151 Lords Amendment 157 would have the effect of adjusting the definition of UK arrangements to include agreements.

152 Lords Amendment 158 is consequential on Lords Amendment 43.

153 Lords Amendments 159, 160 and 164 is consequential on Lords Amendment 78.

154 Lords Amendment 163 would clarify that the exemption for news-related foreign influence arrangements applies to agreements and arrangements within the meaning of "foreign influence arrangement".

155 Lords Amendment 165 is consequential on the Lords Amendments to Clause 66(1).

156 Lords Amendments 166 and 167 would have the effect of incorporating the definitions of "news-related material", "publish" and "recognised news publisher" in the Schedule, rather than by cross-referring to the definitions in the Online Safety Bill.

Lords Amendment to Schedule 15: Damages at risk of being used for the purposes of terrorism

Lords Amendment 169

- 1 Schedule 15 makes provision for freezing and forfeiture orders with respect to an award of damages made by a court where it is satisfied that there is a real risk that the award would be used for the purposes of terrorism.
- 2 This amendment corrects the drafting of paragraph 1(8) of Schedule 15 so that the exclusion of family proceedings from the scope of the provisions is appropriately drafted for the jurisdictions of Scotland and Northern Ireland.

Lords Amendment before Schedule 16

Lords Amendment 170

- 3 This amendment would insert a new schedule that makes a number of changes to the Terrorism Act (TACT) 2000. The Schedule would amend section 41 of TACT 2000 to specify that time initially detained under a provision listed in new section 41(3A), which includes the power of arrest under section 24 of the Police and Criminal Evidence Act 1984, will count towards the 'detention clock' if while being detained under the relevant provision the individual is re-arrested under section 41. It would also amend section 41 of TACT 2000 to make clear that the 'detention clock' does not start to run when an

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individual is arrested in hospital, provided they are not being questioned for the purpose of obtaining relevant evidence.

- 4 Further, the Schedule would amend Schedule 5 to TACT 2000 to create an ex-post factum judicial authorisation safeguard that would require the police to apply to the court for a warrant in relation to any relevant confidential journalistic material seized during an urgent premises search that they need to retain for the purposes of a terrorist investigation. It would amend paragraph 3 of Schedule 5 to TACT 2000 so that the power to authorise a search of specified premises within a cordoned area can only be exercised in urgent cases.

Lords Amendments to Schedule 16

Lords Amendment 171

- 5 This consequential amendment would update the Investigatory Powers Act 2016 to include references to offences and powers in this Bill.

Lords Amendment 172

- 6 This amendment would omit provision for the review of Schedule 3 to the Counter-terrorism and Border Security Act 2019 by the Investigatory Powers Commissioner. It is superseded by Lords amendment 33, which provides for reviews of Schedule 3 by the independent reviewer appointed to review Parts 1 and 2 of the Bill.

Lords Amendments to the Title

Lords Amendments 173, 174

- 7 These amendments are consequential to amendments made to Part 3 of the Bill, that would restrict the registration of foreign influence arrangements to arrangements with foreign powers, not foreign principals, and amendments made to the Terrorism Act 2000.

Financial Effects of Lords Amendments

- 8 Lords amendments 33 and 34 provide for the expenses of the independent reviewer established by those amendments to be met by the Secretary of State. They require money cover, which is provided by the existing money resolution.

NATIONAL SECURITY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to the National Security Bill as brought from the House of Lords on 14 March 2023.

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