

Research Briefing

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National Security Bill 2022- 2023: Progress of the Bill



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Summary

The [National Security Bill 2022-23](#) was introduced in the House of Commons on 11 May 2022. It had second reading on 6 June. It was considered by a Public Bill Committee over 14 sittings between July and October and is scheduled to have its remaining stages on 16 November.

The Bill would replace existing counter-espionage laws with a comprehensive framework for countering hostile state activity analogous to the counter-terrorism framework established since 2000. It would also limit the availability of civil legal aid and damages to those connected with terrorist activity.

It would implement a number of recommendations made by the Law Commission and the Intelligence and Security Committee, and was broadly welcomed at second reading.

Significant Government amendments were tabled in Committee, including:

- The extension of financial investigation powers to state threat investigations;
- The establishment of a foreign influence registration scheme aimed at deterring foreign power use of covert arrangements, activities and proxies, by requiring greater transparency around activities directed by foreign powers or entities; and
- The creation of new offences relating to obtaining material benefits from a foreign intelligence service.

The amendments were generally welcomed and there were no divisions in Committee.

Members were critical of the decision to introduce such significant amendments after second reading and of the lack of explanatory memoranda accompanying them.

The Government committed to giving further consideration to a number of issues that were the subject of opposition amendments, including the implementation of the Law Commission's recommendations regarding reform of the Official Secrets Act 1989 and the introduction of a public interest defence.

For a full background briefing on the Bill see the Library Briefing Paper prepared in advance of second reading: [National Security Bill 2022-2023](#).

The Bill as amended is available on the [Bill page](#) together with other relevant documents. This paper refers to clause numbers from the [Bill as introduced](#) in the House of Commons unless otherwise specified.

The Joint Committee on Human Rights reported on the Bill in October 2022
[Legislative Scrutiny: National Security Bill](#)

1 Second reading

Second reading took place on 6 June 2022. During the debate the then-Home Secretary Priti Patel explained that the Bill would completely overhaul and update espionage laws and create a new suite of measures “to enable our law enforcement and intelligence agencies to deter, detect and disrupt the full range of modern-day state threats”.¹

Several Members from different parties questioned why the Government was not bringing forward plans to reform the Official Secrets Act (OSA) 1989 as part of the Bill, noting that it carries a maximum sentence for unauthorised disclosures of two years, by contrast with the proposals in the Bill for much higher sentences for comparable offences. The Home Secretary explained that the Government was engaged in ongoing work on the matter but that it was very complex, and that it was necessary to “engage with a wide range of interests and give all due consideration to a number of concerns”.²

Members also questioned the absence of the foreign influence registration scheme that formed part of the Government’s original proposals.

The Home Secretary responded that the Government was intending to introduce amendments to give effect to such a scheme during the Bill’s Commons stages. She further explained that there had been extensive discussions with counterparts in Australia about the operation of the equivalent scheme there to learn which aspects of it work well in practice.³

She also confirmed that the government has been considering plans to reform the law of treason, but did not at that time intend to do so through the Bill.⁴

The Shadow Home Secretary, Yvette Cooper (Labour), offered support for the Bill’s second reading and committed to work constructively on scrutiny. She highlighted aspects of the Bill which were particularly important, including making it easier to prosecute those seeking to harm Britain on behalf of a foreign intelligence service; protecting the intellectual property of British businesses; and, enabling earlier intervention to prevent attacks.

She noted the “gaping hole” left by the absence of the foreign agents registration scheme and urged the Home Secretary to introduce amendments in time to allow for proper scrutiny.⁵

¹ [HC Deb 6 June 2022, c575](#)

² [HC Deb 6 June 2022, c572](#)

³ [As above, cc 574 - 575](#)

⁴ [As above, c582](#)

⁵ [As above, c586](#)

She also questioned the Government's intentions with regard to reform of the OSA 1989, suggesting that it was likely to be the subject of debate during the Bill's passage, even if the Government did not propose to use the legislation to deal with it.

Yvette Cooper identified some aspects of the Bill about which the Opposition had reservations, or wished to explore further, including:

- Whether it does enough to do deal with misinformation or disinformation put online repeatedly by a foreign state, or whether further amendments were required to the Bill or the Online Safety Bill to address this;
- The risk from the use of shell companies to make donations to political parties, enabling hostile states to interfere in elections;
- The breadth of the drafting in some areas of the Bill, and whether it is capable of distinguishing between contact with foreign intelligence agencies which may be entirely legitimate, and that which is not;
- The weakness of the proposals for an independent reviewer to provide oversight of some of the proposed measures, by comparison with the remit of the independent reviewer of terrorism legislation.

Dr Julian Lewis (Labour), chair of the Intelligence and Security Committee (ISC), said the Bill took "significant steps in the right direction", but suggested it fell short in significant respects. He said that the ISC broadly welcomed the proposed reforms to the OSAs 1911-1939. However he was critical of the Government for failing to include the "urgently needed reform of the 1989 Act", and described as "odd, to put it mildly" the exclusion of the foreign influence registration scheme from the Bill as introduced.⁶ He said that the omission suggested that the Bill may have been introduced before it had fully matured, or that the Government wished to undermine parliamentary scrutiny by introducing it after second reading so that the Commons as a whole could not decide on it before it went to Committee. He said that such suspicions could be dispelled if the Government were to agree to a Committee of the Whole House.

Elaborating on the ISC's concerns with respect to the OSA 1989, Dr Lewis explained that the existing requirement to demonstrate actual harm caused by the publication of classified material by a civil servant or someone outside Government had led to some prosecutions being dropped. This is because the act of disclosing or specifying the harm done may compound the problem and increase the damage. He also noted that the scope to cause very significant harm through the publication of classified information had increased substantially as a result of technological advances since 1989. This he said left "huge gaps" in the legislation, and revisiting the 1989 Act was necessary to close them.⁷

⁶ [HC Deb 6 June, cc591-592](#)

⁷ [As above, cc593-4](#)

Sir Jeremy Wright (Conservative), another member of the ISC, suggested that the OSA 1989 could be replaced by broad offences of disclosure together with specific public interest defences. He argued that this would have the advantage of recognising the current reality that juries already apply *de facto* public interest defences in such cases, which do are not clearly defined in law. It would also place a lower burden on the prosecution, with less risk of damaging disclosure by the state.⁸

Several other members of the ISC also expressed concern about the omission of OSA 1989 reform from the Bill, noting that this had was first called for by the ISC almost 20 years ago.

Stuart McDonald conveyed the SNP's support for the Bill's second reading. However, he noted that there may be a tendency of Government and Parliament to grant the security and intelligence agencies whatever powers and capabilities they seek, and suggested Opposition MPs should not give "a blank cheque".⁹

He said that the SNP would seek to test whether the proposed new offences were fair and proportionate, and whether key concepts were drafted with sufficient precision.

He also highlighted clause 23, which would disapply certain extraterritorial provisions in relation to offences of encouraging and assisting crime under the Serious Crime Act 2007. According to the Explanatory Notes, this seeks to ensure that those working for or on behalf of the intelligence agencies would not be liable for support they provide to activity overseas which is deemed necessary for the exercise of the intelligence agencies functions. Stuart McDonald suggested that the provision as drafted goes way beyond that description, and that Ministers should not be able to put themselves beyond the rule of law in circumstances where their actions led to an unlawful drone killing of a family, or extraordinary rendition and torture, for example.¹⁰

Stuart McDonald further questioned whether the introduction of state threat prevention and investigation measures (STPIMs) could be justified, and whether the case could be made for restricting legal aid in unconnected proceedings on the basis of a past conviction for terrorism.¹¹

Overall there was broad consensus in support for the Bill, but also concern about the omissions described above, about clause 23, and about the complexity of some of the proposed offences. Several Members also expressed concern about the fairness of proposals to limit legal aid to those with past terrorist convictions.

Responding to the debate for the Government, then-Minister for Security and Borders Damian Hinds said that reform of the OSA 1989 involving the

⁸ [As above, c602](#)

⁹ [HC Deb 6 June 2022, c594](#)

¹⁰ As above, c595

¹¹ [As above, c596](#)

introduction of a public interest defence would give rise to more unauthorised disclosures. He also suggested that it would be impossible for an individual making such a disclosure to understand what harm could be caused by it, and that additional damage could be caused by further disclosures which may be necessary to defeat the defence. He reiterated that the Government would continue to consider the best way to reform the OSA 1989.¹² He also confirmed the Government's intention to bring forward a foreign influence registration scheme.¹³

¹² [HC Deb 6 June 2022, cc635-636](#)

¹³ [As above, c638](#)

2 Public Bill Committee

2.1 Financial and property investigations

New clause 8 and Schedule 1 were tabled by the Government and debated in Committee on 18 October. They would provide for constables and NCA officers (or the Lord Advocate in Scotland) to apply to a court for an order requiring the provision of information where there are reasonable grounds for believing that it is likely to be of substantial value to an investigation.

Tom Tugendhat explained that their inclusion was prompted by the intervention of Matt Jukes, the national lead for counter-terrorism policing, who said in evidence to the Committee that financial investigation powers, modelled on investigatory powers contained in counter-terrorism legislation, would assist with counter state threat investigations.¹⁴

Tom Tugendhat stated that in counter-state threat cases, property and finance investigations are often used to establish the link between the activity and the foreign power “particularly regarding investigations into obtaining material benefits from a foreign intelligence service”.¹⁵

Disclosure orders could not be used to compel a person to provide information that was legally privileged or “excluded material”, as defined under the Police and Criminal Evidence Act 1984 (PACE). This includes personal records relating to physical and mental health and journalistic material.¹⁶

New clauses 9 and 10 and new schedules 2 and 3 were also introduced as Government amendments and would provide for related powers to apply for customer information orders and account monitoring orders respectively from financial institutions.

Tom Tugendhat explained that these powers were also modelled on existing powers contained in PACE, the Proceeds of Crime Act 2002 (POCA) and counter-terrorism legislation.

¹⁴ Jukes, M., Letter to Chair of the Public Bill Committee, 29 July 2022

¹⁵ [PBC 18 October 2022, c338](#)

¹⁶ NS1, para 3

Holly Lynch said that Labour welcomed the new schedules, noting that they had been requested by counter-terrorism policing. However she questioned the adequacy of the oversight of the powers.¹⁷

The Minister committed to giving further consideration to the question of oversight.¹⁸

Stuart McDonald indicated that the SNP were also broadly supportive of the new schedules.¹⁹

Several members of the Committee criticised the lack of explanatory memoranda for the amendments.

2.2 Foreign Influence Registration Scheme

A new Part 2A²⁰ was added to the Bill via Government amendments. It would introduce a Foreign Influence Registration Scheme (FIRS).

The Government published a [Factsheet](#) on the scheme. It explains that “the overall aim of the 2-tier scheme is to deter foreign power use of covert arrangements, activities and proxies” by requiring greater transparency.

New clauses 11-28 were tabled by the Government and debated in Committee on 18 October.

Tom Tugendhat explained that they were being introduced in light of the ISC’s recommendation in the Russia report in 2020 and representations from the director general of MI5, and that it draws on the experience of comparable schemes in the USA and Australia.

The scheme has two main parts. The primary registration requirements, provided for by new clauses 14-17, would require the registration of political influence activities undertaken in the UK at the direction of a foreign principal²¹ (a “foreign influence arrangement”). According to the Government factsheet, the purpose of the scheme is to bring transparency to political influencing activity being done for a foreign power or entity, where the involvement of that foreign power or entity might not otherwise be apparent.

Registerable activity is defined by new clause 15, and would include making communications to Ministers, MPs, and senior officials, or providing incentives such as money or hospitality.

¹⁷ [As above, cc340-342](#)

¹⁸ [PBC 18 October 2022, c344](#)

¹⁹ [As above, cc342-343](#)

²⁰ Part 3 in the Bill as amended in Committee

²¹ As defined by NC14(3)

Arrangements with Ireland, or bodies incorporated or associated there, would be exempt from the scheme. According to the factsheet, this reflects the “spirit of the Belfast (Good Friday) Agreement”.

It would be an offence to fail to register an arrangement within 10 days, and to carry out political influence activity pursuant to an unregistered arrangement. A foreign influence offence would carry a maximum sentence of two years in prison.

“Foreign powers” would be excluded from the scheme, meaning that other governments would not be expected to register activity that they themselves are undertaking. This reflects the premise of increasing transparency around political influence where the involvement of a foreign power may not otherwise be obvious.

The other tier of the scheme, the “enhanced registration requirement” provided for by new clauses 11-13, would require the registration of arrangements to carry out any activity on behalf of a foreign power or an entity subject to foreign power control specified by the Secretary of State. It would also require the specified entity to register activities to be undertaken in the UK.

The Secretary of State would be able to specify a foreign power or entity for these purposes if they considered it reasonably necessary to protect the safety or interests of the United Kingdom.

It would be an offence to carry out activities under an unregistered foreign activity arrangement, or for a specified person to carry out unregistered activities. A foreign activity offence would carry a maximum sentence of five years.

Tom Tugendhat said the enhanced registration scheme would have three principal benefits:

- Providing the Government and the public with a greater understanding of the scale and extent of activity being undertaken for specified foreign powers and entities within the UK;
- Offences and penalties for non-compliance will increase the risks to those who seek to engage in covert activities for foreign powers;
- The potential for earlier disruption of state threats activity.²²

There would be a number of exemptions from the scheme, including:²³

- To individuals to whom privileges and immunities apply in international law, such as diplomatic and consular staff;

²² [PBC 18 October 2022, c353](#)

²³ New clause 18

- Legal services;
- Arrangements to which the UK is party; and
- Domestic and international new publishers (for the primary tier only).

During the debate on the new provisions, Tom Tugendhat confirmed that those subject to the primary registration requirements would be made public, and those on the enhanced tier would be identified in the order placing them on that tier. However, companies registering activities with entities on the enhanced tier would not be made public. He explained that this was because the Government wished to be aware of those activities, but not necessarily to stop them.²⁴

Holly Lynch expressed Labour's support for the scheme, but again criticised the lack of explanatory memoranda to accompany the amendments, and suggested that they should be made available before Report stage.²⁵

She said that there was "potential for loopholes all over the place" and that it would be important to get the details right in regulations. She also questioned the clarity of the drafting, and whether it would successfully capture the nature of the relationship between some states and entities that they control.²⁶

Stuart McDonald was also supportive of the scheme in principle, but questioned whether there were loopholes with respect to the liability of intermediaries.

He and other members raised further concerns about the diplomatic consequences of placing countries on the enhanced tier.²⁷

Other members, including ISC members Kevan Jones and Maria Eagle expressed concerns about the complexity of the enhanced tier measures, suggesting that their utility may be reduced as a result.²⁸

New clause 19 would give the Secretary of State the power to make regulations setting out the information required from a person registering under the scheme.

New clause 20 would enable the Secretary of State to issue information notices, requiring information from those who register, or should have registered under the scheme. New clause 21 provides exemptions from this for material subject to legal professional privilege and confidential journalistic material.

²⁴ [PBC 19 October 2022, c356](#)

²⁵ [As above, cc364-365](#)

²⁶ [As above, c366](#)

²⁷ [As above, cc367-368](#)

²⁸ [As above, cc369-372](#)

New clauses 22-28 deal with offences relating to providing false information; penalties; the publication of information about the scheme; annual reporting; and, interpretation.

2.3

Other significant issues

Offence of assisting a foreign intelligence service

The Government tabled a number of amendments to clause 3, which would provide for an offence of assisting a foreign intelligence service.²⁹

Then Minister Stephen McPartland explained that the amendments were intended to clarify that clause 3(7) provides for a defence rather than an exception, and to require that the defendant adduce some evidence to establish that defence. He said that the amendments had been drafted with the input of law enforcement and the CPS and would make it easier to bring prosecutions for the offence.

The amendments were agreed without a division.

Definition of prohibited place

The Government tabled amendments to clause 7, which defines the meaning of “prohibited place” for the purpose of the offences relating to entry to a prohibited place provided for by clauses 4 and 5.³⁰

Stephen McPartland explained that they would add sites used by the intelligence services to the definition of prohibited place. He said

The sites used by our intelligence services are some of our most sensitive locations and must be afforded the measures and protections given by the wider prohibited place provisions.³¹

The amendments were agreed without a division.

Foreign interference offence

The government tabled an amendment to clause 13 which would provide for an offence of foreign interference.³²

Stephen McPartland explained that the amendment would create a bridge to the priority offences in the Online Safety Bill

²⁹ [PBC 12 July 2022, cc94-98, Government amendments 1-4](#)

³⁰ [As above, cc115-121, Government amendments 5-8](#)

³¹ As above, c115

³² [As above, cc129-136, Government amendment 9](#)

... which will strengthen the Government’s response to the state-sponsored disinformation that seeks to undermine the UK’s interests...

Designating the offence as a priority offence in schedule 7 of the Online Safety Bill will require online platforms to guard against and act swiftly to remove content that amounts to an offence.³³

It was agreed without a division.

Foreign interference in elections

The Government tabled amendments to clause 14, which would provide for an offence of foreign interference in elections.

The amendments would add additional offences from the Electoral Law Act (Northern Ireland) 1962 to those listed in Schedule 1. The listed offences carry higher maximum penalties when the person who commits them meets the foreign power condition set out in clause 24.³⁴

They were agreed without a division.

Retention of biometric data

The Government tabled a series of technical amendments to schedules 3 and 9 of the Bill, which govern detention powers and biometric data.

Stephen McPartland explained that the amendment would bring the provisions in line with their equivalents in PACE and counter-terrorism legislation. He said that they had been left out initially “out of an abundance of caution” while the Government considered their compatibility with the ECHR following a legal judgment.³⁵

Obtaining benefits from a foreign intelligence service

The Government tabled new clause 7 (clause 15 in the Bill as amended) which would provide for two offences concerned with obtaining, accepting, agreeing to accept or retaining a material benefit from a foreign intelligence service.³⁶ The offences would carry maximum sentences of 14 and 10 years.

Tom Tugendhat explained the need for the provisions:

FIS operations in the UK run contrary to our safety and interests. In order to operate successfully, a FIS needs to recruit, fund and support networks of agents to support their undeclared activity in the United Kingdom. One of the most important motivating factors that a FIS is able to deploy to recruit agents is financial inducement or the provision of benefits in kind. It is often the case—this is reflective of the tradecraft of such organisations—that only the

³³ [PBC 12 July 2022, c135](#)

³⁴ [PCB 12 July 2022, c139, Government amendments 10 & 11](#)

³⁵ [PBC 14 Jul 2022, cc167-175, Government amendments 13-38](#)

³⁶ [PBC 8 September 2022, cc325-326](#)

money or other material benefits can be evidenced to a satisfactory criminal standard. The new offence will enable early intervention to prevent further harm from being caused and will further strengthen our ability to prevent FIS activity, building on clause 3.³⁷

Benefits received for legitimate reasons would be excluded, and the offences would be subject to a reasonable excuse defence.

Tom Tugendhat indicated that the Government would introduce further amendments at Report stage to ensure that the enhanced powers and tools provided for elsewhere in the Bill would be applicable to the more serious of the two offences, contained in subsection (1) of new clause 7.

Legal aid for individuals convicted of terrorism offences

Jess Phillips (Labour) tabled amendments to clause 62, which would restrict the availability of legal aid to those convicted of terrorism offences.³⁸ The amendment would exclude from the provisions those seeking civil legal aid in proceedings relating to domestic violence. She explained that

Under the Bill as it stands, a domestic abuse victim who received a non-custodial sentence for a terror offence two decades previously would not be allowed to access legal aid to seek a protective injunction against an abusive partner.³⁹

Tom Tugendhat, newly appointed as Security Minister, committed to give further consideration to the amendments, and they were withdrawn.

Public interest defence

Kevan Jones tabled an amendment with cross party support which would have provided for a defence to an offence under the Bill or the OSA 1989.⁴⁰

He described the Bill as a missed opportunity for dealing with OSA 1989 reform, noting the Law Commission and ISC recommendations, and doubts as to whether the existing scheme is compatible with Article 10 of the European Convention on Human Rights.

Both Holly Lynch and Stuart McDonald spoke in support of the new clause.

Tom Tugendhat committed to engage further on the matter, and the clause was withdrawn on that basis.

³⁷ [PBC 8 September 2022, c326-328](#)

³⁸ [PBC 8 September 2022, c313, amendments 60-62](#)

³⁹ PBC 8 September 2022, c314

⁴⁰ [New clause 6, PBC 18 October 2022, c418](#)

3 Committee reports

The Joint Committee on Human Rights (JCHR) conducted legislative scrutiny of the Bill and reported in October 2022.

The JCHR described the Bill as a welcome attempt to modernise espionage offences and the provisions replacing the OSAs 1911-1939 as a positive step forward and broadly in line with the Law Commission's recommendations. However, it expressed concern that some of the offences were drawn too widely and "could criminalise behaviour that does not constitute a threat to national security".⁴¹

The report raised particular concerns about the impact of some of the offences on the right to free expression, association and protest; the potential to have a disproportionate impact on certain communities; the STPIM measures; and restrictions on access to legal aid and damages.

It made a number of recommendations for amendments to the Bill, including:

- The proposal to grant immunity from prosecution for certain offences of encouraging or assisting an offence overseas where the conduct was necessary for the proper exercise of any function of the intelligence agencies should be removed from the Bill. Given that there are existing immunities where a person has acted reasonably, further protection for conduct that is not reasonable is not necessary.
- There should be stricter limits on the time that someone can be subject to a curfew under the STPIM measures.
- The independent reviewer role should be expanded to reflect the full ambit of the Bill.
- The clauses restricting legal aid should be removed from the Bill. At present they would prevent access to legal aid which may be required to allow equal access to the law – for example in housing cases or cases of domestic violence.
- Consideration should be given to the extent to which the foreign influence registration scheme will impact on democratic rights including freedom of expression.

⁴¹ [Legislative Scrutiny: National Security Bill](#), Joint Committee on Human Rights, 18 October 2022

- The Government should take action to reform the OSA 1989 to ensure it is compliant with human rights law.⁴²

⁴² For a full list of conclusions and recommendations see [Legislative Scrutiny: National Security Bill](#), pages 50-56, and Annex for proposed amendments

4

Appendix: Public Bill Committee membership

Aaron Bell (Conservative)

Maria Eagle (Labour)

Ben Everitt (Conservative)

Sally-Ann Hart (Conservative)

Antony Higginbotham (Conservative)

Damian Hinds (Minister for Security and Borders)

Stewart Hosie (SNP)

Kevan Jones (Labour)

Simon Jupp (Conservative)

Holly Lynch (Labour)

Stuart McDonald (SNP)

Stephen McPartland (Minister for Security)

Scott Mann (Conservative)

Gagan Mohindra (Conservative)

Holly Mumby-Croft (Conservative)

Jess Phillips (Labour)

Gary Sambrook (Conservative)

Tom Tugendhat (Minister for Security)

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