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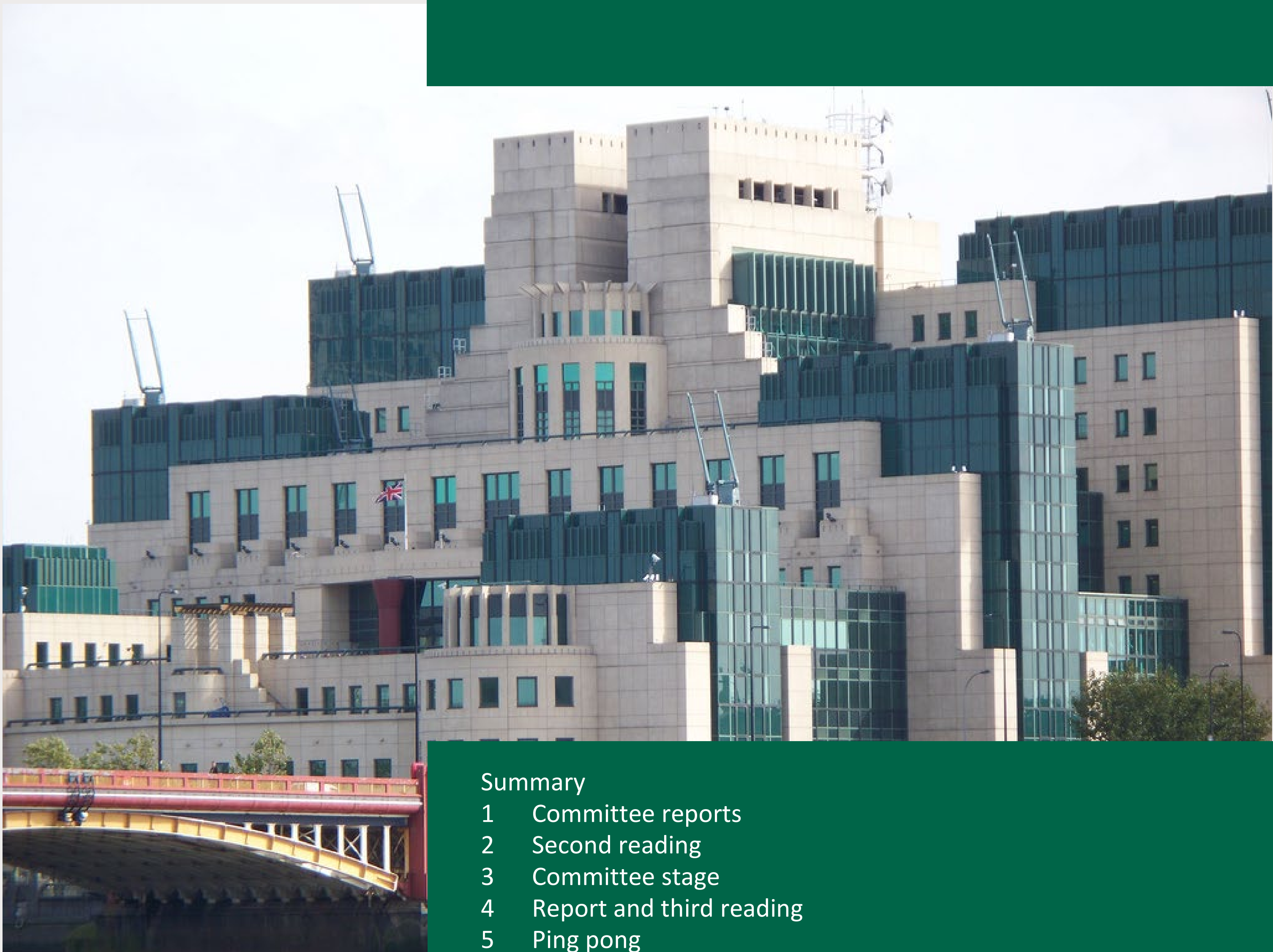
By Joanna Dawson

National Security Bill: Lords amendments



Summary

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Summary

The National Security Bill 2022-23 was introduced in the House of Commons on 11 May 2022. It 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 create a foreign influence registration scheme with the aim of providing transparency around foreign activity and influence in the UK. It would also limit the availability of civil legal aid and damages for those connected with terrorist activity.

Significant Government amendments were tabled at Committee stage in the Commons, 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.

For further background see the Library's briefings for second reading in the Commons and following Committee stage.

The House of Lords Library produced a briefing covering the remaining stages in the Commons.

The Bill was introduced in the House of Lords 17 November 2022. Significant amendments were made to the Bill by the Lords in Committee and on Report, including:

- Changing the definition of several offences created by the Bill and clarifying that they could not be committed without genuine knowledge as to the effect of the conduct in question.
- Introducing new transparency measures on UK-registered political parties with respect to donations received from "foreign powers" (amendment 22).
- Replacing the previous criminal immunity under Part 2 of the Serious Crime Act 2007 with a more targeted defence for members of the intelligence agencies and armed forces.

- Extending the oversight provisions to cover both Parts 1 and 2 of the Bill.
- Focussing the political tier of the foreign influence registration scheme explicitly on foreign powers.
- Requiring the Prime Minister to revise the Government's memorandum of understanding with the Intelligence and Security Committee (amendment 122).

The Commons considered the Lords amendments on 3 May, disagreeing with amendments 22 and 122.

The Lords considered the Commons message on 21 June and voted to reinstate clauses 22B and 122B in lieu.

The Commons will consider the Lords amendments in lieu on 26 June.

Other relevant publications are on the Bill pages.

This paper refers to clauses as numbered in the Bill as brought from the Commons (HL Bill 68) and to amendment numbers in Lords Amendments.

1 Committee reports

1.1 Joint Committee on Human Rights

The Joint Committee on Human Rights (JCHR) reported on the Bill in October 2022, shortly before it completed Committee stage in the Commons.[1]

The JCHR welcomed the Bill's aim of modernising the law, but identified several risks and made corresponding recommendations, including:

- Some of the offences may be drawn too widely and could criminalise behaviour that does not constitute a threat to national security;
- Legal uncertainty about some of the terms used – such as "the safety or interests of the United Kingdom" - could create a chilling effect and interfere unnecessarily and disproportionately with rights to freedom of expression and association and the right to protest;
- Espionage offences based on a link with all foreign powers (rather than enemy states) might disproportionately affect some communities;
- The provision granting criminal immunity from offences under the Serious Crime Act 2007 for members of intelligence and security agencies and armed forces has the potential to undermine respect for the rule of law and the fundamentals of fairness and justice, and is unnecessary in light of existing defences.
- There should be stricter time limits on curfews under State Threat Prevention and Investigation Measures, and legal aid should always be available to those subject to them.
- Denying legal aid to those with previous convictions for terrorism related offences risks undermining the principle of equality before the law.
- The Bill does not address the issue of unauthorised disclosures, as recommended by the Law Commission, and thus fails to resolve concerns about the compatibility of the Official Secrets Act 1989 with the Article 10 right to free speech.

1 Legislative scrutiny: National Security Bill, Joint Committee on Human Rights, HC297, 19 October 2022

1.2 Delegated powers and regulatory reform

The Delegated Powers and Regulated Reform Committee drew the House's attention to the regulation making power in clause 77 of the Bill, which would enable the Secretary of State to provide for the publication and copying of information provided under the foreign activities and foreign influence registration scheme by negative resolution.

The Committee noted that information provided under the scheme is liable to be "both politically and commercially sensitive, as well as potentially impacting on national security" and that it was therefore likely that there would be significant political interest in any regulations made using the power.[2]

The Committee disagreed with the department's justification for the procedure, namely that the power simply reflects the underlying transparency objective of the scheme, and that the Government intended to publish a policy statement about how the power would be exercised for Lords Committee stage. It concluded that neither justified a lower level of parliamentary scrutiny and that the affirmative resolution procedure would offer a more appropriate level of scrutiny.[3]

[2] National Security Bill, 20th Report of Session 2022-23, Delegated Powers and Regulatory Reform Committee, HL Paper 113, 12 December 2022, para 8

[3] As above, para 9

2 Second reading

At Second reading, Lord Coaker (Labour) welcomed the Bill, but indicated that there were areas which required further scrutiny. He questioned whether the Bill should contain a public interest defence to protect investigative campaigners, journalists and whistleblowers. He also questioned the scope and drafting of some of the Bill's provisions.[4]

Clause 28, which would provide for criminal immunity for members of the intelligence and security agencies and armed forces in relation to offences under the Serious Crime Act 2007, was identified as "hugely contentious" and lacking safeguards.

Lord Marks (Liberal Democrat) also expressed general support for the aims of the Bill. However he raised several concerns, including that the "breadth of many of the definitions in the Bill would substantially and unacceptably broaden the scope of the protections ostensibly afforded to national security".[5] He provided the example of "protected information" as an example of this, among others, noting that the Bill does not require that the information in question is actually restricted in order for disclosure to be criminalised. He said that

> The Bill fails to ensure that the steps we take to defend our liberty are targeted and limited to what is necessary for that defence of liberty. So, the first task for this House at the later stages in the Bill will be to cut down the scope of conduct that is unnecessarily and wrongly caught by the Bill as drafted.[6]

He also described a public interest defence, "broad enough to protect the free flow of information on which democratic political discourse depends", as essential.

Lord Wallace (Liberal Democrat) spoke of concerns about the foreign influence registration scheme in Part 3 of the Bill. He said that it would lead to a flood of reports from universities and research institutes involved in research partnerships across the world, which would overwhelm the Home Office. He suggested that universities had not been consulted on the proposals and there was a risk that their reputations and future operations could be severely damaged.[7]

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4 HL Deb, 6 December 2022, c111-114
5 As above, c114-118
6 As above, c116.
7 As above, c123

Lord Evans (Crossbench, former head of MI5) welcomed the Bill. He noted that it is based to some extent on the experience of implementing counter-terrorism measures over the last 20 years, and that will inform the way the new powers in the Bill are exercised.[8]

He suggested that the measures on foreign influence in elections may not go far enough, and that more may need to be done with respect to the regulation of election finance.

He expressed reservations about the possible introduction of a public interest defence, suggesting that having to argue against it might compound the damage caused by a leak of information.

On clause 28 he suggested that “we do not want to put ourselves in a position where it appears that we are endorsing illegal action which would be contrary to our values overseas”, and expressed hope that it would be possible to find a compromise on the drafting in Committee.[9]

Baroness Manningham-Buller (Crossbench, former head of MI5) endorsed Lord Evans’ comments, noting that a public interest defence might put covert human intelligence sources at risk.

She also agreed with Lord Wallace that the scope and practicality of the foreign influence registration scheme needed more scrutiny.[10]

Lord West (Labour) spoke as a member of the Intelligence and Security Committee (ISC). Although welcoming the Bill, he expressed regret that that it had not included measures to reform the OSA 1989, and was critical of the “haphazard” handling of the Bill in the Commons.[11] He welcomed the foreign influence registration scheme but described it as too complex in its current form, and as not going far enough.

He addressed concerns about clause 28, explaining that the Government had shared classified material with the ISC which underpinned its rationale. He told the House that the ISC considered that the clause potentially identified a legitimate problem, that there may still be a risk of criminal liability for junior members of the agencies and military, even when carrying out their duties, which could have an operational impact. However he concluded that the ISC was firmly of the view that the clause went considerably beyond what was needed, and that such a broad automatic exemption was not justified.[12]

8 As above, c118
9 As above, c120
10 As above, c124-126
11 As above, c126-127
12 As above c129

3 Committee stage

The Government tabled a number of amendments in Committee, many of which clarified or corrected drafting. They were agreed without division. The Committee did not divide on any other amendments or clause stand part motions.

The following is summary of the main issues raised in the debate, in particular those that related to or precipitated substantive amendments.

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

Offences

Lord Marks tabled a series of amendments aimed at tightening the scope of the offences in Part 1 of the Bill, by requiring it to be established that the defendant had actual knowledge of the essential facts in order to establish guilt. Lord Marks explained that by omitting the formulation "or ought reasonably to have known" from several clauses (eg 1(1)(b), 2(1)(c)) it would no longer by sufficient to establish guilt on the basis of imputed or constructive knowledge.[13]

The Minister opposed the amendments on the basis that

> Failing to include an element of objectivity in this test would risk seriously undermining the offences and not criminalising behaviour for which we consider individuals should be culpable…
>
> … we believe it is also right to include constructive knowledge in these provisions. Given the seriousness of the offences to which this test applies, it is essential that an element of objectivity is included to ensure that offences can still be prosecuted where individuals are unjustly claiming not to have known the relevant consequences or circumstances.[14]

Lord Marks agreed to withdraw the amendments pending further consideration with the Minister before Report.

A series of amendments were tabled to clause 3 (offence of assisting a foreign intelligence service) by Lord Marks, and by Baroness Ludford,

[13] HL Deb 19 December 2022, c955-958

[14] As above, c961

reflecting recommendations of the JCHR. The amendments sought to narrow the scope of the clause, reflecting concern that it does not include a requirement that the defendant intends that their conduct would prejudice the safety, security or defence interests of the UK.[15]

Lord Pannick raised a further concern as to whether a lawyer giving legal advice to a foreign intelligence service in carrying out UK-based activity would be caught by the offence.[16]

The Minister, Lord Murray, opposed the amendments, on the basis that “any activity taking place in the UK on behalf of a foreign intelligence service that the UK has not even informally agreed would be inherently prejudicial to the safety or interests of the UK”. However, he agreed to give further thought to the issue raised by Lord Pannick.[17]

Lord Marks tabled a further amendment to clause 3 that sought to raise the threshold for committing the offence from the conduct being “reasonably possible” to “likely materially to” assist a foreign intelligence service.[18]

He described the test of “reasonably possible” as “hopelessly vague”, noting the maximum sentence of 14 years for the offence, which he suggested was cast far too wide.[19]

The Minister, Lord Sharpe, rejected the amendment on the basis that it was unnecessary, the Government’s view was that there was no difference between the two terms.[20]

Baroness Ludford also tabled amendments recommended by the JCHR to clause 11, which would provide for police to control activity in the vicinity of a cordoned area. It would be an offence to fail to comply with a police order, subject to a reasonable excuse defence. The amendments would have provided that the reasonable excuse defence included protest and journalism. They would also have required the Government to issue guidance on the use of the powers.[21]

The Minster opposed the amendments, suggesting that they would significantly reduce the ability of the police to stop damaging activity from taking place. He also confirmed (as noted in the Government’s response to the JCHR’s report on the Bill) that police guidance was being developed in collaboration with the College of Policing on the use of the powers.[22]

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15 As above, c991-1004
16 As above, c995-996
17 As above c998
18 As above c1004
19 As above c1005
20 As above
21 As above, c1015-16
22 As above c1012

The Government tabled amendments to clause 13, which would provide for an offence of foreign interference.[23] The amendments would provide for two new ways of committing an offence under clause 13, where the defendant was reckless as to the effect of their conduct, and where the defendant engages in a course of conduct with one or more other people.

The Minister, Lord Sharpe, explained that the amendments did not represent a change of policy, but aimed to give better effect to the intention in respect of third-party conduct. He said

> We must ensure that we capture scenarios where foreign interference is achieved through the actions of two or more people acting in concert, but where it cannot be proven that all individuals intended their actions alone to have an undesirable effect. A scenario could be where a person, P, works for a foreign power and intends to interfere with a person's rights in the UK: for example, pressuring members of a diaspora community to stay silent on certain issues. If P subcontracts the prohibited conduct to another person—for instance, coercion of individuals—these amendments would allow us to charge P with an offence of foreign interference.[24]

The amendments relating to reckless conduct he said reflected comments made during debate in the House of Commons and by stakeholders. Not providing for an offence to be committed on the basis of recklessness would leave a gap in relation to a person who is clearly aware that they are involved in foreign interference but cannot be shown to have intended the relevant effects.

Other amendments in this group would restructure existing clause 13 and introduce new clauses setting out relevant definitions. They would also distinguish between political "processes" and "decisions" for the purposes of interference. The Minister explained that the introduction of political decisions was an important addition which sought to address the way a foreign state might seek to interfere with how a person makes a decision rather than just interfering in a particular process such as an election. [25]

Transparency in political funding

Lord Carlile tabled an amendment which would introduce a new clause after clause 14 entitled "Foreign interference in elections: duties on political parties".[26] It was sponsored by Lord Wallace (Liberal Democrat) and Lord Ponsonby (Labour). It would require political parties to release a policy statement to ensure the identification of donations from foreign powers, and to provide an annual statement on risk management in relation to donations from foreign powers. Lord Carlile explained that it would put responsibility on political parties for where they obtain their money,

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23 Lords amendments 17 & 19-21

24 HL Deb 21 December 2022 c 1154

25 As above c1155

26 Now reflected in Lords Amendment 22

reflecting major concerns about foreign financial influence on political parties.[27]

The amendment was supported by Lord Evans, who said he found it difficult to understand why there should be any objection to enhanced due diligence in relation to money donated to political parties in the course of an election, and by Lord Coaker.

Responding, Lord Sharpe said that UK electoral law already sets out a stringent regime of controls on political donations. Explaining the existing arrangements, he said that the Government opposed the amendment on the basis that these rules mitigate the risks, and that the amendment risked undermining these rules.[28]

Immunity under the Serious Crime Act 2007

Lord Purvis (Liberal Democrat) tabled an amendment to clause 28, which would provide criminal immunity from offences of assisting and encouraging offences abroad under Part 2 of the Serious Crime Act 2007 (SCA) for members of the intelligence and security agencies and military.

The amendment sought to ensure that the immunity would not cover torture, murder or sexual offences.[29]

Lord Purvis argued that the clause would make significant changes to law and guidance that currently governs the involvement of the agencies in criminality, both domestically and internationally, without justification.

Lord Anderson (Crossbench) also tabled an amendment. As an alternative to clause 28, it would have added activities caught by Part 2 of the SCA to scheme established by section 7 of the Intelligence Services Act 1994. This permits authorisations for criminal conduct abroad on the part of the intelligence agencies.

He described the complexity of the provisions of the SCA in question, and the excessive breadth of liability. He said that intelligence officials found them hard to interpret and were concerned about the risks of prosecution in relation to acts which are retrospectively judged to be capable of encouraging or assisting the commission of an offence by a foreign intelligence partner.[30]

However, he argued that, even if there was an unacceptable legal risk, removing all legal accountability for assisting and encouraging the most serious crimes would send an unfortunate message.

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27 As above c1159

28 As above c1167

29 HL Deb 11 January 2023 c1439

30 As above c1444

Lord Coaker welcomed both amendments, describing clause 28 in its current form as unacceptable.

Responding, the Minister said that clause 28 was necessary because the SCA currently exposes those acting for the intelligence and security agencies and military to potential legal jeopardy and limits their operational agility. However he indicated that the Government were considering whether a change of approach was appropriate and committed to reaching a consensus on the matter.[31]

3.2 Part 2: Prevention and investigation measures

Lord Anderson and Baroness Ludford tabled amendments which would have expanded the requirement for the independent reviewer to conduct a review of Part 2 of the Bill under clause 54.[32]

In response, Lord Murray indicated that the Government were considering whether extending the oversight of the independent reviewer could be done in a way that did not duplicate or interfere with existing oversight mechanisms. He committed to making a decision at the next stage of the Bill's passage.

3.3 Part 3: Foreign activities and foreign influence registration scheme

Part 3 of the bill would introduce a foreign influence registration scheme (FIRS). The scheme would require those acting for a foreign power or entity to declare political influencing activity and would criminalise those who do not do so.

The scheme would be two-tiered. The primary tier would require the registration of political influence activities within the UK at the direction of a foreign power or entity, subject to certain exceptions. A person would need to declare who they are in an arrangement with, what activity they have been directed to undertake, and when the arrangement was made. They would be required to do this within 10 days of the direction, or in any case before the activity is carried out. Foreign entities would also be required to register their own political influence activities before carrying them out.

The enhanced tier would allow the Secretary of State to specify a foreign power or foreign power-controlled entity where necessary to protect the

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31 As above c1455-1463

32 HL Deb 16 January 2023 c 1642-45. Now reflected in Lords Amendments 32-34

safety or interests of the UK. It would then make it an offence for anyone to carry out any activity in the UK at their direction without it being registered.

Peers raised significant concerns about the provisions in Part 3, including that they had been introduced without sufficient consultation at a late stage in the House of Commons and had therefore not benefitted from in depth scrutiny. Objections reflected representations from business, charities, NGOs, academia, legal and professional services, among others. Many made the point that the provisions went beyond the ambit of national security.

The Government tabled several amendments to Part 3 in Committee to clarify and ensure consistent use of terminology. They would also insert a new schedule into the Bill listing senior public officials who, if communicated with, trigger a requirement to register under FIRS.[33]

Lord Anderson expressed "grave concerns" about this part of the Bill, and tabled stand part notices which would remove clauses 66-70 of the Bill, which provide for the primary tier of FIRS.

He noted that the obligation to register would fall on any person who is directed by a foreign principal to exert political influence or arrange for it to be carried out, including trying to influence a parliamentarian or political party on any issue. Further, it would involve a continuing and open-ended obligation to disclose whatever may be required by an information notice. He suggested that the Government could revert to a model based on the Australian scheme, which would not apply to all foreign organisations but only those controlled by foreign Governments. The alternative would be to accept that the clauses were too flawed to be improved during the passage of the Bill and remove them, he suggested.[34]

Baroness Hayter (Labour), who also put her name to the stand part motions, raised very serious concerns on the part of businesses, such as banks, the pharmaceutical industry and other major importers and exporters, as well as NGOs and academia.[35]

Lord Wallace tabled amendments aimed at ensuring that charitable bodies, commercial bodies, universities and policy researchers should be excluded from some parts of the Bill. Reflecting on Part 3 more generally, he suggested that it needed much further consultation and urged the Government to take time to heed the concerns expressed and ensure it strikes the right balance.[36]

Baroness Noakes (Conservative) tabled amendments aimed at restricting the scope of the political influence clauses to organisations which are under the control of a foreign power and extended the ambit to UK-incorporated

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33 HL Deb 16 January 2023 c1683-85
34 HL Deb 16 January 2023, c1649-1651
35 As above c1651-1654
36 As above c1654-57

organisations. They would also have exempted commercial activities from the definition of “political influence activity” and created a power to exempt activities which do not involve a risk to national security.[37]

In response, the Minister committed to consider how to address the concerns raised ahead of Report.[38] However, he also noted that the Government had sought to minimise the anticipated regulatory burden which was the source of many of the concerns raised.

3.4 Part 4: Persons connected with terrorism: damages and legal aid

Lord Marks tabled amendments to clauses 82-86, which would provide for the courts to reduce the level of damages payable to a claimant who had previously been involved in terrorism, and to freeze and forfeit assets to prevent them being used in relation to terrorist activity. He also raised objections to the clauses standing part.

He described the clauses as vindictive, in that they are not clearly targeted at achieving the end at which they are aimed but “instead represent a far wider knee-jerk attack on the civil rights of those affected”.[39] He further objected that they were unnecessary because existing powers could achieve the same ends, and that they would restrict the rule of law and immunise government from legitimate legal action.

The amendments would have restricted the ambit of national security proceedings for the purposes of reducing damages so that it would not apply where the national security considerations were merely incidental.

Lord Pannick supported the amendments, suggesting that awarding damages for civil wrongdoing is one of the primary means by which the court remedies the wrongdoing and deters future wrongdoing.

Lord Purvis also agreed that the clauses would undermine mechanisms for holding government to account,[40] as did Lord Coaker.[41]

Responding, the Minister, Lord Bellamy, said that the overriding purpose was to convey a message that the UK is not a “soft touch” for those involved in terrorist wrongdoing when they come to claim civil damages. He also rejected the suggestion that the provisions were intended to introduce a

[37] As above c1657-59
[38] As above c1670
[39] HL Deb 18 January 2023 c1847
[40] As above c 1851
[41] As above c1854

level of impunity.[42] However he agreed to give further consideration as to whether more precision could be introduced to the provisions.

Baroness Ludford spoke to the question of whether clause 87, which would limit the provision of legal aid to those with terrorist convictions, should stand part of the Bill. She suggested that it may raise questions of compatibility with the European Convention on Human Rights, and rule of law challenges regarding access to justice.[43] She noted that the provision would catch people convicted of minor and historic offences, with a tenuous relationship to terrorism, and could prevent a domestic abuse victim from accessing legal aid to obtain an injunction, on the basis of such an offence.

Lord Pannick, Lord Anderson and Lord Marks also objected to the clause as a matter of principle.

The Minister defended the clause on the basis that those who have committed acts of terrorism should be subject to different rules as to the granting of civil legal aid, but agreed to reflect further on the specific issues raised.[44]

3.5 Other provisions

Lord Coaker tabled a new clause, supported by Lord West and members of the ISC, which would require the Government to revise the Memorandum of Understanding (MoU) between the Prime Minister and the ISC to reflect any changes to the intelligence and security activities undertaken by Government as a result of the Bill.[45]

He explained that this would reflect the Government's position during the passage of the Justice and Security Act 2013 (when the ISC's remit and status were reformed). He noted the most recent annual report of the ISC, which suggested that the Government was actively avoiding the effective scrutiny by Parliament of national security issues.[46]

Responding, the Minister, Lord Sharpe, distanced the current Government from the approach taken by the Johnson Government and suggested that the Prime Minister would consider the proposed changes to the MoU in due course. However he declined to support the amendment.[47]

42 As above c1856
43 As above c1865
44 As above c1869
45 As above c1897. Now reflected in Lords Amendment 122
46 As above c1898
47 As above c1900

4 Report and third reading

Report stage

Offences

At Report the Government tabled amendments to several of the offences in the Bill which could be committed on the basis of constructive or imputed knowledge.[48]

Lord Sharpe explained that the Government had considered the concerns raised in Committee, and whilst it did not consider the phrase "ought reasonably to know" to be unclear, it would be helpful to clarify it nonetheless. The amendments would therefore insert "having regard to other matters known to them" as a qualification into a number of clauses.[49]

Amendments were also tabled to clause 3 reflecting the amendments tabled by Lord Marks in Committee. These would replace the wording "it is reasonably possible may" with "is likely to" materially assist a foreign intelligence service in 3(2)(a) and (b). Lord Sharpe explained that the Government saw this as meaning a real possibility.[50]

The Government tabled a further amendment to introduce a defence for lawyers providing legal advice, reflecting the concerns raised by Lord Pannick in Committee.[51]

Transparency in political funding

Lord Carlile reintroduced an amendment to impose transparency requirements on UK-registered political parties. He said that

> … what this amendment seeks to do is protect us from the likes of Putin's cronies, who might, one way or another, find their way to dinners, contribution events and even meeting people in this great building. We seek to establish a register. In effect, each political party would have to create a policy statement which meant that they were obliged to disclose at least the outline of contributions made by a foreign power … .[52]

48 Including Lords amendments 1,2,10,11, 16, 23, 27 to clauses 1, 2, 3, 4 , 5 ,12, 15, 29
49 HL Deb 1 March 2023 c249
50 HL Deb 1 March 2023 c250; Lords amendments 3, 5 & 6
51 As above, Lords amendments 7-9
52 As above c293-294

As with his amendment tabled in Committee, it would require UK-registered political parties to provide the Electoral Commission with an annual statement of risk management relating to donations from a foreign power.

The House divided and the amendment was passed by 209 votes to 170.[53]

Defence under the Serious Crime Act 2007

A number of amendments were tabled to clause 28, on immunity under the SCA, including by the Government. The Government amendment would replace clause 28 with a new clause which would provide a defence for extra-territorial offences.[54]

The Minister said that the Government's shift in approach on the SCA reflected its maintained commitment to ensuring that individuals working for the intelligence and security agencies and military are protected.

He explained that the new defence would apply to those carrying out their functions in supporting activities overseas. It would be established where it could be shown that the act was necessary for the proper exercise of a function of an intelligence service or the armed forces. Lord Sharpe said that it would provide more reassurance than the current reasonableness defence in section 50 of the SCA because it did not depend on the subjective requirement of proving reasonableness.

It would place an evidential burden of proof on the individual to raise the defence, after which there would be a legal burden on the prosecution to disprove it.

The heads of the intelligences agencies and the Defence Council would be required to ensure that arrangements were in place to ensure that any acts covered were necessary for the proper exercise of their functions. The Secretary of State would also have responsibility for ensuring these arrangements were satisfactory.[55]

Responding to amendments tabled by Lord Anderson, Lord Carlile and Lord Beith, Lord Sharpe said that it was necessary for the defence to be available to the armed forces because it would enable more effective cooperation with international partners. He explained that intelligence sharing often formed a necessary part of wider co-operation with allies in a military context.

In light of the Government amendment, the other amendments were withdrawn or not moved.

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53 As above, c303-305: Lords amendment 22

54 Lords amendment 26

55 HC Deb 1 March 2023 c317-319

Foreign power threat activity

A Government amendment was tabled to clause 31, which would define foreign power threat activity and involvement in that activity, addressing concerns raised in Committee and by the JCHR.[56] The concerns were that that support or assistance unrelated to the harmful conduct covered by foreign power threat activity as defined by clause 31(3) could be caught by clause 31(1)(c). Lord Sharpe explained that this was not the Government's intention, and that the amendment would put beyond doubt that the support or assistance must be in relation to the conduct covered by clause 31(1)(a) rather than unrelated activity.[57]

Oversight

Government amendments were tabled to remove clause 54, which would provide for the appointment of an independent reviewer to review Part 2 of the Bill.[58] The amendments would create a new provision requiring the appointment of an independent reviewer of state threats legislation to oversee Parts 1 and 2 of the Bill, as well as Schedule 3 of the Counter-Terrorism and Border Security Act 2019 (which governs state threats port stops power). Lord Sharpe explained that the Government intended to run an open competition for the role, aligned with the appointment cycle of the independent reviewer of terrorism legislation (IRTL).[59]

In response to opposition amendments, Lord Sharpe explained that an explicit commitment to review Part 4 of the Bill was unnecessary, because it was already within the remit of the IRTL.

Foreign influence registration scheme

On the second day of report the Government tabled a group of amendments to clarify the intent of the enhanced tier of FIRS.

Lord Sharpe explained that the amendments to clause 62[60] would enable the Secretary of State make regulations narrowing the activities requiring registration under this tier, allowing registration requirements to be tailored to the threat posed by a country or entity.[61]

Amendments to clause 64[62] would amend the offence of carrying out activities under an unregistered foreign activity arrangement.[63]

Lord Sharpe explained that the Government did not wish to unfairly criminalise those who reasonably believe an arrangement is registered and

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56 As above c332. Discussed as clause 33 at Report stage. Now reflected in Lords Amendment 28
57 HL Deb 1 March 2023 c332
58 Lords amendments 32-34
59 As above c339-340
60 Lords amendments 35-39. Clause 64 at Report stage, reflecting amendments made in Committee
61 HL Deb 7 March 2023, c 694
62 Clause 66 at Report stage
63 Lords amendments 40-43

have taken all reasonably practicable steps to check with a foreign power or specified person, or for subcontractors carrying out activities under arrangements. The amendments would therefore provide for a defence where a person has taken all reasonably practicable steps to determine whether the arrangement was registered.[64]

Further Government amendments tabled at Report would modify the individuals to whom an information notice could be given under clause 73, for both tiers of FIRS. They would provide that the Secretary of State could issue an information notice to an individual whom they reasonably believe is carrying out activity under a registerable arrangement, even if they are not the person who has made the arrangement.[65]

An amendment tabled by Lord Anderson, which would clarify that the Secretary of State may only specify information in an information notice which they consider may be relevant to an arrangement or activity, was supported by the Government and added to the Bill without a division.[66]

Government amendments to clause 66 would restrict the definition of foreign influence arrangement to arrangements with foreign powers.[67] Lord Sharpe explained that the Government was introducing the amendments in response to concerns raised in previous debates. The amendments would refocus the political tier back on its original intention, the influence of foreign powers over UK democracy, he said. The effect would be that registration would only be required where a person was carrying out foreign influence at the direction of a foreign Government. The amendments would therefore take those being directed by foreign companies, charities or other foreign entities out of the scheme.[68]

The amendments would also provide that a person would have up to 28 days to register an arrangement, and that it would not need to be registered before the activity took place.

They would also narrow the definition of "political influence activity" so that attempts to influence a Member of Parliament or of one of the devolved administrations would only be caught when the intention is to influence them in that capacity.

The Government also tabled amendments to provide that regulations detailing the information to be published on the FIRS public register under clause 77 should be subject to the affirmative resolution procedure, responding to the recommendation of the Delegated powers and Regulatory Reform Committee.[69] The Government also published draft regulations

64 HL Deb 7 March 2023, c 694
65 Lords amendments 89-95
66 Lords amendment 96
67 Lords amendments 55-63. There were also a number of consequential amendments to other clauses in this Part of the Bill as a result of this group of amendments.
68 HC Deb 7 March 2023 c702
69 Lords amendment 126

making clear that information would not be published where doing so would prejudice national security, put an individual's safety at risk or involve the disclosure of commercially sensitive information.[70]

The Government accepted an amendment tabled by Lord Anderson and Lord Carlile, which would ensure that the requirement to register foreign influence arrangements would not apply to arrangements that have ceased to have effect at the point the clause comes into force. It was agreed without a division.[71]

A further group of Government amendments were agreed which would amend clause 68. Clause 68 would provide a definition of "political influence activity" for the purposes of the scheme's political tier registration requirements.[72] The amendments would replace the list of persons, communication to whom could constitute political influence activity, with a new more extensive list in a new Schedule (Public Officials) after schedule 13. The group would also make a number of clarifications, corrections and consequential amendments.

Damages

The Government tabled amendments to clauses 83 and 84, which would enable the courts to limit damages in civil cases in which the claimant had been involved in terrorist activity.

The amendments would provide that damages could only be reduced if there was a connection between the terrorist conduct of the claimant and the subject matter of the civil claim.[73]

The amendments sought to address concerns raised in previous debates. Lord Marks described it as a significant concession which answered an important criticism.[74]

Legal aid

The Government tabled a group of amendments to the legal aid provisions in clause 87. These would create an exception to the restriction on terrorist offenders receiving legal aid where it is sought in relation to family and housing matters and they are a victim of domestic abuse.[75] They were supported and agreed without a division.

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[70] HL Deb 7 March 2023, c703

[71] Lords amendment 60

[72] Lords amendments 64-74; consequential amendments to clause 70: 79-81; new schedule: 153

[73] Lords amendments 111-116

[74] HL Deb 7 March 2023, c719

[75] Lords amendments 117-120

Lord Marks welcomed the exception, but said that it was based on “no discernible principle at all”, and questioned why victims of human trafficking or sexual violence should not also be excepted.[76]

He tabled amendments which sought to provide that legal aid would not be excluded in cases in which there was no link between the past terrorist offence and the current application for legal aid.[77]

Lord Pannick supported these amendments, suggesting that the legal aid provisions were wrong in principle for several reasons, including that there is no exclusion from civil legal aid for those convicted of murder and rape, who may receive life sentences, whereas the provisions would cover people convicted of relatively low level terrorist offences.[78]

The Opposition tabled an amendment that would have required a review of the impact of the provisions in relation to certain lower-level cases, but supported in principle the position that terrorism should be treated differently to other classes of offending.[79]

The House divided on Lord Marks’ amendments and they were defeated by 197 votes to 93.[80]

The House also divided on the Opposition amendment which was defeated by 211 votes to 146.[81]

Memorandum of understanding with the ISC

Lord Coaker tabled an opposition amendment which would insert a new clause imposing a requirement on the Prime Minister to revise the MoU with the ISC to reflect changes to the Government’s intelligence and security activities as a result of the Bill.[82]

Lord Coaker explained that the amendment sought to implement a suggestion from the ISC’s most recent annual report, which set out the need to update the MoU. He suggested that Select Committees were not able to perform oversight of intelligence and security activities devolved to different Government departments because they do not have access to classified information.[83]

76 HL Deb, 7 March c723
77 As above c724
78 HL Deb 7 March 2023 c725
79 As above c727
80 As above c733-735
81 As above c736-738
82 As above c741-743
83 It was suggested during the debate that members of the ISC are able to view classified information because they have the necessary security clearance, unlike members of Select Committees. In fact, members of the ISC do not have security clearance. However, they are subject to the Official Secrets Act 1989, and officials on the ISC’s secretariat have the requisite security clearance. For

He also described as unacceptable the fact that no Prime Minister had met with the ISC since 2014.

Lord West supported the amendment on behalf of the ISC, saying it would ensure that the ISC was able to scrutinise intelligence and security activity across government under the new national security regime. He explained that many policy departments which now undertake intelligence and security activity are not included in the ISC's remit and often exclude the ISC from looking at relevant material.

Lord Sharpe suggested that the amendment could be taken to imply that the ISC required explicit legislative provision to make changes to the MoU, whereas it already has that flexibility.[84]

He also said that changes were under consideration following recent machinery of government changes, and it would not be appropriate to require the Prime Minister to revise the MoU according to a fixed timetable.

The House divided on the amendment and it was agreed by 210 votes to 184.[85]

Third reading

The Government tabled a series of technical amendments to ensure that the Bill accurately reflected the decision making powers of the devolved administrations and their ministers.

They were all agreed without division.[86]

further information about the ISC, see Library Briefing Paper The Intelligence and Security Committee

84 HL Deb 7 March 2023 c740

85 As above c749-751: Lords amendment 122

86 HL Deb 13 March 2023 c1089-95

5 Ping pong

The Commons considered Lords amendments on 3 May. The Government tabled motions disagreeing with amendments 22 and 122.

The Security Minister, Tom Tugendhat, explained that the Government did not consider amendment 22 necessary because political parties are already required by law to verify whether donations are or are not from a political source, and donations from foreign powers were not permitted either directly or indirectly. He said that existing laws already provided strong incentives for parties to ensure that donations come only from permissible donors.[87]

He also suggested that the amendment would apply to minor political parties who are not currently subject to financial reporting requirements, placing “huge administrative burdens on small, grassroots political campaigning”.[88]

He said that amendment 122 risked creating the erroneous impression that explicit legislative provision is required in order for the ISC to propose amendments to the MoU with the Government. He also noted that the power to amend the MoU already existed in the Justice and Security Act 2013.[89]

In response, Sir Julian Lewis (Chair of the ISC) noted that the Prime Minister had been reluctant to use the existing power, and the MOU had not been amended.

The Shadow Minister, Holly Lynch, spoke in support of amendments 22 and 122,[90] as did Sir Julian Lewis,[91] and Stuart McDonald for the SNP.[92]

The House divided on amendment 22 and it was disagreed by 254 votes to 134.[93] Amendment 122 was disagreed by 254 votes to 134.[94]

A number of Government amendments were agreed without division.

87 HC Deb 3 May 2023, c122
88 As above, c123
89 As above, c124
90 As above, c127-129
91 As above, c131-136
92 As above, c137-138
93 As above, c150-152
94 As above, c153-156

The Lords considered the Commons message on 21 June.

Lord Carlile proposed amendment 22B in lieu of amendment 22, and Lord Coaker tabled 122B in lieu of amendment 122.

The Minister, Lord Sharpe, responding to amendment 122B noted that the Security Minister had recently met with the Chair of the ISC in order to better understand the Committee's concerns and had also committed to providing regular updates on the Bill's implementation. He reiterated arguments as to why the amendment was unnecessary.[95]

On amendment 22B he repeated previous arguments as to why it would not add value to the existing legal framework and that therefore it was not reasonable or proportionate. He added that it was convention that the Government would not change the law relating to elections without consulting political parties, which had not happened.[96]

Speaking to his amendment, Lord Carlile disagreed that existing safeguards were sufficient, describing the law relating to foreign donations as being "riddled with loopholes".[97] He said that they enabled foreign money to be channelled to political parties and MPs through what appear to be lawful donors, such as UK-registered businesses and unincorporated associations, and does not require political parties to have a risk-based approach to donations.

He also denied that it would apply to small political parties, suggesting that they take their funds from small groups of closely interested people.

Lord Coaker explained that amendment 122B had been revised following the Government's rejection of the original amendment, and now only included a duty to review the MoU, rather than to update it. He suggested that the existing power to review the MoU was insufficient and that without the amendment it would not happen.[98]

Lord West, a member of the ISC, spoke in support of the amendments, and said that all members of the ISC felt that their efforts to get the MoU changed were being thwarted, describing it as "extremely worrying".[99]

Amendment 22B was agreed on a division by 219 voted to 172.[100]
Amendment 122B was agreed by 223 votes to 165.[101]

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95 HL Deb 21 June 2023, c226
96 As above, c227
97 As above, c231
98 As above, c233
99 As above, c245
100 As above, c247-249
101 As above, c250-252

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