



Home Office

Lord Hanson of Flint
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Dear David,

National Security (State Threats) Bill

Thank you for your letter setting out the Joint Committee on Human Rights' considerations on the National Security (State Threats) Bill. I am grateful for the Committee's scrutiny and welcome the opportunity to respond to the points you have raised.

Designating bodies involved in foreign power threat activity (paragraphs 3-7 of the JCHR letter)

The power to designate bodies is designed to target state linked organisations posing a direct and significant threat to UK national security. The bar is necessarily high, involving a two-stage test. Alongside reasonably believing that the body is or has been involved in foreign power threat activity, the Secretary of State must also consider that designating the body is necessary to protect the safety or interests of the United Kingdom. This second part of the test will involve the Secretary of State considering a number of factors including that the consequences of designation are a necessary and proportionate response to the threat.

You raise an interesting point around s4 of the National Security Act (Prohibited Places) and the theoretical possibility that an organisation could be designated on the basis of such activity without the need for a foreign power connection. We consider it unlikely in practice that involvement in prohibited place offences alone would satisfy the statutory requirements for designation. However, it is worth noting that the s.4 offence is limited to the UK's most sensitive sites, such as those with military technology or connected to the intelligence services. In legislating for this offence, Parliament recognised that these sites are likely to be a target of state threat activity. As such, even if there is not an overt connection to a foreign power, an organisation engaged in s.4 activity is likely to be acting in a way that is likely to be beneficial to a foreign power. For example, trespass or surveillance of sites connected to the intelligence services, which may threaten essential national security measures in a way that benefits a foreign power, or which, even indirectly provides foreign states with information about the operation of those sites.

In view of the above, we do not consider that it would be appropriate to amend the Bill. While we judge that it is unlikely that involvement in s.4 offences alone would be sufficient grounds to designate an organisation, we cannot exclude the possibility that circumstances might arise in which designation would be the appropriate intervention. Amending the Bill to rule this out would narrow the utility of the designation power and would potentially leave a gap in the legislative scheme.

Assisting a designated body (paragraphs 8-12)

As mentioned above, the purpose of the power is to call out the most egregious state linked organisations posing a threat to our national security, and to constrain as far as possible their ability to operate in the UK and against the UK's interests overseas.

The offence in new s17B would only arise once a body has been designated. In making that decision, the Secretary of State would need to be satisfied that the body is or has already been involved in foreign power threat activity. Part of that consideration would look at the activities of the body more broadly including any carried out within the UK. The Secretary of State would therefore have in mind the nature of the body's UK activities at the point of designating a body and the offence that would arise as a result of designation.

Once a body has been designated, and therefore it has been assessed that it is involved in foreign power threat activity, we consider it is right that any activity that materially assists that body in carrying out activities in the UK should be subject to criminal sanction. This is in line with the existing offence of assisting a foreign intelligence service at s.3 of the National Security Act 2023. We cannot see any justification for applying different standards to a designated body.

It is worth also pointing to the defence at 17B(6), in particular at paragraph (d). We consider if a person needs to provide material assistance to a designated body for activities in the UK, they would be able to seek an agreement or arrangement with HMG to do so.

Obtaining material benefits from a designated body (paragraphs 13-15)

In your letter, you questioned the receipt of material benefits, for example the receipt of helpful information. Section 17C is not intended to criminalise all communications with a designated body.

For the receipt of information to be criminalised, the prosecution would need to prove that the information constituted a "material benefit" to that person. Subsection (3) expressly includes "information". But in interpreting legislation, when general words follow specific words, the general words are to be construed in light of those specific words. The preceding words are "financial benefits" and "anything which has the potential to result in a financial benefit".

It is our view that the term "information" in subsection (3) would not be interpreted to mean "any" information; rather information that possesses an inherent value that enriches the recipient or improves their material position. We believe that a similar view has been adopted by the courts in their interpretation of section 58 of the Terrorism Act 2000, which criminalises any information likely to be useful to a terrorist.

As you will be aware, the offence also only catches material benefits that are not excluded benefits. Material benefits that are legitimately received in consideration for goods or services are therefore not within the offence.

The new offences are intentionally broad in order to restrict as much as possible the UK-related activities of the most threatening state linked organisations. This offence will allow action to be taken before significant harm has occurred, as financial or other material

benefits are often the first stage in a designated body developing a relationship with an individual.

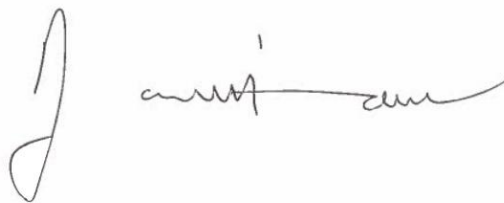
You raise the defence of reasonable excuse in new 17C(7) which applies to retaining a benefit. This replicates the same defence in existing s17 and has been designed to ensure that someone who has not taken active measures to obtain or accept a benefit but has come into possession of a benefit would have a defence, for example if they had spotted the payment and were taking steps to investigate its origin.

We have considered the need for further exclusions or restrictions but note the risk of creating loopholes which could be exploited by hostile actors and which would undermine the point of the bill.

I hope this provides helpful further clarification on the issues you raised.

I am grateful for your continued engagement, and I look forward to working constructively with you as the Bill progresses through the House of Lords.

Yours sincerely,

A handwritten signature in dark ink, consisting of a large, stylized 'J' followed by a series of connected loops and a long horizontal stroke.

Lord Hanson of Flint