Written evidence from The News Media Association (NSB0003)

1. I write on behalf of the News Media Association (**NMA**), the voice of UK national, regional and local newspapers in all their print and digital forms - a £4 billion sector read by more than 46 million adults every month in print and online. Our members publish over 900 news media titles from The Times, The Guardian, the Daily Mail and the Daily Mirror to the Yorkshire Post, Kent Messenger, and the Monmouthshire Beacon.

2. The Joint Committee on Human Rights is scrutinising the ways in which the new offences in the National Security Bill (the **Bill**) that relate to foreign power threat activity and the safety or interests of the UK might impact on the rights guaranteed by Articles 10 and 11 of the European Convention on Human Rights (**ECHR**), namely the right to freedom of expression, the right to freedom of assembly and the right to engage in peaceful protest. We note that the Committee is particularly interested in the potential impact of these offences on political speech, journalism and peaceful protest.

3. The NMA is concerned to ensure that recommendations for law reform to protect national security do not undermine press freedom by criminalising legitimate public interest journalism. The importance of a free and independent press to a democratic society cannot be overstated, facilitating government accountability and the public's right to know. Any uncertainty over the nature and scope of the espionage offences will have a chilling effect, discouraging sources (including whistle-blowers) from coming forward and engendering a risk-averse environment in media organisations. Furthermore, the failure to include a public interest defence in the Bill poses a grave threat to investigative journalism and its sources.

The new offence of obtaining or disclosing protected information (clause 1 of the Bill)

4. We share the concerns that have been voiced by the Campaign for Freedom of Information (**CFoI**) and ARTICLE 19, flowing from the definitions of the key terms 'protected information', 'prejudicial to the safety or interests of the United Kingdom' and 'foreign power condition' in clause 1 of the Bill. As the CFoI and ARTICLE 19 make clear in their detailed briefing note, these broad definitions have the potential to criminalise matters that do not involve espionage, sabotage or other hostile actions by or on behalf of foreign states.

5. We are particularly concerned by the Bill's implications for journalists working for another government's state broadcaster - including that of a friendly state - who report on a leak of protected information which is subsequently held to be prejudicial to the UK's interests. The fact that the journalist was paid for from the funds of a foreign government department or agency and that the broadcasting organisation itself was financed by such funds would satisfy the 'foreign power condition'. The journalist would commit an offence under the bill if they knew or

ought to have known that the report would prejudice the UK's safety or interests and could face a maximum sentence of life imprisonment. It is arguable, for example, that the Cambridge Analytica story which revealed election interference with Brexit and the US election could have been caught in scope. Even the possibility that such conduct could be criminalised creates a high-risk environment for journalists and their sources, which can lead to the dropping of stories and the chilling of speech and accountability.

Absence of a public Interest defence

6. The National Security Bill does not include a public interest defence, which is a significant omission. The Law Commission recommended the introduction of such a defence, available to anyone - including journalists - charged with an unauthorised disclosure under the Official Secrets Act 1989. They made the point that whether or not such a defence succeeds it *"makes it considerably less likely that the UK will be found not to be compliant with Article 10"* [§9.153].

7. The Law Commission was clear that such a defence was needed to ensure that the Government were not able to abuse legislation as a "cloak to mask serious wrongdoing". It also advocated a Statutory Commissioner to investigate allegations of wrongdoing or criminality made by civil servants or members of the public where disclosures of such concerns would be an offence under the 1989 Act. It took the view that without an independent means of investigation the prohibition on disclosures covered by the 1989 Act would constitute a disproportionate restriction on the right to freedom of expression guaranteed by Article 10 ECHR. Since the proposed Statutory Commissioner might not be able to investigate certain urgent concerns speedily enough the Law Commission also proposed that a public interest defence to charges under the 1989 Act should be created. The NMA agreed fully with these recommendations.

8. In light of the offences that can be committed under the Bill by persons with no involvement in terrorism or espionage we consider that the introduction of a simple and broad public interest defence to these charges and any under the 1989 Act is an essential safeguard. Such a defence enhances public accountability; it enables matters of public interest to be scrutinised and debated and allows malpractice to be exposed and addressed. The defence must be available to all. Neither whistle-blower nor journalist should be at risk of prosecution for revealing wrongdoing or other matters of public interest.

9. The NMA recognises that there may be merit in preventing unauthorised disclosures that are not in the public interest. However, we have the profound concern that the Home Office's approach to tackling this issue is through restricting the UK's ability to exercise free speech *per se*. By including a public interest defence the government would not merely be paying lip service to the importance of Article 10; instead, it would actively demonstrate that it believes neither whistle-

blower nor media should be at risk of prosecution for public interest revelations concerning state wrongdoings.

10. A statutory public interest defence provides a more certain safeguard for any individual against prosecution than reliance upon the discretion of the Attorney General, Director of Public Prosecutions or Crown Prosecution Service not to bring proceedings or the way they might interpret guidance that can be varied at any time. The legal concept of public interest is well defined and established throughout the UK's body of law. The provision could, for example, be modelled on precedents in data protection legislation. As Sir Robert Buckland, the former Solicitor General, commented during the Second Reading debate: "We are not suggesting something that is wholly out of place; this idea is well known to the criminal law and can equally apply to disclosures made by public servants, journalists and people acting in the public interest".

11. The introduction of a public interest defence is unlikely to open the disclosure 'floodgates' so that no information could ever be guaranteed safe. The relationship of trust between Civil Service, security and intelligence agencies and Government is long established and is not so fragile. It has, after all, been maintained through the cultural and technological changes of the past thirty years and survived two major legislative reforms (both intended to foster greater openness), namely: (i) the narrowing of criminal liability by the Official Secrets Act 1989; and (ii) the 2000 Freedom of Information legislation and exemptions.

Search powers in clause 20 and Schedule 2

12. The Police and Criminal Evidence Act (PACE) provides protections for 'special procedure material', which includes a journalist's notebooks and electronic files. Currently a court must rule on police applications to inspect journalistic material. Under Schedule 2 paragraph 10 of the National Security Bill these protections will be somewhat watered down, allowing a Police Superintendent to authorise search warrants and inspection (but not seizure) of journalistic material where they have *"reasonable grounds for believing that the case is one of great emergency and that immediate action is necessary"*. This is a retrograde step which: (i) reduces protections for journalistic material in police searches; (ii) has the potential to stifle investigative journalism; (iii) puts sources at risk; and thereby (iv) impacts adversely upon Article 10 ECHR (freedom of expression) in relation to that journalistic material.

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We would be happy to facilitate meetings with local and national media organisations and their publishers, editors and legal advisers in order to discuss the practical implications of the provisions in the National Security Bill in greater detail.

17/06/2022