

Impact Assessment, The Home Office

Title: National Security Bill: Counter State Threat Measures, Serious Crime Act 2007 amendment

Date: 27 October 2022

Stage: FINAL

IA No: HO0389

Intervention: Domestic

RPC Reference No: N/A

Measure: Primary legislation

Other departments or agencies: N/A

Enquiries: nationalsecuritylegislation@homeoffice.gov.uk

RPC Opinion: Not Applicable

Business Impact Target: Non-qualifying regulatory provision

Cost of Preferred (or more likely) Option (in 2022 prices)

Net Present Social (Value NPSV (£m))	-124.6	Business Net Present	0.0	Net cost to business per year EANDCB (£m)	0.0
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What is the problem under consideration? Why is government intervention necessary?

The UK's existing legislation related to state threats is over 100 years old and is not reflective of the nature of state threats in the modern age. The threat of hostile activity against the UK's interests from foreign states is growing. States are becoming increasingly assertive in how they advance their own objectives and undermine the safety and interests of the UK. Government intervention is needed to ensure that the legislation reflects the nature of the modern threat so that our world class law enforcement and intelligence agencies have the modern tools, powers and protections they need to counter those who seek to do the UK harm.

What is the strategic objective? What are the main policy objectives and intended effects?

The strategic objective is to protect the security of the United Kingdom. The counter state threat measures seek to strengthen the UK's ability to deter, detect and disrupt state actors who target the UK and protect UK interests and the public. The intended effect is the UK will become a harder operating environment for state threats activity and that foreign states are deterred from conducting hostile acts in the UK, stealing information or commercial advantage or interfering in UK society. By amending the Serious Crime Act 2007 (SCA 2007), persons fulfilling their proper national security functions on behalf of the Government will be better protected from risk of criminal liability, removing barriers that may prevent information sharing between the UK Intelligence Community (UKIC), the Armed Forces and international partners.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing.

Option 2: Legislate to introduce updated and new tools and powers. **This is the Government's preferred option** as it best meets the policy objectives. Non-statutory options were considered but could not deliver the policy objectives.

Main assumptions/sensitivities and economic/analytical risks

Discount rate (%)

3.5

There is uncertainty over the number of new state threats investigations and the consequence on the Criminal Justice System (CJS) and operational costs. The evidence base has details of assumptions, sensitivities and risks. Where possible, proxies have been used and tested with partners for suitability. The costs presented mainly represent opportunity costs.

Will the policy be reviewed? It will be reviewed **If applicable, set review date:** October 2025

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____ October 2022

Summary: Analysis & Evidence

Policy Option 2

Description: National Security Bill: Counter State Threat Measures, Serious Crime Act 2007 amendment

FULL ECONOMIC ASSESSMENT

Year(s):	Price Base	2020/21	PV Base	2022	Appraisal	10	Transition	1
Estimate of Net Present Social Value NPSV (£m)						Estimate of BNPV (£m)		
Low:	-41.8	High:	-255.4	Best:	-124.6	Best BNPV	0.0	

COSTS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	0.03	42.81	42.84	5.0	0.0
High	0.04	256.47	256.52	29.8	0.0
Best Estimate	0.03	125.58	125.61	14.6	0.0

Description and scale of key monetised costs by 'main affected groups'

Familiarisation costs to the Counter Terrorism Police (CTP) and intelligence agencies lie in the range of **£0.03 to £0.04 million** with a central estimate of **£0.03 million** (2020/21 prices) in year 1 only. Ongoing costs for the same organisations lie in the range **£42.8 to £256.5 million (PV)**, with a central estimate of **£125.6 million (PV)**. Total costs lie in the range **£42.8 to £256.5 million (PV)** with a central estimate of **£125.6 million (PV)** over 10 years.

Other key non-monetised costs by 'main affected groups'

There may be costs to individuals that are not monetised. If the increased law enforcement powers are used on individuals in error, this may cause reputational damage and result in remedial costs that are sought to mitigate the impact of that harm. There may be other unintended consequences of this legislation that have not been identified.

BENEFITS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	0	1.01	1.01	0.1	0.0
High	0	1.09	1.09	0.1	0.0
Best Estimate	0	1.05	1.05	0.1	0.0

Description and scale of key monetised benefits by 'main affected groups'

Operational benefits (cost-savings) are estimated between **£1.0 to £1.1 million (PV)**, with a central estimate of **£1.1 million (PV)** over 10 years. Benefits are not monetised due to a lack of data. The Home Office is undertaking long-term research and analysis to develop the evidence and estimates of harms for state threats. In future, a more robust assessment of the benefits of preventing state threat harms could be made.

Other key non-monetised benefits by 'main affected groups'

Deterring state threats may have wide-ranging benefits for many groups in the UK. Preventing or reducing the likelihood/impact of state-backed intellectual property theft and cyber-attacks that cause loss of access to critical national infrastructure are vital benefits. Other security benefits may also accrue to the UK but are not monetised due to the sensitive information involved.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:										
Cost, £m	0.0	Benefit, £m	0.0	Net, £m	0.0					
Score for Business Impact Target (qualifying provisions only) £m:					0.0					
Is this measure likely to impact on trade and investment?					N					
Are any of these organisations in scope?			Micro	Y	Small	Y	Medium	Y	Large	Y
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)					Traded:	N/A	Non-Traded:	N/A		

PEOPLE AND SPECIFIC IMPACTS ASSESSMENT (Option 2)

Are all relevant Specific Impacts included?	Y	Are there any impacts on particular groups?	N
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Evidence Base

A. Strategic objective and overview

A.1 Strategic objective

1. The strategic objective of this bill is to protect homeland security. States engage in hostile activities which are persistent and take many forms, including espionage, foreign interference in our political system, sabotage, disinformation, cyber operations, and even attempted assassinations. States are becoming increasingly assertive in how they advance their own objectives and undermine the safety and interests of the UK. At a strategic level, this activity harms our national interests, sensitive information, trade secrets and democratic way of life.

A.2 Background

Counter state threat measures

2. In 2018, the then Prime Minister announced that the Government would be taking a number of steps to address the threat posed to the UK by the hostile activities of foreign states. This included introducing a new power to allow law enforcement agencies to stop those suspected of conducting hostile activity on behalf of a foreign state at the border and, in slower time, conducting a comprehensive review of the tools and powers available to counter the threat. The former was delivered through the Counter Terrorism and Border Security Act 2019 (CTBSA 2019) and came into force in 2020. In March 2019, the former Home Secretary announced that the Home Office was working towards introducing new legislation and the Queen's speech in December 2019 announced that 'measures will be developed to tackle hostile activity conducted by foreign states'. The measures included in this bill undertake the biggest overhaul of UK state threats legislation for a generation and will ensure our world class security and intelligence agencies and law enforcement have the modern tools, powers and protections they need to counter those who seek to do us harm.

Amendment to Schedule 3 of the CTBSA 2019

3. The change will remove the requirement for the Investigatory Powers Commissioner (IPC) to authorise the retention of copies of confidential business material and replace it with a new counter-terrorism police authorisation procedure in the Code of Practice. The new procedure will require an officer of at least the rank of superintendent to authorise the retention of such copies, bringing it in line with the procedure to examine confidential business material under Schedule 7 to the Terrorism Act 2000 (TA 2000) (the original CT power on which Schedule 3 was modelled). The model of authorisation has proven an effective safeguard that avoids unnecessary bureaucratic burdens on the system.

The SCA 2007

4. The offences under Part 2 of the SCA 2007 can make it difficult for the UK intelligence agencies and Ministry of Defence (MoD) to accurately assess legal risk in complex operational contexts when working collaboratively and sharing information with key allies. These challenges are exacerbated when working at pace and can create friction and delay in achieving national security objectives. The offences under the SCA 2007 place that legal risk with individual officials/officers, even when they are complying with all internal processes and safeguards. The existing reasonableness defence lacks specificity as to the circumstances in which the defence will apply. Given that this is a complex area in which legal risk is carried by individual officials/officers, greater clarity is necessary to better protect those engaged in this activity. This amendment means that where an individual has operated in good faith, and in compliance with all proper processes, they will no longer face the risk of personal criminal liability for those actions under the offences within the SCA. Instead, that unfair burden will be removed, and accountability will rightly sit at the organisational level. This will enable UKIC and the armed forces to collaborate with our key international partners more effectively to support UK national security objectives.

A.3 Groups affected

- Criminal Justice System (CJS).
- Crown Dependencies.
- Crown Prosecution Service (CPS).
- Devolved Administrations (DA).
- Family, friends and colleagues of perpetrators.
- Family, friends and colleagues of victims.
- General public, both in the UK and overseas.
- Government departments.
- HM Courts and Tribunal Services (HMCTS) (including equivalents in Scotland and Northern Ireland).
- Investigatory Powers Commissioner's Office (IPCO).
- Law Enforcement Agencies (LEAs) across the UK (particularly Counter Terrorism Policing) and members of these agencies.
- UK intelligence agencies and members of the UK intelligence agencies.
- Perpetrators.
- Victims.

A.4 Consultation

Within government

5. A number of government departments have been consulted throughout the policy development process including:
 - Cabinet Office.
 - Department for Business, Energy and Industrial Strategy.
 - Department for Culture, Media and Sport.
 - Department for Levelling Up Housing and Communities.
 - Devolved Administrations and Crown Dependencies.
 - HM Treasury.
 - Foreign Commonwealth and Development Office.
 - Ministry of Defence.
 - Ministry of Justice
 - UK Law enforcement and intelligence agencies.

Public consultation

6. A public consultation on the Legislation to Counter State Threats (Hostile State Activity) took place between 13 May 2021-22 July 2021¹. The Home Office also conducted sector specific virtual roundtables. In total, there were 207 responses to the consultation and representation from 23 groups/organisations at roundtables.

¹ Legislation to counter state threats: government consultation - <https://www.gov.uk/government/consultations/legislation-to-counter-state-threats/outcome/legislation-to-counter-state-threats-hostile-state-activity-consultation-government-response-accessible>

7. Respondents had the opportunity to answer 39 questions spread across four sections. The sections included:
 - Section 1: Official Secrets Acts (OSA 1911, 1920, 1939 and 1989) Reform.
 - Section 2: Foreign Influence Registration Scheme (FIRS).
 - Section 3: Civil Orders.
 - Section 4: Additional questions for consultees.
8. The Government has conducted and published a full public consultation².

B. Rationale for intervention

Counter state threats measures:

9. States engage in and orchestrate hostile activities which fall short of general armed conflict but nevertheless undermine our national interests, sensitive information, trade secrets and democratic way of life.
10. The threat from hostile activity by states is a growing, diversifying and evolving one, manifesting itself in several different forms including espionage, foreign interference in our political system, sabotage, disinformation, cyber operations, and even attempted assassinations.
11. Despite the evolution of this threat, the UK's existing legislation which is aimed at countering state threats is over 100 years old, does not reflect the nature of state threats in the modern age. The current legislation for countering state threats is The Official Secrets Act 1911 (OSA 1911) and subsequent acts in 1920 (OSA 1920) and 1939 (OSA 1939) which are primarily focussed on the threat posed by early 20th-century Germany. Since then, the global landscape has changed significantly. The traditional way of viewing states as hostile and non-hostile often overlooks the complexity of modern international relations in an interconnected world, including complex international trade and supply chains. The focus, first and foremost, needs to be on the activity being conducted and the UK's ability to counter it.
12. In addition, new technologies and their widespread commercial availability has created new opportunities and significant vectors for attack, lowering the cost and risk to states of conducting hostile activity in and against the UK. Accordingly, while only a small number of states show the full range of capabilities and a willingness to use them, a large number of countries have both the capability and intent to conduct hostile activity against the UK, in some form.
13. Government intervention is needed to create a modern, comprehensive legal framework that will make the UK a more challenging environment for states to conduct hostile activity in and increase the cost to them of doing so. This bill will enhance our ability to deter, detect and disrupt state actors who target the UK and ensure that UK law enforcement and intelligence agencies have the powers they need to keep the country safe.

Schedule 3 Amendment of the CTBSA 2019

14. The Schedule 3 amendment will remove a significant delay in progressing investigations into hostile state activity as the new Counter Terrorism Police (CTP) Superintendent authorisation process will allow officers to examine confidential business material in real-time. Currently under the non-urgent condition, the judicial authorisation process takes approximately five to six weeks, during which CTP are prohibited from using the retained material. Applying the new authorisation model will bring significant efficiencies while still providing a highly effective safeguard.

² www.gov.uk/government/consultations/legislation-to-counter-state-threats

Serious Crime Act 2007 amendment

15. Applying the complex elements of the SCA offences causes significant challenges in how we collaborate with international partners. In some cases, despite being satisfied that all other domestic and international law obligations are met, essential cooperation with partners has been delayed or prevented in order to protect individual officers from liability. As a country that means we are less safe because the reciprocal access to intelligence facilitated by joint working is crucial to responding to the threats we face.
16. HMG does not believe it is right or fair to expect the risk of criminal liability to sit with trusted individuals who are conducting highly sensitive and vital national security work on behalf of the UK. Particularly when those activities are done in good faith and deemed a proper function of UKIC or armed forces.
17. The purpose of clause 28 is to remove the unintended effect the SCA is having on UKIC and the armed forces, not to make wholesale changes to our core legal, policy and ethical values. It will ensure that accountability for authorised activity rightly sits with HMG, rather than individual officers who are taking forward vital work to keep the country safe. The UK is committed to the rule of law and would never collaborate or share information with an international partner with the intention of supporting unlawful activity overseas. The SCA amendment does not change this.

C. Policy objective

18. The policy objective of these measures is to strengthen the UK's efforts to detect, deter and, disrupt state threats, to protect its people, infrastructure, economy and values from those who seek to do us harm. There are several intended effects of these measures:
 - UK law enforcement and intelligence agencies will have the powers they need to reduce the risk from state threats. The Government has worked closely with UK law enforcement and intelligence agencies in developing this legislation to ensure that the powers are proportionate but effective.
 - The UK becomes a harder operating environment for foreign states to undertake hostile activity. The increased number of disruptive tools available to UK law enforcement and intelligence agencies and increased penalties will mean that hostile actors will need to work much harder, and expend more money and energy to operate effectively in and against the UK.
 - Greater disruption and punishment of state threats activity. Where hostile activity by foreign states is detected there will be a greater range of options for the UK law enforcement and intelligence agencies to successfully intervene, in return reducing the number of successful operations by malign state actors and ensuring appropriate punishment where operations do take place.
 - Foreign states are deterred from undertaking hostile activity. New technologies and the modern interconnected world have reduced the costs to states to commit hostile activity and reduced the barriers to entry. This legislation will once again raise the bar and as a result of the harder operating environment and increased disruptive options will act as a barrier to entry.
19. The policy objective of the amendment to Schedule 3 of the CTBSA 2019 is to allow counter-terrorism police to progress operations and investigations into hostile state activity at the required pace and bring parity between Schedule 3, and the power it was modelled on, Schedule 7 to TA 2000.
20. The policy objective of the SCA 2007 amendment is to provide better protection to those discharging national security functions on behalf of the Government, to enable more effective joint working and

to improve operational agility, all of which are essential to UKIC and MoD's work to counter threats to UK national security.

D. Options considered and implementation

21. To meet the policy objectives, the following options are assessed in this IA:

Option 1: Do-nothing

22. Under **Option 1**, there would be no modernising changes made to the existing OSAs 1911 to 1939 and they would remain focused on the threat from early 20th-century Germany. There would also be no new tools or power introduced to ensure that law enforcement and intelligence agencies have the powers they need to keep the country safe or to deter, detect and disrupt state actors who target the UK. The Government consider that doing nothing would leave the UK with a legislative package that is not fit to counter state threats in the modern age.

Option 2: Reform of existing legislation (OSAs 1911-1939) and a suite of updated and new tools and powers

23. Reform would involve repealing and replacing the existing espionage legislation, updating the existing powers to reflect the modern threat and modern legal standards so that they are effective in the present day. The key offences and powers contained in the existing legislation are – a criminal offence of espionage, including provisions to protect sensitive sites, an associated search power and an acts preparatory offence.
24. **Core espionage offences, which capture espionage by information gathering and communication:** Reform would: modernise offences, including the 'acts preparatory' offence, so that they reflect the modern espionage threat from different vectors (including cyber) increase the maximum penalty available to reflect the severity of the harm and expand the extra-territorial jurisdiction of offences to capture acts of espionage committed overseas regardless of a person's nationality, to sufficiently reflect the global reach of the modern espionage threat.
25. **Obtaining or disclosing trade secrets offence:** By gaining unauthorised access to information that loses value if confidentiality is breached, a foreign state may either gain an advantage for itself or reduce an advantage held by someone else. Existing legislation in this area is often not applicable (ideas or items with future value are not covered by the Theft Act 1968 (TA 1968)) and only attracts civil sanction. The aim of expanding espionage to include an offence of obtaining or disclosing trade secrets is to provide an effective tool to tackle this type of state threat, which can have significant consequences both in damage to the UK itself and as the UK as a leader of innovation.
26. **Assisting a Foreign Intelligence Service (FIS):** It is not currently an offence in the UK to assist a FIS. A new offence of supporting a foreign intelligence service would ensure that the UK represents a harder operating environment for those who wish to do the UK harm.
27. **Powers of entry, search and seizure (Schedule 2 of this bill):** Reform of the existing power of search under section 9 of the OSA 1911 would allow for search warrants to be authorised when there is a reasonable suspicion that a state-threats offence within the bill has been, or is about to be, committed. Material on the premises believed to be of relevance to the offence can also be searched and seized using this power. Reform would also provide for the authorisation of production orders which require a specified person to grant access or produce material (including confidential material) to a constable. The provisions create three new offences which echo the compliance offences found in TA 2000, schedule 5, whereby: it is an offence to knowingly make a statement that is false or misleading regarding the material sought under a search warrant; to wilfully obstruct a search conducted in an urgent case; and to fail to comply with a notice requesting an explanation of any material seized.

28. **Prohibited places:** Reform of the existing provisions within section 1 and 3 of the OSA 1911 would introduce a bespoke regime to protect and capture harmful activity at sites designated as prohibited places – the UK’s most sensitive sites - and ensure that modern methods of unlawfully entering or inspecting these sites are captured (including through the use of modern technology such as unmanned devices). The regime provides new offences and police powers to deter, capture and prosecute harmful activity in and around these sites and would be futureproofed by providing that additional land, buildings or vehicles can be designated as prohibited places through regulations if necessary to protect the safety or interests of the UK. This ensures that any site vulnerable to state threats is capable of being designated in the future, whilst ensuring sufficient safeguards are in place.
29. However, hostile activity is not merely carried out through acts of espionage and ranges from cyber-attacks, threats to critical national infrastructure, and attempts to interfere in democratic processes which can all be significantly damaging to UK national security. By only reforming espionage legislation, this would leave the Government unable to disrupt and punish activity that does not fall within the definition of espionage, leaving significant gaps in the UK’s ability to protect itself against state threats. The Government do not consider it sufficient to merely reform the existing state threats legislation.
30. Additional measures would provide options, including in cases where the covert nature of the activity means that prosecution is not possible. As well as the measures detailed above, these measures described below (paragraphs 31-38) collectively form a cohesive approach across the justice system, law enforcement and intelligence agencies to address the threat from state threats.
31. **Sabotage:** While acts of sabotage may already be captured by common law offences (such as: criminal damage, computer misuse) and some acts of sabotage will constitute espionage, there is a clear gap for a new offence specifically covering activities conducted for or on behalf of, or for the benefit of a foreign state that cause damage to property, sites and data. Sabotage, damage to and interference with critical national infrastructure backed by states is distinct from criminal damage, vandalism and computer misuse. The resources and intentions of some state actors means that a new offence is needed in order to properly deter this activity. A new standalone offence of sabotage would cover activities that are carried out to destroy, damage, modify or obstruct critical national infrastructure or organisations, for political or military advantage.
32. **Foreign interference:** There is no offence in criminal law of foreign interference in the UK. All countries conduct diplomatic missions and influence discussions on issues important to them; foreign interference goes beyond this. Foreign interference in democratic life, civil society, or elections, for example, is a direct, albeit covert, attack on the UK’s sovereignty, national interest, institutions and values. A new offence of ‘Foreign Interference’ would seek to criminalise influence activity for or on behalf of a foreign state that goes beyond routine diplomatic influence.
33. **Expanded acts preparatory offence:** The ‘acts preparatory’ offence under existing state threats legislation provides a tool to disrupt and criminalise harmful preparatory acts in the lead up to an espionage offence. This offence is applicable in situations where an individual has commenced preparations for an espionage offence, for example, but where law enforcement has intervened before the individual can take further steps in committing the intended offence and cause serious harm. Under **Option 2** the Government would expand its application beyond the core espionage offence to criminalise acts carried out for or on behalf of a foreign power. This will capture preparatory conduct in the lead up to espionage, sabotage, protection of trade secrets and entering a prohibited place for the purpose prejudicial to the UK. It will also apply to acts which involve serious violence, endanger life or create a serious risk to the health or safety of the public. This will ensure that serious preparatory activities such as state sponsored kidnap or murder can be disrupted and are captured by the offence.
34. **State threats aggravating factor:** The Government would make a connection to state threats an aggravating factor in sentencing. The measure would mean that if an individual is found guilty of an offence which is not a state threats offence, but a connection to state threats activity can be proven, the Judge may aggravate their sentence up to the maximum available for the original offence.

35. **Law Enforcement investigative powers:** In support of the new and reformed offences set out above the Government would introduce context specific investigative powers that UK law enforcement require to address the state threat. Many of these are currently only available to law enforcement in the pursuit of terrorism investigations or following a successful prosecution. State threats investigations can be as, and indeed more, complex than CT investigations. Powers include:
- Extended detention without charge.
 - Automatic retention of biometric data.
 - The ability to make inquiries into suspects before an arrest has been made through the creation of Account Monitoring Orders, Customer Information Orders and Disclosure Orders.
36. **State Threats Prevention and Investigation Measures (STPIMs):** The STPIMs would provide a new tool to disrupt individuals who are engaged in state threats activity. This would include where harmful activity has already taken place but where there are significant challenges around bringing a prosecution against an individual, or where preparatory activity is underway and damage to the UK, which has not yet occurred, can be prevented. In such situations, being able to apply a number of restrictive countermeasures to that individual, tailored to the specific threat that they pose, will help reduce the risk of damage to the UK. The Civil Courts will play a vital role in STPIMs. In each case, five conditions, seen below, must be met in order to impose a STPIM.
- Condition A – the Secretary of State for the Home Department (Home Secretary) must reasonably believe that the individual is, or has been, involved in ‘foreign power threat activity’.
 - Condition B – some, or all, of the foreign power threat activity is new foreign power threat activity.
 - Condition C – the Home Secretary reasonably considers that imposition of the measures is necessary to protect the UK from the risk of acts or threats from foreign powers.
 - Condition D – the Home Secretary reasonably considers that the individual measures applied are necessary to prevent or restrict the individual’s involvement in foreign power threat activity.
 - Condition E – the Court must provide the Home Secretary with permission to impose the measures.
37. Once the order measures have been imposed a review hearing will automatically be scheduled, where the Court will ensure that the STPIM is lawful. Furthermore, during the lifespan of a STPIM, the individual subject to the measures will be able to appeal any decision made by the Home Secretary in relation to the STPIM. Criminal court proceedings may also be used as breaching any of the measures under the STPIM will constitute a criminal offence. In addition to these court processes, STPIMs will be subject to independent oversight.
38. **Obtaining material benefits etc from a Foreign Intelligence Service (FIS):** This offence builds on our ability to tackle activity by foreign intelligence services, building on the offence of assisting a FIS. The ambition of this offence is to criminalise activity whereby a person takes possession, control or ownership of a material benefit, including a financial benefit, directly or indirectly from a FIS, where they know or ought reasonably to know that it is from a FIS, unless that material benefit is received in reasonable consideration for the lawful provision of goods or services (including as part of a contract of employment).
39. **Amendment to Schedule 3 to the CTBSA 2019:** This amendment will remove the requirement for the IPC to authorise the retention of copies of confidential business material. This will be replaced by a new CTP authorisation procedure in the Code of Practice, which will require an officer of at least the rank of superintendent to authorise access to such material. This will allow CTP to progress operations and investigations at the required pace.
40. **Amendments to the Serious Crime Act 2007:** This amendment seeks to amend Schedule 4 in the SCA 2007 and remove an unintended consequence of the original legislation. Retaining the current position on the SCA 2007 would lead to continuing legal uncertainty for those discharging national security functions on behalf of the Government.

41. **Option 2 is the Government's preferred option** as it meets the Government's objectives.

E. Appraisal

Assumptions

42. The assumptions used in this impact assessment (IA) are listed below. As previously discussed, because of sensitivity and availability, data has been difficult to obtain for analysis. Where possible, assumptions have been tested with partners for appropriateness and used proxies or estimates.
- A 10-year appraisal period, a discount rate of 3.5 per cent, a price base year of 2020/21 and a present value base year of 2022 are used.
 - It is not possible to forecast the number of new investigations over the 10-year appraisal period. As a result of this, this report uses indicative figures, derived through Home Office consultation with experts, to illustrate potential costs. The indicative figures used are a central estimate of 80 new investigations, a low estimate of 40 and a high estimate of 120 over the 10-year appraisal period. The indicative figures for investigations per year are therefore a central estimate of 8, with a low estimate of 4, and a high estimate of 12.
 - It is assumed that the prosecution rate of state threats investigations is 33 per cent. This is an internal estimate from CPS, based on prosecution of previous OSA 1911-1939 cases.
 - It is assumed that custody rates (those who are sentenced that face an immediate custodial sentence in prison) are between 35, 65 and 100 per cent (L, C and H respectively). This was assumed from the outcome by offence tool³ and consultation with CTP and CPS. It was difficult to ascertain accurate figures in this instance because of so few OSA 1911-1939 cases and the sensitivity surrounding such cases.
 - The average custodial sentence lengths of 7, 84 and 168 months, L, C and H respectively, are assumed. This was assumed from the outcomes by offence tool, and new maximum sentence lengths.
 - An optimism bias (OB) of 20 per cent is assumed for CJS costs. The MoJ advised that this is the standard assumption used on CJS costs to account for uncertainty around the unit costs.
 - An eligibility assumption of 75 per cent is assumed for Legal Aid Agency (LAA) costs.
 - Numbers of staff, familiarisation and training times, and ranks, are estimated from consultation with CTP, NCA and the intelligence agencies.
 - Staff costs are assumed from the Home Office staff cost model.
 - Where salary ranges have been given, a non-wage uplift of 22 per cent has been assumed⁴ to account for overheads, pension contributions and national insurance payments to employers to reflect the marginal product of labour.
 - It is assumed a working day is 7.4 hours, and a working year is 1,850 hours (50 multiplied by 37).
 - It is assumed that 12.5 per cent of The Investigatory Powers Commissioner (IPCO) cases are appealed.
 - A Terrorism Prevention and Investigation Measure (TPIM) low-cost estimate of £0.1 million, a central estimate of £0.55 million and a high estimate of £1 million has been used, following

³ Criminal justice system statistics quarterly: December 2020: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>

⁴ RPC guidance note on 'implementation costs - August 2019': https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827926/RPC_short_guidance_note_-_Implementation_costs_August_2019.pdf

consultation with CTP. This has been multiplied by additional staff as a proportional cost of current staff in the team, to give a cost of STPIMs.

- The expected number of STPIM hearings per year has a low estimate of 1, a central estimate of 1.5 and a high estimate of 2. This is based on internal consultation.
- As STPIMs and TPIMs are similar measures, it is assumed that STPIM costs and structure reflect that of TPIMs.
- Through external consultation, it is assumed that the average length of STPIM hearings is six days.
- Through external consultation, it is assumed that the average cost for civil court proceedings is the similar to TPIM cases, at £600 per hour.
- In line with TPIMs, it is assumed that the STPIM appeal rate is extremely low. Appeals are therefore not included within the monetised costs.
- Based on internal consultation, the expected number of days required for STPIM oversight per year has a low estimate of 10, a central estimate of 30 and a high estimate of 60.
- In line with TPIMs, it is assumed that the costs of STPIM oversight per day is £1,200 excluding VAT.
- It is assumed that there are six court sitting hours per day as per the Courts and Tribunal Judiciary website⁵.
- It is assumed that there are eight working hours per day for new ST investigations.

COSTS

Set-up costs

Familiarisation Costs

43. State threats measures: The Home Office has consulted with the intelligence agencies, NCA and CTP regarding familiarisation and training costs for the new and amended measures. Officers of varying rank across NCA and CTP will be required to familiarise themselves with the new National Security Act through self-learning and on-the-job reading. A mandatory package of learning or short course may be introduced to other officers and staff who need to become familiar with the legislation.
44. Numbers of staff, rank, and salary ranges have been supplied by partner organisations in addition to staff costs from the Home Office's staff cost model to calculate familiarisation and training costs for partner organisations. Staff will need to familiarise themselves with the legislation in the first year. This is a one-off cost. London wages⁶ are primarily used. The CTP wages are summarised below:

⁵ <https://www.judiciary.uk/about-the-judiciary/judges-career-paths/terms-of-service/working-hours/>

⁶ From the Home Office Staff Costing Model.

Table 1: CTP hourly officer wage by grade and location, £ 2020/21 prices.

Rank	Cost to employer per hour £: (wage + overhead + pension + national insurance contribution)
Constable (London)	37.79
Sergeant (London)	46.63
Inspector (London)	55.18
Chief Inspector (London)	58.77
Superintendent (London)	73.67
Sergeant (regional)	41.54
Average officer (regional)	38.58

Source: Home Office, own estimates, 2022.

- 45. Following consultation with NCA, it is expected that there will be similar familiarisation costs per employee as for the CTP however at this stage it has not been possible to monetise these costs accurately due to limited data. Further work will be required to accurately estimate these costs.
- 46. Additionally, the intelligence agencies will have familiarisation costs across the business. These are not broken down in this IA due to the sensitivity of this information, however, these costs are included in total familiarisation costs.
- 47. **Schedule 3 amendment:** CTP staff will also need familiarising with the Schedule 3 amendments. This will be delivered through a two-page document, taking approximately 15 minutes to read. London wages are assumed for all staff. This is a one-off cost in the first year. There will also be familiarisation costs for employees of the intelligence agencies. These are not broken down here but are included in the total familiarisation costs.
- 48. There will be no SCA 2007 amendment familiarisation costs.
- 49. Familiarisation costs in the first year lie in a range of **£0.03 million to £0.04 million**, with a central estimate of **£0.03 million** (2020/21 prices) in year 1 only. These are also the **total set-up costs**.

Table 2, Familiarisation costs to CTP and the intelligence agencies, £ million 2020/21 prices.

Low	Central	High
0.03	0.03	0.04

Source: Home Office, own estimates, 2022.

Ongoing and total costs

Training costs

- 50. Similarly to familiarisation costs, ongoing training costs that the intelligence agencies, NCA and CTP will face over the appraisal period are assumed. Again, training costs for intelligence agencies are not broken down in this IA due to the sensitivity of this information, however, these costs are included in total training costs.
- 51. For the state threats measures, CTP have advised that staff who are trained will not likely require onerous re-training, unless the Bill introduces any mandatory requirement for such training, possibly including processes around use of confidential material. This training will mostly be either on-the-job learning or mandatory one-hour awareness courses.
- 52. The NCA is also expected to incur training costs and, in line with CTP, they are not expected to be onerous. It has not been possible to monetise these costs at this stage due to limited data. Further work will be required to accurately estimate these costs.
- 53. **Schedule 3 Training Costs:** CTP officers will have to be upskilled and retrained to account for this amendment to Schedule 3. Following discussions with CTP, it is suggested that this will take place

over half a day. Training costs were calculated using the same rank breakdown in Table 1. In the future, for new officers, this training will take place alongside the existing Schedule 3 accreditation process.

- 54. SCA 2007 training: There is no training attached to the SCA 2007 amendment.
- 55. Total training costs lie in a range of **£1.62 to £1.63 million (PV)**, with a central estimate of **£1.63 million (PV)**.

Table 3, Training costs to CTP and the intelligence agencies (2020/21 prices).

Low	Central	High
1.62	1.63	1.63

Source: Home Office, 2022.

Operational Costs

- 56. Operational costs for the state threats measures consist of new investigations arising from increased investigative powers, as well as costs arising from the STPIMs capability.
- 57. It is not possible to forecast the number of new investigations over the 10-year appraisal period. As a result of this, this report uses indicative figures, derived through Home Office consultation with experts, to illustrate potential costs. The indicative figures used are a central estimate of 80 new investigations, a low estimate of 40 and a high estimate of 120. The indicative figures for investigations per year are therefore a central estimate of 8, with a low estimate of 4, and a high estimate of 12.
- 58. Using an internal staff cost model, it is assumed that the cost per day of an average investigation is about £4,300. Assuming that the average length of a state threats investigation typically lasts between one and two years, this gives a cost-per-investigation of between £1.11 million and £2.23 million, with a central estimate of £1.67 million. Using these figures, the indicative cost of new state threats investigations per year would lie in a range of £4.45 million and £26.71 million per year, with a central estimate of £13.35 million (2020/21 prices).
- 59. The NCA would also incur additional operational costs from increased investigations, however due to a lack of robust evidence and sensitivity issues these costs cannot be included. Further work will be required to accurately estimate these costs.
- 60. The STPIMs cost methodology is based on a similar measure in the CT space – TPIMs. The TPIM costs are, however, ambiguous due to data difficulties so this methodology could possibly be improved with further research and partner engagement. Modelling based on TPIM assumptions gives a STPIMs estimated per year cost of between £0.08 million and £0.77 million, with a central estimate of £0.43 million.
- 61. The Bill introduces an independent reviewer who must produce an annual report on the operation of STPIMs, to be laid before Parliament. It will be at the discretion of the role-holder how much time they spend reviewing the STPIMs and this will likely vary year to year – based on the Independent Reviewer of Terrorism Legislation (IRTL) who oversees the operation of TPIMs (amongst other terrorism legislation), this is estimated at between 20 to 40 days, with the large range reflecting the significant uncertainty here. Their remuneration will likely be similar to the IRTL – £1,200 per day (excluding VAT). It is possible that the amount of time required to review the STPIMs would be reduced in the event that the individual holding the IRTL position is also appointed to oversee the STPIMs given overlap between the two. The current estimate for the cost of STPIMs oversight per year is between £0.01 million and £0.14 million, with a central estimate of £0.05 million.
- 62. There are no operational costs with the SCA 2007 amendment. There will also be operational costs for the intelligence agencies which are not summarised here but are included in the total operational costs.

63. Total operational costs lie in a range of **£38.4 million and £231.1 million (PV)**, with a central estimate of **£115.4 million (PV)** over 10 years.

Table 4, Total operational costs to CTP and the intelligence agencies, £ million (PV) over 10 years.

Low	Central	High
38.4	115.4	231.1

Home Office, own estimates, 2022.

Criminal Justice System costs

64. For the state threats measures included in this legislation, CJS costs per case arise from the cost to the LAA, the CPS, HMCTS, and His Majesty's Prison and Probation Service (HMPPS). These costs are summarised in the Table 5.

Table 5, CJS costs, per case, £ (2020/21 prices)

Description	Cost (£)	Source
Cost to courts (HMCTS) per case	1,800	MoJ
Cost to LAA per case	1,600	MoJ
CPS completed prosecutions that relate to state threats/OSA cases and that progress through to trial, consisting of: - external counsel fees - case costs - CPS staff costs	57,000	CPS
Transition cost per new prison place (prison build cost)	250,000	MoJ Costs per prison place
Cost per prison place per year	44,640	MoJ Costs per prison place

Home Office, own estimates, 2022.

65. The CJS costs rely on the same assumption as above, using an indicative range for the number of additional investigations per year. A 20 per cent optimism bias uplift⁷ and 75 per cent LAA eligibility assumption are applied to HMCTS costs and LAA costs. This is a standard MoJ assumption which is applied to all CJS costs to reflect uncertainty around unit cost estimates.
66. The prosecution, conviction and sentenced rates from the MoJ outcome by offence data tool⁸ are used to calculate the number of additional individuals who may face immediate custody per year. Low, central and high average custodial sentence lengths (ACSLs) of 7, 84 and 168 months are used respectively. It is assumed⁹ that individuals on average serve half of their custodial sentence, so these ACSLs are multiplied by 0.5.
67. Total yearly non-prison costs are estimated by summing (OB-uplifted) HMCTS costs, LAA costs, CPS costs and multiplying throughout by number of additional prosecutions per year. Total yearly prison costs are estimated by multiplying the prison impact by prison transition and annual costs. Total CJS costs are estimated by summing prison and non-prison costs. This is likely to be an underestimate as there will be CJS costs for those who do not face immediate custody, for example. These costs have not been monetised.
68. A STPIM is a civil procedure and it is expected that this process will closely follow that of the TPIMs. This process is split into three hearings: the permissions hearing, the directions hearing, and the review hearing. It can be appealed after decisions at the directions and review hearings however it is assumed that the appeal rate is extremely low and therefore is not costed. The average cost for civil court proceedings associated with TPIMs is £600 per hour. It is anticipated that a typical STPIM

⁷ Internal estimate provided by MoJ

⁸ Criminal justice system statistics quarterly - December 2020: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>

⁹ Internal assumption provided by MoJ

will require on average 6 days of court hearings over its lifetime. The overall STPIM civil court process is expected to cost between £0.02m and £0.04m, with a central estimate of £0.03m, per year.

- 69. There are no CJS costs arising from the schedule 3 or SCA 2007 amendments.
- 70. Total CJS costs lie between **£2.8 million and £23.7 million (PV)**, with a central estimate of **£8.5 million (PV)** over 10 years.

Table 6, Total CJS costs £ million (PV) over 10 years.

Low	Central	High
2.8	8.5	23.7

Home Office, own estimates, 2022.

Non-monetised costs

- 71. There may be costs to individuals that are not monetised, such as additional administrative costs. If the increased law enforcement powers are used on individuals in error, this may cause reputational damage and result in remedial costs that are sought to mitigate the impact of that harm. There may also be other unintended consequences of this legislation that have not been identified.
- 72. NCA will incur costs relating to familiarisation of new legislation and training – all of which are one off costs – as well as the ongoing operational costs arising from an increase in new investigations. These costs have not been monetised within this Impact Assessment due to the lack of information. Further work will be required to accurately estimate these costs.
- 73. The additional powers introduced in this bill (Account Monitoring Orders, Customer Information Orders, Disclosure Orders and Schedule 2) could impose additional administrative costs to business. This may be particularly the case for financial institutions which include small and medium-enterprises (SMEs). There are limitations on the evidence that can be gathered to accurately reflect these costs, so they have not been monetised. These notices are similar in nature to those that can be served in other contexts such as CT. The businesses that could expect to receive such notices regularly will already have established processes in place. Given the low volumes, this is expected to be a low impact.
- 74. The new powers may also incur additional CJS time in the courts. These costs are likely to be very low though and therefore have not been costed.
- 75. The STPIM court appeals have not been costed as there is a lack of robust evidence to predict the rate although an appeal would incur additional costs to the court system. It is however anticipated that the appeal rate would be extremely low and therefore any associated costs would be minimal.
- 76. The NCA will incur legal costs, and these are expected to rise as a result of its Combatting Kleptocracy Cell (CKC). The precise costs are very difficult to estimate because each piece of litigation is different. Legal costs are comprised not only of the costs of mounting litigation, but also of any adverse cost orders should the NCA be unsuccessful, as well as claims for compensation or damages arising from matters connected with litigation.

BENEFITS

Operational savings

- 77. By amending Schedule 3, it will no longer be required to request permission for a retention of classified business materials from a Judicial Commissioner (JC) at the IPCO. Consequently, the costs associated with the IPCO process will no longer be borne. Following consultation with IPCO and the Home Office, the cost of this process is calculated by multiplying the number of staff by their appropriate hourly wage and the amount of time they spend on each case.

78. The Home Office has one Executive officer (EO), one Higher Executive Officer (HEO) and one Senior Executive Officer (SEO) spending about half a day's work per retention request case. This will require sign off by a senior civil servant, and oversight by a Grade 7 employee in the Home Secretary's Private Office. For cases approved by the JC, two constables from CTP will then be required to use the Schedule 3 power.
79. According to IPCO, each case requires four EOs and one SEO working on the case for half a day, one day of IPCO legal time and half a day for the JC. For cases that are appealed, each appeal requires four EOs and one SEO working on the case for half a day, half a day of IPCO legal time and half a day for Sir Brian Leveson (The Investigatory Powers Commissioner).
80. **Total** estimated savings lie in a range of **£1.01 million to £1.09 million (PV)**, with a central estimate of **£1.05 million (PV)** over 10 years.

Table 7, Total operational savings £ million (2020/21 prices).

Low	Central	High
1.01	1.05	1.09

Home Office, own estimates, 2022.

Non-monetised benefits

Counter-state threats benefits: It has not been possible to monetise the main benefits of this policy. The impact of hostile activity by states can be difficult to measure and quantify, but long-term research and analysis is being undertaken within the Home Office to build the evidence base in this area.

81. The Economic and Social Costs of Crime (ESCC 2018) publication (Home Office, 2018)¹⁰ estimates that the annual cost of criminal damage (excluding arson) is £1.4 billion (£1.6 billion in 2020/21 prices) and the annual cost of cyber-crime is £1.1 billion (£1.3 billion in 2020/21 prices). It is important to note that these are cost estimates of crimes against individuals and based on 2015/16 volumes in England and Wales. These estimates are therefore not directly applicable to the sabotage and espionage offences outlined in this IA. State threats can also manifest in physical and emotional harms resulting from injury and death, such as the Salisbury incident¹¹. This legislation could reduce the risk of an attack (because of higher available penalties and increased law enforcement powers deterring hostile activity) although this cannot be stated with certainty; the potential reduced likelihood cannot be estimated.
82. There are several other non-monetised benefits of this policy. The physical threat to people from state threat activity can result in deaths or serious injuries, as seen in recent times in both the UK and beyond. Deterring foreign states from carrying out hostile activity in the UK would reduce this risk of death or serious injury. State-backed intellectual property theft is likely to cost UK businesses, government, and academia significantly both financially and reputationally. Creating an offence of theft of trade secrets aims to reduce the risk of Intellectual Property (IP) being stolen which is likely to reduce the amount of money lost to the theft of trade secrets and also protect the UK's reputation as a centre for innovation. Cyber-attacks can cause loss of access/service to critical national infrastructure. Reducing the likelihood or impact of an attack/theft will benefit the UK, but this cannot be monetised currently.
83. The physical threat to locations can also have a significant impact, from affecting critical services such as gas or electricity, to affecting supply chains and therefore the price and supply of goods in the UK. The National Cyber Security Centre's annual report for 2020¹² notes some of the cyber threats that exist, assessing, for example, that there have been state linked attempts to acquire IP

¹⁰ Heeks, Reed, Tafsiiri and Prince, (2018), The economic and social costs of crime, second edition, Research report 99, July, London: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732110/the-economic-and-social-costs-of-crime-horr99.pdf

¹¹ <https://www.gov.uk/government/news/novichok-nerve-agent-use-in-salisbury-uk-government-response>

¹² The National Cyber Security Centre Annual Review 2020: <https://www.ncsc.gov.uk/files/Annual-Review-2020.pdf>

relating to COVID-19 vaccine research and noting that hostile actors have almost certainly sought to interfere in recent elections.

84. Other security benefits may also accrue to the UK but are not monetised due to the sensitive information involved. There may also be other consequences of this legislation that have not been identified.

NPSV, BNPV, EANDCB

85. Total costs are estimated in a range of **£42.8 to £256.5 million (PV)**, with a central estimate of **£125.6 million (PV)** over 10 years. Total benefits are estimated in a range of **£1.0 to 1.1 million (PV)**, with a central estimate of **£1.1 million (PV)** over 10 years.
86. Net Present Social Value (NPSV) is equal to the total discounted benefits minus total discounted costs. Business Net Present Value (BNPV) is equal to the total discounted benefits to business minus the total discounted costs to business. The NPSV of the policy lies in a range between **-£41.8 and -£255.4 million (PV)**, with a central estimate of **-£124.6 million (PV)** over 10 years.
87. There are no monetised business costs calculated in this IA, and the BNPV is zero. The net direct cost to business per year (EANDCB) is also zero.

Table 8, Summary of costs, benefits, NPSV, BNPV, EANDCB over 10 years (£ million PV).

Costs	Low	Central	High
Set-up costs			
Familiarisation costs	0.03	0.03	0.04
Total set-up costs	0.03	0.03	0.04
Ongoing costs	42.81	125.58	256.47
Total costs	42.84	125.61	256.52
Total benefits	1.01	1.05	1.09
NPSV	-41.83	-124.56	-255.43
BNPV	0.00	0.00	0.00
EANDCB	0.00	0.00	0.00

Home Office, own estimates, 2022.

Value for money (VfM)

88. The estimated NPSV is **-£124.6 million**, which means the monetised total costs outweigh the monetised total benefits. However, as already discussed, the Home Office is currently unable to monetise the main benefits of deterring or preventing state threats. If these were able to be monetised, the NPSV may be positive.
89. The policy will deliver value for money because it will meet its objectives, in that it will provide law enforcement and intelligence agencies with the powers they need to tackle, and reduce the risk from, state threats. It will also make the UK a harder operating environment for foreign states to undertake hostile activity, as law enforcement and intelligence agencies will have improved disruption tools. Increased sentencing and harsher punishment or the prospect of restrictions imposed through civil measures may deter actors from carrying out hostile acts. Given the importance of protecting homeland security, public confidence in parliamentary democracy and the UK's overall strategic advantage, and the assessment that the cost of this proposal is relatively low, it would seem likely that the policy will deliver VfM.

Impact on small and micro-businesses (SMBs)

90. There could be limited impacts to SMBs. The new powers introduced in this Bill (Account Monitoring Orders, Customer Information Orders, Disclosure Orders and Schedule 2) could impose additional administrative costs to SMBs however it is expected that the businesses subjected to these powers will generally be larger financial institutions. It is expected that any costs incurred by SMBs, if at all, would be extremely low.
91. SMBs may benefit from the policy indirectly, through the UK being at a reduced risk of espionage.
92. Foreign states are likely to be deterred from undertaking hostile activity. New technologies and the modern interconnected world have reduced the costs to states to commit hostile activity and reduced the barriers to entry. This legislation may raise security standards and as a result the harder operating environment and increased disruptive options could act as a barrier to state threats affecting businesses, such as intellectual property theft.

F. Proportionality

93. The legislation is not expected to have any significant impacts on government, businesses or the general public, therefore, the limited level of analysis is proportionate. Due to its sensitive and complex nature, much of the evidence and information cannot be disclosed. Analysis has primarily focused on the administrative burden of the new and amended measures, falling on intelligence agencies, CTP, NCA and the CJS.
94. Costs arising from this amendment are expected to only fall to training and familiarisation for new officers, while reducing the costs with the current referral process. The SCA 2007 amendment will have no administrative burden and therefore there are no monetised costs or benefits to this.

G. Risks

95. The main analytical risk is that for the state threats measures, operational costs (cost of investigations and the cost of STPIMs) and CJS costs both rely on the number additional state threats investigations per year, arising as a result of this legislation. Although the Home Office consulted with CTP and intelligence agencies, it has not been possible to estimate the number of investigations. Indicative figures, derived by the Home Office, have therefore been used to provide indicative costs however there is no reason to believe that these costs will represent the real-world costs.
96. Additionally, it has not been possible to monetise NCA costs. These costs will largely be affected by the extent to which the NCA increase their response to State Threats through the use of the new powers, resulting in additional investigations. A large response could result in significant extra costs.
97. In line with TPIMs, it is assumed that the STPIM appeal rate is extremely low and therefore this impact assessment (IA) assumes that there are no STPIM appeals, resulting in no monetised costs. However, if STPIM cases were appealed, additional costs, likely at a similar cost per day, would be incurred.

H. Direct costs and benefits to business calculations

98. The new powers introduced in the Bill (Account Monitoring Orders, Customer Information Orders, Disclosure Orders and Schedule 2) could impose additional administrative costs to business. This may be particularly the case for financial institutions which include SMEs. These notices are similar

in nature to those that can be served in other contexts such as CT. The businesses that could expect to receive such notices regularly will already have established processes in place. Given the low volumes, this is expected to have a low impact.

I. Wider impacts

99. An Equality Impact Assessment (EIA) has been carried out on the counter state threat measures, the amendment to Schedule 3 of the CTBSA 2019, and the amendment to the SCA 2007. This EIA considered the impact of these measures on those with protected characteristics.
100. A Justice Impact Assessment (JIT) has been carried out for the counter state threat measures in the Bill.

J. Trade Impact

101. There is no expected impact on international trade.

K. Monitoring and evaluation plan

102. The National Security Bill will be subject to a post implementation review (PIR) to determine whether it is working in practice as intended. This is likely to be reviewed three years after Royal Assent.
103. **Counter State Threats Measures:** Identifying clear metrics and indicators of success for the measures is challenging. The number of prosecutions under existing legislation is low (about two prosecutions in the last 10 years). While the Government expect the number of prosecutions to increase slightly (potentially to a rate of 1-2 per year) this statistic would not necessarily be indicative of the impact of the legislation. This is because the Government are also expecting the legislation to deter states from operating in and against the UK which would act as a downward pressure on the number of cases.
104. **Amendment to the Serious Crime Act 2007:** success will be measured through removing the risk of criminal liability on persons exercising the proper function of an intelligence service or the armed forces. This is expected to increase the ability of the intelligence agencies and armed forces to effectively respond to key operational situations and protect UK national security.
105. **Amendment to Schedule 3 to the Counter Terrorism and Border Security Act 2019:** success will be measured by the ability of CTP to progress their investigations at the required pace, by enabling access to confidential business material at the time of the examination as opposed to up to six weeks after the examination has taken place.

L. Annexes

Annex A – Equality Impact Assessment – summary of findings

106. The Government does not consider that any of the Home Office measures in the Bill would result in anyone being treated less favourably as a direct result of any protected characteristic. The Government has considered potential indirect impacts of measures on those with protected characteristics within the Bill and also how to mitigate these.

General considerations for the state threats provisions

107. A number of these measures relate to criminalising state threat activity that is being carried out for, on behalf of or for the benefit of a foreign state. There are certain foreign states who may be more likely than others to engage in the activity covered by the Bill and it is possible that they may be more likely to direct their own nationals to carry out this activity than they would be to direct a UK national to conduct the same activity. However, there is not sufficient data to be certain of this and there is also the potential that foreign states may direct UK nationals to conduct state threat activity on their behalf in an attempt to cover up the link between the foreign state and the activity and enable the foreign state to use UK nationals as agents for state threat activity. Were nationals from certain states to form a significant proportion of those impacted by the legislation this could lead to an indirect impact on the protected characteristics of race and religion. However, provided the measures in the Bill are applied equally and fairly to all nationalities and races on the basis of the tests in the legislation, the Government consider this risk to be small and that it can be justified from a national security perspective.

Additional considerations for state threats Prevention and Investigation Measures

108. There is the potential that the implementation of state threats PIMs may have an indirect impact on individuals with several protected characteristics (age, disability, gender reassignment, pregnancy and maternity, religion and belief and marriage and civil partnership). For example, one of the available STPIMs is imposing a travel restriction on individuals to prevent them leaving a certain area. Depending on where the individual is restricted to, this may result in discrimination against individuals who may have specific needs as a result of one of the aforementioned characteristics, such as access to specialist healthcare or the need to be able to access a particular place of worship. Also, prohibiting an individual from using IT (another measure that could be imposed) may have a negative impact on any children living in their household who may need to access IT for educational purposes. Finally, the application of the relocation PIM may result in individuals who are married or in a civil partnership being separated from their spouses or partners.
109. However, the risk of this indirect discrimination is justified and proportionate given the legitimate aim of protecting the United Kingdom's national security and the safeguards in place to ensure that these measures are applied appropriately.

Impact Assessment Checklist

Mandatory specific impact test - Statutory Equalities Duties	Complete
<p>Statutory Equalities Duties</p> <p>The public sector equality duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations in the course of developing policies and delivering services.</p> <p>In evaluating the impact of the introduction of the new policies set out in the Bill, due consideration has been undertaken to assess any discriminatory impacts on groups with protected characteristics including age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation.</p> <p>While the counter state threat measures in the Bill are state agnostic and will have no direct impact on those with the protected characteristic of race or religion and belief, the Government has considered the potential indirect impact of the measures on these characteristics. However, provided the measures in the Bill are applied equally and fairly to all nationalities and races on the basis of the tests in the legislation, we consider this risk to be small and that it can be justified from a national security perspective.</p> <p>In particular the Government has considered whether the suite of State Threats Prevention and Investigation Measures (PIMs) that the Home Secretary can apply where they reasonably believe that the individual is involved in foreign power threat activity and that some, or all, of the activity is new, in order to prevent or restrict the individual's engagement in such activity, will have an indirect impact on those with protected characteristics. While the Government considers that there could be minimal indirect impact of these State Threats PIMs on those with protected characteristics, this will largely be mitigated by the substantial number of safeguards that apply to these measures.</p> <p>The Government do not consider that the amendment to the SCA 2007 will have a direct or indirect impact on those with protected characteristics.</p> <p>The SRO has agreed these summary findings of the Equality Impact Assessment.</p>	<p>Yes</p>

Any test not applied can be deleted except **the Equality Statement**, where the policy lead must provide a paragraph of summary information on this, which must be agreed by the SRO.

The Home Office requires the **Specific Impact Test on the Equality Statement** to have a summary paragraph, stating the main points. **You cannot delete this and it MUST be completed.**

Social Impact Tests

New Criminal Offence Proposals See box below	Yes
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Justice Impact Test Home Office anticipate that there will be a relatively small number of cases per year for the core state threat offences (less than 5). It is estimated that the impact of these measures will be low, at most 1-2 prosecutions per year across the whole suite of measures. It should be noted that these are Home Office estimates and have not yet been signed off by the Ministry of Justice.	Yes
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