

The Foreign Hand and Foreign Interference

RUSI, 23rd July 2024

Introduction

1. It is customary to offer reassurance: the Foreign Hand is here but it was ever thus.
2. On this basis the UK's new national security legislation is just another turn in the wheel of history.
3. The paranoia of the Tudor court; counter-sedition measures during the French revolutionary period; and espionage between the World Wars - now we have the National Security Act 2023 with shiny laws against cyber-spying, theft of trade secrets, and interference by what we must learn to call "foreign powers" rather than old-fashioned "enemies"¹.
4. But we are not in the main historians. From a more recent perspective these new laws are a proper cold shower, a major shock to the system from what went on before.
5. And the Cold War warrior, roused from his slumber by events in Crimea and money from the East, might say – "about time".

Exposure

6. The UK is and remains a country of incredible and blessed openness. We travel. We take investment and students from abroad. We have foreign friends. Many languages are spoken. There is an open information environment online and offline. Foreign policy is a matter of domestic politics.
7. But the implication of the recent national security laws – not only the National Security Act 2023, but the National Security and Investment Act 2021, the Telecoms (Security) Act 2021, the Academic Technology Approval Scheme – is that the UK let down its guard.
8. Or our enemies, or rather certain "foreign powers", stepped up their game.
9. Today I want to discuss one dimension of the UK response – the freshly-minted and thrillingly unfamiliar offence of "foreign interference"².
10. The purpose of this offence is fundamentally two-fold. Imagine that a UK resident has been caught and prosecuted for interfering in UK affairs on behalf of a Foreign Power.

¹ "Enemy" under the Official Secrets Act 1911 (repealed).

² The offence under 13 National Security Act 2023 can be described as a three-legged stool comprising three elements: prohibited conduct; foreign power condition; and intended interference effect.

- Firstly, it is saying to the Foreign Hand – “we see you”. We see what you are doing, and we call it out. Not just in the shadowy odd expulsion of foreign intelligence officers, but through arrests, detentions, searches, and in the glare of the criminal justice system.
- Secondly, saying to the public at large – “don’t you dare”. If you are a tasked foreign agent you are personally at risk. If you are an enabler tempted by greed, don’t lend yourself to foreign meddling. Regulate your conduct if not as a matter of morality or patriotism then legal sanction. Beware the Foreign Hand.

11. One of my roles as the first Independent Reviewer of State Threat Legislation³ is to consider this impact of this offence. Are we going to crush the butterfly on the wheel, or damage society in pursuit of shadows? Does it go far enough?

Conduct

12. Unlike its sharper-elbowed cousins – sabotage, assassination, intrusion onto military bases, theft of secrets – the law of Foreign Interference covers a broad and often subtler base of human activity.

13. Foreign Interference is different from simple foreign *influence* of the type that will soon need to be registered under the Foreign Influence Registration Scheme.

14. Foreign Interference is what former Australian Prime Minister Malcolm Turnbull memorably described as influence that is “covert, coercive or corrupt”, crossing the “line that separates legitimate influence from unacceptable interference”⁴.

15. So whilst relationships are fine, the internet is fine, money, commerce, travel, everything is fine, there is what our government has described as “going beyond overt political influence”, acting “outside the norms of diplomacy”, and using “covert and malign” activities to undermine our interests or weaken our democracy⁵.

16. An overt Russian embassy campaign on social media during local elections would not be unlawful, because it is custom and comity between nations which restricts foreign involvement in domestic politics, not law⁶.

³ For some reason the “Threat” in the title is singular (HM Government, News story, ‘Independent Reviewer of State Threat Legislation appointed’, 6.2.24).

⁴ Speech introducing the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017 (7.12.17).

⁵ HM Government, Policy paper, ‘Foreign interference: National Security Bill factsheet’ (3.5.24). For further discussion of HMG approaches, see Intelligence and Security Committee, ‘China’ (2023) at pp37-8.

⁶ So far as diplomatic agents are concerned, Article 41(1) of the Vienna Convention on Diplomatic Relations (1961) places a duty on persons with immunities and privileges “not to interfere in the internal affairs of [the Receiving] State”. However, Walker-Munro, B. points out that what is meant by interference here is in the eye of the beholder, and that “state practice would suggest that what was once diplomatic interference is now an unwelcome act rather than illegal one”: “‘To live convincingly’: legal challenges at the intersection of diplomacy and foreign interference”, *Edin.L.R.* 2024, 28(2), 147-173.

17. But if it involves some otherwise criminal conduct or coercion⁷ or some sort of misrepresentation⁸, and the Foreign Hand is present, then the offence of Foreign Interference is in play.

18. What sort of things did the government have in mind?

- Collecting damaging information on MPs.
- Creating false identities in elections.
- Coercing a foreign dissident to cease their activities.
- Running a troll farm to damage the take up of vaccines.
- Spreading false information against candidates⁹.

19. The **first** point to note is that until now, some of this conduct was lawful even if morally wrong. Collecting damaging information is lawful¹⁰; disinformation (or digital marketing if you prefer) is not generally a crime; lying in elections, with some narrow exceptions, is lawful¹¹.

20. But if the Foreign Hand is present, Foreign Interference is in play.

21. The **second** point is that these activities don't require a great deal of tradecraft. They are national security offences that can be committed by you and me, perhaps paid by the Foreign Hand, perhaps coerced, perhaps out of conviction.

22. They are a trap to the greedy and irresponsible. They are in the territory of shady business with foreigners, hush-hush jobs for private investigators, easy money for misfits¹² and hired hands, and even misguided teenagers.

23. The **third** point is that foreign interference takes police and prosecutors into areas close to precious zones of national life – journalism, elections, politics. Agents of foreign interference may also pose as journalists or lawyers, and exploit the special protection accorded to bona fide practitioners.

⁷ For a fascinating discussion of what coercion might encompass at international law see Wheatley, S., 'Foreign Interference in Elections under the Non-intervention Principle: We Need to Talk about "Coercion"', 31 *Duke Journal of Comparative & International Law* 161-197 (2020). One issue is whether misrepresentation is coercive on the grounds that, like violence, it damages free (and informed) choice on a given topic.

⁸ See the definition of "prohibited conduct" in section 15.

⁹ Above examples drawn from Foreign Interference factsheet, supra, and Explanatory Notes to the Act, para 150.

¹⁰ Save in certain circumstances under the Data Protection Act 2018.

¹¹ The offences under the Representation of the People Act 1983 are mainly about process (e.g. personation or manipulating proxy votes or giving false names and addresses for candidates). It is however an offence to make or publish a false statement of fact about the personal character or conduct of a candidate to affect the return of a candidate at an election (section 106). The Electoral Commission has an excellent table of offences here: <https://www.electoralcommission.org.uk/guidance-candidates-and-agents-greater-london-authority-elections/campaigning/table-offences>.

¹² Cf. Wall Street Journal, 'The Misfits Russia Is Recruiting to Spy on the West' (15.5.24).

24. The **fourth** point concerns the risk that hunting for the Foreign Hand could lead to suspicion on mere grounds of nationality or ethnicity. The US government's 'China Initiative' was criticized for creating a climate of fear amongst Asian Americans¹³.
25. The **fifth** point concerns harm. Actual or threatened harm is what justifies criminal offences. But as I will explain in the next part, the harm from Foreign Interference is far from straightforward.

Harm

26. Unlike terrorism, most often associated with the physical fear of bombs, bullets or knives, Foreign Interference may hardly ruffle the surface. Its presence could be marked merely by a deep fake on social media, a whispered threat, or some reputation-damaging screen shots.
27. Terrorism has a grand objective – it is separated from other violence by an intention to change government policy or intimidate a population or part of a population¹⁴. Whereas Foreign Interference could mean interfering with just one person's right to protest¹⁵ or with a single local government planning decision¹⁶.
28. Nor is there any severity threshold for Foreign Interference. Interference in elections doesn't have to change the outcome. Trying to stop Hong Kongers from exercising their freedom of speech doesn't have to involve any special degree of violence.
29. For these reasons, despite growing public awareness and discussion of state threats as a strategic challenge requiring a greater share of resources, the practice of police announcements or declarations cannot be transposed from terrorism. It is one thing, and I believe an important thing, to level with the public and declare when, despite the best efforts of the authorities, a terrorist attack has taken place¹⁷.
30. But declaring a successful foreign interference event is another. Indeed, there are types of Foreign Interference such as Transnational Repression which will frequently fall below the national security threshold – I published a paper about this in May this year¹⁸. Greater awareness may be called for, but we don't want to scare ourselves.
31. Again unlike terrorism, and this is where Foreign Interference reveals its subtle colouring, some forms of Foreign Interference could travel under the banner of truth.

¹³ NPR, 'The Justice Department is ending its controversial China Initiative' (23.2.22).

¹⁴ Section 1 Terrorism Act 2000.

¹⁵ Section 14(1)(a).

¹⁶ Section 14(1)(b).

¹⁷ The ruling party in Spain is believed to have suffered badly in a general election when it seems to be trying to avoid attributing the 2004 Madrid Train Bombings to Islamist terrorism Gordon, P., 'Madrid Bombings and US Policy', evidence to Senate Committee on Foreign Relations (31.3.04). The Party Popular had maintained that ETA was responsible.

¹⁸ 'Transnational Repression: What Planet Are We On?' (29.5.24).

32. Imagine a hack and leak in which the truth emerges about a political candidate.
33. The UK Foreign Interference offence is intended to cover this sort of conduct¹⁹. How can it be harmful for the public to know the truth about candidates during an election? The harm can only be the additional and undesirable presence of the Foreign Hand, in a form of reverse alchemy transforming golden truth into base criminality.
34. Under cover of apparently beneficial outcomes, the harm may be a long time in coming. Foreign interference may involve carefully probing for weaknesses, possibly in pursuance of a master outcome, maybe just trying to degrade and demoralise.
35. Slow-burn planning lay behind the case of **Di Sanh Duong** who was convicted of preparing acts of foreign interference in December last year in Australia²⁰. Mr Duong, an Australian citizen, arranged for a large cheque to be paid to a hospital in the constituency of Alan Tudge, a Member of Parliament and Federal Minister. Mr Duong had identified Mr Tudge as a possible future Prime Minister.
36. The giving of the cheque was not charity but a long-term influence operation, involving covert communications with Chinese intelligence officials, bearing all the hallmarks of the United Front Work Department²¹.
37. But slow-burn harm brings in issues of remoteness. When might the rupture in the fabric of Australian politics have occurred? In a decade when perhaps Mr Tudge, who was wholly ignorant of Mr Duong's scheming, became party leader?
38. A famous trial took place in this country in 1794 of a man called **Thomas Hardy**. Like many others in the time of Coleridge and Wordsworth he was fired up by the French Revolution and was a leading member of the London Corresponding Society.
39. A charge of treason was laid against him because he advocated what the prosecution called "equal active citizenship". Under such a political settlement there would be no place for a pre-eminent monarch, and he was thereby accused of "imagining the King's death"²².
40. The great barrister Erskine tore the prosecution case theory apart. It was a chain of reasoning which he said, "if the cause were not too serious", could be likened to

¹⁹ Ward, R., Blundell, D, 'National Security' (Oxford, second edition) at para 19.67.

²⁰ There is no equivalent offence of preparing acts of foreign interference under the 2023 Act; but under section 13(1)(c) the offence may be committed where the prohibited conduct forms part of a wider course of conduct (i.e. a long-term intelligence operation).

²¹ Sentencing remarks of HHJ Maidment, County Court of Victoria [2024] VCC 182 (29.2.24). Another example of "long game play" by Chinese intelligence relates to rising Californian politicians in 2014-5: Axios, 'Exclusive: Suspected Chinese spy targeted California politicians' (8.12.20).

²² I acknowledge with gratitude Robert Walker's paper, 'Security, Freedom of Speech and Criminal Justice in the Age of Burke and Fox' (Bentham Club, 5.3.08).

a nursery rhyme: “This is the cow with the crumpled horn, which gored the dog, that worried the cat, that ate the rat”, and so on. Asking for equal citizenship was too remote from the possibility that a future king might be killed²³.

41. Will juries be persuaded that long term influence operations can amount to foreign interference?
42. It is impossible to predict what future prosecutions will be authorised by the Attorney General²⁴. I remain highly interested to see how long-term influence operations are dealt with, and what sort of evidence will be adduced.
43. I will also keep under review whether the law can, or indeed ought to, deal with those pernicious disinformation operations that we might experience online, whose intention can only be to damage trust in general, or sow divisions, with no more targeted interference effect in mind²⁵.

The Absent Hand

44. I've referred to the Foreign Hand which is present in a malign way. Now I need to talk about when the Foreign Hand is not present at all.
45. In law, showing the involvement of the Foreign Hand is referred to as satisfying the “Foreign Power Condition”, an important feature which underpins many of the new offences²⁶.

²³ The legal historian Sir William Holdsworth took a more nuanced position: “There is no doubt that the actions and correspondence of the Corresponding Society and the Society for Constitutional Information laid them open to suspicion. They had corresponded with the Scotch societies, they had designed a British Convention, and they had been in full sympathy with doings of the Scotch societies which had ended in convictions for sedition or for treason. It was by no means clear from their correspondence that they had intended to limit their activities merely to a constitutional agitation for Parliamentary reform. It was by no means clear that they were not in favour of a radical reform, on the model advocated by Paine, which involved the elimination of the King and the House of Lords a purely democratic representative government which, as the attorney general said, was wholly opposed to the mixed British constitution. It was by no means clear that their convention was not intended to force these changes upon Parliament. On the other hand, there is little real evidence that they intended to effect their purposes by force of arms”: Holdsworth's History of English Law, vol. 13.

²⁴ The Attorney General's consent is required for almost all prosecutions under the National Security Act: see section 37.

²⁵ In his 2021 threat update, the Director General of MI5 spoke of the use of social media to “sow divisions” within society; the government's Foreign Interference Factsheet (3.5.24) refers to “weaken[ing] the integrity of our democratic institutions”. Russia's Internet Research Agency had the stated goal in relation to US elections of “spread[ing] distrust towards the candidates and the political system in general”: USA v Internet Research Agency LLC, US Indictment (filed 16.2.18) at para 10(e). It was certainly the intention of the government to deal with cases where the damage caused by disinformation “cannot be measured until long after” the information is released: Hansard (HC) Public Bill Committee, Col 133 (12.7.22), Stephen McPartland MP (Security Minister).

²⁶ As well as Foreign Interference (section 13), the Foreign Power condition is an element of secrets offences (sections 1, 2), sabotage (section 12), foreign interference in elections (section 16), and the aggravated offences (sections 19-22).

46. Under the new Act, the Foreign Power Condition can be satisfied not only where a foreign power is directing or arranging the interference, but also if a person intends their conduct to benefit a foreign power²⁷. This applies even if the Foreign Power is entirely ignorant of that intention.

47. Let me spell this out.

- It applies to the self-initiated patriot who intends to benefit his or her home country, by attacking political dissidents in this country²⁸. For them, stopping criticism of a beloved leader is loyalty; for the UK, it satisfies the foreign power condition.
- But it also applies to the person whose objective is to keep arms flowing to Ukraine, and to benefit the government in Kiev in their war against Russia. They also satisfy the foreign power condition.

48. Why does the law work like this?

49. In the case of stealing secrets, which requires proof of the Foreign Power Condition, it is to catch the UK official who takes sensitive papers home intending to sell them to the highest bidder. The official hasn't been directed by any Foreign Hand but she ultimately intends to benefit one²⁹.

50. It is also to deal with the tricky question of proof. Attributing interference to a Foreign Power may be difficult given the lengths to which they may go to conceal their involvement. It may be much easier to prove who the person *intended* to benefit.

51. The potential problem is that this sort of intention is common. All the more because as we live through an era of foreign news with wars in Crimea or the Middle East; Great Power politics; the increasing role of nationalism.

52. We debate and promote our chosen causes to politicians. We may want to influence how others vote. Charities pressure the government on foreign aid. The return of the Elgin Marbles and the Benin Bronzes are promoted. Independent Members of Parliament have been elected precisely because of their support for Gaza.

53. In so doing, we may well intend to benefit a foreign country and so support the objectives of the government or authority responsible for that part of the world³⁰. For those who do, the only and in theory potentially wafer-thin aspect that

²⁷ Section 31(5).

²⁸ Or who threatens a North London hairdresser for offering styles which mock a country's leader: BBC News, 'North Korean officials visit salon over Kim Jong-un 'bad hair' advert' (15.4.14).

²⁹ It is not necessary to identify which foreign power: section 31(6).

³⁰ Section 32(1) defines "foreign power". It includes, "an authority responsible for administering the affairs of an area within a foreign country or territory, or persons exercising the functions of such an authority". Since can include proscribed organisations like Hamas, responsible for administering Gaza, there could be cases in which the harm may be both Foreign Interference and terrorism.

separates this conduct from the crime of Foreign Interference is that we do so openly without coercion, or misrepresentation, or some other offending³¹.

54. I say wafer-thin not to excuse malign methods. But “spin” is not unfamiliar to political debate and influence. If I bolster my argument with partial statistics then I could well engage in a representation that the law would regard as false or misleading³². Similarly if I use sock puppet accounts or use other devices familiar to digital marketing³³.

55. It is this aspect of the Foreign Interference offence that rubs against freedom of expression. The government’s analysis to Parliament was that conduct carried out on behalf of a foreign power would in the most part not involve the exercise of free speech³⁴. This proposition feels less secure when individuals are acting on their own initiative³⁵.

56. And the government’s point that journalists should be able to take legal advice on what might fall the wrong side of the line³⁶, does, I fear, overstate the cash resources available to that profession.

The Butterfly

57. The poet Alexander Pope referred to breaking the butterfly on the wheel³⁷, and this phrase has come to be associated with harsh punishment being used against individuals to vindicate social order³⁸.

58. I’ve referred to the private investigator tempted by a shady brief, or the misfit lured in by cash or excitement. The question is whether the authorities can expose the machinations of foreign powers by calling out the Foreign Hand, but with due regard for the frailty of individuals.

59. There is also the question of how, for a country gloriously engaged in foreign affairs, the inculcation of a Cold War mentality, perhaps necessary to some degree,

³¹ If a person engages to conduct that amounts to an offence in the UK as part of their interference, this is also prohibited conduct: section 15(1).

³² The test under section 15(4)(a) is whether I make a representation, “...that a reasonable person would consider to be false or misleading in a way material to the interference effect”.

³³ Internet or digital marketing is awash with trickery which might well qualify as misrepresentation. Such techniques might include astroturfing (making sponsored content appear as if it comes from grassroots organisations); using influencers who falsely present as consumers; fake reviews; search engine optimisation through misleading keywords; unlabelled adverts; false edits to Wikipedia; hijacking online communities; manipulation of fact-checking to conceal adverse information (for latter, see Atlantic Council, ‘Mapping the last decade of Russia’s disinformation and influence campaign in Ukraine’ (Transcript, 8.6.23).

³⁴ Human Right Memorandum, National Security Bill, at para 8, 39-40.

³⁵ Also, where the conduct is carried out with financial or other assistance provided by a foreign power for that purpose (section 31(2)(c)) – for example, a speaker at a cultural event hosted by a foreign embassy.

³⁶ Memorandum, para 40.

³⁷ “Who breaks a butterfly upon a wheel”, Alexander Pope, “Epistle to Dr Arbuthnot” (1735).

³⁸ Used by William Rees-Mogg in a 1967 Times editorial protesting at Mick Jagger’s imprisonment for amphetamine use.

can avoid an impoverished public forum, the growth of paranoia and a loss of status. This consideration may be relevant to think tanks.

The Internet

60. In the final part I want to discuss foreign interference online. Online disinformation severely tests the saying that the best remedy for bad speech is more speech³⁹.

61. I know from my review of terrorism that the online dimension is the most important dynamic affecting terrorism in GB – whether as a supplier of ideology, a means of connecting with like-minded individuals, or as vehicle for terrorist offending⁴⁰.

62. The internet is the perfect forum for foreign interference: easy to perform, hard to attribute to the Foreign Hand. You will also recall that:

- given the wide definition of misrepresentation, it is an offence to spread true information by bots masquerading as real people⁴¹.
- The offence applies to patriots as well as foreign funded troll farms⁴².

63. I have no reason to doubt that the online world will play an outsized role in Foreign Interference investigations, even though the General Election seems to have passed without signs of disturbance. OFCOM has produced a superb analysis of how online Foreign Interference is likely to manifest itself⁴³.

64. I do however still detect a tendency in policy circles to think of the internet as being ‘over there’.

65. Everyone accepts that the internet is the cheap and obvious way to persuade, distract and influence. And yes, politicians and officials can point to the Online Safety Act 2023, and the regulator OFCOM⁴⁴.

³⁹ *Whitney v People of State of California*, (1927) 274 US 357, per Justice Brandeis at para 44: “Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom.”

⁴⁰ Principally sections 1 and 2 Terrorism Act 2006 and section 58 Terrorism Act 2000. So-called documentary offences making up bulk of GB terrorism offending.

⁴¹ Section 15(6)(a).

⁴² Because of the intentional aspect of the Foreign Power condition discussed earlier.

⁴³ OFCOM, ‘Protecting people from illegal harms online: Volume 2’ (9.11.23), at Chapter 6P.

⁴⁴ See for example, HM Government, ‘Consultation outcome: A pro-innovation approach to AI regulation: government response’ (6.2.24)’, at para 48.

66. They can rightly point to the legal obligation for user-to-user services and search services to remove foreign interference material as a priority⁴⁵.

67. But a heavy dose of realism is needed:

- The target of regulation is not troll farms or digital marketers but the platforms themselves. Those platforms are absorbing a vast number of obligations under the Online Safety Act and legislation elsewhere⁴⁶.
- We don't know how platforms will weigh lost profit and growth against the benefit of complying with online safety standards.
- The regulator OFCOM has many priorities of which enforcing standards on Foreign Interference is only one. I do not know whether OFCOM can carry out real time cross-platform analysis (for example via a 'Twitter/X pipe/API'⁴⁷). But tech platforms are making access to data far too expensive for civil society organisations⁴⁸, meaning that tech platforms may be left to mark their own homework.
- The law on Foreign Interference will be seriously hard to explain to overseas tech companies⁴⁹. Unlike other most other harm types, it is about societal harm rather than harm to individuals. It is one thing for specialist prosecutors, another thing to operationalise UK national security law in cyberspace.
- Attribution of content to a Foreign Hand, or identifying an intention to benefit a Foreign Power, is just plain difficult⁵⁰.

68. Proportionate measures against digital Foreign Interference could in principle be swept up by action against "inauthentic behaviour", although identifying such behaviour and taking action requires significant expertise and is likely to be limited to the largest platforms.

69. Of course, artificial intelligence will be offered as a panacea. Tech platforms are in a race for market share, and are less and less likely to pay armies of human moderators. Indeed, since human moderators may struggle as much as machines to spot the Foreign Hand, technical solutions feel inevitable. This could lead to high error rate and detriment to truth and free expression, since the Foreign Hand is harder to spot than say branded terrorism content.

⁴⁵ Schedule 7, para 37. Section 59(10) ("Priority illegal content"). Section 10 contains the duty to take proportionate measures to prevent users encountering priority illegal content. OFCOM says that it expects the first new duties to come into effect at the end of 2024.

⁴⁶ Such as the EU's Digital Services Act.

⁴⁷ Application Programming Interface allowing access to all output.

⁴⁸ Windwehr, S., Selinger, J., 'Can we fix access to platform data? Europe's Digital Services Act and the long quest for platform accountability and transparency', *Internet Policy Review* (27.3.24); Karpf, D., 'Back to Basics: Studying Digital Campaigning While Our Objects of Analysis Are in Flux', *PolComm Report* 29 (2024).

⁴⁹ See for example, OFCOM's draft *Illegal Contents Judgment Guidance* (9.11.23) at A14.

⁵⁰ For example, where state-created content is reposted by innocent users; or where the purpose of content is principally revenue-raising – created to go 'viral' but incidentally supporting a Foreign Power.

Conclusions

70. Because the offence is so new and untested, it would be premature for me to offer policy suggestions.
71. We know it is a wide offence, deliberately so, formulated to catch the Foreign Hand in all its malign and evolving schemes.
72. We also know that some previously lawful and some foolish or misguided conduct could come within its scope. The burden on the authorities of deciding whether to carry out an arrest and detention, or to bring a prosecution⁵¹, is therefore an extremely heavy one.
73. I suspect that the Cold War warriors may be right, that we have lost some of our instinct for self-preservation against foreign interference at a time when technology exposes us more and more.
74. But I doubt that legislation can replace a mentality.
75. I remain sceptical about how the Foreign Interference offence can ever be a safety standard under the Online Safety Act 2023 and wish that civil society organisations could have a greater role in monitoring the extent of foreign interference that tech companies are prepared to tolerate on their platforms. I would welcome legislation requiring much greater transparency from platforms
76. And finally I hope that the legislation is used in a way that plays to the UK's strengths. Given the quality and expertise of our journalists and the strength of our judicial system, I hope that when the Foreign Interference offence comes to be tested, it is tested in open court beneath the public gaze.
77. There is a power under the National Security Act to exclude the public from criminal proceedings in the interests of national security⁵². I recognise that such a power is inevitable in a statute designed to combat the Foreign Hand, but my firm hope is that the public are excluded as little as possible.
78. In fact, the two purposes I referred to – calling out the foreign hand, and warning the public against entanglement – are best served by an open display of what this new law has to offer.

JONATHAN HALL KC

⁵¹ All prosecutions are subject to Attorney General consent: section 37(2).

⁵² Section 38.