INDEPENDENT REVIEWER OF TERRORISM AND STATE THREAT LEGISLATION

LEGISLATION TO ADDRESS STATE-BASED SECURITY THREATS TO THE UNITED KINGDOM

1. INTRODUCTION AND EXECUTIVE SUMMARY

1.1. The purpose of this independent review is to examine whether there are tools available in terrorism legislation which should be emulated or adapted to address state-based security threats to the UK. The review was announced to Parliament on 4 March 2025 after I had been commissioned in December 2024. My terms of reference were published on 27 March 2025.

1.2. This review is separate from my much longer annual review of State Threat legislation[1] which has now been submitted to the Home Office, and which considers in detail its effectiveness, fairness, and any potential pitfalls.

1.3. My recommendations are:

- Ability to issue **Statutory Alert and Liability Threat Notices** against Foreign Intelligence Services, an equivalent to proscription under the Terrorism Act 2000. By way of example, this strong power would be available for use against the Islamic Revolutionary Guard Corps.
- Creation of **additional criminal offences** for individuals who invite support for or display the insignia of the Foreign Intelligence Service in question.
- Application of the **acts preparatory offence** to certain State Threat activity done in the UK where the intended target is overseas.
- Police to be given power to erect **cordons** in State Threat investigations.
- Consideration be given to a power to **stop and search** individuals without suspicion in high threat situations, or locations such as the premises of a known State Threat target.
- Power in limited circumstances to carry out **post-charge interviews** in State Threat criminal investigations.
- Police to be given the power to **seize passports** on the basis of suspected foreign power threat activity, as currently exists in terrorism cases.
- The **relocation** power should be available in a wider range of State Threat Prevention and Investigation Measures under Part 2 of the National Security Act 2023.
- Amendment to the Serious Crime Act 2007 to allow police to apply directly to the High Court for **Serious Crime Prevention Orders** in State Threat cases.

[1] Schedule 3 to the Counter-Terrorism and Border Security Act 2019, and the National Security Act 2023.

1.4. Chapter 2 contains an analysis of the legal position of State entities under the Terrorism Act 2000. Chapters 3 and 4 identify areas of overlap and potential gaps. Chapter 5 contains my recommendations.

2. STATES AND TERRORISM

2.1. Even if one assumes that a State entity has used serious violence, has done so to influence a government or intimidate a section of the population, and is doing so to advance the political cause of that State[2], there are in my view strong reasons to conclude that Parliament never intended the Terrorism Act 2000 to allow the proscription of State entities.

2.2. The point is that the Terrorism Acts were never designed to regulate the conduct of States, which includes the conduct of State entities or organs[3], and that looking to the Terrorism Act 2000 for a way of proscribing state bodies is quite simply shopping in the wrong department.

2.3. This is a question of law rather than a question of the linguistic uses of the word terrorism.

- It is unexceptionable to refer to States using terrorism or terroristic methods, and to recognise that various national and international laws prohibit terrorist methods, for example during armed conflict[4].
- It is often pointed out that modern states, from the Jacobins in the 1790s, have been responsible for the most lethal instances of terrorism[5] and the word terrorism is understood to have been first used in connection with the French Revolution[6].
- Terrorism as a tactic adopted by the State has been described as the most prevalent and devastating form of all[7]. The Director General of MI5 has referred to Iran as "the state actor which most frequently crosses into terrorism"[8].

2.4. The question of whether the Terrorism Act 2000 applies to State entities is a matter of legal interpretation, which requires understanding the intention of Parliament as expressed in the words of the statute[9].

2.5. The answer will not be forthcoming by reference to international law. Parliament did not legislate to implement an agreed international definition, and none in fact exists. Attempts to find common ground at the United Nations foundered because, significantly, States could not agree about how a terrorism definition should treat freedom-fighters, armed forces during conflict, and "the

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[2] It has been convincingly argued that most State violence "is inherently political in purpose, so it is not possible to distinguish between State uses of force and State terrorism as separate categories on the basis of political motivation alone": Saul, B., Defining Terrorism in International Law (Oxford University Press, Oxford, 2006) p.223.

[3] Under Article 4 of the International Law Commission's Draft articles on Responsibility of States for Internationally Wrongful Acts (2001), adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10), the conduct of any State organ shall be considered an act of that State.

[4] Under the Geneva Conventions and their additional Protocols.

[5] Burleigh, M., 'Blood and Rage: A Cultural History of Terrorism' (Harper, 2008).

[6] Hoffman, B., 'Inside Terrorism' (Columbia University Press, 2006).

[7] Walker, C., 'Blackstone's Guide to The Anti-Terrorism Legislation' (3rd Ed, Oxford, 2014) at 1.08.

[8] Annual threat update (16.11.22).

[9] R (O) v Secretary of State for the Home Department [2022] UKSC 3; [2023] AC 255.

activities of military forces of a State in peacetime, also taking into account related concerns about State terrorism"[10]. My understanding is that the UK has consistently opposed the inclusion of State activity within any international definition.

2.6. The 2000 Act was the UK's first permanent terrorism legislation. From 1974[11] there was a succession of temporary Acts that applied exclusively to terrorism in Northern Ireland and were focused on terrorist organisations such as the IRA; hence they all contained, as the first measure, the power of proscription. Powers of arrest under the temporary legislation were extended to other forms of terrorism for the first time in 1984[12].

2.7. During the 1990s, Lord Lloyd's Inquiry into terrorism concluded that there was a need for a permanent statute[13]. Neither Lord Lloyd's report, nor the government consultation that followed[14] considered the application of the new legislation to State entities, although it is right to note that both contain references to the 1988 bombing of Pan Am Flight 103 over Lockerbie (by then known to have been perpetrated by Libyan intelligence officers) as examples of "international terrorism"[15]. During Parliamentary debates during the passage of the Terrorism Bill there was a passing reference to Lockerbie by the sponsoring Minister[16].

2.8. The definition of terrorism in the 2000 Act takes a generalising approach, rather than being based on scheduled offences such as bombing or hostage-taking[17].

2.9. In 2013 the Supreme Court pointed out that the definition was if anything troublingly broad[18]. The defendant's argument that terrorism did not apply to the acts of freedom fighters in a Non-International Armed Conflict was rejected, because there was no basis for narrowing the meaning of "terrorism" in this way[19].

2.10. The Court referred to the second report of Lord Anderson KC, in which the former Independent Reviewer of Terrorism Legislation raised the "potential application" of the terrorism definition even to UK forces in conflicts overseas,

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[10] Ad Hoc Working Group under the Sixth Committee (legal) of the General Assembly, established by resolution 51/210 on 17 December 1996, fifteenth session (11 to 15 April 2011) (A/66/37, 2011): cited by the Supreme Court in R v Gul [2014] AC 1260 at 46.
[11] Starting with the Prevention of Terrorism (Temporary Provisions) Act 1974.
[12] Prevention of Terrorism (Temporary Provisions) Act 1984, section 12(3)(b).
[13] Cm 3420 (October 1996).
[14] Cm 4178 (December 1998).
[15] Vol II to the Report, by Professor Paul Wilkinson of the University of St. Andrews, referred at 1.10 and 1.12 to Lockerbie being the worst incident of international terrorism in the UK in recent years and after discussing state-sponsored terrorism said this: "Some states are, themselves, known to have adopted terrorism as an instrument of policy, employing terrorist methods against their political opponents overseas".
[16] Hansard (HC) Standing Committee D, col 31, 18 January 2000, Charles Clarke MP.
[17] As in the European Union's key instruments on terrorism, the Framework Decision of 2002 and Directive of 2017, European Union Council Framework Decision on Combating Terrorism, 2002/475/JHA, OJ L164/3, 13 June 2002 and Directive (EU) 2017/541, OJ L 88, 15 March 2017.
[18] R v Gul [2013] UKSC 64.
[19] Ibid.

as part of illustrating the potential scope of the definition, but the Court did not address the plausibility of this potential application[20].

2.11. I will assume that the Terrorism Act 2000 could not, because of the doctrine of Crown application[21], bind UK military forces. But because the Terrorism Acts are famously threat-neutral, the following propositions would be correct if they applied to other State entities:

- US soldiers fighting Islamic State would themselves commit acts of terrorism.
- French police would commit acts of terrorism when breaking up a riot.

2.12. These propositions are so unlikely that it would be necessary to identify some exempting principle such as compliance with International Humanitarian Law in the case of armed conflict, or compliance with domestic human rights standards when dealing with law enforcement.

2.13. But it is very strongly arguable that because Parliament did not deal with such matters, then Parliament cannot have intended the Terrorism Act 2000 to apply to State entities at all. In 2006 the High Court gave short shrift to an argument that the words of the Terrorism Act 2000 applied to military actions by Israel: this was a "misconception of the definition" [22]. In other words, not just a matter for prosecutorial discretion but a matter of the definition itself.

2.14. Nor is it plausible that Parliament intended to leave the scope of terrorism to be determined by the courts on a case-by-case basis. The Supreme Court's wide interpretation of terrorism for non-State actors makes practical sense because juries would otherwise need to be directed on complicated and often contested points of international law applicable to armed conflict and be asked to distinguish between good and bad causes[23]. If terrorism applied to State entities, the same if not even greater complexity would arise.

2.15. These considerations are fortified when the content of the Terrorism Act 2000 is considered in more detail. As already noted, the first measure found in earlier Northern Ireland-related legislation was proscription, a mechanism directed at Republican and Loyalist terrorist organisations active during the Troubles.

2.16. Lord Lloyd disagreed with earlier non-statutory reviewers who had deprecated the utility of proscription. On the contrary he was "…inclined to

[20] Para 61.
[21] Following the principle in R (on the application of Black) v Secretary of State for Justice [2017] UKSC 81, the Terrorism Act 2000 does not bind the Crown either expressly or by necessary implication, UK troops are in any event out of scope. This appears to be the answer to the so-called "Kosovo problem" raised in debates on the Terrorism Bill, e.g. Hansard (HL) Vol 613 Col 230 (16.5.00). By contrast, the National Security Act 2023 expressly binds the Crown: see section 97.
[22] R. (on the application of Islamic Human Rights Commission) v Civil Aviation Authority [2006] EWHC 2465 (Admin), Ouseley J, at para 44.
[23] In R v F [2007] QB 960 the Court of Appeal held that the jury was prohibited from the latter.

regard proscription as one of the key provisions"[24]. As with the temporary legislation, proscription is the first measure contained in the Terrorism Act 2000 [25].

2.17. The offences created by section 11, and sections 12(1) and 13, "…were designed to support the proscription regime and thus to inhibit the ability of terrorist organisations to operate as such"[26]. In effect, they are all directed at rendering an organisation devoid of life, by declaring it unlawful, rather than (as is the case with State-targeted sanctions) changing its behaviour. A dictionary meaning of 'proscribe' is prohibit[27].

2.18. For the Secretary of State to have or purport to have power to prohibit the existence of foreign State entities would be well beyond what Parliament could have intended. There is no indication that Parliament was asked to consider the legal basis for proscribing a State entity in its own country[28], which could, since it bears on matters of core State sovereignty in arranging the organs of its political system, appear to overstep the boundaries of the principle of non-intervention at international law[29].

2.19. In the case of regular officers of a State entity, even more so in the case of conscripts, it would be odd to consider each of these as committing the membership offence, subject only to issues of State immunity[30]. There is no indication that Parliament considered how immunities might operate, and nothing in the Act to address them, although they would be fundamentally linked to prosecutions of State officials that could arise.

2.20. I therefore conclude that Parliament did not intend proscription to apply to State entities. The fact that the *principal* measure under the Terrorism Act 2000 is not available is a further strong indication that the rest of the Act was not intended to apply either.

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[24] Vol 1 para 6.9.
[25] Section 3, after the definition of terrorism (section 1), and repeal of earlier statutes (section 2).
[26] ABJ v R [2024] EWCA Crim 1597, para 21.
[27] The New Shorter Oxford English Dictionary defines 'proscribe' as, "Reject, condemn, denounce (esp. a practice) as unwanted or dangerous; prohibit." Proscription may be characterised as 'a governance tool that furnishes the power to designate specific groups as terrorist in nature, making the group unlawful within the relevant jurisdiction', Ahmed Almutawa and Clive Walker, 'Proscription by proxy: the banning of foreign groups' [2021] *Public Law* 377, 378.
[28] Brownlie's Principles of Public International Law, 8th Ed (2012), page 458, states that "if a state wishes to project its prescriptive jurisdiction extraterritorially, it must find a recognised basis in international law for doing so".
[29] As explained by the International Criminal Court, Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA) (Merits), Judgment of 27 June 1986, [1986] ICJ Rep 14, para 205.
[30] From 2000, the funding offences, applying to the resources of a proscribed organisation, applied to conduct overseas, so a person dealing with a State entity's resources would commit an offence in his own country (section 63 Terrorism Act 2000). From 2006 the membership offence also applied to membership overseas (section 17 Terrorism Act 2006). Whilst State immunity would apply proscription offences committed overseas, it would seem not to apply because of the Forum State exemption to conduct in the UK: Bat v The Investigating Judge of the German Federal Court [2011] EWHC 2029 (Admin).

2.21. A final point is that where non-terrorism measures contained in terrorism legislation has been intended to apply to States or governments, Parliament has said so[31].

2.22. I should end this analysis with the caveat that this point of interpretation is untested in the courts. Some of the main counterarguments were laid out by Professor Clive Walker KC in 2017[32]:

- Firstly, it is so obvious that states can commit "state terrorism" (referring to Hitler and Stalin), that it makes no sense to exclude it from the Terrorism Act 2000.
- Secondly, the section 1 definition does not expressly exclude State entities.
- Thirdly, the reference in debates to Lockerbie.
- Fourthly, Lord Carlile's brief reference to this being an issue not of definition but of jurisdiction[33].
- Fifthly, the Supreme Court's reference in 2013 to Lord Anderson KC's report where he considered the "potential application" to UK soldiers[34].
- Sixthly, that terrorism powers under Schedule 7 Terrorism Act 2000 were found applicable to David Miranda (carrying sensitive Russia-linked Edward Snowden material) in circumstances redolent of State threats[35].
- Seventhly, the fact that non-jury trials are available for soldiers in Northern Ireland under the Justice and Security (Northern Ireland) Act 2007.

2.23. It seems to me that none of these arguments adequately grapples with the unlikely implications of the Terrorism Act 2000, or the proscription tool, applying a State entity, as I have sought to describe above.

2.24. Two further counterarguments might be considered. Firstly, that the section 1 definition *has* been applied to a State on one occasion when the Foreign Secretary designated the Directorate for Internal Security of the Iranian Ministry of Intelligence and Security (known as the 'MOIS') under the UK's post-Brexit international counter-terrorism sanctions regime[36].

- This permits the Foreign Secretary to designate a person where he has reasonable grounds to suspect that the person is or has been involved in terrorist activity using the definition in section 1 Terrorism Act 2000[37]. The basis for the designation was the bomb plot attack on Villepinte, Paris in June 2018, involving Iranian officials.

[31] Section 4 Anti-Terrorism Crime and Security Act 2001 and Schedule 7 to the Counter Terrorism Act 2008.
[32] In the Annex to Max Hill KC's Terrorism Acts in 2017.
[33] Cm 7052 (March 2007), analysis at paras 83-85.
[34] See above.
[35] R (Miranda) v Secretary of State for the Home Department [2016] EWCA Civ 6.
[36] The Counter-Terrorism (International Sanctions) (EU Exit) Regulations 2019 ('CT2').
[37] Reg 6 and section 62(1) Sanctions and Anti-Money Laundering Act 2018.

- However, the simple explanation is that the MOIS appeared on the European Union counter-terrorism sanctions list, to which previously the UK gave effect under its EU obligations[38]. After Brexit, the MOIS designation was simply carried forward into the UK's autonomous sanctions list. Moreover, the purpose of sanctions, which have long been made against State entities, is quite different from proscription under the Terrorism Act 2000[39].

2.25. Finally, it is right to note that other countries, including the United States of America, have designated the Islamic Revolutionary Guard Corp. However, their terrorism legislation is different and does not include the offence of membership.

2.26. Aside from the legal availability of the Terrorism Act 2000, there is the UK's position as a matter of policy.

2.27. No counter-terrorism powers were used in response to the nerve agent attack by operatives of a Russian intelligence service[40], and the policy response to rising State threats was the enactment of specialised legislation, the Counter-Terrorism and Border Security Act 2019 and the National Security Act 2023, rather than an expansion of terrorism legislation.

2.28. There are sound reasons in my view for this policy position[41] but the purpose of this Chapter has been to explain my conclusion that the proscription power is unavailable as a matter of law. It is in this context that I have recommended, in Chapter 5, the creation of a new proscription-type power under the 2023 Act.

[38] Common Position 2001/931/CFSP and EU Regulation 2580/2001.
[39] CT2 section 2(4) statement: "Sanctions can be used to change behaviour; constrain damaging action; or send a signal of condemnation" (para 16).
[40] Terrorism Acts in 2018 at 2.2. The Russian intelligence service in question was the GRU.
[41] See my note, 'Hidden Implications: Islamic Revolutionary Guard Corps and Terrorism Proscription' (11.1.23).

3. OVERLAP

3.1. Terrorism legislation is already applicable in some State Threat circumstances:

- Where a terrorist organisation is sponsored by a State. Some of the most historically powerful proscribed organisations (e.g. Hamas, Hizballah) have historically had State backing[42].

- Where a non-State individual or body uses or threatens serious violence against persons[43] to influence a government or intimidate a section of the public and does so for the purpose of advancing a State-backed political cause. On this basis Russia-supporting Wagner Group was capable of being proscribed under the Terrorism Act 2000[44], and an unemployed British man was convicted in 2017 of fighting for irregular Russian forces in Ukraine[45]. It would also include a terrorist acting on a State-backed fatwa.

- For terrorism offences where the defendant's motive is irrelevant. For example, section 58 Terrorism Act 2000 (collection of information of a kind likely to be useful to a person committing or preparation an act of terrorism) which was used to prosecute a recent case of Iran-linked hostile reconnaissance[46].

- In cases of uncertainty, investigators may reasonably suspect terrorism meaning investigative powers under terrorism legislation are available, even though State Threat activity remains a possibility.

3.2. In 2019, and then in 2023, Parliament legislated for counteracting State Threats in a way that was strongly modelled on existing terrorism legislation[47]. In many cases there is an equivalence between terrorism and State Threat powers so that no further borrowing is required.

3.3. The Counter-Terrorism and Border Security Act 2019, Schedule 3, creates a regime for the examination of persons entering or leaving the UK to detect involvement in hostile state activity (**'Schedule 3'**).

- It is very closely modelled on the Terrorism Act 2000, Schedule 7, with the addition of permitting the retention of journalistic and privileged material subject to judicial oversight. No gap is apparent.

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[42] See Byman, D., 'Deadly Connections: States that Sponsor Terrorism', Cambridge University Press (2012).
[43] Or any of the other acts within the scope of section 1(2) Terrorism Act 2000, i.e. serious damage to property, endangerment to the life or the health and safety of the public, or serious interference with an electronic system.
[44] Cf. Terrorism Acts in 2022 at 3.38 et seq.
[45] R v Stimson, Manchester Crown Court, Independent, 'British man who joined pro-Russian forces in Ukraine jailed on terrorism charge' (15.7.17).
[46] R v Dovtaev, Central Criminal Court, Independent, 'Terror scout jailed over reconnaissance of TV channel before "planned attack"' (22.12.23). In his threat assessment of 8 October 2024, the Director General of MI5 referred to this case in the context of Iran's use of criminal proxies. See also section 58A (eliciting information on members of the armed forces, intelligence services, or police, which is of use for terrorism).
[47] There is separate national security legislation for particular sectors, not modelled on terrorism legislation, such as the Telecommunications (Security) Act 2021 and the National Security (Investment) Act 2023.

3.4. The National Security Act 2023 (**'NSA 2023'**) introduced new powers and offences to counter certain malign activity for or on behalf of, or for the benefit of, foreign powers.

3.5. Most of the **investigative powers** in the NSA 2023 are based wholesale on counter-terrorism powers and do not require any further consideration.

3.6. These are: arrest and detention[48], disclosure orders[49], customer information orders[50], and account monitoring orders[51].

3.7. The statutory threshold concerns suspected involvement in Foreign Power Threat Activity[52], which is the equivalent, in the State Threat context, to the statutory threshold of suspected terrorism or being a terrorist under the Terrorism Act 2000[53]. It is still early days, but I have seen no indication that this threshold is too narrow to permit the exercise of these investigative powers in the right cases.

3.8. The following **offences** in the NSA 2023 effectively cover conduct that is penalised under terrorism legislation: preparatory conduct[54] being equivalent to preparatory acts under the Terrorism Act 2000[55] but also liable to cover possession of articles with intent[56]; sabotage[57] covering damage to nuclear facilities and extraterritorial bombing[58]; and foreign interference[59] covering nuclear threats[60].

3.9. The NSA 2023 provides for aggravated sentences where the Foreign Power condition is met in relation to ordinary offences[61]. This is equivalent to the power in the Counter Terrorism Act 2008[62], for courts in Scotland and Northern Ireland, and in the Sentencing Code[63], for courts in England and Wales where a terrorist connection is found to exist. This requires no further consideration[64].

3.10. Part 4 of the NSA 2023 establishes a regime of civil State Threat Prevention and Investigation Measures (STPIMs) and is modelled directly on

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[48] Section 27 and Schedule 6 cf. section 41 and Schedule 8 Terrorism Act 2000.
[49] Section 24 and Schedule 3, cf. Schedule 5A Terrorism Act 2000.
[50] Section 25 and Schedule 4, cf. Schedule 6 Terrorism Act 2000.
[51] Section 26 and Schedule 5, cf. Schedule 6A Terrorism Act 2000.
[52] Section 33.
[53] Section 40.
[54] Section 18.
[55] Section 5.
[56] Cf. section 57 Terrorism Act 2000. Of necessity this will cover possession of articles such as nuclear material, an offence under sections 9 and 10(1) Terrorism Act 2006.
[57] Section 12.
[58] Terrorism offences under 10(2) Terrorism Act 2006, and sections 62 Terrorism Act 2000.
[59] Section 13.
[60] Cf. section 11 Terrorism Act 2006.
[61] Sections 19-22.
[62] Sections 30-31.
[63] Section 69.
[64] Although there is currently no Criminal Practice Direction for state threat cases equivalent to CrimPD 13 which contains the terrorism protocol. Practice Directions are a matter for the judiciary, but I can see the merit of widening the terrorism protocol to include state threat prosecutions.

Terrorism Prevention and Investigation Measures[65]. The threshold is current or past involvement in Foreign Power Threat Activity.

3.11. There are subtle differences between the two regimes. Unlike TPIMS and terrorism-related activity, it is not sufficient to give encouragement to the commission, preparation or instigation of State Threats and any support for State Threats must be deliberate[66]. These were careful legislative choices, no doubt because State Threats encompass a wider set of activities than terrorist acts.

3.12. Other differences concern the types of measures available. The absence of drugs testing from STPIMs seems immaterial, but limitations on relocation are considered further below[67].

[65] TPIM Act 2011.
[66] Section 33(1)(c) compared to Section 4(1)(c) TPIM Act 2011; Section 33(1)(c)(ii) compared to section 4(1)(d). Another difference is that the STPIM regime does not require 5-yearly renewal, cf. section 21 TPIM Act 2011.
[67] Imposed by section 40(6).

4. POTENTIAL GAPS

4.1. This Chapter lists the terrorism powers[68] that are not currently replicated in existing State Threat legislation. I have divided the powers into those that require further consideration in Chapter 5, and those that can be discounted at this stage.

Terrorism Act 2000

4.2. Further consideration is required for:

- Proscription and its offences: sections 3-13.
- Terrorism property, offences and forfeiture and seizure powers: sections 14-23.
- Cordons: sections 33-36.
- Search warrants and production orders: Schedule 5.
- Powers against Offenders on licence: sections 43B-43E.
- Urgent stop and search powers: sections 47A-47AE.
- Weapons training: section 54.
- Overseas jurisdiction: sections 63A-E.

4.3. No further consideration is required for:

- The offence of failing to notify the authorities regarding an imminent terrorist attack: section 38B. Offences under the NSA 2024 range from immediate violence to slow burn and subtle foreign interference, and there is no equivalent and unambiguous 'national security attack' to which such an offence might relate[69].
- Search warrants to search for terrorists: section 42. This power is technically necessary under terrorism legislation because to be a terrorist is not to commit an offence. The powers under the National Security Act 2023, and the Police and Criminal Evidence Act 1984, are sufficient to search for and arrest a person suspected of involvement in a State Threat offence.
- Parking restrictions to prevent acts of terrorism: sections 48-52. It has not been suggested to me that such a power is needed in relation to State Threats.
- Designated area offences: sections 58B-C. This was created to deal with terrorism travel overseas, never used, and is not relevant to State Threats.

Part 1 Anti-Terrorism, Crime and Security Act 2001

[68] Many important investigative powers used for national security purposes, such as under Part III Police Act 1997, the Regulation of Investigatory Powers Act 2000, and the Investigatory Powers Act 2016, are outside the scope of terrorism legislation.

[69] Even in cases of serious violence it may not be clear whether a person is acting on behalf of or for the benefit of a foreign power. Creating a positive reporting obligation in these circumstances, punishable by the criminal law, would go too far.

4.4. Forfeiture of terrorist property under Part 1 and Schedule 1 requires further consideration.

Terrorism Act 2006

4.5. Encouragement and publication offences (sections 1-4) and training offences (sections 6-8) require further consideration.

Counter-Terrorism Act 2008

4.6. I will consider further post-charge questioning (Part 2) and Terrorist Notification Orders (Part 4).

4.7. However, I am informed by officials that the special terrorist financing provisions under the 2008 Act (Part 5, Schedule 7) have never been used, and do not consider them further.

Part 1 Counter-Terrorism and Security Act 2015

4.8. The power to seize passports (section 1, Schedule 1) requires further consideration.

4.9. There is no need to consider further Temporary Exclusion Orders (sections 2-15, Schedules 2-4). These measures are only available for British citizens who wish to return to the UK from abroad and were created to deal with returning foreign terrorist fighters. It has not been suggested to me that such a power is relevant to countering State Threats.

5. RECOMMENDATIONS

5.1. I have grouped the areas of potential gaps, compared to terrorism legislation, that have merited further analysis as follows:

- Classification/Proscription power.
- Financing Offences and Civil Forfeiture.
- Precursor offences (training, overseas jurisdiction, speech).
- Police powers (cordons and stop and search, search and production orders, post-charge questioning, passport seizure).
- Offender Management (Notification Orders, ST-PIMs, Serious Crime Prevention Orders).

New Proscription-type Power

5.2. In my view there are solid reasons for creating a classification power, equivalent to proscription under the Terrorism Act 2000, which is additional to existing measures such as sanctions.

5.3. I propose that Secretary of State should have the power to issue a **Statutory Alert and Liability Threat Notice (SALT Notice)** against Foreign Intelligence Services. Whether a Notice should be issued against any particular body would be for the Secretary of State informed by current intelligence, operational and policy considerations, and I make no observations on whether it should be exercised against the Islamic Revolutionary Guard Corps[70]. Any new power should be threat neutral.

5.4. This power, available against State entities, and private entities acting as Foreign Intelligence Services, would be added to the National Security Act 2023, and would be subject, like terrorism proscription, to affirmative resolution in both Houses of Parliament.

5.5. Firstly, the government needs to do even more to warn the public about the risk posed by the most dangerous Foreign Intelligence Services. It is striking how the heads of the domestic intelligence services in the UK (MI5) and Australia (ASIO) have in recent annual threat assessments directly addressed members of the public getting into cahoots with spies[71]. Since there is no way for the authorities to be everywhere (and nor would we want them to be), all

[70] Most of the relevant public research has considered the utility of State entity proscription against the Islamic Revolutionary Guard Corps. These include: Aarabi, K, 'Making the Case for the UK to Proscribe Iran's IRGC', Tony Blair Institute for Global Change (17.1.23); Samson, E., "A Duty To Protect: The Failure Of UK Sanctions Against Iran And The Necessity Of Proscribing the IRGC", The Henry Jackson Society (2023); idem, 'Ban Iranian Extremists Behind Hamas Attacks', Comment Central (16.11.23); Stott, P., 'Tehran Calling', Policy Exchange (2023); Jenkins, J., Stringer, E., Halem, H., Mens, J., 'The Iran Question and British Strategy', Policy Exchange (2023).

[71] DG MI5, Annual Threat Update (8.10.24) "…So to those tempted to carry out such tasks, I say this: If you take money from Iran, Russia or any other state to carry out illegal acts in the UK, you will bring the full weight of the national security apparatus down on you. It's a choice you'll regret."; DG ASIO, Annual Threat Update (21.2.23): "…As far as ASIO is concerned, any insider providing this sort of information is making a very grave mistake. You are not just selling out your employer and the customer, you are enabling foreign interference. You are aiding repression. You are undermining freedoms. You are the lackey of a foreign regime."

those criminals, proxy groups, misfits and private investigators who might be tempted to assist[72] should be alerted to the most dangerous organisations.

5.6. Whilst few Foreign Intelligence Services will ever act openly, the fact that such organisations actively aspire to damage national security should be prominently exposed for public consumption. Exposure in itself could lead to a harder operating environment in which State entities can have less confidence in finding either willing or unwitting assistance[73], whether in carrying out plans, securing finance or providing accommodation[74]. For comparison, the proscription of terrorist organisations appears to cut through to public understanding in a way that sanctioning does not.

5.7. Secondly, it will allow the government to communicate decisive stigma at an international level for certain State and State-backed entities. Naming and shaming in a high-profile manner, accompanied by open reasons, can help address attempts at plausible deniability for serious harm caused to the UK or its allies.

5.8. I am mindful that, sanctions apart, the only current mechanism with the requisite degree of condemnation is terrorism proscription; not having an equivalent, for example in the wake of a brazen act of hostility by a Foreign Intelligence Service on UK soil, would expose a genuine legislative gap; and might put pressure on the government to stretch the terrorism proscription power for want of something else.

5.9. Thirdly, it will provide a further operational basis for counter-intelligence action. The Liability Threat Notice element not only refers to the risk posed *by* an entity: it is also a threat *to* that entity, putting it on notice that its operations, and its minions and influence networks, are at greater risk of executive action, by way of arrest and prosecution, or deportation, or other forms of disruption, from UK authorities[75].

5.10. Fourthly, a new measure will allow greater accuracy in dealing with state-aligned groups such as Wagner Group. Whilst it was lawful for the government

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[72] In the words of DG MI5, supra, are "prepared to have their strings pulled by states".
[73] Including by donation or economic transaction.
[74] Khoshnood, A.M., Khoshnood, A., 'The Islamic Republic of Iran's Use of Diplomats in Its Intelligence and Terrorist Operations against Dissidents: The Case of Assadollah Assadi' (2024) 37 International Journal of Intelligence and CounterIntelligence 976 refer to the use of non-diplomatic premises such as "Islamic cultural centers, mosques, and similar types of institutions" as important for supporting Iranian intelligence activities including through spreading regime disinformation and propaganda, gathering intelligence, providing meeting facilities, and creating "a network for intelligence and terrorist operations".
[75] See Terrorism Acts in 2018 at Chapter 3 for how proscription is often a springboard to other activity. Jenkins, J., Stringer, E., Halem, H., Mens, J., supra, considered that an equivalent tool should be found (within the National Security Act 2023) and considered that this would be "extraordinarily useful" by allowing the exercise of "police powers" against suspected Iranian affiliates "without actual proof of an active pro-Iranian plot", to "investigate and suspend" operations at Iranian-linked front companies, and to Iranian affiliated organisations "posing as civic groups or religious institutions". I agree. It could also incentivise the regulatory bodies to take the types of regulatory action: more aggressive investigation by the Financial Reporting Council of suspected accountancy violations; action by the Charities Commission for IRGC-linked charities; attention by Companies House to failures by foreign companies to declare ownership and control.

to proscribe Wagner as a terrorist organisation as it did[76], it was never a comfortable fit, and depended on the assessment that Wagner was not, at that stage, a part of the Russian state. If I am right that proscription is not a suitable power for State entities, this raises the prospect of a group securing de-proscription merely because it is later incorporated into a State.

5.11. Accuracy is also desirable because it allows the government to communicate strong disapproval of a State body without appearing to express the view that it is a terrorist entity and by implication illegitimate, thereby providing greater scope for condemnation than previously has existed.

5.12. I acknowledge several counter-arguments.

5.13. Firstly, the risk of reciprocal action against UK officials or entities. This could well be a consideration in deciding whether to exercise the power but is not an argument against having the power in the first place[77]. Judgments would need to be made about the cost of damage to bilateral relations, and on how the purpose of a SALT Notice would be best communicated to the affected State.

5.14. Secondly, the possibility of confusing the new national security legislative landscape, given that there is already the power under the National Security Act 2023 to place individuals or entities on the enhanced tier of the Foreign Influence Registration Scheme (FIRS)[78]. But a SALT Notice would pursue different objectives and be clearly distinguishable.

- The FIRS regime concerns the registration of arrangements. Even where an entity is on the enhanced regime, the obligations, and the maximum penalty of 2 years imprisonment for breach, are based on considerations of transparency rather than illegality. By contrast, SALT Notices would make additional conduct unlawful (see below, 'Additional Criminal Liability')[79].
- SALT Notices would allow the Secretary of State to specify an entity carrying out intelligence activities for the benefit of a foreign power (see further below), where it could not be said that the entity was "controlled by" a foreign power[80]. In such circumstances the FIRS regime would not apply at all.
- To be specified under the enhanced FIRS regime, there is no requirement that the Secretary of State is satisfied about past behaviour – it is sufficient that it is reasonably necessary to do so to protect the

[76] On 15 September 2023.
[77] I appreciate that merely adding something to the UK statute book could be noticed and replicated by Foreign Powers. I doubt this is a reason against changing the legislation. It would apply to any improvements to State Threat legislation and would end up limiting the UK's ability to defend itself.
[78] Part 4.
[79] If an entity was made subject to a SALT Notice which was already subject to the enhanced FIRS regime, the overall effect would be comprehensive. A person having anything to do with the FIS would commit an offence in most cases; in other cases (for example, if the FIS directed activities that could not be proven to provide material support to the FIS itself), he would be required to register the arrangement.
[80] Section 66(2)(b).

safety or interests of the UK[81]. The basis for a SALT Notice would be that an entity has already been involved in Foreign Power Threat Activity.

5.15. Thirdly, the danger that Parliament, which could in principle refuse to affirm the Secretary of State's decision, would be handed a significant foreign policy tool for which it is not suited. But the history of terrorism proscription, which has long been subject to Parliamentary oversight, and which confers a vital element of legitimacy, strongly suggests that this is not a valid objection.

5.16. Fourthly, the damage to personal freedoms and liberties, including freedom of association and expression, that any extension of national security powers can give rise to; the distortion of the general criminal law by reaching for special measures; the risk of putting certain nationalities under the spotlight or appearing to question their loyalties; and the effect on innocent family members of members of identified State entities. These are legitimate but general considerations that apply equally to terrorism proscription and must be considered alongside the damage that aggressive Foreign Intelligence Services intend towards individual human rights, for example by targeting dissidents.

Additional Criminal Liability

5.17. I also propose that additional offences would apply following the issue of a SALT Notice. The National Security Act 2023 already criminalises individuals who provide material assistance to or receive benefits from Foreign Intelligence Services[82].

5.18. On balance, I do not think that a **membership offence** should be created by parity with section 11 Terrorism Act 2000. Such an offence would be unsuitable for members of State entities for the reasons already given[83].

5.19. One solution would be to make it available for non-State Foreign Intelligence Services (FIS) subject to a SALT Notice, or even to allow the Secretary of State to specify whether a membership offence should apply in a given case. However, it may be difficult to determine, and difficult to explain openly, whether an entity is wholly part of a State, so that the membership offence ought or ought not to be available.

5.20. At a level of principle, it is also undesirable for government ministers to switch individual criminal offences on and off. To do so could also risk undermining the integrity of the terrorism proscription regime, on the basis that there should be a more differentiated set of criminal offences applying to that regime.

[81] Section 66(4). It therefore applies where a specified entity may be used in future.
[82] Sections 3, 17.
[83] See Chapter 2 above.

5.21. It may be that the material assistance offence is already sufficient to catch all those who might join a FIS because in practice they will intend by their conduct to assist a FIS and go on to do so (or at least intend to do so). There may however be cases in future of individuals simply offering themselves to assist a FIS, where the section 3 offence is not made out.

- This might include cases where an individual could be proven to have offered his services, but not to have agreed to do anything specific, even though there may be intelligence that he has done so.
- Section 3(1) would arguably not apply where the only conduct is offering himself as personnel. It might be difficult to prove that he intended this conduct in itself to materially assist the FIS – the assisting conduct would come later.
- Section 3(2) would also arguably not apply because it could not be shown that the offer of service was likely to materially assist the FIS.

5.22. Section 3(3) currently provides that:

> "Conduct that may be likely to materially assist a foreign intelligence service includes providing, or providing access to, information, goods, services or financial benefits (whether directly or indirectly)."

5.23. I have considered whether section 3(3) should be amended to specify that assisting conduct also include, "providing…**personnel** (one or more individuals who may be or include the defendant)". This is by parity with the United States material assistance offence which has the same express provision[84]. However, my overall conclusion is that the case for change is not made out. Firstly, section 3(3) is a general provision already and has not yet been considered by the courts in a real case. Adding further examples of assisting conduct to the subsection may therefore be unnecessary. Secondly, there are unfortunately many deluded individuals who make unrealistic offers to work for intelligence services. In few cases will their conduct be a matter for national security laws but the effect of amending section 3(3) would be to bring them all in scope.

5.24. I also recommend that the offence of **inviting support** should apply to any FIS subject to a SALT Notice, in the same form as section 12 Terrorism Act 2000. It would therefore an offence to invite support for such a FIS, either intending that another person would support the FIS, or being reckless as to whether they would.

5.25. This is in recognition of the fact that there may be ideologically or otherwise non-financially motivated individuals tempted to carry out acts of espionage or sabotage because a supportive narrative has been created in public, in private, or online.

[84] 18 U.S.C. §2339A(b)(2); see Breinholt, J., 'Material Support: An Indispensable Counterterrorism Tool Turns 20', War on the Rocks (19.4.16).

5.26. The reasons for penalising the invitation of support for international terrorist organisations apply just as much to inviting support for the most hostile FIS. Whilst deliberate recruiting for a FIS could already amount to an offence of material assistance under section 3, an inviting support offence would apply to inviting individuals to act as agents, and would apply whether the propaganda activity was proven to be of real assistance or not. As with proscribed terrorist organisations, it would extend to meetings, ceremonies of recruitment, pledges of allegiance and other forms of open invitation online and offline.

5.27. For the same reason, it should also be an offence to **display in public a flag or other insignia** in such a way as to arouse reasonable suspicion that a person is a member or support of a FIS subject to a SALT Notice. This is by parity with section 13 Terrorism Act 2000 which applies only to public displays.

5.28. Just as with terrorist organisations, the purpose would be to make recruitment and support less likely for the most aggressive FIS. There could be circumstances

5.29. The final additional criminal liability that applies in relation to proscribed terrorist organisations concerns financing. I consider this separately below.

Technical Considerations

5.30. It will be clear from the above analysis that locating the proposed new power within the Terrorism Act 2000 is not appropriate.

5.31. The approach I recommend builds on the existing definition of Foreign Intelligence Service within the National Security Act 2023, a definition that is wide enough to encompass wholly State entities, non-State entities, and hybrid entities if they have functions which include carrying out intelligence activities for or on behalf of a foreign power[85]. It would in principle be possible for an entity both to be proscribed as a terrorist organisation and subject to a Statutory Alert and Liability Threat Notice as a FIS. They are not mutually inconsistent.

5.32. I have considered but rejected other terminology: proscription (appropriate for abolishing terrorism organisations but not state entities); designation (too resonant of sanctions); “dangerous”/ “high-risk” FIS (too glamourising); “hostile” FIS (too vague).

5.33. The same provisions should apply as exist for terrorist organisations that change their names[86]; there is a risk of whack-a-mole but no less so than for terrorist organisations. Similarly, the Secretary of State would have power to remove a SALT Notice. The considerations that apply for the listing and delisting of terrorist organisations, and the making and removing of SALT Notices will obviously be different.

[85] Section 3(10).
[86] Section 3(6) Terrorism Act 2000.

5.34. The new power would apply to an entity that already qualifies as a Foreign Intelligence Service, defined by section 3(10) as "a person whose functions include carrying out intelligence activities for or on behalf of a foreign power". As I discuss in my forthcoming annual State Threats report, the meaning of "intelligence activities" is wide.

5.35. However, "for or on behalf of" does require some degree of actual or institutional control on behalf of the Foreign Power. Strange as it may sound, there are entities, encountered in the State Threats world, which carry out intelligence activities on an untasked basis, or where the relationship to the Foreign Power is uncertain. By way of hypothetical example, an organised crime group might set itself up in order to carry out sabotage or intelligence collection to benefit a Foreign Power in the hope of future payment or favours.

5.36. In my view, the Secretary of State therefore ought to have power to make a SALT Notice against an entity that carries out intelligence activities "to benefit a foreign power"[87]. Limiting the power to entities that were acting on behalf of Foreign Powers would be insufficient. If a SALT Notice was served on such an entity, then sections 3 and 17, and the full suite of additional criminal liability would apply[88]. If a SALT Notice was made, there could not be any argument as to whether the entity was or was not a FIS in any prosecution that followed[89].

5.37. But in addition, the Secretary of State ought to be satisfied that the entity is or has been involved in Foreign Power Threat Activity within the meaning of section 33. Although attribution may be difficult in the complicated arena of State Threats, I believe this additional criterion is needed[90]. Firstly, because this power is intended for use in identifying and shaming the most hostile FIS for their actions against the UK's interests, which would not be achieved by a vague criterion like "in the interests of national security". Secondly, because the absence of such a criterion would put too much weight on the entity merely being a FIS which, in principle, is perfectly lawful since all States have intelligence services of some form or another.

5.38. Considerations of safety and security could well result in the power being exercised against Foreign Intelligence Services that sponsor terrorism or terrorist organisations. Directing or supporting terrorists or terrorist organisations is a way in which some States seek to increase their hostile reach:

- However, I do not recommend a separate power to deal with States or State entities that sponsor terrorism.

[87] This is the second limb of the Foreign Power Condition in section 31(5).
[88] I have considered, but reject, the possibility of making a SALT Notice against any entity that is involved in Foreign Power Threat Activity as defined by section 33. This would make the power far too wide.
[89] This being a matter to be challenged, if at all, in separate proceedings against the SALT Notice. Provisions would exist, as with terrorism proscription (section 7 Terrorism Act 2000), to enable an individual to appeal against conviction if a SALT Notice was overturned by a court.
[90] I recognise that considering it reasonably necessary to protect the safety or interests of the UK is the threshold for specification under the enhanced tier of the FIRS scheme (section 66), but this pursues a different function.

- It is true that the United State of America has a statutory regime for designating state sponsors of terrorism, but this pursues an objective that is closer to UK sanctions than the new power I recommend[91].
- Moreover, as Professor Dan Byman has observed, there is a marked difficulty in defining what sponsorship really means in this context[92].
- Since the new power would apply irrespective of how the FIS interacts with a terrorist organisation, or indeed non-terrorist organised crime group, there is no need for a separate power.

5.39. It is hard to know whether an entity subject to a Statutory Alert and Liability Threat Notice would wish to challenge it, but in principle a route for challenge ought to be available. It is not clear to me whether there is need for a separate statutory appeal scheme. The need for a specialised body, the Proscribed Organisations Appeals Commission (POAC), made particular sense for groups of private individuals. The position with State entities, or entities carrying out intelligence activities on behalf of States, is different and it could therefore be argued that, consistent with specification to the enhanced FIRS tier under Part 4 of the NSA, judicial review would be sufficient[93]. On the other hand, parity with terrorism legislation, and familiarity with the POAC regime, may suggest that POAC should be provided with appeal jurisdiction for SALT Notices too. I make no recommendation either way.

5.40. Finally, there is no basis to conclude that this new power should not be created because of limitations at international law[94].

Financing Offences and Civil Forfeiture

5.41. Terrorism legislation provides a regime for investigations, criminal liability and civil forfeiture where terrorism property is handled. It exists alongside the Proceeds of Crime Act 2002 (POCA) regime which broadly speaking does the same in relation to the benefit of other criminal conduct[95]. POCA is often used in terrorism investigations[96].

5.42. There is no special criminal finance regime under the NSA, save in relation to receiving property or other benefit from a Foreign Intelligence Service[97]. However, in this sphere of activity sanctions will sometimes apply which prohibit, at the risk of committing a criminal offence, dealing with the

[91] 28 USC section 1605A(h)(6)
[92] Particularly where the conduct of the State is passivity or tolerance: Byman, D., 'Understanding, and Misunderstanding, State Sponsorship of Terrorism', Studies in Conflict & Terrorism, (2022) 45:12, 1031-1049; 'How to Think about State Sponsorship of Terrorism' (2023) Survival, 65:4, 101-122.
[93] With, as is likely, the Justice and Security Act 2013 mechanism for closed material procedure.
[94] Having similarity to unilateral sanctions which, although their international law basis is often debated, are a routine feature of State conduct. I have found the analysis of Butchard, P., 'Sanctions, international law and seizing Russian assets', House of Commons Library Research Briefing (7.11.24) very useful.
[95] Part 2 (criminal confiscation); sections 327-9, 340 (offences); Part 5 (civil forfeiture); Part 8 (investigative orders).
[96] See for example Terrorism Acts in 2022 at 4.61-65.
[97] Section 17.

property of designated individuals and entities such as foreign intelligence services or intelligence officials and enablers[98].

5.43. On the criminal side, it is already an offence to handle state threat *proceeds*. In summary it would be necessary to show suspicion (for investigations) and proof (for prosecution) that identified property was the proceeds of any of the NSA offences. For example, if an individual received money from a foreign intelligence service, this would be the proceeds of an offence contrary to section 17(1) NSA, and any person handling this money would commit a further money laundering offence under POCA if they knew or suspected that the money had been obtained in this way, unless they had previously made an authorised disclosure to the police[99]. If done to benefit a foreign power, a POCA offence could be aggravated under the NSA for the purposes of sentencing[100].

5.44. The position for terrorist financing offences[101] is however broader.

- Firstly, what needs to be proven is a connection between the property and "the purposes of terrorism", a compendious term that (a) relieves the investigator or prosecutor from identifying any particular offence, and (b) includes the resources of, or property intended to benefit[102], a proscribed organisation.
- Secondly, the offences also penalise the future use of property for the purposes of terrorism[103]. For example, it was an offence contrary to section 17 for the jihadist Jack Lett's parents to send him money suspecting that it might be used for the purposes of terrorism[104].

5.45. The absence of a future-looking property offence under the NSA is a gap.

5.46. Although there will be cases where a Foreign Intelligence Service can be shown to be involved[105], or the handling of property is part of a course of foreign interference[106], or an act preparatory[107] there will be cases where individuals hold monies for future state threat activity on an untasked basis.

5.47. All this would in principle lead me to recommend the creation of a parallel set of offences as currently exist under sections 15-18 Terrorism Act 2000. It could be directed at property held for use in future Foreign Power Threat Activity.

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[98] For example, the Iranian Revolution Guard Corp, and various officials and linked civilians are sanctioned under several of the sanctions regimes created by the Sanctions and Money Laundering Act 2018.
[99] A SAR or suspicious activity report under section 327(2), 328(2) or 329(2).
[100] Under sections 19-22.
[101] Sections 14-18 Terrorism Act 2000.
[102] The effect of section 1(5) Terrorism Act 2000.
[103] Sections 15, 16, 17 and parts of section 18.
[104] CPS, 'Sally Lane and John Letts sentenced for sending money to Daesh supporting son' (News, undated).
[105] Otherwise, an offence under section 3 or 17 would most likely be committed.
[106] Under section 13.
[107] Section 18.

5.48. However, I am mindful that the terrorism funding offences are accompanied by a special financial reporting regime. There is an obligation to report suspected terrorist financing which applies to information obtained in the course of business or employment[108] and to the regulated sector (generally, banks and other financial institutions)[109]. There is also the ability for individuals who suspect terrorist financing to seek prior permission for a transaction[110].

5.49. I would be loathe to recommend, without further consideration and consultation, a reporting regime where an individual or entity had to report something merely because they suspected it was going to be used for, for example, foreign interference. There is a risk of too many false positives – alternatively, it might result in a pointless regime because state threat actors will take steps to obfuscate their involvement and the nature of the activity being undertaken.

5.50. Even if there was no mandatory reporting obligation, the presence or absence of an ability to seek prior permission could be significant. It is hard to predict how the UK financial system, which has sophisticated and well-understood processes for flagging, blocking and reporting suspected money-laundering and terrorist financing might respond to the risk of committing a State Threat financing offence. It would be precipitate to recommend the creation of an offence without further consultation and deliberation. In summary, there is a gap but I am unable to propose a convincing filler.

5.51. There is less of a distinction for civil forfeiture under POCA because, like the terrorist financing regime[111] which applies to property that is intended for the purposes of terrorism, it has a future-looking aspect. All property derived from unlawful conduct, which would include offending under the National Security Act 2023, can be forfeited[112]; in addition, money or other transferable forms of value[113] can also be forfeited if it is intended for use in unlawful conduct and exceeds the statutory minimum (currently £1,000)[114]. I do not need to make any recommendations here.

Pre-Cursor Conduct

5.52. The existence of terrorism **training offences**[115] begs the question of whether training for Foreign Power Threat Activity, or some other type of State Threat conduct, should be an offence. In principle this covers general training, rather than training for a particular attack, and it does not matter who delivers the training.

[108] Section 19 Terrorism Act 2000.
[109] Section 21A.
[110] Section 21ZA.
[111] Anti-terrorism Crime and Security Act 2001.
[112] Or subject to civil recovery in the High Court.
[113] Ranging from precious gemstones to cryptocurrency.
[114] The £1,000 minimum under sections 303/303Y POCA does not apply to the terrorist forfeiture regime, but I have not been provided with any good reason why the £1,000 minimum would be a problem in State Threat cases.
[115] Section 54 Terrorism Act 2000; sections 6-8 Terrorism Act 2006.

5.53. In practice, much training for State Threats would already be caught by the new Foreign Intelligence Service offences[116] because a recipient and provider of the training would intend to provide material assistance to the FIS[117]; other training would qualify as preparatory conduct[118] or might form part of a course of conduct within the foreign interference offence[119]. Whilst there remains a theoretical gap, I am conscious that the Terrorism Act 2006 terrorism training offences were introduced to deal with Al Qaeda training camps; this is a phenomenon that does not need to be specifically addressed in State Threat legislation. I therefore make no recommendation here.

5.54. **Preparation in the UK for activity overseas** is an offence under terrorism legislation[120] The preparatory offence under the NSA makes it an offence to prepare for serious violence against persons where the foreign power condition is met, but only where the target is in the United Kingdom[121] - this is therefore narrower than terrorism legislation.

5.55. Although it might appear odd for foreign agents[122] to use the United Kingdom as a base for overseas attacks, such assumptions need to be revisited in light of the recent Roussev trial[123]. In principle there is no good reason why, if it is confined to conduct taking place in the UK[124], acts preparatory done in the UK (for example, setting up a safehouse and directing surveillance of an individual) should not be penalised even if the intended target will be overseas at the point of attack. The Roussev case justifies such an approach in practice. By parity with acts preparatory for sabotage[125], to avoid extra-territorial overreach, and to ensure that cases of overseas targeting are properly matters for national security legislation, it should be an additional requirement that the intended overseas attack would be known (or ought reasonably to be known) to be prejudicial to the safety or interests of the UK.

5.56. As to **speech offences**, the encouragement offences under the Terrorism Act 2006[126] were created partly in response to radicalising Islamist extremists, and partly to fulfil international obligations[127]. It was already an offence under the Terrorism Act 2000 to incite terrorism overseas[128].

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[116] Sections 3, 17 NSA.
[117] If any part of a Foreign Power was involved in training for State Threat Activity, by definition that entity would be a Foreign Intelligence Service, since it would demonstrably have a function of carrying out intelligence activities under section 3(10).
[118] Section 18 NSA.
[119] Section 13.
[120] Section 5 Terrorism Act 2006; R v Iqbal and Iqbal [2010] EWCA Crim 3215.
[121] Section 18(4).
[122] Section 72 Domestic Abuse Act 2021 extends jurisdiction in violent offences for UK nationals or residents, and a completed violent attack could therefore be aggravated by the foreign power condition (sections 19-22). But this will not apply to non-nationals or residents, or to merely preparatory conduct.
[123] R v Roussev and others, Central Criminal Court, 2025, the prosecution of six Bulgarians in due course convicted of spying for Russia.
[124] And therefore for this class of offending, section 18(5) would need to be modified.
[125] Section 18(3)(a)(iv) read together with section 12(1)(c).
[126] Sections 1, 2.
[127] The Council of Europe Convention on the Prevention of Terrorism, adopted by the Committee of Ministers of the Council of Europe on 3 May 2005
[128] Sections 59-61 Terrorism Act 2000.

5.57. The NSA does not contain specific speech offences, although some foreign interference offences will be committed by uttering threats or lies. Under general criminal law encouragement of offences under the NSA will be caught[129], including in some limited circumstances where the intended conduct is overseas[130]. If, as I have already recommended, there should be liability for inviting support for an organisation subject to a SALT Notice, this will also provide liability for speech in some circumstances.

5.58. There are strong grounds to resist copying directly from terrorism encouragement laws to create further offences such as encouraging state threat activity.

- Firstly, any interference with the right to impart and receive information must be strictly justified, and there is no evidence that penalising general encouragement of state threat activity[131] is needed to avert harm to national security.

- Secondly, as I examine in my forthcoming annual report, criminal conduct under the NSA sometimes comes very close to lawful activity; and penalising encouragement of all state threat activity would intrude on lawful debate and demonstrations on foreign policy matters[132].

Police Investigations and Disruptions

5.59. **Cordons** are an established part of counter-terrorism investigations, allowing the police to exclude persons from significant areas (such as search scenes)[133]. The test is whether the designation of a cordoned area is "expedient for the purposes of a terrorist investigation"[134]. In cases of urgent necessity, a constable may authorise a search of premises within the cordoned area[135].

5.60. I am satisfied that the same operational reasons for excluding the public that justify cordons in terrorism cases apply equally where police investigate foreign power threat activity. I therefore recommend that equivalent powers to those currently contained in sections 33-36 are created for state threat cases. Urgent premises search powers are already catered for under the NSA[136].

5.61. A potential variation of the cordon power relates to places that are identified as high-risk locations, because they are known to be targeted with violence by state threat actors, such as the TV station Iran International's

[129] Serious Crime Act 2007 section 44-49.
[130] Sections 44-46, if for example if D is in the UK but anticipates that the anticipated overseas conduct will amount to an offence under the law of that country: Schedule 4, para 2.
[131] Encouraging specific offences is already criminal under Part 2 of the Serious Crime Act 2007.
[132] For example, coercion or misleading policy makers to favour one country over another, for example on the issue of supplying arms to Ukraine, could amount to the offence of foreign interference under section 13.
[133] Section 36 Terrorism Act 2000.
[134] Section 33.
[135] Schedule 5 para 3.
[136] Schedule 2, para 12.

previous premises in West London[137]. In high-risk situations, there may be strong public protection reasons for allowing the police to **stop and search** individuals who come within a specified perimeter of the premises to detect and deter hostile reconnaissance or attacks. For example, if a threat target was at one end of a business park, a power might allow the police to search everyone going beyond a particular point on a standing basis, and not just as part of an ongoing investigation.

5.62. But whilst a search cordon would be protective of individuals at risk of attack, it would also represent a substantial intrusion to permit the police to set up shop on a semi-permanent basis on private premises (such as a shopping centre), searching everyone without suspicion who might have cause to enter.

5.63. It is right to consider what other powers the police might have in high-risk cases. Under terrorism legislation where a senior police officer reasonably suspects that an act of terrorism will take place he may authorise stop and search within a specified place or area for evidence of terrorism without the need to show suspicion[138].

5.64. In principle, this would allow every person entering an area to be searched, although the power is designed to be used on a short-term basis (in practice, the few authorisations made have lasted a matter of hours or a few days[139]). There is no equivalent power under the NSA even where a physical attack by a state threat actor is believed to be likely.

5.65. Given the events at Iran International, I accept that some equivalent power to stop and search may be needed under state threat legislation subject to authorisation and oversight safeguards. Whether it should be an equivalent to the terrorism power, or an adapted cordoning power, needs further practical consideration which I recommend.

5.66. The basis for **search warrants and production orders** under Schedule 2 are subtly different from their terrorism equivalents. Under the NSA there must be a basis for suspecting the likely presence of "evidence" that a relevant "act"[140] has been or will be carried out[141]; under terrorism legislation it is sufficient, in summary, that material relevant to a terrorism investigation is suspected to present which it is necessary to secure[142].

5.67. Here terrorism legislation may in theory be more advantageous. Because of the compendious definition of terrorism investigation[143] it is unnecessary to have a particular act or offence in mind, nor is it necessary to look for evidence for use in criminal proceedings. This appears to open the

[137] BBC News, 'Iran protests: Armed Met Police guard Iranian journalists facing death threats' (25.11.22).
[138] Section 47A Terrorism Act 2000, and accompanying Code of Practice (updated 9.1.23).
[139] Terrorism Acts in 2018 at 4.15 et seq.
[140] Essentially an offence, or (threat of) violence where the foreign power condition is satisfied: Schedule 2, para 1 and section 33(3)(b)(c).
[141] I have been unable to find out why this threshold, and not suspected foreign power threat activity, which is the threshold for arrest and detention under section 27, was chosen. The provision was not amended or debated.
[142] Schedule 5 para 1(3).
[143] Section 32.

door to purely disruptive actions by the police, where there is no prospect of criminal proceedings but a need to secure material. Although I have raised this point with police, they have not suggested that this is a point of practical substance. On that basis, I do not make any recommendations for change here because from a rights perspective, precision in criteria for intrusive orders is preferable.

5.68. The reasons for allowing **post-charge questioning** of terrorist suspects in limited circumstances[144], although rarely used, apply equally to State Threat cases. An individual might be arrested and charged in connection with organised crime only for State-links to be found on digital devices later on; or an individual might be extradited to the UK (which necessarily involves a charge[145]) without ever having been interviewed. Given the complexity of State Threat cases, and the real possibility that digital analysis may subsequently demonstrate that a plot, initially charged under general criminal legislation, was in fact a matter of national security, I recommend that the same power should be available in National Security Act investigations. I expect that it will be used very sparingly, as has been the case under terrorism legislation[146].

5.69. Police have the power of **passport seizure** at airports and seaports, and retention thereafter, in cases of suspected involvement in terrorism-related activity. The purpose is to allow the authorities to take counter-terrorism measures before they leave the country, in particular consideration by the Secretary of State whether to cancel the passport using the Royal Prerogative[147].

5.70. There is a strong case for enabling speedy action to remove a passport from a person who would otherwise leave the jurisdiction, where there is suspicion of involvement in foreign power threat activity, and where retention is needed for potential further action such as passport cancellation or making a Prevention and Investigation Measures order[148].

5.71. The fact that the power can currently only be exercised on terrorism grounds is too limited, as it may be necessary to stop an individual who is reasonably suspected of taking highly damaging information out of the country. In the case of digital devices, seizure under Schedule 3 might be sufficient[149], but not if he had committed the information to memory. Subject to the same safeguards that apply in terrorism cases (reviews by senior officers and by judicial authorities for longer periods of retention) I therefore recommend creating an equivalent power in cases of suspected foreign power threat

[144] Section 22 Counter-Terrorism Act 2008.
[145] Cf. the Manchester Arena bomber, Hashem Abedi, extradited to the UK from Libya. He was questioned on his arrival under section 22.
[146] The power has been used four times. I have examined these occasions in Terrorism Acts in 2019 at 4.57 and Terrorism Acts in 2022 at 4.30.
[147] Section 1 and Schedule 1 Counter-Terrorism and Security Act 2015, para 5(1)(a). There were 97 instances of passport cancellation on national security grounds between 2013-2023: Home Office, Disruptive Powers Transparency Report (29.11.24)
[148] Under Part 2 NSA.
[149] To the Counter-Terrorism and Border Security Act 2019.

activity. This could be done by extending Schedule 1 to the Counter-Terrorism and Security Act 2015, or creating a separate statutory regime.

Offender Management Powers

5.72. There are some persuasive arguments in favour of creating a **registration scheme** for convicted state threat actors similar in design to Terrorist Notification Orders under Part 4 Counter-Terrorism Act 2008. Requiring offenders who have been convicted under the National Security Act 2023 to notify their address, vehicle, bank details, any change of name and other specified details[150] would allow the police keep tabs on them and speak to them openly from time to time to ensure that details remain correct and up to date. This type of overt offender management may provide a suppressive effect against reengagement in state threat activity.

5.73. The resource burden of creating and maintaining such a scheme does not seem a significant obstacle given the low numbers of expected convictions. A weightier objection is uncertainty over whether convicted individuals, whether agents of foreign powers or self-tasked individuals, are liable to return to their old ways.

5.74. Agents may be 'burnt'; or, if financially motivated, move on to other less risky ways of making money; or simply persuaded that the game is not worth the candle. The cohort of National Security Act offenders may be less ideological, or less fixated, than terrorist offenders who sometimes return to their old causes.

5.75. This begs the question of whether the considerable inroads into individual freedom and privacy, with, in the case of terrorist offenders, a minimum of 10 years' compliance, can be justified[151].

5.76. Without wishing to overstate the ways in which individual terrorists can differ from one another – from those engaged in online dissemination of terror manuals to full-on attack-planners – the range of potential convicts under the NSA is wider.

- The most serious state threat actors will have been planning for murders or grievous damage to critical national infrastructure in the interests of foreign powers; some of them will have major tradecraft; others will be in possession of insider information whose release, even after conviction, could be damaging to national security.
- Others will be bit-part hires, carrying out state threat activity such as minor sabotage or surveillance for several thousand pounds.
- Yet others could be politicians and activists who agreed to help foreign powers worm their way into the corridors of power but are now thoroughly discredited.

[150] Section 47 contains a list of specified information on initial notification. Section 48 requires notification of changes, and section 49 periodic notification (generally, every year).
[151] Section 53, for anyone who receives over 12 months' imprisonment.

5.77. This raises an important point of underlying principle: what is the risk against which special measures may be necessary? It is simpler in the case of terrorism: the public wish to be protected against stabbings, bombings and vehicle-borne attacks, and have a legitimate desire to be protected against those who have already tried and are now back in the community. State threats may be no less serious, but they are different. The risk that a discredited politician will try to hook up with a foreign power after release is different from the risk of terrorism.

5.78. There is a further organisational point to consider. Over time the system of managing released offenders under Part 4 Counter-Terrorism Act 2008, and through MAPPA[152], has matured into strong working relationships between police, HM Prison and Probation Service, and MI5. There is a risk with copying across a system improved through experience in one context, into another.

5.79. For these reasons I do not recommend that an equivalent to Terrorist Notification Order is created for NSA offenders, or that the special power to stop and search terrorist offenders on licence (a measure brought in following the Fishmongers' Hall attack) is created[153].

5.80. In any event, measures are already available for the top-tier risk cases on release, namely Serious Crime Prevention Orders and State Threat Prevention and Investigation Measures (ST-PIMs) under Part 2 of the NSA. Recent experience of terrorism cases is that Serious Crime Prevention Orders and Terrorism Prevention and Investigation Measures are obtained for the most dangerous individuals after release as a risk management measure.

- There is one significant and deliberate limitation within the STPIM regime, which is that **relocation** may only be imposed where the individual has been involved in a specific form of Foreign Power Threat Activity.
- The Foreign Power Threat Activity must relate to acts or threats which involve serious violence against another person, endanger the life of another person or create a serious risk to the health or safety of the public or a section of the public[154]. Other forms of Foreign Power Threat Activity do not unlock the relocation power.
- This limitation appears to have been self-imposed by the government when taking the legislation through Parliament.
- The power to relocate terrorists under TPIMs has proven important; after it was abolished in 2011 it was restored in 2015[155]. My predecessor Lord Anderson KC accepted, as I do, that the power was needed in some cases, particularly to deal with the risk of absconding[156].
- It is easy to envisage cases where relocation might be needed to manage the risk of an individual involved in State Threat activity falling

[152] Multi-Agency Public Protection Arrangements, under the Criminal Justice Act 2003.
[153] Section 43C Terrorism Act 2000.
[154] Section 40(6) referring to section 33(3)(b) and (c).
[155] Under the Counter-Terrorism and Security Act 2015.
[156] In evidence to the Joint Committee on Human Rights: see Fifth Report (January 2015).

short of the required type of Foreign Power Threat Activity, and where relocation might nonetheless be proportionate, and fair given the nature of the threat.

- This might arise where a UK intelligence officer has spied for a Foreign Power, and continues to be aware of very sensitive intelligence matters, but has now been released from prison. An STPIM might be justified. The danger to national security presented by the former intelligence officer absconding to the Foreign Power could be very high.
- In these circumstances, as I appreciate from my knowledge of the operation of TPIM legislation, relocation can make a real and practical difference to mitigating escape risk. From the perspective of individual rights and freedoms I do not see why, if justified in physical threat cases, relocation should not also be justified in serious national security threat cases not involving violence.
- There is another consideration. Where an escape or attack by an individual subject to a civil order or licence conditions occurs despite the efforts of the authorities, the desire to prevent further escapes or attacks by others can lead to hyper-caution to the detriment of unrelated individuals subject to restrictive measures[157]. It is better to have the right powers to prevent escape now, subject to necessity, proportionality, and judicial oversight, than to overreact later on.

5.81. Finally, there is a procedural point about Serious Crime Prevention Orders. I recommend that the **Serious Crime Act 2007** which governs the making of SCPOs should be amended to allow police-led SCPOs in National Security Act 2023 cases[158]. For this type of particularly sensitive and resource intensive case it is right that the police should have option of applying direct to the court; at present, unlike for terrorism, the police would have to rely on the Director of Public Prosecutions to make the application[159]. The new police-led system in terrorism-related cases has worked well for post-release offender management.

5.82. I would be reluctant at this stage to recommend changes to release eligibility and licences, or the availability of special sentences[160] for individuals convicted under the NSA[161]. Matters are in flux given the recently commissioned Independent Sentencing Review, but I intend to consider this matter further with the Ministry of Justice as matters develop. If there is, contrary to my analysis above, a justified use-case for a registration scheme equivalent to Terrorist Notification Orders then it may emerge during a wider consideration of offender management.

JONATHAN HALL KC
19 MAY 2025

[157] For example, the licence conditions for all released terrorist offenders were tightened after one particular attack.
[158] Reflecting sections 8(2) and 8A of the 2007 Act.
[159] Section 8(1).
[160] Such as the Sentence for Offenders of Particular Concern or Extended Determinate Sentence.
[161] Terrorist offenders are subject to special treatment as a result of the Terrorist Offenders (Restriction of Early Release) Act 2020, and the Counter-Terrorism and Sentencing Act 2021.