

LOOMING UK FOREIGN INFLUENCE REGISTRATION SCHEME - BEWARE OF UNINTENDED CONSEQUENCES

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Legal Briefings - By **Paul Butcher and James Palmer**

Concerns grow that foreign influence policy is misdirected, bureaucratic and risks deterring benign engagement and investment

The UK's proposed Foreign Influence Registration Scheme is part of a wider package of measures to revamp domestic espionage laws, in this instance via new obligations for a wide range of businesses, across all sectors, and others with international dimensions or interests, including charities, NGOs and institutions and other friendly international bodies. This short note provides an overview and links to a [detailed note](#) for those who wish to find out more. Both articles include examples of some of the unexpected impacts in terms of the entities, individuals and activities caught in its crosshairs.

In short, the proposed regime is wider and more onerous than equivalents in Australia and the US often used as precedents and raises substantive concerns for being a bureaucratic headache for overt benign activity while failing to effectively target the malicious covert activity it is designed to address.

OVERVIEW

The National Security Bill was introduced in Parliament in May 2022. It passed through the House of Commons and is now before the House of Lords. Part three of the Bill, establishing a new Foreign Activities and Foreign Influence Registration Scheme, passed through the Commons with little scrutiny having been tabled late in the Bill's progress. Broadly, the scheme requires all foreign organisations, including companies, LLPs and unincorporated associations, whether businesses, charities or otherwise, to register publicly each of their interactions with UK policy and decision makers.

The main scheme - the 'primary tier' - can be briefly described as follows:

- public registration requirements fall on almost all foreign entities (even if fully UK based and operated), with no focus on national security related characteristics:
 - in addition to all foreign organisations, a foreign subsidiary of a UK business would fulfil the criteria to be within the scheme's scope. Similarly, a UK subsidiary of a foreign organisation where directed (or worried about the perception of direction) by its parent would be caught. Whereas UK or Irish subsidiaries of malign government owned businesses or political organisations would not necessarily be caught if there was not evidence of foreign direction and they were not minded to.
- the scheme relates to a swathe of activities with no focus on national security characteristics:
 - any routine UK/ devolved government/ regulatory decisions for business from whatever branches of government are included. The Department of Transport, HM Treasury, the Competition and Markets Authority, HMRC and so on would have to be assumed to be in scope in circumstances where the content might involve civil servants of deputy director (or equivalent) in correspondence or meetings.

- Note that, due to the way they are constituted, the Financial Conduct Authority, the Bank of England, the Prudential Regulation Authority and the Crown Estate would all fall outside the scheme's scope.
 - any engagement with such officials in relation to public policy debates which are live in any UK Parliament are also in scope as is engagement with any MP or peer to influence on anything (the latter not limited to government decisions or policy).
- the information required has limited confidentiality exemptions and is unusually intrusive
- the scheme criminalises an almost uncircumscribed range of individuals, charities, academics, businesses and other organisations and individuals, for behaviours and activities usually categorised and encouraged as benign

- multiple offences apply with the maximum penalty for each being two years' imprisonment, a fine or both, for example:

- where a foreign registered entity engages in political influence activities itself and fails to register in advance (with personal liability also falling on office holders or employees for their own activities or failure to register);
 - consequential offences outside the scheme may also arise, for example in relation to "proceeds of crime".

SOME EXAMPLES:

1. Discussions with HM Treasury or MPs about the Edinburgh Reform policies

A UK subsidiary of a Bank registered in the EU wishes to meet with senior officials at HM Treasury about the [Edinburgh Reforms](#) to discuss the announcements and suggest ideas which they consider may amplify some intended benefits. The UK subsidiary may feel it should register the "arrangement" with the EU parent even if it did not consider it was being directed on this to mitigate risk of perceived criminal breach if a deputy director-level civil servant or higher attended the meeting. In any event, an executive from the parent bank could not simply decide to attend such a meeting at the last minute, without criminal breach, unless it had been pre-registered.

The same applies for any similar discussions with peers, MPs, MSPs or their staff. Indeed, any discussion with peers or MPs (but in this case not their staff) in which views are shared on anything, even if not related to policy views or government decisions would require registration - at least by the parent bank.

2. Constraining support for allied countries in time of war

The wife of the president of a country, U, which has been invaded by a hostile state is herself president of a charity based in U seeking to raise funds for local hospitals. She visits the UK privately. This does not require registration. A UK charity learns she will be in the country and arranges for her to speak to private meetings of policy makers in the UK, including MPs, peers and officials, including about the work of her charity. The president's wife must therefore ensure her charity registers before any of her meetings, as she is an officer representing her charity.

Because she is unaware of the legislation, and the meetings are fixed at short notice, she fails to register. Meetings with her on the same subject set up by MPs, peers and others consequent on her (unlawful) original meeting are also likely to require registration and public disclosure.

3. Minister for Health participates in trade mission to Japan with colleagues from an All-Party Parliamentary Groups (APPG) which leads to criminal conduct by Japanese businesses and their employees as well as various criminal offences by the Minister and MPs

The APPG are learning about foreign health services but also promoting the UK pharma and biotech sector. They all informally encourage contact from those they meet at different government and private organisations, once returned to the UK. There are resultant telephone and virtual call contacts to the minister and other APPG members, including over policy issues; those visited then wish to meet proactively the minister and APPG members on their next visits to the UK. Some were encouraged to contact by the minister (but no formal invitations issued), others by APPG members.

The foreign organisations must register before engaging with the minister or APPG members in the UK (absent formal invitation in the case of the minister or in any event for other APPG members). They may also need to do so before virtual calls into the UK on the basis that such cross-border contact is “in the UK”.

Criminal conduct by the foreign organisations and their employees will clearly follow, solicited by the minister and APPG members, unless they flagged the need for registration. There is at least a question as to whether the Parliamentarians on the facts may have committed offences of aiding and abetting or conspiracy to break the scheme laws.

4. A Netherlands registered renewables company (NetherRenewablesCo) uses a UK registered subsidiary, UK Ops Ltd, to manage its UK wind farm business - meetings and communications on operational matters might quickly put both companies and employees in criminal breach

NetherRenewablesCo entered into arrangements under which its UK registered subsidiary, UK Ops Ltd, carried out its UK operational matters then it would be a criminal offence for the subsidiary to:

- a) attend any discussion with a deputy director level or higher civil servant or regulator in attendance - for example, with the energy regulator Ofgem in relation to an offshore transmission competitive tender process;
- b) conduct any email correspondence on the same example topic which at some point is copied to a deputy director or higher level civil servant;

if UK Ops Ltd had not either:

1. registered the initial agreement with the NetherRenewablesCo under the scheme within 10 days; and
2. each of a) and b) within 14 days of them occurring.

To the extent that any such offences by UK Ops Ltd were due to the negligence of an officer of UK Ops Ltd that officer would also be criminally liable. Also, if any of the office holders or employees of UK Ops Ltd engaging in either of a) or b) above was also an office holder or employee of NetherRenewablesCo then they may be personally criminally liable if NetherRenewablesCo had not registered the arrangements prior to them occurring.

OUR IN-DEPTH BRIEFING WITH MANY MORE EXAMPLES

Our more detailed and general briefing is available [here](#).

We have been leading constructive criticism of the government's proposed approach since the initial May 2021 consultation. Recently, more industry bodies have understood the scheme's problematic implications and there is also now a growing group of concerned peers. So, hopefully, there will be improvements to the position outlined above.

If you would like to discuss any of the issues raised with this proposed regime, please speak to your usual Herbert Smith Freehills adviser.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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