



Rt Hon Sir George Howarth MP
House of Commons
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DECS Reference: MIN/0465015/22

15 November 2022

Dear Sir George

Thank you for your email of 2 November on behalf of a number of your constituents regarding clause 27 and clauses 79-83 of the National Security Bill and for passing on your constituents' concerns. I hope this letter will provide clarity and reassurance on the intentions and purpose of these clauses.

Clause 27: Serious Crime Act 2007 Amendment

Clause 27 seeks to remove personal criminal liability for the offences of encouraging or assisting crime overseas in the Serious Crime Act only where that activity is necessary for the proper exercise of the functions of the security and intelligence agencies or the armed forces. Any individual found to be working outside of the proper functions of the intelligence agencies or armed forces will of course remain liable for those actions as per the Serious Crime Act offences and all other applicable laws.

The intention of clause 27 is to protect individuals from personal criminal liability when they have operated in good faith, and in compliance with all proper processes to conduct authorised conduct. The Government does not believe it is right or fair to expect fear of criminal liability to sit with dedicated individuals who are conducting highly sensitive and vital national security work which is properly authorised on behalf of the UK. Instead, through clause 27 that unfair burden will be removed, leaving appropriate accountability to sit at the organisational level. It will still be possible for legal challenges to be brought against the intelligence agencies and armed forces in relation to allegations of unlawful behaviour, whether in the form of judicial review, civil damages claims, or through a referral to the Investigatory Powers Tribunal. This is exactly as it should be.

The proposed amendment will not create blanket criminal law immunity or change the application of all other criminal law offences, including those criminalising torture anywhere in the world. The UK remains subject to international legal obligations, for example, including under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and international obligations on assisting an unlawful act (Article 16 of the International Law Commission's Articles on State Responsibility for Internationally Wrongful Acts).

There are a number of internal safeguards and processes in place which manage the way that the intelligence agencies and the armed forces work to prevent potential wrongdoing. Careful legal analysis of the applicable criminal law offences, civil law and international obligations are undertaken before working with partners overseas.

Throughout these processes senior officers and Ministers will continue to have significant obligations and responsibilities to ensure compliance with the law. The Government and UK security and intelligence agencies follow robust internal policies and processes, including the Fulford Principles and Overseas Security and Justice Assistance Guidance, which exist to ensure that there is comprehensive assessment of the risks of supporting partners' activity.

Clause 27 is designed to support international collaboration for national security between trusted partners. Every exchange of information is carefully assessed to ensure it cannot contribute to unacceptable conduct on the part of the recipient, but the Serious Crime Act (2007) as drafted still creates a risk that individual officers might face prosecution. This risk can persist even when officers have acted in good faith and in full accordance with proper procedure and the authorisation of senior leaders and where the risk cannot be reasonably foreseen by an individual. It is not right that we ask individuals to continue to take personal risk to undertake vital data exchanges where this risk cannot be fully mitigated.

Clauses 79-83: Civil Damages

With regard to clauses 79-83 in the Bill, which relate to Civil Damages, these measures are necessary, will improve public protection and are proportionate in nature.

At present when damages are paid out to claimants involved in terrorism a court is not required to consider whether damages should be reduced to reflect the claimant's involvement in wrongdoing.

In addition, no current powers are available to courts to freeze damages at the point of being awarded, which means that there is a risk of funds being used for terrorism.

The reforms proposed in clauses 79-83 will enable the UK's security services to apply for:

- a) A reduction in civil damages in national security proceedings where a claimant has been involved in wrongdoing associated with terrorism.
- b) A court order which would freeze or forfeit damages payable where the court is satisfied that there is a **real risk** of a claimant using their award to fund acts of terror.

These reforms will be subject to the independent and objective oversight of the courts, who must be satisfied that the evidence presented in individual cases warrants a reduction in damages or awards being frozen or forfeited. It is entirely wrong to suggest that 'national security' factors alone are sufficient to reduce damage pay outs and important to note that in all cases, the final decision rests with a judge.

Thank you again for raising your constituents' concerns and giving me the opportunity to clarify the measures above. Please do not hesitate to contact me if I can be of further assistance.

Yours sincerely



Rt Hon Tom Tugendhat VR MBE MP
Minister for Security