



National Security Act 2023

2023 CHAPTER 32

PART 1

ESPIONAGE, SABOTAGE AND PERSONS ACTING FOR FOREIGN POWERS

Acting for foreign power as aggravating factor in sentencing

19 Aggravating factor where foreign power condition met: England and Wales

- (1) The Sentencing Code is amended as follows.
- (2) After section 69 insert—

“69A Offences where foreign power condition met

- (1) This section applies where a court is considering the seriousness of an offence that—
 - (a) is committed on or after the day on which section 19 of the National Security Act 2023 comes into force, and
 - (b) is not an offence listed in subsection (2).
- (2) Those offences are—
 - (a) an offence under the National Security Act 2023 or an inchoate offence (see section 398) in relation to any such offence;
 - (b) a relevant electoral offence within the meaning given by section 16 of that Act (foreign interference in elections).
- (3) Where the foreign power condition is met in relation to the conduct that constitutes the offence, the court—
 - (a) must treat that fact as an aggravating factor, and
 - (b) must state in open court that the offence is so aggravated.

Status: This is the original version (as it was originally enacted).

- (4) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (1) to have been committed on the first of those days.
- (5) Section 31 of the National Security Act 2023 (meaning of foreign power condition) applies for the purposes of this section as it applies for the purposes of Part 1 of that Act.”

20 Aggravating factor where foreign power condition met: Northern Ireland

- (1) This section applies where a court in Northern Ireland is considering for the purposes of sentence the seriousness of an offence that—
 - (a) is committed on or after the day on which this section comes into force, and
 - (b) is not an offence listed in subsection (2).
- (2) Those offences are—
 - (a) an offence under this Act or an ancillary offence in relation to any such offence;
 - (b) a relevant electoral offence (within the meaning given by section 16).
- (3) An “ancillary offence”, in relation to an offence, means any of the following—
 - (a) aiding, abetting, counselling or procuring the commission of the offence;
 - (b) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence;
 - (c) attempting or conspiring to commit the offence.
- (4) For the purposes of this section, an offence committed by a person under Part 2 of the Serious Crime Act 2007 is related to another offence if that other offence is the offence (or one of the offences) which the person intended or believed would be committed.
- (5) Where the foreign power condition is met in relation to the conduct that constitutes the offence, the court—
 - (a) must treat that fact as an aggravating factor, and
 - (b) must state in open court that the offence is so aggravated.
- (6) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (1) to have been committed on the first of those days.
- (7) In this section “sentence”, in relation to an offence, includes any order made by a court when dealing with a person in respect of the offence.

21 Aggravating factor where foreign power condition met: Scotland

- (1) This section applies where in Scotland, in relation to a relevant offence, it is—
 - (a) libelled in an indictment, and
 - (b) proved,
 that the offence has been aggravated by reason of the foreign power condition being met in relation to the conduct that constitutes the offence.
- (2) Where this section applies, the court must take the aggravation into account in determining the appropriate sentence.

- (3) Where the sentence imposed by the court in respect of the offence is different from that which the court would have imposed if the offence had not been aggravated by reason of being an offence within [subsection \(1\)](#), the court must state the extent of, and the reasons for, the difference.
- (4) Evidence from a single source is sufficient to prove that an offence has been aggravated by reason of the foreign power condition being met in relation to conduct which constitutes the offence.
- (5) A “relevant offence” is an offence that—
 - (a) is committed on or after the day on which [this section](#) comes into force, and
 - (b) is not an offence listed in [subsection \(6\)](#).
- (6) Those offences are—
 - (a) an offence under this Act or an ancillary offence in relation to any such offence;
 - (b) a relevant electoral offence (within the meaning given by [section 16](#)).
- (7) An “ancillary offence”, in relation to an offence, means any of the following—
 - (a) being art and part in the commission of the offence;
 - (b) inciting a person to commit the offence;
 - (c) attempting or conspiring to commit the offence.
- (8) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of [subsection \(5\)\(a\)](#) to have been committed on the first of those days.

22 Aggravating factor where foreign power condition met: armed forces

In section 238 of the Armed Forces Act 2006 (deciding the seriousness of an offence), at the end insert—

- “(7) In section [69A](#) of the Sentencing Code (seriousness of offence where foreign power condition met)—
- (a) the references in that section to a court are to be read as including a court dealing with an offender for a service offence, and
 - (b) the reference in subsection (1)(b) to an offence which is not an offence listed in subsection (2) is to be taken as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is not an offence so listed.”