

Alert | International Trade



May 2024

Enhancing the UK’s National Security Capability: The Foreign Influence Registration Scheme

The UK’s National Security Act 2023 (“NSA”), enacted in July 2023, introduced the yet-to-be-implemented Foreign Influence Registration Scheme (“FIRS”). FIRS has been designed to ensure transparency around legitimate activities carried out at the direction of foreign states and to protect the UK’s economy and political system against specified foreign states or foreign state-controlled entities that are considered to pose a risk to the UK’s safety and interests. To fulfil these intentions, FIRS will require UK and overseas businesses to register arrangements with foreign states where those arrangements concern undertaking “*political influence*” conduct in the UK.

Notably, certain information that is required to be registered will also be made available on a public register. Examples of the type of information that may be disclosed is included in draft guidance; however, instructions as to the timing of publication and how to search the public register are not yet available.

The timeframe for when FIRS is to come into force has not yet been confirmed, but it will not be before the introduction of statutory guidance, a consultation regarding which closed on 31 December 2023. In a recent update, the Home Office amended expectations regarding publication of the guidance from “*Spring*

2024” to “*expected in 2024*”.¹ The full extent and scope of FIRS remains unclear as we await the publication of guidance when many aspects of the scheme are expected to be fleshed out.

There are a number of areas for which awareness of FIRS and introducing compliance policies to address this will be necessary, in particular:

- Businesses / organisations that may fall under the “*foreign power*” definition or be directed by a foreign government, such as sovereign wealth funds; and
- Businesses / organisations that are under contractual or other obligations to foreign governments and which require engagement with UK Government policy or decision makers, such as investment banks.

BACKGROUND TO THE FOREIGN INFLUENCE REGISTRATION SCHEME

The NSA replaces the Official Secrets Acts of 1911, 1920 and 1939 by updating and expanding the offences² under these acts and establishing new rules designed to counter the threats against the UK from hostile foreign states. It has been introduced to account for the technological developments which have changed the nature of espionage and the creation of separate offences is considered to better reflect the modern world without inadvertently criminalising a wider range of activity.

FIRS is the UK’s response to countering hostile foreign state activity aimed at harming its economy and values or which may otherwise present a risk to its safety and interests. It is the UK’s version of the United States’s Foreign Agents Registration Act (“**FARA**”) which applies to anyone who acts on behalf of a “foreign principal” to influence US policy or public opinion.

The aims of FIRS relate to valid concerns about emerging threats from hostile foreign states, as evidenced, for example, by the UK’s 2020 Intelligence and Security Committee of Parliament Report concerning Russia,³ which identified an array of risks or threats from Russia including cyber security and disinformation.

FIRS AND FARA

There are similarities between FIRS and FARA, based on the information and draft material currently available. However, FIRS appears to be a narrower scheme focused on foreign government influence in connection with the UK political system, rather than the broad scope of FARA.

Although we await the finalised guidance and further details on the scheme from the UK government, a number of distinctions between FIRS and FARA are already emerging.

It appears, as at the time of writing, that the FIRS enhanced tier is as comprehensive as under FARA; however, the political influence tier is where the differences are most apparent. It should also be noted that the NSA in its final form was the subject of considerable redrafting as its initial draft risked

¹ <https://www.gov.uk/government/publications/national-security-bill-factsheets/foreign-influence-registration-scheme-factsheet> - updated 12 February 2024

² Including, but not limited to espionage, sabotage, foreign interference, etc, as well as new powers of arrest, detention, search and seizure.

³ https://isc.independent.gov.uk/wp-content/uploads/2021/03/CCS207_CCS0221966010-001_Russia-Report-v02-Web_Accessible.pdf - dated 21 July 2020

criminalising a huge range of individuals, charities, academics, and others for overt behaviours considered to be benign and rightly encouraged.

Issue	FARA	FIRS
Scope	Broad and highly fact dependent, registration is required for anyone who acts on behalf of a “foreign principal,” and seeks to, among other things, influence U.S. policy or public opinion.	Under the political influence tier, registration is required for a defined set of activities that are considered to influence the conduct of the UK government, political parties, or elections.
Who?	Broadly applies to anyone who acts on behalf of a “foreign principal,” defined to include, for example, foreign governments and political parties, as well as non-U.S. individuals, partnerships, associations, corporations, and other organisations.	Limited to work for non-UK government entities and political parties.
Exemptions	An array of exemptions designed to temper the broad scope of registrable activity, including the often used “commercial activity” exemption.	FIRS has a narrower exemption offering and a wide interpretation of “political influence activity”, albeit there is a built-in exemption connected to public communications “ <i>where it is reasonably clear from the communication that it is made by or at the direction of a foreign power</i> ”. ⁴
Registration	In addition to registering the nature of the activities, etc, registrants must continue to proactively update the US government with details of their activities as well as labelling publicly facing communications.	Subject to finalising the guidance, there is a requirement to register activities and information sufficient to achieve FIRS’s transparency aims. A long list of information as to what is publishable is available, including the type of activity undertaken and the names of the individuals carrying out the activities. Material changes require the registrant to update the register. The labelling of publicly facing communications is not something that is currently required.

⁴ s70(2)(b) of the NSA 2023.

FOREIGN INFLUENCE REGISTRATION SCHEME

Once enforced, FIRS will require:

1. The registration of arrangements with foreign states under which both individuals and entities are directed by a foreign state power to carry out political influence activities in the UK; and
2. The registration of a broader range of activity where a person is acting at the direction of a specified foreign power or entity that has been assessed as posing a potential risk to UK safety or interests.

While registration does not prevent the activity from taking place, the draft guidance highlights that the Home Office can issue information notices requiring the disclosure of further information or arrangements.

Moreover, the Home Office's draft guidance proposes that those who are required to register their activities (both political and enhanced) should be regarded as supporting the transparency aims of FIRS, rather than an indication of illegitimate activity or being a national security risk.

TWO TIERS

FIRS is a two-tier regime consisting of a (i) "*political influence*" tier, and an (ii) "*enhanced tier*". The first tier aims to improve transparency concerning political influence activities⁵ and arrangements with a foreign power in the UK. The second tier requires disclosure of information by those undertaking activities in the UK at the direction of a foreign power or controlled entity.

All arrangements must involve a "*foreign power*".⁶ The concept is defined broadly and includes sovereigns and heads of state, foreign governments, a political party in power, agencies of foreign governments, or an authority administering a region of a foreign country.

There must also exist a "*direction*",⁷ such as an order or an instruction, to a person or entity to do something. The term is not defined under the NSA but can include a request where there is some degree of control by the foreign power, e.g., a contract, a payment, or some other form of benefit (such as a promise of future compensation), or favourable treatment. A generic request, the existence of funding or payment, or an alignment of views, without an element of expectation, will be insufficient to meet the requirement of "direction".

Under FIRS, it is the arrangement that must be registered, rather than each individual activity. The responsibility to register lies with the individual or entity that makes the arrangement with the foreign power, or foreign controlled entity. Furthermore, the draft guidance imposes a responsibility on the individual tasked with carrying out activities pursuant to the arrangement to ensure it has been registered and recommends checking with your employer and the public register.

Where there is a "*material change*" to a registered arrangement, the register must be updated within 14 days from the day on which the change takes effect. The concept of "material change" is not defined, but

⁵ Defined in s.70 of the NSA 2023.

⁶ Defined in s.32 of the NSA 2023.

⁷ Not defined under the NSA, but according to the draft guidance "direction" is considered to be an order or instruction to act; implies a degree of control or expectation by the foreign power.

rather the draft guidance provides examples of the types of change that would be considered material, such as an informal quid pro quo arrangement being formalised through a contract. Where an activity, for example, is repeated and conducted in the same way for the same purpose as the original registered arrangement, this would not trigger a material change update.

“Political Influence” Tier

A qualifying “*political influence activity*” is a communication to senior decision makers such as UK ministers (and ministers of the devolved administrations), election candidates, MPs, local government, and senior civil servants. The communication must also include an intention or purpose to influence UK public life, such as elections, decisions of the government or members of the Houses of Parliament, or the content of legislation.

Individuals or entities must register any qualifying foreign influence arrangements, as opposed to each individual activity, if:

1. It is an arrangement (whether formal or informal) with a “*foreign power*”;
2. The arrangement involves a “*direction*” from the foreign power;
3. The direction is to carry out, or arrange for others to carry out, “*political influence activities*” in the UK; and
4. No exemptions apply to the arrangement or activities.

If an arrangement satisfies the above conditions, it must, within **28 days**, be registered via an online portal hosted by the UK’s Home Office. It is important to note that where an arrangement already exists on the date the provisions come into force, such an arrangement must be registered within **3 months** from the date of enforcement.

“Enhanced” Tier

FIRS includes a power, subject to Parliamentary approval, that enables the Secretary of State for the Home Office to specify a foreign power, or an entity subject to specified foreign power control, where it is considered necessary to protect the safety or interests of the UK. In doing so, an arrangement with such a specified foreign power or entity subject to specified foreign power control will be required to be registered on the “enhanced” tier.

The draft guidance does not cover how and what factors the Secretary of State will take into account when considering whether a foreign power or entity should be specified for these purposes. The basis for making this decision and the foreign powers and entities that have been specified will be published within the guidance in advance of the coming into force of the relevant provisions.

Registration of any new “*foreign activity arrangement*” must be completed within **10 days** from the day on which the arrangement is made and before any activities pursuant to that arrangement have been carried out.

“*Foreign activity arrangement*” refers to the carrying out of “*relevant activities*” within the UK. By default, “*relevant activities*” includes all activities from supplying utilities and catering services to

emergency medical assistance. At present it is unclear if the UK Government will narrow the scope of “relevant activities” with a national security focus. The current breadth of scope could potentially result in a significant and unintended risk of innocent individuals or entities being criminalised on failure to register.

Under the enhanced tier, there is no express provision for registering an existing arrangement. The draft guidance is silent on this point, but it is expected that transitional arrangements will be clarified in regulations specifying relevant countries and entities.

Where an arrangement meets the registration requirements for both the political influence and enhanced tier, only registration under the enhanced tier is necessary.

EXEMPTIONS

The UK Government set out a number exemptions to registration, including:

- Any arrangement with the Republic of Ireland;
- those acting pursuant to an arrangement to which the UK is party, for example, those invited to participate at an event by a UK government department (applies to both tiers);
- individuals acting for a foreign power in their official capacity as employees and office holders (applies to both tiers);
- family members who are part of the household of members of diplomatic and consular staff (applies to both tiers);
- those providing essential services to a diplomatic mission for example, catering or building services (applies to the enhanced tier);
- lawyers providing legal services (applies to both tiers); and
- recognised domestic and international news publishers (applies to the political influence tier only).

THE PUBLIC REGISTER

Certain information that qualifies for registration under the political influence tier will be included in a publicly accessible register to better inform the public regarding the scale and extent of influence in UK political affairs. The extent of what will be published is intended to be limited to what is necessary to achieve FIRS’s transparency aims.

The draft guidance includes a long list of information that is publishable on the publicly accessible register, including the type of activity undertaken and the names of the individuals carrying out the activities (albeit personal data such as date of birth and address will be withheld).

Exceptions from publication can be sought, if supported by evidence, at the registration point and will be considered by a yet to be established FIRS management unit within the Home Office. The exceptions that may be sought are:

- Where there is a risk that publication would prejudice the UK’s national security;
- Where there is a significant risk that publication would risk a person’s safety; or

- Where publication would involve disclosure of commercially sensitive information.

The management unit will inform the registrant if the application has been accepted.

FAILURE TO COMPLY OR REGISTER

A failure to comply with FIRS is a criminal offence, punishable by up to two years' imprisonment (political influence tier) or five years imprisonment (enhanced tier) and/or an unlimited fine (both tiers).

The responsibility of registering falls upon the individual or the entity who is making the arrangement with the foreign power or specified foreign power.

Managers, officers, and similar persons may commit offences where an offence has been committed by a corporate entity with their consent or connivance, or due to their neglect. The “carrying out” offences are also potentially wide enough to apply to employees, sub-contractors or similar entities. Where an individual or entity lacks relevant knowledge, they may avoid committing an offence in certain circumstances.

There are also criminal offences associated with carrying out activities which are pursuant to arrangements which have not been registered or falsely registered.

The administration and enforcement of FIRS sits with the management unit within the Home Office, which will have the authority to issue information notices to those believed to be party to a registrable act. Where registration requirements have not been met, the relevant information will be passed onto law enforcement. The process and assessment of registration requirements have not yet been detailed and are expected to be clarified in the forthcoming guidance.

AFFECTED SECTORS

The UK Government considers that the sectors most likely to be affected by the scheme include:

- Political lobbying/consultant lobbyists;
- Management consultancy, advertising and public relations;
- Representative associations;
- “Cultural institutions”;
- Non-government organisations;
- Charities;
- Legal sector (where not covered by the exemption for legal services);
- Media (where not covered by the exemption for domestic or international news publishers); and
- “Other businesses and sectors” such as defence.

NEXT STEPS

The draft guidance confirms that the UK Government intends sector-specific guidance to be published ahead of FIRS going live.

Organisations and individuals will need to consider what potentially registrable arrangements they might currently have and be prepared to register these when this new regime becomes effective.

Some immediate considerations may be to:

- Establish whether you undertake any political influence activities, or have arrangements to carry such activities out, pursuant to an arrangement with a foreign power; and
- Check whether you have any arrangements involving direction from “high risk third countries” regarding activities in the UK.

They should also consider whether any applications should be made for information to be withheld from the public register, and what evidence in support might be required. Assessment of such matters will be assisted once the final version of the guidance, and any further exemptions to be introduced via regulations, is produced.

Organisations that might have to register arrangements, will need to consider developing policies and procedures to ensure any potential registrable arrangements are compliant and that necessary training and awareness is undertaken.

Given the “carrying out” offences, the draft guidance also recommends that employees or subcontractors tasked with carrying out an activity pursuant to a registrable arrangement should check with their employer or contracting party whether the arrangement has been registered, and that a check should be made of the public register; such actions offer a potential defence to the “carrying out” offence.

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