

National Security Bill

Supplementary Delegated Powers Memorandum

The Government has tabled amendments for Report stage of the National Security Bill in the House of Lords. These include new delegated powers in relation to the Foreign Influence Registration Scheme in Part 3 of the Bill, as well as a clarification to one of the existing powers in that Part. This supplementary memorandum covers why the new powers have been taken and the reason for the procedure selected.

Clause 64(1B): Power to specify relevant activities

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and purpose

1. Clause 64 requires registration of foreign activity arrangements made between a person and a “specified person”. A “specified person” is a person specified by the Secretary of State in regulations, under the power in clause 65. A specified person can be a foreign power or an entity controlled by a foreign power, but not an individual.
2. If a person has been specified under clause 65, an arrangement with that specified person to carry out activities in the United Kingdom must be registered. Under the amendment, the Secretary of State may provide that the requirement to register the arrangement only applies in relation to certain activities.

Justification for the power

3. This power allows the Secretary of State to require that the requirement to register arrangements only relates to certain specified activities (rather than all activities). The Secretary of State will consider whether there are only certain activities that are of concern in relation to arrangements with all specified persons or certain specified persons.
4. Given that a person will be specified by the Secretary of State by regulations, consideration of what activities are of concern and whether any regulations need to be made under this power will depend on the person or persons being specified at the time. It may not be necessary or proportionate for the Secretary of State to require arrangements relating to any activity to be registered. It would not be possible to make this assessment in advance of making a decision to specify a

person, or considering the particular circumstances of the persons whom the Secretary of State determines should be specified.

5. It is therefore appropriate for the power to be exercisable by statutory instrument to allow the legislation to be properly focused on activities of concern in relation to arrangements with specified persons while still providing Parliament a proper opportunity to scrutinise the decision.

Justification for the procedure

6. These regulations are subject to the affirmative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given the potential diplomatic, economic or social impacts in setting out particular activities of concern in any arrangement with a foreign power or foreign power-controlled entity. It is right that this follows the same procedure as that for specifying a person given much of the same considerations will apply and it is appropriate that this should be debated and voted on in Parliament.

Clause 67(3B): Power to specify relevant activities

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and purpose

7. Clause 67(1) and (2) require a “specified person” who is not a foreign power (or their office-holders, employees or staff members when acting for the specified person) to register their activities in the United Kingdom. A “specified person” is a person specified by the Secretary of State in regulations, under the power in clause 65. A specified person can be a foreign power or an entity controlled by a foreign power, but not an individual.
8. Clause 67(3) requires a person who is an office-holder, employee or staff member of a specified person who is a foreign power to register any activities in the United Kingdom to the extent that they make a misrepresentation about those activities.
9. Under the amendment, the Secretary of State may provide that the requirement to register only applies in relation to certain activities.

Justification for the power

10. This power allows the Secretary of State to require that the requirement to register only relates to certain specified activities (rather than all activities). The Secretary

of State will consider whether there are only certain activities that are of concern in relation to all specified persons or certain specified persons.

11. Given that a person will be specified by the Secretary of State by regulations, consideration of what activities are of concern and whether any regulations need to be made under this power will depend on the person or persons being specified at the time. It may not be necessary or proportionate for the Secretary of State to require registration of all activities that a specified person is engaged in. This power will provide the Secretary of State with the discretion to remove activities from the registration requirement. It would not be possible for the Secretary of State to make this assessment in advance of making a decision to specify a person, or considering the particular circumstances of the persons whom the Secretary of State determines should be specified.
12. It is therefore appropriate for the power to be exercisable by statutory instrument to allow the legislation to be properly focused on activities of concern of specified persons while still providing Parliament a proper opportunity to scrutinise the decision.

Justification for the procedure

13. These regulations are subject to the affirmative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given the potential diplomatic, economic or social impacts in setting out particular activities of concern in relation to a foreign power-controlled entity. It is right that this follows the same process as that for specifying a person given much of the same considerations will apply and it is appropriate that this should be debated and voted on in Parliament.

Clause 74(2A): Additional provision in relation to the power to make provision about the information to be provided to the Secretary of State when registering under Part 3

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative Resolution

Context and purpose

14. To fulfil the registration requirements under clauses 64, 67, 68 and 72, information will need to be provided to the Secretary of State within established timeframes. Clause 74(1) provides the Secretary of State the ability to make regulations to outline the information required from a person in order to comply with their registration obligations under the scheme.

15. This amendment is not adding a power but clarifies the breadth of this regulation-making power such that regulations can include the requirement to provide information about activities carried out during the registration period of 28 days.

Justification for the power

16. This power is necessary to ensure that the information required by the Secretary of State in relation to a registration can be clearly set out. The amendment provides further clarity on the scope of the power. The application process will be largely administrative in nature and we consider it appropriate for the detail to be outlined through regulations, with the substantive obligations to register provided by the primary legislation. This amendment ensures it is clear that regulations made can include information about activities carried out in the registration period. The power enables the Secretary of State to meet the objectives of the scheme by ensuring relevant information is provided.

Justification for the procedure

17. These regulations are subject to the negative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny given that Parliament will already have set the parameters for what constitutes a registerable arrangement or activity in passing the primary legislation. Information required through registration will necessarily relate to the arrangements and activities which Parliament has, as part of the wider scheme set out in the Bill, agreed should be registerable. We do not consider that this amendment, which clarifies the regulation-making power, alters that position.

Clause 79(1)(a): Power to make provision about the publication of information provided to the Secretary of State under part 3

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and purpose

18. Clause 79 allows the Secretary of State to make regulations about the publication or disclosure of information provided through registration.

19. The ability to publicise certain information registered with the scheme is vital to delivering the aims of the scheme by ensuring that the influence and activities of foreign powers and entities is open and transparent.

Justification for the power

20. The power at clause 79(1) is necessary to ensure that the information that is to be made publicly available in support of the transparency and national security objectives of the scheme can be clearly set out, as well as the conditions that would exempt information from appearing publicly.
21. We consider it appropriate for this level of detail to be outlined through regulations, rather than the primary legislation, because it is largely administrative in nature. If amendment needs to be made to what information needs to be published to meet the objectives of the scheme, the ability to do so through regulations will ensure it can be done without the need for further primary legislation.

Justification for the procedure

22. This power was included in the original delegated powers memorandum, but was subject to the negative procedure. In its report, the Delegated Powers and Regulatory Reform Committee questioned this procedure indicating that such information was liable to be both politically and commercially sensitive, as well as potentially impacting on national security. On that basis there would likely to be significant political interest in relation to publication of such information. We have accepted that recommendation and tabled an amendment to change the procedure from negative to affirmative.