

TERRORISM (PROTECTION OF PREMISES) BILL

Memorandum from the Home Office to the Delegated Powers and Regulatory Reform Committee

INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Terrorism (Protection of Premises) Bill (“the Bill”). The Bill was introduced in the House of Lords on 10 December 2024.
2. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

OVERVIEW AND PURPOSE OF THE BILL

3. The Bill seeks to enhance public safety by ensuring better preparedness for, and protection from, terrorist attacks.
4. The Bill will require those responsible for certain premises and events to take steps to mitigate the impact of a terrorist attack and reduce harm in the event of a terrorist attack occurring. In addition to this, certain larger premises and events must also take steps to reduce the vulnerability of the premises to terrorist attacks.
5. The Bill establishes a tiered approach based on the number of people that it is reasonable for a premises or event to expect to be present. Premises will be qualifying premises only where it is reasonable to expect that they will host 200 or more individuals at the same time (from time to time) in connection with any Schedule 1 activities. Events will be qualifying events only where it is reasonable to expect that they will host 800 or more individuals at the same time at some point during the duration of the event in connection with their use for the event.
6. Standard duty premises are those where it is reasonable to expect that from time to time 200 and 799 individuals may be present on the premises at the same time. Persons responsible for standard duty premises will be required to notify the regulator of their premises and put in place reasonably practicable and appropriate public protection procedures to keep the public safe. This includes ensuring there are procedures in place to provide information to individuals on the premises and to evacuate, invacuate (that is, bring people safely into, or to safe parts of, the premises) or lockdown the premises. The requirements for standard duty qualifying public premises will be focused on simple, low-cost activities surrounding policies and procedures, aimed at driving forward good preparedness and responses.
7. The enhanced duty applies to both qualifying public premises and qualifying events if it is reasonable to expect that 800 or more individuals may be present.

The requirements in this tier are more significant in recognition of the potentially catastrophic consequences of a successful attack at these premises/events.

8. Those responsible for enhanced duty qualifying public premises and qualifying events will be required to put in place public protection procedures and measures that could be expected to reduce, so far as reasonably practicable, the vulnerability of the premises or event to acts of terrorism, and the risk of physical harm being caused to individuals if an act of terrorism were to occur on the premises, at the event or in the immediate vicinity.
9. They will also be required to: notify the regulator of their premises/event; document their procedures and measures, which will be aided by an assessment of the terrorism risk and vulnerabilities of their premises or event, and provide this to the regulator; and where the responsible person is not an individual, they must appoint an individual as a designated senior individual to ensure that the relevant requirements are met.
10. Compliance with the Bill's requirements will be overseen by the Security Industry Authority as the regulator. The primary role of the regulator will be to guide, advise and inspect. To enable effective inspections and so that the regulator can assess compliance, the regulator will have a set of inspection powers (see Schedule 3), as well as a sanctions toolkit to address instances of persistent non-compliance.
11. A credible sanctions regime with suitable sanctions is needed to enable the regulator to secure compliance where a premises or event refuses to comply or it identifies serious breaches. The Bill will provide the regulator with the ability to impose a range of civil sanctions which will ensure that any non-compliance can be addressed swiftly, reducing potential harm without undue impact on the criminal justice system. Due to the seriousness of some actions and in line with other regulatory regimes the Bill will also provide for certain criminal sanctions.
12. Part 2 of the Bill makes amendments to the Licensing Act 2003 and the Licensing (Scotland) Act 2005 to protect premises plans from being used for the purposes of terrorism.

SUMMARY OF DELEGATED POWERS

13. The Bill contains 17 delegated powers. In preparing the Bill, the Government has made every effort to stress-test the delegated powers it includes so as to draw them as narrowly as possible and to find alternative mechanisms which remove the need for secondary legislation where possible. This is in accordance with the findings of the pre-legislative scrutiny the draft Bill underwent in 2023, and with the *Democracy Denied* Delegated Powers and Regulatory Reform Committee report of 2021-22. Furthermore, the Government has sought to include the detail of the policy on the face of the Bill in so far as possible, in order to ensure the public and Parliament can effectively scrutinise it. Furthermore, where possible and appropriate, the Government has used precedent from other safety regimes (e.g. fire safety) in drafting these powers.

14. Broadly, the powers remaining in this Bill fall into three categories:

- To enable the operational and technical delivery of the Bill and provide for a degree of detail which would be inappropriate for the face of primary legislation. For example, the powers in clause 9, which allow for the detail of the notification requirements.
- To allow the new regime to keep pace with developments in the nature of the threat of acts of terrorism (and the methodology of the perpetrators) and the ever-evolving nature of the wide range of sectors affected by this legislation. In particular to ensure public protection and that the impact on premises and events in scope remains reasonable and proportionate.
- The powers in clause 34 which amend existing licensing legislation in England, Wales and Scotland to limit the public availability of detailed premises plans. This is because the Government has become aware that these could be useful to a person committing or preparing an act of terrorism. These powers will future-proof the regulatory system created by this Bill to ensure content remains relevant and reflects changes in best practice regarding terrorism response procedures and the developing nature of the terrorist threat.

15. Of the powers in the Bill, eight are Henry VIII powers. These Henry VIII powers are subject to the affirmative procedure, with two exceptions, as set out below. Henry VIII powers have only been included where they are necessary to ensure that this legislation continues to operate as intended and there is a proportionate justification for doing so. They have therefore been drafted with a narrow and focused scope and provide the ability to amend the technical detail that is already on the face of the Bill rather than to create new policy.

16. The delegated powers contained in this Bill:

- Set out how the principal Schedule 1 use of premises is to be determined in cases where premises have multiple Schedule 1 uses (clause 4(3))
- Specify additional, or omit or amend, public protection procedures which all qualifying premises and events must put in place (clause 5(4))
- Specify additional, or omit or amend, public protection measures and procedures which only enhanced duty public premises and qualifying events must put in place (clause 6(4))
- Specify information which must be documented in relation to the measures put in place for enhanced duty premises or qualifying events (clause 7(1)(e))
- Specify additional types of information that persons responsible for qualifying premises or events must notify the regulator of (clause 9(3))
- Specify the types of information required in a notification issued under this Act, specify the manner and form of notifications, and specify when a notification requirement must be complied with (clause 9(5) and clause 9(6))
- Amend the maximum amount of the non-compliance penalty that may be imposed for contraventions in relation to standard duty premises, enhanced duty premises and qualifying events (clause 18(8))

- Amend the maximum daily penalty that may be imposed, in addition to the non-compliance penalty, for contraventions of notices in relation to standard duty premises, enhanced duty premises and qualifying events (clause 19(6))
- Make further provision about notices under the Act, such as relating to the types of information that notices must contain, procedures for giving notices and their variation (clause 30(1))
- Amend the figure for the number of individuals that a premises or event must be reasonably expected to have present at the same time in order to be in scope of the Bill's requirements (clause 32(a) and clause 32(b))
- Amend Schedule 1, which sets out the uses of premises which bring them into scope of this Act (clause 32(c))
- Amend Schedule 2 which sets out that certain premises and events are excluded from this Act (clause 32(d))
- Make regulations as to the form and content of premises plans for the purposes of amending existing licensing legislation (clause 34(2)).
- Set the fee for replacing a non-compliant premises plan with a compliant one within the register for historical plans (clause 34(4))
- Include standard commencement, transitional and saving provisions (clause 35)

Territorial coverage and devolution

17. The Bill extends to and applies in England and Wales, Northern Ireland and Scotland, apart for clause 34 and schedule 4 which extend to England and Wales and Scotland only. The provisions of the Bill relate to / deal with the reserved / transferred matter of counter-terrorism.

DELEGATED POWERS

Clause 4(3): Power to determine the principal use of premises

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative procedure

Context and Purpose

18. The requirements imposed by this Bill apply in respect of qualifying premises. Clause 2(2)(b) provides that premises are qualifying premises if (among other conditions) they are used wholly or mainly for a use or uses specified in Schedule 1 to the Bill. Clause 4(1)(a) sets out that the person responsible for premises, and so responsible for complying with the requirements of the Bill, is the person who is in control of the premises in connection with their relevant Schedule 1 use.

19. “Relevant Schedule 1 use” has the meaning at clause 4(2) which sets out that where there is only one use under Schedule 1, it is that use, but if there is more than one use under Schedule 1, whichever of those uses is the principal use.
20. The power in clause 4(3) allows the Secretary of State to make regulations setting out how the principal use of premises is to be determined.
21. It is the Government’s view that in most cases the principal use will be obvious. For example, at a sports ground which also hosts occasional concerts, its use as a sports ground will still be the principal use of the two. However, this power will be needed to provide rules to clearly set out how the principal use should be determined for the purposes of this Bill where this may not be evident.

Justification for the power

22. Whilst the Government thinks that in the vast majority of cases the principal use will be readily apparent, the Government recognises that there may be circumstances in which it is less obvious which of various uses under Schedule 1 to which premises are put is the principal use.
23. This power is therefore necessary to allow the Secretary of State to clearly set out the basis by how principal use should be determined for the purposes of this Bill, where that may be necessary. Without such rules, there is a risk that significant legal uncertainty could be created. It may be unclear, for example, as to which person is responsible for complying with the relevant requirements where different persons use the premises for different uses.
24. The regulations will need to make provision to cover the range of different types of premises and uses and it would not be feasible nor appropriate to include such provision in the Bill.

Justification for the procedure

25. The exercise of this power does not change which premises are within the scope of the duties. Rather, it seeks only to deal with cases of unusual application of Schedule 1 uses and to bring clarity. As such, it is the Government’s view that it is appropriate for regulations made under the power to be subject to the made negative procedure.

Clause 5(4): Power to specify, omit or amend public protection procedures

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Draft Affirmative Procedure (Henry VIII power)

Context and Purpose

26. Clause 5 requires the person responsible for qualifying premises and events must ensure that appropriate public protection procedures are in place, as far as reasonably practicable.
27. Appropriate means that they further the objectives set out under clause 5(2) – to reduce the risk of physical harm being caused to individuals if an act of terrorism were to occur on the premises, at the event or in the immediate vicinity of the premises or event.
28. Public protection procedures are defined in clause 5(3) as procedures to be followed by people working at the premises should an act of terrorism be suspected to be occurring or about to occur, at or in the vicinity of the premises. Those working at a premises will include permanent, temporary, voluntary and contracted staff.
29. The types of public protection procedures required are: procedures to evacuate the premises, or move occupants to a safer place within the premises; prevent individuals entering or leaving the premises; and to provide information to people at the premises.
30. Statutory guidance, as required under clause 27, will be provided which will assist duty holders to develop appropriate procedures suitable for their individual premises and environment. This will include guidance enabling persons responsible for a premises to make an assessment as to what is “reasonably practicable” for their premises, circumstances, and resources, and how to ensure that the standard is met.
31. The delegated power in clause 5(4) will allow the Secretary of State to prescribe other procedures that must be included when duty holders are fulfilling their requirements under clause 5, or to omit or amend the description of the existing public protection procedures. Its purpose is to ensure that the requirements continue to reflect changes in the nature of terrorism and the procedures that are needed in response. This could be to add etc. procedures in response to any lessons learned from future terrorist attacks, changes in the nature of the terrorist threat or evolving best practices in terrorism response.

Justification for the power

32. The Bill makes exhaustive provision for the types of procedures that must be put in place for standard duty premises. This is appropriate and it is right that Parliamentarians have the opportunity to scrutinise from the outset the new legal requirements with which responsible persons will be obliged to comply.
33. However, the nature of, threat from and methodologies involved in, terrorism is evolving and can change quickly. This is demonstrated, for example, in the most recent [CONTEST strategy published on 18 July 2023](#). The Government therefore considers it appropriate to include powers to specify additional public protection procedures, or to amend or omit existing procedures, that must be put in place by responsible persons. This will allow the Government to swiftly apply any lessons learnt from future terrorist attacks, or, as a result of operational delivery

experience. It will enable the scope of the procedures to be varied to meet the objective of clause 5 of ensuring that there are appropriate procedures in place to reduce the risk of physical harm to individuals if an act of terrorism were to occur

34. In order to ensure that the scope of the power is not inappropriately broad, it is limited by clause 5(5) and (6). Clause 5(5) requires that the Secretary of State may only specify further types of procedures if he or she considers that these procedures will have the effect of reducing the risk of physical harm to individuals. Clause 5(6) requires that the Secretary of State may only omit or amend a procedure if he or she considers that doing so will not increase the risk of physical harm to individuals. These limitations are intended to ensure that the power may be exercised in such a way as to further the overall objective of clause 5.

Justification for the procedure

35. The draft affirmative procedure is considered appropriate here to enable Parliament to approve the changes in the scope of the required procedures; and given that the power enables amendments to be made to primary legislation.

Clause 6(4): Power to specify, omit or amend public protection measures

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Draft Affirmative Procedure (Henry VIII power)

Context and Purpose

36. Clause 6 requires the responsible person for enhanced duty premises and qualifying events to assess and keep under review such public protection measures as are appropriate for the premises or event.
37. Appropriate means that they further the objectives set out under clause 6(2) – to reduce the vulnerability of the premises/event to acts of terrorism and reduce the risk of physical harm to individuals if a terrorist act were to occur at or near the premises. The person responsible for the premises or event must also put these measures in place, as far as is reasonably practicable.
38. Clause 6(3) sets out what these public protection measures must include, including requirements around monitoring of the premises/event and its immediate vicinity, movement of individuals into, out of and within the premises/event, security of potentially sensitive information and the physical safety and security of the premises or event.
39. As with the requirements for standard duty premises, statutory guidance will assist duty holders in their considerations. Clause 27 creates the requirement for this guidance. This will include guidance on what measures might be considered

“reasonably practicable” for their premises/events, circumstances and resources, and how the responsible person can ensure that the standard is met.

40. In the same manner as clause 5, subclause 6(4) contains a power that allows for the Secretary of State to prescribe other types of measures that must be included when duty holders are fulfilling their requirements under clause 6(1), or to omit or amend the description of procedures or measures in that clause. Its purpose is to ensure that the requirements of the enhanced duty can be amended to reflect changes in the nature of terrorism or the best means of response to it. This could be to take account of any lessons learned from future terrorist attacks, changes in the nature of the terrorist threat or evolving best practices in terrorism response.
41. The power’s scope is limited (in the same way as the power in clause 5(4)) by clause 6(5) and (6). Clause 6(5) requires that the Secretary of State may only specify further types of measures or procedures if he or she considers that the amendment will reduce the risk of physical harm to individuals or reduce the vulnerability of the premises or event to the risk of acts of terrorism. Clause 6(6) requires that the Secretary of State may only omit or amend a procedure or measure if he or she considers that doing so will not increase the risk of physical harm to individuals or increase the vulnerability of a premises or event to acts of terrorism. These limitations are intended to ensure that the power cannot be exercised in such a way as will burden persons responsible for premises and events with requirements which do not directly fulfil the goals of the Bill; and ensuring that any amendments are in accordance with the overall purpose of clause 6.

Justification for the power

42. A considerable amount of detail about what is required for enhanced duty premises and events, and in particular, the requirement to put in place public protection measures under clause 6, is included on the face of the Bill. This is appropriate and it is right that Parliamentarians have the opportunity to scrutinise from the outset the new legal requirements persons responsible will be obliged to comply with.
43. However, in line with the approach taken in clause 5, given the evolving nature of terrorism alongside the changing threat picture, the Government considers it appropriate to include powers to specify additional measures, or to amend or omit existing measures, that must be covered by responsible persons in fulfilling their duties under clause 6. This will allow the requirements to keep pace with the evolving threat picture, thereby ensuring the Bill is delivering on its purpose of improving protective security and preparedness.

Justification for the procedure

44. The draft affirmative procedure is considered appropriate here to enable Parliament to approve the changes in the scope of the required measures; and given that the power enables amendments to be made to primary legislation.

Clause 7(1)(e): Power to specify other information to be documented

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative procedure

Context and Purpose

45. Clause 7 requires that the person responsible for enhanced duty premises or a qualifying event must prepare and maintain a document relating to their public protection measures. This must contain a statement of the measures in place at the premises/event as required by clause 7, and an assessment as to how those measures may be expected to reduce the vulnerability of the premises or event to the risk of acts of terrorism and the risk of physical harm being caused to people if one were to occur.
46. Clause 7(2) requires that the completed document is provided to the Security Industry Authority (the regulator) as soon as possible after it is prepared, or within 30 days if a revision is made to it.
47. Clause 7(1)(e) gives the Secretary of State the power to make regulations to require additional information about the premises, event or responsible person to be included in the document.
48. The document described in clause 7 will be a key element of how enhanced duty premises and events record their compliance with the requirements of the Bill. The document will also assist the regulator in performing its duties.

Justification for the power

49. The purpose of the power contained in clause 7(1)(e) is to allow the Secretary of State to set out what information the document must contain in order to enable the regulator to fulfil their function. The power may be used to require the provision of information such as the name and contact details for specified individuals (for example, the designated senior individual in scenarios where the person responsible for enhanced duty premises or a qualifying event is not an individual), the premises/event location, details of qualifying activities and information on the assessment of how many people it is reasonable to expect may be present at once on the premises/at the event.
50. Specifying this degree of detail, which is highly administrative in nature, is most appropriately done through secondary legislation.

Justification for the procedure

51. Regulations made under this power will be subject to the made negative procedure. Their detail will be administrative and technical in nature as they allow the Secretary of State to require the provision of different types of information about existing procedures and measures. Parliament will have already approved the types of procedures and measures that responsible persons must consider

under this Bill as this is contained in primary legislation, and any subsequent changes to these will be made using the powers in clauses 5(4) and 6(4), both of which are subject to the draft affirmative procedure.

Clause 9(3): Power to specify further matters that the Security Industry Authority must be notified of

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure Made Negative Procedure

Context and Purpose

52. Clause 9 requires persons responsible for qualifying premises and qualifying events to notify the regulator, the Security Industry Authority. Clauses 9(1)-(2) set out the notifications required under the Bill. The purpose of these notifications is to ensure that the regulator is informed of all qualifying events and premises (i.e. those that will be subject to the Bill's requirements) in a timely fashion and that it receives adequate information about those premises and events in order to perform its enforcement functions.

53. Clause 9(3) creates a power for the Secretary of State to specify further matters which the person responsible for qualifying premises or a qualifying event must notify the regulator of, and to specify the time by which any such notification must be given.

54. Clause 9(4) requires persons responsible for qualifying premises and events to update the regulator should any information contained in their notification cease to be accurate. This will only be required if the person is still the responsible person at the time of a notification. This is to prevent a duty applying to an entity that is no longer a responsible person and who is no longer within the Bill's scope.

Justification for the power

55. The power for the Secretary of State to make provision as to what types of information persons responsible for qualifying premises and events must notify of the Security Industry Authority of is an essentially technical and administrative matter, and the level of detail is most appropriately set out in secondary legislation.

56. Limiting the types of required notification to those on the face of the Bill would risk the regulator being hamstrung in future if it were to become apparent that these notifications did not cover all essential information for the regulator to exercise its powers.

Justification for the procedure

57. The ability of the Secretary of State to make provision as to what kinds of information the regulator must be notified of is an essentially technical and administrative matter, and the level of detail is most appropriately set out in secondary legislation.

Clause 9(5): Power to specify the ‘required time’ for notifying the Security Industry Authority

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative Procedure

Context and Purpose

58. Clause 9 requires persons responsible for qualifying premises and qualifying events to notify the regulator, the Security Industry Authority. Clauses 9(1)-(2) set out the notifications required under the Bill. The purpose of these notifications is to ensure that the regulator is informed of all qualifying events and premises (i.e. those that will be subject to the Bill's requirements) in a timely fashion and that it receives adequate information about those premises and events in order to perform its enforcement functions.

59. Clause 9(4) requires persons responsible for qualifying premises and events to update the regulator should any information contained in notifications made under these provisions cease to be accurate.

60. Clause 9(5) creates a power for the Secretary of State to make regulations setting out when the “required time”, i.e. the time by which notification requirements under clauses 9(1), (2) and (4) must be complied with. This power sits alongside the power to modify the content of notifications created by 9(6).

Justification for the power

61. Regulations setting out notification timeframes will be technical in nature and will contain a level of detail that would be appropriate to include in secondary legislation, including how premises that are qualifying premises on commencement are to be dealt with. A delegated power will provide for a degree of flexibility allowing for changes to be made to these timeframes to reflect the operating environment the Security Industry Authority will be working in. For example, if changing circumstances meant that the required time provided for was insufficient for the Security Industry Authority to prepare for and carry out a terrorism protection investigation after being notified. The power will also provide the flexibility to adapt according to the changing circumstances of premises or events in scope.

Justification for the procedure

62. As mentioned above, the ability of the Secretary of State to make provisions as to the detail of notifications under clause 9 is an essentially technical and administrative matter.
63. Given the essentially technical and administrative nature of the use of this power, it is considered the made negative procedure is most appropriate, in line with the approach for similar powers contained within the Bill.

Clause 9(6): Power to specify information required in a notification

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative Procedure

Context and Purpose

64. Clause 9 requires persons responsible for qualifying premises and qualifying events, to notify the regulator the Security Industry Authority. Clauses 9(1)-(2) set out the notifications required under the Bill. The purpose of these notifications is to ensure that the regulator is informed of all qualifying events and premises (i.e. those that will be subject to the Bill's requirements) in a timely fashion and that it receives adequate information about those premises and events in order to perform its enforcement functions.
65. Clause 9(6) provides a power for the Secretary of State to specify certain types of information that a notification must contain or be accompanied by. In particular, the Secretary of State may use this power to require information about the person giving the notification, the designated senior individual (as defined in clause 10) or the relevant premises or event. Clause 9(6) also allows the Secretary of State to make provision to impose requirements about the manner and the form of the notification (for example in a specified digital or physical form). The purpose of this power is to ensure that the types of information the regulator receives about qualifying premises and events can remain relevant.

Justification for the power

66. The power concerns matters that are essentially technical and administrative in nature, and the level of detail is most appropriately set out in secondary legislation.
67. Defining this type of detail on the face of the Bill would risk the regulator being hamstrung in future by having to receive, process and store out-of-date, incomplete, unhelpful or superfluous information. This would potentially place an unnecessary burden on both the regulator and on persons responsible to provide information that the regulator no longer requires or in a sub-optimal form.

Justification for the procedure

68. As mentioned above, the ability of the Secretary of State to make these provisions as to what information, or form, a notification under clause 9 must take, is an essentially technical and administrative matter.
69. Given the essentially technical and administrative nature of the use of this power, it is considered the made negative procedure is most appropriate, in line with the approach for similar powers contained within the Bill.

Clause 18(8): Power to amend the “standard maximum” and “enhanced maximum” financial penalty value

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Draft Affirmative procedure where a financial penalty is increased/decreased by more than is necessary to reflect changes in the value of money; Made Negative otherwise (Henry VIII power)

Context and Purpose

70. The Bill provides the regulator, who is the Security Industry Authority, with a power to levy financial penalties against persons responsible for premises or events in the event of a contravention. This is part of a wider enforcement regime created by clauses 13-23.
71. As set out in clause 18(1)(a) the maximum amount of non-compliance penalty that may be imposed for contravention of a notice under paragraph 3(1)(b) of Schedule 3 (requirement to attend an interview) is £5,000.
72. For other contraventions, the maximum amount of the non-compliance penalty is as follows:
- £10,000 in relation to standard duty premises (clause 18(1)(b), and
 - £18 million or 5% of qualifying worldwide revenue for the person’s most recent complete accounting period (whichever is greater) in relation to enhanced duty premises and qualifying events (clauses 18(1)(c), (2) and (3)). In the event that a person does not have an accounting period or their first accounting period has not ended, the maximum amount is simply £18 million.
73. The power contained in clause 18(8) allows the Secretary of State to amend the maximum penalties that apply in respect of standard duty premises, enhanced duty premises and qualifying events.

Justification for the power

74. The power will enable the Secretary of State to ensure that the maximum amounts of penalties can be updated to reflect changes to economic circumstances and the regulatory environment in which the terrorism protection requirements are enforced by the regulator. For instance, it might be considered

that the maximum amount of the financial penalty for either the standard or enhanced duties no longer proves to be effective in securing compliance.

75. Moreover, putting aside such circumstances, it may become necessary to update the figures in the longer term to reflect inflationary or deflationary pressures. This is particularly crucial for standard duty premises where the Bill does not give an option to impose a penalty that is calculated based on a percentage of the responsible person's revenue.

Justification for the procedure

76. Regulations which merely change the maximum amount of financial penalties to reflect changes in the value of money due to inflationary or deflationary pressures are subject to the negative procedure. Any other changes will be subject to the affirmative procedure. The affirmative procedure is considered appropriate for a non-inflationary change to penalties, as this represents a departure from the overarching policy that Parliament will have approved through passage of the Bill. It is therefore appropriate for Parliament to scrutinise the regulations and confirm its agreement to the proposed penalty levels.

77. The Government considers that the negative resolution procedure is appropriate in circumstances where penalties are being updated in line with the changing value of money, notwithstanding that it is a Henry VIII power. This is because updating fines in line with inflationary pressures should be viewed as a continuation of the status quo and is therefore in accordance with Parliament's intention regarding the impact that the penalty should have.

Clause 19(6): Power to amend the "standard maximum" and "enhanced maximum" daily financial penalty values

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Draft Affirmative procedure where a financial penalty is increased/decreased by more than is necessary to reflect changes in the value of money; Made Negative otherwise (Henry VIII power)

Context and Purpose

78. The Bill provides the regulator, who is the Security Industry Authority, with a power to levy daily financial penalties against persons responsible for premises or events in the event of contravention. This is part of a wider enforcement regime created by clauses 13-23.
79. As set out in clause 19(5) the maximum daily penalty for standard duty premises is £500, and £50,000 for enhanced duty premises and qualifying events.
80. The power contained in clause 19(6) allows the Secretary of State to amend the maximum daily penalties for standard duty premises and enhanced duty premises and events.

Justification for the power

81. The power will enable the Secretary of State to ensure that the maximum amounts of daily penalties can be updated to reflect changes to economic circumstances and the regulatory environment in which the terrorism protection requirements are enforced by the regulator. For instance, it might be considered that the maximum amount of the financial penalty for both standard and enhanced duties no longer proves to be effective in securing compliance.
82. Moreover, putting aside such circumstances, it may become necessary to update the figures in the longer term to reflect inflationary or deflationary pressures.

Justification for the procedure

83. Regulations which merely change the maximum amount of financial penalties to reflect changes in the value of money due to inflationary or deflationary pressures are subject to the negative procedure. Any other changes will be subject to the affirmative procedure. The affirmative procedure is considered appropriate for a non-inflationary change to penalties, as this represents a departure from the overarching policy that Parliament will have approved through passage of the Bill. It is therefore appropriate for Parliament to scrutinise the regulations and confirm its agreement to the proposed penalty levels.
84. The Government considers that the negative resolution procedure is appropriate in circumstances where penalties are being updated in line with the changing value of money, notwithstanding that it is a Henry VIII power. This is because updating fines in line with inflationary pressures represents a continuation of the status quo and is therefore in accordance with Parliament's intention regarding the impact that the daily penalty should have.

Clause 30(1): Power to make further provision about notices

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative

Context and Purpose

85. The Bill provides for the regulator to be able to issue persons responsible for qualifying premises and qualifying events with various notices, which are: compliance notices, information notices, restriction notices, and penalty notices.
86. The power contained in this clause permits the Secretary of State to make regulations about the form or content of such notices or their variation or withdrawal.

Justification for the power

87. The Bill already provides detail of: what must be contained in a notice; procedures for issuing notices; and places limitations on their variation. The ability of the Secretary of State to make further provisions as to what is required as regards notices issued by the regulator is an essentially technical and administrative matter. It is considered necessary to be able to make adjustments over time to reflect any good practice or operational learning once the bill is introduced. Further detail as to the form and content of notices or their variation or withdrawal are appropriate matters to be set out in secondary legislation, rather than on the face of the Bill.

Justification for the procedure

88. Given the essentially technical and administrative nature of the use of these powers, we assess the made negative procedure is appropriate. Parliament will have approved the availability and conditions of the notices to which the regulations relate by virtue of the relevant provisions of this Bill.

Clause 32(a) and Clause 32(b): Power to amend the threshold figure for the minimum number of people who it is reasonable to expect may be present at the same time at standard and enhanced duty premises and qualifying events.

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Draft Affirmative procedure (Henry VIII power))

Context and Purpose

89. A set out in clause 2, to be a qualifying premises, it must (among other conditions) be reasonably expected that from time to time 200 or more individuals may be present on the premises at the same time. To qualify as an enhanced duty premises or qualifying event, this number must be 800 or more.

90. These thresholds have been developed in light of consultation responses, and subsequent engagement with stakeholders and across Government (in particular with its security expertise). The thresholds seek to strike the right balance between the capability and capacity of a premises or event to develop appropriate measures and procedures, and the impacts an attack would potentially have at a premises or event in scope. However, the nature of the terrorist threat is variable and subject to change over time and it is therefore appropriate for this Bill to create powers permitting the levels to be varied.

91. For this reason, the power contained in clause 32(a) gives the Secretary of State the ability to change the threshold set out at clause 2(2)(c) at which premises become qualifying premises. This is subject to a restriction that the threshold cannot be lowered below 100 persons. The lower limit is to prevent this power from being used in a way which would place an undue burden on the smallest premises and events by bringing them within the scope of the requirements.

92. The power contained in clause 32(b) gives the Secretary of State the power to amend the minimum threshold set out in clause 2(3)(a) for enhanced duty premises, and the minimum number of individuals who must be attending the event at any one time for the event to be a qualifying event which is set out in clause 3(d). This is subject to the restriction that neither threshold may be lowered below 500 individuals. As with clause 32(a), the purpose of including this lower limit is to avoid burdensome regulations falling upon premises or events with lesser capability and capacity to take them forward.

Justification for the power

44. The Government will closely monitor and assess the impact of the new regime once implemented to ensure it remains effective in its objective of protecting the public in a way that is proportionate and reasonable. The Government may therefore, with the consent of Parliament by virtue of the draft affirmative procedure, wish to make changes to these thresholds, depending on the nature of the threat, which is not expected to impact all qualifying premises and events uniformly.

45. It is important that the Government is able to do this with the necessary responsiveness and speed in response to changes in the nature or level of the threat from terrorism; and similarly to ensure that the impact on business and other organisations in response to threat remains effective, reasonable and proportionate.

46. The Fire Safety Act 2021, which provided for an affirmative power to change premises to which the Fire Safety Order applies, provides precedent for taking similar powers.

Justification for the procedure

47. The draft affirmative procedure is considered appropriate here given the fact that this is a Henry VIII power and so amends primary legislation. Given the material impact this power could have on premises and events – such as drawing in additional premises and events into the scope of enhanced terrorism duties or reducing the number of premises in scope of standard duties – it is considered appropriate that Parliament has the opportunity to debate the proposals through the draft affirmative procedure.

Clause 32(c): Power to amend Schedule 1 (Specified uses of premises)

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument (Henry VIII power)

Parliamentary Procedure: Draft Affirmative procedure

Context and Purpose

93. Clause 4 provides for the person who is responsible for meeting the requirements in respect of the qualifying premises or qualifying events. Specifically, clause 4(1) states that the responsible person is the person who has control of the premises in connection with their relevant Schedule 1 use; while for a qualifying event it will be the person who will have control over the premises at which the event is to be held. Clause 4 is subject to any provision in Schedule 1 which specifies different provision as regards the person responsible for certain types of premises. For example, if the premises are being used for higher education, paragraph 16 of that Schedule clarifies that the person responsible for the premises is the governing body of the institution.
94. Schedule 1 specifies various uses. If premises are wholly or mainly used for one or more of those uses they will be qualifying premises (provided that various other conditions are met – see clause 2(2)(b).
95. Clause 32(c) provides a power for the Secretary of State to amend Schedule 1 so as to:
- specify further Schedule 1 uses;
 - provide that, in certain cases, premises are to be treated as standard or enhanced duty premises;
 - specify who is the responsible person for certain types of premises; or
 - omit or amend the description of a Schedule 1 use.
96. The purpose of this power is to allow the Secretary of State to amend the Act to provide greater clarity on types of premises in scope or who is responsible for them, or to respond to changes in the terrorist threat. The ability to specify additional uses, as well as remove or amend uses, means that the power could potentially be used to bring both a greater or a fewer number of premises into the Act's scope. The ability to change the categorisation of particular premises is intended to allow the Act to reflect changes to requirements deemed necessary in light of the threat to particular types of premises. The power to specify the responsible person further allows the Secretary of State to provide greater clarity, should it be required, as to the application of the act to responsible persons at certain types of premises.

Justification for the power

97. The Government has provided a high level of detail for different categories of premises on the face of the Bill. However, it views this power as necessary to provide the flexibility to make changes to Schedule 1 activities.
98. The nature and level of the threat from terrorism can evolve and change rapidly, with different behaviours, methods and tactics emerging. It is therefore important that the Government is able to respond quickly if it becomes evident that the threat and risk of physical harm from terrorism at a particular type of premises is increasing or reducing.
99. Furthermore, there may arise new uses of premises that are not contained within the Schedule 1, or types of use within the schedule which require clarification on whether the Act applies or not – for example, developments or

innovations within the arts or hospitality sector could require clarification of whether particular uses fall within the definition of “libraries, museums and galleries etc” or “hotels, etc” at paragraphs 5 and 8 of the Schedule respectively.

100. It may also be the case that, subsequently to the legislation being enacted, it is no longer considered appropriate or necessary for premises in a certain sector to apply all the requirements of the Act (similarly to the rationale for the provisions in Schedule 1 that include places of worship and schools in the standard tier irrespective of how many people may be reasonably expected to be present there at one time).

101. This power ensures that only such premises as can reasonably be expected to put in place procedures or to adopt measures to protect individuals from a risk of physical harm from terrorism are within the scope of the duties.

Justification for the procedure

102. Parliamentary scrutiny and debate via the affirmative resolution procedure in relation to the exercise of this power is appropriate given the fact that, as a Henry VIII power, regulations made under this power may amend Schedule 1. This will ensure that any extension of the Bill, where the Government specifies another primary use and therefore draws additional premises into the scope of the Bill, has explicit parliamentary approval.

Clause 32(d): Power to amend Schedule 2

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument (Henry VIII power)

Parliamentary Procedure: Draft Affirmative procedure

Context and Purpose

103. This clause gives the Secretary of State the power to amend Schedule 2. Schedule 2 specifies the types of premises and events which are excluded from the provisions of this Bill. These include, for example, ones protected by certain existing security legislation.

104. Schedule 2 also excludes events held at places of worship, childcare or primary, secondary or further education premises. This is in accordance with the provision of Schedule 1 which sets out that these types of premises are to be treated as standard tier, even if they may reasonably expect to have more than 800 individuals present at once from time to time.

105. This clause allows the Secretary of State to exclude further premises or events from the application of this Act, or omit or amend existing exclusions under the provisions of Schedule 2.

Justification for the power

106. The Government has provided a high level of detail for different categories of premises on the face of the Bill. However, it views this power as necessary to provide the flexibility to exclude further premises from the Act's scope should it be necessary once the legislation has been enacted.

107. For example, this could be because similar protective regimes or other arrangements have been put in place (by other means), so that it is no longer appropriate or necessary for those premises to apply the requirements of this Bill (which is in line with the rationale for excluding the Parliamentary estates and transport hubs at paragraphs 1, and 2 and 4 of Schedule 2 respectively).

108. Conversely, existing regimes or arrangements subject to Schedule 2 may change such that it is right to bring excluded premises into scope of the duties in order to ensure that they have the right procedures and measures in place to protect the public and mitigate the impact of an act of terrorism.

Justification for the procedure

109. Parliamentary scrutiny and debate via the affirmative resolution procedure in relation to the exercise of this power is appropriate given the fact that, as a Henry VIII power, regulations made under this power may amend Schedule 2. This will ensure that any change to the scope of the Bill has explicit parliamentary approval.

Clause 34(2): Form and content of premises plans for licensing purposes

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative

Context and Purpose

110. Under existing licensing legislation (the Licensing Act 2003 in England and Wales, and the Licensing (Scotland) Act 2005 (asp 16) in Scotland), when a person applies for a premises licence or club certificate, they must provide a layout plan of the premises. This plan is then available to view in a public register held by the licensing authority. These plans can be highly detailed and contain information which could be useful to a person committing or preparing acts of terrorism.

111. Clause 34 allows for Schedule 4 to this Bill to amend this existing licensing legislation in order to restrict the availability of plans of licensed premises in public registers and the disclosure of certain plans of premises not included in those registers. Schedule 4 also provides the ability for licensees who have a plan lodged with the licensing authority which is not compliant with the regulations under 34(2) to apply to replace it with a compliant plan.

112. The power contained in clause 34(2) requires the Secretary of State to make regulations as to the form and content of premises plans for the purposes of the amended licencing legislation that refers to regulations under clause 34(2).

113. Its application is limited by clause 34(3) which requires that the Secretary of State only make regulations for the purpose of restricting the disclosure of information that he or she considers is likely to be useful to a person committing or preparing an act of terrorism.

Justification for the power

114. The purpose of the power contained at 34(2) is to ensure that necessary regulations are put in place where they are called for under amended licencing legislation to avoid incompatibility. This is intended to ensure that the regulatory system created by this Bill remains relevant and reflects changes in best practice regarding terrorism response procedures and the developing nature of the terrorist threat. Making these changes through regulations will allow the Secretary of State to respond more rapidly and efficiently than through amending primary legislation.

Justification for the procedure

115. Regulations made under this power will be subject to the made negative procedure. Their detail will be administrative and technical in nature as they allow for the Secretary of State to amend the requirements for layout plans.

Clause 34(4): Licensing: fees for amending plans of premises

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative

Context and Purpose

116. Under existing licensing legislation (the Licensing Act 2003 in England and Wales, and the Licensing (Scotland) Act 2005 (asp 16) in Scotland), when a person applies for a premises licence or club certificate, they must provide a layout plan of the premises. This plan is then available to view in a public register held by the licensing authority. These plans can be highly detailed and contain information which could be useful to a person committing or preparing acts of terrorism.

117. Clause 34(1) allows for Schedule 4 to this Bill to amend this existing licensing legislation. Schedule 4 includes amendments which make provision to restrict the availability of plans of licensed premises in public registers and the disclosure of certain plans of premises not included in those registers. Schedule 4 then provides the ability for licensees who have a plan already lodged with the

licensing authority which is not compliant with the regulations under 34(2) to apply to replace it with a compliant one. Replacing an existing non-compliant plan is not mandatory.

118. The power contained in clause 34(4) allows the Secretary of State to make regulations specifying the fee for replacing a non-compliant plan with a compliant one within the register, for historical plans.

Justification for the power

119. The purpose of the power contained at 34(4) is to allow the Secretary of State to set the cost for replacing a non-compliant premises plan, which is a degree of technical and administrative detail most appropriate for secondary legislation. This is intended as a future-proofing measure to allow the Secretary of State to adjust the fees as appropriate, for example to reflect inflation.

Justification for the procedure

120. Regulations made under this power will be subject to the negative procedure because this is an appropriate level of scrutiny for changing a level of fee. Their detail will be administrative and technical in nature as they simply allow for the Secretary of State to amend the amount of fee charged for replacing a plan. This reflects the current process under the 2003 Act whereby fees are set and changed by SI through the Negative procedure.

Clause 37: Commencement, transitional and saving provision

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: None

Context and Purpose

121. Clause 37 provides a standard power to make regulations to appoint a date, or dates, for the commencement of provisions of the Bill.

122. As set out in clause 37(2), parts 1 and 2 of the Bill come into force for the purposes of making regulations, on the day on which this Act is passed. For all other purposes they will come into force on such day as the Secretary of State may by regulations appoint. The Secretary of State will be able to appoint different days for different purposes or areas.

123. Subsection (3) provides a standard power to make regulations to make transitional or saving provision in connection with the coming into force of any provision in the Bill. Subsection (4) includes a power for such regulations to make different provision for different purposes or areas.

Justification for taking the power

124. Permitting provisions in the Bill to be brought into force by regulations will afford the necessary flexibility to commence the provisions of the Bill at the appropriate time following Royal Assent, having regard to the need to make any necessary secondary legislation, issue guidance and put in place the necessary systems and procedures to operationalise the Bill, as the case may be. The powers will be exercised with a view to allowing persons responsible for qualifying premises sufficient time to prepare for commencement of their obligations.

125. The power to make transitional or saving provision is often needed when bringing legislative provisions into force, for example, to ensure consistency when transitioning between two legislative regimes.

Justification for the procedure

126. Consistent with common practice, these regulations are not subject to any parliamentary procedure.

Home Office
[December 2024]

[END]