

TERRORISM (PROTECTION OF PREMISES) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

1. The Government has tabled amendments to the Terrorism (Protection of Premises) Bill for Lords Report Stage. These amendments amend existing delegated powers. These amendments would consolidate the existing delegated powers currently in Clauses 5 and 6 into Clause 32, and strengthen the safeguards on the use of these powers and the others already contained in Clause 32. The amendments do not change the procedures attached to each power.
2. This supplementary memorandum updates the relevant sections of the existing Delegated Powers Memorandum to reflect these changes.

Clause 32(1)(ba): 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

3. Clause 5 requires that the person responsible for qualifying premises and events must, so far as is reasonably practicable, ensure that appropriate public protection procedures are in place to further the objective in clause 5(2) of reducing the risk of physical harm in the event of an act of terrorism. Clause 5(3) sets out what these public protection procedures must include.
4. The power now in clause 32(1)(ba) was previously in clause 5(4). It is not a new power. It has been moved to clause 32 and amended. It contains a power that allows for the Secretary of State to specify additional procedures that must be included as public protection procedures when duty holders are fulfilling their requirements under clause 5. The power also allows them to omit, or amend the description of, the existing public protection procedures. Its purpose is to ensure that the requirements can be adapted if there is a significant change in the nature of, or threat from, terrorism.
5. Without the amendment, the power to specify further procedures may be exercised if the Secretary of State considers that the further procedures will reduce the risk of physical harm being caused to individuals; and the power to omit, or amend the description of, procedures may only be exercised if the Secretary of State considers that doing so will not increase the risk of physical harm being caused to individuals. The Government amendments ensure that appropriate safeguards on this power are included, which are included with other powers in clause 32 for ease of understanding by those considering the powers, as well as to promote consistency of the safeguards. Making the powers subject to an amended requirement, which is set out in new

subclauses 32(2)(b) and 32(3)(b). 32(2)(b) requires that the Secretary of State may only use the power to specify further procedures if he or she considers that doing so is necessary for public protection. Clause 32(3)(b) requires that the Secretary of State may only omit, or amend a description of, a procedure if he or she considers that retaining the procedure is not necessary for public protection.

6. Additionally, a new paragraph in clause 32 requires that, before using the regulation-making power in 32(1), the Secretary of State must consult such persons as the Secretary of State considers appropriate.

Justification for the power

7. As detailed in the Bill's original delegated powers memorandum, the overall power is justified as the Bill makes provision for procedures for standard duty premises. These are procedures designed to facilitate the objective of clause 5 as these are things that should be considered and, where appropriate, implemented, so far as is reasonably practicable. Including the procedures on the face of the Bill has rightly allowed Parliamentarians to have the opportunity to properly scrutinise from the outset the new legal requirements, as well as ensuring that the procedures are appropriately focussed to achieve the important public protection outcomes.
8. The existing procedures have been designed in relation to the current terrorism threat landscape, including the ways that acts of terrorism are likely to be carried out. However, the nature of terrorism, including how acts of terrorism may pose a threat to physical safety, may change, potentially quickly. The Government therefore considers it appropriate to include powers to specify additional public protection procedures, or to omit, or amend the description of, existing procedures.
9. Whilst these powers were constrained in the current version of the Bill, the Government considers that these amendments will provide, on the face of the Bill, an important set of safeguards to ensure that these powers, if exercised, are used appropriately and with proper consideration; and only after the Secretary of State has consulted as appropriate.

Justification for the procedure

10. The Government considers that the draft affirmative procedure is still appropriate here to ensure appropriate Parliamentary scrutiny of any changes to clause 5, particularly as this would be an amendment to primary legislation.

Clause 32(1)(bb) "Power to specify, omit or amend public protection measures"

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Draft Affirmative Procedure (Henry VIII power)

Context and purpose

11. Clause 6 requires that the responsible person for enhanced duty premises and qualifying events must, so far as is reasonably practicable, ensure that appropriate public protection measures are in place to further the objective in clause 6(2) of reducing the risk of physical harm in the event of an act of terrorism and reducing the vulnerability of the venue to such acts. Clause 6(3) sets out what these public protection measures must include.
12. The power now in clause 32(1)(bb) was previously in clause 6(4). It is not a new power. It has been moved to clause 32 and amended. It contains a power that allows for the Secretary of State to specify additional measures that must be included as public protection measures when duty holders are fulfilling their requirements under clause 6. The power also allows them to omit, or amend the description of, the existing public protection measures. Its purpose is to ensure that the requirements can be adapted if there is a significant change in the nature of, or threat from, terrorism.
13. Without the amendment, the power to specify further measures may be exercised if the Secretary of State considers that the further measures will reduce the risk of physical harm being caused to individuals; and the power to omit, or amend the description of, measures may only be exercised if the Secretary of State considers that doing so will not increase the risk of physical harm being caused to individuals. The Government amendments ensure that appropriate safeguards on this power are included, which are included with other powers in clause 32 for ease of understanding by those considering the powers, as well as to promote consistency of the safeguards. Making the powers subject to an amended requirement, which is set out in new subclauses 32(2)(c) and 32(3)(c). 32(2)(c) requires that the Secretary of State may only specify further measures if he or she considers that doing so is necessary for public protection. Clause 32(3)(c) requires that the Secretary of State may only omit, or amend a description of, a measure if he or she considers that retaining the measure is not necessary for public protection.
14. Additionally, a new paragraph in clause 32 requires that, before using the regulation-making power in 32(1), the Secretary of State must consult such persons as the Secretary of State considers appropriate.

Justification for the power

15. As detailed in the Bill's original delegated powers memorandum, the overall power is justified as 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. These are measures designed to facilitate the objective of clause 6 as these are things that should be considered and, where appropriate, implemented, so far as is reasonably practicable. Including the measures on the face of the Bill has rightly allowed Parliamentarians to have the opportunity to properly scrutinise from the outset the new legal requirements, as well as ensuring that the measures are appropriately focussed to achieve the important public protection outcomes.

16. The existing measures have been designed in relation to the current terrorism threat landscape, including the ways that acts of terrorism are likely to be carried out. However, the nature of terrorism, including how acts of terrorism may pose a threat to physical safety, may change, potentially quickly. The Government considers it appropriate to include powers to specify additional measures, or omit, or amend the description of existing measures, that must be covered by responsible persons.
17. Whilst these powers were constrained in the current version of the Bill, the Government considers that these amendments will provide, on the face of the Bill, an important set of safeguards to ensure that these powers, if exercised, are used appropriately and with proper consideration; and only after the Secretary of State has consulted with appropriate persons.

Justification for the procedure

18. The Government considers that the draft affirmative procedure is still appropriate here to ensure appropriate Parliamentary scrutiny of any changes to clause 6, particularly as this would be an amendment to primary legislation.

Clause 32(1)(a) and Clause 32(1)(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

19. As set out in the Bill's delegated powers memorandum, Clause 2 provides that, to be 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 in connection with a relevant use. To qualify as enhanced duty premises or as a qualifying event, this number must be 800 or more.

20. 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 premises or events to develop appropriate measures and procedures, and the impacts an attack would potentially have at premises or events 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.
21. For this reason, the power contained in clause 32(1)(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.
22. The power contained in clause 32(1)(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(1)(d). This is subject to the restriction that neither threshold may be lowered below 500 individuals. As with clause 32(1)(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.
23. The Government amendments add a further constraint to this power via new 32(2)(a) and 32(3)(a). These apply the same tests as described above (for the powers to omit, add or amend the public protection procedures and measures). 32(2)(a) requires that the Secretary of State may only increase the threshold figures if he or she considers that doing so is necessary for public protection of the public. Clause 32(3)(a) requires that the Secretary of State may only lower the threshold if he or she considers that the retaining the higher figure is not necessary for public protection.
24. Subclause 32 has also been amended to require that, before using these regulation making powers, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

Justification for the power

25. 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.

26. The Government recognises the potentially significant impacts of some of the changes that could be implemented through this power. The Government's amendments recognise this and are intended to ensure that this power, if exercised, are used appropriately and with proper consideration; and only after the Secretary of State has consulted with appropriate persons.
27. 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.
28. 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. New subclause 32(4) is in line with this.

Justification for the procedure

29. The Government considers that the draft affirmative procedure is still 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.

Other powers in Clause 32

30. As set out in original Delegated Powers Memorandum, clause 32 contains two further powers in addition to those detailed above. These are:
 - Clause 32(1)(c): Power to amend Schedule 1
 - Clause 32(1)(d): Power to amend Schedule 2
31. The government amendments we have tabled do not change the detail of these powers or the associated parliamentary procedure.
32. However, the amendment to introduce a consultation requirement into clause 32 applies. This is the requirement to consult such persons as the Secretary of State considers appropriate to all powers in this clause. The Government considers this is a helpful safeguard, recognising the potentially significant impacts of some of the changes that could be implemented through this power. This further strengthens the safeguards already available.

Home Office
3 March 2025