

DRAFT TERRORISM (PROTECTION OF PREMISES) BILL

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

A. 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 published in draft on 2 May.
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.

B. PURPOSE AND EFFECT OF THE BILL

Overview of the Bill

What the Bill will do

3. A person responsible for qualifying public premises or a qualifying public event will be subject to the terrorism protection requirements set out in the Bill. A person is responsible for qualifying public premises or a qualifying public event if the person has control of the premises or event, both of which must be accessible to the public as described in the Bill. Premises are included by reference to their use and both premises and events must have the minimum capacities specified. Qualifying public premises may be located within other premises, such as a retail store within a shopping centre. The requirements will not apply to premises (or parts thereof) that are used as private dwellings or offices.
4. Qualifying public premises may be either standard duty premises or enhanced duty premises. Enhanced duty premises are those with a public capacity of 800 individuals or more. Standard duty premises are those with a capacity of 100 to 799 individuals. The Bill provides, or allows for provision to be made to provide, for some premises to be treated as standard duty premises when they would otherwise be enhanced duty premises, and vice versa.
5. The requirements which will apply to enhanced duty premises will also apply to qualifying public events. These are public events held at premises that are not qualifying public premises with a capacity of 800 or more individuals, where express permission is required to enter for the purpose of attending the event (with or without payment).
6. The public capacity of premises and events will be determined in accordance with regulations made by the Secretary of State. Such regulations might require the capacity of some types of premises to be determined differently from others.
7. Persons responsible for standard duty premises will be required to undertake what are intended to be low-cost activities which seek to improve protective security and preparedness. They will be required to ensure that relevant workers

are given appropriate terrorism protection training. It is expected that they will be able to utilise free terrorism protection training materials to educate relevant personnel on the threat posed by terrorism, and the actions personnel should undertake in response. Persons responsible for standard duty premises will also be required to undertake a standard terrorism evaluation in which they consider how best to respond in the event of a terrorist event, e.g. procedures to evacuate their premises.

8. Persons responsible for enhanced duty premises or a qualifying public event will also be required to ensure that terrorism protection training is provided to relevant workers at their premises. In addition, they must appoint an individual as the designated senior officer for the premises or event and must complete and regularly review their terrorism risk assessment. In completing this assessment, they will consider the types of terrorist act most likely to occur at or around their premises or event and the 'reasonably practicable' measures that might be expected to reduce the risk of such an act occurring, or the risk of physical harm to individuals as a result of such an act.
9. Persons responsible for enhanced duty premises or a qualifying public event must implement reasonably practicable security measures to reduce the risk of, and harm caused by, terrorist acts occurring at or near the premises or event. Measure must include, for example, those relating to monitoring the premises and vicinity and procedures to be followed in the event of an attack.
10. Persons responsible for enhanced duty premises or a qualifying public event must keep and maintain a security plan, which must also be provided to the regulator. The security plan documents, amongst other things, information about the premises or event, the persons responsible for the premises or event, and information arising out of compliance with the other requirements.
11. Other persons who to some extent have control over premises – whether qualifying public premises or those at which a qualifying public event is to be held - will be under a duty to co-operate with the person responsible for the premises or event under the Bill insofar as it relates to a matter within that other person's control. For example, the person responsible for a store within a shopping centre must comply with the operator of the shopping centre as necessary for the operator to fulfil their duties under the Bill.
12. Persons responsible for both standard and enhanced duty premises will also be responsible for ensuring premises are registered with the regulator. Persons responsible for a qualifying public event will be required to give notice of the event to the regulator.
13. In the event of non-compliance, the regulator will have a range of sanctions to swiftly address non-compliance and impose penalties where appropriate. A credible sanctions regime with suitable sanctions is needed to enable the regulator to secure compliance where a person responsible for qualifying public premises or a qualifying public event refuses to comply or the regulator identifies serious breaches. The Bill will provide the regulator with the ability to impose a range of civil sanctions which will be utilised to address non-compliance, reducing potential harm and, we expect, placing a lower burden on the criminal justice system in providing an alternative to criminal sanctions. Due to the

seriousness of some actions and in line with other regulatory regimes, the Bill will nonetheless also provide for certain criminal offences.

14. The regulator will be able to issue a contravention notice to a person they consider to have contravened, or be contravening, a relevant requirement under the Bill. A notice will require the person to remedy the contravention by taking specified steps or providing evidence as to their compliance.
15. In rare cases, a restriction notice may be issued to a person in relation to enhanced duty premises or a qualifying public event. These notices are to be issued where 1) the regulator believes a person is contravening a requirement of the legislation and 2) it is necessary to impose restrictions on the use of the premises concerned to protect the public from the risk of harm arising from acts of terrorism.
16. The regulator will be able to issue civil monetary penalties. In many cases, it is expected that these will be issued following a failure to comply with a contravention or restriction notice. For standard duty premises, the regulator will have the power to issue a fixed penalty up to a maximum of £10,000. And for enhanced duty premises and qualifying public events, the regulator will be able to issue a maximum fixed penalty of the higher of £18m or 5% of worldwide revenue. It will be possible for the regulator to require payment of daily penalties until a contravention ceases (up to a specified maximum amount), where non-compliance with a requirement persists after the period for payment of the fixed penalty expires.
17. It will be a criminal offence to fail to comply with a contravention notice (unless it relates to standard duty premises) or restriction notice and to provide false or misleading information in compliance, or purported compliance, with a requirement of the Bill.
18. The regulator will be equipped with a set of inspection powers (see Schedule 2) which will ensure that investigations into compliance at qualifying public premises and qualifying public events can take place. The Bill seeks to ensure that inspection activity is not hindered by obstruction or non-compliance with an inspector exercising their powers lawfully. In order to ensure the effective functioning of these powers, the Bill includes criminal offences for failing to comply with an information notice and obstructing an inspector. In addition, the Bill will create a criminal offence for pretending to be an authorised inspector with intent to deceive.

Summary of the measures

19. The Bill includes measures to:
 - a. require that persons responsible for standard duty premises (as set out in clauses 2, 3 and 5) undertake a standard terrorism evaluation concerning the types of terrorist activity most likely to occur at the premises and the measures and procedures in place to mitigate the risk of such activity occurring and resulting in physical harm (clause 11);

- b. require that persons responsible for enhanced duty premises (as set out in clause 2, 3 and 5) or a qualifying public event (as set out in clause 4) undertake a terrorism risk assessment that considers such matters in more detail and the steps that might be taken to mitigate those risks, and to put in place all such reasonably practicable security measures as might cumulatively be expected to reduce the risk of activity occurring and physical harm resulting. These matters should be recorded in a security plan (clauses 12, 15, 17);
- c. require that persons responsible for qualifying public premises or a qualifying public event ensure terrorism protection training is provided to relevant workers (in accordance with clauses 13 and 14);
- d. require that persons responsible for enhanced duty premises or a qualifying public event ensure that a designated senior officer is appointed in respect of the premises or event (clause 16);
- e. require other persons in control, to any extent, of qualifying public premises or premises at which a qualifying public event is to be held cooperate with the persons responsible for those premises under the Bill (clause 18);
- f. permit the regulator to conduct terrorism protection investigations (clause 21 and Schedule 2); and
- g. allow the regulator to take a range of enforcement action (clauses 22 to 35) to secure compliance with the duties, including contravention notices, restrictions notices and penalty notices.

Summary of delegated powers

- 20. The Bill contains 20 delegated powers, of which 3 are “Henry VIII powers”, which enable amendments to primary legislation to be made by regulations and are subject to the affirmative procedure (with one exception, as set out below, where the power may be used to change certain maximum penalties to reflect changes in the value of money).
- 21. The provisions of this Bill are novel, as this is the first time the Government has legislated to place a requirement on publicly accessible venues to reduce the risk of acts of terrorism. Where relevant and appropriate, the Government has used precedent from other safety regimes (e.g. fire safety) in drafting these powers. Broadly speaking, the powers are required to enable the operational and technical delivery of the Bill, as well as allowing it to keep pace with developments in the nature of acts of terrorism.
- 22. Regulation-making powers under the Bill include power to make consequential, supplementary, incidental, transitional or saving provision, or different provision for different purposes or for different areas (by virtue of clause 44). The Bill also contains powers to commence certain provisions by regulations.

Territorial coverage and devolution

23. The Bill extends to England and Wales, Scotland and Northern Ireland except for the amendments to the Licensing Act 2003 (clause 38 and Schedule 3), which extend only to England and Wales.
24. The Bill does not create any powers that are exercisable in areas of devolved competence, or by the devolved administrations.

C. DELEGATED POWERS

Clause 1(1)(a): Power to specify the regulator

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Draft Affirmative procedure

Context and Purpose

25. Clause 1(1)(a) confers a power on the Secretary to State to appoint a public authority as regulator. The regulator is responsible for the Bill's inspection and enforcement regime. The Bill confers various powers and functions on the regulator to enable them to fulfil this function. For example, Schedule 2 enables the regulator to authorise qualified persons to exercise information gathering powers, powers of entry and inspection and apply for and execute warrants to enter premises. The regulator is also critical to the Bill's operation. For example, clause 7 specifies that the regulator is responsible for keeping and maintaining a register of qualifying public premises (premises that meet certain conditions to be subject to the Bill's provisions).

Justification for the power

26. With this power to specify the regulator by way of regulations, the Government is ensuring that the regulator's functions can be fulfilled by the most appropriate body. It allows the Government to continue its thorough consideration and development of proposals for a body to undertake the regulation of the Bill's requirements throughout the process of pre-legislative scrutiny, thereby providing flexibility and ensuring alignment with final policy outcomes.

Justification for the procedure

27. Given the breadth of powers the Bill grants the regulator, their centrality to the effective functioning of the Bill and the regular, significant interactions they will have with qualifying venues, the Government considers it appropriate that Parliament has the opportunity to debate and formally approve the nominated delivery body by way of the draft affirmative procedure.

Clause 5(4)(c): Power to determine the relevant Schedule 1 use where no specified use is predominant

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative procedure

Context and Purpose

18. As explained, and set out in clause 2, to be qualifying public premises those premises must be used for a use or uses specified in Schedule 1 of the Bill. Clause 5 sets out that the person responsible for those qualifying public premises, and so responsible for complying with the requirements of the Bill, is the person who in control of the premises in connection with their relevant Schedule 1 use. The relevant Schedule 1 use is also pertinent to certain other provisions of the Bill, including treating premises with a relevant Schedule 1 use of a particular description as standard duty premises when they would otherwise be enhanced duty premises (or vice versa).

19. "Relevant Schedule 1 use" has the meaning at clause 5(4), which sets out that:

- a. where there is only one use under Schedule 1, it is that uses,
- b. where there is more than use under Schedule, it is the predominant of those uses, and
- c. in a case within paragraph (b) where none of the uses specified in Schedule 1 is the predominant of those uses, the use determined by regulations made by the Secretary of State.

20. It is the Government's view that in most cases the predominant use will be obvious for qualifying public premises. For example, at a church that also hosts entertainment – such as concerts – on certain evenings, use as a place of worship is still the predominant use of the two.

Justification for the power

21. Whilst the Government thinks that in the vast majority of cases the predominant 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 predominant.

22. Given that the Government recognises the possibility of such marginal cases, it is appropriate that the Government ensure that it can make provision to deal with such cases as they arise in the operation of the Bill.

Justification for the procedure

23. The exercise of this power does not change the meaning of qualifying public premises or who is responsible for compliance with the requirements of the Bill in respect of such premises. Rather, it seeks only to deal with cases of unusual application and 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 6(1): Power to determine the public capacity of premises (the maximum number of individuals who can reasonably be accommodated in the public parts of premises)

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative procedure

Context and Purpose

28. The Government has assessed, further to its consultation exercise, that for the purposes of the Bill, capacity is the most useful and tangible measure to set threshold criterion. It considers that capacity is closely linked to the impacts of an attack and the capability and capacity of a premise to take forward requirements.
29. As set out above in relation to clause 2, premises must have a minimum public capacity of 100 individuals to qualify as a 'qualifying public premises' for the purposes of the Bill and be subject to its requirements.
30. As specified in clause 4, qualifying public events are events with a public capacity of 800 or more individuals which are held at premises that are not qualifying public premises as defined in Clause 2(1). Public access to the qualifying public event must be by express permission, whether or not on payment.
31. Clause 3 clarifies that qualifying public premises with a public capacity of 800 or more individuals are enhanced duty premises, which will be subject to the requirements detailed in clauses 12 and 15 to 17 of the Bill as well as the terrorism protection training requirements in clauses 13 and 14. Qualifying public events are also subject to these requirements.
32. These enhanced duties include a requirement for the person responsible for the qualifying public premises or qualifying public event to appoint an individual as the designated senior officer for the premises, carry out a terrorism risk assessment of the premises, put in place reasonably practicable security measures, and prepare and maintain a security plan. These duties are designed to ensure better, consistent; protection is delivered through enhanced security systems, training and processes.
33. The power contained in clause 6(1) gives the Secretary of State the ability to determine how to calculate public capacity. Regulations may, among other things, make different provision in relation to premises, or parts of premises, of different descriptions; make provision by reference to guidance or a document issued by the Secretary of State or another person, and confer functions on the regulator.

34. Recognising that public capacity may be calculated differently for the purposes of this Bill than elsewhere, the purpose of this power is to provide clarity to the persons responsible for potentially qualifying public premises about whether they are in scope of the Bill's requirements and/or subject to enhanced terrorism protection duties by setting out how capacity is to be calculated at premises. This may vary between premises with different primary uses and different parts of premises.

Justification for the power

35. Whilst the Government intends to ensure that public capacity is calculated via regulations comprehensively, fairly and accurately, practical application may result in cases where it is appropriate to change the way in which capacity is calculated. The Government considers that, as putting the method of calculation on the face of the Bill would require another Act of Parliament each time any updates to the calculations are needed, it is appropriate to make provision by way of regulations. Moreover, given the complexity of calculating public capacity for different types of premises, it is highly likely the resulting regulations will contain a level of technical detail not appropriate for primary legislation.

Justification for the procedure

36. Regulations made under this power will be subject to the made negative procedure, as their detail will be administrative and technical in nature and Parliament will have approved the relevant thresholds of public capacity for qualifying public premises, qualifying public events and enhanced duty premises in the Bill (albeit with powers to amend set out in this memorandum).

Clause 7(1)(d): Power for Secretary of State to specify parts of qualifying public premises or a qualifying public event that may be disregarded for purpose of a requirement imposed under Act

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative procedure

Context and Purpose

37. Clause 7 sets out which parts of the premises should be disregarded when determining where the Bill's requirements do not apply. This includes where parts of premises are used as a private dwelling, as an office, or for office purposes, or where a transport security regime applies (as specified in subsections (2) and (3)). Clause 7(1)(d) confers a power on the Secretary of State to specify, via regulations, additional parts of qualifying public premises or a qualifying public event that may be disregarded and therefore exempt from requirements under the Bill.

Justification the power

38. Whilst the Government is satisfied that the uses specified in clause 7(1)(a) to (c) are comprehensive, it is possible that further examples, where it would be sensible to exclude parts of the premises, will emerge at a later date. Having a power to specify these as required provides the Government with the flexibility to ensure the Bill's requirements are sensible and proportionate. If excluded parts of premises were to be specified only in primary legislation, it is likely there would be a considerable gap between identifying the need to exempt parts of premises and the exemption coming into force, creating an unnecessary burden on those responsible for qualifying public premises.

Justification for the procedure

39. The Government considers that the negative procedure affords an appropriate level of parliamentary scrutiny given that the power can only be used to reduce the burden of the Bill's requirements on otherwise qualifying public premises. As the power does not allow for new parts of premises to be included within the scope of the Bill's requirements, its use is unlikely to be controversial.

Clause 8(1)(a): Power to amend qualifying public premises' capacity threshold for standard and enhanced duty premises and to amend the capacity threshold for qualifying public events, and Clause 8(1)(c): Power to apply, disapply and modify requirements under the Act to premises or events of a specified description

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Draft Affirmative procedure (Henry VIII power contained at Clause 8(1)(a))

Context and Purpose

40. Qualifying public premises with a public capacity of 800 or more are, by virtue of clause 3, subject to enhanced terrorism protection duties; outlined in clauses 12 and 15 to 17. The enhanced terrorism duties are detailed above in relation to clause 6 and are not repeated here.

41. Qualifying public events are required to have a public capacity of 800 or more as specified in Clause 4 and are subject to the requirements set out in clauses 12 and 15 to 17.

42. The power contained at 8(1)(a) gives the Secretary of State the ability to change the public capacity threshold to which both standard and enhanced terrorism protection duties apply by amending clause 2(1)(c) or 3(1)(a). The power also gives the Secretary of State the power to amend the capacity threshold for qualifying public events set out at clause 4(1)(c).

43. Clause 8(1)(c) provides a power to apply some, or all of the provisions to apply in relation to premises which they otherwise would not or be disapplied for premises that would otherwise be within scope. The Secretary of State may also make provision to apply particular provisions to some, or all, premises described with modifications. The power can be used to both increase, or reduce the application of the duties.

Justification for the power

44. The nature of the terrorist threat is variable and subject to change over time. The Government, with the consent of Parliament by virtue of the draft affirmative procedure, may wish to disapply elements of the Bill to certain premises or sectors, add new premises to which elements apply, or make changes to the capacity thresholds, depending on the nature of the threat, which is not expected to impact all qualifying public premises uniformly. A delegated power provides the Government with the flexibility to make these changes in a timely manner, allowing it to respond swiftly to developments in acts of terrorism. Additionally, as this is the first time that specifying premises and qualifying powers has been undertaken through legislation, there may be errors of inclusion, or omissions, that need to be corrected at pace. 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 the powers at clauses 8(1)(a) and (c).

45. The Bill places a limit on the use of the power at 8(2), specifying that regulations cannot provide for the Bill's standard duties to apply to premises with a public capacity of less than 100. Similarly, the subsection clarifies that enhanced duties cannot apply to any premises with a public capacity of fewer than 500. This will avoid overly burdensome regulations falling upon premises with lesser capability and capacity to take them forward. Capacity thresholds (and their potential variation) have been developed in light of consultation responses, and subsequent engagement with stakeholders and across Government (in particular with its security expertise). The thresholds arrived at seek to strike the right balance between the capability and capacity of a premise to consider security issues, the responsibility it might entail, and the impacts an attack would have at a premise in scope.

Justification for the procedure

46. As drafted, the power provides the Government with the ability to substantively change the legislative regime by both drawing in additional qualifying public premises into the scope of enhanced terrorism duties and, should the standard duty public capacity threshold be raised, reducing the number of premises in scope of standard duties. Given the material impact this will have on qualifying public premises and their safety regimes, it is considered appropriate that Parliament be given the opportunity to debate the merit of proposals through the draft affirmative procedure. The affirmative procedure is also considered appropriate for a Henry VIII power contained at 8(1)(a).

Clause 8(1)(b): 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

47. The meaning of qualifying public premises under clause 2 and the meaning of qualifying public event under clause 4 have already been described above. Clause 5 identifies the person who, for the purposes of the Bill, is responsible for the qualifying public premises or qualifying public event. Specifically, subsection (1) states that the person is the person who has control of the premises in connection with their relevant Schedule 1 use. Subsection (2) clarifies that where more than one person has control or the premises references in the Bill to the responsible person apply to each such person. Both subsections are subject to any provision in Schedule 1, which specifies the person responsible for premises.
48. The Bill imposes several obligations on the person responsible for qualifying public premises. For example, such a person must ensure that the premises are registered with the regulator. For premises to which the enhanced terrorism protection duties in clauses 12 and 15 to 17 do not apply, the responsible person has a duty to complete a standard terrorism evaluation of the premises, ensure that a copy of this evaluation is available to persons who use the premises as a place of work, and if requested by the regulator, provide them with a copy.
49. Schedule 1 specifies the use of the premises for the purposes of identifying qualifying public premises and a relevant Schedule 1 use thereafter and, in some cases, sets out the persons responsible for premises for different categories of premises. For example, for higher education, paragraph 18 clarifies that the use is for “purposes of a higher education institution” and that the person responsible for the premises is the governing body of the institution. Responsible persons are not designated for all categories of premises. Where a responsible person has not been designated in Schedule 1, then this is determined as set out in clause 5.
50. Subsection 8(1)(b) provides a power to the Secretary of State to amend schedule 1 to: (i) specify a further use of premises; (ii) specify where qualifying public premises should be considered as standard or enhanced duty premises, regardless of how they would otherwise be treated; (iii) specify the person responsible for the qualifying public premises; and (iv) remove or modify a provision of Schedule 1. The ability to specify additional uses, as well as remove uses, means that the power can be used to bring both a greater number and fewer premises into the Bill’s scope.

Justification for the power

51. Whilst the Government has provided a high level of detail for different categories of premises on the face of the Bill, it views the power as necessary to provide

the flexibility to make changes where descriptions are inaccurate, remove premises that are no longer of concern, and make additions where there have been omissions or concern has increased in relation to premises used primarily for a particular purpose. This protects against premises inappropriately falling in or out of the Bill's scope, potentially undermining the Bill's purpose.

Justification for the procedure

52. 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.

Clauses 9(4) and 10(3): Power to make provisions about applications for registration with the Regulator; Power to make provision about notification of qualifying public events to the Regulator

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative procedure

Context and Purpose

53. Clause 9(1) creates a requirement for the person responsible for qualifying public premises to register the premises with the regulator. The purpose of registration is to provide the regulator with a solid foundation of premises identified as being within scope and so readily available for inspection. This will enable an accurate record to be kept of qualifying public premises. It will provide the regulator with some of the basic, initial information it would need to undertake its routine inspection activities and will be a mechanism for the regulator to check and monitor compliance with the Bill.

54. Clause 10(1) creates a requirement that the person responsible for a qualifying public event to ensure that the regulator is notified of the event in accordance with the clause and any regulations under it. As with clause 9, the purpose of such notification is to ensure that the regulator knows the events that will be within scope of the duties and is more readily enabled to undertake inspection of such events.

55. Clauses 9(4) and 10(3) contain powers for the Secretary of State to make regulations about applications for registration and notification of events respectively. 9(4)(a) to (e) provides that those regulations may make particular provision about the form and content of an application, the information that must accompany an application, the way in which an application and supporting documents is to be given, the circumstances in which an application may be withdrawn or treated as withdrawn and the way in which an application may be withdrawn. This is not exhaustive, and 10(3)(a) to (f) makes similar provision for the notification of events.

Justification for the power

56. These powers are needed to ensure that, through an appropriate process of registration and notification, the Secretary of State can require the provision to the regulator of the essential information it needs for its regulatory activity.
57. The Government considers it appropriate for this level of detail to be outlined through regulations, rather than primary legislation, because the processes will be administrative in nature. For example, in relation to qualifying public premises, responsible persons will be required to submit specified information such as naming those responsible, declaring the capacity of premises (in accordance with the designated capacity test) and contact information.
58. As the registration and notification systems develop, amendments may need to be made to the information required from registrants and flexibility will be needed to update application requirements. Secondary legislation is the practical way for detailed requirements to be prescribed and amended in a timely manner.

Justification for the procedure

59. These regulations are subject to the made negative procedure. The Government considers this affords an appropriate level of parliamentary scrutiny, given that Parliament will have already consented to the registration and notification regimes in passing the primary legislation. A negative procedure is considered consistent with other comparable powers to set out application requirements e.g. information to be provided when registering under the Foreign Activities and Foreign Influence Registration Scheme in the National Security Bill.

Clause 9(5): Powers to make provision about the register held by the regulator (i.e. the information held, its maintenance and procedure for removal)

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative procedure

Context and Purpose

60. As explained above in relation to the power contained in clause 9(4), the purpose of the register is to enable the regulator to identify which locations are qualifying public premises and therefore subject to the Bill's requirements. Clause 9(2) states that the regulator must, upon receiving a valid application from the person responsible for qualifying public premises, register the premises.
61. The power contained in clause 9(5) permits the Secretary of State to make, by regulations, provision about the information to be contained in the new register, the updating or revision of information contained in the register and the procedure for removing premises from the register. This will ensure that the register is current and can function efficiently. The type of information captured

in the register will likely include the premises' capacity, address, the name of the responsible person and correspondence details. The information will not be publicly accessible and will be held by the regulator.

Justification for the power

62. Clause 9 sets out the parameters within which the registration process will operate in the future, envisaging, for example, that it will be established how information contained in the register will be updated and removed.
63. The granularity of how the register will function is a level of technical detail more suitable for secondary legislation. Regulations, for example, may make provision for registration to take place via an online form where responses are provided to questions asked by the regulator. The flexibility to amend the register through secondary legislation will allow for it to be strengthened, if for example, the regulator requires additional information to be recorded in order to monitor compliance more effectively.

Justification for the procedure

64. The Government considers that the negative resolution procedure gives Parliament the appropriate level of scrutiny as provisions about the register is a procedural and administrative matter. This is consistent with the procedure applicable to similar powers e.g. the register of building inspectors and building control approvers under the Building Safety Act 2022.

Clause 11(4)(f), and clause 11(5): Power to prescribe other matters in respect of a standard terrorism evaluation and power to specify different forms of standard terrorism evaluation.

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative procedure

Context and Purpose

65. Clause 11 specifies that the person responsible for standard duty premises must complete a standard terrorism evaluation. In the context of the Bill, a standard terrorism evaluation is a document which includes information about a) the types of acts of terrorism most likely to occur on, or in the immediate vicinity of the premises; b) the measures in place in relation to the premises that might be expected to reduce the risk of acts of terrorism of the aforementioned types, occurring on or in the immediate vicinity of the premises; c) the measures in place in relation to the premises that might be expected to reduce the risk of physical harm to individuals if acts of terrorism of those types were to occur on, or in the immediate vicinity of the premises; d) the procedures to be followed in the event that acts of terrorism were to occur on, or in the immediate vicinity of the premises; e) the ways in which individuals who use the premises as a place of work will be made aware of the standard terrorism evaluation and finally any

such matters as the Secretary of State may prescribe in regulations. The evaluation is to be completed in such form as may be specified from time to time in a notice issued by the Secretary of State (and different forms may be specified in such notice for different types of premises).

Justification for the power

66. Due to the ever evolving and diverse threat posed by terrorism, it is challenging to envisage the wide range of information that could be relevant for a standard duty premises to consider when performing a standard duty evaluation in future. Therefore, the Government considers it appropriate to enable the Secretary of State to prescribe further matters that should be considered by the responsible person when undertaking a standard terrorism evaluation. For example, this might arise were there to be a significant change in terrorist attack methodologies or learning from operational experience identifying a significant gap in awareness that would be suitable to be addressed by way of this training.

Justification for the procedure

67. The Government's view is that the principle of the provision is clearly set out on the face of the legislation, and the power is limited by the legislation such as that it may only be used to specify additional matters to be considered when responsible persons undertake an evaluation. Consequently, we do not envisage that the use of this power will be controversial, and view the use of the negative procedure, where Parliament can debate the measures if they choose, to be proportionate.

Clause 12(5)(d), clause 15(3)(e) and clause 17(3)(h): Powers to specify other matters in respect of terrorism risk assessments, security measures, and information required in a security plan

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative procedure

Context and Purpose

68. The context of this power is the same for clause 8 as set out above and is not repeated here. This policy objective is to ensure that persons responsible for qualifying public premises and qualifying public events improve their protective security and organisational preparedness for acts of terrorism. Persons responsible for enhanced duty premises or a qualifying public event will be required to consider the threat from terrorism and implement appropriate, proportionate ("reasonably practicable") mitigation measures. The enhanced duties are the mechanism through which these goals will be achieved.

69. Enhanced terrorism risk assessments, as introduced by clause 12, are assessments of the types of acts of terrorism most likely to occur on, or in the immediate vicinity of, the premises; the reasonably practicable measures that might be expected to reduce the risk of acts of terrorism of those types occurring

on, or in the immediate vicinity of, the premises and the reasonably practicable measures that might be expected to reduce the risk of physical harm to individuals if acts of terrorism of those types were to occur on, or in the immediate vicinity of, the premises.

70. The person responsible for qualifying public premises must complete a terrorism risk assessment and review it each time a material change is made to the premises or its use and within 12 months of the assessment being completed. The person responsible for a qualifying public event must complete the assessment at least 3 months before the event is due to begin. Where details of the events are not yet available to the public 3 months prior the event, the assessment must be complete as soon as reasonably practicable once details are made available and before the event begins. Clause 12(5)(d) includes a power for the Secretary of State to specify other matters that must be covered by the assessment.
71. Clause 15(1) creates a requirement for the responsible person to put in place all such reasonably practical security measures as might be expected to reduce the risk of terrorist acts occurring and physical harm as a result of those acts. As set out in Clause 15(3), these measures must, in particular, include measures in relation to monitoring the premises or event and the immediate vicinity of the premises or event; measures in relation to the movement of individuals into, out of and within the premises or event; measures to relation to the security of sensitive information about the premises or event and procedures to be followed in the event that acts of terrorism were to occur on, or in the immediate vicinity of, the premises or event. Statutory guidance will provide guidance as to what measures might be considered “reasonably practicable” and how the responsible person can ensure that the standard is met. Subsection (3)(e) contains a power for the Secretary of State to specify other matters that must be covered by the measures, in particular.
72. Clause 17 introduces a requirement for the responsible person to prepare and keep up to date a security plan for the premises or event. The plan must be shared with the regulator. This a document setting out particulars of the premises or event to which the plan relates, and the person who for the purposes of this Bill has been appointed the designated senior officer for the premises or event (see clause 16); the findings of the most recent terrorism risk assessment in relation to the premises or event; details of the security measures in place (within the meaning given by clause 15); any security measures in relation to the premises which have been identified as desirable but are not yet in place and details of terrorism protection training provided in accordance with clauses 13 and 14. The Secretary of State has a power at clause 17(3)(h) to specify other matters that must be included in a security plan.

Justification for the power

73. As set out above, a considerable amount of detail about what is required for each enhanced duty is included on the face of the statute. This is appropriate, as it allows for Parliament to fully scrutinise the new requirements persons responsible for qualifying public premises and qualifying public events must meet. However, given the evolving nature of terrorism, the Government considers it appropriate to include powers to specify additional matters that must

be covered by responsible persons in fulfilling their duties. 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 Bill to better fulfil its purpose of improving premises' protective security and preparedness.

Justification for the procedure

74. These powers are all subject to the negative procedure. The Government's view is that the principle of the provisions is clearly set out on the face of the legislation, and the power is limited by the legislation such as that it may only be used to specify additional matters to be covered when responsible persons fulfil their duties, as opposed to altering the frequency they must fulfil said duties, or creating a new type of enhanced duty. Consequently, we do not envisage that the use of this power will be controversial, and view the use of the negative procedure, where Parliament can debate the measures if they choose, to be proportionate.

Clause 14(1)(d): Power to specify other matters in respect of which terrorism protection training must be provided

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative procedure

Context and Purpose

75. Clause 13 requires that terrorism protection training must be provided to relevant workers on a regular basis, and it is for the persons responsible for qualifying public premises to ensure that it is provided. In the context of the Bill, terrorism protection training means a) training in relation to the type of acts of terrorism most likely to occur on, or in the immediate vicinity of, the premises in the event that acts of terrorism were to occur; b) the indications that an act of terrorism may be occurring on, or in the immediate vicinity of, the premises; and (c) the procedures to be followed in the event that acts of terrorism were to occur on, or in the immediate vicinity of, the premises. In addition, clause 14(1)(d) provides a power to specify further matters to be included in terrorism protection training, beyond those already outlined at clause 14(1)(a) to (c).

Justification for the power

76. The nature of the terrorist threat is diverse, and it is difficult to envisage how it may change in future. The Government would like to provide for this power as a means to allow for additional elements of terrorism training to be specified in future, should it prove necessary to do so; for example, were there to be a significant change in terrorist attack methodologies or learning from operational experience identifying a significant gap in awareness that would be suitable to be addressed by way of this training.

Justification for the procedure

77. It is considered that this power is suitable to the negative resolution procedure. Parliament will have considered the appropriateness of imposing a duty in relation to training, and the basic elements of that training, during the passage of the Bill. Additions to the subject-matter of that training are appropriate to be considered by the executive, which has expert competence in matters of national security and counter terrorism. Consequently, we view the use of the negative procedure, where Parliament can debate the measures if they choose, to be proportionate.

Clause 18(2)(e): Power to specify content of a cooperation notice

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative procedure

Context and purpose

78. Clause 18 requires, in relation to qualifying public premises or a qualifying public event, any other person that has, to some extent, control over the qualifying public premises or the premises at which the event is held must cooperate with the person responsible for the premises or event in complying with a requirement of the Bill. This may for example be the owner of the premises, where the owner is not the person responsible under the Bill.

79. Cooperation only applies to matters that are within the other person's control and does not alter who is the person responsible for the purposes of the Bill, as determined by clause 5, but rather acknowledges that various persons will have relevant responsibilities and powers that could frustrate or impede compliance with the duties by the person responsible under the Bill. Where a person under the duty in clause 18 is not already cooperating with the person responsible for the premises or event under the Bill, the clause provides a mechanism for formal notice to be given to the person.

Justification for the power

80. That mechanism is referenced in clause 18(2) as a "cooperation notice" in which the person responsible for the premises or event can formally let the other person know of their obligations. This will allow the person responsible to evidence to the regulator they have sought co-operation. Upon inspection, the regulator can then use the relevant enforcement tools if they consider a premises owner or other relevant third party to not be reasonably co-operating.

81. Whilst subsection 18(2)(a) to (d) details the core components of what the notice must specify, the Government considers it appropriate to include powers to specify additional matters that may be required as part of a notice. Regulations will allow flexibility in making any amendments as the notice process is tested and developed, ensuring that those involved are supported and provided with appropriate means to comply.

Justification for the procedure

82. The Government considers that it is appropriate that regulations made under this power are subject to the made negative procedure, as their detail will be administrative and technical in nature.

Clause 29(4): Power to determine a person’s “qualifying worldwide revenue” in relation to “enhanced maximum” financial penalties

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Made Negative procedure

Context and Purpose

83. To secure compliance with its requirements, the Bill establishes a civil penalty regime. This regime differs between standard and enhanced duty premises. In line with the most recent comparable civil sanctions regimes, and to disincentivise any financial benefit from non-compliance with the Bill, variable monetary penalties can be applied against persons in contravention of a relevant requirement in relation to all qualifying public premises and qualifying public events. Penalties can be issued, for instance, where there is a failure to ensure qualifying public premises are registered, complete a standard terrorism evaluation, and fulfil enhanced terrorism protection duties.

84. Clause 29(4) clarifies that the maximum amount of a fixed financial penalty for premises subject to enhanced terrorism protection duties or qualifying public event under the Bill is whichever is the greater of £18 million or 5% of the person’s qualifying worldwide revenue.

85. The power contained in 29(4) grants a power to the Secretary of State to make regulations as to how the regulator must calculate a person’s qualifying worldwide revenue. Its purpose is to ensure that penalties are set correctly by reference to that revenue. Penalties must be appropriate and proportionate to the contravention under clause 28, but that the intention remains to effectively disincentivise non-compliance with the Bill.

86. Clause 29(5) specifies that the regulations may, in particular, make provision as to: the amounts which are, or which are not, to be treated as comprising a person’s qualifying worldwide revenue; the period by reference to which a person’s qualifying worldwide revenue is to be determined; the circumstances in which a person’s qualifying worldwide revenue may be determined by reference to estimated amounts (including amounts estimated by the regulator); and the determination of a person’s qualifying worldwide revenue (in whole or in part) by reference to accounting rules specified or described in the regulations.

Justification for the power

87. Regulations setting out how qualifying worldwide revenue is to be calculated will be highly technical in nature and will cover a level of technical detail that would

be inappropriate to include on the face of the Bill. A delegated power will provide for a degree of flexibility allowing for changes to be made to calculations, if for example, the method of calculation proves to be outdated or insufficient. This will ensure the penalties are calculated appropriately and stay up to date with changes to any relevant accounting rules to which they may make reference (as they may change from time to time).

Justification for the procedure

88. The regulations will be technical in nature and will only establish how the regulator should calculate qualifying worldwide revenue, rather than setting out the maximum amounts of penalties or determining who is liable to a penalty. We therefore consider that the negative procedure provides the appropriate degree of Parliamentary scrutiny, and this is consistent with the procedure applicable to similar powers to determine how revenue or turnover is calculated, e.g. the calculation of turnover under the Enterprise Act 2002 and, more recently, the Digital Markets, Competition and Consumers Bill.

Clause 29(6): Power to amend the “standard maximum” and “enhanced maximum” financial penalty value

Power conferred on: Regulator and 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

89. As set out above, the Bill provides the regulator with a power to levy penalties against persons responsible for qualifying public premises in the event of contravention and is a crucial element of the sanction framework. Financial penalties are outlined on the face of the Bill. In relation to standard duty premises, the maximum amount is £10,000. For premises subject to the enhanced duties, the maximum amount is the greater of £18 million or 5% of the person’s qualifying worldwide revenue. Clause 29(6) confers a power on the Secretary of State to amend both these maximum penalties.

Justification for the power

90. 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 example, it might be considered that the maximum amount of the financial penalty for standard duty premises no longer proves to be effective in securing compliance or that, given that for enhanced duty premises and qualifying public events the maximum amount is the higher of two amounts (the other being 5% of qualifying worldwide revenue), it may be considered appropriate to lower the figure from £18 million.

91. Moreover, putting aside such circumstances, it may in any event be appropriate to update the figures in the longer term to reflect inflationary pressures. This is particularly crucial for qualifying public premises not subject to enhanced terrorism protection duties, where the amount is fixed and not expressed by reference to revenue.

Justification for the procedure

92. Regulations which change the maximum amounts of the financial penalties by more than is necessary to reflect changes in the value of money are subject to the affirmative procedure. Regulations which merely update penalties to reflect inflationary powers are subject to the negative procedure.

93. 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.

94. 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, given the scope of the power is limited to amendments to clauses 29(2) and (3)(a). Updating fines in line with inflationary pressures should be viewed as a continuation of the status quo, is administrative in nature and is therefore not considered significant enough to warrant the increased scrutiny of affirmative procedure.

Clause 41: 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 procedure

Context and purpose

95. The Bill provides for the Regulator to be able to issue various notices, such as contravention notices, restriction notices and penalty notices as explained above. This clause permits the Secretary of State to make regulations in respect of all the notices under the Bill. In particular, the regulations may concern the form and content of notices and their variation and withdrawal. Their use would not alter the capacity of the regulator to vary or withdraw notices but would be concerned with the form in which that is undertaken.

Justification for the power

96. The ability of the Secretary of State to make these provisions as to what is required of notices issued by the regulator is an essentially technical and administrative matter. Further detail as to their form and content are appropriate matters to be set out in secondary legislation, rather than on the face of the Bill.

Justification for the procedure

97. Given the essentially technical and administrative nature of the use of these powers, they are not considered to require the level of scrutiny that the affirmative procedure would entail. 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. The made negative procedure is considered appropriate.

Clause 46: Commencement and transitional provision

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: None

Context and Purpose

98. Clause 46(2) provides a power to make regulations to appoint a date, or dates, for the commencement of provisions of the Bill. As specified in subsection (1), sections 39 to 47 come into force when the Bill receives Royal Assent. Subsection (2) allows commencement regulations to appoint different commencement dates for different purposes, or different areas.

99. Subsection (3) provides a power to make regulations to make transitional or savings provision in connection with the coming into force of any provision in the Bill. This includes a power to make different provision for different purposes or areas.

Justification for the power

100. Leaving 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. This is a standard power in order to ensure the smooth commencement of new legislation, without creating any undue difficulty or unfairness in making these changes.

101. The powers will be exercised with a view to allowing persons responsible for qualifying public premises sufficient time to prepare for commencement of their obligations.

Justification for the procedure

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