

OFFENSIVE WEAPONS 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 Offensive Weapons Bill (“the Bill”). The Bill was introduced in the House of Commons on 20 June 2018. This memorandum identifies each of the provisions in the Bill that confer powers to make delegated legislation. It explains in each case the purpose of the power, why a delegated power is appropriate and the parliamentary procedure that has been selected.

B. SUMMARY OF THE BILL

2. The Bill deals with three aspects of violent crime – ‘acid attacks’, knife crime and gun crime. It creates new criminal offences relating to the sale of corrosive products to under 18s and the possession of corrosive substances in a public place that might be used in ‘acid attacks’, new criminal offences relating to the sale of corrosive products and knives (and other bladed articles) online, extends and strengthens existing offences relating to the sale and possession of knives and other offensive weapons and prohibits certain firearms under section 5 of the Firearms Act 1968. The issues covered by the Bill are of considerable public concern and attract significant media and parliamentary interest. Recorded knife and gun crime are on the increase and there has been a recent rise in the use of corrosives as offensive weapons causing devastating injuries to victims.
3. The Bill contains the following measures:
 - It creates a new criminal offence of selling a corrosive product to a person under the age of 18. This offence extends to the United Kingdom. What constitutes a corrosive product is set out in Schedule 1 to the Bill.
 - It creates a new criminal offence of possessing a corrosive substance in a public place. Corrosive substance is defined in clause 5(9) of the Bill. In England, Wales and Northern Ireland there is a defence of possessing a corrosive substance for good reason or under lawful authority (reasonable excuse or lawful authority in Scotland). The Bill replicates similar provisions in relation to bladed articles and provides for a minimum custodial sentence in England and Wales where a person is convicted of possessing a corrosive substance a second time.
 - It creates new criminal offences prohibiting the dispatch of bladed products and corrosive products sold online in the United Kingdom to a residential address or locker. The offence on the dispatch of bladed products includes defences for made to order items and for items acquired for sporting and re-enactment purposes. Deliveries to business customers will not be affected by the proposals in the Bill.

- It amends section 141A of the Criminal Justice Act 1988 (prohibiting the sale of bladed articles to those under 18) so that the existing defence of having taken reasonable precautions and exercised due diligence can only be relied on in relation to online sales in the United Kingdom where the seller meets certain conditions in terms of age verification, packaging and delivery of the items. Similarly it amends Article 54 (sale of bladed articles to persons under 18) of the Criminal Justice (Northern Ireland) Order 1996 to set out limitations to the defence of committing an offence under that Article in Northern Ireland.
- It creates a new criminal offence on delivery companies in the United Kingdom of delivering bladed articles on behalf of a seller outside of the United Kingdom to a person under the age of 18.
- It amends the definition of a 'flick knife' in section 1 of the Restriction of Offensive Weapons Act 1959 and Article 53 of the Criminal Justice (Northern Ireland) Order 1996 (the 1996 Order).
- It makes it a criminal offence to possess knives covered by section 1 of the 1959 Act (flick knives and gravity knives) and Article 53 of the 1996 Order and any of the weapons covered by section 141 of the Criminal Justice Act 1988 – these include weapons such as knuckledusters and zombie knives. It provides for the surrender of the prohibited weapons and the compensation of owners. The offence extends to the United Kingdom.
- It extends the existing offence of possessing a knife or offensive weapon on school premises to cover Further Education premises in England and Wales and Northern Ireland.
- It amends the offence of threatening with an offensive weapon in England and Wales under section 1A of the Prevention of Crime Act 1953 to include circumstances where a person is threatened in such a way that a reasonable person would think that there was a risk they would suffer immediate physical harm.
- It prohibits firearms with a high muzzle energy, self unloading rifles and a firearm device known as a 'bump stock' under section 5 of the Firearms Act 1968. It provides for the surrender of these weapons and for the payment of compensation to their owners.

C. DELEGATED POWERS

4. The Bill contains ten delegated powers as set out below. The three delegated powers relating to the prohibition of firearms have been grouped together.

Clause 1(5)(c): Sale of corrosive products to a person under 18

Power conferred on: The Scottish Ministers

Power exercised by: Order made by Scottish statutory instrument

Parliamentary Procedure: Negative

Purpose of the power

5. Clause 1 creates a new offence of selling a corrosive product to a person under 18. Clauses 1(4) to (6) provides that, in Scotland, it is a defence for an accused person to show that (a) they believed the person to whom the corrosive product was delivered to be aged 18 or over, and (b) either they had taken reasonable steps to check the person's age, or no reasonable person could have suspected from the person's appearance that the person was under the age of 18. The clause further sets out what constitute reasonable steps for the purpose of verifying age. It provides that only certain types of document are acceptable as proof of a person's age, namely a passport or a European Union photocard driving licence.
6. Clause 1(5)(c) confers on the Scottish Ministers a power to prescribe by order additional types of document that would be acceptable in establishing a person's age for the purposes of the 'reasonable steps defence'.

Justification for taking the power

7. This power is necessary to future-proof the defence to the new clause 1 offence. It will allow the Scottish Ministers to respond swiftly to any new forms of ID that may in the future be acceptable for verifying age, without the need to use primary legislation to add them into the legislation. This power is consistent with the delegated powers in section 141A(4B)(c) of the Criminal Justice Act 1988 (sale of knives and certain bladed articles to persons under 18) and section 102(4)(c) of the Licensing (Scotland) Act 2005 (sale of alcohol to a child or young person).

Proposed parliamentary procedure

8. Any order made under clause 1(5)(c) would be subject to the negative procedure in the Scottish Parliament. We consider that this procedure provides the appropriate level of parliamentary scrutiny for changes of this nature. It is also consistent with the procedure applying to instruments made under section 141A(4B)(c) of the 1988 Act and section 102(4)(c) of the 2005 Act.

Clause 1(10): Meaning of 'corrosive product'

Power conferred on: Secretary of State and the Department of Justice in Northern Ireland.

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Purpose of the power

9. The power would enable the Secretary of State (in relation to England, Wales and Scotland) and the Department of Justice (in relation to Northern Ireland) to amend Schedule 1 of the Bill by adding, modifying or removing a reference to a corrosive substance or concentration limit.
10. The Bill prohibits the sale of corrosive products to a person under 18. A corrosive product is any product that contains certain acid and alkaline substances above a particular concentration level. Schedule 1 of the Bill lists the relevant substances (together with their unique international identifier – the CAS RN number) and concentration levels. These substances and concentration levels have been arrived at following discussions with the police in England and Wales and Home Office scientific advisers and represent the substances that are most likely to be used as a weapon in an ‘acid attack’ and which are likely to lead to permanent scarring of the victim where that is the case. We have excluded from the schedule substances which are very difficult to obtain and substances at concentration levels that may cause surface damage to an individual but not serious injury. The substances in Schedule 1 will also form the basis for the prohibition on dispatching corrosive products bought online in the United Kingdom to a residential address or locker as set out in clause 3 of the Bill, the provisions in relation to online sale of corrosives at clause 2 of the Bill and the offence of delivering corrosives to an under 18 in the United Kingdom that are bought outside of the United Kingdom at clause 4 of the Bill. Listing the substances on the face of the Bill will enable Parliament to fully consider the types of products that will be banned from sale to under 18s (and prohibited from being delivered to a residential address etc) and to amend these if necessary during the passage of the Bill.

Justification for taking the power

11. Although we believe the substances set out in the Schedule represent those that pose the greatest risk of being used in an ‘acid attack’ at present, it is possible that other substances might become more widely available in time and be used as part of violent crime. Experience may also identify lasting damage to victims through the use of chemicals at lower concentrations than currently set out in the Schedule. The unique international numbers used to identify the substances might change. It is possible that experience will show that limiting the sale of certain substances at a particular concentration level has unintended consequences for business and legitimate activities (particularly in relation to the prohibition on delivery to a residential address) and that concentration levels need to be adjusted to address such a situation.
12. Clause 1(10) therefore provides a delegated power for the Secretary of State and the Department of Justice in Northern Ireland to amend Schedule 1 by regulations made by statutory instrument (or statutory rule in Northern Ireland) . The power would enable new substances to be added to the Schedule and for existing substances and concentration levels to be changed or deleted. The Secretary of State and the Department of Justice would as a matter of good practice consult with each other and the Scottish Government before making any regulations under clause 1(10) but this would not be a statutory requirement.

13. We have included in the Bill the substances (and concentration levels) that will form the basis of the prohibition on the sale of corrosive products to those under 18. We believe this is the right approach to take as it will allow Parliament the opportunity to consider in detail the proposed prohibition. It will also enable Parliament and the Northern Ireland Assembly to amend, if necessary, the substances and concentration levels that will be covered by the prohibition. The alternative would have been to take a power to set out the relevant substances and concentration levels in secondary legislation but this would not have afforded Parliament the same level of scrutiny. Having adopted this approach to enable full parliamentary consideration of the substances to be covered by the prohibition, we think it would be appropriate that any subsequent changes to the substances and concentration levels be done through delegated legislation. The extent of the delegated power will need to cover the addition of substances because operational experience might identify new substances being used to commit acid attacks in future, for example substances which are currently only available to a limited number of specialist users may in future become more widely available (as part of cleaning products for example) and therefore could potentially be bought by those under 18. The power will need to cover the removal of substances in case a particular substance in future no longer presents a risk of it being obtained by those under 18, for example if it is no longer used in cleaning products that might be available to a person under 18. The power needs to cover amending the Schedule to enable the concentration levels to be adjusted if operational experience suggests that lower concentrations have the potential to cause serious injury to victims.
14. Delegated legislation is justified in this case because it will provide the ability to respond quickly should the nature of the harm we are seeking to address (acid attacks) change in future.
15. The proposed delegated power at clause 1(10) is a Henry VIII power because it enables the amendment of Schedule 1 in the Bill. We believe a Henry VIII power is justified in this case because we think it is preferable to set out the corrosive products covered by the prohibition on sale to under 18s on the face of the Bill (rather than through secondary legislation) to enable full parliamentary scrutiny of what is proposed but that it is also necessary to future proof this provision by enabling it to be amended quickly in future should the operational threat change.
16. There is a precedent for this approach under the Poisons Act 1972 which regulates the sale of poisons and explosive precursors. This Act sets out the substances that are to be regulated but includes a delegated power to add, remove or amend the substances by regulations (subject to the affirmative procedure).

Proposed parliamentary procedure

17. The power to make regulations under clause 1(10) falls to the Secretary of State and the Department of Justice for Northern Ireland. Clause 1 of the Bill deals with matters that are devolved under the devolution arrangements with

Northern Ireland. It is therefore appropriate that the Department of Justice has the power to make regulations under clause 1(10).

18. Any statutory instrument or statutory rule made under clause 1(10) would be subject to the affirmative procedure. Clause 37 provides that all Secretary of State and Department of Justice in Northern Ireland powers in the Bill are subject to the affirmative procedure (other than the powers in clause 37 to make commencement regulations or orders or regulations or orders making transitional provision). We believe this is the appropriate level of parliamentary and Northern Ireland Assembly scrutiny given the proposed power is a Henry VIII power and it will enable Parliament and the Northern Ireland Assembly to consider and debate any changes to the substances at concentration levels set out in Schedule 1 of the Bill.

Clause 4(8)(c): Delivery of corrosive products to persons under 18

Power conferred on: The Scottish Ministers

Power exercised by: Order made by Scottish statutory instrument

Parliamentary Procedure: Negative

Purpose of the power

19. Clause 4 creates a new offence of delivering corrosive products to persons under 18, where the products are purchased from overseas sellers (whether online or by mail order or telephone). This offence applies to corporate bodies that deliver corrosive products for overseas sellers. Clause 4(6) to (9) provides that, in Scotland, it is a defence for an accused person to show that (a) they believed the person to whom the corrosive product was delivered to be aged 18 or over, and (b) either they had taken reasonable steps to check the person's age, or no reasonable person could have suspected from the person's appearance that the person was under the age of 18. The clause further sets out what constitute reasonable steps for the purpose of verifying age. It provides that only certain types of document are acceptable as proof of a person's age, namely a passport or a European Union photocard driving licence.
20. Clause 4(8)(c) confers on the Scottish Ministers a power to prescribe by order additional types of document that would be acceptable in establishing a person's age for the purposes of the 'reasonable steps defence'.

Justification for taking the power

21. This power is necessary to future-proof the defence to the new clause 4 offence. It will allow the Scottish Ministers to respond swiftly to any new forms of ID that may in the future be acceptable for verifying age, without the need to use primary legislation to add them into the legislation. This power is consistent with the delegated powers in section 141A(4B)(c) of the Criminal Justice Act 1988 (sale of knives and certain bladed articles to persons under 18) and section 102(4)(c) of the Licensing (Scotland) Act 2005 (sale of alcohol to a child or young person).

Proposed parliamentary procedure

22. Any order made under clause 4 would be subject to the negative procedure in the Scottish Parliament. We consider that this procedure provides the appropriate level of parliamentary scrutiny for changes of this nature. It is also consistent with the procedure applying to instruments made under section 141A(4B)(c) of the 1988 Act and section 102(4)(c) of the 2005 Act.

Clause 16: Defences to offence under clause 15

Power conferred on: Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland.

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Purpose of the power

23. The power (clause 16(7)) would enable the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland to add a new defence to the offence of delivery of a bladed product to a residential premise or a locker under clause 15 of the Bill.

24. Clause 15 of the Bill makes it a criminal offence for a person who sells certain bladed products remotely (online or by mail order or telephone) to dispatch those products to an address that is used solely for residential purposes or to a locker. This approach is intended to complement the offence of selling knives to those under the age of 18, and restrict their ability to purchase knives. Business transactions (for example the sale of knives to a hospital or a business run from a residential address) are not covered by the offence. Clause 16 also provides defences from the offence for certain bladed products. The bladed products that will be covered by the defences are those that have been designed or manufactured to specifications provided by the buyer (for example a hand crafted chef's knife that is made to specific specifications from the chef) or which are intended for sporting or re-enactment purposes. We have made it a defence to dispatch made to order bladed products to a residential address because where they are made to meet personal requirements of an individual buyer it is likely that the buyer will have a relationship with the maker and seller of the item which will mitigate against the risk of them being acquired by a person under 18. We have made it a defence to dispatch bladed products intended for sporting and re-enactment purposes because many of these items can only be used for such purposes (for example a fencing foil) and some of them would be of little use as a weapon in committing crime. Many of these knives and swords are also expensive, making it unlikely that a person under 18 would choose to buy them. The aim of these defences is therefore to limit the impact of the prohibition on dispatch of items to a residential address on personal buyers of some of the more specialised bladed articles. For example, someone who is involved in the sport of fencing would still be able to have fencing swords

(which are not widely available on the High Street) delivered to their home address.

Justification for taking the power

25. Although we believe the defences included in the Bill will significantly limit the impact of the prohibition on individual buyers without increasing the risk of knives being acquired online by a person under 18, it is possible that operation of the prohibition will identify other areas where the prohibition is having a significant impact on buyers of particular types of bladed articles and on the people who make and sell such items. For example, experience might suggest that those who buy and sell antique swords are unduly affected by the prohibition. In such a case we might want to add a new defence.
26. Clause 16(7) therefore provides the Secretary of State, Scottish Ministers and Department of Justice in Northern Ireland with a power to make regulations by statutory instrument (or statutory rule for Northern Ireland) to add a new defence to the Bill.
27. We have included the defences in the Bill because we believe it will allow Parliament the opportunity to consider in detail the proposed prohibition on dispatch of bladed articles to a residential address. It will also enable the national authorities to amend, if necessary, the defences that will apply to the prohibition. The alternative would have been to take a power to set out the defences in secondary legislation but this would not have afforded Parliament the same level of scrutiny. Having adopted this approach to enable full parliamentary consideration of the defences to the prohibition, we think it would be appropriate that any additional defences should be added to the Bill through delegated legislation. We have not included a power to modify the defences in the Bill or to remove them. The extent of the delegated power will need to cover the addition of defences because experience of operating the new criminal offence might identify areas where it is having a significant impact on legitimate sellers and buyers of particular bladed articles.
28. Delegated legislation is justified in this case because it will enable the Government to respond to lessons learned from implementing the measure at clause 15 of the Bill – potentially protecting small businesses from adverse and unintended impacts.
29. The proposed delegated power at clause 16(7) will enable the addition of defences to those set out on the face of the Bill. We think it is preferable to set out the defences on the face of the Bill (rather than through secondary legislation) where possible to enable full parliamentary scrutiny of what is proposed but that it is also necessary to future proof this provision by enabling further defences to be provided quickly in future should experience of implementing the proposals identify unintended consequences.

Proposed parliamentary procedure

30. The power to make regulations under clause 16(7) is vested in the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland as Clause 15 of the Bill deals with matters that are devolved under the devolution arrangements with Scotland and Northern Ireland. It is therefore appropriate that Ministers in the Scottish Government and the Northern Ireland Assembly have the power to make regulations in relation to Scotland and Northern Ireland. The Secretary of State and the devolved administrations would as a matter of good practice consult with each other before making any regulations under clause 16(7) but this would not be a statutory requirement.
31. Any statutory instrument or statutory rule made under clause 16(7) would be subject to the affirmative procedure in Westminster, the Scottish Parliament and the Northern Ireland Assembly. We believe this is the appropriate level of scrutiny and will enable relevant national authorities to fully consider and debate any new defences proposed.

Clause 18(8)(c): Delivery of bladed articles to persons under 18

Power conferred on: The Scottish Ministers

Power exercised by: Order made by Scottish statutory instrument

Parliamentary Procedure: Negative

Purpose of the power

32. Clause 18 creates a new offence of delivering bladed articles to persons under 18, where the articles are purchased from overseas sellers (whether online or by mail order or telephone). This offence applies to corporate bodies that deliver bladed articles for overseas sellers. Clause 18(6) to (9) provides that, in Scotland, it is a defence for an accused person to show that (a) they believed the person to whom the bladed article was delivered to be aged 18 or over, and (b) either they had taken reasonable steps to check the person's age, or no reasonable person could have suspected from the person's appearance that the person was under the age of 18. The clause further sets out what constitute reasonable steps for the purpose of verifying age. It provides that only certain types of document are acceptable as proof of a person's age, namely a passport or a European Union photocard driving licence.
33. Clause 16(8)(c) confers on the Scottish Ministers a power to prescribe by order additional types of document that would be acceptable in establishing a person's age for the purposes of the 'reasonable steps defence'.

Justification for taking the power

34. This power is necessary to future-proof the defence to the new clause 16 offence. It will allow the Scottish Ministers to respond swiftly to any new forms of ID that may in the future be acceptable for verifying age, without the need to use primary legislation to add them into the legislation. This power is consistent with the delegated powers in clauses 1(5) and 4(8) of the Bill,

section 141A(4B)(c) of the Criminal Justice Act 1988 (sale of knives and certain bladed articles to persons under 18) and section 102(4)(c) of the Licensing (Scotland) Act 2005 (sale of alcohol to a child or young person).

Proposed parliamentary procedure

35. Any order made under clause 16 would be subject to the negative procedure in the Scottish Parliament. As with the power in clauses 1 and 4, we consider that this procedure provides the appropriate level of parliamentary scrutiny for changes of this nature. It is also consistent with the procedure applying to instruments made under section 141A(4B)(c) of the 1988 Act and section 102(4)(c) of the 2005 Act.

Clause 25: Payments in respect of surrendered offensive weapons

Power conferred on: Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland.

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Purpose of the power

36. The power would enable the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland to make regulations providing for payment of compensation in respect of weapons surrendered under clause 24.
37. Clauses 20 and 22 of the Bill make it a criminal offence to possess certain offensive weapons. Clause 20 makes it an offence to possess any knife covered by section 1 of the Restriction of Offensive Weapons Act 1959 (flick knives and gravity knives) and the Criminal Justice (Northern Ireland) Order 1996. Clause 22 makes it an offence to possess any weapon covered by section 141 of the Criminal Justice Act 1988 – these weapons are set out in secondary legislation and include weapons such as zombie knives and knuckledusters. There are a number of defences for possession of weapons covered by section 141 of the Criminal Justice Act, including for weapons of historical importance, religious or educational reasons, for museums and galleries and for weapons used for sporting and re-enactment purposes.
38. Clause 24 provides for surrender of the weapons being prohibited under the Bill at a police station.
39. As the criminal offences covered by clauses 20 and 22 will prohibit the possession of certain weapons that are currently lawfully possessed this will interfere with a person's right to peaceful enjoyment of their property under Article 1 Protocol 1 of the ECHR. Deprivation of the use of property in effect amounts to confiscation of property and confiscation without compensation is only justifiable in exceptional circumstances. Clause 25 therefore makes provision to compensate owners of any weapons that are surrendered.

Justification for taking the power

40. Clause 25(2), (4) and (6) provides that the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland must by regulations provide for payments to be made in respect of any weapons that are surrendered in accordance with Clause 24 where certain conditions are met. These conditions are that the person making the claim either owned or had contracted to acquire a weapon on the day that the Bill was introduced in Parliament, and that the possession of that weapon will become unlawful by virtue of the Bill. Clause 25(11) enables any regulations to include provisions restricting eligibility for compensation (including limiting eligibility to the surrender of weapons in a particular timeframe) and the procedure to be followed when making and determining any claim (including what evidence might be needed to support a claim).
41. It is appropriate for delegated legislation to be used to set out the compensation arrangements because the arrangements will contain considerable detail – much of it around procedural matters. The regulations setting out the compensation arrangements will need to cover, for example, details around the process for applying for compensation including who can apply, how they can apply, what forms to use, details on how receipt of surrendered weapons will be recorded, timescales for applications, what information it is necessary for owners to supply to evidence ownership and the appeal mechanism/complaints procedure that owners can follow if they feel their claim has been wrongly handled. The regulations will also need to set out the level of compensation payments available. Setting out this detail on the face of the Bill would unnecessarily lengthen the Bill and take up parliamentary time on the scrutiny of technical and procedural matters. A draft of the proposed regulations to be made under Clause 25(2), (4) and (6) will be available for Committee stage of the Bill in the House of introduction to aid parliamentary consideration of the Bill.
42. There is a precedent for using delegated legislation to set out the details of a compensation scheme. Sections 15 to 18 of the Firearms (Amendment) Act 1997 made provision for a compensation scheme following the prohibition imposed on short firearms following the Dunblane massacre. Although this provided for the compensation arrangements to be set out in a scheme (rather than regulations) made by the Secretary of State, the scheme was subject to approval by Parliament under the affirmative procedure. We have used the Firearms (Amendment) Act 1997 as the model for the provisions in the Bill.

Proposed parliamentary procedure

43. The power to make regulations under clause 25(2), (4) and (6) is vested in the Secretary of State, Ministers in Scotland and the Department of Justice in Northern Ireland. Clauses 20 and 22 of the Bill deal with matters that are devolved to Scotland and Northern Ireland under the relevant devolution arrangements. It is therefore appropriate that Scottish Ministers and the Department of Justice in Northern Ireland have the power to make compensation arrangements in relation to Scotland and Northern Ireland.

44. Any regulations made under clause 25 would be subject to the affirmative procedure in Westminster, the Scottish Parliament and the Northern Ireland Assembly as appropriate. We believe the affirmative procedure will enable the national authorities to consider and debate the detail of the compensation scheme – in particular to ensure that owners are properly compensated for the loss of their property and that public money is being spent appropriately. The affirmative procedure also follows the precedent of the compensation arrangements under the Firearms (Amendment) Act 1997.

Clauses 32: Payments in respect of surrendered firearms other than bump stocks; 33: Payments in respect of prohibited firearms which are bump stocks; and 34: Payments in respect of ancillary equipment

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Purpose of the powers

45. These powers would enable the Secretary of State to make regulations to provide for payments in respect of firearms, bump stocks and ancillary equipment surrendered under clause 31 of the Bill.

46. Clause 28 of the Bill prohibits certain firearms and firearm devices under section 5 of the Firearms Act 1968. These are rifles with a kinetic energy of more than 13,600 joules at the muzzle, rifles from which empty cartridges are automatically ejected and a device known as a 'bump stock' which increases the rate of fire of self loading weapons. Section 5 of the Firearms Act 1968 makes it a criminal offence to possess or supply any firearm covered by the section unless the person has an appropriate certificate from the Secretary of State or Scottish Minister. Clause 29 makes equivalent provision in relation to Northern Ireland.

47. Clause 31 provides for surrender of the weapons and devices being prohibited under the Bill at a police station.

48. The Bill therefore makes provision in Clauses 28 and 29 to prohibit the possession of certain weapons that are currently lawfully possessed and this will interfere with a person's right to peaceful enjoyment of their property under Article 1 Protocol 1 of the ECHR. Deprivation of the use of property in effect amounts to confiscation of property and confiscation without compensation is only justifiable in exceptional circumstances. The Bill therefore makes provision to compensate owners of any weapons that are surrendered.

Justification for taking the powers

49. Clauses 32(3), 33(3) and 34(1) provide that the Secretary of State can make regulations to make payments in respect of any firearms, bump stocks or ancillary equipment that are surrendered in accordance with Clause 31 of the Bill where certain conditions are met. In respect of firearms and bump stocks, these conditions are that the person making the claim lawfully possessed (or had contracted to acquire) the weapon or bump stock on the date of introduction, and that the possession of that weapon or bump stock will become unlawful by virtue of the Bill. In respect of ancillary equipment, the person making the claim must have possessed the equipment on the date of introduction or had contracted to acquire it before or on that date. Clauses 32(8) and 33(9) and 34(7) enables any regulations to include provisions restricting eligibility for compensation (including limiting eligibility to the surrender of weapons in a particular timeframe), the procedure to be followed when making and determining any claim (including what evidence might be needed to support a claim) and the surrender and disposal of ancillary equipment.
50. We believe it is appropriate for delegated legislation to be used to set out the compensation arrangements because the arrangements will contain considerable detail – much of it around technical and procedural matters. The regulations setting out the compensation arrangements will need to cover, for example, details around the process for applying for compensation including who can apply, how they can apply, what forms to use, details on how receipt of surrendered weapons/equipment will be recorded, timescales for applications, what information it is necessary for owners to supply to evidence ownership and the appeal mechanism/complaints procedure that owners can follow if they feel their claim has been wrongly handled. The regulations will also need to set out the level of compensation payments available. A draft of the proposed regulations to be made under Clauses 32, 33 and 34 will be available for Committee stage of the Bill in the House of introduction to aid parliamentary consideration of the Bill.
51. There is a precedent for using delegated legislation to set out the details of a compensation scheme. Sections 15 to 18 of the Firearms (Amendment) Act 1997 made provision for a compensation scheme following the prohibition imposed on short firearms following the Dunblane massacre. Although this provided for the compensation arrangements to be set out in a scheme (rather than regulations) made by the Secretary of State, the scheme was subject to approval by Parliament under the affirmative procedure. We have used the Firearms (Amendment) Act 1997 the model for the provisions in the Bill.

Proposed parliamentary procedure

52. The power to make regulations under clauses 32, 33 and 34 are vested in the Secretary of State because firearms are a reserved matter under the relevant devolution arrangements.

53. Any regulations made under these clauses would be subject to affirmative procedure. We believe the affirmative procedure will enable Parliament to consider and debate the detail of the compensation scheme – in particular to ensure that owners are properly compensated for the loss of their property and that public money is being spent appropriately. The affirmative procedure also follows the precedent of the compensation arrangements under the Firearms (Amendment) Act 1997.

Clause 39: Commencement

Power conferred on: Secretary of State, Scottish Ministers and Department of Justice in Northern Ireland

Power exercised by: Regulations (or Order in Northern Ireland)

Parliamentary Procedure: None

Purpose of the power

54. Clauses 39(1), 39(2) and 39(3) enable the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland to commence those provisions in the Bill that do not come into force on Royal Assent by commencement regulations or a commencement order. Clauses 39(6), 39(7) and 39(8) enable the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland to make by regulations or an order any transitional, transitory or saving provisions needed in relation to the coming to force of a provision.

Justification for taking the powers

55. It is envisaged that different measures in the Bill will be commenced at different times. This is necessary to ensure that any measures which impact on business are commenced on one of the two common commencement dates and that other provisions only come into force once the any guidance or training that may be required have been put in place. Transitional provision in connection with commencement will also be needed.

Proposed parliamentary procedure

56. In line with the usual approach for commencement and transitional provision, regulations under this clause are not subject to Parliamentary procedure.

Home Office

Date: 20th June 2018