

COUNTER TERRORISM AND SECURITY BILL

DELEGATED POWERS

MEMORANDUM BY THE HOME OFFICE

Introduction

1. This Memorandum identifies the provisions of the Counter Terrorism and Security Bill which confer powers to make delegated legislation, and explains in each case why the power has been taken and the nature of, and reason for, the procedure selected. This Memorandum is prepared by the Home Office with input from the Department for Transport.

The Bill is in seven Parts as follows:-

Part 1

Provides for two regimes which may be used to temporarily restrict travel. The first permits certain officers to seize and temporarily retain travel documents where there are reasonable grounds to suspect that a person is at a port with the intention of leaving Great Britain or the UK for the purpose of engaging in terrorism related activity outside the UK or intends to leave the for such a purpose soon. The second enables the Secretary of State to impose a Temporary Exclusion Order on an individual who is outside the UK (but has a right of abode in the UK) and who the Secretary of State reasonably suspects is involved in terrorism related activities overseas. The purpose of the Temporary Exclusion Order is to protect members of the public in the UK, and while the Order is in force, the individual may only enter the UK with the permission of the Secretary of State (except in deportation cases).

Part 2

Makes amendments to the measures which may be imposed under the Terrorism Prevention and Investigations Act 2011. It also increases the threshold for imposing a TPIM so that the Secretary of State has to be satisfied on the balance of probabilities that the person is or has been engaged in terrorism-related activity and increases the penalty for breach of a travel measure.

Part 3

Amends the Data Retention and Investigatory Powers Act 2014 to provide for retention of relevant internet data.

Part 4

Provides a power to enable the Secretary of State to establish "authority to carry schemes". These are schemes which require a carrier to seek authority from the Secretary of State to carry passengers on an inward or outward bound ship, aircraft or train. Such a scheme may

provide that authority will be refused in respect of a specified class of passenger. The schemes may be backed up by regulations which impose penalties for breach. The Secretary of State is also given powers to make regulations which require carriers to provide passenger, crew and service information to the Secretary of State or the police and create a penalty regime for non-compliance with the requirements for carriers to provide such information. Part [4] also makes amendments to the Aviation Security Act 1982, the Aviation and Maritime Security Act 1990 and the Channel Tunnel (Security) Order 1994 to enhance the Secretary of State's powers to direct special security requirements on aeroplanes and trains entering or leaving the UK and vessels intending to enter a UK harbour.

Part 5

A duty is placed on various specified authorities to have regard to the need when discharging their functions to prevent people from being drawn into terrorism.

A duty is placed on local authorities to ensure the existence of panels to consider providing and where appropriate, arrange for provision of, support to people identified to them by the police as being vulnerable to being drawn into terrorism.

Part 6

Inserts a new offence at section 17A of the Terrorism Act 2000 to criminalise the making of payments under an insurance contract where those payments are made in respect of money or other property provided in response to a demand made wholly or partly for the purposes of terrorism.

Amends paragraph 9 of Schedule 7 to the Terrorism Act 2000 to clarify the locations in which examining officers (in practice, the police) are permitted to exercise the power to examine goods to determine whether they have been used in the commission, preparation or instigation of acts of terrorism. Also ensures lawful authority under the Regulation of Investigatory Powers Act 2000 for the Schedule 7 power to be used in respect of postal items.

Part 7

Contains a power to set up a board (the "Privacy and Civil Liberties Board") to support reviewers of terrorism legislation and makes provision for the Special Immigration Commission to review certain naturalisation decisions. Part 7 also contains powers to make consequential, transitional and financial provisions and deals with extent and commencement.

PART 1 – TEMPORARY RESTRICTIONS ON TRAVEL

Clause [1 (td01)] introducing Schedule [1 (td01s)], paragraphs [18 and 19]: duty to issue code of practice

Power conferred on:	The Secretary of State
Power exercisable by:	Regulations
Parliamentary procedure:	Made Affirmative for the first exercise of the power, Affirmative for any subsequent revision of the Code of Practice

Introduction

2. Paragraph [2] of Schedule [1 (td01s)] to the Bill provides a power for a constable (or an immigration or customs officer who is designated for the purpose or who is acting upon the direction of a constable) to seize travel documents from a person at a port, or in the border area, if the constable or designated officer has reasonable grounds to suspect that the person (a) is there with the intention of leaving the United Kingdom for the purpose of involvement in terrorism-related activity or (b) has arrived in the United Kingdom with the intention of leaving it soon for that purpose.

3. Paragraph [18] of Schedule [1 (td01s)] imposes a duty on the Secretary of State to issue a code of practice dealing with various matters, including the procedure for designating immigration officers or customs officials as qualified officers or accredited officers, the training to be undertaken by persons who are to exercise powers under the Schedule; the exercise by constables, immigration officers or customs officials of functions conferred on them by virtue of the Schedule; the information to be given to a person in whose case the power to retain a travel document has been exercised; and details of the procedure for review by senior police officer of the decision to authorise retention of travel documents. Constables, immigration officers and customs officials are required to discharge their functions in accordance with the code, a draft of which must be consulted upon before being issued. The draft code must be laid before Parliament and then may be brought into operation by regulations made by statutory instrument; paragraph [19(3)].

Effect of the provision

4. The code is a significant document since it will set out important details regarding how the powers in Schedule [1 (td01s)] are to be exercised in practice. The code will be the primary document that officers will consult when exercising the new powers. It is therefore a significant means by which safeguards can be established against arbitrary use of the new powers. Paragraph [19] of Schedule [1 (td01s)] provides the mechanism by which Parliament scrutinises the content of the code.

Justification of the Delegation

5. The code of practice will contain details about how the travel document seizure power and ancillary powers in Schedule [1 (td01s)] are to be exercised by those responsible for using the powers. It is not appropriate to provide for this level of detail on the face of the Bill. Providing for these details to be contained in a code provides greater flexibility for future changes to be made if it is thought appropriate that further provision is required as to the way the powers in the Schedule should be exercised.

Justification of the level of Parliamentary Scrutiny

6. Schedule [1 (td01s)] provides the authorities with significant powers. The code represents a means of safeguarding against abuse of these powers, by providing detailed instruction about how they are to be exercised in a manner which is compliant with EU and human rights law. Constables, immigration officers and customs officials are obliged to follow the code. Since the code plays an important part in ensuring these significant powers are exercised in an appropriate and lawful manner, it is appropriate that Parliament has the opportunity to scrutinise and debate the code.

7. The Schedule [1 (td01s)] powers are to be commenced the day after Royal Assent. In order for the safeguards in the code to apply to the exercise of those powers immediately, it is necessary for the code to be commenced in tandem with the powers themselves. Therefore the regulations that bring the first code into operation are subject to the made affirmative procedure. Any subsequent regulations bringing into operation any revised code will be subject to the affirmative procedure.

Clause [10(1) (CREO91(1))]: Giving of notices

Power conferred on: The Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Negative

Introduction

8. Clause [10 (CREO91(1))] provides a power for the Secretary of State to make provision, by regulations, about: first, the giving of notice of the imposition of a temporary exclusion order to the person on whom it is imposed; and, second, the giving of notice to an individual subject to a temporary exclusion order of the imposition of certain obligations on that individual. The regulations may, in particular, make provision about cases in which notice is deemed to have been given.

Effect of the provision

9. The provision allows the Secretary of State to set out how she will give notice to individuals that they are subject to a temporary exclusion order, and that they are subject to certain obligations pursuant to the exclusion.

10. A notice of the imposition of a temporary exclusion order is significant because the order will only come into force when notice of its imposition is given. The regulations will be able to make provision for cases in which notice is deemed to have been given. This is necessary because a temporary exclusion order may be imposed on someone who is taking part in terrorism-related activity outside the UK to whom it is not possible to give actual notice.

Justification of the delegation

11. Provisions concerning the giving of notice in both the nationality and the immigration contexts are generally made in regulations. Section 41(1)(e) of the British Nationality Act 1981 (“the 1981 Act”) provides that the Secretary of State may, by regulations, make provision for the giving of any notice required or authorised to be given to any person under that Act. This includes notice about matters affecting a person’s citizenship, including a decision by the Secretary of State to deprive a person of their citizenship. Section 10(10)(b) of the Immigration and Asylum Act 1999 (“the 1999 Act”), as amended by the Immigration Act 2014, provides that the Secretary of State may, by regulations, make provision about the service of a removal decision in respect of the family members of a person who is to be removed from the United Kingdom. Section 105 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), as amended by the Immigration Act 2014, provides that the Secretary of State may, by regulations, make provision about service of notice of an appealable decision.

12. Notices in respect of temporary exclusion orders will be served in a similar way to notices in respect of deprivations under the 1981 Act, the removal of family members under the 1999 Act, and appealable decisions under the 2002 Act. It is therefore appropriate that the Secretary of State should be able to make regulations in respect of such notices.

Justification of the level of Parliamentary Scrutiny

13. The level of Parliamentary Scrutiny proposed in respect of notices concerning the imposition of temporary exclusion orders is the same as that already provided for by Parliament in respect of deprivations under the 1981 Act (see section 41), the removal of family members under the 1999 Act (see section 166), and appealable decisions under the 2002 Act (see section 112). It is appropriate that regulations concerning notices relating to temporary exclusion orders should be subject to the same scrutiny procedures as these comparable regulations.

Clause [10(3) (CREO91(3))]: legislation relating to passports

Power conferred on: The Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Negative

Introduction

14. Clause [10(3) (CREO91(3))] provides that the Secretary of State may make regulations providing for legislation relating to passports or other identity documents to apply (with or without modifications) to permits to return giving permission to individuals subject to a temporary exclusion order to return to the United Kingdom.

Effect of the provision

15. The provision allows the Secretary of State to apply to permits to return legislation relating to passports.

Justification of the delegation

16. Permits to return have effect as a form of passport. They confirm the holder's identity for the purposes of border and security checks. They confirm that the holder has permission to return to the UK. It is therefore appropriate that the Secretary of State should be able to apply legislation relating to passports to permits to return.

Justification of the level of Parliamentary Scrutiny

17. The provisions on temporary exclusion orders contain substantive provisions relating to passports. But these appear on the face of the provisions and will be subject to extensive scrutiny. By contrast, the proposed level of Parliamentary Scrutiny in this delegated power is considered appropriate because permits to return are effectively a form of passport. Parliament will be fully aware of what the Executive can do and the negative procedure gives it the option of scrutinising if members feel that the delegated power is not being used appropriately; rather than requiring Parliament to debate.

PART 4 – AVIATION , SHIPPING AND RAIL

Clause [18(1) (atc01(1))]: Authority-to-carry schemes

Power conferred on: Secretary of State

Power exercisable by: Statutory Scheme

Parliamentary Procedure: Laid only

Introduction

18. Clause [18(1) (atc01(1))] provides the Secretary of State with a power to establish a statutory authority-to-carry scheme or schemes covering both inbound and outbound travel to, or from, the UK. This replaces the existing authority to carry provisions at section 124 of the Nationality, Immigration and Asylum Act 2002. The scheme currently established under that provision is the Security and Travel Bans Authority to Carry Scheme 2012, and is referred to at regulation 2(1) of the Nationality, Immigration and Asylum Act 2002 (Authority to Carry) Regulations 2012.

Effect of the Provision

19. These powers enable the Secretary of State to establish a scheme or schemes applying to specified categories of carriers and in respect of specified classes of passengers, and enable the Secretary of State to refuse a carrier authority to carry a person into or out of the UK.

Justification of the Delegation

20. It is appropriate that the Secretary of State has this flexibility as the categories on whom these obligations should be imposed, those who fall within the scope of the scheme and the purposes for which authority to carry may be refused will vary over time and it is therefore important that any scheme or schemes can be altered quickly in response to legislative change, increased security threat and many other factors. Parameters for the scheme are set out on the face of the Bill. For example, a scheme may only provide that a class of passengers will be refused authority to travel where it is necessary to do so in the public interest.

Justification of the level of Parliamentary Scrutiny

21. The scheme is not subject to any parliamentary procedure on the basis that there will be provision on the face of the Bill providing guidance as to the circumstances in which a class of passenger may be specified for the purposes of the scheme. The provision sets out the types of requirements that any scheme may impose and the means by which data may be collected. Authority to carry schemes made under section 124 of the Nationality, Immigration and Asylum Act 2002 (which clause [18] [atc01] will replace) are not subject to any parliamentary scrutiny. In order for the sanctions associated with any scheme to take effect the scheme will, as now, need to be cited in the secondary legislation setting out the detail of the civil penalty regime. This secondary legislation will be subject to the affirmative procedure (see below) and, in practice, will be made on the same day on which the scheme is made. This procedure will ensure that Parliament is fully informed of the use of the power.

Penalty for breach of authority-to-carry scheme clause [19 (atc02)]

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Introduction

22. Clause [19(1) (atc02(1))] gives the Secretary of State a power to make regulations imposing penalties for breaching the requirements of an authority-to-carry scheme.

Effect of the provision

23. These regulations will identify the authority-to-carry scheme to which they refer and may not be laid unless the Secretary of State has laid the scheme before Parliament. The regulations may make provision about how a penalty is to be calculated, the procedure for imposing a penalty, the enforcement of penalties and the scope for appeal against a decision to impose a penalty. Regulations must provide for a carrier to be given an opportunity to object to a proposed penalty.

Justification of the Delegation

24. The proposed delegation of the power to create a penalty regime to the Secretary of State mirrors the approach adopted in section 124 of the Nationality, Immigration and Asylum Act 2002. The regulations will be supported by non-statutory guidance regarding the level of penalty. It is anticipated that this will be similar to the guidance issued to support the 2012 scheme and regulations. In light of the fact that the approach is to mirror this existing model, the Government considers that the approach provides the appropriate degree of Parliamentary Scrutiny. It is intended to have a consistent approach to the provisions for establishing new civil sanctions across the Bill and to rely on this model throughout. This approach is in part adopted because the regulations will necessarily be detailed and because it is a structure with which carriers will already be familiar.

Justification of the level of Parliamentary Scrutiny

25. The regulations are subject to the affirmative procedure. The proposed approach will provide Parliament with the opportunity to scrutinise and debate the enforcement mechanism for the authority to carry scheme created by the Secretary of State and it is considered that this provides the appropriate level of scrutiny.

Clause [20 (atc03)]: Amendments to the Immigration Act 1971 (clause 20(2), Schedule [2 (atc03s)], Part [1], Paragraph [1(3)]

Power conferred on: Secretary of State

Powers exercisable by: Direction in writing

Parliamentary procedure: None

Introduction

26. Paragraph [1(3) of Schedule 2] inserts a direction making power for the Secretary of State to make a direction to a carrier to be able to receive communications from an immigration officer in such form and manner as the Secretary of State may direct into paragraph 27B of Schedule 2 to the Immigration Act 1971. It is a criminal offence not to comply with the directions without reasonable excuse and will also be punishable by civil penalty.

Effect of the Provision.

27. Paragraph 27B(8) already enables the Secretary of State to require carriers to provide passenger and service information in such form and manner as the Secretary of State may direct. This direction making power enables the Secretary of State to direct that the carrier must communicate information using an interactive system which can receive communications relating to the information they supply.

Justification of the Delegation

28. This power is an adjunct to the existing direction making power at paragraph 27B(8) regarding form and manner. In keeping with the approach already adopted, it is considered appropriate that the directions model should continue to be used.

Justification of the Level of Parliamentary Scrutiny

29. The lack of formal Parliamentary scrutiny and procedure with regard to these directions is justified. It assists in maximising flexibility so that the requirement can be imposed in different circumstances for different carriers and different communication systems can be specified.

Clause [20] (atc03): Provision of passenger, crew or service information to the Secretary of State or an immigration officer [Clause 20(2), Schedule 2, Part 1, Paragraph 1(4) [atc03s]]

Power conferred on: Secretary of State

Powers exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Introduction

30. Paragraph [1(4)] of Schedule [2] inserts this regulation making power into Schedule 2 of the Immigration Act 1971. This new provision enables the Secretary of State to place a standing requirement on owners or agents of specified categories of ships or aircraft to supply passenger, crew and service information.

Effect of the provision

31. These regulations will enable the Secretary of State to require passenger, crew and service information from specified categories of unscheduled journeys made by aircraft and

vessels by way of a standing requirement as opposed to service of a written notice. The requirements imposed by the regulations may include provision of the specified data, the time by which it must be supplied and the form and manner in which it must be supplied. This can be used to capture information about those categories of unscheduled journeys where there will not be a great deal of advance notice of intention to travel.

Justification of the Delegation

32. It is not intended that this power should apply uniformly to all categories or modes. Flexibility is required to ensure that the correct data requirements are made of the appropriate categories of journey in the most suitable form and manner and to ensure that there can be a flexible response to the changing needs of the sector.

Justification of the level of Parliamentary Scrutiny

33. These regulations potentially have a significant impact for this sector. There will be particular concerns on the burdens any such requirements may place on leisure travellers and it is appropriate that Parliament has the opportunity to scrutinise and debate the regulations.

Clause [20(2) (atc03): Penalty for failure to provide passenger, crew or service information to the Secretary of State or an immigration officer, Schedule 2 (atc03s), Part 1, Paragraph 1(4)]

Powers conferred on: Secretary of State

Powers exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Introduction

34. Paragraph [1(4) of Schedule 2] amends Schedule 2 to the Immigration Act 1971. This new provision provides powers to make regulations imposing penalties for failure to comply with requirements to provide passenger, crew and service information.

Effect of the provision

35. These regulations will enable the Secretary of State to impose a penalty on a person who fails to comply with data requirements under paragraphs 27 & 27B of Schedule 2 to the Immigration Act 1971 and under new paragraph 27BA of Schedule 2. Regulations may make provision about how a penalty is to be calculated, the procedure for imposing the penalty, the enforcement of penalties and any procedure for appeal against a decision to impose a penalty as well as different provision for different purposes. Provision will be made for objection to the penalty. The regulations will be supported by non-statutory guidance regarding the level of penalty.

Justification of the Delegation

36. It is considered appropriate to mirror the approach adopted in relation to the regulations setting out the civil sanctions regime made under section 124 Nationality, Immigration and Asylum Act 2002 which set out these matters by regulations rather than on the face of the primary legislation. This approach is in part adopted because the regulations will necessarily be detailed and because it is a structure with which carriers will already be familiar.

Justification of the level of Parliamentary Scrutiny

37. The regulations are subject to the affirmative procedure. The proposed approach will enable Parliament to scrutinise the framework and it is considered that this provides the appropriate level of scrutiny.

Clause 20 [atc03]: Regulations requiring information to be provided to the police [Clause 20(2), Schedule 2 [atc03s], Paragraph 7]

Power conferred on: Secretary of State

Powers exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Introduction

38. Paragraph [7] of Schedule [2] inserts this new regulation making power (section 32A) into the Immigration, Asylum and Nationality Act 2006. This new provision enables the Secretary of State to place a standing requirement on owners or agents of specified categories of ships or aircraft to supply passenger, crew and service information to the police.

Effect of the provision

39. These regulations will enable the Secretary of State to require passenger, crew and service information from specified categories of unscheduled journeys made by aircraft and vessels by way of a standing requirement as opposed to service of a written notice. The requirements imposed by the regulations may include provision of the specified data, the time by which it must be supplied and the form and manner in which it must be supplied. This can be used to capture information about those categories of unscheduled journeys where there will not be a great deal of advance notice of intention to travel.

Justification of the Delegation

40. It is not intended that this power should apply uniformly to all categories or modes. Flexibility is required to ensure that the correct data requirements are made of the appropriate categories of journey in the most suitable form and manner and to ensure that there can be a flexible response to the changing needs of the sector.

Justification of the level of Parliamentary Scrutiny

41. These regulations potentially have a significant impact for this sector. There will be particular concerns on the burdens any such requirements may place on leisure travellers and it is appropriate that Parliament has the opportunity to scrutinise and debate the regulations.

Clause [20(2) (atc03): Penalty for breach of section 32 or section 32A [Clause 20(2), Schedule 2 (atc03s), Paragraph 7]

Powers conferred on: Secretary of State

Powers exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Introduction

42. Paragraph [7] of Schedule [2] inserts new enabling power section 32B into the Immigration, Asylum and Nationality Act 2006. This new provision provides powers to make regulations imposing penalties for failure to comply with requirements to provide passenger, crew and service information to the police.

Effect of the provision

43. These regulations will enable the Secretary of State to impose a penalty on a person who fails to comply with data requirements under sections 32 and 32A of the Immigration, Asylum and Nationality Act 2006. Regulations may make provision about how a penalty is to be calculated, the procedure for imposing the penalty, the enforcement of penalties and any procedure for appeal against a decision to impose a penalty as well as different provision for different purposes. Provision will be made for objection to the penalty. The regulations will be supported by non-statutory guidance regarding the level of penalty.

Justification of the Delegation

44. It is considered appropriate to mirror the approach adopted in relation to the regulations setting out the civil sanctions regime made under section 124 Nationality, Immigration and Asylum Act 2002 which set out these matters by regulations rather than on the face of the primary legislation. This approach is in part adopted because the regulations will necessarily be detailed and because it is a structure with which carriers will already be familiar.

Justification of the level of Parliamentary Scrutiny

45. The regulations are subject to the affirmative procedure. The proposed approach will enable Parliament to scrutinise the framework and it is considered that this provides the appropriate level of scrutiny.

Clause [20(3) (atc03)]: Aviation Security Directions (Schedule [2 (atc03s), Paragraph 9(3)]

Power conferred on: Secretary of State

Power exercisable by: Direction in writing

Parliamentary procedure: None

Introduction

46. The amendment to section 12 of the Aviation Security Act 1982 enhances the direction making power of the Secretary of State to make directions in relation to aircraft for the purpose of the protection of aviation from acts of violence.

47. The Act provides that directions must be in writing. They may also be made so as to relate either to all persons or only to one or more persons, or persons of one or more specified descriptions, and either to property of every description or only to particular property, or property of one or more specified descriptions.

48. It is a criminal offence not to comply with a direction.

Effect of this Provision

49. Section 12(1)(b) of the Aviation Security Act 1982, which enables the Secretary of State to make directions that an aircraft may not fly in the event that searches of the aircraft itself are not carried out, is widened so that the Secretary of State may also make directions that an aircraft may not fly in the event that searches of passengers or property are not carried out. Prior direction making power in relation to searches of passengers or property only carried the prohibition that said passengers or property may not be brought in the vicinity of the aircraft unless searched.

50. In addition, the current prohibition on “flying” unless specified searches are carried out, is replaced with a prohibition on “flying in or into the UK” unless specified searches are carried out.

Justification of the Delegation

51. This is an amendment to an existing power of direction. In keeping with the rest of the Act, it is considered appropriate that the directions model should continue to be used.

Justification of the Level of Parliamentary Scrutiny

52. The lack of formal Parliamentary scrutiny and procedure with regards directions in the aviation sector is justified:

a) in the light of the ever evolving nature of threats to aviation, in order to maximise the flexibility as to whom, what and where aviation security measures should apply; and

(b) in order to comply with the UK’s obligations under the Chicago Convention on International Civil Aviation that contracting States must have legislation which is sufficiently

flexible in order to be able to legislate quickly in relation to threats to the security of civil aviation.

53. In addition, these powers may only be exercised for the limited purpose of preventing acts of violence against aviation. This provides a significant check on the circumstances in which they are used.

Clause [20(3) (atc03)]: Aviation Security Service Provisions (Schedule [2 (atc03s)], Paragraph 9(5)]

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

Introduction

54. Clause [20(3) and paragraph 9(5) of Schedule 2] amend the requirements in the Aviation Security Act 1982 in relation to service of directions and notices in order to give the Secretary of State the power to make regulations in relation to electronic service.

Effect of this Provision

55. The regulations will enable the Secretary of State to make regulations in relation to electronic service by methods not already contemplated in the Aviation Security Act 1982 and may make different provision for different cases.

Justification of the Delegation

56. It is considered appropriate to adopt this approach because technological advances and future electronic systems requirements upon transport carriers, which may be imposed by law, cannot yet be defined.

Justification of the Level of Parliamentary Scrutiny

57. The regulations are subject to the negative procedure. The regulations relate to the more administrative matter of service by electronic means and this issue is left to secondary legislation in order to enable flexibility in relation to emerging technology: it is not considered a matter for which Parliamentary scrutiny by affirmative resolution is necessary.

Clause [20(3) (atc03)]: Aviation Security Civil Sanctions [(Schedule 2 (atc03s), paragraph 11)]

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative resolution

Introduction

58. Clause [20(3) (which gives effect to paragraph 11 of Schedule 2)] provides powers to make regulations imposing penalties for failure to comply with directions and information requests made under Part 2 of the Aviation Security Act 1982.

Effect of this Provision

59. These regulations will enable the Secretary of State to impose a penalty on a person who fails to comply with a direction under sections 12 to 14 of the Aviation Security Act 1982 or a request for information under section 11 of that Act. Regulations may make provision about how a penalty is to be calculated, the procedure for imposing the penalty, the enforcement of penalties and any procedure for appeal against a decision to impose a penalty as well as different provision for different purposes. Provision will be made for objection to the penalty. The regulations will be supported by non-statutory guidance regarding the level of penalty.

Justification of the Delegation

60. It is considered appropriate to adopt this approach because the regulations will necessarily be detailed and because it is a structure with which aircraft operators will already be familiar from applicable immigration legislation.

Justification of the Level of Parliamentary Scrutiny

61. The regulations are subject to the affirmative procedure. The proposed approach will enable Parliament to scrutinise the framework by which sanctions may be imposed (including a maximum level of sanction) and it is considered that this provides the appropriate level of scrutiny.

Clause [20(3) (atc03)]: Maritime Security (Schedule [2 (atc03s), Paragraph 12(3)]

Power conferred on: Secretary of State

Power exercisable by: Direction in writing

Parliamentary procedure: None.

Introduction

62. The amendment to section 21 of the Aviation and Maritime Security Act 1990 constitutes an expansion of the existing power to make directions, to encompass ships which appear to the Secretary of State to be likely to enter a UK harbour. This is an expansion of a power which currently applies only to UK ships and ships within a harbour. In addition, the direction making power is amended so that ships can be prevented from entering a UK harbour unless specified searches have been carried out.

63. The Act provides that directions must be in writing. It may be given so as to relate either to all persons or only to one or more persons, or persons of one or more specified descriptions, and either to property of every description or only to particular property, or property of one or more specified descriptions.

64. Failure to comply with a direction (without reasonable excuse) is an offence.

Effect of the Provision

65. The Secretary of State will now be empowered to make written directions in relation to a wider category of ships than previously, and to additionally prevent a ship from entering a harbour. This is in the nature of an emergency power.

Justification of the Delegation

66. This power has been taken as we do not wish to nominate categories of persons and property to be searched in the legislation itself, as this would provide insufficient flexibility to respond to emerging threats. The direction provides maximum flexibility to provide an appropriate security response to threats as they arise.

Justification of the level of Parliamentary Scrutiny

67. No Parliamentary scrutiny is proposed, and this is in line with the existing direction making power. These directions are not made subject to scrutiny because they often need to be made very quickly in order to respond to specific threats with no time for scrutiny to occur. These powers can only be exercised for limited specified statutory purposes, being the protection against acts of violence of ships, of persons or property on board ships, and of harbour areas, or persons or property in harbour areas. This provides a significant check on the circumstances in which they are used.

Clause [20(3) (atc03)]: Maritime Security Service Provisions (Schedule [2 (atc03s), Paragraph 12(5)]

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution

Introduction

68. Clause 20(3), which gives effect to Schedule [2, paragraph 12(5)], amends the requirements in the Aviation and Maritime Security Act 1990 in relation to service of directions and notices in order to give the Secretary of State the power to make regulations in relation to electronic service.

Effect of this Provision

69. The regulations will enable the Secretary of State to make regulations in relation to electronic service by methods not already contemplated in the Aviation and Maritime Security Act 1990, to require persons to accept electronic service in a manner and form specified in the Regulations and may make different provision for different cases.

Justification of the Delegation

70. It is considered appropriate to adopt this approach because technological advances and future electronic systems requirements upon transport carriers, which may be imposed by law, cannot yet be defined. In addition, electronic service may not be a suitable option for some carriers but this would require further investigation.

Justification of the Level of Parliamentary Scrutiny

71. The regulations are subject to the negative procedure. The regulations relate to the more administrative matter of service by electronic means and this issue is left to delegated legislation in order to enable flexibility in relation to emerging technology: it is not considered a matter for which Parliamentary scrutiny by affirmative resolution is necessary.

Clause [20(3 (atc03))]: Rail Security Directions (Schedule [2 (atc03s), Paragraph 13(3)]

Power conferred on: Secretary of State

Power exercisable by: Direction in writing

Parliamentary procedure: None

Introduction

72. The amendment to article 13 of the Channel Tunnel (Security) Order 1994 enhances the direction making power of the Secretary of State to make directions in relation to Channel Tunnel trains for the purpose of the protection of international rail from acts of violence. It provides that the Secretary of State will have the power to prevent the entry of a train into UK territory unless searches of persons or property on the train have been carried out.

73. The Order provides that directions must be in writing. They may also be made so as to relate either to all persons or only to one or more persons, or persons of one or more descriptions, specified in the direction, and either to property of every description or only to particular property, or property of one or more descriptions, so specified.

74. It is a criminal offence not to comply with a direction.

Effect of this Provision

75. Article 13(1)(b), which enables the Secretary of State to make directions that a Channel Tunnel train may not be put into service or moved in the event that searches of the train itself are not carried out, is widened so that the Secretary of State may also make directions that a train may not be put in to service or moved in the United Kingdom in the event that searches of passengers or property are not carried out.

Justification of the Delegation

76. This is an amendment to an existing power of direction. In keeping with the rest of the Order, it is considered appropriate that the directions model should continue to be used.

Justification of the Level of Parliamentary Scrutiny

77. No Parliamentary scrutiny is proposed, and this is in line with the existing direction making power. These directions are not made subject to scrutiny because they deal with sensitive matters and may need to be made quickly in order to respond to specific threats with no time for scrutiny to occur. These powers can only be exercised for limited specified purposes, being the protection of rail against acts of violence. This provides a significant check on the circumstances in which they are used.

Clause [20(3) (atc03)]: Rail Security Service Provisions (Schedule [2 (atc03s), Paragraph 13(4)]

Power conferred on: Secretary of State
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Introduction

78. [Paragraph 13(4)], amends the requirements in the Channel Tunnel (Security) Order 1994 in relation to service of directions and notices in order to give the Secretary of State the power to make regulations in relation to electronic service.

Effect of this Provision

79. The provision will enable the Secretary of State to make regulations in relation to electronic service by methods not already contemplated in the Channel Tunnel (Security) Order 1994. The regulations may make different provision for different cases.

Justification of the Delegation

80. It is considered appropriate to adopt this approach because technological advances and future electronic systems requirements upon transport carriers, which may be imposed by law, cannot yet be defined.

Justification of the Level of Parliamentary Scrutiny

81. The regulations are subject to the negative procedure. The regulations relate to the more administrative matter of service by electronic means and this issue is left to delegated legislation in order to enable flexibility in relation to emerging technology: it is not considered a matter for which Parliamentary scrutiny by affirmative resolution is necessary.

Clause [20(3)(atc03)]: Rail Security (Schedule [2 (atc03s), Paragraph 14]

Power conferred on: Secretary of State
Power exercisable by: Order
Parliamentary procedure: Affirmative or Negative

Introduction

82. This power relates to the amendment to the Channel Tunnel (Security) Order 1994 inserted by paragraph [14] of Schedule [2] to this Bill.

Effect of this Provision

83. This power allows the Secretary of State to amend or revoke the provision inserted by this Bill through an Order, whether following the negative or the affirmative resolution procedure.

Justification of the Delegation

84. The Channel Tunnel (Security) Order 1994 is delegated legislation, made under section 11 of the Channel Tunnel Act 1987. The amendment made to it by this Bill could therefore be made by Order under the 1987 Act, and such an Order would be subject to either the negative or the affirmative resolution procedure, at the Secretary of State's election. On this occasion, it has been considered that using the Bill to amend it would allow for proper parliamentary scrutiny of the measures proposed, while minimising the impact on parliamentary time. Nonetheless, once the provision is made, it will be expedient for it to be subject to the same kind of amendment or revocation process as the rest of the 1994 Order. This is justified by the evolving nature of the requirements of the Channel Tunnel, including threats to its security. Parliament already shown, in 1987, that it wanted ministers to have the power to regulate international rail security by Order.

Justification of the Level of Parliamentary Scrutiny

85. This is the level of parliamentary scrutiny already provided for, in relation to the rest of the Channel Tunnel (Security) Order 1994, by section 34 of the Channel Tunnel Act 1987.

PART 5 – RISK OF BEING DRAWN INTO TERRORISM ETC

Clause [22(1) (p01A(1))]: power to amend Schedule [3 (p01s)]

Power conferred on:	The Secretary of State
Power exercisable by:	Regulations
Parliamentary procedure:	Affirmative (but negative in cases where the amendment merely reflects the demise or change in name of a body or a transfer of functions) [(clause 22(4) (p01A(4)))]

Introduction

86. Clause [22(1) (p01A(1))] of the Bill provides a power for the Secretary of State to amend Schedule [3 (p01s)], which contains a list of the authorities which are subject to the duty contained in clause [21(1) (p01(1))]. This duty requires the specified authorities, in the exercise of their functions, to have due regard to the need to prevent people from being

drawn into terrorism. The power is subject to certain limitations and conditions: under clause [22(2) (p01A(2))] the power may not be exercised in respect of various bodies, such as the Houses of Parliament, the Security Service, the Secret Intelligence Service, and the Government Communications Headquarters; and clause [23 (p01B)] makes provision concerning the addition of Welsh and Scottish authorities to Schedule [3 (p01s)]. Before adding any Welsh or Scottish authorities to Schedule [3 (p01s)], the Secretary of State must consult the Welsh Ministers and the Scottish Ministers, as appropriate.

Effect of the provision

87. The effect of this power is to enable the Secretary of State both (a) to add bodies to the list, in cases where, for example, new bodies are established and it is considered appropriate that they should be made subject to the duty or experience shows that it is appropriate for bodies which exist when the Bill is passed to be made subject to the duty; and (b) to remove bodies from the list, in cases in which it ceases to be appropriate for the body in question to be subject to the duty.

88. The power also enables the Secretary of State to remove a body from the list of those subject to the duty if the body in question has ceased to exist, to amend the reference to a body where it has changed its name, or to amend the reference where there has been a transfer of functions.

Justification of the Delegation

89. It is appropriate that the Secretary of State should be able to determine whether any new bodies that come into being and which are not listed in Schedule [3 (p01s)] should be subject to the duty to have due regard to the need to prevent people from being drawn into terrorism, or, following the passage of time, whether existing bodies should be brought within the scope of the duty. The delegated power to add existing bodies, is, however appropriately limited, by the exclusion of certain listed bodies, for example Parliamentary bodies and the security services. It is also appropriate that the Secretary of State has the flexibility to remove bodies from the list if it is no longer appropriate for them to be subject to the duty (whether because they have ceased to exist, their function have been transferred or for other policy reasons). The power is also necessary to permit revisions to the descriptions of bodies since these may change in the future and this would otherwise render the list in Schedule [3 (p01s)] inaccurate.

Justification of the level of Parliamentary Scrutiny

90. The duty in clause [21(1) (p01(1))] is a significant statutory obligation which has potentially far-reaching consequences for the way those bodies subject to the duty discharge their functions. The power permits any person to be added to the list, not just those which exercise public functions. It is therefore appropriate that additions to the list of those who are required to abide by that duty are subject to Parliamentary debate. It is also appropriate that if the Secretary of State considers it is no longer appropriate for a body to be subject to this significant duty, Parliament is afforded the opportunity to debate that assessment. Clause [22(3) (p01A(3))] accordingly requires that these categories of amendments to Schedule [3

(p01s)] are subject to the affirmative procedure. However, administrative amendments which are required in consequence of a body ceasing to exist or changing its name, or a transfer of functions, do not warrant an affirmative procedure; clause [22(4) and (5) (p01A(4) and (5))] provides that such changes to the list are subject to the negative procedure.

Clause [24(1) p03(1)]: power to issue guidance

Power conferred on:	The Secretary of State
Power exercisable by:	Issuance of guidance
Parliamentary procedure:	None

Introduction

91. Clause [24(1) (p03(1))] provides a power for the Secretary of State to issue guidance to bodies listed in Schedule [3 p01s] about the exercise of their duty under clause [21(1) (p01(1))]. It is not subject to any Parliamentary procedure. Clause [24 (p03)] arguably provides a power for the Secretary of State to make delegated legislation since specified authorities will be obliged to have regard to the contents of the guidance, which will include important details as to what is required of different categories of bodies in order to comply with the duty in clause [21(1) (p01(1))]. Failure to follow the guidance could therefore give rise to an assessment that a specified body has failed to comply with its statutory duty in clause [21(1) (p01(1))].

Effect of the provision

92. Clause [24 (p03)] gives the Secretary of State power to issue guidance to which bodies listed in Schedule [3][p01s] must have regard in the performance of their duty under clause 21(1) [p01(1)]. The guidance will, in effect, indicate the steps that will be expected of such bodies in terms of compliance with the duty.

Justification of the Delegation

93. The duty in clause 21(1) [p01(1)] is to apply to a very wide range of bodies which have very different functions. It would be inappropriate to specify in primary legislation the different steps that each category of body is expected to take in order to comply with the duty. It is more appropriate to engage in a wide-ranging consultation (see the consultation duty clause [24(4) (p03(4))]) in order for the Government to come, as far as possible, to an agreed view with those different categories of bodies as to what steps should (and can in practical terms) be taken in order to prevent people from being drawn into terrorism.

Justification of the level of Parliamentary Scrutiny

94. Clause [24(4) (p03(4))] imposes a duty on the Secretary of State, before issuing any guidance under clause [24(1) (p03(1))], to consult Welsh and/or Scottish Ministers so far as the guidance relates to the devolved Welsh/Scottish functions of Welsh and/or Scottish authorities; and to consult any other person whom the Secretary of State considers

appropriate. In light of this, and the fact that while the specified authorities must have regard to the guidance, they are not required to follow it in all cases, we do not believe it is necessary for the issuance of the guidance to be subject to any Parliamentary scrutiny. (It is uncommon for statutory guidance to be subject to Parliamentary approval). The guidance must be published (see clause [24(8) (p03(8))], and will therefore be readily accessible.

Clause [25 (p02)]: power to give directions

Power conferred on: The Secretary of State

Power exercisable by: Direction

Parliamentary procedure: None

Introduction

95. Clause [25(1) (p02(1))] provides that the Secretary of State may issue directions to a specified authority listed in Schedule [3 (p01s)] where satisfied that the specified authority has failed to discharge the duty imposed on it by clause [21(1) (p01(1))], for the purpose of enforcing the performance of that duty. Clause [25(2) (p02(2))] provides that a direction given under this power may be enforced, on an application made on behalf of the Secretary of State, by a mandatory order. The power is not subject to any Parliamentary procedure. Clause [25 (p02)] provides the Secretary of State with a mechanism for making delegated legislation since any directions issued would amount to legal obligations which could be enforced through the courts. It is viewed as the key mechanism by which compliance with the duty in clause [21(1) (p01(1))] would be enforced.

Effect of the provision

96. The power to give directions is intended to be used, for example, to require a particular body such as a specific district Council, to take steps to ensure its compliance with the duty in clause [21(1) (p01(1))]. If the direction relates to the devolved Welsh/Scottish functions of a Welsh/Scottish authority, the Secretary of State must consult the Welsh or Scottish Ministers, as appropriate, before making it. This power is modelled on the power contained in section 497 of the Education Act 1996, which allows the Secretary of State to declare that any body to which that section applies has failed to discharge a duty imposed by that Act, and to issue a direction, enforceable by court order, for the purpose of enforcing performance. This power is not subject to any Parliamentary procedure.

Justification of the Delegation

97. It is appropriate that the Secretary of State should have powers to direct those persons who are failing to meet the duty in clause [21(1) (p01(1))] to take specific steps so as to enforce performance of the duty in circumstances where it is assessed that there has been a default. This is an important mechanism by which compliance with this duty could be enforced.

Justification of the level of Parliamentary Scrutiny

98. It would not be appropriate to require the giving of such directions to be subject to Parliamentary oversight. Parliament will have scrutinised the list of those bodies which are to be subject to the duty in clause [21(1) (p01(1))] already and it would be disproportionate for Parliament also to have to review and authorise each single direction that the Secretary of State chooses to give to particular bodies to secure their effective compliance with that duty. To require this would blunt the effectiveness of the power, making the Secretary of State less able to respond swiftly to compliance failures.

Clauses [28(7) (C01(7)) and 30(6) (C03(6))]: powers to issue guidance

Power conferred on: The Secretary of State

Power exercisable by: Issuance of guidance

Parliamentary procedure: None

Introduction

99. Clause [28(7) (C01(7))] imposes a duty on panels in place by virtue of clause [28(1) (C01(1))] to have regard to any guidance given by the Secretary of State about the exercise of panels' functions. Clause [30(6) (C03(6))] imposes a duty on partners of a panel to have regard to any guidance given by the Secretary of State about the carrying out of that duty. If the guidance is to relate to panels in Scotland and/or Wales, the Secretary of State must consult the Welsh and/or Scottish Ministers, as appropriate, before issuing it. The Secretary of State's powers to issue the guidance referred to in these provisions arguably provide powers for the Secretary of State to make delegated legislation since panels and panel partners are under a legal duty to have regard to the provisions in such guidance.

Effect of the provision

100. These provisions impose duties on panels and partners of panels to have regard to guidance issued by the Secretary of State concerning the exercise of their respective functions.

Justification of the Delegation

101. It is necessary and appropriate for the Secretary of State to have the power to issue such guidance, which will assist those persons required to perform functions under the statutory obligations contained in clauses [28 (C01) and 30 (C03)] to do so effectively.

Justification of the level of Parliamentary Scrutiny

102. Although the panels and the partners of panels are required to have regard to the guidance, they are not required to follow it in all cases. Given its restricted status, it is not

regarded as necessary to subject the guidance to Parliamentary scrutiny. Guidance of this nature is not generally subject to Parliamentary scrutiny and there is no reason for the guidance contemplated by these clauses to be subject to different procedural requirements. As an example, guidance issued under section 78 of the Care Act 2014 is not subject to any Parliamentary scrutiny.

Clause [31(1) C06(1)]: power to amend Chapter 2

Power conferred on:	The Secretary of State
Power exercisable by:	Regulations
Parliamentary procedure:	Affirmative (but negative in cases where the amendment merely reflects the demise or change in name of a body, or a transfer of functions) [clause 31(6) and (7) (C06(6) and (7))]

Introduction

103. Clause [28(1) (C01(1))] imposes a duty on each local authority to ensure that a panel of persons is in place for its area with the function of assessing the extent to which certain individuals referred to it by the police are vulnerable to being drawn into terrorism; and, where appropriate, to offer support to the individual for the purpose of reducing that vulnerability. If the individual accepts the offer, the panel is to be required to implement a support plan in respect of the individual (see clause [28(4) (C01(4))]).

104. Clause [30(1) (C03(1))] imposes a duty on the “partners of a panel”, so far as appropriate and reasonably practicable, to co-operate (a) with the panel in the carrying out of its functions and (b) with the police in the carrying out of their functions (in particular, their function of determining whether an individual should be referred to a panel in the first instance). Clause [30(2) (C03(2))] provides that “partners of a panel” are those persons and bodies specified in Schedule [4 (C03s)]. A power is contained in clause [31(1) (C06(1))] to amend the list of “partners of a panel” in Schedule [4 (C03s)] by way of regulations made by the Secretary of State. The power also enables amendments to the definition of “local authority”, to cater for the possibility of Scottish local authorities being brought within the scope of the Chapter 2 duties, together with any other consequential or supplemental provisions. The Secretary of State must consult Welsh Ministers and/or Scottish Ministers if Welsh and/or Scottish authorities are to be added to Schedule 4 (and in the case of Scottish local authorities, brought within the scope of the duty in clause [30(1) (C03(1))]).

Effect of the provision

105. The power in clause [31(1) (C06(1))] provides the Secretary of State with the flexibility to expand the remit of the Chapter 2 duties so that they bind persons not currently listed on the face of the primary legislation (including Scottish authorities). The power also allows the list to be amended so as to omit entries for bodies which have ceased to exist,

and to vary the description of entries in consequence of changes of name or transfer of functions.

Justification of the Delegation

106. It is appropriate that the Secretary of State has this flexibility since it provides a mechanism for ensuring that any persons who are not listed as partners of a panel in Schedule [4 (C03s)] but who, in future, it is considered appropriate should be required to co-operate with the panel and the police in the carrying out of their respective functions can be required to do so. For example, if new bodies are created after the passage of this Bill and it would be appropriate for them to assist the panel and police, it will be possible for the Secretary of State to use this power to add them to the list of partners.

Justification of the level of Parliamentary Scrutiny

107. Expanding the scope of this statutory co-operation duty is a significant decision which has ramifications for those to whom the duty is extended. It is therefore appropriate that the list of those subject to the duty is augmented by way of regulations which are subject to Parliamentary scrutiny by means of the affirmative procedure. However, administrative amendments which are required in consequence of a body ceasing to exist, changing its name, or following a transfer of functions, do not warrant an affirmative procedure; clause [31(6) and (7) (C06(6) and (7))] provides that such changes to the list are subject to the negative procedure.

PART 7 – MISCELLANEOUS AND GENERAL

Clause [36(1) (ab01(1))]: Privacy and Civil Liberties Board

Power conferred on:	The Secretary of State
Power exercisable by:	Regulations
Parliamentary procedure:	Affirmative for the first regulations and for any regulations which amend, repeal or revoke anything in primary legislation; negative in other cases

Introduction

108. Clause [36(1) (ab01(1))] provides the Secretary of State with a power, exercisable by regulations made by statutory instrument, to establish a board (the Privacy and Civil Liberties Board) to provide advice and assistance to the persons appointed under section 36(1) of the Terrorism Act 2006, section 31(1) of the Terrorist Asset-Freezing etc., Act 2010 and section 20(1) of the Terrorism Prevention and Investigation Measures Act 2011 in the discharge of their functions as reviewers of the operation of those enactments.

109. Regulations under this clause may contain incidental, consequential, transitional or supplementary provision, which includes provision amending, applying (with or without modifications), disapplying, repealing or revoking any enactment.

Effect of the provision

110. This power allows the Secretary of State to establish a board to provide advice and assistance to the independent reviewer(s) of terrorism legislation.

Justification of the Delegation

111. It is not necessary for the detail concerning, for instance, the membership of the board, the appointment of members, the organisation and procedure of the board and what the board may and must do to be contained in primary legislation. Making provision for these matters by way of secondary legislation provides flexibility to amend details concerning the operation and activities of the board without having to pass an Act of Parliament.

Justification of the level of Parliamentary Scrutiny

112. The functions of the independent reviewer(s) of terrorism legislation are extremely important ones and it is appropriate that Parliament has the opportunity to scrutinise and debate the first regulations which establish, and make provision in relation to the functions and activities of, a board whose purpose is to advise and assist those persons. However, once the board has been established and the framework for its operation has been created by the first regulations made under this power, it is considered that revisions to the regulations can be appropriately scrutinised by way of the negative resolution procedure. Regulations made under this power may also amend, repeal or revoke primary legislation (it is envisaged, for example, that it might be appropriate to add members of the board to one of the lists in Schedule 1 to the House of Commons Disqualification Act 1975), and where this is the case, it is appropriate that Parliament should have the opportunity to debate any such amendments, and the affirmative resolution procedure is required.

Clause [38 (x01)]: Power to make consequential provision

Power conferred on:	The Secretary of State
Power exercisable by:	Regulations
Parliamentary procedure:	Affirmative for regulations which amend, repeal or revoke anything in primary legislation; negative for other regulations.

Introduction

113. The purpose of clause [38] is to enable the Secretary of State to use delegated legislation to make such provision as is appropriate in consequence of the Bill. Such provision may include transitional, transitory or saving provision, and amendments, repeals, revocations or other modifications of any provision of primary or subordinate legislation. This power is exercisable in relation to England and Wales, Scotland and Northern Ireland.

Effect of the provision

114. This clause provides a mechanism for amending legislation which needs to be changed in consequence of the Bill.

Justification of the use of delegated legislation

115. The Bill includes many of the consequential amendments of primary legislation that will be needed as a result of the substantive provision being made by the Bill, although it is possible that some further consequential amendments of primary legislation may need to be made. Taking a power to make such amendment by regulations is a well precedented means of ensuring that this can be achieved. The power is narrow in its scope – any amendment must be consequential on provision that is included in the Bill, and which therefore has already been scrutinised by Parliament.

116. In addition, consequential amendments of subordinate legislation may be needed.

Justification of the level of parliamentary scrutiny

117. Where the regulation making power is to be used to amend, repeal or revoke primary legislation, the affirmative procedure is considered appropriate. This is in accordance with normal practice. In other cases, it was considered that the negative procedure is appropriate. Clause [38] deals with changes which need to be made in consequence of the substantive provisions in the Bill. The policies behind the substantive provisions will already have been debated and approved.

Clause [41(3)-(8) (x03(3)-(8))]: power to extend the Bill to Crown Dependencies

Power conferred on:	Her Majesty
Power exercisable by:	Order in Council
Parliamentary procedure:	None

Introduction

118. Clause [41(3) (x03(3))] provides that Her Majesty may by Order in Council direct that any of the provisions of Parts 1 and 4 of the Bill are to extend, with whatever modifications appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.

119. Subsections [(4)-(8) (x03(4)-(8))] refer to similar mechanisms for extending the extent of the Special Immigration Appeals commission Act 1997, the Aviation Security Act 1982, the Aviation and Maritime Security Act 1990, the Terrorism Act 2006 and the Terrorism Prevention and Investigation Measures Act 2011 to the Channel Islands and the Isle of Man, and subsections [(4)-(8) (x03(4)-(8))] provide that those mechanisms can be used in relation to any amendments made by the Bill to those Acts.

Effect of the provision

120. These powers ensure that both the provisions of the Bill and any amendments made by the Bill to the Acts referred to above, can be extended to the Channel Islands and the Isle of Man.

Justification of the Delegation

121. It is appropriate that primary legislation is not required to extend the provisions of this Bill (and any amendments made by this Bill to various enactments) to those jurisdictions. The extension of the provisions to the Crown Dependencies would occur only with the agreement of those jurisdictions' authorities, and would be the means by which the Bill could be extended without those jurisdictions being required to legislate for themselves.

Justification of the level of Parliamentary Scrutiny

122. The extension of the Bill to the Crown Dependencies does not warrant Parliamentary scrutiny since the Bill itself will have already been scrutinised during its Parliamentary passage.

Clause [42 (3) (x05 (3))]: Commencement

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: None

Introduction

123. Clause [42(3)] provides for a power to bring into force by Regulations: [Part 3; Part 2 of Schedule 2 and section 20 so far as relating to that Part; and Chapter 1 of Part 5;] of the Act once passed. The other provisions of the Act are brought into force by provisions set out in clause [42(1), (2) and (5)].

Effect of the Provision

124. The provision allows the specified clauses to be brought into force on whatever day or days the Secretary of State appoints by Regulations.

Justification of the Delegation

125. Commencement in this way has common precedent. It enables the Secretary of State to bring into force specified provisions of the Act through secondary legislation.

Justification of the level of Parliamentary Scrutiny

126. As usual with commencement regulations, they are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.