

COUNTER-TERRORISM AND BORDER SECURITY BILL: MEMORANDUM ON THE APPLICATION OF STANDING ORDER 83L OF THE STANDING ORDERS OF THE HOUSE IN RESPECT OF THE GOVERNMENT AMENDMENTS TABLED FOR COMMONS REPORT

Summary

1. Subject to certain exceptions (as detailed in Annex C to the Explanatory Notes), the provisions of the Bill extend and apply to England and Wales, Scotland and Northern Ireland.
2. Taking into account the Government amendments tabled¹ for Commons Report stage, it remains the view of the Government of the United Kingdom (“UK”) that none of the provisions of the Bill are within the legislative competence of the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.

Commons Report stage amendments

3. The following is the Department’s assessment of the amendments to the Bill tabled by the Government for consideration at Commons Report stage.
4. The Government has tabled amendments to clauses 2, 3, 6, 8, 9, 10, 14, 23 and 25 and to Schedule 3 (amendments 1 to 12 and 15 to 25). None of these amendments alter the territorial application of the clause or Schedule in question or the analysis at Annex C to the Explanatory Notes. Amendments 11, 12, 23, 24 and 25 to Schedule 4 to the Bill make further consequential amendments to various enactments. The amendment to section 29 of the Criminal Procedure and Investigations Act 1996 extends and applies to England and Wales and Northern Ireland. The amendments to the Terrorism Act 2000 and the Counter-Terrorism Act 2008 extend and apply to England and Wales, Scotland and Northern Ireland, while those to the Legal Aid (Scotland) Act 1986 and the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 extend and apply to Scotland only. The provisions of Schedule 4 to the Bill, as it would be amended, would continue to apply in part only to each of the three jurisdictions, as such, these amendments similarly do not alter the analysis at Annex C to the Explanatory Notes.
5. The amendment to section 8A of the Legal Aid (Scotland) Act 1986, made by amendment 11, extends the regulation-making power conferred on the Scottish Ministers by that section. The power enables the Scottish Ministers to provide for legal advice and assistance in relation to criminal matters to be available, without

¹ In this memorandum, the Government amendments are referred to by reference to the amendment number assigned to them in the notices of amendments.

reference to certain financial limits or criteria, to the description of clients listed in that section. Amendment 11 would add to that description persons who are detained under Schedule 3 to the Bill or under section 41 of, or Schedule 7 to, the Terrorism Act 2000. As the amendment to section 8A of the Legal Aid (Scotland) Act 1986 alters the executive competence of Scottish Ministers a legislative consent motion is being sought in respect of this provision.

6. New clause 2 (*“Entering or remaining in a designated area”*) applies to the whole of the UK.
7. The above assessment is presented in tabular form in the attached annex.

Home Office
6 September 2018

**Provisions in the Bill as amended in Committee taking into account
Government amendments tabled for Commons Report**

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 6	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 7	In part	In part	In part	In part	N/A	N/A	N/A	No
Clause 8	Yes	Yes	No	No	No	No	No	No
Clause 9	No	No	Yes	No	N/A	N/A	N/A	No
Clause 10	No	No	No	Yes	N/A	N/A	N/A	No
Clause 11	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 12	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 13	In part	In part	In part	In part	N/A	N/A	N/A	No
Clause 14	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (S) ²
Clause 15	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 16	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 17	In part	In part	In part	In part	N/A	N/A	N/A	No
Clause 18	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 19	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 20	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 2	In part	In part	In part	In part	N/A	N/A	N/A	No
Schedule 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 4	In part	In part	In part	In part	N/A	N/A	N/A	Yes (S)

² Provision in clause 14 alters the executive competence of Scottish Ministers and, accordingly, a legislative consent motion is being sought in respect of this provision.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
New clause 2 (" <i>Entering or remaining in a designated area</i> ")	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No