

COUNTER-TERRORISM AND BORDER SECURITY BILL
SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

The Government has tabled further amendments to the Counter-Terrorism and Border Security Bill for Commons Report stage. These include one new delegated power. This supplementary memorandum explains why the new power has been taken and the justification for the procedure selected.

New clause “*Entering or remaining in designated area*” - new section 58C(1) of the Terrorism Act 2000 (“the 2000 Act”): Power to designate area outside the United Kingdom for purpose of offence of entering or remaining in designated area overseas

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Made affirmative procedure

Context and purpose

1. New clause “*Entering or remaining in a designated area*” introduces into the Terrorism Act 2000 (“the 2000 Act”) a new offence, in section 58B, of entering or remaining in a designated area outside the United Kingdom (“UK”). The offence can only be committed by a person who is a UK national or resident at the time of entering the area or at any time during which the person remains there.
2. A defence is available for those prosecuted under this new offence if the person can show they had a reasonable excuse for entering, or remaining in, the designated area. If a defence is raised, the jury is entitled to assume the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not (section 118 of the 2000 Act, as amended).
3. A person does not commit the offence if the person is already travelling to, or is already in, the area on the day on which it becomes a designated area and the person leaves the area before the end of the period of one month beginning with that day.
4. Nothing in the new offence imposes criminal liability on any person acting on behalf of, or holding office under, the Crown.
5. Section 117 of the 2000 Act will operate so as to ensure that the Director of Public Prosecutions or the Director of Public Prosecutions for Northern Ireland, will have to consent to any prosecution of the new offence, and such consent will be subject to obtaining the permission of the Attorney General or the Advocate General for Northern Ireland, as the case may be. In Scotland, all prosecutions

are brought by the Lord Advocate or on his behalf, where to do so is in the public interest and so no consent or permission is required.

6. A person found guilty of the offence is liable on conviction on indictment to imprisonment for a term not exceeding 10 years, or to a fine, or to both.
7. The new clause also inserts into the 2000 Act a new section 58C which contains the designation power. This allows the Secretary of State to designate an area outside the UK where satisfied that it is an area to which it is necessary to restrict the entry of UK nationals or residents in order to protect the public from a risk of terrorism. The designation power would be exercisable by means of regulations. New section 58C(4) requires the Secretary of State to keep under review whether the test for any designation continues to be met and where it is no longer met, to revoke the regulations (or revoke them so far as they have effect in relation to that area if the regulations designate more than one area).

Justification for taking the power

8. The new offence does not apply at large. A central component of the offence is that it applies only to the act of entering or remaining in an area outside the UK which has been designated by the Secretary of State under new section 58C(1). The new offence is intended to tackle the phenomenon, as seen in recent years in relation to Syria and Iraq, of UK nationals or residents travelling to an area outside of the UK to take part in a conflict involving terrorist organisations or to otherwise sustain such organisations. The power to designate an area only arises where the Secretary of State is satisfied that such designation is necessary for the purpose of protecting members of the public from a risk of terrorism. The triggering of the offence will therefore be case specific. As such, the designation of an area is appropriately a matter for secondary legislation so that the Government can respond swiftly to events overseas both in terms of initially designating an area once satisfied that it is necessary to do so to protect the public from a risk of terrorism, but also to revoke or modify the designation (to expand or contract the designated area) as the nature of the terrorism risk in the designated area evolves over time.

Justification for the procedure

9. By virtue of the amendments made to section 123 of the 2000 Act, the designation power is subject to made affirmative procedure. However, any regulations revoking a designation are not subject to any Parliamentary procedure. The made affirmative procedure would also apply to any regulations modifying an earlier designation.
10. Events overseas which give rise to a risk of terrorism are often dynamic and rapidly evolving. The Government would need to be able to respond to such events as soon as it became apparent that they were acting as a draw to UK nationals and residents to that part of the world to engage in terrorist acts or otherwise support and sustain terrorist organisations. Accordingly, it is necessary that the Government has the ability to make and bring into force regulations

designating an area as soon as practicable once a decision to designate an area had been taken. It is accepted, however, that the designation of an area has significant consequences in terms of triggering the operation of the section 58B offence and that accordingly any designation of an area should be subject to Parliamentary approval. The combination of these factors argues for the made affirmative procedure.

11. As the effect of any new regulations which only revoke previous regulations made under section 58C would be to decriminalise the entering or remaining in the designated area in question; given such effect, it is not considered necessary to subject such regulations to any Parliamentary procedure beyond a requirement to lay the regulations before Parliament.

Home Office
5 September 2018