

COUNTER-TERRORISM AND BORDER SECURITY BILL
SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

The Government has tabled amendments to the Counter-Terrorism and Border Security Bill for Lords Third Reading. Amongst other things, these amendments make drafting changes to a new delegated power added to the Bill at Lords Report stage following a division on a non-Government amendment. This supplementary memorandum explains why the new power has been taken and the justification for the procedure selected.

Clause 4(2) - new section 58B(7) of the Terrorism Act 2000: Power to add a purpose or remove a purpose from section 58B(5)

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Draft affirmative procedure

Context and purpose

1. Clause 4 of the Bill 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. 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.
6. In response to concerns raised at Lords Committee stage about the impact of the new offence on individuals with a legitimate reason for travelling to a designated area, the Government tabled amendments at Report stage (amendments 11 and

16 on the marshalled list) which provided for an indicative list of reasonable excuses for entering or remaining in a designated area, including for the purposes of providing aid of a humanitarian nature and carrying out work as a journalist. However, on a division the House agreed an alternative amendment (amendment 15 on the marshalled list) in the name of Lord Rosser which instead provided that a person does not commit the offence if they enter or remain in a designated area for one or more specified purposes (now new section 58B(4)(b) and (5) of the 2000 Act). The list of specified purposes mirrored the Government's list of reasonable excuses. The amendment agreed by the House included a power, by regulations, to add to or remove a specified purpose (new section 58B(7)). In effect, this is a Henry VIII power to amend new section 58B(5).

Justification for taking the power

7. In contrast to the Government's proposed indicative list of reasonable excuses, the approach taken in new section 58B(5) is to set out an exhaustive list of exclusions from the scope of the designated area offence (in addition to the exclusion in respect of Crown servants in section 58B(13)). Although the reasonable excuse defence will still be available to a person who enters or remains in a designated area for a purpose other than one specified in section 58B(5), experience of operating the new designated area offence may identify a category of persons who are travelling to a designated area for a legitimate purpose and who should also benefit from being excluded from the scope of the offence rather than having to rely on the defence. Possible examples of such other purposes include purposes of a peacebuilding nature (see amendment 12 at Report stage).

Justification for the procedure

8. By virtue of new section 58B(8) as currently provided for in clause 4 (or by virtue of the amendments made to section 123 of the 2000 Act as provided for in the Government's Third Reading amendments), the regulation-making power in section 58B(7) is subject to the draft affirmative procedure. The draft affirmative procedure is considered appropriate given that the effect of any regulations would be to either extend or narrow the scope of the designated area offence and, as the terms of the offence are set out in primary legislation, it is fitting that any changes to the offence are debated and approved by both Houses before they take effect. The affirmative procedure is also considered apt as this is a Henry VIII power.