

Note on the draft Terrorism (Protection of Premises) Bill

Introduction

1. This Note sets out some legal points about the draft Bill.

Effect of Bill re smaller premises

2. Firstly, it is impossible to understand the legal duty relating to smaller (standard) premises without considering the Draft Standard Terrorism Evaluation Guidance published earlier this month¹. The Guidance contains a Standard Terrorism Evaluation form for businesses, charities, places of worship etc to complete.
3. According to the Guidance, completing the Standard Terrorism Evaluation satisfactorily will satisfy the duty in clause 11 of the Bill². The Guidance also appears to address the content of any terrorist training required by clause 12 of the Bill, by recommending the use of the Action Counter Terrorism Awareness E-Learning package by way of example³.
4. This begs the question why Clause 11(4), which defines what is required by a standard terrorism evaluation, is so complicated, and why clause 36(4) does not simply say that complying with the guidance means (rather than tends to show) that there is no contravention of any duty. The same point can be made about clause 12 and training in relation to standard premises.

Overall purpose of Bill

5. Secondly, there is a lack of clarity about what the overall purpose of the Bill is. Understanding purpose is necessary to understanding effectiveness.
6. Given the Bill's background, it might be thought that the Bill was about preventing future attacks, as is suggested by certain clauses relating to both standard and bigger (enhanced) premises and events, which refer to reducing the risk of acts of terrorism occurring⁴. If so, this is a Bill about security arches, bag searches, CCTV, additional staff and perimeter security all of which would have a profound impact on UK society given the number of premises in scope. When considering effectiveness and thinking about

¹ HM Government, Terrorism (Protection of premises) draft bill: overarching documents.

² See Introduction, p2.

³ See Question 3, p3.

⁴ Clauses 11(4)(b), 12(5)(b) and 15(1)(a).

the overall differences to preventing attacks this Bill may make, careful attention would need to be given to displacing attacks from location within scope of the Bill to a location out of scope (such as a street).

7. Alternatively, the nature of the terrorism training required by Clause 14 for both standard and enhanced premises, and the draft Guidance that applies to standard premises, suggest that the overall purpose of the Bill may be to mitigate the effects of attacks *if they should happen*.
8. The training required by clause 14 is about spotting attacks which are happening, and following procedures if they should occur, rather than preventing them. The draft Guidance is all about warnings that an attack is taking place; followed by lockdowns; evacuation; contacting the emergency services; first aid and fire safety; and alerting neighbours.
9. In one sense it is easier to control the aftermath of an attack (including providing ongoing support to victims) than to judge how and when one might happen and take effective preventative measures in advance. The Bill could be clearer about its purpose.

United Kingdom-wide

10. Thirdly, the Bill is intended to create legal duties in all parts of the United Kingdom.
11. However, the history of completed attacks is very different in England, Wales and Scotland, and very different between urban and rural areas.
12. I am not aware of any attacks in Scotland within the scope of the Bill in the last 40 years (the Glasgow airport attack in 2007 would be out of scope). Nor am I aware of any terrorist attacks in Wales.
13. Almost all⁵ terrorist attacks take place in urban areas, although the Bill applies equally to remote rural areas.
14. The threat picture in Northern Ireland is very different. Northern Ireland does not have a history of suicide or marauding knife or gun attacks, the threat of which appear to underpin the Bill. It is difficult to see how the Bill could mitigate the threat of terrorist attacks by Dissident Republicans, which are in any event targeted against what are perceived as Crown bodies, or shootings by Loyalist and Dissident Republican terrorists.

Control of Premises

⁵ Indeed I have struggled to think of any terrorist attacks in rural areas.

15. Fourthly, it is an important aspect of the Bill that it is not simply about protecting individuals within premises, or at qualifying events, that the individual duty-holder controls.
16. Clause 11, 12 and 15 all refer to reducing the risk of attacks, and the harm from attacks, in the immediate vicinity of the premises or event.
17. The implications for street-facing premises, for example, need to be considered. For example, does the Bill require measures to be taken to protect individuals on the pavement at the back of premises?
18. Clause 18 is unprecedented. It allows one person (R) to give a cooperation notice to another person (P), specifying the measures that R thinks P should take.
19. It is then P's legal duty to satisfy that notice⁶, failure to do so being punishable by the regulator⁷.
20. It seems wrong in principle for one private individual to be able to impose such a duty on another private individual. It is also open to abuse: for example, a landlord who wishes to get rid of a licensee/ tenant on part of his premises could serve a notice knowing that the licensee/tenant would find it hard to comply with or challenge the notice.

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⁶ Clause 18(4).

⁷ Clause 22.