

INDEPENDENT REVIEWER OF TERRORISM LEGISLATION

NOTE ON TERRORISM (PROTECTION OF PREMISES) BILL: CLAUSES 8, 32

Introduction

1. These are short observations on Clauses 8 and 32 of the Bill that is due to be debated in the House of Commons (Report and Third Reading) on 9th December 2024.

Clause 8

2. Sub-clauses (5) and (6) of Clause 8 create a special duty in the case of enhanced duty premises or premises at which qualifying events are to be held.
3. That duty is placed on a person (P) who “is not responsible for” the premises but who has “control to any other extent” of the premises. The duty is subject to enforcement by the regulator.
4. It is not entirely clear what “control to any other extent” means. However, as the Explanatory Notes show, it is intended to apply to the freehold owner of premises (or superior landlord) of premises leased to the person who is primarily responsible under the Bill. There may be other examples.
5. Under Clause 8(6) P must “so far as is reasonably practicable” cooperate with the responsible person (R), “for the purposes of R complying with a requirement imposed on R by or under this Part.”
6. These are the scenarios considered in the Explanatory Notes (para 82):

- A theatre operator holds the lease for a theatre building and it is necessary to make modifications to the building structure “...and the building owner is required to provide their agreement to the modifications”.
 - An event organiser is responsible for delivering an event in a field, and they “require the landowners' agreement to put in place certain protective measures”.
7. The question is whether Clause 8 is intended to overwrite commercial agreements.
8. For example, the owner of premises (P) rents them out to the responsible person (R) who uses them as a bingo hall with a capacity of 800+. The lease has 12 months to run and provides that no alteration may be made to the structure of the premises without the owner’s consent.
- P plans not to renew the lease, and to sell the premises to a developer for residential flats. R concludes that to comply with his duty under the new Act he must put in a new exit where there are currently attractive windows. Assume that under the lease, P would be entitled to refuse these alterations, especially because they would adversely affect the value of the premises.
 - Does Clause 8(6) mean that P has a duty to give consent? It is obviously practicable for P to consent, but is it reasonable? What is the policy intention? Does it matter that the lease gives the ultimate say to P over building alterations, or is the lease now overwritten?
9. The purpose of drawing attention to this point is that Clause 8 has the capacity to impose new terrorism-related duties on many building owners and landowners, in particular but not only in the property investment sector, but the effect of Clause 8 is uncertain. It is suggested that since the Bill imposes unprecedented terrorism-related duties on members of the public, and has the

capacity to interfere with commercial relationships, the intended impact of Clause 8 should be clearer.

Clause 32

10. Clause 32 allows the Secretary of State to amend the threshold for qualifying premises (currently 200+), enhanced duty premises and qualifying events (currently 800+) upwards or downwards (not less than 100 in the case of qualifying premises; otherwise not less than 500).
11. This would be done by regulation, requiring approval by each House of Parliament before taking effect (Clause 35(3)(d)).
12. Lowering the threshold for qualifying premises from 200 to 100 would bring an additional 124,250 premises within the scope of the legal duty¹.
13. With the best will in the world, the pressures on the Secretary of State to consider a lowering of the threshold in the event of a future terrorist attack will be very strong. The consequences for venues of being brought suddenly within scope are profound and could lead to closures of small venues.
 - It is strongly questionable whether this is a power that should be exercised by the Secretary of State as opposed to an amendment to the Act by way of further primary legislation. Following the Fishmongers' Hall attack in 2019, Parliament quickly passed emergency legislation, the Terrorist Offenders (Restriction of Early Release) Act 2020, to alter the release date of terrorist offenders.
 - There are no provisions within Clause 32 for an implementation period before smaller premises will become subject to legal duties if regulations are made. This puts 100+ premises in a dilemma – should they prepare now as if the duties apply, in case there is a sudden change? Does the Secretary of State have a completely free hand about implementation?

¹ Comparing the impact assessments for the 2023 Draft Bill based on 100+ (278,873 premises, see page 20) and for the 2024 Bill based on 200+ (154,623 premises, see page 22): 278,873 - 154,623 = 124,250.

- Because regulations under Clause 32 are un-amendable by Parliament, if new regulations were laid by the Secretary of State to lower the threshold, if Parliament thought they should come into effect later than contemplated by the government, it would either have to agree or veto. This is not a very palatable option.
- There is not even a statutory test or criterion in Clause 32 which limits the circumstances in which the Secretary of State may alter the threshold.

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