

EXPLANATORY MEMORANDUM TO
THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005
(DESIGNATED SITES) ORDER 2005

2005 No. 3447

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Serious Organised Crime and Police Act 2005 provides for the designation of sites by the Secretary of State in the interests of national security. A person commits a criminal offence if he enters, or is on, any designated site in England, Wales or Northern Ireland as a trespasser, or any designated Scottish site without lawful authority. This Order lists thirteen Ministry of Defence sites which the Secretary of State considers appropriate for designation in the interests of national security.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 Under section 128 of the Serious Organised Crime and Police Act 2005 a site may only be designated in one of three different circumstances, if:-
 - (a) it is comprised in Crown land; or
 - (b) it is comprised in land belonging to Her Majesty in Her private capacity or to the immediate heir to the Throne in his private capacity; or
 - (c) it appears to the Secretary of State that it is appropriate to designate the site in the interests of national security.
 - 4.2 Under section 129 of the Act sites may only be designated in Scotland where it is appropriate in the interests of national security.
 - 4.3 Trespass on a designated site in England, Wales or Northern Ireland is a criminal offence punishable on summary conviction by imprisonment for not more than 51 weeks and or a fine not exceeding level 5 on the standard scale. Trespass on a designated site in Scotland is punishable on summary conviction by imprisonment for not more than 12 months and or a fine not exceeding level 5 on the standard scale.
 - 4.4 This is the first Order which designates sites where the Secretary of State considers it is appropriate to do so in the interests of national security

4.5 During the passage of the Serious Organised Crime and Police Bill through Parliament, a commitment was given by the Home Office that designations would be made sparingly. Following the events of July 2005 and subsequently, when it became clear that there was a real threat of suicide bomber attacks on UK soil, the Home Secretary agreed in principle to the designation of key Ministry of Defence sites and he informed the House of Commons of the Government's intention to designate such sites on 26 October 2005.

5. Extent

5.1 Section 128 of the Serious Organised Crime and Police Act 2005 provides for the offence of criminal trespass in England, Wales and Northern Ireland. Section 129 provides for the corresponding offence in Scotland.

5.2 Two of the sites listed in this Order are designated Scottish sites. Accordingly, this Order extends to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The House of Commons Defence Committee raised the issue of an offence of criminal trespass on key Ministry of Defence sites in its inquiry into defence and security in January 2002.

7.2 It is considered that the deterrent effect of an offence of criminal trespass on Ministry of Defence sites will make those sites more secure. Only those key sites, where the activity of intruders has the potential to impede the operation of the site such that it cannot perform its primary function, are designated. There are some critical Ministry of Defence sites that meet these criteria but which have not, to date, been affected by intrusions, and therefore are not included to prevent their significance being brought to the attention of potential intruders.

7.3 At each of the designated sites there has been persistent activity by protestors who, by actively trespassing, place themselves at risk of being mistaken for terrorists. By trespassing at these critical sites, protestors divert the attention of the armed Ministry of Defence Police and service personnel protecting those sites from their primary task, which temporarily increases the vulnerability of those sites to terrorist activity. Designating these sites will, by allowing the security forces to concentrate on their primary task, afford them increased security.

7.4 Whilst this offence should deter protestors from entering key MOD sites, it will not prevent them from protesting at those sites. The criminal offence will apply only to trespass beyond the secure perimeter that is relied on to protect

the site from intruders. The public's right to protest will be preserved as access to any area to which the public currently have rights of access will not be restricted, and the public will retain the ability to protest outside the secure areas of these sites.

8. Impact

- 8.1 A Regulatory Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is likely to comprise some increased prosecution costs. The Ministry of Defence has agreed to meet the ancillary costs accruing to the Department of Constitutional Affairs in Her Majesty's Court Service dealing with the anticipated number of prosecutions for the offence of criminal trespass.

9. Contact

- 9.1 Sue McIntosh at the Ministry of Defence can answer any queries regarding the instrument. Her contact details are:

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