

**EXPLANATORY MEMORANDUM TO  
THE SERIOUS ORGANISED CRIME AND POLICE ACT 2005 (DESIGNATED  
SITES UNDER SECTION 128) ORDER 2007**

**2007 No. 930**

**1.** This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This instrument applies the new offence of criminal trespass on protected sites, established by sections 128 to 131 of the Serious Organised Crime and Police Act 2005 (as amended by section 12 of the Terrorism Act 2006) to sixteen royal, governmental or parliamentary sites.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 This instrument is made under section 128 (2) of the Serious Organised Crime and Police Act 2005 (as amended). This is the second order made using these powers; the first was the Serious Organised Crime and Police Act 2005 (Designated Sites) Order 2005 (SI 2005 No. 3447) which applied the offence to thirteen operational Ministry of Defence sites. In addition, the offence also applies to all licensed nuclear sites following the amendments made by section 12 of the Terrorism Act 2006.

**5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

**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 creation of a new offence of criminal trespass on protected sites in sections 128 to 131 of the Serious Organised Crime and Police Act 2005 was a response to a recommendation in the report prepared by Commander Armstrong of the City of London Police (following an intrusion at Windsor Castle on 21 June 2003). The report recommended the consideration of a new offence of criminal trespass “into secure/specified (Royal/Government) premises”. This recommendation was endorsed in the Security Commission Inquiry Report of May 2004 (following revelations of a

journalist's activities in Buckingham Palace late in 2003). After careful consideration it was agreed that a new criminal offence was necessary for two reasons:

- It would create a deterrent to intrusions at secure, sensitive sites. It was noted that it had not been possible to secure prosecution (with an appropriate penalty) of any of the individuals who had recently carried out high profile intrusions at Buckingham Palace and the Palace of Westminster.
- It would give the police a specific power of arrest of a trespasser at a sensitive site where no other apparent existing offence had been committed. This was something for which the police responsible for security at such sites had been lobbying. The specific power of arrest in section 130(1) of the Serious Organised Crime and Police Act 2005 has now been superseded by the general power of arrest inserted into the Police and Criminal Evidence Act 1984 by section 110 of the Serious Organised Crime and Police Act 2005.

7.2 This instrument applies the new offence to all or part of the following sixteen sites:

85 Albert Embankment, London;  
Buckingham Palace, London;  
Ministry of Defence Main Building, Whitehall, London;  
Old War Office Building, Whitehall, London;  
St James's Palace, Cleveland Row, London;  
Thames House, 11 and 12 Millbank, London;  
The Chequers estate, near Aylesbury, Buckinghamshire;  
10 – 12 Downing Street site as well as 70 Whitehall;  
Government Communication Headquarters, Harp Hill, Cheltenham;  
Government Communication Headquarters, Hubble Road, Cheltenham;  
Government Communication Headquarters, Racecourse Road, Scarborough, North Yorkshire;  
Government Communication Headquarters, Woodford, Bude, Cornwall;  
Highgrove House, Doughton, Gloucestershire;  
Palace of Westminster and Portcullis House site;  
Sandringham House, Norfolk;  
Windsor Castle, Berkshire.

7.3 There has been some media coverage of these proposals, as a result of high-profile intrusions to sites within this group, including royal residences. However, public interest in this issue has not been widespread and no public consultation has been undertaken. Ramblers and right to roam lobby groups, such as the Ramblers Association, or members of parliament on their behalf, have expressed their interest in the primary legislation and its implementation and we have responded as fully as possible to all their enquiries. Their main concerns are a belief that the grounds for designation in sections 128 and 129 are too wide and could lead to large areas of the countryside being rendered inaccessible to members of the public; that members of the public might inadvertently stray into designated sites and be liable for arrest and prosecution; and that placing the onus on the defendant to prove the defence in section 128(4) is unfair. In response, reassurances have been provided that designations will be few in number and will not deprive members of the public rights of access. The list of sites contained in the order should provide further reassurance.

7.4 Additionally, each of the sites designated has very clear defined boundaries and it is intended that necessary measures, including clear signage where appropriate, will be in place at all protected sites to ensure that members of the public are aware of the provisions of the offence. Section 128(4) also provides that it is a defence for a person charged with an offence under this section to prove that he did not know, and had no reasonable cause to suspect, that the site in relation to which the offence is alleged to have been committed was a protected site. Furthermore, no prosecution can be brought without the consent of the Attorney General.

7.5 Boundaries have been agreed in close liaison with all those involved at each site, including the royal households, the police, the office of the Prime Minister and the Security Coordinator for the Palace of Westminster. Officials at the Ministry of Defence and Department for Trade and Industry, responsible for the designation of sites under these provisions, have been consulted to ensure consistency of approach. There have also been discussions with the Crown Prosecution Service.

## **8. Impact**

8.1 A Regulatory Impact 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 expected to be minimal. Protected public sector sites will incur costs of signage, the extent of which will be dependant on the size and complexity of boundaries. Signage proposals for listed buildings will need to be considered by local Planning Authorities. A very low number of arrests and prosecutions are anticipated and so the additional burden on the police and criminal justice system should be limited.

## **9. Contact**

J Fanshawe at the Home Office Tel: 020 7035 3764 can answer any queries regarding the instrument.