

Criminal Justice Committee
Wednesday 15 May 2024
18th Meeting, 2024 (Session 6)

UK Criminal Justice Bill: Legislative Consent Memoranda

Purpose

1. This paper invites the Committee to consider two Legislative Consent Memoranda (“LCM”) lodged by the Scottish Government in relation to the [Criminal Justice Bill](#) which is currently before the UK Parliament. These are LCM-S6-43 and LCM-S6-43a.
2. The Criminal Justice Committee is the lead committee for the consideration of the policy content of both the LCMs. At this meeting, the Committee will take oral evidence from Angela Constance, Cabinet Secretary for Justice and Home Affairs and her officials on these LCMs.
3. Both LCMs have been lodged by Angela Constance, the Cabinet Secretary for Justice and Home Affairs, under Rule 9B.3.1(a) of the Parliament’s Standing Orders.
4. In addition, the Cabinet Secretary may refer to an additional LCM which is expected in the coming days. This is due to an amendment to the UK Bill which has now been lodged.
5. The amendment refers to offences relating to things used in serious crime or vehicle theft as part of the proceeds of crime legislation.
6. The Cabinet Secretary may refer to this additional planned supplementary LCM in her opening remarks.

Background

7. The Criminal Justice Bill (“the Bill”) was introduced by the UK Government in the House of Commons on 14 November 2023. As of 10 May 2024, the Bill is at Report Stage in the House of Commons. It has yet to be considered by the House of Lords.
8. The UK Government has set out that the Bill:

“is intended to amend the criminal law to make provisions about criminal justice including the powers and duties of the police; dealing with offenders; reforms to

the confiscation regime under the Proceeds of Crime Act 2002, the use of monies in suspended accounts; the prevention and detection of crime and disorder; begging, rough sleeping and anti-social behaviour; and for connected purposes.”¹

9. A detailed [description of the provisions of the Bill](#) is available online.

LCM-S6-43

10. The first LCM ([LCM-S6-43](#)) dates from 21 December 2023).
11. The Bill contains provisions that apply to Scotland and the UK Government has requested legislative consent in relation to Clause 14 and Clause 21.
12. Details of LCM-S6-43 and the provisions of the Bill for which the consent of the Scottish Parliament consent required are set out in **Annex A** of this paper.
13. **The Scottish Government is supportive of Clause 14 and Clause 21 of the Bill and recommends legislative consent be granted to both.**

LCM-S6-43a

14. During the passage of the Bill through the House of Commons, amendments were tabled on 20 December 2023 which have resulted in further relevant provision requiring the consent of the Scottish Parliament to be sought.
15. The latest version of the [Criminal Justice Bill, as amended](#), along with its Explanatory Notes and other supporting documents can be found online at:

<https://publications.parliament.uk/pa/bills/cbill/58-04/0155/230155.pdf>
16. Consequently, a supplementary Legislative Consent Memorandum ([LCM-S6-43a](#), dated 13 February 2024) has been lodged by the Scottish Government.
17. The Bill contains provisions that apply to Scotland and the UK Government has requested legislative consent in relation to Clauses 1 to 4. Responsibility for some of these measures is intermingled, with Clauses 1 and 2, which introduce new offences in relation to articles used in serious crime, concerning a combination of reserved and devolved matters.
18. Clauses 3 and 4 introduce new offences regarding the possession, importation, making, adaptation, supplying of electronic devices used to commit vehicle theft.

¹ LCM-S6-43: <https://www.parliament.scot/-/media/files/legislation/bills/lcms/criminal-justice-bill/legislative-consent-memorandum.pdf> (Page 1)

19. Details of LCM-S6-43a and the provisions of the Bill for which the consent of the Scottish Parliament consent required are set out in **Annex B** of this paper.
20. **The Scottish Government is supportive of Clauses 1 to 4 of the Bill and recommends legislative consent be granted to both.**

Other committees' scrutiny

21. The Delegated Powers and Law Reform (DPLR) Committee considered and [reported](#) on both LCMs at its meeting on 5 March 2024.
22. In its report, the DPLR Committee made various recommendations in relation to the various delegated powers set out in the Criminal Justice Bill as they relate to those provisions which require the consent of the Scottish Parliament.
23. The DPLR Committee was content with the various powers conferred on the Secretary of State by the Bill in relation to those provisions which require the consent of the Scottish Parliament.

Decisions

24. **The Committee is invited to put questions to the Cabinet Secretary for Justice and Home Affairs and consider LCM-S6-43 and LCM-S6-43a at this meeting.**
25. **The Committee will then be invited on whether to recommend whether the Scottish Parliament should consent to the relevant provisions covered by both of these LCMs.**
26. **In relation to any further LCM that may be lodged, the Committee will return to this later for a decision on whether to recommend consent.**

**Clerks to the Committee
May 2024**

Annexe A

Provisions which require the consent of the Scottish Parliament

The Bill contains provisions that apply to Scotland and the UK Government has requested legislative consent in relation to Clause 14 and Clause 21-

- Clause 14 provides for a corporate body or partnership to be held criminally liable where a senior manager commits any offence while acting within the actual or apparent scope of their authority, replacing provisions in the [Economic Crime and Corporate Transparency Act 2023](#) which were confined to specified economic crimes.
- Clause 21 enables the Secretary of State to make regulations about access to driver licence records by the police and other law enforcement agencies.

Clause 14

During the passage of the Economic Crime and Corporate Transparency Act 2023 (“the 2023 Act”), the ‘identification doctrine’ was placed on a statutory footing for which the Scottish Government recommended legislative consent and the Scottish Parliament gave consent for those provisions. These provisions in the 2023 Act provide a statutory approach for establishing corporate liability where senior managers of an organisation have committed an offence.

In particular, section 196 of the 2023 Act provides that, where a senior manager of an organisation acting within the actual or apparent scope of their authority commits a relevant offence, the organisation is also guilty of the offence. However, the 2023 Act provisions were restricted to operate only in respect of a specific list of economic offences due to the scope of the legislative vehicle being used.

Within this context, the UK Government committed to extending the statutory identification doctrine to all criminal offences. Clause 14 gives effect to that commitment and repeals the provisions introduced in the 2023 Act. Clause 14 will require legislative consent as the general principles of criminal liability are devolved insofar as they relate to devolved criminal offences.

Clause 21

Clause 21 enables the Secretary of State to make regulations permitting persons authorised by various bodies, including the Police Service of Scotland, to access and use driver licence records for any policing or law enforcement purpose specified in the regulations. It provides a more flexible replacement for the existing section 71 of the Criminal Justice and Court Services Act 2000.

It requires legislative consent as the purposes for which access is granted, and for which the material accessed is used, are likely to be for devolved purposes.

This provision includes a regulation-making power by the Secretary of State and a requirement to consult with the Scottish Ministers before making such driver information regulations or an associated code of practice.

Reasons for recommending legislative consent

In relation to Clause 14, as with the relevant clauses in the 2023 Act, the Scottish Government considers the placing of the identification doctrine on a statutory footing is a sensible step to take through this UK Government Bill which is why legislative consent is being sought for such a step to be taken.

In relation to Clause 21, the Scottish Government is recommending consent for this provision as it includes the Police Service of Scotland in the list of permitted forces to whose authorised persons UK driver record details may be disclosed by the Secretary of State for policing or law enforcement purposes. The ability to access and use this information is valuable to the Police Service of Scotland.

EU alignment

Clause 14 is not relevant to the Scottish Government's policy to maintain alignment with the EU because it is provision which is not in an area formerly within the competence of the EU. The provision could not be considered to jeopardise the attainment of any of the EU's objectives.

Clause 21 is not relevant to the Scottish Government's policy to maintain alignment with the EU because it is provision which is not in an area formerly within the competence of the EU. The provision could not be considered to jeopardise the attainment of any of the EU's objectives.

Consultation

There has been no specific Scottish Government consultation on those areas requiring legislative consent. However, the Scottish Government has sought to engage with, and take account of the views of the Crown Office and Procurator Fiscal Service and the Police Service of Scotland in deciding to recommend consent.

Financial implications

There are no significant financial implications for the Scottish Ministers or other organisations or bodies in Scotland arising from the clauses requiring legislative consent.

Conclusion

The Scottish Government is supportive of Clause 14 and Clause 21 and recommends legislative consent to both.

There is ongoing engagement with UK Government officials and Ministers about parts of the Bill which may be amended so that those provisions are extended to also apply to Scotland. In the event that such relevant amendments are made to the Bill during its passage, a further LCM will be submitted.

Draft Legislative Consent Motion

The draft motion, which will be lodged by the Cabinet Secretary for Justice and Home Affairs, is:

“That the Parliament agrees that the relevant provisions contained within the UK Criminal Justice Bill, namely Clause 14 and Clause 21, introduced in the House of Commons on 14 November 2023, so far as within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
December 2023

Annexe B

Provisions which require the consent of the Scottish Parliament

Overview of clauses 1 to 4

Clauses 1 and 2 introduce new offences to criminalise the possession, importation, manufacture, adaptation, supply and offering to supply of articles for use in serious crime. Articles specified include pill presses, vehicle concealments and templates to print 3D firearms. It is already an offence to possess, buy or produce component parts for a 3D-printed gun. These Clauses contain provision for the Secretary of State to add further articles, by regulation, as required and to consult with the Scottish Ministers before doing so. These provisions would extend to Scotland and fall within the legislative competence of the Scottish Parliament insofar as they relate to creating new criminal offences in relation to serious crime and therefore, necessitate legislative consent.

Clauses 3 and 4 make it a criminal offence to possess, import, make, adapt, supply or offer to supply and possess electronic devices for use in vehicle theft. Police are increasingly seeing organised crime groups using electronic devices such as signal jammers, signal amplifiers, devices used to access a vehicle's 'CAN bus' (wiring system), and a device which when touched against the door handle of the vehicle can process the signal from the vehicle and calculate an unlock code to gain entry and start the vehicle. These provisions would extend to Scotland and fall within the legislative competence of the Scottish Parliament insofar as they create new criminal offences in relation to theft of vehicles and therefore necessitate legislative consent.

The intention is that these Clauses will give the police a clearer enforcement route against criminals using such technology and enable the police to respond to changing technology deployed by criminals.

Clauses 1 to 4, and the amendments extending these Clauses to Scotland made on 20 December 2023, were debated, and agreed to on 11 January 2024 in the fifth sitting of the House of Commons Criminal Justice Public Bill Committee. The debate highlighted, on all sides, the importance of taking a whole-UK approach to tackling serious organised crime, and of discussion and positive engagement with the Scottish Government and the administration in Northern Ireland.

Clauses 1 and 2

Clause 1 of the Bill creates two new criminal offences of possessing any relevant article where a person intends, or has reasonable grounds to suspect, that it will be used in any serious crime; and of the importing, making, adapting, supplying,

offering to supply a specified article where there are reasonable grounds to suspect that the article will be used in any serious crime.

Serious offences are offences such as fraud, money laundering, terrorism, drug and people trafficking. In Scotland, a “serious offence,” is an offence specified or described in Part 1A of Schedule 1 of the Serious Crime Act 2007.

Clause 2 defines a “relevant article” as meaning a 3D printer firearm template²; an encapsulator³; a tablet press⁴; a vehicle concealment⁵. Clause 2 contains a regulation making power for the Secretary of State to amend Clause 2 to include other articles which will be subject to the new offences – depending on what these may be, it is possible that this would be within devolved competence. Subject to very limited exceptions, criminal justice (as well as criminal law and procedure and the police) is devolved to Scotland.

While Clauses 1 and 2 relate to a combination of reserved and devolved matters (for example, firearms and misuse of drugs) the purpose of the provision is to create new offences to criminalise the use of articles used in serious crime, which would be within devolved competence.

We agree that the LCM process is engaged insofar as Clauses 1 and 2 relate to devolved matters.

Clauses 3 and 4

Clause 3 of the Bill makes it an offence to possess or import, make, adapt, supply or offer to supply an electronic device which gives rise to a reasonable suspicion that the device will be used in connection with a relevant offence. In Scotland a “relevant offence” means (i) theft of a vehicle, vessel, or aircraft constructed or adapted for use for transporting one or more persons or of anything in such a vehicle, vessel, or aircraft, or (ii) an offence under section 178 of the Road Traffic Act 1988.

Clause 4 of the Bill relates to the evidential burden for the defences in Clause 1(3) or 3(3).

These particular offences relate to criminalising the use of electronic devices which give rise to reasonable suspicion that the device will be used in connection with serious crime (in particular, vehicle theft).

² Defined as meaning any document that may be used in conjunction with a 3D printer to produce any part of a firearm (as defined by section 57 of the Firearms Act 1968)

³ Defined as including any device that may be used to produce capsules.

⁴ Defined as including any device that may be used to produce tablets.

⁵ Defined as meaning a compartment that (a) forms or is intended to form part of a vehicle or is attached or intended to be attached to a vehicle, and (b) conceals, or facilitates the concealment of, things or people or is intended to conceal or facilitate the concealment of things or people

While internet services, telecommunications and wireless telegraphy are reserved matters, criminal law is generally devolved to Scotland. The Bill does not define “electronic device” and the purpose of the provision as a whole is to tackle serious crime. As such, we agree that Clauses 3 and 4, engage the LCM process.

Statutory duty to consult

Clause 2 contains a limited power for the Secretary of State to add new articles to the list of specified articles. After negotiation, the UK government has agreed to the inclusion of a statutory duty to consult Scottish Ministers whenever the Secretary of State is considering adding an article to the list, but they are not in a position to agree to including a consent mechanism in relation to devolved articles. They have stated that this is primarily because of the need to ensure a consistent regime across UK, since any divergence where the article in question is criminalised in England, Wales, and Northern Ireland, but not Scotland could lead to changes in criminal tactics, diverting these articles as needed within the UK to take them where they are not criminalised with potential repercussions in terms of public safety. The duty to consult would bite in all cases, whether or not the article is reserved or devolved.

Reasons for recommending consent

The provisions in these clauses are intermingled. Consent would give law enforcement bodies additional tools to help tackle serious organised crime, and would avoid the risk of a divergent Scotland being seen as an easier target for organised criminal groups. Both the Scottish Government and Police Scotland have been calling for legislation to control pill presses, in particular, for some time, since it is possible that Scottish Ministers would face legislative competence issues if they attempted to legislate to create a new offence of possession, making etc. of a tablet press or 3D digital firearm template. It would of course be possible for the UK Government to legislate in Scotland only for those areas (i.e. in relation to drugs or firearms) which are clearly reserved. The more pragmatic approach is clearly to take advantage of this opportunity created by the UK Government and to consent to legislation to control certain articles used in organised crime and which also contains provision to add new articles to the list. Organised criminals remain flexible and quick to adapt to emerging technology and opportunities. Consenting to these provisions in this legislation should allow a quicker legislative response to such technological advancements in the future.

EU alignment

Clauses 1 to 4 are not relevant to the Scottish Government’s policy to maintain alignment with the EU because it is provision which is not in an area the EU has legislated on. The provision could not be considered to jeopardise the attainment of any of the EU’s objectives.

Consultation

There has been no specific Scottish Government consultation on those areas requiring legislative consent. However, the Scottish Government has sought to engage with, and take account of the views of the Crown Office and Procurator Fiscal Service and the Police Service of Scotland. The UK Government carried out a consultation on the proposals in Clauses 1 and 2 in early 2023. Respondents, including Scottish stakeholders such as the Police Service of Scotland were supportive. The devices referred to in Clauses 3 and 4 were not referred to explicitly in that consultation but were covered by the general statements covering articles used by organised crime groups.

Financial implications

There are no significant financial implications for the Scottish Ministers or for other organisations such as Police Scotland.

Conclusion

The Scottish Government is supportive of Clauses 1 to 4 and promotes legislative consent to those provisions.

Draft Legislative Consent Motion

The draft motion, which will be lodged by the Cabinet Secretary for Justice and Home Affairs, is:

“That the Parliament agrees that the relevant provisions contained within Clauses 1 to 4 of the UK Criminal Justice Bill, introduced in the House of Commons on 14 November 2023 and as amended on 20 December 2023, so far as within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
13 February