

Legislative Consent Memorandum

Criminal Justice Bill

Background

1. This Legislative Consent Memorandum (“LCM”) has 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.
2. The Criminal Justice Bill (“the Bill”) was introduced by the UK Government in the House of Commons on 14 November 2023.
3. The latest version of the Bill, Explanatory Notes and other supporting documents can be found at: <https://bills.parliament.uk/bills/3511>

Content of the Criminal Justice Bill

4. 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. 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 2002¹, and 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.
5. The UK Government has presented the Bill as having seven key objectives to keep communities safe by:
 - strengthening the law to protect the public from violence and intimidation;
 - tackling violence against women and girls;
 - enabling law enforcement agencies to respond to changing technology deployed by criminals;
 - equipping law enforcement agencies with the necessary powers to address emerging crime types and threats;
 - introducing tougher sentencing;
 - enhancing the management of offenders; and
 - strengthening public confidence in policing.

¹ [Proceeds of Crime Act 2002 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2002/29)

6. In more detail, specific elements of the Bill are:
- Clauses 1 to 4 introduce new offences to criminalise the possession, importation, manufacture, adaptation, supply and offering to supply of articles for use in serious crime.
 - Clauses 5 to 7 and Schedule 1 introduce new offences relating to the possession or supply of a “SIM farm”² with associated powers of entry and search for evidence of those offences.
 - Clause 8 introduces a power for the Secretary of State, by regulations, to introduce a new offence for the possession or supply of other electronic articles (specified in the regulations) used to facilitate fraud.
 - Clause 9 introduces a new offence relating to the possession of a bladed article or offensive weapon with intent to use it to cause unlawful violence (or a person to apprehend such unlawful violence) or serious damage to property; or to enable another person to cause such violence or damage.
 - Clause 10 increases the maximum penalty for offences relating to the sale etc. of offensive weapons (under sections 141 and 141A of the Criminal Justice Act 1988³, and section 1 of the Restriction of Offensive Weapons Act 1959⁴).
 - Clauses 11 and 12 introduce a new broader offence of encouraging or assisting serious self-harm, replacing and expanding the communications offence in the Online Safety Act 2023⁵ to cover all means of encouraging or assisting.
 - Clauses 13 and Schedule 2 introduce new offences to criminalise taking or recording an intimate photograph or film without consent, and installing equipment to enable the taking or recording of intimate photographs or films with the intention of committing a taking offence.
 - 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 2023⁶ which were confined to specified economic crimes.
 - Clauses 15 to 17 expand police powers to test persons on arrest or after charge (for persons aged 14 and over) for the presence of specified Class A drugs and refer them into drug treatment, to also permit drug testing for specified Class B and Class C drugs.
 - Clause 18 provides police with a new power to seize bladed articles where they are lawfully on private premises and have reasonable grounds to suspect the article will be used in connection with unlawful violence.

² SIM (subscriber identity module) farms are electronic devices that are capable of using five or more SIM cards simultaneously or interchangeably and which allow the user to send Short Messaging Service (“SMS”) texts or phone calls in large numbers over the telecommunications network.

³ [Criminal Justice Act 1988 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1988/45)

⁴ [Restriction of Offensive Weapons Act 1959 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1959/1)

⁵ [Online Safety Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2023/1)

⁶ [Economic Crime and Corporate Transparency Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2023/1)

- Clause 19 provides police with a new power to enter and search premises (private or public) without a warrant where they have reasonable grounds to believe there are articles on those premises which have been stolen.
- Clause 20 and Schedule 3 provide investigative agencies with a power to apply to the court for an order that a third-party entity involved in the provision of internet protocol (IP) addresses and internet domain names should prevent access to an IP address or domain name.
- 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 22 gives courts the power to compel offenders to attend their sentencing hearing and to punish them as if it were criminal contempt of court if they do not. This provision only applies to offenders being sentenced for an offence punishable by a life sentence. This clause also permits a court to order that the offender be produced and for reasonable force to be used to give effect to that order where necessary and proportionate. This provision applies to offenders aged 18 or over who are remanded in custody awaiting sentencing and who have refused, or there are reasonable grounds to suspect that the offender will refuse to attend court for their sentencing hearing.
- Clause 23 creates a new statutory aggravating factor for grooming behaviour where the court is considering the seriousness of a child sex offence, including, where perpetrated by grooming gangs.
- Clause 24 creates a new statutory aggravating factor sentencing for murder connected to (i) the end of a relationship; (ii) the victim intending to bring about the end of that relationship; or (iii) the offender's belief as to those things.
- Clauses 25 to 29 facilitate the Secretary of State to transfer prisoners held in England and Wales to be housed in an overseas prison in accordance with arrangements made between the UK and a foreign country.
- Clause 25 provides the definitions for Clauses 26 to 29 and clarifies the purpose of those provisions as giving effect to an arrangement for prisoners to be held in a foreign country.
- Clauses 26 to 29 allow for the transfer of prisoners out of the UK to another jurisdiction and for their return, by operation of a warrant in accordance with an arrangement.
- Clause 28 makes provision for the Secretary of State to appoint a person to monitor and report on any arrangement with a foreign country and the transfer and return of prisoners pursuant to that arrangement.
- Clause 29 allows for the Secretary of State to make further provision in secondary legislation, including to amend existing primary legislation to facilitate the implementation of any arrangement to transfer prisoners to a prison overseas.
- Clause 30 makes the multi-agency public protection arrangements ("MAPPA") automatic for those convicted of the offence of controlling or coercive behaviour.

- Clause 31 extends the criteria for polygraph testing to people released on licence, under probation supervision, who have been convicted of murder and are assessed as posing a risk of sexual offending; to the whole envelope of the sentence for those who are sentenced concurrently for a sexual and non-sexual offence; and to offenders sentenced for offending which is considered to be linked to terrorism before the Counter Terrorism Act 2008⁷ (“CTA”) was commenced, or following commencement of the CTA but before the Counter-Terrorism and Sentencing Act 2023⁸ was commenced for offences outside the specified list contained in Schedule 2 to the CTA.
- Clause 32 and Schedule 4 reform some parts of the confiscation regime in England and Wales in Part 2 of the Proceeds of Crime Act 2002⁹.
- Clause 33 and Schedule 5 create a Suspended Accounts Scheme - a statutory scheme under which participating financial institutions (including banks or building societies) may transfer to the scheme administrator funds which represent the balances that have been suspended by them, and to allow those funds to be used in relation to economic crime.
- Clauses 34 to 37 strengthen the operation of Serious Crime Prevention Orders (“SCPOs”) by giving courts an express power to impose electronic monitoring requirements; enabling additional law enforcement agencies to apply to the High Court for an SCPO; introducing a standardised set of notification requirements; and allowing the Crown Court to make an order on its own motion or on an application on acquittal.
- Clauses 38 to 64 introduce new offences and civil prevention notices and orders to tackle nuisance and organised begging and rough sleeping where it causes damage, distress and disruption in place of the provision in the Vagrancy Act 1824¹⁰.
- Clauses 38 to 64 deal with police and local authority officers’ powers in relation to nuisance beggars; directing such persons to leave an area; seeking and enforcing Nuisance Begging Prevention Notices; and the introduction of a new summary offence to engage in nuisance begging.
- Clauses 65 to 71 amend the powers of the police, local authorities and other agencies to tackle anti-social behaviour. Clause 65 extends the ability for the court to attach a police power of arrest to all breaches of an anti-social behaviour injunction.
- Clause 66 extends the duration of dispersal directions and closure notices.
- Clause 67 lowers the minimum age for Community Protection Notices (from 16 to 10 years).
- Clause 68 and Schedule 6 enables senior police officers to make Public Spaces Protection Orders (“PSPOs”) and Expedited PSPOs.

⁷ [Counter-Terrorism Act 2008 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2008/42)

⁸ [Counter-Terrorism and Sentencing Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2023/10)

⁹ [Proceeds of Crime Act 2002 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2002/16)

¹⁰ [Vagrancy Act 1824 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1824/1)

- Clause 69 and Schedule 7 enable registered housing providers to issue closure notices.
- Clause 70 increases the sum payable under Fixed Penalty Notices (“FPNs”) issued for certain breaches of PSPOs, Expedited PSPOs and Community Protection Notices and enables persons accredited under the community safety accreditation scheme to issue FPNs.
- Clause 71 strengthens the role of local policing bodies in Anti-Social Behaviour Case Reviews.
- Clause 72 make provision to enhance the accountability of Community Safety Partnerships (“CSPs”) and ensure closer working with elected policing bodies.
- Clause 73 places a duty on the College of Policing to issue a Code of Practice about ethical policing, including a duty of candour on the police.
- Clause 74 provides a power for the Secretary of State to make certain provision by secondary legislation about appeals by chief officers of police and local policing bodies to the Police Appeals Tribunals.
- Clauses 75 to 79 make general provision, including in respect of the Bill’s territorial extent and commencement.

Provisions which require the consent of the Scottish Parliament

7. 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

8. During the passage of the Economic Crime and Corporate Transparency Act 2023¹¹ (“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.

9. 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.

¹¹ See footnote 6 above

Clause 21

10. 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 2000¹².

11. 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.

12. 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

13. In relation to Clause 14, as with the relevant clauses in the 2023 Act¹³, 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.

14. 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

15. 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.

16. 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

17. 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.

¹² [Criminal Justice and Court Services Act 2000 \(legislation.gov.uk\)](#)

¹³ See footnote 6 above

Financial implications

18. 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

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

20. 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

21. 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

This Legislative Consent Memorandum relates to the Criminal Justice Bill (UK legislation) and was lodged with the Scottish Parliament on 21 December 2023

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