

# Supplementary Legislative Consent Memorandum

## UK 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(c) of the Parliament’s Standing Orders.
2. The Criminal Justice Bill (“the Bill”) was introduced 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>. An LCM was lodged on 21 December 2023 covering Clauses 14 and 21 of the Bill as introduced (see LCM-S6-43A <https://www.parliament.scot/bills-and-laws/legislative-consent-memorandums/criminal-justice-bill>). Amendments tabled on 20 December 2023 have resulted in further relevant provision and the requirement for this supplementary LCM.

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

6. More detail about the Bill can be found in the first aforementioned LCM (see <https://www.parliament.scot/bills-and-laws/legislative-consent-memorandums/criminal-justice-bill>).

## Provisions which relate to Scotland requiring an LCM

7. 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. Clauses 3 and 4 introduce new offences regarding the possession, importation, making, adaptation, supplying of electronic devices used to commit vehicle theft.

8. The Scottish Government agrees with the UK Government assessment that the LCM process is engaged insofar as Clauses 1 to 4 relate to devolved matters.

## Overview of clauses 1 to 4

9. 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.

10. 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.

11. 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.

12. 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

13. 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.

14. 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.

15. Clause 2 defines a “relevant article” as meaning a 3D printer firearms template<sup>1</sup>; an encapsulator<sup>2</sup>; a tablet press<sup>3</sup>; a vehicle concealment<sup>4</sup>. 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.

16. Subject to very limited exceptions, criminal justice (as well as criminal law and procedure and the police) is devolved to Scotland.

17. 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.

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

## Clauses 3 and 4

19. 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.

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<sup>1</sup> 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)

<sup>2</sup> Defined as including any device that may be used to produce capsules.

<sup>3</sup> Defined as including any device that may be used to produce tablets.

<sup>4</sup> 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.

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

21. 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).

22. 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

23. 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

24. 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 (ie 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

25. 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

26. 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

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

## Conclusion

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

## Draft Legislative Consent Motion

29. 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 2024

This Supplementary Legislative Consent Memorandum relates to the Criminal Justice Bill (UK legislation) and was lodged with the Scottish Parliament on 13 February 2024

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