Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish Solicitors. With the overarching objective of leading legal excellence, we strive to excel and to be a world class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure provision of excellence legal services and ensure the public can have confidence in Scotland’s solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective Solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fair and just Society through our active engagement with the Scottish and United Kingdom Governments, Parliaments wider Stakeholders and our Membership.

This paper is intended to inform MSPs of our comments on the Policing and Crime Bill to help to inform Members’ consideration of the Legislative Consent Memorandum (LCM).

If you would like to discuss this paper, or if you would like more information on the points that we have raised, please do not hesitate to contact us. Contact details can be found at the end of the paper.

Areas Requiring Consent of the Scottish Parliament

The areas of the Bill which require the consent of the Scottish Parliament are set out below:

1. Police Maritime Powers
2. Cross Border Powers of Arrest
3. Restoration of Littering Powers
4. Firearms

Society's Comments

1. Police Maritime Powers
We believe that the Bill provisions in relation to maritime cross-border pursuit are consistent with the position regarding cross-border pursuit powers on land.

2. Cross Border Powers of Arrest

*Background to Cross Border Arrest within the UK*
In 1993 a joint Home Office/Scottish Office consultation paper\(^1\) proposed a number of reforms. These were grouped under four headings:

(i) Pursuing a fleeing suspect;
(ii) Investigating a series of offences;
(iii) Following an offence beginning in one country and continuing into the other (e.g. fraud); and
(iv) Providing assistance at the request of another force across the border (e.g. serious public disorder)

The consultation paper outlined that the central problem was that police officers effectively ceased to be police officers as soon as they crossed from England to Scotland and vice versa, losing all the powers of detention and arrest associated with that status. Similarly, on entering Scotland, officers from England lost all protection from civil liability for any damage they might cause to persons or property in the execution of their duty. The consultation paper noted that in practice officers regularly crossed the Border in pursuit of offenders, but noted (1) increasing concern amongst officers at the practical and legal risks associated with this practice, (2) in urgent cases, particularly where no warrant was issued, officers on one side of the Border were often reliant on officers on the other to carry out arrests. Thirdly, officers were increasingly concerned about being required to act without the legal protections afforded to them by the laws of their home jurisdiction.


Sections 36-140 of the Act allow a warrant issued in one jurisdiction to be executed without endorsement or judicial intervention in the other. In addition, there are now cross-border powers of arrest.

**The Bill Provisions**

The Justice Committee’s Note by the Clerk explains that the problem with the existing framework is that there are no powers of arrest available in urgent investigations where an individual is alleged to have committed a serious offence in one UK jurisdiction, where no arrest warrant has been issued and the suspect has turned up unexpectedly in another UK jurisdiction. Even if there are strong arguments for arresting and holding the suspect, at present, the local police lack clear power to do so.

Clause 105 of the Bill was inserted into the Bill at Report Stage in the House of Commons to fill this gap in cross-border arrest powers. This clause inserts new sections into the Criminal Justice and Public Order Act 1994 (“the 1994 Act”). The provisions will allow people suspected of serious offences in Scotland to be arrested in other parts of the UK by police from those jurisdictions.

According to the Government’s factsheet on the cross-border provisions:

> “Given that the criminal law differs in each of the three jurisdictions it is necessary to develop a bespoke, but analogous, list of offences for each jurisdiction. To allow for the appropriate consultation with, and consent of, the devolved administrations, and consultation with police forces in the three

\(^1\) [https://archive.org/stream/op1279427-1001/op1279427-1001_djvu.txt](https://archive.org/stream/op1279427-1001/op1279427-1001_djvu.txt)
jurisdictions, the Bill provides for a list of offences to be specified in secondary legislation. This approach would also afford the flexibility to update the list in the light of experience and to reflect the creation of relevant new offences.\(^2\)

In relation to cross-border arrest, we believe that the police in each UK jurisdiction must work collaboratively and give careful consideration given to the differences in the law of each of the UK jurisdictions.

Notwithstanding our concerns about these operational aspects on implementation, we support the aims of this part of the Bill.

3. **Restoration of Littering Powers**

We are supportive of the Bill provisions which seek to restore the relevant provisions relating to littering powers.

4. **Firearms**

Part 6 of the Bill makes a number of changes to existing firearms legislation. The provisions seek to:

- clarify the meaning of “firearm” for the purposes of the legislation
- define the meaning of “antique firearm”
- set out a new offence with regard to the possession of articles intended to convert imitation firearms into firearms
- set out controls on deactivated weapons
- make provision for the charging of fees in certain circumstances
- provide for the issue of statutory guidance to the police in connection with the firearms legislation

The majority of firearms legislation remains reserved to the UK Government. The exception to this is for air weapons licensing, which was devolved under the Scotland Act 2012 and has been introduced under Part 1 of the Air Weapons and Licensing (Scotland) Act 2015 (“the 2015 Act”). We also note that Scottish Government has established the Scottish Firearms Consultative Panel which has examined the practicalities of licensing air weapons and has advised on the development and implementation of a new licensing regime.

As outlined above, the Bill introduces the charging of a fee for authorised possession of prohibited weapons in certain circumstances. Specifically, the Bill provides that that the Secretary of State may by regulations authorise the appropriate national authority to require payment of a fee before an authority under section 5 of the Firearms Act 1968 is granted, varied or renewed. The introduction of fee-charging for section 5 authorities extends the Scottish Government’s executive powers in that they are given a new power to levy the fee. We believe that the extension of the Scottish Government’s executive powers to enable a fee to be charged for section 5

authorities is a sensible approach and we support the aims of cost recovery, through the levying of fees.

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