Justice Committee

14th Report, 2013 (Session 4)

Legislative Consent Memorandum on the Anti-social Behaviour, Crime and Policing Bill
LCM(S4) 22.1

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Justice Committee

Remit and membership

**Remit:**

To consider and report on:

a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and

b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

**Membership:**

Roderick Campbell
John Finnie
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Colin Keir
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**Committee Clerking Team:**

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The Committee reports to the Parliament as follows—

The UK Bill

1. The Anti-social Behaviour, Crime and Policing Bill ("the Bill") was introduced in the House of Commons on 9 May 2013.

2. The Bill is wide ranging and has provisions covering anti-social behaviour; dangerous dogs; firearms offences; forced marriage; powers of the new College of Policing; police remuneration; the Independent Police Complaints Commission; and compensation for miscarriages of justice.\(^1\)

The Sewel Convention

3. Under the Sewel Convention, the UK Parliament does not normally legislate on devolved matters, or alter the executive competence of Scottish Ministers, unless the Scottish Parliament has given its consent (by agreeing to a legislative consent motion). The Bill engages the Convention by virtue of the changes it makes to the criminal law and by altering the executive functions of Scottish Ministers.

4. Under the Convention, the Parliament should normally signify its consent before the final amending stage in the House of introduction which, in this instance, means Third Reading in the House of Commons. This is expected to be in October 2013.

5. The Parliament’s procedures require any legislative consent motion to be preceded by the lodging of a legislative consent memorandum ("LCM") and its consideration by a committee.

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Legislative consent memorandum and motion

6. The Cabinet Secretary for Justice, Kenny MacAskill MSP, laid a legislative consent memorandum LCM(S4) 22.1 in the Scottish Parliament on the Bill on 29 May 2013.³

7. The LCM included a draft legislative consent motion in the following terms:

“That the Parliament agrees that the relevant provisions of the Anti-social Behaviour, Crime and Policing Bill, introduced in the House of Commons on 9 May 2013, relating to the abolition of the Police Negotiating Board; dangerous dogs law; and witness protection law; so far as these matters fall within the legislative competence of the Scottish Parliament or alter the functions of Scottish Ministers, should be considered by the UK Parliament.”

Scrutiny of the memorandum

8. On introduction, the LCM was referred to the Justice Committee by the Parliamentary Bureau. The delegated powers were also considered by the Delegated Powers and Law Reform Committee (DPLR) at its meeting on 17 September 2013.

9. The DPLR reported its views on 18 September 2013⁴. It confirmed that it was content the extension of Scottish Ministers’ powers under the Dangerous Dogs Act 1991 and that these powers will continue to subject to the negative procedure.

10. The Justice Committee considered its approach to the LCM at its meeting on 18 June, where it agreed to undertake a targeted call for evidence⁵. It also took evidence from the Cabinet Secretary for Justice at its meeting on 10 September.

Abolition of the Police Negotiating Board

11. The Bill abolishes the Police Negotiating Board (PNB), a UK-wide body where pay and terms and conditions of all 175,000 UK police officers is negotiated. Following the recommendations of the Winsor Review⁶, the Home Office plans to replace the PNB with a Police Remuneration Review Body (PRRB) for England, Wales and Northern Ireland.

12. The LCM states⁷ that interested parties in Scotland do not support the UK Government’s proposal to replace the PNB with a PRRB. The Scottish

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⁵ The written evidence received by the Committee can be found here: http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/ASBCP_v2.pdf

⁶ UK Government website, Police pay: Winsor review Available at: https://www.gov.uk/police-pay-winsor-review [Accessed 11 September 2013]

⁷ Legislative Consent Memorandum, paragraph 24
Government intends to establish a PNB for Scotland which is being brought forward as part of the Criminal Justice (Scotland) Bill\(^8\).

13. Respondents to the Committee’s call for evidence raised no concerns over the use of LCM procedure to abolish the PNB.

14. During his evidence to the Committee, the Cabinet Secretary for Justice addressed concerns about the transition between the PNB being abolished and the establishment of a new PNB for Scotland. He said “we have already established a standing committee—it is up and running, although it is not yet formally constituted on a statutory basis. We hope that there will be a legislative dovetailing, but there is a fall-back position of continuing with the existing PNB powers”\(^9\).

15. The Cabinet Secretary indicated that the Scottish Government was currently consulting on the proposed PNB for Scotland and he reassured the Committee that careful consideration would be given to the responses made. The Cabinet Secretary also indicated that he supported the inclusion of chief officer ranks of the police in the remit of the PNB for Scotland. In addition, he addressed concerns of the Scottish Police Federation regarding the access to information under the proposed arrangements; the Cabinet Secretary suggested that the Office for National Statistics would be able to perform this function\(^10\).

16. The LCM states that the overall impact of the abolition of the PNB and its replacement with a PNB for Scotland will be cost neutral in terms of the Scottish Government’s budget\(^11\). In his evidence to the Committee, the Cabinet Secretary reaffirmed this position and also went on to say that “any additional resources can be provided by us or by other bodies”\(^12\).

**Dangerous Dogs**

17. There are two elements to the proposed amendments to the Dangerous Dogs Act 1991 (“the 1991 Act”) brought forward by the legislation.

18. Under the 1991 Act it is an offence if an owner or a person in charge of a dog allows the dog to be dangerously out of control; this offence is aggravated if a person is injured by the dog while it is dangerously out of control. Clause 98 of the Bill extends this aggravation to apply when a dog attacks an assistance dog.

19. Clause 99 of the Bill has the effect of requiring a court to consider the character of the owner or keeper as well as the temperament of the dog and its past behaviour along with any other relevant circumstances when deciding whether the dog poses a risk to public safety. This requirement will affect courts’

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\(^8\) Section 87 of the Criminal Justice (Scotland) Bill.
\(^11\) Legislative Consent Memorandum, paragraph 33.
\(^12\) Scottish Parliament Justice Committee. *Official Report*, 10 September 2013, Col. 3148
decisions in relation to the destruction of dogs or placing dogs of a banned breed\textsuperscript{13} onto the Index of Exempted Dogs.

20. The Scottish Government indicated in the LCM that it had no plans to bring forward legislation in this area but considered the proposed amendments to the 1991 Act to be appropriate\textsuperscript{14}.

21. In their written submissions, Police Scotland and Guide Dogs Scotland both welcomed the extension of the aggravated offence to include attacks on assistance dogs.

22. Guide Dogs Scotland raised concerns about the definition of an assistance dog. The Cabinet Secretary indicated to the Committee that the Scottish Government understood that DEFRA would issue guidance on the definition of an assistance dog in due course\textsuperscript{15}.

23. In its submission the Scottish SPCA welcomed courts taking into account the character of the owner or keeper when deciding on the destruction of a dog. The Scottish SPCA also indicated that it had many examples of dogs which have been destroyed who could have been safely re-homed to a responsible owner.

24. The Cabinet Secretary explained that the intention was for account to be taken of the character of owners or keepers and that the courts would have greater flexibility in dealing with offences under the proposed amendments to the 1991 Act\textsuperscript{16}.

25. The Scottish Government does not hold statistics on the destruction of dogs. However the Government noted the importance of measuring the impact of the new provisions and it gave assurances that it is planning to meet with stakeholders in this respect\textsuperscript{17}.

\textbf{Witness Protection}

26. The Bill enables a protection provider (usually the police) to make protection arrangements for anyone whose safety may be at risk due to another person’s possible or actual criminal conduct. The current legislation restricts eligibility for protected status (commonly known as witness protection) to witnesses, informants, judges, juries, police, prison staff and other officers working in the criminal justice system\textsuperscript{18}.

27. The Scottish Government noted in the LCM the high degree of cross-border co-operation in witness protection arrangements. It therefore considered that it was essential that the Chief Constable in Scotland would have the same tools at his disposal as his counterparts in the rest of the UK\textsuperscript{19}.

\textsuperscript{13} Banned breeds are any dogs of the type known as a Pit Bull Terrier, Japanese Tosa, Dogo Argentino or Fila Brasileiro.

\textsuperscript{14} Legislative Consent Memorandum, paragraph 28.

\textsuperscript{15} Scottish Parliament Justice Committee. \textit{Official Report}, 10 September 2013, Col. 3149


\textsuperscript{17} Scottish Parliament Justice Committee. \textit{Official Report}, 10 September 2013, Col. 3150

\textsuperscript{18} Serious Organised Crime and Police Act 2005, Section 82.

\textsuperscript{19} LCM, paragraph 29.
28. The LCM states\(^{20}\) that the extension of eligibility of protected status would mean that, for example, victims of forced marriage or other “honour-based” violence could be taken into a protection programme before any crime is committed.

29. The extension of protected status to other persons at risk and these measures being extended to Scotland was welcomed by Victim Support Scotland, ACPO, the Law Society of Scotland and Scottish Women’s Aid in their submissions to the Committee.

30. In its submission, Police Scotland raised concerns that the proposed amendment to witness protection could be used by persons involved in criminal feuds. The Cabinet Secretary, in his evidence to the Committee, explained that the Chief Constable has discretion on whether a person is afforded protected status and the use of witness protection is considered on a case-by-case basis\(^{21}\).

31. Victim Support Scotland raised concerns on how persons with protected status are treated and it stressed the importance of support and information provided to those with protected status throughout the process. The Cabinet Secretary expressed his view that the support of individuals with protected status is not necessarily best addressed through legislation due to the variety of circumstances that protected status entails. However, the Cabinet Secretary indicated he would pass on these concerns to the Chief Constable\(^{22}\).

**Recommendation**

32. The Committee recommends that the Parliament agrees to the Scottish Government’s forthcoming legislative consent motion on the UK Anti-social Behaviour, Crime and Policing Bill.

\(^{20}\) LCM, paragraph 22.
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