



The Scottish Parliament  
Pàrlamaid na h-Alba

## Delegated Powers and Law Reform Committee

Angela Constance MSP  
Cabinet Secretary for Justice and Home Affairs

**4 September 2025**

Dear Cabinet Secretary

### Crime and Policing Bill

At its meeting on 2 September 2025, the Delegated Powers and Law Reform Committee considered the Legislative Consent Memorandum (“LCM”), the supplementary LCM, the second supplementary LCM and the powers exercisable within devolved competence in the Crime and Policing Bill (“the Bill”).

To assist the Committee in its consideration of these LCMs, it agreed to ask the Scottish Government the following questions.

#### **Clause 89: New section 86B of the Sexual Offences Act 2003 - power to specify meaning of “qualifying premises” (section 86B(3))**

The UK Government’s Delegated Powers Memorandum (“DPM”) explains that the power to define “qualifying premises” is intended to enable the requirements in section 86B to be readily and quickly expanded in response to new risks from predatory behaviour.

The Committee notes that an initial list of qualifying premises could have been set out on the face of the Bill, and instead of this broad power, a more limited power could have been taken for the appropriate authority to amend the list, as considered appropriate following operational experience and in light of any developments to new types of premises.

The Committee therefore asks:

1. What sort of premises are intended to fall within the definition of “qualifying premises”, in new section 86B of the Sexual Offences Act 2003?
2. If it would be appropriate for such premises to be specified on the face of the Bill, with a power to amend the definition of “qualifying premises” as appropriate?

Contact: Delegated Powers and Law Reform Committee, The Scottish Parliament, Edinburgh, EH99 1SP.

Email: [dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot).

We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

## **Clause 91: New section 87A(6) of the Sexual Offences Act 2003 – power to provide for specified matters for which a notification cannot be given virtually**

The Committee notes that no justification is included in the DPM for the power to provide for “specified matters” about which notifications cannot be given virtually. The Committee considers it would be useful to obtain further information about the intended policy behind this provision, in order to effectively scrutinise the delegation of powers. On initial consideration, a list of “specified matters” appears to be something that the Committee might expect to be set out on the face of the Bill, since it affects the scope of the policy.

The Committee therefore asks:

3. What sort of matters is it intended should be specified as unsuitable for virtual notification?
4. If it would be appropriate for these matters to be specified on the face of the Bill, whilst taking a power to amend them, as appropriate?

The Committee also had a range of questions related to which Government (Scottish or UK) powers are conferred on, requirements to consult with the Scottish Ministers or obtain their consent, and the Scottish Parliament’s scrutiny of the Scottish Ministers’ position on proposed UK Statutory Instruments to be made under the powers.

For context, the DPLR Committee’s agreed general position in relation to this issue is:

- a) The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
- b) Where such powers are exercised by UK Ministers in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.
- c) If such powers contain a requirement for the Scottish Ministers’ consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers’ consent decision.

The Committee will scrutinise powers conferred on UK Ministers not subject to a requirement for Scottish Ministers’ consent, and may suggest matters for the lead committee to consider.

- d) As a minimum, powers when exercised by UK Ministers in devolved areas should be subject to the process set out in the [SI Protocol 2](#) where the power is within the scope of that protocol.

The specific questions are given below.

### **Clause 138: New section 71 of the Criminal Justice and Court Services Act 2000 - power to make information-sharing regulations for police and law enforcement about DVLA information**

In relation to this power, the Committee asks the Scottish Government:

5. How it intends to facilitate scrutiny by the Scottish Parliament of:
  - (a) any proposals by the Secretary of State to make regulations containing provision within legislative competence; and
  - (b) the Scottish Ministers' consultation response in respect of such proposals?

### **Clause 192: Power to implement international agreements on sharing information for law enforcement purposes**

In relation to this power, which is given concurrently to the Secretary of State and to the Scottish Ministers, the Committee asks the Scottish Government

6. Why it is considered appropriate for this power to be exercisable by the Secretary of State within legislative competence?
7. Where the power is exercised by the Secretary of State within legislative competence, why it is considered appropriate for there to be a requirement to consult the Scottish Ministers but not to obtain their consent?
8. How decisions will be made regarding which authority will exercise this power?
9. The Committee also asks the Scottish Ministers how the Scottish Government intends to facilitate scrutiny by the Scottish Parliament, where the power is exercised by the Secretary of State, of:
  - a) any proposals to make regulations containing provision within legislative competence; and
  - b) the Scottish Ministers' consultation response in respect of such proposals?

### **Clause 197: Power to make consequential provision**

The Committee notes that this clause gives the Scottish Ministers power to make consequential provision in relation to some matters in the Bill which are within the Parliament's legislative competence<sup>1</sup>. It also notes that there are other matters

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<sup>1</sup> Cuckooing offence; Management of sex offenders; Offence of dangerous, careless or inconsiderate cycling; Proceeds of crime and other property connected with criminal behaviour.

identified by the Scottish and UK Governments as being within the Parliament's legislative competence, which the Scottish Ministers are not given a power to make consequential provision about<sup>2</sup>. For these matters, only the Secretary of State has power to make any required consequential provision. The Committee asks the Scottish Government:

10. Why it is considered appropriate to confer power on the Scottish Ministers to make consequential provision in respect of some matters in the Bill which fall within legislative competence, but not others?

11. What criteria have been used to guide that choice?

**Clause 132(2): Power to amend list of enforcement officers and senior officers for purposes of the clause 130 power to extract online information from seized devices**

In relation to this power, the Committee asks the Scottish Government:

12. Why it is considered appropriate for this power to be exercisable by the Secretary of State within legislative competence, and not by the Scottish Ministers?

13. What consideration has been given to requiring the consent of the Scottish Ministers, or consultation with the Scottish Ministers, in advance of exercising the power within legislative competence?

14. The Committee also asks the Scottish Ministers how the Scottish Government intends to facilitate scrutiny by the Scottish Parliament of exercise of the power by the Secretary of State?

**Clause 133(7): Power to provide for circumstances in which the duty to make confidential 'protected material' information inaccessible does not apply**

In relation to this power, the Committee asks the Scottish Government:

15. Why it is considered appropriate for this power to be exercisable by the Secretary of State within legislative competence, and not by the Scottish Ministers?

16. What consideration has been given to requiring the consent of the Scottish Ministers, or consultation with the Scottish Ministers, in advance of exercising the power within legislative competence?

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<sup>2</sup> Child criminal exploitation offence; Implementation of international law enforcement information-sharing agreements; Powers of the police - Extraction of online information; Powers of the police – Access to driver licensing information; Special police forces - Barred persons lists and advisory lists.

17. The Committee also asks the Scottish Ministers how the Scottish Government intends to facilitate scrutiny by the Scottish Parliament of exercise of the power by the Secretary of State?

## **Schedule 19: Special police forces: barred person lists and advisory lists**

In relation to the seven powers exercisable within devolved competence conferred on the Secretary of State in this Schedule<sup>3</sup>, the Committee asks:

18. Why it is considered appropriate for these powers to be exercisable by the Secretary of State within legislative competence, and not by the Scottish Ministers?
19. Why it is considered appropriate for there to be a requirement for the Secretary of State to consult the Scottish Ministers before exercising the power, but not to obtain their consent?
20. The Committee also asks the Scottish Ministers how the Scottish Government intends to facilitate scrutiny by the Scottish Parliament of:
- a) any proposals by the Secretary of State to make regulations under these powers containing provision within legislative competence; and
  - b) the Scottish Ministers' consultation response in respect of such proposals?

Please note that the Committee is writing in similar terms to the UK Government.

The Committee requests a response by **Friday, 12 September**.

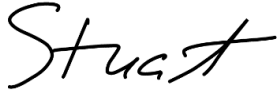
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<sup>3</sup> The powers are:

- a. Paragraph 1(3): Power to specify information to be included in barred persons list
- b. Paragraph 5(1)(b): Power to specify appeal proceedings
- c. Paragraph 6: Power to make other provision in connection with the removal of persons from barred persons lists
- d. Paragraph 7(2): Power to require relevant policing authority to publish information about persons included in the barred persons list maintained by the authority
- e. Paragraph 9(2): Duty to specify information to be included in the advisory list
- f. Paragraph 11(3): Power to make other provision in connection with removals from the advisory list
- g. Paragraph 13(e): Power to specify meaning of "disciplinary proceedings" in relation to civilian employees of British Transport Police Authority and Civil Nuclear Police Authority.

This letter is also being copied to the Criminal Justice Committee. Please also copy your response to them.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stuart'.

**Stuart McMillan MSP**  
**Convener**