

Stuart McMillan MSP
Convener
Delegated Powers and Law Reform Committee
The Scottish Parliament

29 September 2025

Dear Stuart,

Crime and Policing Bill

Thank you for your letter of 4 September addressed to the Secretary of State for Business and Trade which has been passed to me as the responsible minister for the UK Government's Crime and Policing Bill.

Your committee has posed a number of questions about various delegated powers in the Bill as they apply to Scotland. I response to these in turn below.

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

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?

Response

Regulation 10 of The Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 (the “2012 Regulations”) sets out information that a registered sex offender is required to notify at their initial notification if they reside or stay in a ‘relevant household’ for a period of at least 12 hours. That information is the date on which the offender begins to reside or stay in that household; the address of the relevant household and the period of time for which the offender intends to reside or stay at the relevant household.

Regulation 11 of the 2012 Regulations requires registered sex offenders to notify (following their initial notification) if they begin residing or stay for at least 12 hours in a relevant household or cease to stay at a relevant household. These two regulations are made respectively under sections 83(5)(h) and 84(1)(ca) of the Sexual Offences Act 2003.

Regulation 2 of the 2012 Regulations defines a ‘relevant household’ as a household or other place where a child resides or stays and to which the public do not have access (whether for payment or not). Reference to these regulations is made in the explanatory notes to the Crime and Policing Bill. It is expected that the definition of ‘qualifying premises’ in new section 86B will recreate the effect of the existing regulations by requiring offenders to notify in advance of entering households or other private places where children are present.

The notification requirements for sex offenders require flexibility. Sexual offending changes over time, as do the ways in which the threat from persistent sex offenders manifests. Defining qualifying premises in secondary legislation will allow the government to swiftly add to the list of premises when required, and it will enable amendments to the list of premises such that there is coherence between existing descriptions of premises and new additions.

The current notification requirements relating to residence or stay in a relevant household and the definition of the same are set out in the 2012 Regulations. Further regulations could be made under the enabling powers in Part 2 of the 2003 Act to require the notification of information about entry into or residence or stays in other premises where children or other vulnerable people are present. In view of the above, the government considers that secondary legislation will be – as it is now – the most appropriate place to define qualifying premises for the purposes of new section 86B.

In addition, having established on the face of the 2003 Act the requirement on certain registered sex offenders to notify the police before entering qualifying premises where children are present, the UK Government is satisfied that it is an appropriate use of delegated powers to then leave it to regulations to specify all categories of “qualifying premises”.

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

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?

Response

Section 83 of the Sexual Offences Act 2003 sets out the initial notification requirements that registered sex offenders must comply with within three days of the ‘relevant date’. The ‘relevant date’ is the date of an offender’s conviction, finding or caution, although any periods of time in custody are disregarded such that – for offenders sentenced to a term of imprisonment – their first notification will take place within three days of their release into the community. Section 84(1)(d) requires registered sex offenders to notify following release from custody, service detention or detention in a hospital.

Section 83 – the initial notification following the relevant date – is already excluded from the matters that can be notified virtually. It is likely that any notifications after release from custody or detention will also be required to be given in person. The primary reason for requiring the initial notification in person is that it will enable the officer receiving the notification to take the offender's fingerprints and photograph without any delay. Secondly, without an in-person notification on the first occasion, the officer will not have had an opportunity to give an offender a notice permitting virtual notification.

There are operational reasons why notifications following subsequent periods in custody should be required in person. For example, if the offender's appearance has significantly changed during their time in custody, in-person notification following their release will afford the police the opportunity to take photographs of that offender's changed appearance.

As with new section 86B, specifying these matters in secondary legislation will enable swift updates and amendments to the notification requirements in response to new trends in sexual offending and changing operational practicalities regarding the management of sex offenders in the community.

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

5. Why it is considered appropriate for this power to be exercisable by the Secretary of State within legislative competence?

Response

The UK Government has prerogative powers to enter into international agreements with third countries governing the sharing of data for law enforcement purposes. It is envisaged that under such agreements law enforcement data will be shared between UK law enforcement agencies, particularly, police forces, the National Crime Agency, Border Force and equivalent organisations in the third countries.

Whilst international relations are a reserved matter, the domestic implementation of international agreements is devolved, and law enforcement is a devolved matter to varying extents in each administration. This measure includes a concurrent power for the devolved government for matters within their legislative competence; however, we consider it appropriate for this power to also be exercisable by the Secretary of State to ensure the UK is able to meet international legal obligations under such international agreements.

International agreements implemented through use of these provisions will relate to the sharing of information for law enforcement purposes and national systems would likely be used to facilitate information sharing, such as the Law Enforcement Data Service (LEDS) and UK Borders systems. Regulations to implement such agreements will cover operational and technical details requiring the need for coordinated UK wide implementation, particularly when considering the nature of UK law enforcement activity regarding international police and judicial cooperation.

6. 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?

Response

Making the power subject to a consent mechanism could risk the UK being unable to meet its international obligations, for example where consent is not provided; agreements are likely to apply to law enforcement sharing across the UK, as such UK wide implementation would be required.

This could also pose significant operational and technical challenges, making the international exchange of data impractical and lead to disparate capabilities and information being available across law enforcement, and risks to public safety and security. The nature of cross-border criminality means that UK police forces frequently work together on investigations. In order to exercise these public safety duties, police officers should have access and be able to use the same intelligence obtained under international agreements in a collaborative way taking co-ordinated and sometimes joint operational action. As a result of these cross-border operational realities and the need to ensure UK wide implementation of international agreements we assess that consultation with Scottish Ministers is an appropriate course of action.

We will of course work closely with devolved governments throughout the process of using these powers. The concurrent power for the devolved governments, along with a requirement for the Secretary of State to consult with the devolved governments on relevant provisions, recognises the fact that the agreements may cover devolved matters and highlights our commitment to working closely with the devolved governments on the operation of this policy.

We also judge that a third country would be less willing to maintain a law enforcement information sharing agreement with the UK should it not apply UK-wide, which would undermine our policy intention to enhance international law enforcement data sharing, particularly, following EU Exit.

It should be noted that there are multiple existing forums for international criminality engagement with the Scottish Government and there are previous examples where engagement has taken place to affect the successful implementation on international agreements, such as the UK-EU Trade and Cooperation Agreement law enforcement measures.

7. How decisions will be made regarding which authority will exercise this power?

Response

The measure defines the “appropriate national authority” by which regulations may be made as the Secretary of State or, where a provision falls within devolved competence, Scottish Ministers, Welsh Ministers or the Northern Ireland Department of Justice.

We expect regulations to set out the technical requirements of such international agreements which will enable the operationalisation of the international law enforcement agreement, for example this could concern the IT software to be used, the timescales by which data should be provided, etc. Such regulations may also include operational details.

As noted, there are multiple existing forums for international criminality engagement which would be used to discuss any international law enforcement information sharing agreements under consideration. This engagement combined with requirement for the Secretary of State to consult with the devolved governments on relevant provisions, recognises the fact that the agreements may cover devolved matters and highlights our commitment to working closely with the devolved governments on the operation of this policy. Through the requirement for consultation, this will determine which national authorities will exercise this power to enable UK wide implementation and ensure the UK meet its international obligations.

Clause 197: Power to make consequential provision

8. 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?

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

Response

Given the wide-ranging nature of the Bill, clause 197(1) confers a power on the Secretary of State at large to make consequential amendments. Where it may be necessary to make consequential amendments to legislation within devolved competence arising from provisions in the Bill, the UK Government accepts that it would be appropriate to vest the power to make such provision in the Scottish Ministers and clause 197(3) provides for that. However, given the limited number of provisions in the Bill that meet that criterion, the UK Government has considered on a case-by-case basis, whether particular provisions in the Bill may give rise to the need to make consequential amendments to legislation falling within devolved competence. Where it is judged that that consequential amendments to legislation falling within devolved competence will not need to be made in respect of particular provisions in the Bill, no power has been conferred on the Scottish Ministers to make consequential amendments given that such a power would be otiose. The list of provisions in clause 197(3) to which the power relates has been discussed and agreed with the Scottish Government.

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

10. 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?

11. 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?

Response

The UK Government takes the view that while policing falls within the devolved competence of the Scottish Government and the Scottish Parliament, it is appropriate for the Secretary of State to exercise this power to ensure a consistent approach across the UK in how these powers, which operate across devolved and reserved areas, are exercised and authorised. This provides clarity to all law enforcement agencies and courts and mitigates the risk of divergence.

Where appropriate, the UK Government will work closely with the Scottish Government before amending the list of enforcement officers and authorising officers for Scottish law enforcement agencies.

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

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?

Response

The UK Government takes the view that while policing falls within the devolved competence of the Scottish Government and the Scottish Parliament, we consider it appropriate for the Secretary of State to exercise this power to ensure a consistent approach across the UK in how these powers are exercised.

The regulation-making power under clause 133(7) is necessary to ensure that the police powers to extract online information can operate effectively and consistently for all law enforcement agencies, including for those who regularly need to access certain confidential material, in particular certain business material, to exercise their core investigative functions.

The Government believes that it is crucial that the protection for confidential material, including any situations under which the general duty under these powers do not apply for certain material, should be uniform across the UK to avoid divergence. Where appropriate, the UK Government will engage closely with the Scottish Government before making regulations under clause 133(7).

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

14. 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?

15. 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?

Response

The drafting approach for the barred list measures and regulations affecting devolved matters was carefully considered, including the best way to exercise the regulation-making powers. We consider that the current wording in the clauses strikes the right balance to ensure that UK-wide provisions in regulations can be made for the National Crime Agency and British Transport Police while also respecting the need to consult Scottish Ministers on regulations affecting devolved matters. Given that any regulations made under these provisions will relate to a mix of reserved and devolved matters, the UK-Government does not consider it appropriate to require the regulations to be made with the consent of the Scottish Ministers. We will continue to engage with the Scottish Government as the regulations are developed.

I am copying this letter to Angela Constance.

Your sincerely,

A handwritten signature in blue ink, appearing to be 'S. Jones', with a long horizontal flourish extending to the right.

Sarah Jones MP
Minister of State for Policing and Crime