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Convener
Delegated Powers and Law Reform Committee
The Scottish Parliament
Edinburgh
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By Email

29 January 2026

Crime and Policing Bill

Dear Convener

Thank you for your letter of 21 January regarding the third supplementary Legislative Consent Memorandum (“LCM”), in relation to the UK Government’s Crime and Policing Bill (“the Bill”).

I have provided detailed responses to the committee’s questions on clauses which confer powers on UK Ministers and which may be exercised within devolved competence.

Clause 36: Power to make provision about the reporting of remote sales of knives etc. in bulk (inserting new section 141D(1) in the Criminal Justice Act 1988);

Clause 36: Power to amend definition of a reportable sale of bladed articles (inserting new section 141D(15) in the Criminal Justice Act 1988)

Question 1: Why it is considered appropriate for the powers to be exercisable by the Secretary of State within legislative competence, and not by the Scottish Ministers?

Response: Clause 36 creates a new legal duty on retailers to report the bulk sales of knives to a relevant police force. While this relates to devolved matters, it is envisaged the scheme will operate in England, Wales and Scotland in a consistent manner. This reflects powers of enforcement will sit with relevant police forces across these countries with police forces collaborating through the National (UK-wide) Police Chiefs Council as needed. It also reflects that the use of the two regulation-making powers do not bring with them any distinct Scottish-specific issues. For example, the manner in which reports are to be made to the relevant police force – which is captured within the new section 141D(1) power – does not

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carry with it any Scottish distinct element that could be not be addressed through SG consultation feedback to the UKG.

Within this context, the Scottish Government is content that requiring consultation on use of these two sets of regulations is sufficient as this will help facilitate a co-ordinated and consistent approach to the operation of the new scheme. Consultation seems appropriate in particular as we expect, as has happened with the extension of clause 36 to Scotland by amendment itself, constructive engagement and consideration from the UK Government of any views the Scottish Government may provide.

Question 2: What consideration has been given to:

- (i) Conferring the powers on the Scottish Ministers (solely or concurrently), or
- (ii) Requiring the consent of the Scottish Ministers, instead of a consultation requirement, before the powers may be exercised by the Secretary of State within legislative competence?

Response: As the scheme is to operate across England, Wales and Scotland in a consistent manner, we consider conferring the power on the Scottish Ministers was not necessary in these circumstances. Requiring consent was an option, but given the excellent collaboration between governments on the extension of clause 36 to Scotland itself, we consider consultation is sufficient to ensure devolved interests are reflected as and when the two sets of regulation making powers are used.

Question 3: How it intends to facilitate scrutiny by the Scottish Parliament of exercise of the powers within legislative competence by the Secretary of State?

Response: The Scottish Government will write to the relevant subject Committee in the Scottish Parliament as either and/or both of the regulation making powers are used to update Parliament on the use of the powers and provide details of the consultation that has taken place.

New clause: “Obscenity etc offences: technology testing defence” (after clause 84) – Subsection (1): Power to authorise technology to be tested for prohibited material, without offences being committed in the course of the testing; and

New clause: “Technology testing defence: Meaning of relevant offence” (after clause 84) – Subsection (1): Power to amend the meaning of “relevant offence”.

Question 1: Why it is considered appropriate for the powers to be exercisable by the Secretary of State within legislative competence, and not by the Scottish Ministers?

Response: It is considered appropriate for the powers to be exercisable by the Secretary of State because the policy intention is to maintain a single, UK-wide decision-making structure that ensures consistency and flexibility across the rapidly developing technology testing sector.

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It is noted that establishing a separate Scottish power could create practical constraints, including delays in the designation of Scotland-based organisations and reduced agility in responding to developments in the sector. Given the rapidly evolving nature of the sector, we considered it important that the regime remained sufficiently flexible.

Question 2: What consideration has been given to:

- (i) Conferring the powers on the Scottish Ministers (solely or concurrently), or
- (ii) Requiring the consent of the Scottish Ministers, instead of a consultation requirement, before the powers may be exercised by the Secretary of State within legislative competence?

Response: Both options were considered. While Scottish Ministers holding an equivalent regulation-making power was explored, it was recognised that the Secretary of State retaining the power enables the Home Office to implement a coherent compliance and enforcement regime, including, where necessary, the ability to create proportionate criminal offences to address recklessness or grossly negligent non-compliance. This is intended as a safeguard, particularly where testers or companies act recklessly or with gross negligence, but without limiting the scope of the power as the policy framework develops. Without sanctions, there is a risk that organisations may not be sufficiently incentivised to comply with authorisation conditions. This approach also promotes consistency across the UK in the application of the regulations, including any criminal offences that may be prescribed.

The agreed approach, which is the requirement for the Secretary of State to consult Scottish Ministers before authorising testing activities in Scotland ensures that Scottish Ministers interests are considered while preserving an agile and UK-wide regulatory system. We are content that this approach is sufficient in this context and will continue to engage Home Office counterparts regularly on these measures.

Question 3: How it intends to facilitate scrutiny by the Scottish Parliament of exercise of the powers within legislative competence by the Secretary of State?

Response: The Scottish Government will write to the relevant subject Committee in the Scottish Parliament if the regulation making power is used to update Parliament on the use of the powers and provide details of the consultation that has taken place.

I hope this information is helpful. As you are aware, this is a lengthy and complex Bill, and I anticipate the UK Government tabling further amendments at Lords Report Stage which will also trigger the LCM process.

I am copying this letter to Sarah Jones MP, Minister for Policing and Crime.

Yours sincerely,


ANGELA CONSTANCE

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