



Home Office

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Stuart McMillan MSP
Convenor
Delegated Powers and Law Reform Committee
The Scottish Parliament
Edinburgh
EH99 1SP

2 February 2026

Dear Stuart,

Crime and Policing Bill

Thank you for your letter of 21 January to the Home Secretary regarding the third supplementary Legislative Consent Memorandum in relation to the UK Government's Crime and Policing Bill.

I have provided responses below 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).

- 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?**
- 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?**

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 powers in clause 36 are necessary to ensure that there is consistency in the information being provided by online knife sellers to policing on what would constitute reportable bulk sales, the time period for qualifying bulk sales, how reports should be made, when reports are to be made and what information reports must contain. This is necessary to ensure effective assessment, identification and investigation by policing of high-risk individuals engaged in the bulk purchasing of knives across the UK.

The UK Government believes that it is crucial for the effective operation of this legislative measure by policing that there is a uniform reporting system in place across the UK to avoid divergence. We have included the requirement for the Secretary of State to consult with Scottish Ministers before making regulations under this clause and will ensure that the UK Government engages closely with the Scottish Government before making any such regulations. Given this level of collaboration, we consider a duty to consult is sufficient to ensure devolved interests are reflected.

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”.

1. Why the powers are exercisable by the Secretary of State within devolved competence

The UK Government considers it appropriate that the powers relating to the technology testing defence are exercisable by the Secretary of State, including where they may be exercised within the legislative competence of the Scottish Parliament, because the defence is intended to operate as a single, UK wide -framework.

The technology testing defence provides a narrow and voluntary statutory defence to specified offences, enabling authorised persons to carry out technology testing involving prohibited material for legitimate safety and public protection purposes. The defence provides legal certainty for those who choose to undertake testing in accordance with strict safeguards.

The defence relies on a centralised authorisation and oversight regime, including the authorisation of eligible persons, the imposition of mandatory operational safeguards and conditions, and the ability to respond to non-compliance. Authorisation to rely on a statutory defence to serious criminal offences is a legally sensitive matter. Conferring responsibility on a single UK authority ensures that the defence is applied consistently, safeguards are robust and uniform, and there is clarity for authorised testers operating across the United Kingdom.

In exercising these powers, the Secretary of State will apply the same procedures, safeguards and decision-making criteria across the United Kingdom. Authorisation decisions will be based on compliance with the statutory conditions and safeguards governing the testing defence, and not on the geographic location of the organisation within the UK.

This ensures that organisations based in Scotland are not disadvantaged by the conferral of the power on the Secretary of State and are subject to the same requirements, oversight and enforcement mechanisms as organisations elsewhere in the United Kingdom. While the exercise of the powers may engage devolved criminal offences in Scotland, the policy intention is not to alter the substance of devolved criminal law, but to ensure that a UK wide testing defence operates safely and effectively in support of public protection objectives. We have worked with Scottish Government officials throughout the development of the measure and they were content with drafting. The UK Government therefore considers that the Secretary of State is best placed to exercise these powers.

2. What consideration has been given to

i. Consideration of conferring the powers on the Scottish Ministers (solely or concurrently)

The UK Government has considered whether the powers relating to the technology testing defence could be conferred on the Scottish Ministers, either solely or on a concurrent basis. This approach was not adopted because the defence is designed to function as a single and coherent regime. Conferring separate or concurrent powers would risk divergence in authorisation criteria, safeguards or enforcement mechanisms, creating legal uncertainty for those carrying out testing activities across the UK and potentially undermining confidence in the integrity of the defence.

In addition, concurrent powers would introduce unnecessary complexity and duplication in the administration of a regime that is intended to be tightly controlled and consistent in its application.

ii. Consideration of a consent requirement instead of consultation

The UK Government has also considered whether the exercise of the powers by the Secretary of State within devolved competence should be subject to a statutory requirement to obtain the consent of the Scottish Ministers, rather than a requirement to consult them.

A consent requirement was not adopted because the technology testing defence must remain operationally responsive. The regulatory framework may need to be updated, including the list of relevant offences or the conditions attached to authorisation, to reflect technological developments or emerging risks. A consent requirement could impede the timely operation of the defence and reduce its effectiveness.

The Government considers that a statutory consultation requirement provides an appropriate and proportionate safeguard. It ensures that the views of the Scottish Ministers are formally sought and considered where regulations make provision within devolved competence, while preserving the Secretary of State's ability to ensure the effective operation of a UK wide- framework.

The UK Government therefore considers that the approach taken in relation to the technology testing defence strikes an appropriate balance between respecting the devolution settlement and ensuring the effective operation of a UK-wide public protection measure. The UK Government will continue to engage closely with the Scottish Government on the exercise of these powers.

I am copying this letter to Angela Constance.

Very best wishes

A handwritten signature in blue ink, appearing to be 'SJ' followed by a long horizontal stroke.

Sarah Jones MP
Minister of State for Policing and Crime