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Justice Committee

Legislative Consent Memorandum on the Policing and Crime Bill



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Justice Committee

Remit: To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.



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Background

1. The Policing and Crime Bill¹ was introduced in the House of Commons on 10 February 2016.
2. The Bill contains provisions which are intended to have effect in Scotland (either in full or in part) which would either alter or affect the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers. As such, it is a “relevant Bill” under Chapter 9B of the Standing Orders and consequently one requiring the consent of the Scottish Parliament.
3. Accordingly the Cabinet Secretary for Justice, under Rule 9B.3.1(a) of the Parliament’s Standing Orders, lodged a Legislative Consent Memorandum² (LCM) on the Bill on 23 June 2016.

Scottish Government updates

4. On 6 October 2016 the Cabinet Secretary lodged a supplementary LCM³. The supplementary LCM advised that discussions were still ongoing with regard to planned further amendments to include reciprocal provisions for Northern Ireland waters in respect of the police maritime powers provisions and that a further supplementary LCM may be required.
5. The Cabinet Secretary wrote again to the Committee on 7 November 2016 setting out his understanding that these provisions would no longer be taken forward in the Bill and provided an updated draft legislative consent motion.
6. The text of the revised draft legislative consent motion can be found in Annexe A. The letter from the Cabinet Secretary can be found in Annexe B.

Outline of the UK Bill

7. The purpose of the Policing and Crime Bill as stated by the UK Government⁴ is to:
 - Further improve the efficiency and effectiveness of police forces, including through closer collaboration with other emergency services.
 - Enhance the democratic accountability of police forces and fire and rescue services.
 - Build public confidence in policing.
 - Strengthen the protections for persons under investigation by, or who come into contact with, the police.

- Ensure that the police and other law enforcement agencies have the powers they need to prevent, detect and investigate crime.
 - Further safeguard children and young people from sexual exploitation.
8. The Bill makes provision in a number of areas which extend mainly to England, or England and Wales only. The Speaker has therefore certified various provisions within the Bill under English Votes for English Laws (EVEL).

Provisions relating to Scotland

Police Maritime Powers

9. The Bill makes provisions relating to Scottish law enforcement officers and the policing of Scottish waters which relate to devolved matters, in particular Chapter 6 of Part 4 which relates to Scotland, and clause 84 which provides power to England and Wales law enforcement officers to pursue vehicles into Scottish waters. Chapter 6 also provides for reciprocal provisions to be made with regard to Scotland. According to the Scottish Government, the provisions in relation to maritime cross-border pursuit are consistent with the position regarding cross-border pursuit powers on land. The Scottish Government has also stated that the powers are also consistent with the reciprocal cross-border maritime enforcement powers in the Modern Slavery Act 2015, for which the Scottish Parliament passed a Legislative Consent Motion on 15 January 2015.⁵

Cross border power of arrest

10. The aim of the cross-border arrest provisions is to provide a new power of arrest to local police where there is an urgent need to detain someone who is suspected of committing a serious offence in another UK jurisdiction. This recognises that criminals do not respect the internal boundaries between UK jurisdictions. The Scottish Government believes that it would not be possible for a Scottish Parliament Bill to deliver the policy required as elements of the provisions about cross-border arrest are clearly devolved but they would not work on their own. Instead the devolved provisions need to be woven into a set of complex cross-jurisdictional powers which cannot be easily divided along reserved/devolved lines. The Scottish Government believes that the only meaningful way to deliver the powers necessary to deliver this aim is by making provision in a UK Bill (paragraph 24 of the LCM).

Restoring littering powers of Scottish local authorities under sections 92, 93 and 94 of the Environmental Protection Act 1990

11. The Bill's provisions also restore powers which were removed in error by earlier UK Legislation. These powers relate to Scottish local authorities' ability to issue:

- **Litter Abatement Notices** – used when organisations with a responsibility to keep their land clear of litter are not fulfilling their duty.
 - **Street Litter Control Notices** – used to instruct businesses to keep the street or land near their premises clear of litter
12. The environment is a devolved matter. However, when the UK government's Anti-Social Behaviour, Crime and Policing Act 2014 repealed sections of the Environmental Protection Act for England and Wales it did so for Scotland too. As these powers were erroneously repealed by a UK Act the Scottish Government believes it is appropriate that they are restored as soon as possible through UK legislation, rather than an act of the Scottish Parliament. Legislative consent is required to allow the UK Parliament and Government to use the Policing and Crime Bill to do so.

Firearms

13. Part 6 of the Bill makes a number of changes and additions to existing firearms legislation. The majority of firearms legislation remains reserved to Westminster and applies throughout Great Britain. The exception to this is for air weapons licensing, which was devolved under the Scotland Act 2012 and is being introduced in Scotland only under Part 1 of the Air Weapons and Licensing (Scotland) Act 2015.
14. Clause 115 requires the legislative consent of the Scottish Parliament as it alters the executive competence of the Scottish Ministers. Specifically, it provides for the Scottish Ministers to charge a fee for the grant, variation or renewal of an authority given under section 5 of the Firearms Act 1968. Such an authority allows a person to possess, purchase, acquire, manufacture, sell or transfer certain weapons which are otherwise subject to a general prohibition. Section 5 authorities are already granted or refused by the Scottish Ministers, on the advice of the Police Service of Scotland. However, there is no provision for a fee to be charged within the current legislation.
15. Clause 115 also amends the fee provisions in relation to the granting, variation or renewal of club approvals under section 15 of the Firearms (Amendment) Act 1988, and of museum firearms licences under the Schedule to that Act. These functions are executively devolved (by virtue of SI 1999/1750). The Scottish Parliament's consent will therefore be required in so far as clause 115 alters the Scottish Ministers' existing fee-charging functions in respect of club approvals and museum firearms licences.

Scottish Government Consultation

16. The LCM provided information on the areas of the Bill which have been, or were due to be, the subject of consultation activity:

Police maritime powers

17. The LCM states that these provisions do not raise any significant or sensitive policy issues. The Scottish Government believes they are consistent with the position regarding cross-border pursuit powers on land. They are also consistent with the reciprocal cross-border maritime enforcement powers in the Modern Slavery Act 2015. The LCM adds that Scottish Government officials have discussed these provisions with Police Scotland and no concerns have been raised.

Cross-border powers of arrest.

18. The LCM confirms that the gap in cross-border arrest provisions was raised by Police Scotland. It explains that the provisions were prepared and tabled as amendments at short notice so it was not possible to consult on them in advance. The LCM advises that Scottish Government officials are engaging with stakeholders to gather views on the provisions, with a view to raising any issues with UK government before the Bill is considered in the House of Lords.

Restoring littering powers of Scottish local authorities under sections 92, 93 and 94 of the Environmental Protection Act 1990 41.

19. The Scottish Government believes that no consultation is necessary as this simply restores powers which were repealed in error.

Firearms

20. The Scottish Government confirmed that the Home Office has not yet consulted on the level of fees to be proposed.

Financial Implications

21. The LCM states that the financial implications associated with the relevant provisions contained within the Bill are as follows:

Police maritime powers

22. The Scottish Government believes these provisions do not have any significant financial implications.

Cross-Border powers of arrest

23. The LCM sets out that the Scottish Government believes there will be resource implications for Police Scotland in dealing with arrests made under this new power but these should not be significant. It is the Scottish Government's view that it is only intended to be used for a small number of serious, urgent cases. The provisions allow for serious offences, for which the new power of arrest can be used, to be defined in regulations. Once this been done the Scottish Government believes it will be possible to estimate how many cases this provision will apply to.

Restoring littering powers of Scottish local authorities under sections 92, 93 and 94 of the Environmental Protection Act 1990

24. The Scottish Government states in the LCM that as this provision restores the status quo there are no new financial implications.

Firearms

25. The proposal to introduce a new fee for authorities under section 5 of the Firearms Act 1968 is an enabling provision. The level of fees will be set out in regulations made by the Secretary of State. The Scottish Government confirms in the LCM that these have yet to be proposed or consulted on. The LCM goes on to state that it is therefore not yet possible to assess the costs to individuals or businesses or the contribution which the fee may make towards the cost of processing applications under section 5 of the Firearms Act 1968.
26. The LCM states that the potential costs or benefits of the remaining provisions on firearms set out in Part 6 of the Bill are not known, but are not expected to be significant.

Delegated Powers and Law Reform Committee Scrutiny

27. The Delegated Powers and Law Reform Committee considered the LCM at its meeting on 15 November 2016⁶ and confirmed that it was content that the power in section 94(1) of the Environmental Protection Act 1990 Act (as inserted by clause 146 of the Bill) was acceptable in principle, and was content that the power is subject to the negative procedure

Justice Committee Scrutiny

28. On 28 June 2016 the Committee issued a call for evidence on the LCM and three written responses were received from the Faculty of Advocates, the Law Society of Scotland and the Scottish Police Federation. The responses can be found in Annexe C.
29. Both the written responses from the Law Society of Scotland and the Faculty of Advocates supported the aims of the Bill and considered the LCM to be appropriate and went on to raise some minor points.
30. The Law Society of Scotland stressed the importance of police in each UK jurisdiction working collaboratively and asked that careful consideration be given to the differences in the law of each of the relevant jurisdictions in respect of the provisions on cross border power of arrest. The differences in law across the jurisdictions was also raised by the Faculty who called for this to be properly

taken into account when specification comes to be made in secondary legislation.

31. In respect of the provisions on police maritime powers the Faculty of Advocates raised a concern that the use of different wording in clauses 96(1) and 97(1), which appears to be used to refer to the same waters, could lead to unintentional ambiguity. The Faculty also noted that, in contrast to the provisions for England and Wales, at clause 87(3), law enforcement officers in Scotland are given no power to require the provision of information about items found on board a ship.
32. The Faculty raised a further concern that the police and maritime provisions contain no express exclusion of criminal and civil liability of Scottish law enforcement officers in respect of things done by them reasonably and in good faith although such an exclusion is provided for England and Wales at clause (90)5.
33. The Faculty noted that it does not appear that that the cross-border entry and search powers at clause 106 of Bill are to be extended to Scotland and questioned whether they should be extended to cover scenarios involving Scotland.
34. The Scottish Police Federation response stated that it had reviewed the provisions of the LCM against the provisions of the Bill and found the contents of the LCM uncontroversial.
35. In view of the comments received the Committee agreed it did not require to take any further oral evidence on the LCM
36. The Committee notes the explanation from the Cabinet Secretary in his letter of 7 November 2016 as to why there was a delay in lodging the final draft consent motion (as set out above in paragraphs 4 and 5). The Committee understands these reasons and does not believe the delay, which has also led to a delay in the Committee reporting to the Parliament, has prevented it scrutinising the LCM adequately.

Recommendation

37. The Committee is supportive of the UK Government legislating in the areas set out in the Legislative Consent Memorandum on the Policing and Crime Bill.
38. The Committee therefore recommends that the Parliament approves the legislative consent motion on the Policing and Crime Bill, to be lodged by the Scottish Government.

39. In doing so the Committee recommends the Scottish Government takes regard of the points raised in the written responses it has received.

¹ UK Government Policing and Crime Bill (HL Bill 55) Available at:

<http://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0055/17055.pdf>

² Policing and Crime Legislative Consent Memorandum, Available at:

<http://www.parliament.scot/LegislativeConsentMemoranda/SPLCM-S05-3-2016.pdf>

³ Policing and Crime Supplementary Legislative Consent Memorandum, Available at:

<http://www.parliament.scot/SPLCM-S05-3a.pdf>

⁴ Modern Slavery Legislative Consent Memorandum, Available at:

<http://www.parliament.scot/LegislativeConsentMemoranda/ModernSlaveryBillLCM.pdf>

⁶ Scottish Parliament Delegated Powers and Law Reform Committee, Legislative Consent Memorandum on the Policing and Crime Bill, 11th Report, 2016 (Session 5), Available at:

http://www.parliament.scot/S5_Delegated_Powers/Reports/DPLRS052016R11.pdf

Annexe A

Draft motion



“That the Parliament agrees that provisions of the Policing and Crime Bill, introduced in the House of Commons on 10 February 2016, which refer to police maritime powers, cross-border powers of arrest, restoring littering powers of Scottish local authorities and to firearms, where these matters fall within the legislative competence of the Scottish Parliament or alter the legislative competence of the Parliament or the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Annexe B

Letter from the Cabinet Secretary for Justice; 7 November 2016

UK POLICING AND CRIME BILL

You will be aware that Legislative Consent Memorandums which I lodged on 23 June and 6 October 2016 for the UK Policing and Crime Bill identified that a number of provisions contained within the Bill were intended to either change the law in respect of a devolved matter or affect/alter the executive competence of the Scottish Ministers. Those provisions relate to:

40. Police maritime powers;
41. Cross-border powers of arrest;
42. Restoring littering powers of Scottish local authorities under sections 92, 93 and 94 of the Environmental Protection Act 1990;
43. Firearms.

The supplementary Memorandum lodged on 6 October advised that discussions were still ongoing with regard to planned further amendments to police maritime powers provisions and that a further supplementary LCM may be required. I am now writing to provide an update on the Scottish Government's final position with regard to all the relevant provisions of the Bill.

Cross-border powers of arrest, littering and firearms

The Scottish Government remains content with provisions relating to cross-border powers of arrest, restoring littering powers of Scottish local authorities and firearms.

Police Maritime Powers

The Bill includes provisions on maritime enforcement powers. These provisions include reciprocal powers of hot pursuit, that would allow law enforcement officers from Scotland to pursue a vessel into England and Wales waters (and vice versa). These provisions were addressed in the LCM lodged on 23 June 2016.

It had been intended that the Bill would also contain reciprocal provisions that would authorise hot pursuit into Northern Ireland waters if a ship was pursued there from Scotland or England and Wales waters. However, we understand that the intention is now that these will not be included in the Bill to allow further detailed work to take place.

The position as outlined in the initial LCM therefore stands and the Scottish Government is content with the provisions in this area. There is now no requirement for a further supplementary LCM.

UK Parliamentary Timetable

The Bill is now completing its Committee stages in its second House (Lords) and the UK Government anticipate that it will reach Report stage around 23 November 2016 (actual date yet to be confirmed). We would therefore hope to have a vote in plenary session by that time if at all possible. We understand this is a compressed timetable but this has been largely outwith the control of the Scottish Government.

Final Legislative Consent Motion

It will be necessary to update the draft Motion contained in the supplementary LCM lodged on 6 October 2016. The final draft motion to be considered will now read:

“That the Parliament agrees that provisions of the Policing and Crime Bill, introduced in the House of Commons on 10 February 2016, which refer to police maritime powers, cross-border powers of arrest, restoring littering powers of Scottish local authorities and firearms, where these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

I am grateful for your patience with regard to the progress of this Bill.

MICHAEL MATHESON

Annexe C

Written submission from the Law Society of Scotland

Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish Solicitors. With the overarching objective of leading legal excellence, we strive to excel and to be a world class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure provision of excellence legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective Solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fair and just Society through our active engagement with the Scottish and United Kingdom Governments, Parliaments wider Stakeholders and our Membership.

This paper is intended to inform MSPs of our comments on the Policing and Crime Bill to help to inform Members' consideration of the Legislative Consent Memorandum (LCM).

If you would like to discuss this paper, or if you would like more information on the points that we have raised, please do not hesitate to contact us. Contact details can be found at the end of the paper.

Areas Requiring Consent of the Scottish Parliament

The areas of the Bill which require the consent of the Scottish Parliament are set out below:-

1. Police Maritime Powers
2. Cross Border Powers of Arrest
3. Restoration of Littering Powers
4. Firearms

Society's Comments

1. Police Maritime Powers

We believe that the Bill provisions in relation to maritime cross-border pursuit are consistent with the position regarding cross-border pursuit powers on land.

2. Cross Border Powers of Arrest

Background to Cross Border Arrest within the UK

In 1993 a joint Home Office/Scottish Office consultation paper¹ proposed a number of reforms. These were grouped under four headings:

- (i) Pursuing a fleeing suspect;
- (ii) Investigating a series of offences;
- (iii) Following an offence beginning in one country and continuing into the other (e.g. fraud); and
- (iv) Providing assistance at the request of another force across the border (e.g. serious public disorder)

The consultation paper outlined that the central problem was that police officers effectively ceased to be police officers as soon as they crossed from England to Scotland and vice versa, losing all the powers of detention and arrest associated with that status. Similarly, on entering Scotland, officers from England lost all protection from civil liability for any damage they might cause to persons or property in the execution of their duty. The consultation paper noted that in practice officers regularly crossed the Border in pursuit of offenders, but noted (1) increasing concern amongst officers at the practical and legal risks associated with this practice, (2) in urgent cases, particularly where no warrant was issued, officers on one side of the Border were often reliant on officers on the other to carry out arrests. Thirdly, officers were increasingly concerned about being required to act without the legal protections afforded to them by the laws of their home jurisdiction.

The 1993 consultation led to the Criminal Justice and Public Order Act 1994. Sections 36-140 of the Act allow a warrant issued in one jurisdiction to be executed without endorsement or judicial intervention in the other. In addition, there are now cross-border powers of arrest.

The Bill Provisions

The Justice Committee's Note by the Clerk explains that the problem with the existing framework is that there are no powers of arrest available in urgent investigations where an individual is alleged to have committed a serious offence in one UK jurisdiction, where no arrest warrant has been issued and the suspect has turned up unexpectedly in another UK jurisdiction. Even if there are strong arguments for arresting and holding the suspect, at present, the local police lack clear power to do so.

Clause 105 of the Bill was inserted into the Bill at Report Stage in the House of Commons to fill this gap in cross-border arrest powers. This clause inserts new sections into the Criminal Justice and Public Order Act 1994 ("the 1994 Act"). The provisions will allow people suspected of serious offences in Scotland to be arrested in other parts of the UK by police from those jurisdictions.

According to the Government's factsheet on the cross-border provisions:

"Given that the criminal law differs in each of the three jurisdictions it is necessary to develop a bespoke, but analogous, list of offences for each

¹ https://archive.org/stream/op1279427-1001/op1279427-1001_djvu.txt

jurisdiction. To allow for the appropriate consultation with, and consent of, the devolved administrations, and consultation with police forces in the three jurisdictions, the Bill provides for a list of offences to be specified in secondary legislation. This approach would also afford the flexibility to update the list in the light of experience and to reflect the creation of relevant new offences.”²

Whilst we recognise and support the introduction of provisions to allow more comprehensive cross-border powers of arrest, we believe that there must also be consideration to the common procedural rules for all cases within the UK. Clearly, the accused can only be subjected to one set of criminal procedure rules and, in this regard, there should be clarity around which set applies. Where an accused is being questioned about a Scots Law Crime, under Scottish Criminal Procedural Rules, the accused must have access to the Scottish rules which affords him or her protection. For example, we believe that where an accused is apprehended in England and is questioned about a Scots Law crime, he or she must have the right to have the advice of a solicitor qualified in Scotland at the police interview.

In relation to cross-border arrest, we believe that the police in each UK jurisdiction must work collaboratively and give careful consideration given to the differences in the law of each of the UK jurisdictions.

Notwithstanding our concerns about these operational aspects on implementation, we support the aims of this part of the Bill.

3. Restoration of Littering Powers

We are supportive of the Bill provisions which seek to restore the relevant provisions relating to littering powers.

4. Firearms

Part 6 of the Bill makes a number of changes to existing firearms legislation. The provisions seek to:

- clarify the meaning of “firearm” for the purposes of the legislation
- define the meaning of “antique firearm”
- set out a new offence with regard to the possession of articles intended to convert imitation firearms into firearms
- set out controls on deactivated weapons
- make provision for the charging of fees in certain circumstances
- provide for the issue of statutory guidance to the police in connection with the firearms legislation

The majority of firearms legislation remains reserved to the UK Government. The exception to this is for air weapons licensing, which was devolved under the Scotland Act 2012 and has been introduced under Part 1 of the Air Weapons and Licensing (Scotland) Act 2015 (“the 2015 Act”). We also note that Scottish Government has

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537277/Factsheet_14b_-_Cross-border_powers.pdf

established the Scottish Firearms Consultative Panel which has examined the practicalities of licensing air weapons and has advised on the development and implementation of a new licensing regime.

As outlined above, the Bill introduces the charging of a fee for authorised possession of prohibited weapons in certain circumstances. Specifically, the Bill provides that the Secretary of State may by regulations authorise the appropriate national authority to require payment of a fee before an authority under section 5 of the Firearms Act 1968 is granted, varied or renewed. The introduction of fee-charging for section 5 authorities extends the Scottish Government's executive powers in that they are given a new power to levy the fee. We believe that the extension of the Scottish Government's executive powers to enable a fee to be charged for section 5 authorities is a sensible approach and we support the aims of cost recovery, through the levying of fees.

Written submission from the Faculty of Advocates

1. The Faculty of Advocates approves of the Legislative Consent Memorandum in respect of the Policing and Crime Bill. Two of the areas identified relate to law enforcement across more than one jurisdiction, where there are clear benefits to legislating in a single UK statute. A third, firearms licensing, has similar potential UK-wide implications, and in any event requires UK legislation in order to empower the Scottish Ministers to charge a fee.
2. The Faculty notes that the fourth area, powers to counter littering, lacks cross-border significance, but is designed to reinstate provisions originally in UK legislation. A Memorandum is therefore considered appropriate, though not as imperative as in the other cases.
3. The Faculty also makes certain other observations, detailed below, concerning the content and structure of the Bill, which it is hoped may be a useful contribution to its passage.

Police Maritime Powers

4. The Faculty observes that the purpose of clauses 82 to 104 of the Bill is the extension of investigation powers over offences committed at sea. The regime in respect of England and Wales (to clause 93) is mirrored, with appropriate modifications, by provisions in respect of Scotland (from clause 94).
5. The Faculty considers a Legislative Consent Memorandum to be appropriate in respect of these provisions. In particular, the provisions on hot pursuit (clauses 84, 85, 96 and 97) address law enforcement on vessels moving between waters under Scottish, Northern Irish, and English and Welsh jurisdiction. The Faculty agrees that it is desirable that those provisions be substantively identical and, so far as possible, contained within the same legislation. To that end the Faculty anticipates that, so far as not already in place, parallel legislation should be in contemplation as regards Northern Ireland.

6. As regards the substantive provisions of the legislation, the Faculty is of the view that the restrictions at clauses 95 and 96 on the exercise of enforcement powers is an appropriate method of respecting the comity of nations; while noting in particular, in respect of the latter, that Article 27 of the United Nations Convention on the Law of the Sea provides a broad authority for the exercise of such powers where the effects of the activity under investigation are felt in the United Kingdom. The Faculty envisages that that authority should not be interpreted unnecessarily restrictively.
7. The Faculty observes that clauses 96(1) and 97(1)³ employ different wording for the waters in which the right of hot pursuit may be exercised. The wording used at 96(1) corresponds with the defined term at clause 104(1). It appears that the clauses are intended to refer to the same waters; consequently the Faculty is concerned that an unintentional ambiguity may result from the use of different wording, and questions whether the defined term should be used in both clauses.
8. The Faculty observes that, in contrast to the provisions for England and Wales⁴, law enforcement officers in Scotland are given no power to require the provision of information about items found on board ship.
9. The Faculty further observes that these provisions contain no express exclusion of criminal and civil liability of law enforcement officers in Scotland, in respect of things done by them reasonably and in good faith⁵. It is unclear why the Scottish provisions contain no such exclusion. The Faculty is keen to ensure that this has been considered in the Bill's passage.

Cross-Border Powers of Arrest

10. The Faculty agrees that it is appropriate for the gap identified to be addressed in the way proposed by the legislation. An urgent and serious investigation within the United Kingdom ought not to be compromised by the presence of a suspect in a jurisdiction different from that of the investigating force.
11. Given the importance, and particularly the complexity of the relationships involved, which by definition involve the enforcement of justice across the United Kingdom, the Faculty considers it essential that these provisions be contained within UK legislation.
12. With regard to the substance of the legislation, urgency is provided for at new section 137C. The Faculty observes, however, that key to the proposed scheme is the method of defining those offences to which it applies. As drafted, those depend on specification in secondary legislation, with appropriate devolved consents, and are subject to affirmative resolution procedure. Only indictable offences may be specified.
13. The Faculty observes that many such offences exist in Scotland only at common law, which is not necessarily the case for England and Wales. It is anticipated that

3 And in clauses 84(1) and 85(1) in respect of England and Wales.

4 At clause 87(3).

5 The exclusion for England and Wales is at clause 90(5).

care will be taken to ensure that this be properly taken into account when specification comes to be made.

14. The Faculty considers that the interaction between new sections 137A(8), 137B(2) and 137B(3) creates a potential ambiguity as to whether an offence may be specified in respect of one jurisdiction alone, or whether by specification it becomes specified in all three jurisdictions. The consent provision at new section 137B(4) suggests that the latter is intended to be the case. However, the Faculty observes that this creates a risk of a divergent law and order policy within one jurisdiction hindering specification, and thereby compromising the introduction of a desired application of cross-border arrest between the other two. This may need to be refined in course of the Bill's passage.
15. In a similar vein, it appears (despite the absence of a conjunctive 'and' within the new section 137B(3)) that an offence may be specified only if indictable within all three jurisdictions. Again, this creates a risk that divergence in the law on indictment in one jurisdiction may frustrate a desired application of cross-border arrest between the other two.
16. It does not appear to be envisaged that the cross-border Entry and Search powers at clause 106 be extended to Scotland. As formed they make comprehensive provision for the exercise of powers where the jurisdictions concerned are Northern Ireland and England & Wales. The Faculty raises the question whether they should be extended to cover scenarios involving Scotland.

Littering powers

17. These provisions are intended to re-enact powers, repealed accidentally, of local authorities to take certain measures to combat littering.
18. The Faculty expresses no view on the policy behind those provisions, other than to agree that it is desirable that behaviour considered anti-social should not escape attention simply by virtue of unrelated errors within a legislative process.
19. The Faculty does note, however, that environmental matters are within competence of the Scottish Parliament; and that the powers and behaviour addressed by these provisions, being entirely local in nature, do not inherently merit the attention of UK legislation. The Faculty does not consider such a course to be inappropriate, but does observe that no broader principle is raised thereby.

Firearms

20. The Faculty considers the control of firearms to be an important function of government. Furthermore, as the control of their use and movement raises concerns common across the jurisdictions, it is appropriate that that control not be exercised divergently without cause.
21. Where this requires the issue of licences, and the imposition of fees therefor, it is necessary for powers to be put in place allowing common policies to be pursued.

As a matter of policy, the Faculty therefore considers these provisions to be appropriate.

22. In any event, it is noted that the fee regime envisaged by the Bill covers licensing powers already devolved to Scotland. In the view of the Faculty, these provisions are thus not only appropriate but necessary.

Written submission from the Scottish Police Federation

I can confirm that the Scottish Police Federation has reviewed the provisions of the LCM against the provisions of the Police and Crime Bill and find the contents to be entirely uncontroversial. Calum Steele General Secretary 14 July 2016.

Calum Steele General Secretary, 14 July 2016

