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ARMED FORCES BILL SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

Thank you for your letter of 3 September seeking further information from the Scottish Government about matters relating to this Legislative Consent Memorandum (LCM) and how the transfer of Service Restraining Orders (SROs) to the civilian justice system will operate.

I have addressed the Committee's specific questions below:

- Could the Scottish Government clarify the interaction between clause 8(5) of the amendment agreed by the House of Commons and the disapplication of section 109 of the Victims, Witnesses and Justice Reform (Scotland) Act 2025? What effect does clause 8(4) have on the operation of victim protections in Scotland, and how will victims be informed that those protections continue to apply?

Section 109 of the Victims and Witnesses and Justice Reform (Scotland) Act 2025 ("the 2025 Act") makes provision for the enforcement in Scotland of certain protective orders made in other parts of the UK. The effect of section 8(5) is to disapply section 109 of the 2025 Act in respect of SROs which are to be treated as if they are civilian restraining orders made by courts in England and Wales by virtue of 8(2) and 8(3) of the Armed Forces Bill. This approach has been taken because such SROs are, for the purpose of Scottish jurisdiction, to be treated as if they are NHOs under clause 8(4) of the Bill. As such, there is no longer a need for the provision in section 109 of the 2025 Act to operate for SROs as they become Scottish NHOs through the Armed Forces Bill approach when a person subject to armed forces discipline leaves the armed forces.

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This approach has a benefit in that if reliance was placed on section 109 of the 2025 Act to enable the Scottish civilian justice system to enforce SROs transferred to the civilian justice system, Scottish courts would have no power to consider applications to vary or revoke an SRO where someone has left the Armed Forces. Instead however, Scottish courts will have an ability to consider variations and revocation as the court procedure that applies to NHOs will operate which includes processes for variations and revocation to be considered by the court by way of application.

- Can the Scottish Government provide assurance that there will be no gap in protections for victims when an individual who is subject to a Service Restraining Order leaves the armed forces and the order becomes enforceable within the Scottish civilian justice system?

Yes. At present, when a person subject to an SRO leaves the Armed Services, the SRO ceases to have effect and if the person whom an SRO is intended to protect wishes the protection to remain in place, they would need to make an application to the civil courts for a new civil protective order. It is the approach taken in clause 8(4) of the Bill that will ensure there is no gap in protection as it puts in place a mechanism by which SROs automatically become enforceable by the Scottish civilian justice system as if they are NHOs when a person subject to an SRO ceases to be subject to Armed Services discipline. This will remove the need for the victim of an offence to have to make an application to the civil courts and ensure protection transfers seamlessly.

- If a person subject to a Services Restraining Order leaves the Armed Forces, does the enforceability of that order transfer automatically into the Scottish civilian justice system? The Committee would welcome further explanation of the practical and technical arrangements that underpin that transfer.

Yes. The effect of clause 8(4) is that an SRO automatically becomes enforceable by the civilian justice system when a person against whom an SRO is made leaves the Armed Forces.

In practical terms, the SRO becomes enforceable as if it were an NHO imposed by a Criminal Court under the powers the court has at section 234A of the Criminal Procedure (Scotland) Act 1995. This means that breach of the terms of an SRO is a criminal offence punishable on conviction by up to 12 months imprisonment. The powers that the COPFS and the subject of an NHO have to apply to the court for an NHO to be varied or revoked will also apply to an SRO in these circumstances.

- How does Police Scotland become aware that a Service Restraining Order has become enforceable within the Scottish jurisdiction? Is there an automatic notification process or other formal mechanism for information sharing between the service justice system and the relevant Scottish authorities?

All Service Protection Orders, including SROs, are entered onto the Police National Computer (PNC). The PNC would flag this to the Police, if they are called to an incident where a restraining order may have been breached, who could then detain them. This legislation will enable the person to be charged for breaching the order, where currently they cannot. This is because breach of an NHO, which is how the SRO is treated as being for enforcement purposes, is a criminal offence.

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- When responsibility for an order transfers from the service justice system to the civilian justice system, who is responsible for informing the victim of that change? Furthermore, who becomes the victim's point of contact, and what arrangements are on place to ensure continuity of communication and support?

The Ministry of Defence have advised that the Defence Victim Witness Care Unit provide Victim Liaison Officers who would have the responsibility to inform the victim that the SRO has been placed on the PNC and that if the offender breaches that SRO, the victim is to contact the Police to report this.

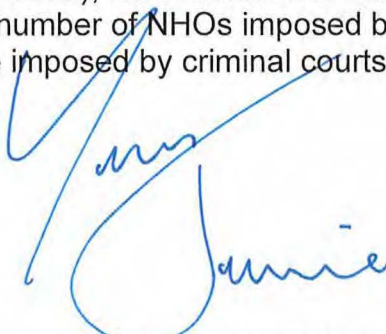
To ensure continuation of communication and support for the victim, we are advised by the Ministry of Defence that the Victim Liaison Officer will, when the offender leaves Service, continue to support the victim.

- In circumstances where an individual who has left the Armed Forces breaches a Services Restraining Order, can the Scottish Government confirm whether Police Scotland would investigate the alleged breach and that prosecution would be taken forward by the Crown Office and Procurator Fiscal Service in the same manner

Yes. As indicated above, the effect of clause 8 is that an SRO becomes enforceable by the Scottish criminal justice system as if it is an NHO. This means that Police Scotland are responsible for investigating alleged breaches of such an SRO and COPFS are responsible for consideration of prosecution where a case is reported to them by Police Scotland. Whether an alleged breach is reported to COPFS is an independent operational matter in any given case for Police Scotland and decisions whether to prosecute an individual for an alleged breach is an independent operational matter for COPFS.

- Finally, could the Scottish Government advise:
 - How many current Service Restraining Orders relate to individuals currently resident in Scotland; and
 - How many cases the Scottish Government estimates to transfer into Scottish jurisdiction each year under these provisions?

We understand from Ministry of Defence officials that since December 2022, there have been eight SROs issued in the Service Justice System. Of those eight, three were dismissed from Service, one of whom resided in Scotland. As such, while it is not possible to provide a precise estimate of the number that will transfer into Scottish jurisdiction each year (as this relates to decisions made whether to impose SROs and how often individuals subject to SROs leave the Armed Forces etc.), we consider it is reasonable to assume the number will be very small, relative to the number of NHOs imposed by the criminal courts in Scotland each year (5,474 NHOs were imposed by criminal courts in 2025/26).



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