

MEMORANDUM

CRIMINAL JUSTICE AND POLICE BILL

Background

1. The Criminal Justice and Police Bill takes forward the United Kingdom Government's priorities for this session at Westminster by introducing measures to tackle crime. The Bill applies primarily to England and Wales but some measures would also apply in Scotland, three of which require the consent of the Scottish Parliament. The Bill had its first reading on 18 January 2001 and its second reading on 29 January 2001.

Content of the Bill

2. The parts of the Bill that would extend to Scotland concern: disclosure of information for the purposes of criminal investigations and proceedings; powers of the police and other investigating bodies to remove property for sifting; execution in Scotland of English and Welsh warrants for the seizure of certain materials; travel restriction orders on drug trafficking offenders; and the National Criminal Intelligence Service (NCIS).

3. Other parts of the Bill not extending to Scotland include: on the spot penalty notices for disorderly behaviour; combating alcohol-related disorder; extending offences of intimidating witnesses to civil cases; extending local child curfew orders to children under 16 (from 10); retention of fingerprints and DNA samples for those not convicted of offences; and a central police training and development authority for England and Wales.

Proposal

4. The measures in the Bill which concern devolved matters and which the Scottish Executive proposes are extended to Scotland through this Bill are:

- i. disclosure of information for the purposes of criminal investigation and proceedings (Part II of the Bill);
- ii. extension of seizure powers of certain bodies, such as Customs and Excise, to allow material to be removed for sifting (Part III of the Bill);
- iii. the execution in Scotland of warrants issued in England and Wales for certain materials (Part IV of the Bill).

The other provisions in the Bill that will extend to Scotland - travel restriction orders for drug trafficking offenders and those relating the organisation and personnel of the NCIS - concern reserved matters.

Information disclosure for the purposes of criminal investigations and proceedings

5. The proposals would improve the ability of Government departments and certain other bodies voluntarily to disclose confidential information for the purposes of criminal investigations and proceedings. They would widen and rationalise certain existing disclosure provisions to permit disclosure for the purposes of criminal investigations or proceedings

anywhere. They would also create new statutory disclosure provisions for the Inland Revenue and Customs and Excise for the purposes of criminal investigations or proceedings. Disclosed information cannot be further disclosed except for the purposes permitted for the original disclosures and with the consent of the relevant Commissioners. These provisions are counterparts of existing provisions which allow the NCIS and the police, for example, to provide information to the Revenue departments for the purpose of criminal investigations and proceedings. They would, therefore, allow for reciprocal information flows.

6. The Bill would amend existing disclosure provisions contained in a large number of existing statutes, some of which are devolved. It would have been within the competence of the Parliament to deal with these devolved statutes separately, but the Executive considers that an exercise to standardise disclosure provisions should be done on a UK basis in order to ensure the greatest degree of consistency and to maximise their value in dealing with crime. The Executive therefore proposes that these measures are dealt with as a whole in the Bill.

Powers of seizure

7. The proposed measures would allow the police and other officers with investigative powers to remove material from premises and individuals for sifting, or for separation when inextricably linked (for example, on a computer hard disk), if these cannot reasonably be done at the time of the search. Inextricably linked material that is not subject to seizure could be retained if it could not reasonably be separated from material which can be seized. Other material not subject to seizure would be returned. The provisions also allow a person with an interest in seized material to apply to a judicial authority for its return separate from any other proceedings. There are also provisions for legally privileged and "excluded" and "special procedure" material (the latter two are terms in the Police and Criminal Evidence Act 1984 (PACE) and are not used in Scots law).

8. The measures would apply to a large range of statutory powers of seizure detailed in a Schedule to the Bill. These powers are the primary powers of seizure; the provisions in the Bill would supplement them. The Bill does not create any new free-standing powers to seize material. The proposals also contain a power to retain property seized by a constable under these provisions if there are reasonable grounds for believing that it was obtained in consequence of the commission of an offence or that it is evidence in relation to any offence, and that it is necessary to retain it to prevent it being concealed, lost, altered or destroyed.

9. The proposals on sifting originate from a decision of the courts in England and Wales that current powers under PACE (which does not extend to Scotland) do not allow the police to remove material for sifting. The position at common law in Scotland is similar. Material is either sifted on the premises or removed for sifting with the consent of the owner. This practice has not caused difficulties and the Executive has therefore concluded that seizure powers, common law or statutory, exercised by the Scottish police should not generally be extended in this way. The proposals regarding inextricably linked material also arise from difficulties experienced by investigators in England and Wales. No such difficulties have to date been experienced in Scotland, so the Scottish Executive does not propose that these measures are extended to Scotland for the Scottish police. Clause 67 of the Bill therefore excludes constables in Scotland from general provisions on seizure.

10. However, as well as the police the Bill extends seizure powers exercised by a number of bodies that operate across the UK, such as HM Customs & Excise, DTI inspectors, and

Inland Revenue officers. There are also provisions affecting the powers of local authority officials, such as Trading Standards Officers. The Executive accepts that these bodies and officials should have the same powers to operate in Scotland as they do in the rest of the UK and that the measures should therefore extend to Scotland for their statutory seizure powers. However, when the relevant statutory power can be exercised by either an officer of the UK body or a constable, the wider powers introduced by the Bill would only be exercisable in Scotland by the officer of the UK body, not a police constable.

11. However, certain seizure powers of UK bodies are exercised through police constables, notably those of the Financial Services Authority. To preserve the integrity of the UK wide regime for these bodies, the Executive proposes that these are exceptions to the general exclusion of Scottish police officers from the scope of these provisions. Clause 67 provides for this.

12. Some of the powers for UK bodies in the Bill are reserved, particularly for DTI inspectors under the Companies Act, but others are investigative tools for the prevention and detection of crime and, although the principal power may be contained in a reserved enactment, there are arguments that the extension of such powers falls within the legislative competence of the Scottish Parliament. However, the Executive believes that the best way of providing consistent powers to these bodies in Scotland and the rest of the UK is to extend the provisions of this Bill to Scotland in respect of them. This would operate by extending the powers contained in a large number of UK Acts in a single measure. Separate Scottish legislation would lose the coherence of this approach. Extending the provisions of this Bill also ensures that these powers are introduced across the UK at the same time.

Execution of certain English and Welsh warrants in Scotland

13. The proposed measure would enable a Sheriff to endorse for execution in Scotland a warrant issued in England and Wales for excluded and special procedure material.

14. In England and Wales, search warrants for excluded or special procedure material, that is material of a confidential nature, may be obtained only on application to a circuit judge. The legislation which provides for warrants issued in England and Wales to be endorsed, or 'backed', for enforcement in Scotland (and *vice versa*) applies only to courts of summary jurisdiction. It does not apply to warrants issued by a circuit judge. Consequently, such warrants cannot be enforced in Scotland and this hampers criminal investigations where the excluded and special procedure material is held in Scotland.

15. The Bill proposes to remedy this situation by amending PACE so that such warrants will be classified as if they were issued by a court of summary jurisdiction and therefore endorsable by a Scottish Sheriff. The Executive considers that the border between Scotland and England and Wales should not be an obstacle to the investigation of crime and fully supports the measure. Although it would have been possible for the Scottish Parliament to enact such a measure, the simplest and most effective route is to amend PACE as it applies to England and Wales through this Bill.