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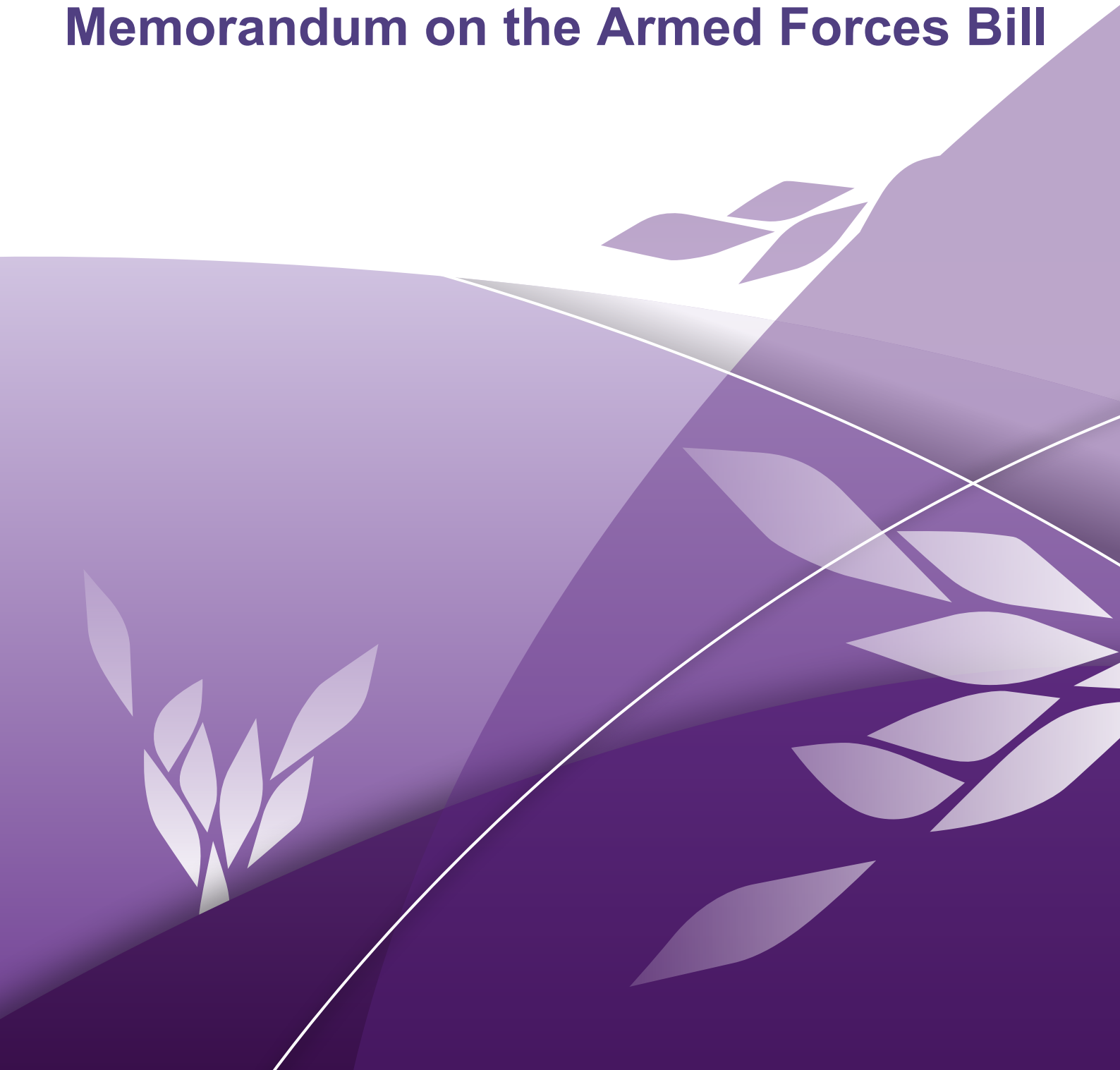
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Criminal Justice Committee

Supplementary Legislative Consent Memorandum on the Armed Forces Bill



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Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland



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Committee Membership

 Convener David Linden Scottish National Party	 Deputy Convener Ben Macpherson Scottish National Party
 Amanda Bland Reform UK	 Maggie Chapman Scottish Green Party
 Stephen Kerr Scottish Conservative and Unionist Party	 Marie McNair Scottish National Party
 Pauline McNeill Scottish Labour	

Introduction

1. The UK Government introduced the [Armed Forces Bill](#) in the House of Commons on 15 January 2026.
2. The UK Government has stated that the Bill would:
 - continue the Armed Forces Act 2006 for a further five years;
 - amend the Armed Forces Act 2006 and other enactments relating to the armed forces;
 - make provision about the reserve forces, visiting forces and the Ministry of Defence Police;
 - make provision about the defence functions of the Oil and Pipelines Agency;
 - make provision about the protection of military remains; and
 - make provision for connected purposes.

A [House of Commons Library briefing](#) is available providing background on the policy debates relating to this Bill.

3. An LCM is lodged when a Bill in the UK Parliament makes provision (a) for any purpose within the legislative competence of the Scottish Parliament or (b) that alters the legislative or executive competence of the Scottish Government. The LCM sets out the Scottish Government's position on whether the Scottish Parliament should consent to such provisions.
4. The Scottish Government lodged a [Legislative Consent Memorandum \(LCM\)](#) on the Bill, on 26 February 2026. The memorandum was referred to the Session 6 Social Justice and Social Security Committee, which subsequently [recommended](#) that the Scottish Parliament give consent to the relevant provisions covered by the LCM. Motion [S6M-21167](#) was lodged on 20 March 2026 and [was agreed to](#) by the Scottish Parliament on 24 March 2026.

Social Justice and Social Security

Committee consideration

5. The Committee's report, published on [18 March 2026](#), states that it took evidence from the then Minister for Parliamentary Business and Veterans on the Legislative Consent Memorandum (LCM) for the Armed Forces Bill on [12 March 2026](#).
6. During that session the Minister explained that the Bill primarily renews the Armed Forces Act 2006 and, while largely concerned with reserved matters, would extend the Armed Forces Covenant duty to Scottish Ministers across a range of policy areas. He stated that the Scottish Government supports the aims of the Covenant and views the extension as a way to improve awareness and consistency of support for the armed forces community. Members discussed the practical impact of the new duty, support for veterans transitioning to civilian life, the effect on local authorities and health boards, and the legislative consent implications of provisions relating to the service justice system and domestic abuse prosecutions. Following the evidence session and debate, the Committee agreed that the Parliament should give its consent to the LCM.

Supplementary LCM

7. The Cabinet Secretary for Justice lodged a [supplementary LCM \(sLCM\)](#) on 16 June 2026, which was referred to the Criminal Justice Committee.
8. The sLCM relates to amendment 30 tabled on 22 May 2026 and agreed to in the House of Commons on 2 June. This adds new clauses 8(4) and 8(5) to the Bill concerning enforcement of service restraining orders (SROs) by the civilian courts. The sLCM notes that this is in line with the UK Government's approach to use the Bill to update the armed services justice system so it operates more effectively in line with policies operating in the civilian justice systems of the UK.
9. Clause 8(4) covers situations where a SRO has been made by a Court Martial or Civilian Service Court, and the person subject to the order later leaves the armed forces or stops being subject to service discipline. In these circumstances, under the Bill, the SRO would be treated in Scotland as if it were a non-harassment order made by a Sheriff Court under section 234A of the Criminal Procedure (Scotland) Act 1995. This would mean that:
 - it would be a criminal offence in Scots law for such a person to breach the conditions of an SRO, and
 - the Scottish courts would be able to hear applications to vary or revoke an SRO.

Similar arrangements apply in England and Wales and in Northern Ireland, where an SRO is treated as the equivalent type of civilian court order in those jurisdictions.

10. Clause 8(5) would disapply section 109 of the Victims, Witnesses and Justice Reform (Scotland) Act 2025, in relation to restraining orders which are so only because they have been deemed so as a result of clause 8 of the Bill. This provision is a technical amendment intended to avoid duplication, as Scottish courts will already have jurisdiction over those orders through clause 8(4).
11. The LCM sets out that the Scottish Government recommend consent to the clauses and provisions set out above. The sLCM states that:

” ...the amendments will ensure that the same protections are in place in Scotland for people whom an SRO is made to protect that will exist in the other jurisdictions in the UK. It would avoid a situation whereby someone in Scotland, in contrast with the rest of the UK, would have to make an application to the court for a civil protective order to obtain the protection that would otherwise be provided by the SRO.
12. The sLCM states that, although the Scottish Parliament could legislate on this matter itself, the Scottish Government considers it preferable for the changes to be made through the Armed Forces Bill, as this would allow a consistent approach to be applied across the UK as soon as possible.

Criminal Justice Committee consideration

13. Ahead of consideration of the sLCM and to help further inform its scrutiny, the Criminal Justice Committee wrote to the Cabinet Secretary for Justice on 5 August 2026 requesting further information.
14. The Minister for Parliamentary Business and Veterans responded to the Committee's correspondence on [21 August 2026](#). He explained that further legislative consent is required for provisions in the Bill that would give Scottish courts jurisdiction in relation to SROs where an individual subject to an SRO leaves the armed forces or is no longer subject to service discipline. The Minister stated that the purpose of these provisions is to ensure that protections for victims can remain in place rather than ending when an individual leaves military jurisdiction.
15. He noted that equivalent provision is being made for England, Wales and Northern Ireland. He also noted that, although engagement on the proposal has been limited, the approach has generally been regarded as a sensible means of maintaining protections for victims. The Minister advised that significant financial, resource or operational implications for Scottish public bodies are not anticipated, although there may be some savings where victims do not need to seek separate civil protection orders. He noted that some of those savings could be offset by Scottish courts dealing with applications relating to SROs. He also explained that Police Scotland would have a role in enforcing SRO conditions, but that no significant impact on the service is expected. Finally, the Minister stated that the Scottish Government is not aware of any further amendments to the Bill that would require legislative consent.
16. The Committee considered the sLCM at its meeting on [2 September 2026](#) and agreed to write to the Cabinet Secretary for Justice and the Minister for Parliamentary Business and Veterans to request further information. The Minister for Parliamentary Business and Veterans responded to the Committee's correspondence on [15 September 2026](#). In this correspondence he addresses the operation of the provisions in practice, including victim protections, enforcement arrangements, notification processes, investigatory responsibilities and the anticipated number of cases transferring to Scottish jurisdiction. This is summarised below.

Interaction with existing Scottish legislation

17. The Minister explained that clause 8(5) disapplies section 109 of the Victims, Witnesses and Justice Reform (Scotland) Act 2025 in relation to Service Restraining Orders (SROs), as clause 8(4) provides that these orders are treated as Non-Harassment Orders (NHOs) in Scotland when an individual leaves the Armed Forces. According to the Minister, this means that section 109 is no longer required to apply to SROs, as they become Scottish NHOs through the mechanism provided by the Bill. The Minister further explained that this enables Scottish courts to enforce, vary and revoke SROs using the existing NHO court procedures, which would not be possible if section 109 applied on its own. As a result, the Minister indicated that existing victim protections would continue to operate through those procedures.

Protections and enforceability

18. Addressing victim protections, the Minister stated that clause 8(4) would ensure there is no gap in protection for victims when an individual subject to an SRO leaves the Armed Forces. He explained that, under the current arrangements, an SRO ceases to have effect when the individual leaves service, requiring the protected person to seek a new civil protective order if they wish protections to continue.
19. On enforcement, the Minister stated that clause 8(4) provides that an SRO automatically becomes enforceable within the Scottish civilian justice system as if it were an NHO imposed by a criminal court under section 234A of the Criminal Procedure (Scotland) Act 1995. This allows protection to transfer without any action being required by the victim. He further advised that breach of such an order would constitute a criminal offence, punishable on conviction by up to 12 months imprisonment, and that existing powers to vary or revoke an NHO would also apply.

Notifications and investigations

20. In relation to the notification process between the service justice system and the relevant Scottish authorities, the Minister explained that all Service Protection Orders, including SROs, are recorded on the Police National Computer (PNC), enabling Police Scotland to identify the existence of an order where a potential breach is reported. The Minister further advised that the Ministry of Defence had indicated that Victim Liaison Officers within the Defence Victim Witness Care Unit would inform victims that an SRO had been recorded on the PNC and that any suspected breach should be reported to the police. He added that the Victim Liaison Officer would continue to support the victim after the offender leaves military service.
21. On investigating a breach and any subsequent prosecution, the Minister confirmed that, where an individual who has left the Armed Forces is alleged to have breached an SRO, Police Scotland would be responsible for investigating the matter and the Crown Office and Procurator Fiscal Service (COPFS) would be responsible for considering whether prosecution is appropriate. The Minister noted that decisions on reporting cases to COPFS remain an operational matter for Police Scotland, while decisions on prosecution are an operational matter for COPFS.

Data

22. The response also sets out that, according to information provided by the Ministry of Defence, eight Service Restraining Orders (SROs) have been issued within the Service Justice System since December 2022. Of those eight cases, three individuals were dismissed from service, including one who was resident in Scotland.
23. The Minister further explained that the Scottish Government is unable to provide a precise estimate of how many cases will transfer into Scottish jurisdiction each year, the response states that this depends on factors such as the future use of SROs and whether individuals subject to them leave the Armed Forces. However, the Government considers that the number is likely to be very small and is expected to be minimal when compared with the volume of NHOs imposed by the Scottish criminal courts, with 5,474 NHOs having been imposed in 2025/26.

Conclusion

24. **The Committee recommends that the Scottish Parliament give its consent to the UK Parliament legislating in this area, as proposed in the Scottish Government's draft motion contained within the sLCM.**

