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Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum: delegated powers relevant to Scotland in the Border Security, Asylum and Immigration Bill



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Contents

Introduction	1
Overview of the Bill	2
Delegated Powers	3
Review of relevant powers	4

Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.

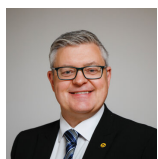


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Introduction

1. At its meeting on 22 April 2025, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers that are exercisable within devolved competence in the [Border Security, Asylum and Immigration Bill](#) ("the Bill").
2. The Committee considered the Legislative Consent Memorandum ("LCM") for the Bill by virtue of Rule 6.11.1(b) of the Standing Orders, which provides that the remit of the Committee includes considering and reporting on proposed powers to make subordinate legislation in particular bills "or other proposed legislation". The Committee and its predecessor Committee have considered powers conferred on UK Ministers in devolved areas in various Bills over the course of sessions 5 and 6.

Overview of the Bill

3. The Bill was introduced by the UK Government in the House of Commons on 30 January 2025. At the time of publishing this report, the Bill is currently at report stage in the House of Commons. As the Bill is still progressing through the UK Parliament, it is subject to amendment. The Committee may therefore need to consider a further supplementary LCM in due course.
4. This is a substantial Bill, comprising 59 sections and 2 schedules. Its stated purpose is “to improve UK Border security and strengthen the asylum and immigration system by creating a framework of new and enhanced powers and offences that, when taken together, reinforce, strengthen and connect capabilities across the relevant government and law enforcement partners which make up the UK’s border security, asylum and immigration systems”.
5. The lead committee for the LCM is the Equalities, Human Rights and Civil Justice Committee.

Delegated Powers

6. The UK Government has published a Delegated Powers Memorandum (“DPM”) to accompany the Bill. It explains the purpose of each power, why a delegated power is appropriate, and the parliamentary procedure that has been selected.
7. As is normal for UK bills, the Scottish Government has not published a delegated powers memorandum. The Scottish Government’s view on the relevant clauses is set out in the [Legislative Consent Memorandum](#) (“LCM”).
8. The UK Government states in its Explanatory Note that clauses 45-47 (43-45 on introduction), 48-52 (46-50 on introduction) in part, and Clause 53 (51 on introduction) engage the LCM process in Scotland. Clause 46 contains a delegated power which we have considered below. The Scottish Government also considers that clauses 30-33, 36, 38, 41 and 44 (referred to as clause 42 in the LCM), engage the LCM process in Scotland.
9. The UK and Scottish Governments agree that the power to amend the meaning of “relevant article” for use in serious crime in clause 46 (referred to as clause 44 in the Scottish Government’s LCM) may make provision within devolved competence. The UK Government has sought legislative consent for this provision and the Scottish Government is recommending that the Parliament does give its consent.

Review of relevant powers

Clause 46(3) - Power to amend meaning of “relevant article” for use in serious crime (referred to as clauses 43 to 45 in the Scottish Government’s LCM)

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative

Provision

10. Clauses 45(1) and (2) create two new criminal offences. A person commits an offence under the provisions where they a) possess a relevant article in circumstances which give rise to a reasonable suspicion that the relevant article will be used in connection with any serious offence, or b) import, make, adapt, supply or offer to supply a relevant article in circumstances which give rise to a reasonable suspicion that the relevant article will be used in connection with any serious offence.
11. A definition for “relevant article” is provided at clause 46(1). Currently, a relevant article for the purpose of the new offences is:
 - a 3D printer firearms template,
 - an encapsulator,
 - a tablet press,
 - a vehicle concealment.
12. Clause 46(2) provides more detailed definitions for the terms above. Clause 46(3) provides that the Secretary of State may make regulations which amend the section, enabling the amendment of the definition of “relevant article”, as well as the more detailed definitions of what constitutes those relevant articles.
13. Clause 46(4) provides that regulations that add an article to subsection (1) may only be made if the Secretary of State considers that there is a significant risk of such an article being used in connection with any serious offence (which in Scotland means an offence specified or described in Part 1A of Schedule 1 of the Serious Crime Act 2007).
14. Clause 46(5) requires the Secretary of State to consult with the Scottish Ministers, and the Department of Justice in Northern Ireland before making such regulations.
15. Regulations under this power would be subject to the affirmative procedure.

Committee consideration

16. The UK Government explains in its DPM that it has taken this delegated power in order that the Secretary of State is able to respond to technological developments and changing criminal tactics. It states that regular consultation will take place with

all stakeholders to identify tools or articles which enable serious crime to take place, and which are not captured under existing legislation. The DPM also states that the affirmative procedure is appropriate given that the power will amend the scope of a criminal offence. It is also a Henry VIII power, enabling the amendment of the Act that flows from this Bill.

17. The Scottish Government states in its LCM that, whilst it considers that the clauses relate to a combination of reserved and devolved matters, the purpose of the provision is to create new offences to criminalise the use of articles in serious crime, which would be within devolved competence. It is recommending that the Scottish Parliament consents to the clauses so that a UK wide approach can be taken. The Scottish Government considers that such an approach will help to ensure that Scotland is not seen as a soft target for organised crime groups.
18. It is the Committee's view that it is possible that this power could be exercised within devolved competence. However, it would not be possible for the Scottish Parliament to legislate to widen the scope of reserved offences, such as drugs and firearms offences, as is the effect of these provisions. Looking at the articles currently prescribed in the Bill, the Committee considers it highly likely that any future article prescribed by regulations would have at least some cross-over with a reserved matter, and therefore the argument for uniformity across the United Kingdom in relation to all serious offences is compelling. The Committee also does not consider that it would be an appropriate use of parliamentary time to make equivalent provision in the Scottish Parliament in relation to devolved offences. It is also of the view that the scope and desire for divergence in this policy area would likely be particularly limited.
19. The Committee also considers that the power is relatively narrow. It is clear what provision will be made under it, and the power is limited by the requirement that the Secretary of State may only make regulations which add an article to the definition if they consider that there is a significant risk of such an article being used in connection with any serious offence. The Secretary of State must also consult with the Scottish Ministers before making such regulations.
20. For all the reasons stated above, the Committee considers that, in this case, it is appropriate that the power is conferred solely on the Secretary of State, who must consult with the Scottish Ministers before making such regulations.

21. The Committee is content with the power in principle and that it has been conferred on the Secretary of State only, with a requirement that they must consult with the Scottish Ministers before making such regulations.

22. However, the Committee suggests that the lead committee seeks a commitment from the Scottish Government that it will keep that committee informed about consultation in relation to any regulations made under the power.

