

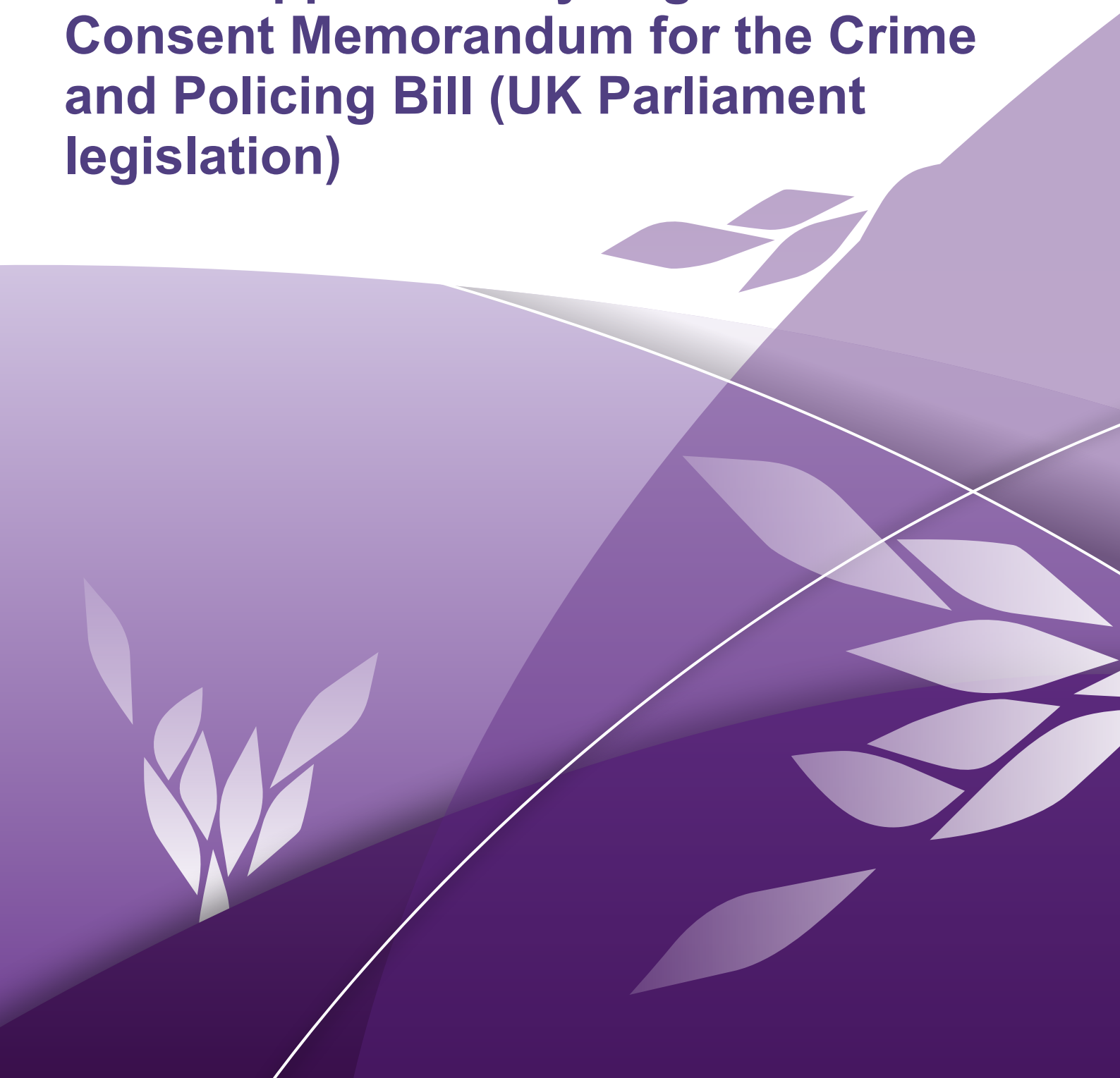


The Scottish Parliament
Pàrlamaid na h-Alba

Published 17 February 2026
SP Paper 1012
18th Report, 2026 (Session 6)

Delegated Powers and Law Reform Committee

Third supplementary Legislative Consent Memorandum for the Crime and Policing Bill (UK Parliament legislation)



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
<https://www.parliament.scot/documents>

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: info@parliament.scot

Contents

| | |
|----------------------------------|----------|
| Introduction | 1 |
| Overview of the Bill | 3 |
| Delegated Powers | 5 |
| Review of relevant powers | 6 |

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.



DPLR.Committee@parliament.scot



0131 348 5974

Committee Membership



Convener
Stuart McMillan
Scottish National Party



Deputy Convener
Bill Kidd
Scottish National Party



Katy Clark
Scottish Labour



Roz McCall
Scottish Conservative
and Unionist Party



Jeremy Balfour
Independent

Introduction

1. This report considers the delegated powers that are exercisable within devolved competence in the [Crime and Policing Bill](#) (“the Bill”), as amended at Committee stage in the House of Lords (second House).
2. The Committee considered these powers under Rule 9B.3.6 of the Parliament’s Standing Orders. Rule 9B.3.6 provides that where the Bill that is subject to a Legislative Consent Memorandum (“LCM”) contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions.
3. The LCM is also being considered in terms of the Committee’s wider remit in 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.
4. The Committee previously considered:
 1. the [Legislative Consent Memorandum](#) dated 16 May 2025,
 2. the [Supplementary Legislative Consent Memorandum](#) dated 12 June 2025, and
 3. the [second Supplementary Legislative Consent Memorandum](#) dated 1 August 2025,for the Bill at its meetings on 2 and 23 September 2025.
5. A Committee [report](#) was subsequently published on 26 September 2025 in which the Committee indicated it was content with the majority of the powers conferred on UK Ministers and Scottish Ministers in the Bill ⁱ.
6. The Scottish Government has now lodged a [third supplementary LCM](#) (“third sLCM”), on 19 December 2025. The third sLCM recommends consent for amendments tabled by the UK Government on [27 October](#), [3 November](#) and [12 November 2025](#). The Bill has now been reprintedⁱⁱ. References in this report to clause numbers are to the numbering of the Bill as amended in Committee (5 February 2026), unless otherwise stated.
7. The Bill is awaiting Report stage in the House of Lords. It is possible that some

ⁱ As regards the power in new section 86B(3) of the Sexual Offences Act 2003, inserted by clause 100 of the Bill (then numbered clause 89), the Committee noted that the definition of qualifying premises was key to the new provisions regarding notification by registered sex offenders proposing to enter premises where children are present. As such, the Committee recommended that a definition of qualifying premises insofar as relating to Scotland should be provided on the face of the Bill, with a power being taken to amend that definition, if considered appropriate. This recommendation has not been addressed in any amendments to the Bill.

ⁱⁱ [Bill as amended in House of Lords Committee, printed 5 February 2026](#).

amendments to delegated powers exercisable within devolved competence (in relation to the sale of knives) which were tabled at Committee stage but not moved may be tabled again. Accordingly the Committee may be required to consider a further supplementary LCM in due course.

8. The Committee considered the third sLCM at its meetings on 20 January and 10 Februaryⁱⁱⁱ 2026.
9. At the meeting on 20 January, the Committee agreed to send questions to the [Scottish Government](#) and to the [UK Government](#) in relation to:
 - Clause 36: Power to make provision about the reporting of remote sales of knives etc. in bulk (inserting new section 141D(1) in the Criminal Justice Act 1988);
 - Clause 36: Power to amend definition of a reportable sale of bladed articles (inserting new section 141D(15) in the Criminal Justice Act 1988);
 - New clause “Obscenity etc offences: technology testing defence” (now numbered clause 92) – Subsection (1): Power to authorise technology (such as AI models) to be tested for prohibited material, without offences being committed in the course of the testing ; and
 - New clause “Technology testing defence: Meaning of relevant offence” (now numbered clause 93) – Subsection (5): Power to amend the meaning of “relevant offence”.
10. At the same meeting, the Committee agreed that it was content with the following delegated powers in the Bill:
 - Clause 36(2): extending the power conferred on the Scottish Ministers to issue guidance relating to offensive weapons etc. (amending section 66(2) of the Offensive Weapons Act 2019); and
 - New Schedule (Schedule 6, paragraph 10(4)): Power to add to or remove from the list of UK child criminal exploitation prevention orders, breach of which constitutes an offence.
11. The [Scottish Government](#) responded on 29 January, and the [UK Government](#) on 2 February 2026.

ⁱⁱⁱ Roz McCall MSP submitted apologies for this meeting; Oliver Mundell MSP attended in her place.

Overview of the Bill

12. The Crime and Policing Bill was introduced by the UK Government in the House of Commons on 25 February 2025. It is currently awaiting Report stage in the House of Lords.
13. This is a substantial Bill. The stated purpose of the Bill in the Explanatory Notes is to halve knife crime and violence against women and girls, increase public confidence in policing and the wider criminal justice system, support neighbourhood policing, and give the police the powers they need to tackle anti-social behaviour, crime and terrorism. It is stated that it will support delivery of the UK Government's Safer Streets Mission and implement specific commitments in the Labour Party's 2024 manifesto.
14. On introduction, the Bill was made up of 15 Parts (137 clauses) and 17 Schedules. As amended in Lords Committee, the Bill is now made up of 220 clauses and 23 Schedules. Most of the provisions apply to England and Wales, however some provisions apply to Scotland. In its report of 26 September 2025, the Committee gave its view on the delegated powers within devolved competence which related to a number of topics across the Bill, including:
 - a new offence of "cuckooing" – controlling another's home for criminal purposes;
 - the management of sex offenders, including requirements relating to name changes, absence from main residence, restrictions on applying for ID documents in a new name, and entering premises where children are present (for child sex offenders);
 - police powers in relation to the remote storage of electronic data;
 - expansion of the list of criminal lifestyle offences in the Scottish Schedule 4 of the Proceeds of Crime Act 2002; and
 - the creation of barred/advisory lists for the National Crime Agency and the British Transport Police.
15. A number of amendments tabled to the Bill and agreed to at Committee stage have been identified by the Scottish Government as triggering the LCM process and prompting the third sLCM. These relate to:
 - offensive weapons;
 - child criminal exploitation prevention orders;
 - child sex abuse image generators;
 - possession of advice or guidance about creating child sexual abuse ("CSA") or CSA images;
 - providing for a technology testing defence; and
 - new offences relating to pornographic images of strangulation or suffocation.

16. The lead committee for the third sLCM is the Criminal Justice Committee.

Delegated Powers

17. The UK Government has published various Delegated Powers Memorandums ("DPMs"), including in support of the amendments tabled during Lords committee stage. A link to the relevant DPM is provided in the body of the report in relation to each of the powers discussed .
18. 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 third sLCM.

Powers exercised by UK Ministers within devolved competence

19. The Bill confers some powers on UK Ministers which may be exercisable within devolved competence. The Committee's position in relation to such powers has been that, in general:
 - a) The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
 - b) Where such powers are exercised by the Secretary of State in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.
 - c) If such powers contain a requirement for the Scottish Ministers' consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers' consent decision.

The Committee will scrutinise powers conferred on UK Ministers not subject to a requirement for Scottish Ministers' consent and may suggest matters for the lead committee to consider.

- d) As a minimum, powers when exercised by the Secretary of State in devolved areas should be subject to the process set out in the [SI Protocol 2](#) where the powers is within the scope of that protocol.

Review of relevant powers

Part 2, Chapter 2: Offensive weapons

Clause 36: Power to make provision about the reporting of remote sales of knives etc. in bulk (inserting new section 141D(1) in the Criminal Justice Act 1988)

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Negative procedure

And

Clause 36: Power to amend definition of a reportable sale of bladed articles (inserting new section 141D(15) in the Criminal Justice Act 1988)

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative procedure

Provisions

20. **In relation to new section 141D(1)**, Clause 36 inserts new section 141D into the Criminal Justice Act 1988 which creates a duty on sellers to report “bulk” online sales of knives. Failure to comply with the reporting requirements is an offence, subject to a maximum penalty of an unlimited fine.
21. New section 141D(1) confers a power on the Secretary of State to prescribe the details of the reports and to specify who the report should be made to. Regulations may in particular include requirements about how and when reports are to be made and the information which must be included.
22. **In relation to new section 141D(15)**, this provision confers an additional power on the Secretary of State to amend the numbers of bladed articles and the frequency of sales which amount to “bulk” sales under the new provisions.
23. **In relation to both provisions**, on introduction, the provisions about reporting for bulk online knife sales applied to England and Wales only. Government amendments and new clauses tabled for Lords Committee stage extend the application of these provisions to Scotland and Northern Ireland.
24. In relation to Scotland, the regulation-making powers continue to be vested in the Secretary of State alone, although new subsection (17) of section 141D of the Criminal Justice Act 1988 requires the Secretary of State to consult the Scottish Ministers before making regulations under section 141D.

Committee consideration

25. **In relation to new section 141D(1)**, the [DPM](#) published on 20 June 2025 highlights

that the new duty to report bulk purchases of bladed articles is set out on the face of the Bill. The power being taken in section 14D1(1) is to make the administrative arrangements in respect of the submission of reports, including the detail to be included in such reports, the method of submission, to whom they are to be sent and the deadline for submission.

26. The UK Government considers that these matters may appropriately be left to secondary legislation. The DPM notes that the relevant details may change over time, for example if the central hub for receipt of such reports were to change or if additional categories of information were considered to be necessary, and leaving such details to regulations would enable necessary changes to be made promptly (as necessitated by the public safety purpose of the reporting scheme).
27. In terms of the choice of procedure, the UK Government considers that the negative procedure is appropriate, given that regulations made under the power will essentially deal with the administrative arrangements for the submission of reports.
28. In the third sLCM, the Scottish Government states that it supports the steps taken to strengthen certain aspects of offensive weapons law, and that it is a sensible use of the legislative consent process for the changes to extend to Scotland. The third sLCM does not specifically address the delegated power.
29. **In relation to new section 141D(15)**, the DPM again highlights that what constitutes a bulk purchase for the purposes of the reporting duty is set out clearly on the face of the Bill. It explains that, as the reporting requirement beds in, evidence may emerge that supports specifying a different qualifying number of bladed articles or qualifying sets, or a different period for the purposes of new section 141D(4) (which broadly provides that two or more remote sales to the same residential address in any 30-day period will be treated as one sale). The DPM gives the example that the police may find that they receive too many reports that do not form useful intelligence and request that the limits are increased. In these circumstances, the UK Government considers it appropriate that the specified qualifying amounts or the 30-day period can be changed promptly via secondary legislation to reduce the burdens on business and the police.
30. In terms of the choice of procedure, the UK Government considers that the affirmative procedure is appropriate, given that one potential effect of any regulations would be to place more onerous burdens on businesses to report knife sales to the police. The affirmative procedure is also considered apt as this is a Henry VIII power.
31. In the third sLCM, the Scottish Government states that it supports the steps taken to strengthen certain aspects of offensive weapons law, and that it is a sensible use of the legislative consent process for the changes to extend to Scotland. The third sLCM does not specifically address the delegated power.
32. **In relation to both these provisions**, the Committee noted that it would be within the Scottish Parliament's legislative competence to place sellers in Scotland under these duties to report bulk knife sales.
33. In light of the Committee's general position on the conferral of devolved delegated powers on UK Government Ministers, and in the absence of an explanation, the Committee agreed to ask both the Scottish and UK Ministers:

- “Why it is considered appropriate for the power to be exercisable by the Secretary of State within legislative competence, and not by the Scottish Ministers? and
 - What consideration has been given to:
 - (a) Conferring the power on the Scottish Ministers (solely or concurrently), or
 - (b) Requiring the consent of the Scottish Ministers, instead of a consultation requirement, before the power may be exercised by the Secretary of State within legislative competence?”
34. The Committee also agreed to ask the Scottish Ministers “how the Scottish Government intends to facilitate scrutiny by the Scottish Parliament of exercise of the power within legislative competence by the Secretary of State?”
35. The Scottish Government’s response indicates the need for a co-ordinated and consistent approach to operation of the new scheme, across England, Wales and Scotland. It notes that:
- ” “the manner in which reports are to be made to the relevant police force – which is captured within the new section 141D(1) power – does not carry with it any Scottish distinct element that could be not be *[sic]* addressed through SG consultation feedback to the UKG.”
36. The response also emphasises the good collaboration between the UK and Scottish Governments in developing the approach to the UK-wide reporting scheme. The Scottish Government says that it considers that:
- ” conferring the power on the Scottish Ministers was not necessary in these circumstances. Requiring consent was an option, but given the excellent collaboration between governments on the extension of clause 36 to Scotland itself, we consider consultation is sufficient to ensure devolved interests are reflected.
37. In terms of facilitating scrutiny by the Scottish Parliament, the Scottish Government states that it:
- ” will write to the relevant subject Committee in the Scottish Parliament as either and/or both of the regulation making powers are used to update Parliament on the use of the powers and provide details of the consultation that has taken place.
38. The UK Government’s response also emphasises the desirability of a consistent approach across the UK in terms of how the powers are exercised. It states that:

” The UK Government believes that it is crucial for the effective operation of this legislative measure by policing that there is a uniform reporting system in place across the UK to avoid divergence. We have included the requirement for the Secretary of State to consult with Scottish Ministers before making regulations under this clause and will ensure that the UK Government engages closely with the Scottish Government before making any such regulations. Given this level of collaboration, we consider a duty to consult is sufficient to ensure devolved interests are reflected.

39. The Committee notes that, while conferring a delegated power solely on UK Ministers is one way to ensure consistent application of a scheme across the UK, that can also be achieved by coordinating the laying of separate legislation in each legislature. This is an approach taken in many policy areas.
40. The Committee also notes that the government responses on the question of why the power was not conferred concurrently, or a consent mechanism attached, emphasise the ongoing strong working relationships between both governments. They indicate that intergovernmental consultation is considered sufficient to ensure devolved interests are reflected. There is no express mention of the Parliament’s role in scrutinising devolved interests in relation to subordinate legislation, although the Scottish Government does commit to writing to the relevant subject committees to inform them that regulations have been made, and to provide details of the consultation which took place.
41. The Committee considers that the lead committee is well placed to take a view on whether, in relation to the particular policy of online sales of bladed articles, it is content for regulations to be laid and scrutinised in the UK Parliament, or whether this is the sort of policy matter it would expect to come before the Scottish Parliament.
42. The Committee is content that delegation of the powers in principle is appropriate, for the reasons given in the UK Government’s DPMs and the 3rd sLCM. It is also content that the choice of negative procedure for the power to make provision about reporting (section 141D(1)), and affirmative procedure for the power to change what amounts to a bulk online sale of bladed articles (section 141D(15)), is appropriate.

43. The Committee is content with delegation of the powers in principle and that they are subject to the negative procedure (for the power in section 141D(1) of the Criminal Justice Act 1998), and the affirmative procedure (for the power in section 141D(15) of that Act).

44. The Committee draws to the lead committee’s attention that:

- **the powers are exercisable by the Secretary of State within the legislative competence of the Scottish Parliament. No equivalent powers are conferred on the Scottish Ministers. Regulations made under the powers will accordingly be laid in the UK Parliament only;**
- **there is a requirement that the Secretary of State consult the Scottish**

Minsters before making regulations under the powers. There is no requirement to obtain the Scottish Ministers' consent, and no formal scrutiny process in the Scottish Parliament; and

- **the Scottish Government has stated that it will write to the relevant subject committee in the Scottish Parliament as either and/or both of the regulation making powers are used, to update Parliament on the use of the powers and provide details of the consultation that has taken place.**

45. **The Committee also suggests that the lead committee considers whether it is satisfied that the powers are appropriately framed in the context of this Bill.**

Clause 36: Power to issue guidance relating to offensive weapons etc. (amending section 66(2) of the Offensive Weapons Act 2019)

Power conferred on: Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: none

Provisions

46. Clause 36(2) amends section 66(2) of the Offensive Weapons Act 2019 (“the OWA”) to extend the power conferred on the Scottish Ministers to issue guidance relating to offensive weapons to include guidance on the effect of new sections 141D of the Criminal Justice Act 1988 (Duty to report remote sales of knives etc in bulk).

Committee consideration

47. The DPM explains that the purpose of guidance issued under section 66 of the OWA 2019 is to aid the implementation of the provisions in Parts 1 to 3 of that Act, and related legislation governing the sale and possession of knives and offensive weapons, by supplementing the legal framework with practical guidance. The existing Scottish Government guidance is available at: [Offensive Weapons Act 2019 : Scottish Statutory Guidance](#).
48. The UK Government notes that the existing guidance-issuing power already covers the provisions in sections 38 to 42 of the OWA 2019 relating to the sale and delivery of knives etc. It considers that the amendment to the scope of the power to cover the duty to report bulk sales does not materially change the nature of the guidance.
49. The third sLCM states that the Scottish Government will issue updated guidance in relation to this duty, under the amended guidance powers.
50. Regarding the procedure, the DPM explains that guidance issued under section 66 of the OWA 2019 is not subject to any parliamentary procedure on the basis that it

deals with practical advice to those affected by the legislation, and has been the subject of consultation with interested parties before being issued (as required by section 66(6)). The UK Government considers that the guidance does not, and indeed cannot, conflict with the statutory framework governing sale and delivery of knives and offensive weapons, including the new duty to report bulk sales, and there is no statutory duty for persons to have regard to or abide by the guidance. The extended power to issue guidance under section 66 does not materially change the nature of the power or the guidance and, as such, the Government continues to consider that it is appropriate that such guidance is not subject to any parliamentary procedure.

51. The Committee is content with the explanation provided for extension of the existing guidance-making power to cover the new requirements around bulk online sales of knives. It is also content that the existing requirements for guidance to be published but not laid before Parliament continue to apply, as the nature of the power is unchanged.

- 52. The Committee is content with the power in principle, and that its exercise is not subject to Parliamentary procedure.**

Part 4, Chapter 1 and new Schedule: Child Criminal Exploitation

New Schedule 6, paragraph 10(4) – power to add to or remove from the list of UK child criminal exploitation prevention orders, breach of which constitutes an offence

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative procedure

Provision

53. By amendment, new clause 57 has been inserted, making provision for child criminal exploitation prevention orders (CCEPOs) in Scotland and Northern Ireland. Prior to amendment, the provisions on CCEPOs extended to England & Wales only. The offence of child criminal exploitation (clauses 41 and 42 of the Bill) has also been extended to Scotland and Northern Ireland. New Schedule 6 contains the procedural detail for CCEPOs as they apply in Scotland.
54. Among other things, the new Schedule empowers the Scottish courts to make a CCEPO in certain circumstances, and makes detailed provision for applications, interim orders, notifications, variation and discharge of orders.
55. Paragraph 10(1) of the new Schedule also makes it an offence, in Scotland, for a person, without reasonable excuse, to fail to comply with a CCEPO made in England and Wales, Scotland or Northern Ireland. Paragraph 10(4) confers a power on the Scottish Ministers to amend the list of orders (in paragraph 10(2)) made by courts in England and Wales or Northern Ireland, breach of which constitutes an offence in Scotland.

Committee consideration

56. The [DPM](#) dated 4 November 2025 explains that it would be open to the UK Parliament, Scottish Parliament or Northern Ireland Assembly to amend or repeal and replace the CCEPO regimes in their respective jurisdictions at a future date. As a consequence of any such future legislation, it may be necessary for the relevant national authorities to amend the scope of the offence of breaching a CCEPO by amending the list of orders to which the offence relates.
57. The DPM also explains that regulations made under the power might simply make a technical update (that is, repeal the entry for orders which no longer exist, or changing the name of them if they have changed) or they could be made for substantive policy reasons (for example, if one jurisdiction introduced a mandatory requirement that must be attached to a CCEPO and another jurisdiction did not want to make breach of the requirement an offence in their jurisdiction).
58. The UK Government accordingly considers that the power is necessary to enable the list of orders to be updated expeditiously in light of changes of the law in relation to CCEPOs in each jurisdiction. In its view, it is appropriate that the jurisdiction can respond quickly to, and does not have to await a future primary legislative vehicle to effect changes in consequence of, a change by another jurisdiction.
59. Parliament will have already approved the core principle that breach of a CCEPO of another jurisdiction should constitute an offence in the “other” jurisdictions. There are constraints on how the power is used – it may only be used to add or remove orders which appear to the relevant national authority to be “equivalent or similar to” CCEPOs.
60. Regarding the choice of parliamentary procedure, the DPM explains that the affirmative procedure is considered appropriate, given that regulations made under this power would modify the scope of the criminal offences provided for in the Bill. The affirmative procedure also reflects the fact that these are Henry VIII powers.
61. In the third sLCM, the Scottish Government recommends that the Scottish Parliament consents to these clauses so that a UK-wide approach is taken to support vulnerable victims and disrupt the activities of adult perpetrators who criminally exploit children. The third sLCM does not specifically address the delegated power.

- 62. For the reasons given in the DPM, the Committee is content with this power in principle and that it is subject to the affirmative procedure.**

Part 5, Chapter 4 – Other provision about sexual offences

New clause 92 “Obscenity etc offences: technology testing defence” – Subsection (1): Power to authorise technology (such as AI models) to be tested for prohibited material, without offences being committed in the course of the testing

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative procedure

And

New clause 93“Technology testing defence: Meaning of relevant offence”” (after clause 84) – Subsection (5): Power to amend the meaning of “relevant offence”

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative procedure

Provisions

63. New clauses 92 and 93 enable the Secretary of State, by regulations, to introduce a technology testing defence. The defence would be available to persons authorised by the Secretary of State to carry out technology testing activities to prevent or detect prohibited materials, which would otherwise fall under specific obscenity offences.
64. The offences for which the technology testing defence is to be available are set out in a second new clause, clause 93, “**Technology testing defence: meaning of “relevant offence”**”. This clause specifies relevant sexual offences in England & Wales, in Scotland and in Northern Ireland. In Scotland, the relevant offences are set out in the Civic Government (Scotland) Act 1982, Sexual Offences (Scotland) Act 2009, and the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. These provisions relate to obscene material, extreme pornography, non-consensual intimate images, child sexual abuse (CSA) image generators, and indecent photographs of children.
65. The power in **clause 92(1)** may only be used to provide a defence for persons who are authorised to carry out “technology testing activities”. The definition covers testing of technology for the purpose of investigating whether a technology (such as AI) may have been made or adapted for use for creating prohibited material, or to establish whether the technology may be used to create prohibited material.
66. The regulations can also include provision on how authorisations are given, how conditions are applied and revoked, and cost recovery. There is also a power for the Secretary of State to prescribe consequences of non-compliance with conditions, including creating criminal offences punishable by a fine.
67. New clause 93, subsection (5) of the new clause 93 enables the Secretary of State to amend the list of relevant offences for each of the three jurisdictions.
68. In relation to both powers, the Secretary of State is required to consult with the Scottish Ministers before making regulations containing provision that would be within the legislative competence of the Scottish Parliament.

Committee consideration

69. In relation to “**Technology testing defence: meaning of “relevant offence”**” (new clause 92), the [DPM](#) dated 13 November 2025 explains that under current legislation, companies are legally blocked, or face significant legal risk, from testing

- an AI model's capability to produce obscene materials. Developers cannot identify when safeguards fail or verify the effectiveness of any interventions. To ensure robust safety standards continuous testing is critical to mitigate risks.
70. In the UK Government's view, the regulation-making power would provide legislative cover for organisations who have a legitimate need to test and/or investigate technologies, such as CSA image-generators, with a view to preventing future crimes and safeguarding children and vulnerable adults.
71. The Bill itself establishes the principle that a person may be authorised to undertake testing in relation to prohibited material and that in undertaking such testing they are not caught by a relevant offence. Having established this principle the UK Government considers that it is appropriate to leave to administrative arrangements the authorisation of persons to undertake such testing and the conditions (which are likely to be technical in nature) under which such testing may take place. The persons authorised to undertake testing may change over time and, in the Government's view, it is important that new or revised authorisations can be made promptly to ensure there is not a gap in the ability to test CSA image-generators or similar technologies which could increase the risk of harm to children and others.
72. The DPM adds that, given the serious nature of the underlying offences, detailed considerations of requirements for testing will be necessary. As a result, the Government considers that this is an occasion where it is suitable to use secondary legislation in order to master detail and afford a measure of agility. In setting out the defence in secondary legislation, it wants to ensure that it has requisite powers to secure adequate management of risk associated with authorising actors relying on the defence.
73. It further explains that alternative mitigations are being explored, however, the Government is alive to risks such as an authorised tester failing substantially to comply with imposed safety conditions. In the UK Government's view, the sensitivity of testing material and the gravity of the underlying offences may require that some form of criminal recourse (with a maximum penalty of a fine) is available in relation to this narrow group of authorised, but non-compliant, testers. It is considered appropriate and proportionate to retain the power to create a criminal offence by secondary legislation, should the fully developed testing regime require such recourse.
74. The UK Government also considers that the affirmative procedure provides an appropriate level of parliamentary scrutiny as the effect of such regulations would be to provide for a defence to child sexual abuse and other serious offences provided for in primary legislation. Moreover, such regulations confer a power to create new offences which, of itself, would justify the affirmative procedure.
75. In the third sLCM, the Scottish Government recommends that the Scottish Parliament consents to these clauses. It considers that the defence, and a new criminal offence regarding breach of conditions, are appropriate and will ensure that authorised persons, e.g. specific technology companies, can examine and limit the ability of existing and emerging technology to develop CSA material and other harmful imagery. In its view, this will ensure that there is consistency across the UK in how these regulations are applied.
76. **In relation to the power in subsection (5) of "Technology testing defence:**

meaning of “relevant offence”)(new clause 93), the DPM explains that the power is considered necessary to enable the list of relevant offences to be updated in the light of any changes to the criminal law relating to prohibited images in any of the jurisdictions. While any legislation amending or repealing the offences listed in the clause, or creating new offences which should be added to the list, can itself make the necessary consequential amendments to that subsection, the UK Government considers it prudent also to include a power to amend the lists to cater for cases where relevant legislation inadvertently fails to make necessary consequential amendments to that subsection.

77. It also explains that the affirmative resolution procedure is considered appropriate as the effect of any such regulations could be to expand the scope of a defence created by regulations made under the power discussed immediately above under subsection (1). The affirmative procedure is also apt given the Henry VIII nature of the power.
78. In the third sLCM, the Scottish Government recommends that the Scottish Parliament consents to these clauses. It gives the same explanation as detailed at paragraph 75 above.
79. **In relation to both powers**, the Committee noted that it would be within the Scottish Parliament’s legislative competence to provide for authorisations and a technology testing defence to the relevant sexual offences, and to amend the list of relevant sexual offences in Scotland set out in new clause 93(3).
80. In light of the Committee’s general position on the conferral of devolved delegated powers on UK Government Ministers, and in the absence of an explanation, the Committee agreed to ask both the Scottish and UK Ministers:
- “Why it is considered appropriate for the power to be exercisable by the Secretary of State within legislative competence, and not by the Scottish Ministers? and
 - What consideration has been given to:
 - (a) Conferring the power on the Scottish Ministers (solely or concurrently), or
 - (b) Requiring the consent of the Scottish Ministers, instead of a consultation requirement, before the power may be exercised by the Secretary of State within legislative competence?”
81. The Committee also agreed to ask the Scottish Ministers “how the Scottish Government intends to facilitate scrutiny by the Scottish Parliament of exercise of the power within legislative competence by the Secretary of State?”
82. The Scottish Government’s response explains that:

- ” it is considered appropriate for the powers to be exercisable by the Secretary of State because the policy intention is to maintain a single, UK-wide decision-making structure that ensures consistency and flexibility across the rapidly developing technology testing sector.

It is noted that establishing a separate Scottish power could create practical constraints, including delays in the designation of Scotland-based organisations and reduced agility in responding to developments in the sector.

83. Similar reasons are provided in response to the second question, on what consideration has been given to conferring the powers on the Scottish Ministers, or including a consent requirement. The response also notes that the requirement for the Secretary of State to consult the Scottish Ministers “ensures that Scottish Ministers’ interests are considered.”
84. As with the powers relating to the online sale of knives discussed above, the response states that the Scottish Government:
- ” will write to the relevant subject Committee in the Scottish Parliament as either and/or both of the regulation making powers are used to update Parliament on the use of the powers and provide details of the consultation that has taken place.
85. The UK Government’s response also refers to the desirability of a centralised authorisation and oversight regime for this defence, ensuring that the same requirements, oversight and enforcement mechanisms apply to all organisations in the United Kingdom, irrespective of where they are situated.
86. It explains the UK Government’s view that:
- ” Conferring separate or concurrent powers would risk divergence in authorisation criteria, safeguards or enforcement mechanisms, creating legal uncertainty for those carrying out testing activities across the UK and potentially undermining confidence in the integrity of the defence.
87. The response adds that:
- ” a consent requirement was not adopted because the technology testing defence must remain operationally responsive...A consent requirement could impede the timely operation of the defence and reduce its effectiveness.
88. As before, the Committee notes that while conferring a delegated power solely on UK Ministers is one way to ensure consistent application of a scheme across the UK, that can also be achieved by coordinating the laying of separate legislation in each legislature. This is an approach taken in many policy areas.
89. The Committee also notes that the responses on the question of why the power was not conferred concurrently, or a consent mechanism attached, emphasise the ongoing collaboration between both governments. The Scottish Government’s response refers to ensuring that the Scottish Ministers’ interests are reflected. There is no express mention of the Parliament’s role in scrutinising devolved interests in relation to subordinate legislation, although the Scottish Government does commit to writing to the relevant subject committees to inform them that

regulations have been made, and to provide details of the consultation which took place.

90. The Committee considers that the lead committee is well placed to take a view on whether, in relation to the particular policy of providing a technology testing defence to relevant obscenity offences, it is content for regulations to be laid and scrutinised in the UK Parliament, or whether this is the sort of policy matter it would expect to come before the Scottish Parliament.

91. The Committee is also content that delegation of the powers in principle is appropriate, for the reasons given in the UK Government's DPMs and the 3rd sLCM. It is also content that the choice of the affirmative procedure is appropriate.

92. The Committee is content with delegation of the powers in principle and that they are subject to the affirmative procedure.

93. The Committee draws to the lead committee's attention that:

- the powers are exercisable by the Secretary of State within the legislative competence of the Scottish Parliament. No equivalent powers are conferred on the Scottish Ministers. Regulations made under the powers will accordingly be laid in the UK Parliament only;**
- there is a requirement that the Secretary of State consult the Scottish Ministers before making regulations under the powers. There is no requirement to obtain the Scottish Ministers' consent, and no scrutiny process in the Scottish Parliament; and**
- the Scottish Government has stated that it will write to the relevant subject committee in the Scottish Parliament as either and/or both of the regulation making powers are used, to update Parliament on the use of the powers and provide details of the consultation that has taken place.**

94. The Committee suggests that the lead committee considers whether it is satisfied that the powers are appropriately framed in the context of this Bill.

