

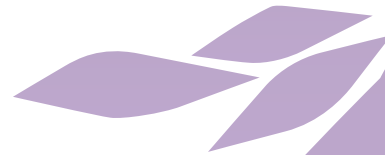


The Scottish Parliament
Pàrlamaid na h-Alba

Published 31 October 2018
SP Paper 406
12th Report, 2018 (Session 5)

Justice Committee Comataidh a' Cheartais

Crime (Overseas Production Orders) Bill: Legislative Consent Memorandum considered by the Justice Committee



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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.



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Background

1. The Crime (Overseas Production Orders) Billⁱ was introduced in the House of Commons on 27 June 2018.
2. The Bill contains provisions which are intended to have effect in Scotland (either in full or in part) which would either alter or affect the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers. As such, it is a “relevant Bill” under Chapter 9B of the Standing Orders and consequently one requiring the consent of the Scottish Parliament.
3. Accordingly the Cabinet Secretary for Justice, under Rule 9B.3.1(a) of the Parliament’s Standing Orders, lodged a Legislative Consent Memorandumⁱⁱ (LCM) on the Bill on 7 September 2018.

ⁱ [Crime \(Overseas Production Order\) Bill](#) (HL Bill 134)

ⁱⁱ [Crime \(Overseas Production Order\) Legislative Consent Memorandum](#)

Outline of the UK Bill

4. The purpose of the Bill is to “enable UK law enforcement officials and prosecutors to apply for court orders enabling them to obtain electronic data directly from persons based overseas, for the purpose of investigating and prosecuting serious crime, if there is a relevant international agreement in place between the UK and that country.”ⁱⁱⁱ
5. The Bill covers a mixture of reserved and devolved policy matters, such as the role of the Lord Advocate. As such, certain provisions in the Bill are subject to legislative consent by the Scottish Parliament.

Provisions which relate to Scotland

6. The Bill as a whole extends to Scotland (with the exception of two sub-clauses (10(2) and 10(3)) which do not) and covers both reserved and devolved areas. Some provisions relate to procedures in different UK jurisdictions, and only the Scottish aspects of these require consent. Details of the aspects of the Bill which require an legislative consent motion can be found in the [LCM](#).

ⁱⁱⁱ [Crime \(Overseas Production Order\) Legislative Consent Memorandum](#)

Consultation

7. The UK Government consulted with law enforcement agencies during the Bill's development. Feedback can be found in the [Impact Assessment for the Bill](#).
8. The Scottish Government and the Crown Office and Procurator Fiscal Service (COPFS) were involved in the development of the Bill, to ensure the Bill reflected desired operating arrangements for Scotland.

Financial implications

9. The Bill is not expected to have significant financial implications. According to the LCM, COPFS estimates it makes approximately 20 Mutual Legal Assistance (MLA) requests to the United States each year, for an annual cost of around £4,000.

Justice Committee consideration

10. The Committee considered the LCM at its meeting on 23 October 2018.

11. The Cabinet Secretary for Justice told the Committee that—

” The purpose of the bill is to enable law enforcement officials and prosecutors to apply for a court order that would enable them to obtain electronic data directly from persons who are based or operating overseas for the purposes of investigating and prosecuting serious crimes. At present, if data that may constitute evidence is located outside the UK, UK courts can generally only access it through current mutual legal assistance agreements. That process requires a domestic order and the engagement of domestic law enforcement from the territory in which the data is held. It can, therefore, be a slow and very cumbersome process, taking on average 10 months to complete.

The bill seeks to create a more efficient process for obtaining data from overseas, meaning that evidence can be recovered more quickly—the default position is within seven days, beginning with the day on which the order is served—and supporting swifter investigations and prosecutions.^{iv}

12. The Committee had no comments to make on the LCM.

Recommendation

13. The Committee is supportive of the UK Government legislating in the areas set out in the Legislative Consent Memorandum on the Crime (Overseas Productions Orders) Bill. The Committee therefore recommends that the Scottish Parliament approves the legislative consent motion on the Crime (Overseas Productions Orders) Bill, to be lodged by the Scottish Government.

Annexe: Draft legislative consent motion

That the Parliament agrees that the relevant provisions of the Crime (Overseas Production Orders) Bill, introduced in the House of Lords on 27 June 2018, relating to the making of overseas production orders; the people who may apply for orders; the requirements for the making of orders; the content and effect of orders; the variation or revocation of orders; inclusion of non-disclosure requirements in orders; restrictions on the service of orders; the retention of electronic data and its use as evidence; procedural matters to be determined by court rules; requirements to notify holders of confidential journalistic data of applications for orders in relation to that data; the effect of notices of application; means of serving an order; and definitions for the purposes of the Bill, so far as 5 these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of the Lord Advocate, should be considered by the UK Parliament.

