

Criminal Justice Committee

**1st Meeting, 2023 (Session 6), Wednesday
11 January 2023**

Legislative consent memorandum

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider a Legislative Consent Memorandum (LCM) in relation to the following UK Government Bill:
 - [Public Order Bill](#)
2. The Public Order Bill was introduced in the House of Commons on 11 May 2022. It is scheduled for Report Stage in the House of Lords shortly.

Legislative consent process

3. The process for considering consent to the relevant provisions in a UK Bill essentially commences with the publication, normally by the Scottish Government, of an LCM. This LCM relates to a Bill under consideration in the UK Parliament which contains what are known as “relevant provisions”. These provisions could:
 - change the law on a “devolved matter” (an area of policy which the UK Parliament devolved to the Scottish Parliament in the Scotland Act 1998);
or
 - alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).
4. Under an agreement formerly known as the “Sewel Convention”, the UK Parliament will not normally pass bills that contain relevant provisions without first obtaining the consent of the Scottish Parliament. The consent itself is given through a motion (a Legislative Consent Motion) which is taken in the Chamber – but the detailed scrutiny is undertaken by a Scottish Parliament committee based on a memorandum. The motion must normally be decided on before the Bill reaches its final amending stage at the UK Parliament in the House in which it

was first introduced (although this can be as late as the last amending stage in the second house). On occasion, a memorandum is lodged which invites the Parliament to note that the Scottish Government does not intend to lodge a legislative consent motion on a particular bill.

5. The detailed procedure for scrutiny of Legislative Consent Memorandums and Motions is set out in [Chapter 9B](#) of the Parliament's Standing Orders.

Public Order Bill

6. The Bill's purpose is to:

- make provision for new offences relating to public order;
- make provision about stop and search powers;
- make provision about the exercise of police functions relating to public order;
- make provision about proceedings by the Secretary of State relating to protest-related activities;
- make provision about serious disruption prevention orders; and,
- for connected purposes.

7. The policy aim of the Bill is to strengthen police powers to tackle dangerous and highly disruptive tactics employed by a minority of protesters. This includes provisions to protect major transport projects and key national infrastructure from being targeted by protesters, causing significant delays to the travelling public, preventing the distribution of critical goods such as fuel, and causing costly delays in construction.

8. The provisions in the Bill which the Scottish Government has requested be extended to Scotland extend powers in Part II Processions and Assemblies of the Public Order Act 1986 to the British Transport Police (BTP) for policing public processions and 2 assemblies in England and Wales. The Scottish Government has requested that these powers be extended by amendment to the BTP in Scotland as well.

9. These powers are currently already available to Police Scotland and are not being strengthened or amended. The purpose of this amendment is to address an anomaly whereby territorial police forces, including Police Scotland, can use these existing powers on the railway, but BTP, who are responsible for policing the railway, are not currently able to do so

10. The Scottish Government's views on the Bill and the relevant provisions are set out in the [LCM](#). The LCM can be found in the **Annex**.

Scottish Government Legislative Consent Memorandum

11. A Legislative Consent Memorandum was lodged by Keith Brown MSP, Cabinet Secretary for Justice and Veterans, on 23 November 2022 (see **Annex**).
12. After consideration of the proposed purpose of the Bill, and the clauses requiring Legislative Consent Motions, **Scottish Ministers have decided to recommend to the Parliament that it passes a motion consenting to the Bill (see paragraph 14 and 15 of the LCM).**

Consideration by the Delegated Powers and Law Reform Committee

13. The DPLR Committee published its [report](#) on the LCM on 21 December. The DPLR Committee stated it was content with the relevant provisions.

Action

14. **There are no plans to invite a Scottish Minister to attend today's meeting for the LCM. If members do have substantive questions, then this will be arranged for a future meeting and the question of consent can be postponed.**
15. **In the absence of any questions, Members are invited to agree to recommend to Parliament that consent be given to the relevant amendments of the Public Order Bill, introduced in the House of Lords on 9 November 2022, relating to the extension of existing powers at Part II of the Public Order Act 1986 to the British Transport Police (BTP) in Scotland for policing public processions and assemblies on the railway, so far as these matters fall within the legislative competence of the Scottish Parliament.**
16. **Members will then be invited to agree that the clerks produce a short, factual report, setting out their recommendations to the Parliament on the issue of legislative consent. The draft would be cleared by the Convener.**

Clerks to the Criminal Justice Committee
January 2023

Annex

Legislative Consent Memorandum

Public Order Bill

Background

1. This memorandum has been lodged by Keith Brown, Cabinet Secretary for Justice and Veterans, under Rule 9B.3.1(a) of the Parliament's standing orders. The Public Order Bill was introduced in the House of Commons on 11 May 2022. The Bill can be found at [Public Order Bill - Parliamentary Bills - UK Parliament](#).

Content of the Public Order Bill

2. The Public Order Bill was introduced to the House of Commons on 11 May 2022 and makes provision for new offences relating to public order, including provisions about stop and search powers; creating new offences in relation to protests; and introducing Serious Disruption Prevention Orders.

3. The policy aim of the Bill is to strengthen police powers to tackle dangerous and highly disruptive tactics employed by a minority of protesters. This includes provisions to protect major transport projects and key national infrastructure from being targeted by protesters, causing significant delays to the travelling public, preventing the distribution of critical goods such as fuel, and causing costly delays in construction.

4. The Bill is comprised of three Parts:

- Part 1 creates several new offences relating to “locking-on”, obstructing major transport works and interfering with the use or operation of key national infrastructure. This Part also confers preventative powers for the police to search for and seize articles related to protest-related offences. The provisions with which this memorandum is concerned are also in Part 1;
- Part 2 provides for a new preventative court order, the Serious Disruption Prevention Order, to disrupt the activities of repeat offenders; and
- Part 3 contains general provisions, including in relation to extent and commencement.

5. The Bill is currently sitting in the House of Lords. Committee stage commenced on 16 November, with the second sitting on 22 November.

6. As Justice is devolved in Scotland, the majority of the legislative proposals contained in the Bill apply to England and Wales only and will not apply in Scotland.

The provisions in the Bill which the Scottish Government has requested be extended to Scotland extend powers in Part II Processions and Assemblies of the Public Order Act 1986 to the British Transport Police (BTP) for policing public processions and assemblies in England and Wales. The Scottish Government has requested that these powers be extended by amendment to the BTP in Scotland as well.

7. These powers are currently already available to Police Scotland and are not being strengthened or amended. The purpose of this amendment is to address an anomaly whereby territorial police forces, including Police Scotland, can use these existing powers on the railway, but BTP, who are responsible for policing the railway, are not currently able to do so.

Provisions which relate to Scotland

8. The requirement for an LCM is in relation to an amendment extending existing powers at Part II of the Public Order Act 1986 to the British Transport Police (BTP) in Scotland for policing public processions and assemblies on the railway. As railway policing is a devolved matter, the extension of this amendment to Scotland requires the legislative consent of the Scottish Parliament. Originally, these provisions of the Bill applied to England and Wales only, the amendment discussed in this LCM enables the removal of that restriction.

9. The provisions as amended would extend certain police powers (Police Scotland and English and Welsh territorial forces) under sections 14 and 14A of the Public Order Act 1986 to BTP.

Section 14

10. Section 14 applies where the senior police officer (as defined in the Act) reasonably believes either that a public assembly may cause serious disorder, serious damage to property or serious disruption to the life of the community, or that the purpose of the organisers is to intimidate others out of doing something they have a legal right to do, or into doing something they have a legal right not to do. In such a situation the senior officer may impose such conditions as to location, maximum duration and/or maximum number of people taking part as are considered necessary to prevent these effects. If extended to Scotland, this would allow BTP officers to exercise this power in relation to public assemblies on railway property.
Section 14A

11. Section 14A allows police to apply to the local authority for an order prohibiting a trespassory public assembly on private land where the assembly may result in serious disruption to the life of the community or significant damage to the land or any building or monument on it (but only if these are of historical, architectural, archaeological or scientific importance). Such an order can prohibit all trespassory assemblies in the local area for a specified period (no longer than 4 days). The Bill provisions would extend this to BTP officers in a modified form, so that the chief constable of BTP could make such an order (rather than the local authority) with the consent of Scottish Ministers, and with the grounds for an order widened to include serious disruption to railway services. BTP in Scotland would only be able to use this power where the public assembly was to be held on railway property.

Consultation

12. Scottish Government officials have consulted widely with key stakeholders regarding these provisions, including the UK Government, Police Scotland and BTP. Police Scotland have no objections to the legislation being extended to BTP in Scotland. Their assessment is that there would be no obvious operational challenges to its implementation. BTP are supportive of the extension of these powers.

Financial implications

13. No significant additional costs to the Scottish Government or any significant additional direct costs to the Scottish Criminal Justice Sector are envisaged as a result of these provisions within the Public Order Bill.

Conclusion

14. Scotland has a proud tradition of activism and of peaceful protest. The right to public assembly is an important human right that the Scottish Government is committed to uphold. This amendment is solely in relation to extending existing police powers to BTP in Scotland and not for the powers themselves to be strengthened or amended. As the extension of these powers to the BTP in Scotland will allow them to exercise existing powers on the railway, which are currently already available to Police Scotland, the Scottish Government welcomes and agrees to these provisions being extended to Scotland.

Draft Legislative Consent Motion

15. The draft motion, which will be lodged by the Cabinet Secretary for Justice and Veterans, is:

“That the Parliament agrees that the relevant amendments of the Public Order Bill, introduced in the House of Lords on 9 November 2022, relating to the extension of existing powers at Part II of the Public Order Act 1986 to the British Transport Police (BTP) in Scotland for policing public processions and assemblies on the railway, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

**Scottish Government
November 2022**