

# Criminal Justice Committee

**10th Meeting, 2024 (Session 6), Wednesday 6  
March 2024**

## **Legislative Consent Memorandums – Criminal Justice Bill**

### **Background**

1. The Criminal Justice Bill was introduced by the UK Government in the House of Commons on 14 November 2023. The latest version of the Bill can be found [here](#).
2. A [Legislative Consent Memorandum](#) was lodged by the Scottish Government on 21 December 2023, covering Clauses 14 and 21 of the Bill as introduced. See **Annex A**. Paragraphs 7 to 11 of the LCM set out the provisions in the UK Government’s Bill that impact on devolved matters.
3. Amendments tabled on 20 December 2023 resulted in further relevant provision and the requirement for a supplementary LCM. A [supplementary LCM](#) was lodged on 13 February 2024 and can be found in **Annex B**. Paragraphs 7 to 23 of the supplementary LCM set out the provisions in the UK Government’s Bill that impact on devolved matters.

### **Timetable**

4. This Bill is currently at the report stage in the House of Commons. The clerk understands that we can expect report stage to be on 18 March, whereupon the Bill would move to the Lords on 19 March and move through to Lords report stage between 17 to 26 June.

### **LCM process**

5. 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).
6. 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.
  7. The detailed procedure for scrutiny of Legislative Consent Memorandums and Motions is set out in [Chapter 9B](#) of the Parliament’s Standing Orders.

## **Consideration by the Delegated Powers and Law Reform Committee**

8. The Delegated Powers and Law Reform (DPLR) Committee intends to consider both the initial and supplementary LCM at its meeting on Tuesday 5 March 2024.
9. The clerks will circulate the DPLR Committee’s report on the LCMs to members when it has been published or provide an oral update on its contents at today’s meeting.

## **Today’s consideration**

10. At today’s meeting, members will consider the issue of whether to recommend consent to the relevant provisions in the Bill.
11. **Both of the Scottish Government’s LCMs state that it agrees that consent should be given (see paragraph 19 in the first LCM and paragraph 28 in the supplementary LCM).**

## **Decisions**

12. **Members are asked to discuss whether they agree with the Scottish Government’s view on consent for both of the LCMs and what recommendation they wish to make to the Scottish Parliament.**
13. **Finally, members are asked to agree that the clerks produce a short, factual report, setting out the Committee’s recommendations to the Scottish Parliament on the issue of legislative consent. The draft would be cleared by the Convener and then published.**



# Annex A

## Legislative Consent Memorandum

### Criminal Justice Bill

#### Background

1. This Legislative Consent Memorandum (“LCM”) has been lodged by Angela Constance, the Cabinet Secretary for Justice and Home Affairs, under Rule 9B.3.1(a) of the Parliament’s Standing Orders.
2. The Criminal Justice Bill (“the Bill”) was introduced by the UK Government in the House of Commons on 14 November 2023.
3. The latest version of the Bill, Explanatory Notes and other supporting documents can be found at: <https://bills.parliament.uk/bills/3511>

#### Content of the Criminal Justice Bill

4. The UK Government has set out that the Bill is intended to amend the criminal law to make provisions about criminal justice including the powers and duties of the police; dealing with offenders; reforms to the confiscation regime under the Proceeds of Crime Act 2002, the use of monies in suspended accounts; the prevention and detection of crime and disorder; begging, rough sleeping and anti-social behaviour; and for connected purposes. The UK Government has set out that the Bill is intended to amend the criminal law to make provisions about criminal justice including the powers and duties of the police; dealing with offenders; reforms to the confiscation regime under the Proceeds of Crime Act 2002<sup>1</sup>, and the use of monies in suspended accounts; the prevention and detection of crime and disorder; begging, rough sleeping and anti-social behaviour; and for connected purposes.
5. The UK Government has presented the Bill as having seven key objectives to keep communities safe by:
  - strengthening the law to protect the public from violence and intimidation;
  - tackling violence against women and girls;
  - enabling law enforcement agencies to respond to changing technology deployed by criminals;
  - equipping law enforcement agencies with the necessary powers to address
  - emerging crime types and threats;

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<sup>1</sup> [Proceeds of Crime Act 2002 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2002/29)

- introducing tougher sentencing;
- enhancing the management of offenders; and
- strengthening public confidence in policing.

6. In more detail, specific elements of the Bill are:

- Clauses 1 to 4 introduce new offences to criminalise the possession, importation, manufacture, adaptation, supply and offering to supply of articles for use in serious crime.
- Clauses 5 to 7 and Schedule 1 introduce new offences relating to the possession or supply of a “SIM farm”<sup>2</sup> with associated powers of entry and search for evidence of those offences.
- Clause 8 introduces a power for the Secretary of State, by regulations, to introduce a new offence for the possession or supply of other electronic articles (specified in the regulations) used to facilitate fraud.
- Clause 9 introduces a new offence relating to the possession of a bladed article or offensive weapon with intent to use it to cause unlawful violence (or a person to apprehend such unlawful violence) or serious damage to property; or to enable another person to cause such violence or damage.
- Clause 10 increases the maximum penalty for offences relating to the sale etc. of offensive weapons (under sections 141 and 141A of the Criminal Justice Act 1988<sup>3</sup>, and section 1 of the Restriction of Offensive Weapons Act 1959<sup>4</sup>).
- Clauses 11 and 12 introduce a new broader offence of encouraging or assisting serious self-harm, replacing and expanding the communications offence in the Online Safety Act 2023<sup>5</sup> to cover all means of encouraging or assisting.
- Clauses 13 and Schedule 2 introduce new offences to criminalise taking or recording an intimate photograph or film without consent, and installing equipment to enable the taking or recording of intimate photographs or films with the intention of committing a taking offence.
- Clause 14 provides for a corporate body or partnership to be held criminally liable where a senior manager commits any offence while acting within the actual or apparent scope of their authority, replacing provisions in the Economic Crime and Corporate Transparency Act 2023<sup>6</sup> which were confined to specified economic crimes.

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<sup>2</sup> SIM (subscriber identity module) farms are electronic devices that are capable of using five or more SIM cards simultaneously or interchangeably and which allow the user to send Short Messaging Service (“SMS”) texts or phone calls in large numbers over the telecommunications network.

<sup>3</sup> [Criminal Justice Act 1988 \(legislation.gov.uk\)](#)

<sup>4</sup> [Restriction of Offensive Weapons Act 1959 \(legislation.gov.uk\)](#)

<sup>5</sup> [Online Safety Act 2023 \(legislation.gov.uk\)](#)

<sup>6</sup> [Economic Crime and Corporate Transparency Act 2023 \(legislation.gov.uk\)](#)

- Clauses 15 to 17 expand police powers to test persons on arrest or after charge (for persons aged 14 and over) for the presence of specified Class A drugs and refer them into drug treatment, to also permit drug testing for specified Class B and Class C drugs.
- Clause 18 provides police with a new power to seize bladed articles where they are lawfully on private premises and have reasonable grounds to suspect the article will be used in connection with unlawful violence.
- Clause 19 provides police with a new power to enter and search premises (private or public) without a warrant where they have reasonable grounds to believe there are articles on those premises which have been stolen.
- Clause 20 and Schedule 3 provide investigative agencies with a power to apply to the court for an order that a third-party entity involved in the provision of internet protocol (IP) addresses and internet domain names should prevent access to an IP address or domain name.
- Clause 21 enables the Secretary of State to make regulations about access to driver licence records by the police and other law enforcement agencies.
- Clause 22 gives courts the power to compel offenders to attend their sentencing hearing and to punish them as if it were criminal contempt of court if they do not. This provision only applies to offenders being sentenced for an offence punishable by a life sentence. This clause also permits a court to order that the offender be produced and for reasonable force to be used to give effect to that order where necessary and proportionate. This provision applies to offenders aged 18 or over who are remanded in custody awaiting sentencing and who have refused, or there are reasonable grounds to suspect that the offender will refuse to attend court for their sentencing hearing.
- Clause 23 creates a new statutory aggravating factor for grooming behaviour where the court is considering the seriousness of a child sex offence, including, where perpetrated by grooming gangs.
- Clause 24 creates a new statutory aggravating factor sentencing for murder connected to (i) the end of a relationship; (ii) the victim intending to bring about the end of that relationship; or (iii) the offender's belief as to those things.
- Clauses 25 to 29 facilitate the Secretary of State to transfer prisoners held in England and Wales to be housed in an overseas prison in accordance with arrangements made between the UK and a foreign country.
- Clause 25 provides the definitions for Clauses 26 to 29 and clarifies the purpose of those provisions as giving effect to an arrangement for prisoners to be held in a foreign country.

- Clauses 26 to 29 allow for the transfer of prisoners out of the UK to another jurisdiction and for their return, by operation of a warrant in accordance with an arrangement.
- Clause 28 makes provision for the Secretary of State to appoint a person to monitor and report on any arrangement with a foreign country and the transfer and return of prisoners pursuant to that arrangement.
- Clause 29 allows for the Secretary of State to make further provision in secondary legislation, including to amend existing primary legislation to facilitate the implementation of any arrangement to transfer prisoners to a prison overseas.
- Clause 30 makes the multi-agency public protection arrangements (“MAPPA”) automatic for those convicted of the offence of controlling or coercive behaviour.
- Clause 31 extends the criteria for polygraph testing to people released on licence, under probation supervision, who have been convicted of murder and are assessed as posing a risk of sexual offending; to the whole envelope of the sentence for those who are sentenced concurrently for a sexual and non-sexual offence; and to offenders sentenced for offending which is considered to be linked to terrorism before the Counter Terrorism Act 2008<sup>7</sup> (“CTA”) was commenced, or following commencement of the CTA but before the Counter-Terrorism and Sentencing Act 2023<sup>8</sup> was commenced for offences outside the specified list contained in Schedule 2 to the CTA.
- Clause 32 and Schedule 4 reform some parts of the confiscation regime in England and Wales in Part 2 of the Proceeds of Crime Act 2002<sup>9</sup>.
- Clause 33 and Schedule 5 create a Suspended Accounts Scheme - a statutory scheme under which participating financial institutions (including banks or building societies) may transfer to the scheme administrator funds which represent the balances that have been suspended by them, and to allow those funds to be used in relation to economic crime.
- Clauses 34 to 37 strengthen the operation of Serious Crime Prevention Orders (“SCPOs”) by giving courts an express power to impose electronic monitoring requirements; enabling additional law enforcement agencies to apply to the High Court for an SCPO; introducing a standardised set of notification requirements; and allowing the Crown Court to make an order on its own motion or on an application on acquittal.
- Clauses 38 to 64 introduce new offences and civil prevention notices and orders to tackle nuisance and organised begging and rough sleeping where it causes damage, distress and disruption in place of the provision in the Vagrancy Act 1824<sup>10</sup>.

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<sup>7</sup> [Counter-Terrorism Act 2008 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2008/18)

<sup>8</sup> [Counter-Terrorism and Sentencing Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2023/11)

<sup>9</sup> [Proceeds of Crime Act 2002 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2002/29)

<sup>10</sup> [Vagrancy Act 1824 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1824/1)

- Clauses 38 to 64 deal with police and local authority officers' powers in relation to nuisance beggars; directing such persons to leave an area; seeking and enforcing Nuisance Begging Prevention Notices; and the introduction of a new summary offence to engage in nuisance begging.
- Clauses 65 to 71 amend the powers of the police, local authorities and other agencies to tackle anti-social behaviour. Clause 65 extends the ability for the court to attach a police power of arrest to all breaches of an anti-social behaviour injunction.
- Clause 66 extends the duration of dispersal directions and closure notices.
- Clause 67 lowers the minimum age for Community Protection Notices (from 16 to 10 years).
- Clause 68 and Schedule 6 enables senior police officers to make Public Spaces Protection Orders ("PSPOs") and Expedited PSPOs.
- Clause 69 and Schedule 7 enable registered housing providers to issue closure notices.
- Clause 70 increases the sum payable under Fixed Penalty Notices ("FPNs") issued for certain breaches of PSPOs, Expedited PSPOs and Community Protection Notices and enables persons accredited under the community safety accreditation scheme to issue FPNs.
- Clause 71 strengthens the role of local policing bodies in Anti-Social Behaviour Case Reviews.
- Clause 72 make provision to enhance the accountability of Community Safety Partnerships ("CSPs") and ensure closer working with elected policing bodies.
- Clause 73 places a duty on the College of Policing to issue a Code of Practice about ethical policing, including a duty of candour on the police.
- Clause 74 provides a power for the Secretary of State to make certain provision by secondary legislation about appeals by chief officers of police and local policing bodies to the Police Appeals Tribunals.
- Clauses 75 to 79 make general provision, including in respect of the Bill's territorial extent and commencement.

## Provisions which require the consent of the Scottish Parliament

7. The Bill contains provisions that apply to Scotland and the UK Government has requested legislative consent in relation to Clause 14 and Clause 21.



## Clause 14

8. During the passage of the Economic Crime and Corporate Transparency Act 2023<sup>11</sup> (“the 2023 Act”), the ‘identification doctrine’ was placed on a statutory footing for which the Scottish Government recommended legislative consent and the Scottish Parliament gave consent for those provisions. These provisions in the 2023 Act provide a statutory approach for establishing corporate liability where senior managers of an organisation have committed an offence. In particular, section 196 of the 2023 Act provides that, where a senior manager of an organisation acting within the actual or apparent scope of their authority commits a relevant offence, the organisation is also guilty of the offence. However, the 2023 Act provisions were restricted to operate only in respect of a specific list of economic offences due to the scope of the legislative vehicle being used.

9. Within this context, the UK Government committed to extending the statutory identification doctrine to all criminal offences. Clause 14 gives effect to that commitment and repeals the provisions introduced in the 2023 Act. Clause 14 will require legislative consent as the general principles of criminal liability are devolved insofar as they relate to devolved criminal offences.

## Clause 21

10. Clause 21 enables the Secretary of State to make regulations permitting persons authorised by various bodies, including the Police Service of Scotland, to access and use driver licence records for any policing or law enforcement purpose specified in the regulations. It provides a more flexible replacement for the existing section 71 of the Criminal Justice and Court Services Act 2000<sup>12</sup>.

11. It requires legislative consent as the purposes for which access is granted, and for which the material accessed is used, are likely to be for devolved purposes. 12. This provision includes a regulation-making power by the Secretary of State and a requirement to consult with the Scottish Ministers before making such driver information regulations or an associated code of practice.

## Reasons for recommending legislative consent

13. In relation to Clause 14, as with the relevant clauses in the 2023 Act<sup>13</sup>, the Scottish Government considers the placing of the identification doctrine on a statutory footing is a sensible step to take through this UK Government Bill which is why legislative consent is being sought for such a step to be taken.

14. In relation to Clause 21, the Scottish Government is recommending consent for this provision as it includes the Police Service of Scotland in the list of permitted

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<sup>11</sup> See footnote 6 above

<sup>12</sup> [Criminal Justice and Court Services Act 2000 \(legislation.gov.uk\)](#)

<sup>13</sup> See footnote 6 above

forces to whose authorised persons UK driver record details may be disclosed by the Secretary of State for policing or law enforcement purposes. The ability to access and use this information is valuable to the Police Service of Scotland.

## EU alignment

15. Clause 14 is not relevant to the Scottish Government's policy to maintain alignment with the EU because it is provision which is not in an area formerly within the competence of the EU. The provision could not be considered to jeopardise the attainment of any of the EU's objectives.

16. Clause 21 is not relevant to the Scottish Government's policy to maintain alignment with the EU because it is provision which is not in an area formerly within the competence of the EU. The provision could not be considered to jeopardise the attainment of any of the EU's objectives.

## Consultation

17. There has been no specific Scottish Government consultation on those areas requiring legislative consent. However, the Scottish Government has sought to engage with, and take account of the views of the Crown Office and Procurator Fiscal Service and the Police Service of Scotland in deciding to recommend consent.

## Financial implications

18. There are no significant financial implications for the Scottish Ministers or other organisations or bodies in Scotland arising from the clauses requiring legislative consent.

## Conclusion

19. The Scottish Government is supportive of Clause 14 and Clause 21 and recommends legislative consent to both.

20. There is ongoing engagement with UK Government officials and Ministers about parts of the Bill which may be amended so that those provisions are extended to also apply to Scotland. In the event that such relevant amendments are made to the Bill during its passage, a further LCM will be submitted.

## Draft Legislative Consent Motion

21. The draft motion, which will be lodged by the Cabinet Secretary for Justice and Home Affairs, is:

“That the Parliament agrees that the relevant provisions contained within the UK

**CJ/S6/24/10/1**

Criminal Justice Bill, namely Clause 14 and Clause 21, introduced in the House of Commons on 14 November 2023, so far as within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government  
December 2023

## Annex B

# Supplementary Legislative Consent Memorandum

## UK Criminal Justice Bill

### Background

1. This Legislative Consent Memorandum (“LCM”) has been lodged by Angela Constance, the Cabinet Secretary for Justice and Home Affairs, under Rule 9B.3.1(c) of the Parliament’s Standing Orders.
2. The Criminal Justice Bill (“the Bill”) was introduced in the House of Commons on 14 November 2023.
3. The latest version of the Bill, Explanatory Notes and other supporting documents can be found at: <https://bills.parliament.uk/bills/3511>. An LCM was lodged on 21 December 2023 covering Clauses 14 and 21 of the Bill as introduced (see LCM-S6-43A <https://www.parliament.scot/bills-and-laws/legislative-consent-memorandums/criminal-justice-bill>). Amendments tabled on 20 December 2023 have resulted in further relevant provision and the requirement for this supplementary LCM.

### Content of the Criminal Justice Bill

4. The UK Government has set out that the Bill is intended to amend the criminal law to make provisions about criminal justice including the powers and duties of the police; dealing with offenders; reforms to the confiscation regime under the Proceeds of Crime Act 2002, the use of monies in suspended accounts; the prevention and detection of crime and disorder; begging, rough sleeping and anti-social behaviour; and for connected purposes.
5. The UK Government has presented the Bill as having seven key objectives to keep communities safe by:
  - a. strengthening the law to protect the public from violence and intimidation;
  - b. tackling violence against women and girls;
  - c. enabling law enforcement agencies to respond to changing technology deployed by criminals;
  - d. equipping law enforcement agencies with the necessary powers to address emerging crime types and threats;
  - e. introducing tougher sentencing;
  - f. enhancing the management of offenders; and
  - g. strengthening public confidence in policing.

6. More detail about the Bill can be found in the first aforementioned LCM (see <https://www.parliament.scot/bills-and-laws/legislative-consent-memorandums/criminal-justice-bill>).

## Provisions which relate to Scotland requiring an LCM

7. The Bill contains provisions that apply to Scotland and the UK Government has requested legislative consent in relation to Clauses 1 to 4. Responsibility for some of these measures is intermingled, with Clauses 1 and 2, which introduce new offences in relation to articles used in serious crime, concerning a combination of reserved and devolved matters. Clauses 3 and 4 introduce new offences regarding the possession, importation, making, adaptation, supplying of electronic devices used to commit vehicle theft.

8. The Scottish Government agrees with the UK Government assessment that the LCM process is engaged insofar as Clauses 1 to 4 relate to devolved matters.

## Overview of clauses 1 to 4

9. Clauses 1 and 2 introduce new offences to criminalise the possession, importation, manufacture, adaptation, supply and offering to supply of articles for use in serious crime. Articles specified include pill presses, vehicle concealments and templates to print 3D firearms. It is already an offence to possess, buy or produce component parts for a 3D-printed gun. These Clauses contain provision for the Secretary of State to add further articles, by regulation, as required and to consult with the Scottish Ministers before doing so. These provisions would extend to Scotland and fall within the legislative competence of the Scottish Parliament insofar as they relate to creating new criminal offences in relation to serious crime and therefore necessitate legislative consent.

10. Clauses 3 and 4 make it a criminal offence to possess, import, make, adapt, supply or offer to supply, and possess electronic devices for use in vehicle theft. Police are increasingly seeing organised crime groups using electronic devices such as signal jammers, signal amplifiers, devices used to access a vehicle's 'CAN bus' (wiring system), and a device which when touched against the door handle of the vehicle can process the signal from the vehicle and calculate an unlock code to gain entry and start the vehicle. These provisions would extend to Scotland and fall within the legislative competence of the Scottish Parliament insofar as they create new criminal offences in relation to theft of vehicles and therefore necessitate legislative consent.

11. The intention is that these Clauses will give the police a clearer enforcement route against criminals using such technology and enable the police to respond to changing technology deployed by criminals.

12. Clauses 1 to 4, and the amendments extending these Clauses to Scotland

made on 20 December 2023, were debated and agreed to on 11 January 2024 in the fifth sitting of the House of Commons Criminal Justice Public Bill Committee. The debate highlighted, on all sides, the importance of taking a whole-UK approach to tackling serious organised crime, and of discussion and positive engagement with the Scottish Government and the administration in Northern Ireland.

## Clauses 1 and 2

13. Clause 1 of the Bill creates two new criminal offences of possessing any relevant article where a person intends, or has reasonable grounds to suspect, that it will be used in any serious crime; and of the importing, making, adapting, supplying, offering to supply a specified article where there are reasonable grounds to suspect that the article will be used in any serious crime.

14. Serious offences are offences such as fraud, money laundering, terrorism, drug and people trafficking. In Scotland, a “serious offence”, is an offence specified or described in Part 1A of Schedule 1 of the Serious Crime Act 2007.

15. Clause 2 defines a “relevant article” as meaning a 3D printer firearms template<sup>14</sup>; an encapsulator<sup>15</sup>; a tablet press<sup>16</sup>; a vehicle concealment<sup>17</sup>. Clause 2 contains a regulation making power for the Secretary of State to amend Clause 2 to include other articles which will be subject to the new offences – depending on what these may be, it is possible that this would be within devolved competence.

16. Subject to very limited exceptions, criminal justice (as well as criminal law and procedure and the police) is devolved to Scotland.

17. While Clauses 1 and 2 relate to a combination of reserved and devolved matters (for example, firearms and misuse of drugs) the purpose of the provision is to create new offences to criminalise the use of articles used in serious crime, which would be within devolved competence.

18. We agree that the LCM process is engaged insofar as Clauses 1 and 2 relate to devolved matters.

## Clauses 3 and 4

19. Clause 3 of the Bill makes it an offence to possess or import, make, adapt, supply or offer to supply an electronic device which gives rise to a reasonable suspicion that the device will be used in connection with a relevant offence. In Scotland a “relevant offence” means (i) theft of a vehicle, vessel or aircraft constructed or adapted for use

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<sup>14</sup> Defined as meaning any document that may be used in conjunction with a 3D printer to produce any part of a firearm (as defined by section 57 of the Firearms Act 1968)

<sup>15</sup> Defined as including any device that may be used to produce capsules.

<sup>16</sup> Defined as including any device that may be used to produce tablets

<sup>17</sup> Defined as meaning a compartment that (a) forms or is intended to form part of a vehicle or is attached or intended to be attached to a vehicle, and (b) conceals, or facilitates the concealment of, things or people or is intended to conceal or facilitate the concealment of things or people.

for transporting one or more persons or of anything in such a vehicle, vessel or aircraft, or (ii) an offence under section 178 of the Road Traffic Act 1988.

20. Clause 4 of the Bill relates to the evidential burden for the defences in Clause 1(3) or 3(3).

21. These particular offences relate to criminalising the use of electronic devices which give rise to reasonable suspicion that the device will be used in connection with serious crime (in particular, vehicle theft).

22. While internet services, telecommunications and wireless telegraphy are reserved matters, criminal law is generally devolved to Scotland. The Bill does not define “electronic device” and the purpose of the provision as a whole is to tackle serious crime. As such, we agree that Clauses 3 and 4, engage the LCM process. Statutory duty to consult

23. Clause 2 contains a limited power for the Secretary of State to add new articles to the list of specified articles. After negotiation the UK government has agreed to the inclusion of a statutory duty to consult Scottish Ministers whenever the Secretary of State is considering adding an article to the list, but they are not in a position to agree to including a consent mechanism in relation to devolved articles. They have stated that this is primarily because of the need to ensure a consistent regime across UK, since any divergence where the article in question is criminalised in England, Wales, and Northern Ireland, but not Scotland could lead to changes in criminal tactics, diverting these articles as needed within the UK to take them where they are not criminalised with potential repercussions in terms of public safety. The duty to consult would bite in all cases, whether or not the article is reserved or devolved.

## Reasons for recommending consent

24. The provisions in these clauses are intermingled. Consent would give law enforcement bodies additional tools to help tackle serious organised crime, and would avoid the risk of a divergent Scotland being seen as an easier target for organised criminal groups. Both the Scottish Government and Police Scotland have been calling for legislation to control pill presses, in particular, for some time, since it is possible that Scottish Ministers would face legislative competence issues if they attempted to legislate to create a new offence of possession, making etc. of a tablet press or 3D digital firearm template. It would of course be possible for the UK Government to legislate in Scotland only for those areas (ie in relation to drugs or firearms) which are clearly reserved. The more pragmatic approach is clearly to take advantage of this opportunity created by the UK Government and to consent to legislation to control certain articles used in organised crime and which also contains provision to add new articles to the list. Organised criminals remain flexible and quick to adapt to emerging technology and opportunities. Consenting to these provisions in this legislation should allow a quicker legislative response to such technological advancements in the future.

## EU alignment

25. Clauses 1 to 4 are not relevant to the Scottish Government's policy to maintain alignment with the EU because it is provision which is not in an area the EU has legislated on. The provision could not be considered to jeopardise the attainment of any of the EU's objectives.

## Consultation

26. There has been no specific Scottish Government consultation on those areas requiring legislative consent. However, the Scottish Government has sought to engage with, and take account of the views of the Crown Office and Procurator Fiscal Service and the Police Service of Scotland. The UK Government carried out a consultation on the proposals in Clauses 1 and 2 in early 2023. Respondents, including Scottish stakeholders such as the Police Service of Scotland were supportive. The devices referred to in Clauses 3 and 4 were not referred to explicitly in that consultation but were covered by the general statements covering articles used by organised crime groups.

## Financial implications

27. There are no significant financial implications for the Scottish Ministers or for other organisations such as Police Scotland. Conclusion 28. The Scottish Government is supportive of Clauses 1 to 4 and promotes legislative consent to those provisions.

## Draft Legislative Consent Motion

29. The draft motion, which will be lodged by the Cabinet Secretary for Justice and Home Affairs, is:

“That the Parliament agrees that the relevant provisions contained within Clauses 1 to 4 of the UK Criminal Justice Bill, introduced in the House of Commons on 14 November 2023 and as amended on 20 December 2023, so far as within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government

13 February 2024