

Legislative Consent Memorandum

Crime and Policing Bill

Background

1. This memorandum has been lodged by Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs, in accordance with Rule 9B.3.1(a) of the Parliament's standing orders.
2. The Crime and Policing Bill was introduced by the UK Government in the House of Commons on 25 February 2025. The Bill is available on the UK Parliament website via this link: [Crime and Policing Bill - Parliamentary Bills - UK Parliament](#).

Content of the Bill

3. The Bill makes provision about anti-social behaviour, offensive weapons, offences against people (including sexual offences), property offences, the criminal exploitation of persons, sex offenders, stalking and public order, the powers of the police, the border force and other similar persons. It also makes provisions about confiscation; about the police; about terrorism and national security, and about international agreements relating to crime; and about the criminal liability of bodies; and for connected purposes.
4. The provisions that apply to Scotland on introduction include a number of reserved provisions in relation to online child sexual abuse, terrorism and national security including youth diversion orders, provisions relating to aspects of organised crime including possession or supply of a sim farm, power to suspend internet protocol addresses and internet domain names and provisions relating to powers for armed forces police in Scotland.
5. The provisions that apply to Scotland on introduction and trigger the legislative consent process include provisions:
 - to create a new offence of "cuckooing" – controlling another's home for criminal purposes;
 - relating to the management of sex offenders including notification requirements in relation to name changes, absence from sole or main residence, and, in the case of child sex offenders, if entering premises where children are present. The relevant clauses also contain provisions relating to restrictions on applying for replacement identity documents in a new name and powers of entry and search in certain circumstances;
 - to create new offences relating to the possession and supply of electronic devices where there is a reasonable suspicion that this is for use in vehicle theft.

- to expand the lawful purposes for which the police can access the DVLA driving license database.
- to protect enforcement authorities from paying expenses during civil recovery proceedings, preventing the court from ordering expenses against them unless the authority acted unreasonably, dishonestly or improperly;
- to expand the list of criminal lifestyle offences in the Scottish Schedule 4 of the Proceeds of Crime Act 2002;
- to confer parallel powers on Scottish Ministers and the Secretary of State to make regulations to implement future international agreements as they relate to the sharing of information for law enforcement purposes and to require the Secretary of State to consult with devolved authorities before making regulations in a devolved area;
- regarding the criminal liability of bodies corporate and partnerships where a senior manager commits an offence.

Provisions which require the consent of the Scottish Parliament

6. The provisions that apply to Scotland on introduction and trigger the legislative consent process include provisions as follows.

7. **Clauses 32 to 34 and 35(4)(b) and Part 2 of Schedule 5** seek to make it an offence if someone exercises control over another person's residence; they do so for the purpose of enabling that residence to be used to carry out one or more of the relevant offences listed in schedule 5; and if someone doesn't consent to their residence to be used for that purpose. This is known as cuckooing.

8. The Scottish Government agrees with the UK Government's assessment that the LCM process is engaged insofar as these clauses relate to a mix of reserved and devolved matters. These measures relate to reserved matters insofar as they deal with the subject matter of the Firearms Act 1968 and the Misuse of Drugs Act 1971 (paragraph B4 and B1 of Schedule 5 to the 1998 Act), and they relate to devolved matters insofar as they deal with relevant offences in Scottish legislation including the Criminal Law (Consolidation) (Scotland) Act 1995 and the Criminal Justice and Licensing (Scotland) Act 2010.

9. **Clause 35(4)(b)** currently makes an amendment to the Proceeds of Crime Act 2002 (POCA) Scottish Criminal Lifestyle Schedule to include the cuckooing offence with its related offences to the Scottish Schedule.

10. **Clause 55** sets out provisions relating to the issue of guidance about disclosure of information by police for the purpose of preventing sex offending. In Scotland this will only apply to Ministry of Defence Police (a reserved provision) and to British Transport Police (BTP) (a devolved matter).

11. The Scottish Government agree with UK Government assessment that the LCM process is engaged insofar as it relates to devolved matters. For this clause, this means in relation to BTP since railway policing is devolved.

12. **Clauses 59 to 63 and 66 to 68 and Schedule 9** set out new provisions relating to the management of sex offenders including notification requirements in relation to name changes, absence from sole or main residence, and, in the case of child sex offenders, if entering premises where children are present. The clauses also contain provisions relating to restrictions on applying for replacement identity documents in a new name and powers of entry and search in certain circumstances.

13. The Scottish Government agrees with the UK Government's assessment that the LCM process is engaged insofar as these clauses relate to a mix of reserved and devolved matters. Clauses 59 to 63 and 66 to 68 and Schedule 9 are within the legislative competence of the Scottish Parliament. They relate to the management of those with sexual offending, which is a devolved function. These measures relate to reserved matters in so far as they deal with the subject matter of the Road Traffic Act 1988 (paragraph E1(d) of Schedule 5 to the 1998 Act).

14. **Clauses 78 and 79** create new offences relating to the possession and supply of electronic devices where there is a reasonable suspicion that they are for use in vehicle theft. These devices include 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.

15. The Scottish Government agrees with the UK Government's assessment that the broad definition of electronic devices used for vehicle theft will encompass devices which are not likely to fall within the specific wording of the telecommunications and internet services reservation. It therefore makes sense to treat these clauses as devolved, whilst noting that it does also relate to certain reserved matters as some of the devices would fall within the reservation. The legislative consent process is engaged insofar as Clauses 78 to 79 relate to devolved matters.

16. **Clause 79(3)(b)** also adds these offences to the list of Scottish Criminal Lifestyle Offences in Schedule 4 of POCA. Scottish Ministers have an existing power to vary, by secondary legislation, the list of criminal lifestyle offences in Scotland. Doing so by way of this Bill therefore engages the legislative consent process.

17. **Clause 95** expands the lawful purposes for which the police can access the DVLA driving license database. This clause updates the list of 'authorised persons' under section 71 of the UK Criminal Justice and Court Services Act 2000 who can access the database. The clause also seeks to enable the police to use DVLA records in connection with the investigation of a broader range of offences than the current provision, which is for the investigation of road traffic offences only. As such a broad range of offences would include those of a devolved nature, the Scottish

Government agrees with the UK Government's assessment that the LCM process is engaged insofar as this clause relates to a mix of reserved and devolved matters.

18. Controls and oversight relating to the purpose of such access will be determined via regulations and a code of practice prepared by the Secretary of State. The clause contains a statutory requirement for the Secretary of State to consult with the Scottish Ministers before making such regulations and the code of practice. This approach is considered by officials to be proportionate in terms of maintaining oversight of UK Government proposals on such matters and providing an opportunity for Scottish Ministers to present their views on the impact of the draft regulations and the draft code of practice as they affect Scotland. This approach is also supported by the independent Scottish Biometrics Commissioner, who is accountable to the Parliament.

19. **Clause 103** contains provisions relating to the expenses in relation to civil recovery proceedings under the Proceeds of Crime Act 2002. The provision is intended to allow enforcement authorities (the Civil Recovery Unit in Scotland) to apply for civil recovery orders and related provisions without being deterred by potential liability for expenses. The provisions do preserve the existing safeguards against unreasonable, dishonest or improper actions by the enforcement authority. POCA is a mix of reserved and devolved matters. The amendment to Chapter 2 of Part 5 makes provision in relation to civil recovery proceedings in POCA and falls within the legislative competence of the Scottish Parliament in relation to unlawful conduct in devolved areas. The Scottish Government agrees with the UK Government's assessment that the LCM process is engaged insofar as these clauses relate to a mix of reserved and devolved matters.

20. **Clauses 127 and 128** confer parallel powers on Scottish Ministers and the Secretary of State to make regulations to implement future international agreements as they relate to the sharing of information for law enforcement purposes. The Scottish Ministers are empowered to make regulations where these contain only devolved provisions. The Scottish Government agrees with the UK Government's assessment that the LCM process is engaged.

21. **Clause 129** requires the Secretary of State to consult with devolved authorities before making regulations under clause 127 in a devolved area of competence. The Scottish Government agrees with the UK Government's assessment that the LCM process is engaged.

22. **Clause 133** sets out the procedure for the making of regulations by Scottish Ministers under clause 127.

23. While international relations are a reserved matter, observing and implementing international agreements is not, except to the extent that the subject matter of the agreement is reserved. As such, implementing an international obligation to the extent it relates to subject matter which is devolved would be within devolved competence. The Scottish Government agrees with the UK Government's

assessment that the LCM process is engaged insofar as this clause relates to a mix of reserved and devolved matters.

24. **Clause 130** sets out provisions regarding the criminal liability of bodies corporate and partnerships where a senior manager commits an offence.

25. During the passage of the Economic Crime and Corporate Transparency Act 2023 (“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.

26. 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 provided 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.

27. Within this context, the UK Government committed to extending the statutory identification doctrine to all criminal offences. Clause 130 gives effect to that commitment and repeals the provisions introduced in the 2023 Act.

28. The Scottish Government agrees with the UK Government’s assessment that the LCM process is engaged and Clause 130 will require legislative consent as the general principles of criminal liability are devolved insofar as they relate to devolved criminal offences.

Reasons for seeking or not seeking legislative consent

Clauses 32 to 34 and Part 2 of Schedule 5

29. The Scottish Government recommends that the Parliament consents to these clauses so that a UK-wide approach is taken for these measures, which would address the current legislative gap, which is where it might be difficult to prove that the householder was in the control of traffickers or had been recruited by them.

Clause 35(4)(b)

30. The Scottish Government recommends that Parliament does not consent to extending the cuckooing offence to the Scottish POCA Criminal Lifestyle Schedule. While some of the relevant offences listed in Schedule 5 are clearly indicative of a criminal lifestyle, others are not always indicative of a criminal lifestyle offence or necessarily linked to financial benefit. Scottish Ministers already have powers to vary, by secondary legislation, the list of criminal lifestyle offences in Scotland. The Scottish Government has concerns regarding the wide-ranging list of related offences that are considered as part of the cuckooing offence in terms of how they

are being applied to POCA. As drafted, a conviction of any related offence within cuckooing would automatically be considered as having a criminal lifestyle under POCA. The list could cover those not necessarily inducing financial profit, and not always indicative of a criminal lifestyle, or where it would not be appropriate to seek a confiscation order. The UK Government is not prepared to amend this provision, and therefore the Scottish Government proposes to rely on the existing power for Ministers to modify the list. The Scottish Government therefore does not consider it proportionate to extend this to Scotland at the present juncture.

Clause 55

31. The Scottish Government recommends that the Parliament does not consent to the extension of this clause to Scotland. While BTP is a UK wide body, railway policing is a devolved matter and so it must operate within a Scottish context and within the confines of the Scottish legal system. Currently, BTP in Scotland abide by child protection rules and processes.

32. Officials understand that the rationale for such an amendment is to put the Child Sex Offender Disclosure Scheme (also known as Sarah's law) in England on a statutory footing, bringing it in line with the Domestic Violence Disclosure Scheme. This scheme allows law enforcement to release information to the public about an individual if they are deemed to be a risk to children.

33. Scotland has its own such scheme, the Community Disclosure Scheme, which is underpinned by several pieces of relevant legislation. Officials have been advised that no further legislation is required for the police to disclose information relating to potential risks to children where applicable. Current relevant legislation includes, but is not limited to, the Protection of Vulnerable Groups (Scotland) Act 2007, Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.

34. Police Scotland and BTP in Scotland do not make use of this scheme as they have existing relevant routes and direct access to relevant information.

35. In contrast to England and Wales, Police Scotland is operationally independent and is held accountable by the Scottish Police Authority, not Ministers. Accordingly, Ministers do not routinely issue guidance to the police, statutory or otherwise.

36. To deviate from this position could result in legal difficulties and BTP officers in Scotland operating under a different standard, with different powers and information sharing protocols. BTP officers may also be in a position of being subject to conflicting guidance and procedure as set out by the Lord Advocate and Secretary of State.

37. While the UK Government and BTP initially indicated their support for this provision to extend to Scotland, through further engagement with officials, they recognise the processes already in place in Scotland, and the need for BTP to adhere to Scottish legal principles. They have therefore indicated they are content to

table an amendment for this provision to extend to BTP officers in England and Wales only.

Clauses 59 to 63 and 66 to 68 and Schedule 9

38. The Scottish Government recommends that the Parliament consents to these clauses to facilitate greater alignment in sex offender policy across the UK, resulting in more consistent and effective cross border management of sex offenders and ultimately keeping the public safer.

Clauses 78 and 79

39. The Scottish Government recommends that the Parliament consents to these clauses so that a UK-wide approach is taken in relation to these measures. These measures are intended to give police a clearer enforcement route against criminals, including organised crime groups, using technology, and to enable the police to respond to changing technology used by criminals. It is important that Scotland is not seen as a soft target for organised crime groups.

Clause 95

40. The Scottish Government recommends that the Parliament consents to this clause, which would enable the police to access DVLA records for wider policing and law enforcement purposes should it be decided that such powers be exercised in accordance with the aforementioned Regulations and Code of Practice prepared by the Secretary of State. This would increase the volume of data available to Police Scotland for searching against in respect of investigations into devolved offences. It is also important that Scottish Ministers are a statutory consultee for the regulations and code of practice to be prepared. Such measures ensure that Scottish Ministers have the opportunity to provide representations to the Secretary of State in relation to whether they are satisfied that the purpose of such access remains appropriate.

Clause 103

41. The Scottish Government recommends that the Parliament consents to this clause. The provision is intended to allow enforcement authorities (the Civil Recovery Unit in Scotland) to apply for civil recovery orders and related provisions without being deterred by potential liability for expenses. The provisions do preserve the existing safeguards against unreasonable, dishonest or improper actions by an enforcement authority. While Civil Recovery is generally devolved, it could take some time for a suitable primary legislative opportunity in the Scottish Parliament to replicate this provision. That may also exclude proceedings relating to the reserved areas of proceeds from drug trafficking or money laundering.

Clauses 127 to 129 and Clause 133

42. The Scottish Government recommends that the Parliament consents to these clauses as they grant the power to Scottish Ministers to make regulations to

implement future international agreements as far as they relate to law enforcement data sharing in devolved areas of competence.

Clause 130

43. The Scottish Government recommends that the Parliament consents to this clause. This is because, as with the relevant clauses in the 2023 Act, the Scottish Government considers the placing of the identification doctrine on a statutory footing across the nations of the UK is a sensible step to take through this UK Government Bill, and that using a UK Government Bill is an efficient means of achieving this.

Consultation

44. Formal stakeholder engagement on the detail of the Bill at a UK level is still in early stages. The House of Commons call for evidence [Crime and Policing Bill: call for evidence - UK Parliament](#) on the Bill was launched on 14 March 2025. The Public Bill Committee met for the first time on Thursday 27 March 2025 to consider the Bill and hear oral evidence. The Committee concluded its consideration on Tuesday 13 May. Details of proceedings in Committee are available here: [Crime and Policing Bill publications - Parliamentary Bills - UK Parliament](#).

45. There has been some initial engagement with stakeholders in Scotland to understand views on the provisions for which legislative consent is required.

46. **With regard to Clauses 32 to 34 and 35(4)(b) and Part 2 of Schedule 5** (Cuckooing), the UK Government was considering including this offence in the previous Criminal Justice Bill as there was a back bencher amendment lodged. Crown Office and Procurator Fiscal Service (COPFS) was consulted at that point and it advised that the existing legislation in Scotland, primarily the Human Trafficking and Exploitation (Scotland) Act 2015 (HTE), might not apply to all situations envisaged by the offence of cuckooing, such as those where the householder was not really in the control of traffickers or would not be considered to have been recruited by them.

47. COPFS has had sight of the provisions in the Crime and Policing Bill, and had some queries around the drafting in relation to victims providing consent for their home to be used in a particular way by exploiters. Some technical amendments may be required to resolve these queries.

48. **With regard to Clause 55** officials engaged with Police Scotland who administer the Sex Offender Community Disclosure Scheme in Scotland.

49. Police Scotland advised that BTP currently adhere to current Scottish rules and processes regarding detection of child protection offences; and have a direct route to child protection investigation processes.

50. As stated above, the UK Government have indicated they are content to table an amendment for this provision to extend to BTP officers in England and Wales only.

51. **With regard to Clauses 59 to 63 and 66 to 68 and Schedule 9** (management of sex offenders), while there remains the issue of the absence of a strong evidence base in relation to some of the UK Government amendments, Police Scotland has welcomed the alignment of sex offender management policy across the UK. It has indicated that operational details still need to be considered, and it is keen to work with UK police forces on developing the detail around these.

52. **With regard to clauses 78 and 79** (electronic devices for use in vehicle theft), these offences were included in the previous UK Government's Criminal Justice Bill. COPFS and Police Scotland were consulted at that point and were supportive. Scottish Ministers are also content to add this offence to the Scottish POCA Criminal Lifestyle Schedule.

53. COPFS and Police Scotland have had sight of the provisions in this Bill and are content.

54. **With regard to Clause 95** (access to the DVLA driving license database), the UK Government has engaged with Police Scotland on these proposals and it is understood that Police Scotland is supportive. Scottish Government officials have also discussed the proposals with the Scottish Biometrics Commissioner, who was supportive.

55. **With regard to Clause 103** (Proceeds of Crime Act 2002), civil recovery cases in Scotland are brought by the Civil Recovery Unit (CRU) on behalf of the Scottish Ministers in the Court of Session. The provision is intended to allow enforcement authorities to apply for civil recovery orders and related provisions without being deterred by potential liability for expenses. The provisions are intended to preserve the existing safeguards against unreasonable, dishonest or improper actions by the enforcement authority.

56. **With regard to Clauses 127-129 and 133** (international information sharing agreements) COPFS and Police Scotland have had sight of provisions in the Bill and no issues were raised.

57. **With regard to Clause 130** (criminal liability of bodies corporate), during the passage of the Economic Crime and Corporate Transparency Act 2023 ("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. This process included engagement with COPFS.

58. Within this context, the use of this Bill is to extend the general approach for the identification doctrine to all offences. This is not new policy as such, but is completing the policy that was initiated in the 2023 Act.

Financial implications

59. **With regard to Clauses 32 to 34 and 35(4)(b) and Part 2 of Schedule 5** (Cuckooing), there are no financial implications.

60. As Clause 55 will not extend to BTP officers in Scotland, there are no financial implications. Paragraphs 48 - 50 set out the background to this.

61. **With regard to Clauses 59 to 63 and 66 to 68 and Schedule 9** any increase in the amount of information that registered sex offenders will be required to notify to the police will likely result in additional administrative activity for Police Scotland. This cannot currently be quantified. There may also be additional costs to the Scottish Courts and Tribunals Service as a result of the appeal processes around authorisation of name change and notices requiring offenders to pre-notify if entering premises where children are present, which may also impact on the legal aid budget. Equally there may be efficiencies through virtual notification and there are arguments that this is preventative activity that helps prevent the cost of future offending.

62. **With regard to Clauses 78 and 79** there are no financial implications.

63. **With regard to Clause 95** there are no financial implications.

64. **With regard to Clause 103** no significant costs or savings are expected to arise as a result of this proposal. The Courts generally rely on case law and the Perinpanathan principle.¹ It would strengthen the position that the Civil Recovery Unit would not be liable for costs under certain civil recovery proceedings unless it acted unreasonably.

65. **With regard to Clauses 127, 128, 129 and 133** Scottish Ministers would be required to resource future Scottish Statutory Instruments to implement UK Government-negotiated international agreements that relate to information exchange in connection with law enforcement, unless they relate to reserved matters (such as national security) or the UK Government is implementing them for Scotland. This is expected to be achievable within existing resources.

66. **With regard to Clause 130** there are no significant financial implications.

67. The UK Government impact assessment available at <https://bills.parliament.uk/publications/59151/documents/6034> also suggests minimal costs to the private sector around familiarisation, for example for legal professionals as the change in legislation will mean that lawyers, solicitors, and other legal professionals will have to familiarise themselves with how the new legislation affects

¹ The case of Perinpanathan: [2010] EWCA Civ 4., which found that “in a case where regulatory or disciplinary bodies, or the police, carrying out regulatory functions, have acted reasonably in opposing the grant of relief, or in pursuing a claim, it seems appropriate that there should not be a presumption that they should pay the other party's costs.”

decisions during charges, court proceedings, prosecutions, convictions, and sentencing.

Other relevant considerations

68. There are likely to be both government and non-government amendments to this Bill as it progresses through Parliament as there is keen interest in this area of policy. There may be further Legislative Consent Memoranda required where any amendments trigger the requirement for legislative consent.

Post EU scrutiny

69. The Scottish Government has not identified any assimilated law which has been impacted by the Bill.

Conclusion

70. The Scottish Government has concluded that relevant clauses within the Bill require consent from the Scottish Parliament.

71. The Scottish Government recommends that the Scottish Parliament consents to the following clauses requiring consent :

- Cuckooing (Clauses 32 to 34 and Part 2 of Schedule 5);
- Management of sex offenders (Clauses 59 to 63 and 66 to 68 and Schedule 9);
- Offences relating to electronic devices for use in vehicle theft (Clauses 78 and 79) and including in the Scottish POCA Criminal Lifestyle Schedule;
- Expanding the lawful purposes for which the police can access the DVLA driving license database (Clause 95);
- Proceeds of crime: expenses protections (Clause 103);
- Implementation of international law enforcement information sharing agreements (Clauses 127 to 129 and 133) and;
- Criminal liability of bodies corporate and partnerships where senior manager commits offence (Clause 130).

72. The Scottish Government recommends that the Scottish Parliament does not consent to:

- the addition of the cuckooing offence to the Proceeds of Crime Act 2002 (POCA) Scottish Criminal Lifestyle Schedule (Clause 35(4)(b)) and
- the guidance about disclosure of information by police for the purpose of preventing sex offending - British Transport Police (Clause 55).

Draft motion on legislative consent

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

“That the Parliament, in relation to the Crime and Policing Bill, consents to Clauses 32 to 34 and Part 2 of Schedule 5 (Cuckooing); Clauses 59 to 63 and 66 to 68 and Schedule 9 (Management of sex offenders); Clauses 78 and 79 (Offences relating to electronic devices for use in vehicle theft); Clause 95 (Expanding the lawful purposes for which the police can access the DVLA driving license database); Clause 103 (Proceeds of crime: expenses protections); Clauses 127 to 129 and 133 (Implementation of international law enforcement information sharing agreements); Clause 130 (Criminal liability of bodies corporate and partnerships where senior manager commits offence) being considered by the UK Parliament and refuses to consent to Clause 35(4)(b) (amendment to the Proceeds of Crime Act 2002 (POCA) Scottish Criminal Lifestyle Schedule to include the cuckooing offence) and to Clause 55 (relating to the issue of guidance about disclosure of information by police for the purpose of sex offending) being considered by the UK Parliament”

Scottish Government
May 2025

This Legislative Consent Memorandum relates to the Crime and Policing Bill (UK legislation) and was lodged with the Scottish Parliament on 16 May 2025

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