

# Supplementary Legislative Consent Memorandum

## Crime and Policing Bill

### Background

1. This further Supplementary Legislative Consent Memorandum (LCM) has been lodged by Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs, in accordance with Rule 9B.3.1(c) 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](#). Clause numbers refer to the version of the Bill published on 19 June.
3. A LCM was lodged in the Scottish Parliament on 16 May 2025: [Crime and Policing Bill | Scottish Parliament](#).
4. Amendments tabled on 24 April 2025 resulted in further relevant provisions to clauses 10 to 24 (now clauses 12-26) and Schedule 4 (online advertising etc. of unlawful weapons: civil penalties) and clause 116 (now clause 126) (powers for British Transport Police) and the requirement for a [Supplementary Legislative Consent Memorandum](#), which was lodged on 12 June.
5. This further Supplementary Legislative Consent Memorandum (the third required for this Bill) relates to amendments to four areas (child criminal exploitation, remote storage provisions for electronic data, the creation of barred/advisory lists for the National Crime Agency (NCA), British Transport Police (BTP) the Ministry of Defence Police (MDP) and the Civil Nuclear Constabulary (CNC) and Proceeds of Crime Act 2002 (POCA)) which were added to the Bill through [amendments tabled on 10 June](#) and published online on the 11 June. Fuller details of those provisions are detailed at paragraph 8. Where these provisions apply to Scotland, consent will be required of the Scottish Parliament.
6. Two of these amendments **remove** clauses covered in the earlier [LCM](#) lodged on 16 May 2025. The Scottish Government recommended Scottish Parliament withhold consent to these clauses. The first amendment removes Clause 62(4) which would have added the cuckooing offence to the Proceeds of Crime Act Scottish Criminal Lifestyle Schedule (previously clause 35(4)(b)). The second removes British Transport Police in Scotland from the bodies affected by Clause 83 which covers the issuing of guidance about disclosure of information by police for the purpose of preventing sex offending (previously clause 55). The UK Government has taken note of the earlier LCM and the recommendation to withhold consent and has amended these provisions out of the Bill.

## Content of the Bill

7. The Bill on introduction makes provision about anti-social behaviour, offensive weapons, offences against people (including sexual offences), property offences, the criminal exploitation of children, sex offenders, stalking and public order; makes provision about powers of the police, the border force and other similar persons; makes provision about confiscation; makes provision about the police; makes provision about terrorism and national security, and about international agreements relating to crime; and makes provision about the criminal liability of bodies; and for connected purposes.

8. The following provisions in the Bill on introduction triggered the LCM process:

- to create a new offence of “cuckooing” – controlling another’s home for criminal purposes;
- to 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;
- 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

9. The Bill contains provisions that apply to Scotland and the UK Government has sought legislative consent in relation the following clauses:

## Clause 40 - Offence of Child Criminal exploitation

10. Clause 40 seeks to make it an offence for someone over the age of 18 to exploit children by intentionally using them to commit criminal activity. This includes engaging in criminal conduct towards or in respect of a child, with the intention of causing the child to commit an offence, or causing or facilitating the child to do anything outside the United Kingdom which would constitute an offence if done in any part of the United Kingdom. This could be, but is not limited to, where an adult recruits a child into an organised crime group, or where an adult directs or controls the child's offending. It also covers precursory acts, such as grooming, where there is the requisite intent.

11. The perpetrator commits the offence if the child is under the age of 13 or if they do not reasonably believe that the child is aged 18 or over.

12. The Scottish Government considers that the LCM procedure is engaged as these provisions apply to Scotland for a purpose within the legislative competence of the Scottish Parliament, namely devolved matters concerning child criminal exploitation.

## Clauses 130 to 137 and Schedule 14 - Remotely Stored Electronic Data (RSED), General Power, PCSC Amendment and Lawful intercept

13. These clauses span numerous pieces of legislation, impacting both reserved and devolved matters. The Scottish Government agrees with the UK Government's assessment that the LCM process is engaged for:

- The core Police Power to Extract RSED in Criminal Investigations (by Police Scotland constables and staff and officers and staff of the British Transport Police and the National Crime Agency). This provides a UK wide legal power for police to search and extract RSED during criminal investigations and border stops to determine an individual's involvement in terrorism and hostile state activity;
- Amendment to the UK Police, Crime, Sentencing and Courts Act 2022 to allow police to extract RSED for lawful purposes (clause 136 and Schedule 14); and
- Amendment to the Investigatory Powers Act (IPA) 2016 – Adds a new targeted authorisation for intercepting communications, avoiding the need for a separate IPA warrant if access to RSED is already authorised. While interception of communications is generally reserved to the UK under Head B8 of Schedule 5, in Scotland there is a limited exception to the reservation relating to communications with individuals detained in places of detention such as a prison or hospital (see sections 48–50 of IPA). A LCM is required, but for this limited exception only.

14. The Scottish Government considers that the LCM procedure is engaged as these provisions apply to Scotland for a purpose within the legislative competence of the Scottish Parliament, namely the investigation and prosecution of crime and bringing offenders to justice.

## Clauses 157 to 165 and Schedule 19 - Creation of Barred and Advisory lists

15. Clauses 157-165 (except clause 159) and schedule 19 require the National Crime Agency (NCA) and the British Transport Police (BTP) to **maintain** their own Barred and Advisory Lists (Clause 164 and Schedule 19) and to **check** Barred and Advisory Lists maintained by other law enforcement employers, as well as making provision ancillary to these main aims. This is to ensure that the details of persons who should not be appointed to policing bodies are placed on the relevant lists and that employment, appointments and contracts are restricted in relation to any person on a barred list (clause 157, with detail of definitions and processes in clauses 158, 160, 161, 162 and 163 and Clause 164 and Schedule 19). The purpose of these provisions is to ensure that people who are not safe to be involved in policing are not appointed by law enforcement bodies. The clauses extend and apply to Scotland insofar as the NCA and BTP operate in Scotland.

16. In addition, Schedule 19 confers a number of regulation making powers on the Secretary of State in relation to matters concerning the creation of barred and advisory lists, which are within devolved competence to the extent that they relate to the NCA and the BTP.

17. The Scottish Government considers that the LCM procedure is engaged for clauses 157-165 and Schedule 19 (except Clause 159 as this relates to Ministry of Defence Police only) as these provisions apply to Scotland for a purpose within the legislative competence of the Scottish Parliament, namely law enforcement/policing functions.

## POCA measures

### Criminal Lifestyle Test Amendment (Schedule 18 1(1))

18. This clause makes amendments to the criminal lifestyle tests under POCA. Firstly, it seeks to amend the test for when an offence constitutes conduct forming part of a course of criminal activity, from three convicted offences to two. Secondly, regarding the offence constituting conduct forming part of a course of criminal activity, it seeks to amend the test to also be satisfied if the accused benefitted, or “intended to benefit”, from the conduct which constitutes the offence.

19. The Scottish Government recommends that legislative consent should be given to this clause so that the discrepancy between cases is removed where there are multiple convictions on the same occasion and convictions on multiple occasions. The intention is to harmonise the number of offences required in each instance. The financial threshold which in Scotland is £1,000 and is one of the conditions required to pass the criminal lifestyle test, will still apply, meaning that the accused will still have to have benefitted to the required degree from at least one of their offences.

20. Following consultation with stakeholders in Scotland, it is not envisaged that a change to this criminal lifestyle test will have much impact in Scotland. However, as the criminal lifestyle tests are a fundamental part of the criminal confiscation regime, on balance, doing so to remain in line with the rest of the United Kingdom will be beneficial as

it will continue to provide a unified approach to a key aspect of POCA and limit confusion and complexity.

21. The Scottish Government considers that the LCM process is engaged as these provisions apply to Scotland for a purpose within the legislative competence of the Scottish Parliament, namely devolved matters concerning criminal confiscation, that is, the removal of assets from criminals obtained from their general criminal conduct.

### Compensation Directions (Schedule 18 2-3)

22. Under POCA, when a person is convicted and their offending triggers one of the criminal lifestyle tests, they may be required to pay a Confiscation Order. This requires them to pay a fixed sum of money relating to the benefit obtained from their criminal conduct. The Court may also order the accused to pay a compensation order to a victim. If so, the payment of the compensation order to the victim takes priority over the payment of the confiscation order if there are insufficient funds to satisfy both orders. Under section 107 of POCA, if the Court considers that the accused's available amount, that is the realisable property that they hold, has increased it may vary and uplift the amount payable under the Confiscation Order.

23. The amendments to POCA relating to the new Compensation Directions will be engaged following any uplift to a Confiscation Order. Following an uplift, if it is known that an identified victim in prior proceedings has suffered a financial loss, and if the Court has increased the amount repayable under the confiscation order, it may direct funds to the victim to compensate for their financial loss.

24. There are two elements to this. A supplementary Compensation Direction (which may apply after a confiscation order has been uplifted) will allow the court to redirect any increased sums owed by the accused to be paid to the victim in whose favour a compensation order was previously made. The second element is a compensation direction. This will apply if a victim's loss was recognised and assessed in the original confiscation proceedings against the accused, but when a Compensation Order was not made at that time.

25. These amendments will help ensure that any victim in the proceedings can be compensated if they have experienced financial loss attributable to the accused, and if there has been an uplift to the confiscation order. In reaching a position, Ministers engaged colleagues in the Victims and Witnesses Unit within the Scottish Government and the Proceeds of Crime Unit at the Crown Office and Procurator Fiscal Service (COPFS). The Scottish Government considers that this provision is beneficial to victims and supports the amendment being extended to Scotland.

26. The Scottish Government considers that the LCM process is engaged as these provisions apply to Scotland for a purpose within the legislative competence of the Scottish Parliament, namely devolved matters concerning criminal confiscation, that is, the removal of assets from criminals obtained from their criminal conduct.

## Reasons for seeking legislative consent

### Clause 40 - Offence of Child Criminal exploitation

27. The Scottish Government seeks legislative consent for this clause to ensure that a UK-wide approach is taken to address the current legislative gap and to reduce criminal exploitation of children in Scotland.

### Clauses 130 to 137 and Schedule 14 - Remotely Stored Electronic Data (RSED) General Power, PCSC Amendment and Lawful intercept

28. The Scottish Government seeks legislative consent for these clauses. This is to reflect changing technology and the gap in the law that currently exists in respect of data held remotely. These provisions close that loophole and support the effective detection and prosecution of crime.

### Clauses 157 to 165 and Schedule 19 (except clause 159) - Creation of Barred/Advisory lists

29. The Scottish Government seeks legislative consent for these clauses. If the British Transport Police Authority and the NCA have to check barred and advisory lists of other law enforcement employers this will also apply to their appointments in Scotland. If they have to maintain lists, then law enforcement employers in Scotland will be able to check these to the extent they are public or if access is otherwise granted. These provisions ensure that individuals who are deemed unsafe and included on any of the lists are not able to be in a position to carry out law enforcement functions and will have a direct effect in Scotland.

### POCA measures - Schedule 18 1(1) - Criminal lifestyle test and Schedule 18 2-3 - Compensation directions

30. The Scottish Government seeks legislative consent for these clauses as these amendments will help ensure that any victim in the proceedings can be compensated if they have experienced financial loss attributable to the accused, and if there has been an uplift to the confiscation order. In reaching a position, Ministers engaged colleagues in the Victims and Witnesses Unit and the Proceeds of Crime Unit at COPFS. The Scottish Government considers that this provision is beneficial to victims and supports the amendment being extended to Scotland.

## Consultation

31. Consultation on the relevant measures was undertaken by the UK Government as part of preparing the provisions and no major issues arose.

32. The House of Commons call for evidence on the Bill was launched on 14 March 2025<sup>1</sup>. The Public Bill Committee met for the first time on Thursday 27 March 2025 to consider the Bill and hear oral evidence.<sup>2</sup>

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

34. **With regard to clause 40** (Child Criminal Exploitation), Scottish Government officials have engaged with Police Scotland and COPFS. Both partners had concerns about prosecutors having to prove that the defendant knew that the person they were using was a child. Scottish Government officials have continued to engage with the Home Office on the drafting of the offence.

35. COPFS also queried the interlink with the offence in the Human Trafficking and Exploitation (Scotland) Act 2015. There is potential for both offences to overlap but as the Child Criminal Exploitation offence is broader than the offence in the Human Trafficking and Exploitation (Scotland) Act, it is hoped that this new Child Criminal Exploitation offence would capture behaviour the human trafficking offence might not.

36. **With regard to clauses 130 to 137 and Schedule 14** (RSED measures), Scottish Government officials engaged with Police Scotland about the possible operational impact of these provisions. Police Scotland indicated its support for the measures.

37. **With regard to clauses 157 to 165 and Schedule 19 (except clause 159)** (Barred and Advisory Lists), officials in the Scottish Government's Safe and Secure Division have engaged with Police Scotland and Home Office colleagues on the proposed provisions. There was limited scope to consult more widely as a result of the late receipt of a revised set of draft amendments. Officials in the Scottish Government's Safe and Secure Division also engaged with colleagues in the Scottish Government's Police Division on plans and the timeline for the introduction of Barred and Advisory Lists to Scotland under Regulations to be made under section 59A of the Police and Fire Reform (Scotland) Act 2012, (as inserted by the Police Ethics, Conduct and Scrutiny (Scotland) Act 2025). The intention of the amendments is to ensure that no person on the Barred Lists will be employed by any named law enforcement body to carry out law enforcement functions.

38. **With regard to Schedule 18** (POCA measures), Scottish Government officials have engaged with Scottish Courts and Tribunals Service (SCTS) and Proceeds of Crime Unit (POCU) at Crown Office and Procurator Fiscal Service. SCTS had concerns as to whether the Compensation Directions are to be regarded as stand-alone disposals or variances to the Compensation Order Regime. Scottish Government officials have continued to engage with Home Office on the drafting of the offence.

39. **With regard to Schedule 19** (Special Police Forces: Barred Persons Lists and Advisory Lists), paragraph 15(1) requires the Secretary of State to consult with the Scottish Ministers before making regulations under this Schedule containing provision

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<sup>1</sup> [Crime and Policing Bill: call for evidence - UK Parliament](#)

<sup>2</sup> [PBC187\\_Crime\\_and\\_Policing\\_1st\\_15th\\_Compilation\\_14\\_05\\_2025.pdf](#)

which would be within the legislative competence of the Scottish Parliament, if contained in an Act of that Parliament. Scottish Government officials have asked Home Office officials to consider amending this to introduce a statutory duty to seek the consent of the Scottish Ministers.

40. The Home Office **remains** of the view that the current wording in Schedule 19 strikes the right balance to ensure that UK-wide provisions in regulations can be made for the NCA and BTP while also respecting the need to consult Scottish Ministers on regulations affecting devolved matters.

## Financial implications

41. **With regard to clause 40** (Child Criminal Exploitation), there are no financial implications.

42. **With regard to clauses 130 to 137 and Schedule 14** (RSED measures), there are financial implications in relation to the potential increase in storage capabilities and an increased workload for the **police**. However, given the predominantly reserved implications, the Scottish Government expects these to be factored into the accompanying UK Government financial impact assessment.

43. **With regard to clauses 157 to 165 and Schedule 19 (except clause 159)** (Barred and Advisory lists), **there** are no financial implications.

44. **With regard to Schedule 18** (POCA measures), there are no financial implications, however the Scottish Courts and Tribunals Service (SCTS) may have to make amendments to their IT **system** to cater for the compensation direction provisions which cannot be estimated until the scope of the provisions are fully understood.

## Other relevant considerations

45. There are likely to continue 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

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

## Conclusion

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



48. The Scottish Government recommend that the Scottish Parliament consent to clauses requiring consent as follows:

- Provisions extending an offence of child criminal exploitation to Scotland (clause 40);
- Provisions in relation to Remotely Stored Electronic Data (clauses 130-137) and Schedule 14;
- Provisions creating barred/advisory lists for NCA/BTP/MDP/CNC (clauses 157-165 and Schedule 19, except clause 159); and
- Provisions making changes to the Proceeds of Crime Act (Schedule 18).

## Draft motion on legislative consent

49. 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 in the Crime and Policing Bill introduced on the 25 February 2025, and subsequently amended, relating to clause 40 (child criminal exploitation), clauses 130-137 and Schedule 14 (RSED), clauses 157-158, 160-165 and Schedule 19 (creation, maintenance and checking of barred and advisory lists for NCA/BTP/MDP/CNC), and schedule 18 (POCA), so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government  
July 2025

This Supplementary Legislative Consent Memorandum relates to the Crime and Policing Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 1 August 2025

# Crime and Policing Bill – Supplementary Legislative Consent Memorandum

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