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Delegated Powers and Law Reform Committee

Crime and Policing Bill Legislative Consent Memorandums, delegated powers consideration



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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.

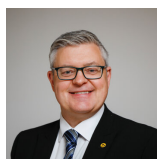


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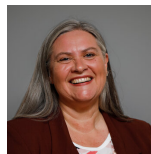
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Introduction

1. The purpose of this paper is to consider the delegated powers that are exercisable within devolved competence in the [Crime and Policing Bill](#) (“the Bill”).
2. The Committee has considered:
 1. the [Legislative Consent Memorandum](#) (“LCM”) dated 16 May 2025,
 2. the [Supplementary Legislative Consent Memorandum](#) (“Supplementary LCM”) dated 12 June 2025, and
 3. the [second Supplementary Legislative Consent Memorandum](#) (“second Supplementary LCM”) dated 1 August 2025,

for the Bill by virtue of Rule 9B.3.6 of the Scottish Parliament’s Standing Orders. Rule 9B.3.6 provides that where the Bill that is subject to an LCM contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions.

3. The LCMs are also being considered in terms of the Committee’s wider remit contained in Rule 6.11.1(b) of the Standing Orders which provide that the remit of the Committee includes considering and reporting on proposed powers to make subordinate legislation in particular bills “or other proposed legislation”. The Committee and its predecessor Committee have considered powers conferred on UK Ministers in devolved areas in various Bills over the course of sessions 5 and 6.
4. The Committee considered the Legislative Consent Memorandums at its meetings of 2 and 23 September 2025.
5. At the meeting on 2 September, the Committee agreed that it was content with the following delegated powers in the Bill:
 - Clause 58: Power to amend the definition of “relevant offence” in relation to the new offence of controlling another person’s home for criminal purposes
 - Clause 88: new section 85ZA of the Sexual Offences Act 2003 – power to amend the period of home address absence before a sex offender is required to notify the police
 - Clause 89 : New section 86B of the Sexual Offences Act 2003 - power to specify other information to be included in a notification (section 86B(2))
 - Clause 89: New section 86B of the Sexual Offences Act 2003 – power to specify circumstances in which further notification is not required (section 86B(4))
 - Clause 90: power to provide for police stations at which notifications may be given
 - Clause 91: New section 87A of the Sexual Offences Act 2003 – power to specify conditions before a relevant offender can notify the police virtually

(section 87A(1)(b) and (9))

- Clause 91: New section 87A of the Sexual Offences Act 2003 – power to direct the form of written acknowledgement that police give for virtual notifications (section 87A(10))
 - Clause 94: New section 93B of the Sexual Offences Act 2003 – power to amend list of identity documents (section 93B(6)(d))
 - Clause 94: New section 93C of the Sexual Offences Act 2003 – power to specify information or documents to be contained in an application (section 93C(2)(c))
 - Clause 94: New section 93C of the Sexual Offences Act 2003 – power to prescribe further conditions to be satisfied before the police will authorise a name change (section 93C(6)(b))
 - Clause 134(1): Power to issue a code of practice regarding the exercise of powers relating to the extraction of online information.
 - Clause 201: Powers to make commencement, transitional and saving provision.
6. At the same meeting, the Committee agreed to send questions to [the Scottish Government](#) and to [the UK Government](#) in relation to certain delegated powers.
 7. A [response was received from the Scottish Government](#). At time of writing, no response had yet been received by the UK Government.
 8. Consideration in full of all the powers is set out in this report.

Overview of the Bill

9. The Crime and Policing Bill was introduced by the UK Government in the House of Commons on 25 February 2025. It has now progressed to the House of Lords. The first reading took place on 19 June 2025 and the second reading has been scheduled for 16 October 2025.
10. This is a substantial Bill. The stated purpose of the Bill in the Explanatory Notes is to halve knife crime and violence against women and girls, increase public confidence in policing and the wider criminal justice system, support neighbourhood policing, and give the police the powers they need to tackle anti-social behaviour, crime and terrorism. It is stated that it will support delivery of the UK Government's Safer Streets Mission and implement specific commitments in the Labour Party's 2024 manifesto.
11. On introduction, it was made up of 15 Parts (137 Clauses) and 17 Schedules. Most of the provisions apply to England and Wales, however some provisions apply to Scotland. Those which were initially identified as triggering the LCM 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 requirements relating to name changes, absence from main residence, restrictions on applying for ID documents in a new name, and entering premises where children are present (for child sex offenders);
 - 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 the 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; and
 - regarding the criminal liability of bodies corporate and partnerships where a senior manager commits an offence.
12. Following amendments tabled to the Bill on 24th April and agreed to on 8th May

2025 at the Public Bill Committee stage, the Bill was expanded to 15 Parts (172 Clauses) and 18 Schedules. There were two sets of amendments at this stage which were identified by the Scottish Government as triggering the LCM process and prompting the Supplementary LCM. These relate to:

- online advertising of unlawful weapons: civil penalties, and
- powers of the British Transport Police and Ministry of Defence Police.

13. Following amendments tabled to the Bill on 10 June, the Bill was further expanded to 16 Parts (203 Clauses) and 21 Schedules. There were four new areas of the Bill which were identified by the Scottish Government as triggering the LCM process and prompting the second Supplementary LCM:

- offence of child criminal exploitation,
- remote storage provisions for electronic data,
- the creation of barred/advisory lists for the National Crime Agency and the British Transport Police, and
- amendments to the Proceeds of Crime Act 2002.

14. The Scottish Government supports the Bill and states that it recommends consent to all the relevant provisions considered in this paperⁱ.

15. The lead committee for the LCM is the Criminal Justice Committee.

ⁱ To note, in the LCM the Scottish Government recommended that the Scottish Parliament withhold consent to Clause 62(4) (Clause 36(4)(b) on introduction) and Clause 83 (Clause 55 on introduction), however these two provisions have since been amended so that they no longer apply to Scotland.

Delegated Powers

16. The UK Government has published a [Delegated Powers Memorandum](#) (“DPM”) to accompany the Bill. It explains in each case the purpose of the power, why a delegated power is appropriate, and the parliamentary procedure that has been selected. The UK Government has also published a [Delegated Powers Memorandum for the introduction of the Bill to the House of Lords](#) (“sDPM”),
17. As is normal for UK bills, the Scottish Government has not published a delegated powers memorandum. The Scottish Government’s view on the relevant clauses is set out in the LCM, the Supplementary LCM and the second Supplementary LCM.
18. The powers which are relevant to this Committee’s remit are contained in Parts 4, 5, 10, 11, 13, 16 and Schedules 18 and 19 of the Bill. Each power is considered below, with some being grouped together for the purposes of brevity.

Powers exercised by UK Ministers within devolved competence

19. The Bill confers some powers on UK Ministers which may be exercisable within devolved competence. The Committee’s position in relation to such powers has been that, in general:
 - a) The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
 - b) Where such powers are exercised by the Secretary of State in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.
 - c) If such powers contain a requirement for the Scottish Ministers’ consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers’ consent decision.

The Committee will scrutinise powers conferred on UK Ministers not subject to a requirement for Scottish Ministers’ consent and may suggest matters for the lead committee to consider.

- d) As a minimum, powers when exercised by the Secretary of State in devolved areas should be subject to the process set out in the [SI Protocol 2](#) where the powers is within the scope of that protocol.

Part 4, Chapter 2: Cuckooing

Clause 58ⁱⁱ : Power to amend the definition of “relevant offence” in relation to new offence of controlling another person’s home for criminal purposes

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: affirmative procedure

Provision

20. Clauses 56 and 57ⁱⁱⁱ provide for a new UK-wide offence: controlling another person’s home for criminal purposes (‘cuckooing’). The offence will occur if the following conditions are met: the person exercises control of the dwelling, for the purpose of enabling it to be used in connection with the commission of a relevant offence, and the owner does not consent. The maximum penalty in Scotland is imprisonment for a term not exceeding 12 months, a fine, or both.
21. The definition of a ‘relevant offence’ will vary across the UK. Clause 56(2)^{iv} clarifies that where the dwelling being controlled is in Scotland, it will be an offence under the law of Scotland as listed in Part 2 of Schedule 6^v of the Bill.
22. Clause 58(2)^{vi} provides a power on the Scottish Ministers to amend the definition of “relevant offence” in Part 2 of Schedule 6^{vii} (the Scottish offences), in so far as the offences to which the amendments relate are within the legislative competence of the Scottish Parliament.
23. The power is subject to affirmative procedure, in accordance with clause 199(1)(a)^{viii}.

Committee consideration

24. The DPM explains that the cuckooing crime is often perpetrated against vulnerable persons, and typically relates to the storage, preparation and sale of illegal drugs. The current offences specified in Schedule 6^{ix} reflect the UK Government’s current understanding of the context in which cuckooing occurs. A power is being taken in order to be flexible regarding the context in which cuckooing occurs, so as to be able to respond quickly as the model expands or evolves. The DPM notes that any

ii Clause 34 on introduction.

iii Clauses 32 and 33 on introduction.

iv Clause 32(2) on introduction.

v Schedule 5 on introduction.

vi Clause 34(2) on introduction.

vii Schedule 5 on introduction.

viii Clause 133(1)(a) on introduction

ix Schedule 5 on introduction.

newly created criminal offences which are added to Schedule 6^x will already have been scrutinised by Parliament when being made into law.

25. In the LCM, the Scottish Government recommends consenting to this clause so that a UK-wide approach is taken for the measures. The current list of offences in Part 2 of Schedule 6^{xi} includes a mix of reserved and devolved matters. For instance, dealing with relevant offences in Scottish legislation, including the Criminal Law (Consolidation) (Scotland) Act 1995 and the Criminal Justice and Licensing (Scotland) Act 2010, and dealing with reserved matters such as the Firearms Act 1968 and the Misuse of Drugs Act 1971, which are reserved under paragraphs B4 and B1 of Schedule 5 to the Scotland Act 1998.
26. The Committee is content with the power in principle, concluding that an appropriate balance has been achieved between the use of primary and secondary legislation. The Committee is also content that the power has been conferred on the Scottish Ministers.
27. The DPM explains that the affirmative procedure is considered appropriate because regulations made under this power could have the effect of expanding the application of a criminal offence, and because it is a Henry VIII power. The Committee is content that this type of procedure provides a sufficient level of scrutiny.

28. The Committee is content with the power in principle and that it is subject to the draft affirmative procedure.

x Schedule 5 on introduction.

xi Schedule 5 on introduction.

Part 5, Chapter 5: Management of sex offenders

Clause 88^{xii} : new section 85ZA of the Sexual Offences Act 2003 – power to amend the period of home address absence before a sex offender is required to notify the police

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

Provision

29. The Sexual Offences Act 2003 (“the 2003 Act”) requires relevant offenders to notify the police of their name and home address within 3 days of their conviction or release from custody, and to keep this information up to date. ‘Relevant offenders’ are those who have been convicted of a sex offence under Schedule 3 to the 2003 Act; have carried out those offences but not been convicted by reason of insanity or disability; and those who have a sexual harm prevention order made against them.
30. Clause 88^{xiii} inserts a new section 85ZA into the 2003 Act. It creates a requirement for relevant offenders to additionally notify the police if they are intending to be absent from their home address for more than 5 days. The notification must take place at least 12 hours before they intend to leave the address, and must contain the date they will leave, their travel and accommodation arrangements, and their return date. They must further notify the police if this information changes.
31. There is a pre-existing requirement in regulations made under section 86 of the 2003 Act that relevant Scottish offenders must notify the police when they intend to leave and return from the UK. Subsection (7) confirms that double-notification of this information is not made necessary by the new section 85ZA requirement.
32. Subsection (8) creates a power for the appropriate authority to make regulations to change the duration of absence before which the notification requirement is triggered. This is subject to a limitation that the relevant period must remain at least 5 days, i.e. it can only be extended. Subsection (9)(b) defines the ‘appropriate authority’ as the Scottish Ministers where the relevant offender’s last home address is in Scotland.
33. When exercised by the Scottish Ministers, this power is subject to the negative procedure by virtue of section 138(3) of the 2003 Act.

Committee consideration

34. The DPM explains that the change being made to the notification requirement is intended to help the police manage the risk of reoffending. This 5-day period has

^{xii} Clause 60 on introduction.

^{xiii} Clause 60 on introduction.

been considered proportionate, but a power is taken to extend it if considered necessary following operational experience. This is intended to strike a balance between: (a) ensuring the police have the necessary information to manage reoffending, and (b) imposing disproportionate and unwieldy administrative requirements on both police and relevant offenders.

35. The Scottish Government recommends in the LCM that the Scottish Parliament consents to this clause to facilitate alignment in policy across the UK, keeping cross-border management of sex offenders consistent and effective.
36. The Committee is content with this power given the policy detail has been set out on the face of the Bill and the power is limited in scope. The Committee is also content that the power has been conferred on the Scottish Ministers.
37. The power is subject to the negative procedure. The DPM explains that this procedure is considered justified because of the narrow ambit of the powers, since it cannot be used to reduce the relevant period and therefore can only make the notification requirement less onerous for offenders, rather than more onerous. While it is a Henry VIII power and therefore normally subject to the affirmative procedure, the negative procedure is considered appropriate in this instance. The Committee is content that this provides a sufficient level of scrutiny for the Scottish Parliament.

38. The Committee is content with this power in principle and that it is subject to the negative procedure.

Clause 89^{xiv}: New section 86B of the Sexual Offences Act 2003

(i) power to specify other information to be included in a notification (section 86B(2)),

(ii) power to specify meaning of “qualifying premises” (section 86B(3)), and

(iii) power to specify circumstances in which further notification is not required (section 86B(4)).

Power conferred on: Scottish Ministers

Powers exercisable by: Regulations

Parliamentary procedure:

(i) Negative procedure,

(ii) Affirmative procedure, and

(iii) Affirmative procedure.

Provision

39. Clause 89 of the Bill inserts new sections 86A to 86D into the 2003 Act. Section 86A creates a requirement that relevant offenders must notify the police before

^{xiv} **Clause 61 on introduction.**

- entering qualifying premises at which children are present. Offenders are subject to this requirement if: (a) they are a child sex offender or (b) they have been given notice by a police chief officer that they are subject to the requirement.
40. The specific requirements are set out in section 86B. At least 12 hours before entering qualifying premises, the relevant offender must notify the police of the address of the premises and the date on which they will enter. If notification is given but they do not enter the premises, they must notify the police within 6 days.
41. In new section 86B, three regulation-making powers are conferred on the appropriate authority. Where an offender's relevant police area is Scotland, the appropriate authority is the Scottish Ministers. The powers conferred are to:
- (i) specify additional information to be included in a section 86A notification,
 - (ii) specify the meaning of "qualifying premises", and
 - (iii) specify circumstances where a further notification is not required in regard to the same premises or children.
42. Under sections 138(4B)(c) and (4C) of the 2003 Act (as amended by paragraph 16 of Schedule 10 of the Bill^{xv}), the first power is subject to the negative procedure, whilst the second and third powers are subject to affirmative procedure.
43. The Bill does not define what is meant by 'qualifying premises'. Instead a delegated power is conferred on the Scottish Ministers in new section 86B(3) of the 2003 Act to define such premises.

Committee consideration

44. The DPM explains that these provisions are intended to strengthen the safeguarding of children from relevant offenders of particular concern.
45. For all three of these powers, the LCM recommends that the Scottish Parliament consents to the clause. The Committee is content that the Scottish Ministers have been appropriately conferred sole regulation-making powers. The Committee's views on the nature and scope of each power are set out below.

(i) Power to specify other information in a notification

46. The UK Government explains that the power to specify other information is considered to be case-specific and better left to secondary legislation in order to provide flexibility to different settings. An example is provided that where the relevant offender is entering the dwelling of a relative, it would be appropriate for them to give the names and ages of children at that address. Contrastingly, this would not necessarily be possible or appropriate when the relevant offender is entering a public dwelling, such as a sports centre.
47. The Committee is content with this power because an appropriate balance appears to have been struck between setting out the substantive provisions on the face of the Bill and allowing more complex detail to be provided in secondary legislation.

xv Schedule 9 on introduction.

(ii) Power to define “qualifying premises”

48. The DPM explains that the power to define “qualifying premises” is intended to enable the requirements in section 86B to be readily and quickly expanded in response to new risks from predatory behaviour. For instance, if a new type of leisure industry facility is established. The list is also expected to dovetail with the (i) power to specify additional information.
49. The Committee noted that, had an initial list of qualifying premises been set out on the face of the Bill, that would have helped to inform scrutiny of the policy. Further, instead of this broad power, a more limited power could have been taken for the appropriate authority to amend the list, as considered appropriate following operational experience and in light of any developments to new types of premises. Therefore the Committee asked both the Scottish and UK Ministers what sort of premises are intended to fall within the definition of “qualifying premises”, and if it would be appropriate for this definition to be set out on the face of the Bill?

Questions and answers

50. The Committee asked the Scottish and UK Governments:

- “what sort of premises are intended to fall within the definition of “qualifying premises”, in new section 86B of the Sexual Offences Act 2003, and
- if it would be appropriate for such premises to be specified on the face of the Bill, with a power to amend the definition of “qualifying premises” as appropriate?”

51. The [Scottish Government responded](#) as follows on the first question:

“Currently in England and Wales a registered sex offender (RSO) must notify if they reside or stay in a ‘relevant household’ for a period of 12 hours. This is provided for under the Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 (the “2012 Regulations”). The 2012 Regulations defines a ‘relevant household’ as a household or other place where a child resides or stays and to which the public do not have access. In Scotland there is no such requirement on an RSO to provide this information to the police as part of their notification requirements.

While the provision in the Crime and Policing Bill tightens the current process in England and Wales by requiring advance notification, it will in fact result in a totally new obligation for RSOs in Scotland.

Reference to the 2012 regulations is made in the explanatory notes to the Crime and Policing Bill, and our understanding is that the intention is for England and Wales to base the definition of “qualifying premises” on their existing provision about ‘relevant household’.

We welcome the flexibility this regulation making power affords, which will allow time for an evidence-based approach to developing this new policy in Scotland. This approach allows greater scope to consult with key stakeholders to understand how any regulations should work operationally, as the Committee noted. Regulations which consider the Scottish context present the best opportunity to draft legislation that will safeguard children.”

52. The Scottish Government responded as follows on the second question:

“The alternative approach suggested by the Committee is an interesting one and that approach would have potentially worked for the Scottish Government. As this is a UK Bill, however, this was ultimately a decision for the UK Government.

The manner in which the Bill is currently drafted allows sufficient flexibility, in our view, to maximise the safeguarding of children. As the Committee has stated in its letter, we would have to consider operational experience, particularly from Police Scotland, to shape our definition of qualifying premises. Ultimately it will up to the Scottish Parliament to consider whether any Regulations brought forward under this new section are deemed a necessary and proportionate use of power.”

53. The Committee notes that the policy in relation to this provision is still to be developed. When the Bill is enacted there will be no restriction on registered sex offenders entering premises where children are present, as is currently the case. However the Scottish Government may develop such a restriction, to be enacted in regulations under this clause. The Scottish Government states in its response that the policy will be developed in consultation with Police Scotland. While the Scottish Government notes that the policy in England and Wales may be to base the definition of qualifying premises on the current definition of ‘relevant household’ (i.e. a household or other place where a child resides or stays and to which the public do not have access), no indication is given of what the policy might be in Scotland.

54. The Committee takes the view that the definition of qualifying premises is key to the new provision about notification by registered sex offenders. Accordingly it considers that a definition of qualifying premises insofar as relating to Scotland should be provided on the face of the Bill, with a power being taken to amend that definition, if considered appropriate.

(iii) Power to specify when further notification is not required

55. It is explained in the DPM that the power to specify when further notification in relation to the same premises or children is not required is intended to allow for the appropriate authority to prevent the need for repeat notifications within a certain timeframe, in certain circumstances. It is expected to be subject to the nature of the premises and the contact with the children. For example, where a relevant offender makes regular visits to the home of a sibling where nephews or nieces are present, and another adult is present.

56. The Committee is content with this power as an appropriate balance has been struck between setting out the substantive provision on the face of the Bill while leaving more complex detail for secondary legislation.

Procedures

57. For instruments made under (i), to set out the detail of information included in a notification, the negative procedure is considered appropriate in the DPM because of its administrative nature. For instruments made under (ii) and (iii) powers, the affirmative procedure is considered appropriate because the effect of such regulations could be to expand circumstances when notification is required or enable notification of multiple events in a single occasion, both of which are key aspects of the scope of the policy and merit debate and approval by Parliament. The Committee is content with that explanation and with the choice of parliamentary

procedures.

58. **The Committee is content with the power in new section 86B(2) of the Sexual Offences Act 2003 in principle and that it is subject to the negative procedure.**

59. **As regards the power in new section 86B(3) of the Sexual Offences Act 2003, the Committee notes that the definition of qualifying premises is key to the new provisions regarding notification by registered sex offenders proposing to enter premises where children are present.**

As such, the Committee recommends that a definition of qualifying premises insofar as relating to Scotland should be provided on the face of the Bill, with a power being taken to amend that definition, if considered appropriate.

60. **The Committee is content with the power in new section 86B(4) of the Sexual Offences Act 2003 in principle and that it is subject to the affirmative procedure.**

Clause 90^{xvi} : power to provide for police stations at which notifications may be given

Power conferred on: Chief officers of police

Power exercisable by: Administrative direction

Parliamentary procedure: None

Provision

61. Clause 90 of the Bill amends section 87 of the 2003 Act, as it applies to Scotland and Northern Ireland. Currently, this section provides that a person can give a notification under Part 2 of the 2003 Act by attending a police station which is prescribed in regulations made by the Scottish Ministers.

62. This regulation-power has been exercised numerous times and the current list of police stations prescribed for Scotland are contained in the Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2017^{xvii}.

63. The amendments made to section 87 by Clause 90 of the Bill will provide a power to the chief officer for each police area to publish a document containing the name and address of each police station in that area at which a person may give a notification under Part 2 of the 2003 Act. The publication can be done in any such manner as the chief officer thinks fit, and the document may be kept under review and revised in the same manner.

Committee consideration

^{xvi} Clause 62 on introduction.

^{xvii} SSI 2017/285.

64. Clause 90 is not considered in the DPM, nor are there specific comments in relation to this power in the LCM.
65. The Committee notes that the effect of this power is that an existing regulation-making power is being replaced with a direction-making power, with equivalent statutory effect. It is therefore removing the opportunity for parliamentary scrutiny.
66. Nevertheless, the Committee is content with this change for the following reasons. First, the power is largely administrative, and it would not necessarily be an effective use of parliamentary time to consider its use. Second, other equivalent powers are not subject to parliamentary scrutiny, such as the power to prescribe the form of acknowledgement of a notification under section 87(3).

67. The Committee is content with this power in principle and that it is not subject to any parliamentary procedure.

Clause 91^{xviii}: New section 87A of the Sexual Offences Act 2003

- (i) power to specify conditions before a relevant offender can notify the police virtually,**
- (ii) power to provide for specified matters for which a notification cannot be given virtually, and**
- (iii) power to direct the form of written acknowledgement that police give for virtual notifications.**

Power conferred on: Scottish Ministers

Power exercisable by:

- (i) Regulations made by statutory instrument,**
- (ii) Regulations made by statutory instrument, and**
- (iii) Administrative direction.**

Procedure:

- (i) Negative procedure,**
- (ii) Negative procedure, and**
- (iii) None.**

Provision

68. Clause 91 of the Bill inserts new sections 87A and 87B into Part 2 of the 2003 Act. Part 2 places several obligations on relevant offenders to notify the police of specified information.

^{xviii} Clause 63 on introduction.

69. New section 87A of the 2003 Act will enable a relevant offender to make these notifications virtually under certain conditions: (a) a senior police officer has authorised them to do so by way of notice, (b) the notification does not relate to a specified matter, and (c) the notification is given to a person authorised to receive it.
70. Giving a notification virtually is defined in section 87A(8) as when it is given by a means which enables the relevant offender and the person receiving the notification to see and hear each other without being together in the same place.
71. In section 87A, the relevant authority is provided with two regulation-making powers and an administrative direction-making power. As above, where an offender's relevant police area is Scotland, the appropriate authority is the Scottish Ministers. These powers are:
- (i) to specify further conditions for the giving of virtual notifications, including conditions about the means of giving a virtual notification (section 87A(1)(b) and (9)),
 - (ii) to specify the matters in relation to which a virtual notification cannot be made (section 87A(6)), and
 - (iii) to make provision by direction about the written form in which notifications must be acknowledged (section 87A(10)).
72. By virtue of new section 138(4C) of the 2003 Act, the (i) and (ii) powers are subject to the negative procedure, whereas the (iii) power is not subject to a parliamentary procedure.

Committee consideration

73. The DPM explains that currently, under section 87(1) of the 2003 Act, notifications take place by the relevant person attending the police station in their local area and giving an oral notification to a person authorised to receive it. This enables the police to identify the offender and assess their demeanour, in order to form a judgment about the veracity of the information provided. This clause is intended to insert a new basic framework for notifications to be given virtually, but in a way which will still enable the police to make this visual confirmation, for instance, using a live link on an electronic device.
74. For all three of these powers, the LCM recommends that the Scottish Parliament consents to the clauses. The Committee is content that the Scottish Ministers have been appropriately conferred sole regulation-making powers. The Committee's views on the nature and scope of each power are set out below.

(i) Power to provide further conditions for a virtual notification

75. The power for the appropriate authority to add conditions before a virtual notification can be given is considered appropriate to be conferred on appropriate authorities in the DPM. It is intended to enable virtual notifications to be adjusted in line with developments in technology, and to allow the conditions to be amended in line with any adjustments to the list of notifiable information, which may be further prescribed by regulations under section 83(5)(h) of the 2003 Act.
76. The Committee finds that an appropriate balance has been struck here between

providing the essential outline of the policy for virtual notifications on the face of the Bill and using secondary legislation to add further detail. For this reason, the Committee is content with this power in principle.

(ii) Power to provide for specified matters

77. At its meeting on 2 September, the Committee was content with the choice of parliamentary procedure for the power. However, it also noted that justification for this specific power was not included in the DPM, and agreed to seek further information from the Scottish and UK Governments about the intended policy behind this provision.

Questions and answers

78. Accordingly the Committee agreed to ask the Scottish and UK Ministers:
- “what sort of matters is it intended should be specified as unsuitable for virtual notification, and
 - if it would be appropriate for these matters to be specified on the face of the Bill, whilst taking a power to amend them, as appropriate?”

79. The [Scottish Government explained in its response](#) on the first question that:

“The regulation making power in the Bill allows us the flexibility to work with the police to understand better what information given as part of the notification requirements would not be suitable to be given virtually – for instance it may be more appropriate to verify an individual’s change of passport details in person as this may be difficult to do online.”

80. In relation to the second question, it stated:

“Specifying these matters in secondary legislation will future proof for any subsequent need for changes to the notification requirements. It will also allow time for engagement with Police Scotland to gather evidence on what notification requirements are not operationally suitable or practical to be received virtually.”

81. The Committee is content with that explanation. The default position under the Bill is that notification requires to be given in person. Virtual notification may only take place if a senior police officer for the relevant police area is satisfied that it is not necessary, for the purpose of protecting the public or any particular members of the public from sexual harm, for the registered sex offender to give notifications in person. Regulations under the power in new section 87A(6) may, in addition, specify matters which it would not be appropriate to notify virtually.
82. Accordingly the Committee is content with the power and that its exercise is subject to the negative procedure.

(iii) Power to provide for acknowledgement of virtual notifications

83. The DPM explains that the power to provide for the acknowledgement of the notification by direction mirrors existing provision in section 87(3) in respect of in-person notifications. It is considered helpful for the police to have a standard form and given it is a purely administrative process, it is considered appropriate for a

ministerial direction rather than through secondary legislation with parliamentary scrutiny.

84. The Committee is content that it is appropriate for this power to be exercised in this manner.

Procedures

85. Both the (i) and (ii) powers are subject to the negative procedure in the Scottish Parliament. The DPM explains that this is considered appropriate since the overarching framework has already been established by the Bill, and the powers are relatively small in scale. For instance, the (i) power to add conditions cannot be exercised so as to remove or override the existing conditions set out in section 87A.
86. The (iii) power is not subject to any parliamentary procedure and the reason given in the DPM is that it is a purely administrative matter which can be appropriately left to the appropriate authority.
87. The Committee is content with the choice of procedure set out for powers (i) and (iii), and with the choice of procedure for power (ii) following the correspondence with the Scottish Government. .

- 88. The Committee is content with the powers in principle and with their proposed procedures.**

Clause 94^{xix} : New sections 93B and 93C of the Sexual Offences Act 2003 –

(i) power to amend list of identity documents (section 93B(6)(d)),

(ii) power to specify information or documents to be contained in an application (section 93C(2)(c)), and

(iii) power to prescribe further conditions to be satisfied before the police will authorise a name change (section 93C(6)(b)).

Powers conferred on: Scottish Ministers

Powers exercisable by: Regulations made by statutory instrument

Procedure:

(i) Affirmative procedure,

(ii) Negative procedure, and

(iii) Affirmative procedure.

Provision

89. Clause 94 inserts new sections 93A – 93H^{xx} into the 2003 Act. These provide a scheme whereby relevant offenders require the authorisation of the police in order

^{xix} Clause 66 on introduction.

- to apply for a passport, driving licence, or other official identify document in a new name.
90. Police must decide the application within 4 weeks but will only grant authorisation where satisfied that the relevant conditions are met and it is not necessary to refuse for the purpose of protecting the public, or any particular members, such as children or vulnerable adults, from sexual harm. The relevant conditions are that the change in name is connected with marriage, civil partnership, religion, belief, or there are exceptional circumstances.
91. This new requirement applies to offenders who are given a notice by the chief officer of police (for their police area) that they are subject to the restriction, and that notice has not been cancelled. The chief officer will give this notice only when satisfied that it is necessary in order to protect the aforementioned groups, and the decision may be appealed by the relevant offender. It is an offence for the relevant offender to fail to comply with the requirement. In Scotland, offenders will be liable on summary conviction to imprisonment for up to 12 months, a fine, or both.
92. Clause 94 provides three regulation-making powers on the appropriate authority. The appropriate authority is the Scottish Ministers, where an offenders' relevant police area is in Scotland. The relevant powers are to:
- (i) add to the list of identity documents to which there is a restriction,
 - (ii) specify other information to be contained in, or documents to accompany, an application, and
 - (iii) prescribe further conditions to be met before the police may grant authorisation.
93. By virtue of section 138(4B)(d), (e) and (4C) of the 2003 Act (as amended by this Bill), the powers in (i) and (iii) are subject to the affirmative procedure, whereas the power in (ii) is subject to the negative procedure.

Committee consideration

94. The DPM explains that the intention behind these new provisions is to strengthen the safeguarding of children and the public by preventing registered sex offenders from changing their names with the intention of reoffending by concealing their criminal past.

(i) Power to add to list of identity documents

95. Section 93B(6) contains a list of three kinds of document for which relevant offenders must obtain authorisation from the police before changing their name. This includes an immigration document, a UK passport, and a driving licence. The DPM explains that the power in section 93B(6)(d), for the Scottish Ministers to specify further kinds of documents, is intended to allow for prompt updating of the existing list should a new official document be introduced which is used for the purpose of confirming a person's identity. This will prevent relevant offenders from evading the safeguarding checks being implemented by this new scheme.

xx New section 93H only applies to England, Wales and Northern Ireland.

96. Under section 93B(7), before making regulations under this provision the Scottish Ministers must consult the other appropriate authorities: the Secretary of State and the Department of Justice in Northern Ireland. The same consultation requirement with the Scottish Ministers applies when other appropriate authorities intend to exercise their equivalent power.
97. The Committee is content with this power in principle, noting that an initial list has been included on the face of the Bill and a power is only being taken to expand the list of appropriate identity documents as required.

(ii) Power to specify other documents in an application

98. The DPM explains that the question of what should be contained in an application for a change in name is considered to be secondary policy detail and therefore appropriately determined by regulations. It is expected to include the relevant personal details of the offender and their reasons for making an application. It is also expected that detail of the requirements will vary depending on the reasons for the application, and this level of detail is not suitable for primary legislation.
99. The Committee considers that an appropriate balance has been struck between providing for the substantive provisions of the scheme on the face of the Bill and allowing more detail to be set out in secondary legislation. For that reason, the Committee is content with the power in principle.

(iii) Power to prescribe further conditions

100. The DPM accepts that the conditions which must be satisfied before the police can authorise a name change is a core part of the scheme and should be contained in legislation. It explains that this has been accommodated by specifying in section 93C(6) the conditions of (a) marriage or civil partnership, and (b) religion or belief.
101. However, the UK Government explains that the exceptional circumstances in which a name change may be required could vary and be an evolving issue. Therefore, a regulation-making power is considered appropriate in order to accommodate this likelihood. It is anticipated that regulations made under this power will include when the relevant offender changes gender, or where they face a risk of harm to life which requires them to change their name.
102. The Committee agrees that it is appropriate for the Bill to delegate a regulation-making power to amend the list of circumstances where a name change would be appropriate. This appears to be a proportionate power to provide flexibility and support the ongoing development of the scheme. Therefore, the Committee is content with the scope of this power.

Procedures

103. The power under (i) to identify a new category of identification document which requires notification is subject to the affirmative procedure. The DPM explains that this is considered appropriate because it would extend the restrictions imposed by the scheme. Similarly, the power under (iii) to determine additional circumstances in which a relevant offender may be authorised to change name is subject to the affirmative procedure. This is explained as an appropriate matter to be debated and approved by the Parliament because it will involve balancing the private life of the relevant offenders with the need to protect the public from harm.

104. The power under (ii) to specify details to be provided in an application is subject to the negative procedure. The DPM explains that this is considered appropriate since it is essentially an administrative matter, and less parliamentary scrutiny is therefore required.

105. The Committee is content with the proposed parliamentary procedures.

106. The Committee is content with these powers in principle and that they are subject to the proposed procedures.

Part 10: Powers of Police etc

Clause 132(2): Power to amend list of enforcement officers and senior officers for purposes of the clause 130 power to extract online information from seized devices

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Draft affirmative resolution procedure or negative procedure

Provision

107. Clause 130 of the Bill permits an enforcement officer to access online accounts and extract information from electronic devices which have been lawfully seized. This requires authorisation by a senior officer, which will be given when the extraction is relevant to a reasonable line of inquiry, and it is not reasonably practicable to obtain the information in any other way.
108. Clause 132 sets out an interpretation table for the purposes of Clause 130. It lists who is classified as an enforcement officer and thus able to exercise this power to extract information, and who is their authorising senior officer. For instance, a police officer within the meaning of Part 1 of the Police and Fire Reform (Scotland) Act 2012 is named as an 'enforcement officer', while a constable of at least the rank of inspector is named as their corresponding 'senior officer'. There are eighteen named categories of enforcement and senior officers.
109. Subsection (2) of Clause 132 creates a power for the Secretary of State to make regulations to amend this interpretation table of enforcement officers and senior officers. This can include adding, removing, or modifying references.
110. By virtue of Clause 198(3)(a), regulations made under this power which add or remove a reference to a person are subject to the draft affirmative procedure. By virtue of clause 198(4), regulations made under this power which modify the description of a person are subject to the negative procedure.

Committee consideration

111. The sDPM explains that data stored in electronic devices is vital for the investigation of a range of criminal activity. Advances in technology have resulted in this data being increasingly stored in the cloud and accessed from online accounts connected to the device, rather than being stored on the device itself. This type of data is commonly referred to as 'RSED' (remotely stored electronic data). Therefore, a change in law is required to update the framework to bring the powers of law enforcement agencies in line with changes in technology and ensure vital evidence and intelligence is not missed.
112. The UK Government justifies taking a power to amend the list of enforcement officers and senior officers because it is possible that over time the operational requirement for access to RSED will change, and that may need done in quick timescales. A comparison is drawn to section 44 of the Police, Crime, Sentencing

and Courts Act 2022, which similarly enables the Secretary of State to amend the Schedule 3 list of persons authorised to extract information stored on a digital device.

113. The UK and Scottish Ministers agree that the LCM process is engaged for this provision because its purpose is the investigation and prosecution of crime, which is within the legislative competence of the Scottish Parliament. In the second Supplementary LCM, the Scottish Government recommends that the Scottish Parliament consents to the clause because it closes a loophole in the law in respect of data being held remotely, which will support the effective detection and prosecution of crime. The Scottish Government states that Police Scotland has been engaged regarding the possible operational impact of the provisions and have indicated support for the measures.
114. The sDPM explains that regulations made under clause 132(2)(a) or (b), which add or remove a reference to a person, are subject to the draft affirmative procedure because they will have the effect of potentially expanding the list of persons who may access RSED, and because it is a Henry VIII power to amend primary legislation. For both reasons, a higher level of scrutiny is warranted. Regulations made under clause 132(2)(c), which modify the description of a person, will not increase or reduce the categories of persons who can exercise the power, and so the negative resolution procedure is considered appropriate.
115. The Committee is content with the scope of the power, and that an appropriate balance has been struck between setting out the policy on the face of the Bill and enabling delegated legislation to be used to amend the list of enforcement officers in the future. It is also content with the choice of parliamentary procedure.
116. As the sDPM and LCM agree, the purpose of this provision is the investigation and prosecution of crime, which is within the legislative competence of the Scottish Parliament. As such, regulations made under this power may contain devolved provision. However the Committee noted that the power is not subject to any requirement to consult or obtain the consent of the Scottish Ministers.
117. In light of the Committee's general position on UK Government powers exercisable within devolved competence, the Committee asked both the UK and Scottish Ministers why it is considered appropriate to confer the power in this way. The Committee also asked the Scottish Government how it intends to facilitate scrutiny by the Scottish Parliament of the exercise of the power.

Questions and answers

118. The Committee agreed to ask both the Scottish and UK Ministers:
- “why it is considered appropriate for this power to be exercisable by the Secretary of State within legislative competence, and not by the Scottish Ministers, and
 - what consideration has been given to requiring the consent of the Scottish Ministers, or consultation with the Scottish Ministers, in advance of exercising the power within legislative competence?”
119. The Committee also agreed to ask the Scottish Ministers “how the Scottish Government intends to facilitate scrutiny by the Scottish Parliament of exercise of

the power by the Secretary of State?”

120. In response to the first question, [the Scottish Government stated](#) :

“The Scottish Government recognises that in so far as the power relates to the purpose of preventing, detecting and investigating or prosecuting crime, the power falls within devolved competence. However, predominantly the power operates in a reserved area, namely counter terrorism and national security. Given the predominantly reserved aspect of this power and the need for a consistent approach to determining which enforcement officers are authorised to exercise powers across the UK, it is considered appropriate for the Secretary of State to exercise this function without direct involvement of the Scottish Ministers. This avoids the risk of divergence in operational lists that could undermine clarity for law enforcement agencies and the courts.”

121. In response to the second question, the Scottish Government stated:

“In line with practice for other provisions of this kind, we do not consider it necessary for the Secretary of State to seek the consent of, or consult with, Scottish Ministers before exercising the power.”

122. In response to the third question, the Scottish Government stated:

“The Scottish Government will ensure that the Scottish Parliament is able to scrutinise how this power is being exercised in practice. We will maintain close engagement with the UK Government and will provide updates to Parliament, as appropriate, where the Secretary of State proposes to amend the list of enforcement officers.”

123. Having considered the response, the Committee is content with conferral of the power on the Secretary of State in principle. The Committee also notes the Scottish Government’s commitment to provide updates to the Parliament as appropriate, where the Secretary of State proposes to amend the list of enforcement officers.

124. The Committee:

- **is content with the power and that it is subject to the draft affirmative procedure where a description of a person is added to or removed from the list, and otherwise to the negative resolution procedure;**
- **notes that the power is exercisable by the Secretary of State within the Parliament’s legislative competence, and is not subject to any consultation or consent requirements; and**
- **notes the Scottish Government’s commitment to provide updates to the Parliament as appropriate, where the Secretary of State proposes to amend the list of enforcement officers.**

Clause 133(7): Power to provide for circumstances in which the duty to make confidential ‘protected material’ information inaccessible does not apply

Power conferred on: Secretary of State

Power Exercisable by: Regulations made by statutory instrument**Parliamentary procedure: Draft affirmative resolution procedure****Provision**

125. Clause 133 makes provision for dealing with confidential information that is extracted from seized devices using the power in Clause 130. Where it appears to the enforcement officer accessing the information that it is, or contains, confidential information, as soon as reasonably practicable, that person must ensure the information is made inaccessible and any copies are destroyed.
126. Clause 133(7) confers a power on the Secretary of State to make regulations to provide for circumstances in which the duty to make confidential material inaccessible, and to destroy copies, does not apply. The power is limited in scope to disapply the duty in relation to 'excluded' or 'special procedure' material under the relevant law.
127. By virtue of Clause 198(3), regulations made under this power are subject to the draft affirmative procedure.

Committee consideration

128. The sDPM explains that this power is being taken to provide for circumstances where amendments are needed to align with existing legal provisions, so that the power in clause 130 operates effectively. The existing powers of some law enforcement agencies who will have the ability to access RSED data from seized devices do not always dovetail with the intention behind the new power.
129. For instance, the Serious Fraud Office ("SFO") have statutory functions under the Criminal Justice Act 1987 such that they can seize and retain certain protected material. However, under this new clause 133(2), if they accessed and retained that same material under the new power, the material would be considered "confidential" and the SFO would be required to destroy it. Therefore, a regulation-making power is required to provide exemptions to the new scheme so that the intentions behind the existing law and the provisions in the Bill are not thwarted.
130. The Committee is content with the scope of the power, and that an appropriate balance has been struck between the use of primary and secondary legislation. The Committee is also content with the choice of the draft affirmative procedure.
131. In light of the Committee's general position on UK Government powers exercisable within devolved competence, the Committee asked both the UK and Scottish Ministers why it is considered appropriate to confer the power in this way. The Committee also asked the Scottish Government how it intends to facilitate scrutiny by the Scottish Parliament of the exercise of the power.

Questions and answers

132. The Committee asked both the Scottish and UK Ministers:
- "Why it is considered appropriate for this power to be exercisable by the Secretary of State within legislative competence, and not by the Scottish Ministers, and

- What consideration has been given to requiring the consent of the Scottish Ministers, or consultation with the Scottish Ministers, in advance of exercising the power within legislative competence?”

133. The Committee also agreed to ask the Scottish Ministers “how the Scottish Government intends to facilitate scrutiny by the Scottish Parliament of exercise of the power by the Secretary of State?”

134. In response to the first question, the [Scottish Government stated](#) :

“The Scottish Government recognises that in so far as the power relates to the purpose of preventing, detecting and investigating or prosecuting crime, the power falls within devolved competence. However, predominantly the power operates in a reserved area, namely counter terrorism and national security. Given the predominantly reserved aspect of this power and the need for a consistent approach to determining which enforcement officers are authorised to exercise powers across the UK, it is considered appropriate for the Secretary of State to exercise this function without direct involvement of the Scottish Ministers.”

135. In response to the second question, the Scottish Government stated:

“In line with practice for other provisions of this kind, we do not consider it necessary for the Secretary of State to seek the consent of, or consult with, Scottish Ministers before exercising the power.”

136. In relation to the third question, the Scottish Government responded as follows:

“The Scottish Government recognises that subsection (7) provides the Secretary of State with a regulation-making power to specify further circumstances in which the duty to render confidential “protected material” inaccessible does not apply. While this could appear to weaken existing safeguards, there are important reasons why the power is both justified and proportionate.

First, the scope of the power is narrow. It does not extend to legally privileged material, which remains absolutely protected. It is confined to excluded and special procedure material, both of which are already subject to statutory access processes under existing legislation, such as the Police and Criminal Evidence Act 1984 in England and Wales or equivalent provisions in Scotland.

Second, the power provides necessary operational flexibility. Policing and criminal justice are increasingly shaped by digital evidence, and in practice relevant evidence is often embedded within large and complex datasets. Where excluded or special procedure material cannot easily be separated from admissible evidence, the ability to manage these situations effectively is essential. Subsection (7) ensures that operational practice can adapt to technological change without the need for new primary legislation.

Third, the measure supports consistency across the UK; applying it on a consistent basis helps avoid unnecessary divergence that could complicate investigations with cross-border elements.

Finally, the power is subject to appropriate scrutiny. Any regulations made under subsection (7) would be laid before the UK Parliament and subject to parliamentary

scrutiny before they come into effect. The Scottish Government will continue to engage with the UK Government on the use of this power and will ensure that the Scottish Parliament is kept informed as appropriate.”

137. Having considered the response, the Committee is content with conferral of the power on the Secretary of State in principle. The Committee also notes the Scottish Government’s commitment to keep the Scottish Parliament informed about proposed uses of the power.

138. **The Committee:**

- **is content with the power and that it is subject to the draft affirmative procedure;**
- **notes that the power is exercisable by the Secretary of State within the Parliament’s legislative competence, and is not subject to any consultation or consent requirements;**
- **notes the Scottish Government’s commitment to ensure that the Scottish Parliament is kept informed as appropriate on proposals for the use of this power.**

Clause 134(1): Duty to issue a code of practice regarding the exercise of powers relating to the extraction of online information

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution procedure

Provision

139. Clause 134 provides that the Secretary of State must prepare a code of practice about the exercise of the power in clause 130 to access RSED data on seized devices. In exercising (or deciding whether to exercise) the powers in clause 130, a person must have regard to this code.

140. The Secretary of State is obliged by subsection (4) to lay the code before the UK Parliament and publish it. Following which, clause 134(5) provides a power for the Secretary of State to bring the code into force by regulations.

141. In preparing this code, the Secretary of State is obliged by subsection (3) to consult (a) the Information Commissioner, (b) the Investigatory Powers Commissioner, (c) the Scottish Ministers, (d) the Department of Justice in Northern Ireland, and (e) any other such persons the Secretary of State considers appropriate. The code may also be revised, and the provisions in relation to consultation, laying, publication and the power to bring into force, apply to such revisions (unless the Secretary of State considers the revisions to be insubstantial, in which case there is no duty to consult).

142. By virtue of clause 198(4), the power to bring the code into force by regulations is

subject to the negative resolution procedure.

Committee consideration

143. The sDPM explains that it is felt that a code of practice will assist enforcement officers and senior officers in understanding the purpose and appropriate use of the new powers to retain data, and considerations they should be making before relying on them. This will deliver greater consistency and ensure that an effective balance is struck between investigating crime and protecting the rights of persons whose electronic devices have been seized in the course of an investigation. The provisions in this clause requiring a code of practice to be published, and to be revised from time to time, will allow the guidance to be updated quickly to keep pace with best practice, and the evolution of technology.
144. The power to bring the code into force is considered appropriate in the sDPM due to the invasive nature of the powers provided, and the level of parliamentary and public interest in the investigation and prosecution of crimes. Accordingly, an opportunity for parliamentary scrutiny is considered necessary.
145. The Committee is content with this power in principle. The bulk of the policy has already been set out on the face of the Bill, and a power is being taken here to add detail by way of a code of practice and to bring that code into force by regulations. The Secretary of State is obliged to consult the Scottish Ministers in drafting the content of the code.
146. The Committee also considers the negative procedure a proportionate level of parliamentary scrutiny for such regulations.
147. **That the Committee is content with this power in principle and that it is subject to the negative resolution procedure.**

Clause 138^{xxi} : New section 71 of the Criminal Justice and Court Services Act 2000 - power to make information-sharing regulations for police and law enforcement about DVLA information

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Negative resolution procedure

Provision

148. Clause 138 of the Bill inserts new sections 71 to 71C into the Criminal Justice and Courts Services Act 2000 (the “2000 Act”). Section 71 creates a power for the Secretary of State to make driver licensing information available for use by authorised persons for purposes relating to policing or law enforcement. These regulations must specify the circumstances in which the information may be made available and may provide for conditions or requirements about who is authorised to receive it, how they use it, and when it may be onwardly disclosed.

^{xxi} Clause 95 on introduction.

149. New section 71A defines who is an “authorised person” for the purposes of these regulations. It sets out a table of persons and the circumstances of when they are held to be authorised. This includes constables, members of civilian police staff, police volunteers, National Crime Agency officers, and staff of the Police Investigations and Review Commissioner.
150. The information that can be made available to these persons is contained in Part 3 of the Road Traffic Act 1988, including a driver’s name, address, date and country of birth, photograph, signature, driving vehicle entitlement, endorsements, convictions, and relevant medical information that affects their ability to drive.
151. Before making regulations under this provision, the Secretary of State must consult: (a) the Scottish Ministers, (b) the Department of Justice in Northern Ireland, (c) the National Police Chiefs’ Council, (d) such persons that appear to the Secretary of State to represent the views of police and crime commissioners, and (e) other such persons that the Secretary of State considers appropriate. Furthermore, the Secretary of State must prepare and publish an annual report about the use of information made available under this provision.
152. By virtue of section 76(6) of the 2000 Act, this power will be subject to the negative resolution procedure in the UK Parliament.

Committee consideration

153. Section 71 of the 2000 Act already contains provision enabling driver licensing information to be made available for certain law enforcement purposes. The effect of new section 71 is that the list of ‘authorised persons’ who can access the database is updated and expanded. It also enables the police to use this data in connection with a broader range of offences than the current provision, which is for the investigation of road traffic offences only. The DPM explains that this is intended to re-establish the principle in primary legislation and to allow regulations to specify the precise circumstances in which it may take place.
154. According to the LCM, while much of the Road Traffic Act 1988 (and subsequently much of the driver licensing information powers and process) is reserved, the effect of this provision is that offences of a devolved nature can be investigated by police and law enforcement across the UK using DVLA records. As such, the Scottish and UK Governments have agreed that this regulation-making power engages the LCM process.
155. In the LCM, the Scottish Government explains that the approach being taken is considered proportionate to maintain the UK Government’s oversight on such matters, whilst providing the Scottish Ministers an opportunity to present their views on the impact of the draft regulations as they affect Scotland. The LCM further explains that the approach is supported by the independent Scottish Biometrics Commissioner, who is accountable to the Parliament. Equally, the policy approach will increase the volume of data available to Police Scotland for searching against in respect of devolved offences. As such, the Scottish Government recommends that the Parliament consents to this clause.
156. In its consideration on 2 September, the Committee was content with delegation of the power in principle. It was also content with the choice of the negative procedure, noting that the principle of making driver licensing information available for all

policing and law enforcement purposes is set out on the face of the Bill, with the power being available only to specify the particular circumstances or situations in which that information may be provided.

157. The LCM explains that while the decision to share driver licensing information with Scottish policing and law enforcement is a reserved matter, some of the provision which could be made in regulations under new sections 71(2) to (4) would relate to the investigation and handling of devolved offences. As such, any regulations are likely to contain a mix of reserved and devolved provision.
158. The LCM states that it is accordingly considered appropriate for the UK Government to have oversight of the policy and to make the regulations, with a statutory requirement to consult the Scottish Ministers before doing so. The Committee was content with that approach, noting that a statutory consultation requirement appears in the circumstances to be a proportionate solution.
159. Given that the regulations are likely to contain devolved provision, and in light of the Committee's general position on UK Government powers exercisable within devolved competence, the Committee asked the Scottish Government how it will facilitate Scottish parliamentary scrutiny of its policy position on any proposed regulations, and of its response to the statutory consultation.

Questions and answers

160. The Committee asked the Scottish Government:

“How it intends to facilitate scrutiny by the Scottish Parliament of:

- any proposals by the Secretary of State to make regulations containing provision within legislative competence, and
- the Scottish Ministers' consultation response in respect of such proposals?”

161. The [Scottish Government responded](#) as follows:

“[...] Throughout the development of the Crime and Policing Bill we have worked closely with the UK Government. This collaborative approach will continue during the implementation of the Bill and development of regulations made under the new powers. As part of this collaborative approach, we are committed to keeping the appropriate Committees of the Scottish Parliament informed of the publication of consultations and consultation responses related to future regulations, where possible. I will also continue to ensure that the Committees are informed of any decisions made on regulations and would be happy to engage with the Committees should they have any questions about regulations which contain devolved provision.”

162. The Committee notes the Scottish Government's commitment to inform Scottish Parliament Committees of any decisions made on regulations which contain devolved provision, and to engage with Committees should they have any questions, and draws this to the attention of the lead committee.

163. **The Committee:**

- **Is content with the power in principle and that its exercise is subject to the negative procedure;**
- **Notes that the power is exercisable by the Secretary of State within the Parliament's legislative competence, is subject to a requirement to consult the Scottish Ministers, and does not fall within the scope of SI Protocol 2;**
- **Notes the Scottish Government's commitment to inform the Scottish Parliament's Committees of any decisions made on regulations under the power which contain devolved provision, and to engage with Committees should they have any questions; and**
- **Draws this commitment to the attention of the lead committee.=**

Part 13: The Police

Schedule 19: Special police forces: barred person lists and advisory lists

- (a) Paragraph 1(3): Power to specify information to be included in barred persons list**
- (b) Paragraph 5(1)(b): Power to specify appeal proceedings**
- (c) Paragraph 6: Power to make other provision in connection with the removal of persons from barred persons lists**
- (d) Paragraph 7(2): Power to require relevant policing authority to publish information about persons included in the barred persons list maintained by the authority**
- (e) Paragraph 9(2): Duty to specify information to be included in the advisory list**
- (f) Paragraph 11(3): Power to make other provision in connection with removals from the advisory list**
- (g) Paragraph 13(e): Power to specify meaning of “disciplinary proceedings” in relation to civilian employees of British Transport Police Authority and Civil Nuclear Police Authority.**

Powers conferred on: Secretary of State

Powers exercisable by: Regulations made by statutory instrument

Parliamentary procedure: negative resolution procedure

Provision

- 164. Clauses 157 to 165 of the Bill introduce rules about the employment of persons on (a) barred or (b) advisory lists to law enforcement roles. Law enforcement employers have new duties to check both sets of lists before employing or appointing proposed employees. This includes persons who are seconded to work for the law enforcement employer, and any contract for the provision of services. If a person is on a barred list, they must not be employed to any position in the law enforcement organisation.
- 165. Schedule 19 goes on to makes specific provision about barred persons lists and advisory lists to be maintained by:
 - (a) the British Transport Police Authority,
 - (b) the Civil Nuclear Police Authority
 - (c) the Director General of the National Crime Agency, and
 - (d) the Secretary of State.

166. Schedule 19 confers seven regulation-making powers on the Secretary of State:
- a) Paragraph 1 of Schedule 19 creates a duty on the above four authorities to maintain a barred persons list. Subparagraph (3) creates a power for the Secretary of State to make regulations setting out what information must be included about a person that is added to these barred persons lists.
 - b) Paragraph 5 of Schedule 19 establishes that the relevant policing authority must remove a person from their barred person list when they have successfully appealed against the dismissal or disciplinary proceedings which required them to be on the list. This includes when it has been found to be an unfair dismissal following a complaint under section 111 of the Employment Rights Act 1996. Subparagraph (1)(b) creates a power for the Secretary of State to make regulations setting out which other appeal proceedings will trigger the requirement to remove a person from the barred persons list.
 - c) Paragraph 6 of Schedule 19 creates a power for the Secretary of State to make regulations in connection with the removal of persons from barred persons lists otherwise than under paragraph 4 (NCA officers and constables on the barred person list but who are later reinstated in post) or paragraph 5 (successful appeals against dismissal or disciplinary proceedings).
 - d) Paragraph 7 of Schedule 19 creates a power for the Secretary of State to make regulations to require the policing authority to publish information about persons included on their barred persons list^{xxii}. The regulations may in particular make provision about what, when, how, and for how long, certain information is to be published.
 - (e) Paragraph 9 of Schedule 19 creates a duty on the above four authorities to maintain an advisory list. Subparagraph (2) creates a power for the Secretary of State to make regulations setting out what information must be included about a person that is added to these advisory lists.
 - (f) Paragraph 11 of Schedule 19 sets out circumstances when a person must be removed from the advisory list. Namely, if it is determined that no disciplinary proceedings will be brought against them, the proceedings are withdrawn, or they are concluded without there being a finding that they would have been dismissed. Alternatively, they must be removed if the person is to be instead included on the barred persons list. Subparagraph (3) creates a power for the Secretary of State to make regulations to provide for removal from an advisory list, otherwise that under the aforementioned circumstances.
 - (g) Paragraph 13 of Schedule 19 sets out the definition of “disciplinary proceedings” in relation to the four relevant policing authorities who are to create barred person and advisory lists. Subparagraph (1)(e) creates a power for the Secretary of State to make regulations setting out the definition of “disciplinary proceedings” in relation to a civilian employee of the British Transport Police or the Civil Nuclear Police Authority.
167. For each of the seven powers described above, the Secretary of State is obliged by paragraph 15(1) of Schedule 19 to consult the Scottish Ministers before making

xxii Noting this does not apply to the National Crime Agency barred persons list.

regulations with provision that would be within the legislative competence of the Scottish Parliament.

168. By virtue of clause 198(4), regulations made under these powers are subject to the negative resolution procedure.

Committee consideration

169. The sDPM explains that the purpose of clauses 157-165 and Schedule 19 is to broadly replicate for other law enforcement agencies the existing provision for the police (in England & Wales) about maintaining a barred person and advisory list^{xxiii}. The law enforcement agencies are: the National Crime Agency (“NCA”), British Transport Police (“BTP”), Civil Nuclear Constabulary (“CNC”), and Ministry of Defence Police (“MDP”).
170. As stated in the sDPM, the purpose of the new clauses is to restrict employment, appointments and contracts in relation to persons on barred or advisory lists. Obliging these agencies to create such lists will ensure all dismissed individuals are captured and, in turn, strengthen police vetting and increase public confidence in policing.
171. The second sLCM explains that 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. It states that these provisions apply to Scotland for a purpose within the legislative competence of the Scottish Parliament, namely law enforcement/policing functions.
172. As a broad justification for each of the seven powers, the sDPM states that having provided for the core elements of the scheme on the face of the Bill, the UK Ministers consider it appropriate to leave secondary detail to delegated legislation. This was the same approach that was taken when providing delegated powers in Part 4A of the Police Act 1996, added by the Policing and Crime Act 2017. The sDPM goes on to give further justification for the individual powers, as follows.

Paragraphs 1(3) and 9(2): Powers to specify information to be included in the barred persons list, and in the advisory list

173. The sDPM explains the information to be specified under paragraph 1(3) is expected to mirror the Police barred list and thus include the name, date of birth, rank or grade, and a brief description of the conduct that led to their dismissal. Information to be specified in relation to the advisory list under paragraph 9(2) is expected to include details about the individual who resigns or retires from a force following an allegation about their conduct, efficiency or effectiveness, but before the disciplinary process has concluded, or when an allegation is received within a specified person after the individual has left the force, which if proven, would have led to dismissal had they still been serving.
174. The sDPM states that it is considered more appropriate to leave this level of detail to secondary legislation. It says that the approach also recognises that much of the disciplinary and performance frameworks governing the law enforcement agencies

xxiii Under Part 4A of the Police Act 1996, as added by the Policing and Crime Act 2017.

is itself set out in secondary legislation. Changes to those frameworks may necessitate changes to the categories of information to be included in the barred persons lists.

Paragraphs 5(1)(b), 6, 11(3) and 13(e): Powers to specify appeal proceedings and disciplinary proceedings, and to make further provision about the removal of persons from the lists

175. The sDPM again states that the disciplinary and performance frameworks governing officers of the law enforcement agencies is itself set out in secondary legislation and changes to these frameworks may necessitate additions to the circumstances in which an officer should be removed from the barred persons lists or advisory lists.
176. In addition, the disciplinary system for civilian BTP and CNC police staff is set out in policy and guidance, rather than in primary or secondary legislation. As such it is not practicable to define in paragraph 13 the meaning of “disciplinary proceedings” in respect of such staff or to set out in primary legislation all the circumstances in which civilian employees should be removed from the barred persons lists, necessitating the delegated power in paragraph 13(e).
177. Taken together, these delegated powers also afford the flexibility to specify other circumstances where it would be appropriate to remove a person from the barred persons lists or advisory lists, for example following the death of the person or a judicial review.

Paragraph 7(2): Power to require relevant policing authority to publish information about persons included in the barrier persons list maintained by the authority

178. The sDPM explains that this regulation-making power is required to enable the criteria for determining what should be published to be kept under review and to broaden or narrow such categories over time. This recognises that there may be circumstances where information about an individual should not be put into the public domain. The UK Government’s expectation is that the great majority of the names included on this barred list, with the exception of the NCA’s list, will be published. However, exceptions are required in limited circumstances where the publication of the name of a dismissed individual may result in significant harm to them or another affected person, such as vulnerable witnesses or victims.
179. In terms of parliamentary procedure, the sDPM explains that the negative procedure is considered to provide an appropriate level of parliamentary scrutiny as the regulations deal with largely procedural matters that are secondary to the core elements of the scheme set out in primary legislation. It adds that the application of the negative procedure mirrors the approach for the equivalent powers in the Police Act 1996, as added by the Policing and Crime Act 2017.
180. In relation to all seven powers in Schedule 19 discussed above, the Committee is content with delegation of the powers in principle.
181. The Committee notes that provision about the effect of inclusion on the barred and advisory lists has been set out on the face of the Bill, with the delegated powers limited to more procedural matters of the sort which might be expected in secondary legislation. Moreover the powers do not enable primary legislation to be modified. The Committee is content that they are subject to the negative procedure.

182. As set out in the second Supplementary LCM, the Scottish Government and the UK Government agree that these seven powers may be exercisable within the legislative competence of the Scottish Parliament. However, the powers are conferred solely on the Secretary of State, with a requirement to consult the Scottish Ministers before making any provision within the Parliament’s legislative competence.
183. In light of the Committee’s general position on UK Government powers exercisable within legislative competence, the Committee asked both the UK and Scottish Ministers why it is considered appropriate to confer the seven powers in Schedule 19 in this way. The Committee also asked the Scottish Government how it intends to facilitate scrutiny by the Scottish Parliament of the exercise of any of the powers.

Questions and answers

184. The Committee asked both the Scottish and UK Ministers:
- “why it is considered appropriate for these powers to be exercisable by the Secretary of State within legislative competence, and not by the Scottish Ministers, and
 - why it is considered appropriate for there to be a requirement for the Secretary of State to consult the Scottish Ministers before exercising the power, but not to obtain their consent?”
185. The Committee asked the Scottish Ministers “how the Scottish Government intends to facilitate scrutiny by the Scottish Parliament of:
- any proposals by the Secretary of State to make regulations under these powers containing provision within legislative competence, and
 - the Scottish Ministers’ consultation response in respect of such proposals?”
186. On the first question, the [Scottish Government responded](#) as follows:
- “Whilst it would be within legislative competence to have police forces operating in Scotland dealing with serious and organised crime, or policing of railways, the factual position is that the NCA and BTP are both accountable to the UKG via the relevant Secretaries of State under their respective enabling legislation. It makes sense that the relevant Secretary of State is responsible for the legislation around the barred and advisory lists as they are otherwise responsible for legislation and government oversight of these forces. Given that the forces operate UK or GB wide, it is also better if the barred and advisory list provisions are consistent across the UK/GB. This might be more difficult to achieve efficiently if different sets of regulations need to go through different parliaments, especially given the position where the rest of the administration of the two police forces are otherwise dealt with in UK Parliament legislation.”
187. In response to the second question, it stated:
- “The Scottish Government did ask that the proposed powers to be exercisable by the Secretary of State include a consent clause but the UK Government were not willing to agree to this. On balance the Scottish Government has concluded it is appropriate for UK Ministers to consult with the Scottish Ministers on a UK wide

approach rather than to refuse consent to the provisions being included in the Bill and do something in Scotland.[...]"

188. On the third question, the Scottish Government responded as follows:

"The Scottish Government is clear that, as a matter of principle, the Scottish Parliament should have oversight of the use by UK Ministers of delegated powers in devolved areas. The Government recognises the essential role which the Parliament plays in scrutinising regulations within devolved competence, and will facilitate the scrutiny of Scottish Government's decision to consent to the making of regulations in these areas or when consulted. Throughout the development of the Crime and Policing Bill we have worked closely with the UK Government. This collaborative approach will continue during the implementation of the Bill and development of regulations made under the new powers.

As part of this collaborative approach, we are committed to keeping the appropriate Committees of the Scottish Parliament informed of the publication of consultations and consultation responses related to future regulations, where possible. I will also continue to ensure that the Committees are informed of any decisions made on regulations and would be happy to engage with the Committees should they have any questions about regulations which contain devolved provision."

189. Following consideration of the response, the Committee takes the view that, in the particular circumstances of the powers in Schedule 19, advance consultation with the Scottish Ministers is a proportionate approach to enabling devolved interests to be taken into account.

190. The Committee notes the commitment given by the Scottish Government to keep the Scottish Parliament informed in relation to consultations related to future regulations, and in relation to any other decisions on regulations made under these powers. It draws this commitment to the lead committee's attention.

191. **The Committee :**

- **is content with these seven powers and that their exercise is subject to the negative procedure;**
- **notes that the powers may be exercised within the Scottish Parliament's legislative competence only by the Secretary of State, subject to a requirement to consult the Scottish Ministers, and that they do not fall within the scope of SI Protocol 2;**
- **notes the Scottish Government's commitment to inform the Scottish Parliament's Committees of the publication of consultations and consultation responses where possible, and of any decisions made on regulations under the power which contain devolved provision, and to engage with Committees should they have any questions; and**
- **draws this commitment to the attention of the lead committee.**

Part 16: Miscellaneous and General

Clause 192^{xxiv} : Power to implement international agreements on sharing information for law enforcement purposes

Power conferred on: Secretary of State and Scottish Ministers concurrently

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative resolution or negative procedure

Provision

192. Clause 192 provides a power to the appropriate national authority to make regulations as it is considered appropriate in order to implement international agreements relating to information-sharing for law enforcement purposes.
193. These regulations may provide for the sharing of information, although they may not require or authorise processing of personal data that would contravene data protection legislation, nor in a way that would be prohibited under the Investigatory Powers Act 2016.
194. Clause 193 defines “appropriate national authority” as the Secretary of State and, in so far as any regulations made under Clause 192 would be within the legislative competence of the Scottish Parliament, the Scottish Ministers.
195. In accordance with Clause 194, the Secretary of State must consult the Scottish Ministers before making any regulations under clause 191, if those regulations could be made by the Scottish Ministers (i.e. when they are within the Scottish Parliament’s legislative competence).
196. This power is subject to the negative procedure when exercised by the Scottish Ministers, and negative resolution procedure when exercised by the Secretary of State.

Committee consideration

197. The LCM states that international relations are a reserved matter in Scotland, although the implementation of international obligations is not reserved. The DPM explains that the Secretary of State has prerogative powers to enter into international agreements with third party nations governing the sharing of data for law enforcement purposes. At present, UK police forces, the National Crime Agency and the Border Force have the ability to share law enforcement data with international parties using existing statutory or common law powers.
198. The DPM also explains that it is expected that future agreements will involve information sharing between these organisations, and regulations are desirable to enable swifter implementation of the content of these agreements. It is intended that this power will provide an opportunity to implement the technical, operational elements, for example, the new IT software and the timescales by which data

xxiv Clause 127 on introduction.

should be provided. This level of detail is considered in the DPM as more appropriate to be addressed in secondary legislation.

199. The LCM recommends that the Scottish Parliament consents to this clause because it grants a power to the Scottish Ministers to make regulations in devolved areas of competence: the domestic implementation of international agreements, specifically relating to law enforcement.
200. In the DPM, the UK Government explains that the negative procedure is considered appropriate given the regulations will deal with technical and operational matters and will mostly be for the benefit of frontline officers and the relevant international partners. Moreover, any international agreement would be made by way of treaty, which triggers appropriate parliamentary scrutiny.
201. The Committee notes that while this is a wide power to make any provision considered appropriate to implement international agreements on data sharing for law enforcement, it is limited by the terms of those international agreements which will have been entered into by treaty. Moreover, the power does not expressly enable modification of primary legislation and is accordingly not a Henry VIII power. As such, the Committee is content with the choice of negative procedure.
202. In its consideration of the delegated powers on 2 September, the Committee noted that no explanation appeared to be given in the documents accompanying the Bill for the conferral of the power within the Parliament's legislative competence on the Secretary of State. In light of the Committee's general position on UK Government powers exercisable within devolved competence, the Committee asked both the UK and Scottish Ministers why it is appropriate for the Secretary of State to exercise this power within devolved competence, subject only to a requirement to consult the Scottish Ministers.

Questions and answers

203. The Committee asked the UK and the Scottish Ministers:
- “why it is considered appropriate for this power to be exercisable by the Secretary of State within legislative competence,
 - where the power is exercised by the Secretary of State within legislative competence, why it is considered appropriate for there to be a requirement to consult the Scottish Ministers but not to obtain their consent, and
 - how decisions will be made regarding which authority will exercise this power?”
204. The Committee also asked the Scottish Ministers “how the Scottish Government intends to facilitate scrutiny by the Scottish Parliament, where the power is exercised by the Secretary of State, of:
- any proposals to make regulations containing provision within legislative competence, and
 - the Scottish Ministers' consultation response in respect of such proposals?”
205. In relation to the first question, [the Scottish Government stated](#) :

“The Scottish Government is content that a concurrent power is pragmatic and appropriate in this instance and ensures that there is sufficient flexibility to implement international legal obligations.”

206. In relation to the second question, the Scottish Government stated:

“The Scottish Government’s default position is that the UK Government should only have the power to use secondary powers in devolved areas with the consent of the Scottish Government. There are instances where there has been a strong case for the Scottish Government to take a more pragmatic approach. The approach in this instance aims to mitigate risks to public safety potentially caused by a treaty having different implementation across the UK.”

207. In response to the third question about which authority will exercise the power, the response notes that it is the Scottish Government’s preference for devolved institutions to implement the provisions of international agreements that fall within devolved competence. However it also notes that decisions about who will regulate in individual cases will be a matter of discussion between the UK Government and the Scottish Government.

208. In response to the question about facilitating Scottish Parliamentary scrutiny, the response states:

“[...] Throughout the development of the Crime and Policing Bill we have worked closely with the UK Government. This collaborative approach will continue during the implementation of the Bill and development of regulations made under the new powers. As part of this collaborative approach, we are committed to keeping the appropriate Committees of the Scottish Parliament informed of the publication of consultations and consultation responses related to future regulations, where possible. I will also continue to ensure that the Committees are informed of any decisions made on regulations and would be happy to engage with the Committees should they have any questions about regulations which contain devolved provision.”

209. Following consideration of the response, the Committee takes the view that, in the particular circumstances of this power, advance consultation with the Scottish Ministers is a proportionate approach to enabling devolved interests to be taken into account.

210. The Committee also notes the Scottish Government’s commitment to inform Scottish Parliament Committees of any decisions made on regulations which contain devolved provision, and to engage with Committees should they have any questions. The Committee draws this commitment to the attention of the lead committee.

211. **The Committee:**

- **is content with the power and that its exercise is subject to the negative procedure;**
- **notes that the power may be exercised either by the Secretary of State**

or by the Scottish Ministers. Where it is exercised by the Secretary of State within the Parliament's legislative competence, the power is subject to a requirement to consult the Scottish Ministers, and does not fall within the scope of SI Protocol 2;

- notes the Scottish Government's commitment to inform the Scottish Parliament's Committees of any decisions made on regulations under the power which contain devolved provision, and to engage with Committees should they have any questions; and
- draws this commitment to the attention of the lead committee.

Clause 197^{xxv} : Power to make consequential provision

Power conferred on: Secretary of State and Scottish Ministers

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: Negative if it does not amend primary legislation, otherwise affirmative

Provision

212. Clause 197 confers a power on the Secretary of State to make such provision in regulations as the Secretary of State considers appropriate in consequence of the Bill, once enacted. It also provides a concurrent power for the Scottish Ministers to make provision in consequence of the following provisions of the Bill^{xxvi} :

- Part 4, Chapter 2 (cuckooing),
- Part 5 Chapter 5 (management of sex offenders),
- clause 106 (offence of dangerous, careless or inconsiderate cycling), and
- clause 145(3) and Schedule 18 (proceeds of crime and other property connected with criminal behaviour: Scotland),

insofar as within the legislative competence of the Scottish Parliament.

213. Any regulations made under this power may amend, repeal or revoke prior legislation. It is subject to the negative procedure, unless it amends primary legislation, in which case it is subject to the affirmative procedure (clause 199^[5](1)(b) and (2)).

Committee consideration

214. The DPM explains that although some consequential amendments are included within the Bill, it is possible that not all the necessary amendments have been

xxv Clause 131 on introduction

xxvi This power is held concurrently with the Secretary of State.

identified. Therefore, a power is needed in order to immediately rectify any that are missed and which become apparent when the provisions are implemented. It is explained that this will help maintain public confidence in the justice system and prevent any misadministration of justice.

215. The negative procedure is considered appropriate by the UK Government for any changes to secondary legislation as they will likely be administrative or procedural, however, where the power is amending or repealing primarily legislation, the affirmative procedure is considered befitting for a Henry VIII type of power.
216. In terms of its scope, this is a standard power to make provision consequential on the Bill. If the Parliament is content to give its consent for the substantive provisions in the Bill, it would be reasonable and appropriate for it also to consent to the taking of standard ancillary powers to give it full effect. As such, the Committee is content with the power in principle and with the choice of parliamentary procedure, which is again standard for consequential powers.
217. As regards conferral of the power on the Secretary of State and, in part, the Scottish Ministers, the DPM notes that *“the powers conferred on the Scottish Ministers are appropriately limited to what falls within devolved competence”*.
218. However, the Committee notes that the power for the Scottish Ministers to make consequential provision does not extend to a number of matters identified by the Scottish and UK governments as being within, or capable of exercise within, the Scottish Parliament’s legislative competence. These include:
- Offence of child criminal exploitation (clauses 40-41)
 - Implementation of international law enforcement information-sharing agreements (clause 192)
 - Powers of the police - Extraction of online information (Part 10)
 - Powers of the police – Access to driver licensing information (Part 10)
 - Special Police forces: barred persons lists and advisory lists (Part 13).
219. The Committee accordingly asked the UK and Scottish Governments why it is considered appropriate that a power to make consequential provision has been conferred on the Scottish Ministers in respect of some matters which fall within the Scottish Parliament’s legislative competence, but not others, and what criteria have been used to guide that choice.

Questions and answers

220. The Committee asked the UK and Scottish Governments:
- “Why it is considered appropriate that a power to make consequential provision has been conferred on the Scottish Ministers in respect of some matters which fall within the Scottish Parliament’s legislative competence, but not others, and
 - What criteria have been used to guide that choice?”
221. The [Scottish Government’s response](#) explains that the Scottish and UK Governments have so far only identified a potential need for consequential

amendments in the devolved areas covered by Clause 97(3) (outlined above). That is with the exception of the Child Criminal Exploitation offence, in respect of which the Scottish Government is still engaging with the UK Government. The response notes that, subject to the outcome of those discussions, there may be a requirement for further amendments to the Bill in relation to that offence, including consequential provision.

222. The Committee notes the explanation that the Scottish Ministers have been given a concurrent power to make consequential provision in relation to all the devolved matters which it is considered may give rise to the need for consequential amendments. The Committee is content with that approach.
223. Accordingly the Committee is content with the power as it is conferred on the Secretary of State and the Scottish Ministers respectively.

224. The Committee is content with the power and that its exercise is subject to the negative procedure where not amending primary legislation, and otherwise to the affirmative procedure.

Clauses 201^{xxvii}: Powers to make commencement, transitional and saving provision

Powers conferred on: Secretary of State and the Scottish Ministers

Powers exercisable by: Regulations or orders made by statutory instrument

Procedure: None where exercised by the Secretary of State; 'laid only' where exercised by the Scottish Ministers

Provision

225. Clause 201 contains ancillary provision in connection with the coming into force of the Bill. It commences some provisions on the day after which the Bill is passed: the final provisions of the Bill, and some provisions which contain subordinate legislation-making powers, in so far as is necessary for making those regulations. It commences further provisions on a date 2 months after the Bill receives Royal Assent.
226. Subsection (1) contains a power for the Secretary of State to appoint day(s) to bring the remaining provisions of the Act into force, other than where that power is conferred on the Scottish Ministers (or the Department of Justice in Northern Ireland).
227. Subsection (4) confers an additional power on the Secretary of State to make transitional or saving provision in connection with the coming into force of any provision of the Bill.
228. Subsection (7) confers power on the Scottish Ministers to appoint day(s) for the coming into force of the following, insofar as extending to Scotland:
- Clauses 40 and 41 (offence of child criminal exploitation)

^{xxvii} Clause 135 on introduction.

- Chapter 5 of Part 5 (management of sex offenders).
229. Subsection (9) confers power on the Scottish Ministers to appoint day(s) for the coming into force of clause 145(3) and Schedule 18 order (proceeds of crime and other property connected with criminal behaviour: Scotland).
230. The powers in subsections (7) and (9) include power to make associated transitional or saving provision.
231. Clause 202 provides a requirement for the Secretary of State to consult the Scottish Ministers and the Department of Justice in Northern Ireland before commencing Chapter 2 or 4 of Part 4 (Cuckooing and supplementary provision) or section 94(1) (management of sex offenders – restriction on applying for replacement identity documents in new name, as it applies to England & Wales). Similarly, before commencing section 94(1) as it applies to Scotland, the Scottish Ministers must consult the Secretary of State and the Department of Justice in Northern Ireland.
232. As is normal with ancillary powers in connection with commencement, these powers are not subject to any parliamentary procedure in the UK Parliament, and require to be ‘laid only’ in the Scottish Parliament.
233. The DPM explains that leaving provisions to be commenced by regulations or orders is intended to afford flexibility to commence the provisions at a convenient time, considering the need to issue guidance, undertake appropriate training, and put necessary systems and procedures in place. Similarly, standard ancillary powers will provide a smooth transition between existing and new legislation.
234. The Committee considers that these are standard powers to make provision in connection with the coming into force of the Bill. If the Parliament is content to give its consent for the substantive provisions in the Bill, it would be reasonable and appropriate for it also to consent to the taking of these standard ancillary powers to give it full effect. As such, the Committee is content with the powers in principle and with the choice of parliamentary procedure, which is again standard for commencement powers.
235. With regard to the provision which makes the Scottish Ministers responsible for bringing into force certain provisions falling within the Parliament’s legislative competence, but the Secretary of State responsible for others, the Committee is also content. These powers are limited to making provision about commencement and also cannot be used to modify primary legislation.
236. Accordingly, the Committee is content with these powers in principle, and that they are not subject to further parliamentary procedure.

237. The Committee is content with the powers in principle and that they are not subject to further parliamentary procedure.

