

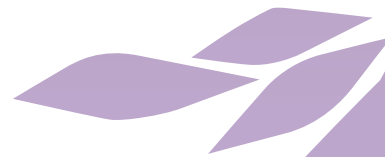


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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Legislative Consent Memorandum: Offensive Weapons Bill



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Contents

Introduction	1
Legislative Consent Memorandum	2
Brief outline of the Bill	3
Delegated powers	4
Clause 1(5)(c): Sale of corrosive products to a person under 18	4
Clause 4(8)(c): Delivery of corrosive products to persons under 18	5
Clause 18(7) (clause 16(7) in Bill as introduced): Defences to offence under clause 17 (clause 15 as introduced)	5
Clause 20(8)(c) (clause 18 on introduction): Delivery of bladed articles to persons under 18	6
Clause 27 (clause 25 on introduction): Payments in respect of surrendered offensive weapons	7
Clause 41(2) and (7) (clause 39(2) and (7) on introduction): Commencement	8

Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is 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; and

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

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



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Introduction

1. At its meetings on 25 September and 2 October 2018, the Committee considered the provisions in the Offensive Weapons Bill (“the Bill”).ⁱ
2. The Bill was introduced by the UK Government in the House of Commons on 20 June 2018. The Bill is due to have its report stage and third reading on 15 October 2018. The Bill completed its committee stage on 11 September 2018.
3. A number of clauses in the Bill extend to Scotland. Some fall within a reserved area (such as the new offence of selling corrosive products to under 18s). However, a number trigger the requirement for a legislative consent motion because they either fall in a devolved area, or extend the executive competence of the Scottish Ministers. The Bill also confers some delegated powers on the Scottish Ministers.
4. This Report refers to the clauses as numbered in the latest version of the Bill, with the original clause numbers in brackets, for ease of reference. The UK Delegated Powers Memorandum and the Legislative Consent Memorandum (LCM) refer to the numbering of the Bill as introduced.

ⁱ The latest version of the Bill as amended in Committee is available [here](#).

Legislative Consent Memorandum

5. The Scottish Government lodged an LCM, which is available [here](#).
6. The lead committee in respect of the LCM is the Justice Committee. The draft motion, which will be lodged by the Cabinet Secretary for Justice is:
 - ” “That the Parliament agrees that the relevant provisions of the Offensive Weapons Bill, introduced in the House of Commons on 20 June 2018, relating to the creation of new offences in respect of corrosives, stop and search powers in relation the new offence of possession of a corrosive substance in public, certain procedural provisions relating to the corrosives offences, a new defence specific to remote sales relating to the existing offence of sale of bladed articles to under 18s, a new offence of delivery of bladed articles to residential premises, a new offence of delivery of bladed articles to under 18s when purchased remotely from outwith the UK, changes to the definition of a flick knife, a new offence of possession in all place of certain knives and offensive weapons, arrangements for disposal of these certain knives and offensive weapons, and prohibition of certain firearms and commencement powers, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”
7. The LCM was considered by the Committee under Rule 9B.3 of the Parliament’s Standing Orders. Paragraph 6 of Rule 9B.3 provides that where the Bill that is the subject of a legislative consent memorandum 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.

Brief outline of the Bill

8. The Bill deals with three aspects of violent crime: ‘acid attacks’, knife crime and gun crime. The Bill consists of 7 parts: -
- Part 1 creates a new criminal offence of selling a corrosive product to a person under the age of 18. This offence extends to the United Kingdom. What constitutes a corrosive product is set out in Schedule 1 to the Bill.
 - Part 2 creates a new criminal offence of possessing a corrosive substance in a public place. Corrosive substance is defined as “a substance which is capable of burning human skin by corrosion”. In Scotland, there is a defence of possessing a corrosive substance having reasonable excuse or lawful authority to do so.
 - Part 3 creates new criminal offences prohibiting the dispatch of bladed products and corrosive products sold online in the United Kingdom to a residential address or locker. The offence on the dispatch of bladed products includes defences for made to order items and for items acquired for sporting and re-enactment purposes. Deliveries to business customers will not be affected by the proposals in the Bill. It also amends section 141A of the Criminal Justice Act 1988 (prohibiting the sale of bladed articles to those under 18) so that the existing defence of having taken reasonable precautions and exercised due diligence can only be relied on in relation to online sales in the United Kingdom where the seller meets certain conditions in terms of age verification, packaging and delivery of the items. It creates a new criminal offence on delivery companies in the United Kingdom of delivering bladed articles on behalf of a seller outside of the United Kingdom to a person under the age of 18.
 - Part 4 amends the definition of a ‘flick knife’ in section 1 of the Restriction of Offensive Weapons Act 1959. It makes it a criminal offence to possess knives covered by section 1 of the 1959 Act (flick knives and gravity knives) and any of the weapons covered by section 141 of the Criminal Justice Act 1988 – these include weapons such as knuckledusters and “zombie knives”. It also provides for the surrender of the prohibited weapons and the compensation of owners. The offence extends to the United Kingdom.
 - Part 5 (threatening with offensive weapon) does not extend to Scotland.
 - Part 6 prohibits firearms with a high muzzle energy, self-unloading rifles and a firearm device known as a ‘bump stock’ under section 5 of the Firearms Act 1968. It provides for the surrender of these weapons and for the payment of compensation to their owners.
 - Part 7 makes provision for the commencement of the Bill provisions. It also sets out the territorial extent and application in the UK of each of the measures.

Delegated powers

9. There is no delegated powers memorandum by the Scottish Government available for the Committee's consideration, but this is normal for UK Bills. The Home Office has published a DPM for the entire Bill (the 'UK DPM').ⁱⁱ
10. The UK DPM identifies each of the provisions in the Bill that confers powers to make delegated legislation. It explains in each case the purpose of the power, why a delegated power is appropriate, and the parliamentary procedure that has been selected.
11. This Report considers the powers delegated to the Scottish Ministers.
12. The Committee reports to the Justice Committee as set out below.

Clause 1(5)(c): Sale of corrosive products to a person under 18

- **Power conferred on: The Scottish Ministers**
- **Power exercised by: Order**
- **Parliamentary Procedure: Negative**

Provisions

13. Clause 1 creates a new offence of selling a corrosive product to a person under 18. It further provides that, in Scotland, it is a defence for an accused person to show that (a) they believed the person to whom the corrosive product was delivered to be aged 18 or over, and (b) either they had taken reasonable steps to check the person's age, or no reasonable person could have suspected from the person's appearance that the person was under the age of 18. The clause sets out what constitute reasonable steps for the purpose of verifying age. It provides that only certain types of document are acceptable as proof of a person's age, namely a passport or a European Union photocard driving licence.
14. Clause 1(5)(c) confers on the Scottish Ministers a power to prescribe by order additional types of document that would be acceptable in establishing a person's age for the purposes of the 'reasonable steps defence'.

Committee consideration

15. The Committee agreed with the justification set out in the UK DPM. This power "future proofs" the legislation so that Ministers will be able to allow new forms of ID in future. It is also consistent with comparable provisions regarding sale of items to persons under a certain age (such as alcohol and knives).

Recommendations

ⁱⁱ The UK Delegated Powers Memorandum is available [here](#).

16. **The Committee finds the power to make an Order in clause 1(5)(c) of the Bill acceptable in principle.**
17. **The Committee is content that the exercise of the power should be subject to the negative procedure.**

Clause 4(8)(c): Delivery of corrosive products to persons under 18

- **Power conferred on: The Scottish Ministers**
- **Power exercised by: Order made by Scottish statutory instrument**
- **Parliamentary Procedure: Negative**

Provisions

18. Clause 4 creates a new offence of delivering corrosive products to persons under 18, where the products are purchased from overseas sellers (whether online or by mail order or telephone). This offence applies to corporate bodies that deliver corrosive products for overseas sellers.

Committee consideration

19. This offence is subject to same defence provided under clause 1 (discussed above). Clause 4(8)(c) confers on the Scottish Ministers a power to prescribe by order additional types of document that would be acceptable in establishing a person's age for the purposes of the 'reasonable steps defence'.
20. The same justification applies to this power and the power in clause 1.

Recommendations

21. **The Committee finds the power to make an Order in clause 4(8)(c) of the Bill acceptable in principle.**
22. **The Committee is content that the exercise of the power should be subject to the negative procedure.**

Clause 18(7) (clause 16(7) in Bill as introduced): Defences to offence under clause 17 (clause 15 as introduced)

- **Power conferred on: The Scottish Ministers**

- **Power exercised by: Regulations**
- **Parliamentary Procedure: Affirmative**

Provisions

23. The power in clause 18(7) enables the Scottish Ministers to add a new defence to the offence of delivery of a bladed product to residential premises or a locker under clause 17 of the Bill.
24. Clause 17 of the Bill makes it a criminal offence for a person who sells certain bladed products remotely (online or by mail order or telephone) to dispatch those products to an address that is used solely for residential purposes or to a locker.
25. Clause 18 provides defences to the offence of selling certain bladed products if they are manufactured to specifications provided by the buyer (for example a hand-crafted chef's knife that is made to specific specifications from the chef) or are intended for sporting or re-enactment purposes.
26. Clause 18(7) provides Scottish Ministers with a power to make regulations to add new defences to the Bill (but not to modify or remove the defences that are on the face of the Bill).

Committee consideration

27. The justification for conferring this power is set out in the UK DPM. It is anticipated that Scottish Ministers may wish to add to the list of defences in future as the operation of the new criminal offence might identify areas where it is having a significant impact on legitimate sellers and buyers of particular bladed articles. This power "future proofs" provision by enabling further defences to be provided quickly in future should experience of implementing the proposals identify unintended consequences.
28. The Committee agreed that the affirmative procedure provides the appropriate degree of scrutiny to allow the Scottish Parliament to fully consider and debate any new defences proposed.

Recommendations

29. **The Committee finds the power to make Regulations in Clause 18(7) of the Bill acceptable in principle.**
30. **The Committee is content that the exercise of the power should be subject to the affirmative procedure.**

Clause 20(8)(c) (clause 18 on introduction): Delivery of bladed articles to persons under 18

- **Power conferred on: The Scottish Ministers**

- **Power exercised by: Order**
- **Parliamentary Procedure: Negative**

Provisions

31. Clause 20 creates a new offence of delivering bladed articles to persons under 18, where the articles are purchased from overseas sellers (whether online or by mail order or telephone). This offence applies to corporate bodies that deliver bladed articles for overseas sellers.
32. Clause 20(6) to (9) provides the same defence as is provided by clauses 1 and 4 (it is a defence for an accused person to show that they had taken reasonable steps to check the person's age). It provides that only certain types of document are acceptable as proof of a person's age. Clause 20(8)(c) gives the Scottish Ministers the power to prescribe additional types of document that would be acceptable in establishing a person's age the defence.

Committee consideration

33. The same justification applies to this power as applies the powers in clauses 1 and 4.

Recommendations

34. **The Committee finds the power to make an Order in Clause 20(8)(c) of the Bill acceptable in principle.**
35. **The Committee is content that the exercise of the power should be subject to the negative procedure.**

Clause 27 (clause 25 on introduction): Payments in respect of surrendered offensive weapons

- **Power conferred on: The Scottish Ministers**
- **Power exercised by: Regulations**
- **Parliamentary Procedure: Affirmative**

Provisions

36. Clause 26 (clause 24 on introduction) provides for the surrender, at a police station, of weapons which are being prohibited under the Bill. The power in clause 27 (clause 25 on introduction) would enable the Scottish Ministers to make regulations providing for payment of compensation in respect of weapons surrendered.
37. As the Bill will prohibit the possession of certain weapons that are currently lawfully possessed, the Bill makes provision to compensate owners of any weapons that are surrendered.

Committee consideration

38. The justification for taking this power is set out in the UK DPM. The Committee considered that it is appropriate for compensation arrangements to be set out in subordinate legislation on account that they will be detailed and procedural in nature. The regulations will also need to set out the level of compensation payments available. For that reason, the Committee considered that the affirmative procedure provides the appropriate level of scrutiny.

Recommendations

39. **The Committee finds the power to make Regulations in clause 27 of the Bill acceptable in principle.**
40. **The Committee is content that the exercise of the power should be subject to the affirmative procedure.**

Clause 41(2) and (7) (clause 39(2) and (7) on introduction): Commencement

- **Power conferred on: The Scottish Ministers**
- **Power exercised by: Regulations**
- **Parliamentary Procedure: None**

Provisions

41. Clause 41(2) enables the Scottish Ministers to commence those provisions in the Bill that do not come into force on Royal Assent by commencement regulations or a commencement order. Clause 41(7) enables the Scottish Ministers to make by regulations any transitional, transitory or saving provisions needed in relation to the coming to force of a provision.

Committee consideration

42. The Committee is content with the justification for taking the powers given in the UK DPM.

Recommendation

43. **The Committee accepts that the commencement regulations are subject only to the default laying requirement under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010, which is the normal parliamentary procedure for commencement regulations.**

