

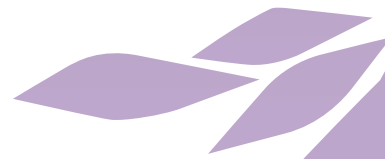


The Scottish Parliament
Pàrlamaid na h-Alba

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

Legislative Consent Memorandum:
Counter-Terrorism and Border Security
Bill



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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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Committee Membership



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Scottish National Party



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Scottish Labour



Alison Harris
Scottish Conservative
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Introduction

1. At its meeting on 13 November 2018, the Committee considered the provision in the Counter-Terrorism and Border Security Bill (“the Bill”) that confers power on the Scottish Ministers to make subordinate legislation.ⁱ
2. The Bill was introduced by the UK Government in the House of Commons on 6 June 2018 and had its third reading there on 11 September 2018. The Bill was introduced in the House of Lords on 12 September 2018 and is currently at Committee stage.
3. The Bill contains one delegated power conferred on the Scottish Ministers. The Bill extends to the whole of the United Kingdom, however, much of it deals with matters which are reserved to the UK Parliament.
4. This Report refers to the clauses as numbered in the latest version of the Bill.
5. The Bill contains a range of counter-terrorism measures, many of which update, amend and add to those already set out in existing legislation. Full details of the Bill can be found on the [UK Parliament’s website](#).

ⁱ The Bill is available [here](#).

Legislative Consent Memorandum

6. The Scottish Government lodged a Legislative Consent Memorandum on 1 November 2018.ⁱⁱ
7. 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 Counter-Terrorism and Border Security Bill, introduced in the House of Commons on 6 June 2018, relating to Anti-Terrorism Traffic Regulation Orders, the retention of Biometric material and legal aid, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”
8. The LCM was considered by the Committee under Rule 9B.3 of the Parliament's Standing Orders. Paragraph 6 of Rule 9B.3 of the Standing Orders 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.

ii The Legislative Consent Memorandum is available [here](#).

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 published an updated delegated powers memorandum on 12 September 2018 (“the UK DPM”) for introduction of the Bill to the House of Lords.ⁱⁱⁱ
10. The UK DPM identifies each of the provisions in the Bill that confer 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 power delegated to the Scottish Ministers.
12. The Committee reports to the Justice Committee as set out below.

Paragraph 19 of Schedule 4 – amendment to section 8A of the Legal Aid (Scotland) Act 1986: Power to prescribe circumstances in which criminal advice and assistance is automatically available.

- **Power conferred on: Scottish Ministers**
- **Power exercisable by: Regulations**
- **Procedure: Affirmative**

Provision

13. Section 8A of the Legal Aid (Scotland) Act 1986 provides that Scottish Ministers may by regulations provide that advice and assistance in relation to criminal matters is to be available for any “relevant client” without reference to financial limits and criteria detailed elsewhere in the 1986 Act. “Relevant client” is defined as a person to whom section 32 of the Criminal Justice (Scotland) Act 2016 applies (i.e. a person in police custody or attending an interview by a constable voluntarily about an offence which the constable has reasonable grounds to suspect the person of committing).
14. Paragraph 19 of Schedule 4 to the Bill expands the definition of “relevant client” to include persons detained under Part 1 of Schedule 3 to the Bill or section 41 of, or Schedule 7 to, the Terrorism Act 2000 (the “2000 Act”).

Committee Consideration

15. The Committee accepts that the explanation in the UK DPM provides justification for this proposed power, in principle. In addition, the Committee accepts that the power is subject to enhanced scrutiny under the affirmative procedure.

Recommendations

ⁱⁱⁱ The UK Delegated Powers Memorandum is available here: [12 September 2018](#).

16. **The Committee finds the power in Paragraph 19 of Schedule 4 of the Bill to be acceptable in principle.**
17. **The Committee is also content that the exercise of the power should be subject to the affirmative procedure.**

