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Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum: delegated powers relevant to Scotland in the Public Order Bill



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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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Committee Membership



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Scottish Conservative
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Oliver Mundell
Scottish Conservative
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Introduction

1. At its meeting on 20 December 2022, the Committee considered the delegated powers conferred on the Chief Constable of the British Transport Police (with consent of the Scottish Ministers) and on the UK Ministers in a UK Bill, the [Public Order Bill](#) ("the Bill") in areas of devolved competence.
2. Paragraph 1(b) of Rule 6.11 provides that the Delegated Powers and Law Reform Committee may consider and report on proposed powers to make subordinate legislation in particular Bills or other proposed legislation.
3. The Bill is a Government Bill introduced in the House of Commons on 11 May 2022. The Bill is currently at the Committee stage in the House of Lords.
4. A [Legislative Consent Memorandum](#) ("the LCM") for the Bill was lodged by the Scottish Government on 23 November 2022.
5. The lead committee for the LCM is the Criminal Justice Committee.

Overview of the Bill

6. The purpose of the Bill, according to the accompanying [Explanatory Notes](#), is to strengthen police powers to tackle dangerous and highly disruptive tactics employed by a minority of protesters. This includes provisions to protect major transport projects and key national infrastructure from being targeted by protesters, causing significant delays to the travelling public, preventing the distribution of critical goods such as fuel, and causing costly delays in construction.
7. The provisions of the Bill extend exclusively to England and Wales apart from certain provisions contained in Clause 16 (Assemblies and one-person protests: British Transport Police and MoD Police) of the Bill. Insofar as measures in Clause 16, which relate to the Ministry of Defence Police extend to Scotland, they are a reserved matter, specifically Defence (paragraph 9 of Schedule 5 to the Scotland Act 1998).
8. Clause 16 amends sections 14 (Imposing conditions on public assemblies) and 14ZA (Imposing conditions on one-person protests) of the Public Order Act 1986, which allow chief officers of the police to impose conditions on an upcoming public assembly or one-person protest where certain conditions are met. Section 14A (Prohibiting trespassory assemblies) is also amended. This provision currently allows chief officers of police, where they believe an assembly will be trespassing on land and may cause serious public disorder, to apply to the local council to prohibit trespassory assemblies, within a certain area for a maximum of 4 days.
9. The Bill provides that the provisions as amended would extend certain police powers (Police Scotland and English and Welsh territorial forces) under sections 14 and 14A of the Public Order Act 1986 to the British Transport Police (BTP).
10. Under Section 14 of the 1986 Act where a senior police officer (as defined in the Act) reasonably believes either that a public assembly may cause serious disorder, serious damage to property or serious disruption to the life of the community, or that the purpose of the organisers is to intimidate others to compel them out of doing something they have a legal right to do or to do an act they have a right not to do, the officer may impose such conditions as to location, maximum duration and/or maximum number of people taking part as are considered necessary to prevent these effects. If the proposed amendments under the Bill are extended to Scotland, this provision would allow BTP officers to exercise this power in relation to public assemblies on railway property.
11. Section 14A of the 1986 Act currently makes provision for the chief officer of police to apply to a local authority for an order prohibiting a trespassory public assembly on private land where the assembly may result in serious disruption to the life of the community or significant damage to the land or any building or monument on it (in specified circumstances). Such an order can prohibit all trespassory assemblies in the local area for a specified period (no longer than 4 days).

Delegated Powers

12. There are two clauses in the Bill which are exercisable within the Parliament's legislative competence, as they relate to the devolved matter of railway policing.

Assemblies and one-person protests: British Transport Police and MoD Police Clause 16:

Power conferred on: the chief constable of the British Transport Police (with consent of the Scottish Ministers)

Power exercisable by: order

Parliamentary procedure: none

Provision

13. The Bill makes provision to extend existing powers available (under section 14 of the 1986 Act) to territorial police (i.e Police Scotland) to British Transport Police officers to be exercised in relation to public assemblies on railway property. This includes imposing conditions such as on location, duration and number of people in attendance, to prevent specified effects of public assembly, namely serious disorder and serious damage to property (amongst other matters).
14. The Bill also makes provision to extend and modify current provisions (under section 14A of the 1986 Act) that allow the police to apply to a local authority for an order to prohibit a trespassory public assembly on private land (where the assembly would have specified effects). The Bill as amended would allow the chief constable of the British Transport Police (BTP) to make such an order (rather than the local authority) in Scotland with the consent of Scottish Ministers, and with the grounds for an order widened to include serious disruption to railway services.

Committee consideration

15. As stated in the LCM, the Committee noted that the amendment is solely in relation to extending existing police powers to BTP in Scotland and not for the powers themselves to be strengthened or amended. As the extension of these powers to the BTP in Scotland will allow them to exercise existing powers on the railway, which are currently already available to Police Scotland, the LCM notes that the Scottish Government welcomes and agrees to these provisions being extended to Scotland.
16. As amended, Section 14A of the 1986 Act will enable the Chief Constable of the BTP to make an order subject to the consent of the Scottish Ministers.
17. The Committee noted that these powers are not the sort of powers the exercise of which would generally be expected to come before Parliament for scrutiny. Imposing conditions on public assemblies or making orders to prohibit specified public assemblies where specified circumstances apply (and where related to railway property and disruption to railway services) are powers likely to be used in relation to time-bound matters concerning temporary public order and/or policing matters.

18. The Committee also noted that the existing power in section 14A enables local authorities to make orders prohibiting a trespassory assembly on private land, but these orders are not required to be laid before Parliament for scrutiny. Given the proposed amendment merely extends this power to the chief constable of the BTP with Scottish Ministers' consent, and slightly widens the grounds for granting an order, the Committee considered it reasonable to take the same approach to Parliamentary scrutiny as under the original power.
19. The Committee therefore considered that the exercise of the power by the BTP subject to obtaining consent from the Scottish Ministers is a proportionate approach, taking account of particular matters being policed and their time sensitive nature.
- 20. The Committee finds the power conferred on the Chief Constable of the British Transport Police, subject to the consent of the Scottish Ministers, under Section 14A of the Public Order Act 1986 (as amended) in clause 16 of the Bill to be acceptable in principle and that this is not subject to any parliamentary procedure.**

Extent, Commencement and Short Title

Clause 35(7):

Power conferred on: the Secretary of State

Power exercisable by: regulations

Parliamentary procedure: None

Provision

21. The UK Government DPM explains that Clause 35(7) of the Bill confers on the Secretary of State power to make such transitional, transitory or saving provisions as they consider appropriate in connection with the coming into force of the provisions in the Bill. Clause 35(8) provides that such regulations may make different provision for different purposes or areas.
22. The DPM also explains that this is a standard power which is only intended to ensure a smooth transition between existing law and the coming into force of the provisions of the Bill.
23. The Bill for the most part extends only to England and Wales. The only provisions which extend to Scotland, and that are devolved, are the provisions on railway policing (the amendments to sections 14 and 14A of the Public Order Act 1986 which extend to BTP).

Committee consideration

24. The Committee noted that the power conferred under Clause 35(7) of the Bill is a UK Government power which is not subject to any scrutiny in either the Scottish Parliament or the UK Parliament and is not subject to a requirement for any consent from the Scottish Ministers prior to the exercise of the power in areas of devolved

competence.

25. The Committee considered that given the devolved exercise of this power is restricted to making provision in connection with the coming into force of these two amendments under sections 14 and 14A of the Public Order Act 1986, there are no significant new powers being conferred on the Secretary of State in this regard.

26. The Committee finds the power conferred on the Secretary of State to make such transitional, transitory or saving provisions, as they consider appropriate, in connection with the coming into force of the provisions in the Bill, to be acceptable in principle.

27. The Committee is also content that the Secretary of State may exercise this power by way of regulations that are not subject to any requirement for consent from the Scottish Ministers where exercised in areas of devolved competence or subject to any parliamentary procedure.

