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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum: delegated powers relevant to Scotland in the Criminal Justice Bill



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Contents

Introduction	1
Overview of the Bill	2
Delegated Powers	5
Review of relevant powers	6

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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Introduction

1. At its meeting on 5 March 2024, the Committee considered the delegated powers that are exercisable within devolved competence in the [Criminal Justice Bill \(as amended\)](#) ("the Bill").
2. The Committee considered the [Legislative Consent Memorandum](#) ("LCM") dated 21 December 2023 for the Bill (as introduced) and the [Supplementary Legislative Consent Memorandum](#) ("Supplementary LCM") dated 13 February 2024 for the Bill (as amended) by virtue of Rule 9B.1 of the Scottish Parliament's Standing Orders - UK Parliament Bills making provision requiring the Parliament's consent.
3. The LCM is 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." This definition encompasses powers to make subordinate legislation in UK Bills, where exercisable within devolved competence and 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.

Overview of the Bill

4. The Bill was introduced by the UK Government in the House of Commons on 14 November 2023. The Bill has had its first and second readings, has been considered by a Public Bill Committee, and is now at the report stage in the Commons with the report still to be published. As the Bill is still progressing through the UK Parliament, it is subject to amendment. The Committee may therefore need to consider a further supplementary LCM in due course.
5. The stated purpose of the Bill is to amend the criminal law; to make provision about criminal justice (including the powers and duties of the police) and about dealing with offenders; to make provision about confiscation and the use of monies in suspended accounts; to make other provision about the prevention and detection of crime and disorder; to make provision about begging, rough sleeping and anti-social behaviour; to make provision about the police; and for connected purposes.
6. According to the Scottish Government's LCM, the UK Government has presented the Bill as having seven key objectives to keep communities safe by:
 - strengthening the law to protect the public from violence and intimidation;
 - tackling violence against women and girls;
 - enabling law enforcement agencies to respond to changing technology deployed by criminals;
 - equipping law enforcement agencies with the necessary powers to address emerging crime types and threats;
 - introducing tougher sentencing;
 - enhancing the management of offenders; and
 - strengthening public confidence in policing.
7. The amended Bill consists of 89 clauses and 9 schedules. 24 of these clauses and 4 schedules extend to Scotland and some clauses/schedules contain delegated powers. The applicable clauses are:
 - **Clause 1** of the Bill creates two new criminal offences of possessing any relevant article where a person intends, or has reasonable grounds to suspect, that it will be used in any serious crime; and of the importing, making, adapting, supplying, offering to supply a specified article where there are reasonable grounds to suspect that the article will be used in any serious crime.
 - **Clause 2** defines a "relevant article" as meaning a 3D printer firearms template; an encapsulator; a tablet press; a vehicle concealment. Clause 2(3) contains a regulation making power for the Secretary of State to amend Clause 2 to include other articles which will be subject to the offences. Clause 2(4) provides that before making regulations under this section, the Secretary of State must consult the Scottish Ministers, and the Department of Justice in Northern Ireland.

- **Clause 3** of the Bill makes it an offence to possess or import, make, adapt, supply or offer to supply an electronic device which gives rise to a reasonable suspicion that the device will be used in connection with a relevant offence. In Scotland a “relevant offence” means (i) theft of a vehicle, vessel or aircraft constructed or adapted for use for transporting one or more persons or of anything in such a vehicle, vessel or aircraft, or (ii) an offence under section 178 of the Road Traffic Act 1988.
- **Clause 4** of the Bill relates to the evidential burden for the defences.
- **Clauses 5 to 7 and Schedule 1** introduce new offences relating to the possession or supply of a “SIM farm.” with associated powers of entry and search for evidence of those offences. SIM (subscriber identity module) farms are electronic devices that can use five or more SIM cards simultaneously or interchangeably and which allow the user to send Short Messaging Service (“SMS”) texts or phone calls in large numbers over the telecommunications network. Clause 7(4) enables the Secretary of State by regulations to amend clause 7 for the purpose of modifying the definition of SIM farms as technology evolves. Regulations made are subject to the draft affirmative procedure given they could alter the ambit of the two offences.
- **Clause 8** introduces a power for the Secretary of State, by regulations, to introduce a new offence for the possession or supply of other electronic articles (specified in the regulations) used to facilitate fraud. Before making regulations under this section, the Secretary of State must consult such persons appearing to the Secretary of State to be likely to be affected by the regulations as the Secretary of State considers appropriate (clause 8(5)). Regulations made are subject to the draft affirmative procedure given they would be creating a new criminal offence
- **Clause 10** increases the maximum penalty for offences relating to the sale etc. of offensive weapons (under sections 141 and 141A of the Criminal Justice Act 1988, and section 1 of the Restriction of Offensive Weapons Act 1959).
- **Clause 16** provides for a corporate body or partnership to be held criminally liable where a senior manager commits any offence while acting within the actual or apparent scope of their authority, replacing provisions in the Economic Crime and Corporate Transparency Act 2023 which were confined to specified economic crimes.
- **Clause 26 and Schedule 3** provide investigative agencies with a power to apply to the court for an order that a third-party entity involved in the provision of internet protocol (IP) addresses and internet domain names should prevent access to an IP address or domain name. Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to suspension orders. In Scotland rules of court are, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, to be made by Act of Adjournal.
- **Clause 27** enables the Secretary of State to make regulations about access to driver licence records by the police and other law enforcement agencies.
- **Clause 39 and Schedule 4** amends Part 4 of the Counter-Terrorism Act 2008

(notification requirements) to enable courts to make notification orders in respect of persons who have committed certain domestic offences or service offences.

- **Clause 41 and Schedule 6** create a Suspended Accounts Scheme - a statutory scheme under which participating financial institutions (including banks or building societies) may transfer to the scheme administrator funds which represent the balances that have been suspended by them, and to allow those funds to be used in relation to economic crime. Paragraph 1 of Schedule 6 confers a power on the Secretary of State, by regulations, to establish the “suspended accounts scheme.”
 - **Clauses 42 to 45** strengthen the operation of Serious Crime Prevention Orders (“SCPOs”) by giving courts an express power to impose electronic monitoring requirements; enabling additional law enforcement agencies to apply to the High Court for an SCPO; introducing a standardised set of notification requirements; and allowing the Crown Court to make an order on its own motion or on an application on acquittal.
 - **Clause 84** provides a power for the Secretary of State to make certain provision by secondary legislation about appeals by chief officers of police and local policing bodies to the Police Appeals Tribunals.
 - **Clause 85** provides a power for the Secretary of State to make such provision as the Secretary of State considers appropriate in consequence of this Act and regulations may amend, repeal or revoke any legislation passed or made before, or in the same Session as, this Act
 - **Clause 86** provides that a power to make regulations includes a power to make (a) consequential, supplementary, incidental, transitional or saving provision; (b) different provision for different purposes.
 - **Clause 87** Extent
 - **Clause 88** provides powers for the Secretary of State power to bring certain provisions of the Bill into force by commencement regulations and 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 89** Short title.
8. The lead committee in respect of the LCM is the Criminal Justice Committee. A number of the provisions in the Bill applicable to Scotland relate principally to the devolved matter of justice and policing, which includes criminal justice, criminal law and procedure, and the police.

Delegated Powers

9. The UK Government has published a [Delegated Powers Memorandum](#) ("the 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.
10. As is normal for UK bills, the Scottish Government has not published a DPM. The Scottish Government's view on the relevant clauses is set out in the LCM and the Supplementary LCM.
11. In its [Explanatory Note](#) the UK Government considers that legislative consent is engaged in respect of clauses 8, 14 (now 16 in the amended Bill) and 21 (now 27 in the amended Bill).
12. In its LCM the Scottish Government agrees with the UK Government that clauses 14 (now 16 in the amended Bill) and 21 (now 27 in the amended Bill) are the provisions which it considers require the consent of the Scottish Parliament. It does not consider that clause 8 requires consent as this relates to a reserved matter. Clause 27 contains delegated powers.
13. Further, in the LCM, the Scottish Government explained that there was ongoing engagement with UK Government officials and Ministers so that parts of the Bill may be amended to extend those provisions to Scotland; and in that event a supplementary LCM would be submitted.
14. As a result, a supplementary LCM was published on 13 February 2024. In this the Scottish Government agrees with the UK Government that legislative consent is now also engaged as clauses 1 to 4 relate to devolved matters, given these provisions have now been extended to Scotland. Clause 2 contains delegated powers.
15. In summary, the UK and Scottish governments consider that legislative consent is required in respect of clauses 1 to 4, 16 and 27 of the Bill (only clauses 2 and 27 contain delegated powers). The Scottish Government states in its LCM and supplementary LCM that it is recommending that the Parliament consents to these provisions of the Bill.
16. In the Committee's view, as well as clauses 2 and 27, clauses 85(1)-power to make consequential amendments, 88(1)-power to make commencement regulations; and 88(4)-power to make transitional, transitory or saving provisions also confer delegated powers capable of being exercised within legislative competence. These are considered further in the next section of the report.

Review of relevant powers

Clause 2(3): Power to amend meaning of “relevant article”

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Provision

17. Clause 1 of the Bill creates two new criminal offences of possessing any relevant article where a person intends, or has reasonable grounds to suspect, that it will be used in any serious crime; and of the importing, making, adapting, supplying, offering to supply a specified article where there are reasonable grounds to suspect that the article will be used in any serious crime. Serious offences are offences such as fraud, money laundering, terrorism, drug and people trafficking. In Scotland, a “serious offence,” is an offence specified or described in Part 1A of Schedule 1 of the Serious Crime Act 2007.
18. Clause 2 defines a “relevant article” as a 3D printer firearms template, an encapsulator, a tablet press, and a vehicle concealment. This clause also contains a regulation making power for the Secretary of State to amend clause 2 to include other articles which will be subject to the new offences
19. Regulations to be made are subject to the affirmative procedure.
20. Before making regulations under this section, the Secretary of State must consult the Scottish Ministers, and the Department of Justice in Northern Ireland.

Committee consideration

21. The UK Government states in its DPM that this power is required because of the fast-paced nature of technological development and the readiness of criminals to exploit new opportunities to engage in crime. It considers it appropriate that the Secretary of State should have the ability to update the definition of a relevant article for the purposes of the offences through secondary legislation. This would ensure that the list of specific articles used in serious crime remains up to date, will enable the UK Government to amend and add articles to the specified list in response to the actions of individuals who facilitate and commit serious crime, and respond quickly to emerging threats and evolving criminal tactics.
22. The DPM further explains that regular consultation will take place with stakeholders including law enforcement agencies to identify tools or articles which enable serious crime to take place which are not captured under existing legislation. Each article will be considered carefully, examining the effects of listing new articles and the impact it would have on the public.
23. The UK Government considers that the affirmative procedure is appropriate as this power will amend the scope of a serious criminal offence and because this is a Henry VIII power. Parliament should therefore have the opportunity to debate and

approve any new articles that would be added to this criminal offence before they take effect, given the impact that this could have on the public.

24. As the purpose of the provision is to create new offences to criminalise the use of articles used in serious crime, this would be within devolved competence.
25. The supplementary LCM states that, after negotiations between the Scottish and UK Governments, the UK Government has agreed to the inclusion of a statutory duty to consult Scottish Ministers whenever the Secretary of State is considering adding an article to the list, but that it is not able to agree to including a consent mechanism. The UK Government has stated that this is because of the need to ensure a consistent regime across UK, since any divergence where the article in question is criminalised in England, Wales, and Northern Ireland, but not Scotland could lead to changes in criminal tactics, diverting these articles to where they are not criminalised with potential repercussions in terms of public safety.
26. The Scottish Government is recommending consent to this provision as it considers this would give law enforcement bodies additional tools to help tackle serious organised crime and would avoid the risk of a divergent Scotland being seen as an easier target for organised criminal groups. It considers that the pragmatic approach is to take advantage of this opportunity created by the UK Government and to consent to legislation to control certain articles used in organised crime and which also contains provision to add new articles to the list. In the Scottish Government's view, organised criminals remain flexible and quick to adapt to emerging technology and opportunities, and consenting to these provisions should allow a quicker legislative response to such technological advancements in the future.
27. For the reasons given in the DPM and the supplementary LCM with regard to the consistent prevention and prosecution of serious crime throughout the UK, the Committee agrees with the Scottish Government's recommendation to consent to this provision; and that, in the circumstances, it would not be appropriate or proportionate for the power to be made subject to a consent requirement.

28. **The Committee reiterates its position in relation to powers in UK bills conferred on UK Ministers in devolved areas, that:**
 1. **The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.**
 2. **Where such powers are exercised by UK Ministers 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.**
 3. **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.

4. **As a minimum, powers when exercised by UK Ministers in devolved areas should be subject to the process set out in the [SI Protocol 2](#) where the power is within the scope of that protocol.”**

29. **The Committee notes that there is no statutory requirement for the Secretary of State to obtain the Scottish Ministers’ consent before exercising this power but that there is a statutory requirement to consult Scottish Ministers.**

30. **The Committee also notes that SI Protocol 2 will not apply to the exercise of this power and that for oversight of how this power is exercised by the UK Government, or of the Scottish Ministers’ position when consulted, the Scottish Parliament will be reliant on information provided by the Governments.**

31. **The Committee considers that, in light of the explanation provided by the UK Government in the DPM and the Scottish Government’s reasons for recommending consent in the Supplementary LCM, it would not be appropriate or proportionate for the power to be made subject to a requirement to obtain Scottish Ministers’ consent.**

32. **For these reasons, the Committee is content with the power conferred on the Secretary of State in principle and with the specified UK parliamentary affirmative procedure.**

33. **The Committee will write to the Scottish Government to ask how it will facilitate Parliamentary scrutiny of any statutory consultations between the Secretary of State and Scottish Ministers.**

Clause 27(2) – New section 71(2) and (5) of the Criminal Justice and Court Services Act 2000: Duty to make driver information regulations

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative for regulations made under section 71(5), negative for regulations made under section 71(2)

Provision

34. **Clause 27(2) substitutes a replacement section 71 of the Criminal Justice and Courts Act 2000. New section 71(1) provides for the Secretary of State to make driver licensing records available for use by an “authorised person”. An authorised person is defined in new section 71(3) as a person who is under the direction and control of the chief officer of a body listed in new section 71(4) and is authorised by**

that chief officer to receive information for the purpose of section 71.

35. New section 71(2) places a duty on the Secretary of State to make “driver information regulations” setting out the purposes for which, and the circumstances in which, driver records may be made available for the purposes of section 71. The prescribed purposes must be related to policing or law enforcement.
36. New section 71(5) enables driver information regulations to amend section 71(4) to add a body to that subsection or to modify or remove a reference to a body listed in that subsection.
37. New section 71(6) allows driver information regulations to provide for (among other things) the purposes for which the data may be made available and subsequently disclosed (and those for which it may not be used or further disclosed) and the conditions that must be met by the person receiving the information.
38. Before making driver information regulations, the Secretary of State is required to consult the persons specified in new section 71(8) including Scottish Ministers.
39. Regulations made under new clause 71(2) are subject to the negative procedure and under clause 71(5) the affirmative procedure.

Committee consideration

40. The UK Government states in its DPM that this power is required as new section 71 re-establishes the principle that DVLA driver records can be shared with policing and other law enforcement agencies for policing and law enforcement purposes; and that it is appropriate to set out the precise purposes, and the circumstances in which, driver records may be made available to an authorised person. Regulations will ensure that driver records can only be accessed for particular prescribed functions, such as the investigation of crime, and not more broadly.
41. New section 71(4) sets out a list of bodies the personnel of which may access driver licence records. The UK Government considers it appropriate that this list can be added to or otherwise amended by regulations (new section 71(5)). This would enable other bodies exercising law enforcement functions to be readily added to the list should an operational case be made to access driver licence records or for a body to be removed from the list or for an entry to be modified.
42. New section 76(5A), as inserted by clause 27(3), provides that regulations made under new section 71(2) are subject to the negative procedure while those made under new section 71(5) are subject to the affirmative procedure. The negative procedure for the section 71(2) regulations is considered appropriate by the UK Government as the overall purposes for which driver licence records may be accessed by a listed body will be established in the primary legislation and regulations would then narrow the purposes for which such records may be made available. Further, it considers that the affirmative procedure is appropriate for regulations made under section 71(5), given regulations may expand the list of bodies to which driver licence records may be disclosed and because this is a Henry VIII power.
43. The LCM states that clause 27 enables the Secretary of State to make regulations permitting persons authorised by various bodies, including the Police Service of Scotland, to access and use driver licence records for policing or law enforcement

purpose specified in the regulations. The Scottish Government considers that this provides a more flexible replacement for the existing section 71. It also considers that this clause requires legislative consent as the purposes for which access is granted, and for which the material accessed is used, are likely to be for devolved purposes. Further the LCM notes that this provision includes a requirement to consult with the Scottish Ministers before making such driver information regulations or an associated code of practice.

44. The Scottish Government is recommending legislative consent in relation to this clause as it includes the Police Service of Scotland in the list of permitted forces to whose authorised persons UK driver record details may be disclosed for policing or law enforcement purposes; and that the ability to access and use this information is valuable to the Police Service of Scotland for these purposes.
45. For the reasons given in the DPM and the LCM as to the value of driver records details to the Police Service of Scotland for policing or law enforcement purposes, and given the additional protections afforded by data protection legislation, the Committee agrees with the Scottish Government's recommendation to consent to this provision; and that, in the circumstances, it would not be appropriate or proportionate for the power to be made subject to a consent requirement.

46. The Committee reiterates its position in relation to powers in UK bills conferred on UK Ministers in devolved areas, that:

- 1. The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.**
- 2. Where such powers are exercised by UK Ministers 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.**
- 3. 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.

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

- 47. The Committee notes that there is no statutory requirement for the Secretary of State to obtain the Scottish Ministers' consent before exercising this power but that there is a statutory requirement to consult Scottish Ministers.**

48. **The Committee also notes that SI Protocol 2 will not apply to the exercise of this power and that for oversight of how this power is exercised by the UK Government, or of the Scottish Ministers' position when consulted, the Scottish Parliament will be reliant on information provided by the Governments.**

49. **The Committee considers that, in light of the explanation provided by the UK Government in the DPM and the Scottish Government's reasons for recommending consent in the Supplementary LCM, it would not be appropriate or proportionate for the power to be made subject to a requirement to obtain Scottish Ministers' consent. For these reasons, the Committee is content with the power conferred on the Secretary of State in principle and with the specified UK parliamentary affirmative procedure.**

50. **The Committee will write to the Scottish Government to ask how it will facilitate Parliamentary scrutiny of any statutory consultations between the Secretary of State and Scottish Ministers.**

Clause 27(2) – New section 71A(1) of the Criminal Justice and Court Services Act 2000: Code of practice about access to driver licence records

Power conferred on: Secretary of State

Power exercisable by: Statutory code of practice

Parliamentary procedure: None

Provision

51. Clause 27(2) also inserts new section 71A into the Criminal Justice and Courts Act 2000, which confers a power on the Secretary of State to issue a code of practice about the receipt and use of driver licence records accessed under new section 71. This enables the code to make different provision for different purposes or different areas. New section 71A(6) requires any persons to whom driver licence records are made available under section 71 to have regard to the code.

52. Before issuing a code of practice, the Secretary of State is required to consult the persons specified in new section 71A(3) including Scottish Ministers.

Committee consideration

53. The UK Government states in its DPM that the processing of driver licence records will be subject to the requirements in the driver information regulations and the UK General Data Protection Regulation and the Data Protection Act 2018. The code of practice to be issued is intended to set out the appropriate tests and safeguards for the processing of such data, to assist with compliance with the data protection legislation.

54. The UK Government considers that a code of practice is the most appropriate vehicle to set out expectations and broad responsibilities in relation to the processing of driver licence records. There is a vast range of statutory guidance

issued each year and it is important that the code can be readily updated to keep pace with events and operational good practice.

55. The UK Government further considers that given the likely content and nature of the code, and in particular the fact that it will not define or create new legal responsibilities, and that the processing of data must be in accordance with the requirements of data protection legislation, it is not necessary for the code to be subject to any parliamentary procedure.
56. As above, the Scottish Government is recommending legislative consent in relation to clause 27, including the issuing of a code subject to consultation.

57. The Committee reiterates its position in relation to powers in UK bills conferred on UK Ministers in devolved areas, that:

- 1. The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.**
- 2. Where such powers are exercised by UK Ministers 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.**
- 3. 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.

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

58. **The Committee notes that there is no statutory requirement for the Secretary of State to obtain the Scottish Ministers' consent before exercising this power but that there is a statutory requirement to consult Scottish Ministers.**

59. **The Committee also notes that SI Protocol 2 will not apply to the exercise of this power and that for oversight of how this power is exercised by the UK Government, or of the Scottish Ministers' position when consulted, the Scottish Parliament will be reliant on information provided by the Governments.**

60. **The Committee considers that, in light of the explanation provided by the UK Government in the DPM and the Scottish Government's reasons for recommending consent in the Supplementary LCM, it would not be appropriate or proportionate for the power to be made subject to a requirement to obtain Scottish Ministers' consent. For these reasons, the Committee is content with the power conferred on the Secretary of State in principle and with no UK parliamentary procedure.**
61. **The Committee will write to the Scottish Government to ask how it will facilitate Parliamentary scrutiny of any statutory consultations between the Secretary of State and Scottish Ministers.**

Clause 85(1): Power to make consequential amendments

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative if amends primary legislation, otherwise negative

Provision

62. The DPM explains that clause 85(1) confers a power on the Secretary of State to make consequential provision for the purposes of the Bill. Such provision may include repealing, revoking or otherwise amending primary and secondary legislation.
63. Regulations made under this clause are subject to the affirmative procedure if amending primary legislation, otherwise the negative procedure.

Committee consideration

64. The UK Government states in its DPM that this power is required because although the Bill already includes some changes to other enactments as a result of the substantive provisions in the Bill, it is possible that not all of the necessary consequential amendments have been identified in the Bill's preparation. As a result, there could be an impact on the public perception of the criminal justice system if a provision is missed; and this could undermine the administration of justice and would need immediate rectification. The UK Government considers that it would therefore be prudent for the Bill to contain a power to deal with these in secondary legislation.
65. Further, the UK Government acknowledges that the powers conferred by this clause are wide, but they are limited by the fact that any amendments made under the regulation-making power must be genuinely consequential on provisions made by or under the Bill.
66. If regulations made under this power do not amend or repeal primary legislation, they will be subject to the negative resolution procedure. However, if regulations made do amend or repeal provision in primary legislation, they will be subject to the affirmative procedure as befitting a Henry VIII power. The UK Government

considers that this provides the appropriate level of parliamentary scrutiny for the powers conferred by this clause.

67. The Committee noted that the power is widely drawn; that it could conceivably be used to make provision within legislative competence, including modifying Scottish primary and secondary legislation; and that such provision would not be subject to scrutiny by the Scottish Parliament.
68. However, considering this ancillary power in the context of the Bill as a whole, while the power is relatively widely drawn, the policy is clearly developed on the face of the Bill. Therefore, the type of provision that could be made under this power is limited to provision that is consequential on those detailed provisions. It is unlikely that it could be used to make significant new policy which is not foreseeable from reading the Bill itself. The Bill contains limited devolved content. The Committee considers that if the Parliament is content with those main provisions, it can be content with this ancillary power.
69. The Committee therefore considered that it was content with the proposed parliamentary procedure: negative procedure for regulations which amend secondary legislation and affirmative procedure for regulations amending primary legislation.
70. This power is not mentioned in the LCM or Supplementary LCM

- 71. The Committee is content with the power conferred on the Secretary of State in principle and with the specified UK parliamentary procedures which are dependent on whether the power is exercised to amend primary legislation.**

Clause 88(1): Power to make commencement regulations

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: None

Provision

72. The DPM explains that clause 88(1) contains a standard power for the Secretary of State to bring certain provisions of the Bill into force by commencement regulations.
73. It is further explained that as is usual with commencement provisions, regulations made under this clause are not subject to any parliamentary procedure.

Committee consideration

74. The reason provided in the DPM for this power is that by leaving provisions in the Bill to be brought into force by regulations this will afford the necessary flexibility to commence the provisions of the Bill at the appropriate time, having regard to the need to make any necessary secondary legislation, issue guidance, undertake appropriate training and put the necessary systems and procedures in place, as the case may be.

75. The Committee noted that the power to commence provisions by regulations, and that the regulations are subject to being laid only, is standard practice for commencement regulations in modern primary legislation.
76. This power is not mentioned in the LCM or Supplementary LCM.

77. The Committee is content with the power conferred on the Secretary of State in principle and that the regulations under this clause are not subject to any parliamentary procedure

Clause 88(4): Power to make transitional, transitory or saving provisions

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: None

Provision

78. The DPM explains that clause 88(4) 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 to ensure a smooth transition between existing legislation and the Bill, without creating any undue difficulty or unfairness in making these changes.
79. It is further explained that such powers are often included as part of the power to make commencement regulations and, as such, are not subject to any parliamentary procedure on the grounds that Parliament has already approved the principle of the provisions in the Bill by enacting them.

Committee consideration

80. The Committee noted that this is a standard power and that it is narrow and limited to regulations to be made in connection with commencement of the provisions of the Bill.
81. Further the regulations are subject to being laid only and not subject to any parliamentary procedure, which is standard for transitional, transitory or saving provisions in commencement regulations.
82. This power is not mentioned in the LCM or Supplementary LCM.

83. The Committee finds the power conferred on the Secretary of State to be acceptable in principle, and that the regulations under this clause are not subject to any parliamentary procedure.

