



The Scottish Parliament
Pàrlamaid na h-Alba

Published 13 March 2020
SP Paper 703
4th Report, 2020 (Session 5)

Justice Committee Comataidh a' Cheartais

Legislative Consent Memorandum - Air Traffic Management and Unmanned Aircraft Bill



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
[http://www.parliament.scot/abouttheparliament/
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Introduction	1
About the Bill	1
Legislative consent memorandum	3
Consideration by the Justice Committee and recommendation	4

Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/justice-committee.aspx>



justicecommittee@parliament.scot



0131 348 5047

Committee Membership



Convener
Margaret Mitchell
Scottish Conservative
and Unionist Party



Deputy Convener
Rona Mackay
Scottish National Party



Alasdair Allan
Scottish National Party



John Finnie
Scottish Green Party



James Kelly
Scottish Labour



Liam Kerr
Scottish Conservative
and Unionist Party



Fulton MacGregor
Scottish National Party



Liam McArthur
Scottish Liberal
Democrats



Shona Robison
Scottish National Party

Introduction

1. The [Air Traffic Management and Unmanned Aircraft Bill](#) is a UK Government Bill introduced in the House of Lords on 9 January 2020. The Bill is currently nearing Report stage in that House. As such, the Scottish Parliament needs to take a view on legislative consent before the Bill has reached its last amending stage

About the Bill

2. The Bill's provisions extend and apply to the whole of the UK. Civil aviation (including airspace) is a reserved matter. The Explanatory Notes accompanying the Bill set out the UK Government's view of its purpose and main functions. The UK Government describes the overall aim of the Bill is to modernise UK airspace and to tackle the illegal use of unmanned aircraft (UA). The Bill provides that "unmanned aircraft" means any aircraft operating or designed to operate autonomously or to be piloted remotely without a pilot on board. Drones and model aircraft are the most commonly used types of UA.
3. The Bill contains provisions which make changes to Scots law on devolved matters, however these are, principally, for the purpose of the reserved matter of air transport. This includes, in Part 3, a power conferred on a police constable to require the suspected controller of an unmanned aircraft to ground it where there are reasonable grounds for believing that the aircraft has been or is likely to be involved in the commission of an offence. Failure to comply with such a requirement is itself an offence. Power is also conferred on the police to search a person or a vehicle where there is reasonable suspicion that this will yield evidence of an unmanned aircraft being involved in various sorts of air navigation offence or prison offence. There is also a new judicial power to issue a search warrant to look for a specified unmanned aircraft or an article associated with it which has been involved in the commission of a "relevant offence" (an offence under the Bill or various air navigation/prisons offences).
4. While police powers and criminal procedure are generally devolved, the overall purpose of the Bill is reserved. Aspects of the Bill that clearly do trigger the need for an LCM are as follows:

Part 3: Unmanned Aircraft

Clause 12: General police powers and prison powers relating to unmanned aircraft. This clause introduces Schedule 8 which amongst other things gives those with responsibilities in respect of prisons certain powers relating to tackling the illegal use of unmanned aircraft.

Schedule 8: Authorisations to interfere with property etc.

Schedule 8, paragraph 5 of the Bill amends section 93 of the Police Act 1997 to insert a limb alongside the serious crime definition under which property interference authorisations can be obtained by a Scottish Prison Officer to allow interference where an UA is being used in the commission of certain offences relevant to Scottish prisons – the definition of those "relevant offences" in this case is set out in the amendments made by paragraph 5(11).

Paragraph 5 of Schedule 8 also amends section 93 to provide for persons to authorise such interference. At subparagraph (15) it requires that person to be a senior manager at a penal institution, (Scottish Prison Service (SPS) staff), who has functions exercisable in relation to that institution and who has been designated for that purpose by the Scottish Ministers. This conferral of functions on Scottish Ministers alters their executive competence. Paragraphs 19 and 20 make amendments to section 93 by providing definitions of terms used in the amendments.

Schedule 8, paragraph 6(4) of the Bill amends section 94(1) of the Police Act 1997 to allow a designated deputy to the authorising person identified in section 93, to instead authorise an interference in certain circumstances. Paragraph 6(11) amends section 94(4) (which sets out definitions for section 94(1)), to make further provision about that designated deputy, including that they are to be designated for these purposes by the Scottish Ministers. This conferral of functions on Scottish Ministers alters their executive competence.

Section 94(2) makes provision for authorisation in urgent cases in the absence of both the authorising person identified under section 93 and their designated deputy. Schedule 8, paragraph 6(8) of the Bill amends section 94(2) so that in such cases the authorisation is by an employee of the Scottish administration with particular penal institution duties and who has been authorised for such a purpose by the Scottish Ministers. This conferral of functions on Scottish Ministers again alters their executive competence

5. In summary, these provide overall for amendments to sections 93 and 94 of the Police Act 1997, for the purpose of authorisation of actions in relation to UA where such action is necessary for the purpose of preventing or detecting the use of that aircraft in the commission of an offence relating to a Scottish prison.
6. The amendments set out that the person who may authorise such actions will be certain persons (the primary authorising person), who are designated by the Scottish Ministers. It makes further provision for other persons authorised by the Scottish Ministers to also authorise such actions in the absence of the primary authorising person. There is no prescribed procedure to be followed by Scottish Ministers when they designate
7. On that basis legislative consent of the Scottish Parliament is being sought, and a [legislative consent memorandum](#) was lodged by Humza Yousaf MSP, Cabinet Secretary for Justice, on 26 February 2020.

Legislative consent memorandum

8. The LCM states that it is the view of the Scottish Government that to the extent that the Bill legislates in an area of devolved competence or make changes to the executive competence of the Scottish Ministers it should be considered by the UK Parliament.
9. The LCM (Annex, paragraph 16) sets out the Scottish Government's draft motion, namely:

"That the Parliament agrees that the relevant provisions of the Air Traffic Management and Unmanned Aircraft Bill, introduced in the House of Lords on 9 January 2020, so far as they fall within the legislative competence of the Scottish Parliament or alter the executive competence of Scottish Ministers, should be considered by the UK Parliament."

Consideration by the Justice Committee and recommendation

10. The Justice Committee considered the Bill and the Scottish Government's LCM at its meeting on 10 March 2020. The Committee had no points it wished to raise.

11. The Committee agreed with the recommendation of the Scottish Government that the Scottish Parliament should give its consent to the relevant provisions in the Air Traffic Management and Unmanned Aircraft Bill.

