

Supplementary Legislative Consent Memorandum

Police, Crime, Sentencing and Courts Bill

Background

1. This supplementary Legislative Consent Memorandum (LCM) has been lodged by Keith Brown MSP, Cabinet Secretary for Justice and Veterans, under Rule 9B.3.1(a) of the Parliament's Standing Orders. This supplementary LCM augments the original LCM (LCM-S6-4¹) on the Police, Crime, Sentencing and Courts Bill which was lodged on 5 August 2021. That LCM identified a number of provisions contained within the Bill that alter the executive competence of the Scottish Ministers or which fall within the legislative competence of the Scottish Parliament for which the Scottish Ministers sought the Scottish Parliament's consent.

2. The original LCM indicated the Scottish Government did not, at that point, recommend consent for the power to extract information from digital devices. It stated that once the position around investigation of deaths was resolved satisfactorily the Scottish Government intended to bring forward a supplementary memorandum for these provisions in order to ensure a consistent approach that takes account of Scotland's distinct position. The UK Government has confirmed that the issue will be kept under review, once the data extraction provisions are in force. The Scottish Government has now concluded that the identified risk is not sufficiently material to prevent the Scottish Government recommending that the Scottish Parliament consent to these provisions.

3. The Police, Crime, Sentencing and Courts Bill ("the Bill") was introduced in the House of Commons on 9 March 2021. The latest version of the Bill can be accessed at: <https://bills.parliament.uk/bills/2839/publications>.

Need for a Supplementary LCM

4. The Scottish and UK Government have been working together to refine the draft Code of Practice for the data extraction provisions to account for Scotland's interests. Since lodging the previous LCM the UK Government have confirmed that the draft Code of Practice will not be finalised until sometime after the Bill attains Royal Assent, and completion of a full public consultation, to ensure it is fit for purpose. The UK Government has also confirmed that the data extraction provisions will not be commenced in Scotland until the Code of Practice has been finalised.

5. The provisions which will require a supplementary LCM are:

- Power to **extract information from digital devices** of witnesses, victims and others to the extent that these provisions are not covered by the reservation in

¹ [police-crime-sentencing-and-courts-bill-legislative-consent-memorandum.pdf \(parliament.scot\)](#)

the Scotland Act 1998 in relation to the interception of communications. These provisions are detailed in full in paragraphs 12 to 16 of the original LCM (LCM-S6-4). While interception of communications is reserved under head B8 of schedule 5 of the Scotland Act 1998, police powers and the criminal law generally are not reserved. The UK Government have accepted our view that the provisions require an LCM. This is both because the powers go wider than communications, to include information more generally, and because it is questionable whether extracting information from a device which has been isolated from the network (which is the standard practice of Police Scotland amongst others) actually amounts to interception of communications at all.

Financial implications

6. This supplementary LCM will have no impact on the financial implications set out in the previous LCM.

Conclusion

7. The Scottish Government recognises that crime has no respect for borders or boundaries and, as such, must be tackled across multiple jurisdictions. Applying the relevant provisions of the Bill to Scotland will help meet the Scottish Government's commitment to further modernising and reforming the justice system in Scotland and to improving the efficiency of the Court system, thus making Scotland a safer and fairer and more transparent country.

8. Originally while the Scottish Government agreed in principle with the data extraction measures we had expected the finalised Code of Practice to issue before royal assent for the Bill. It is now clear that the Code of Practice will not be finalised until after a full public consultation once the Bill has received Royal assent. The Scottish Government is working with the UK Government on the terms of the draft Code and following representations from the Northern Ireland Executive and the Scottish Government, the UK Government has agreed not to commence the data extraction provisions in Scotland and Northern Ireland until the Code has been finalised., The Scottish Government therefore recommends consent for the power to extract information from digital devices of witnesses, victims and others.

Draft Legislative Consent Motion

9. The draft motion, which will be lodged by the Cabinet Secretary for Justice and Veterans, is:

“That the Parliament agrees that the relevant provisions of the Police, Crime, Sentencing and Courts Bill, introduced in the House of Commons on 9 March 2021, relating to the power to extract information from digital devices of witnesses, victims and others so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
December 2021

This Supplementary Legislative Consent Memorandum relates to the Police, Crime, Sentencing and Courts Bill (UK legislation) and was lodged with the Scottish Parliament on 6 December 2021

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