

LEGISLATIVE CONSENT MEMORANDUM

OFFENSIVE WEAPONS BILL

Background

1. This memorandum has been lodged by Humza Yousaf MSP, Cabinet Secretary for Justice, under Rule 9B.3.1(a) of the Parliament's Standing Orders. The Offensive Weapons Bill was introduced in the House of Commons on 20 June 2018. The Bill can be found at:

https://publications.parliament.uk/pa/bills/cbill/2017-2019/0232/cbill_2017-20190232_en_1.htm

2. The amendments lodged on 24 July 2018 referred to in paragraph 5 below can be found at:

https://publications.parliament.uk/pa/bills/cbill/2017-2019/0232/amend/offensive_rm_pbc_0724.1-7.html

Content of the Offensive Weapons Bill

3. The Bill makes a number of reforms to the criminal law in three distinct but linked areas; corrosive products and substances, bladed articles and offensive weapons and firearms. In more detail, the main elements of the Bill are:

- the creation of a new offence of selling certain harmful corrosive products to under-18s;
- the creation of a new offence of possessing a corrosive substance in a public place;
- introducing new restrictions on remote sales of bladed articles and corrosive products, including restrictions on deliveries to residential premises;
- the creation of a new offence of possessing certain offensive weapons in all places (the weapons concerned are already subject to restrictions on their sale, manufacture and importation and for them to be possessed in public); and
- the reclassification of certain firearms as "prohibited weapons" under section 5 of the Firearms Act 1968.

Provisions Which Relate to Scotland

4. A number of clauses in the Bill extend to Scotland. Some fall in a reserved area such as the new offence of sale of corrosive products to under 18s. However, a number trigger the requirement for a legislative consent motion as they either fall in a devolved area or extend the executive competence of the Scottish Ministers.

5. A summary of the clauses in the Bill that require an LCM is as follows (clause numbers relate to the print of the Bill on introduction):

Sale and delivery of corrosive products

- **Clauses 1 and 4 – new offence of sale of a corrosive product to under-18s and new offence of delivery of a corrosive product to under-18s**
 - These clauses alter the Scottish Ministers' executive competence in respect of clause 1(5)(c) and clause 4(8)(c) by providing an order making power for the Scottish Ministers to prescribe additional documents that can be used to verify age for the purposes of the offences in clause 1 and clause 4; the clauses otherwise relate to a reserved matter (the subject-matter of the Poisons Act 1972) and do not alter the Scottish Parliament's legislative competence.

Possession of corrosive substances

- **Clauses 5 and 9 – new offence of possession of a corrosive substance in public and stop and search powers relating to this new offence**
 - These clauses legislate for devolved purposes by making provision in Scots criminal law for the purposes of protecting public safety and preventing violent crime.

Sale and delivery of knives etc.

- **Clauses 13 and 15 to 18 – new defence to the existing offence of sale of bladed articles to under 18s, which is specific to remote sales, new offence of delivery of bladed articles to residential premises and new offence of delivery to under 18s where purchased remotely from outwith the UK**
 - These clauses legislate for devolved purposes by making provision in Scots criminal law for the purposes of protecting public safety and preventing violent crime. In addition, clause 18(8)(c) alters the Scottish Ministers' executive competence by providing an order making power for the Scottish Ministers to prescribe additional documents that can be used to verify age for the purposes of the offence in clause 18.

Possession etc. of certain offensive weapons

- **Clauses 19, 20 and 22 to 25 – changes to definition of a flick knife, criminalising possession in all places of certain knives and offensive weapons and arrangements for disposal of such items**
 - Clause 19 legislates for devolved purposes as it makes provision in Scots criminal law relating to the prohibition on the manufacture, sale, supply and possession etc. of certain dangerous knives (under section 1(1) of the Restriction of Offensive Weapons Act 1959) for the purposes of protecting public safety and preventing violent crime. This is subject to clause 19(1) which is amending section 1(2) of the 1959 Act which modifies Scots criminal law in relation to a reserved matter.

- Clauses 20, 22 and 23 legislate for devolved purposes as they make provision in Scots criminal law to prohibit the possession of certain dangerous knives (clause 20), provision to prohibit the possession of offensive weapons (clause 22) and provision relating to prohibition on possessing offensive weapons (clause 23) for the purposes of protecting public safety and preventing violent crime.
- Clause 24 legislates for devolved purposes as it makes provision in Scots criminal law relating to the prohibition on possessing certain dangerous weapons, for the purposes of securing the orderly and safe surrender of prohibited weapons and protecting public safety. In addition, clause 24(2) confers an order-making power on the Scottish Ministers so as to alter their executive competence with the order-making power allowing Scottish Ministers to make arrangements to secure the orderly surrender at designated police stations in Scotland of weapons, the possession of which will be made unlawful by the Act.
- Clause 25 legislates for devolved purposes as it makes provision in Scots criminal law relating to the prohibition on possessing certain dangerous knives and offensive weapons, for the purposes of securing the orderly and safe surrender of prohibited weapons and protecting public safety. In addition, clause 25(4) confers an order-making power on the Scottish Ministers so as to alter their executive competence with the order-making power allowing Scottish Ministers to make regulations to provide for payments in respect of weapons which are surrendered in accordance with the arrangements.

Prohibition of certain firearms

- **Clause 28 – prohibition of certain firearms**
 - This clause makes provision in relation to a reserved matter; namely firearms. However, this clause alters the Scottish Ministers' executive competence by amending section 5 of the Firearms Act 1968 to extend the list of prohibited weapons whose manufacture, sale and possession etc. the Scottish Ministers may authorise.

Supplementary

- **Clause 39 - commencement**
 - This clause confers certain commencement-related powers with clause 39(2) (Scottish Ministers power to commence by regulations certain provisions in the Bill) and clause 39(7) (Scottish Ministers power to make regulations so as to make transitional, transitory or saving provision in connection with the coming into force of any of the provisions listed in clause 39(2) as they extend to Scotland) having the effect of altering the executive competence of Scottish Ministers.

Amendments lodged on 24 July

- **Procedural provisions**

- Extending time limit for prosecution for offences in clauses 1, 3, 4 and 5 to 12 months; and
- Introducing an evidential presumption in respect of the nature of substances that are or were in containers for the offences in clauses 1, 3, 4 and 5 involving a corrosive product or substance.

Reasons for seeking a legislative consent motion

6. The area of law covered by the content of the Bill is a complex mix of reserved and devolved matters. Although one option would have been to legislate for the devolved areas through a Bill in the Scottish Parliament, the Scottish Government considers it preferable to legislate in one overall Bill so as to ensure consistency in application of the law across the UK in these important areas, eliminate the need to identify a Scottish legislative vehicle at a time of particular pressure on the justice legislative programme and aid users of the eventual legislation in this area by having one overall Act rather than two Acts operating together (as would have been necessary).

7. This justification applies to the package of measures within the Bill that triggers the requirement for an LCM.

Consultation

8. The UK Government undertook consultation on a package of measures in late 2017. This consultation extended to Scotland at the request of the Scottish Government. This was to ensure effective consultation could take place to allow for the development of policy to be contained within the Bill. The consultation documents can be found below:

<https://www.gov.uk/government/consultations/offensive-and-dangerous-weapons-new-legislation>

9. A House of Commons briefing note on the Bill can be found below:

<http://researchbriefings.files.parliament.uk/documents/CBP-8349/CBP-8349.pdf>

Financial Implications

10. There are no significant financial implications from the provisions of the Bill. Although new offences are being created in a number of areas, the intent is that these offences may not need to be prosecuted very often as the offences are designed to act as a deterrent and the expectation is that, for example, retailers will adhere strictly to the new regime in terms of banning the sale of corrosives to under 18s. Any costs that do arise should be capable of being met from within existing budgets of criminal justice agencies.

Conclusion

11. It is the view of the Scottish Government that it is preferable in terms of good governance that the relevant provisions which fall within the legislative competence of the Scottish Parliament should be considered by the UK Parliament in order to ensure that Scotland has as robust laws in these areas as England and Wales and that users of the legislation do not need to refer to two different Acts as would be required if there was to be a separate Scottish Bill for those areas that fall within the legislative competence of the Scottish Parliament.

Draft Legislative Consent Motion

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

“That the Parliament agrees that the relevant provisions of the Offensive Weapons Bill, introduced in the House of Commons on 20 June 2018, relating to the creation of new offences in respect of corrosives, stop and search powers in relation the new offence of possession of a corrosive substance in public, certain procedural provisions relating to the corrosives offences, a new defence specific to remote sales relating to the existing offence of sale of bladed articles to under 18s, a new offence of delivery of bladed articles to residential premises, a new offence of delivery of bladed articles to under 18s when purchased remotely from outwith the UK, changes to the definition of a flick knife, a new offence of possession in all place of certain knives and offensive weapons, arrangements for disposal of these certain knives and offensive weapons, and prohibition of certain firearms and commencement powers, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

SCOTTISH GOVERNMENT
September 2018

This Legislative Consent Memorandum relates to the Offensive Weapons Bill (UK legislation) and was lodged with the Scottish Parliament on 3 September 2018

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