Justice Committee

11th Report, 2014 (Session 4)

Legislative Consent Memorandum on the Criminal Justice and Courts Bill

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Justice Committee

Remit and membership

Remit:

To consider and report on:

a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and

b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Membership:

Christian Allard
Roderick Campbell
John Finnie
Christine Grahame (Convener)
Alison McInnes
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Irene Fleming
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Justice Committee

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The Committee reports to the Parliament as follows—

INTRODUCTION

1. The Criminal Justice and Courts Bill was introduced in the House of Commons on 5 February 2014. The Bill as introduced did not contain any provisions falling within the terms of the Sewel Convention. The Convention has been triggered by amendments agreed at committee stage in the House of Lords on 14 July.

2. The Legislative Consent Memorandum (LCM) was lodged by the Scottish Government on 18 August 2014. The Parliamentary Bureau referred it to the Justice Committee on 20 August 2014.

3. The LCM includes a draft motion, to be lodged by the Cabinet Secretary for Justice—

   “That the Parliament agrees that the relevant provision of the Criminal Justice and Courts Bill, introduced to the House of Commons on 5 February 2014, relating to the amendment of the Rehabilitation of Offenders Act 1974, so far as this matter alters the executive competence of Scottish Ministers, and relating to the activities of officers of the National Crime Agency when those officers are operating in Scotland, should be considered by the UK Parliament.”

4. The Committee took evidence on the LCM from the Cabinet Secretary for Justice and Scottish Government officials at its meeting on 30 September 2014. The Official Report of that meeting is available here—


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PURPOSE OF LCM

5. The Bill as amended seeks to resolve a competence issue by ensuring that the Scottish Ministers have adequate powers to bring forward subordinate legislation under the Rehabilitation of Offenders Act 1974 to specify areas (for example applications for particular types of employment) in relation to which spent alternatives to prosecution (including disposals from Children’s Hearings) may still need to be disclosed.

6. The LCM also covers the offence of police corruption, created by the Bill, which the UK Government wishes to apply to National Crime Agency police officers operating in Scotland.

7. In his introductory remarks at the Committee meeting on 30 September, the Cabinet Secretary provided full details of the specific powers conferred by the Bill.\(^2\)

Rehabilitation of Offenders

Provisions of the Bill

8. The Bill’s provisions in relation to the Rehabilitation of Offenders Act 1974 (the 1974 Act) are technical in nature and clear up a loophole discovered by the Scottish Government during implementation of the Children’s Hearings (Scotland) Act 2011 (the 2011 Act). The application of the 1974 Act in respect of Children’s Hearings is explained in paragraphs 1.8.1 to 1.8.10 of the Scottish Government’s Discussion Paper on the Rehabilitation of Offenders Act 1974 which was published in August 2013\(^3\). It notes that the 2011 Act includes provisions under which referrals to Children’s Hearings on offence grounds would be treated as alternatives to prosecution rather than convictions.

9. The Cabinet Secretary advised the Committee that, during implementation of the 2011 Act, the Scottish Government encountered a difficulty with part of the package of reforms relating to the treatment of disposals from Children’s Hearings for the purposes of the rehabilitation of offenders and disclosure. The Scottish Government wishes to ensure that it has the adequate subordinate legislation powers to require people who apply for certain jobs (e.g. those involving vulnerable groups) to disclose serious offences that they committed as children, even if they were dealt with by way of an alternative to prosecution which is now spent. The main area of potential difficulty arises from the planned treatment of disposals from Children’s Hearings as alternatives to prosecution and current limitations on the Scottish Government’s powers in relation to such alternatives.\(^4\)

10. The LCM makes clear that the loophole stems from Schedule 3 to the 1974 Act having been inserted by an Act of the Scottish Parliament, the Criminal Justice Act.

and Licensing (Scotland) Act 2010. The enabling powers of that Schedule are therefore subject to the limitations of devolved competence.5

11. In practical terms, this means that currently, whilst the Scottish Government has the power to legislate for the disclosure of spent convictions which impact on reserved areas, it does not have the same power in relation to alternatives to prosecution which impact on reserved areas.6

12. To address this, the Bill inserts a new paragraph into Schedule 3, which has the effect of conferring the power on the Scottish Government to bring forward an Order, setting out exclusions and exceptions to the general rule that spent alternatives to prosecution do not need to be disclosed.7

13. As mentioned above, the Scottish Government plans to make an Order specifying the types of employment and proceedings that are excluded from the protection afforded by the 1974 Act and, therefore, where disclosure of spent alternatives to prosecution is required. The Cabinet Secretary indicated that he is not currently in a position to provide any further detail on specific timescales for the Order at this stage other than to say that the Scottish Government is seeking to act on this issue “as expeditiously as possible”8.

Committee consideration

14. The Committee notes that it will be for the Scottish Government, in making the Order, and for the Parliament in scrutinising it, to consider the specific types of employment in relation to which spent disposals from Children's Hearings must still be disclosed.

15. In oral evidence the Cabinet Secretary indicated that the types of employment that could be specified in the forthcoming Order, but are currently outwith the Scottish Government’s powers to do so, would include registered pharmacist, doctor, nurse, midwife and firearms dealer.9

16. When asked about consultation undertaken on the LCM, a Scottish Government official indicated that informal discussions had been held with various child protection groups and that no concerns were raised.10

Recommendation

17. The Committee welcomes the provisions of the Bill in respect of rehabilitation of offenders, as they provide the Scottish Government with the necessary powers to fully implement the package of measures under the 2011 Act.

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5 Legislative Consent Memorandum on the Criminal Justice and Courts Bill, paragraphs 6 and 7. Available at: [http://www.scottish.parliament.uk/LegislativeConsentMemoranda/CriminalJusticeandCourtsBillLCM.pdf](http://www.scottish.parliament.uk/LegislativeConsentMemoranda/CriminalJusticeandCourtsBillLCM.pdf)
6 Legislative Consent Memorandum on the Criminal Justice and Courts Bill, paragraph 5
7 Legislative Consent Memorandum on the Criminal Justice and Courts Bill, paragraph 5
Extension of new offence of corruption

Provisions of the Bill
18. In relation to the extension of the new offence of police corruption, devolved application would be limited. The LCM makes clear that the provisions only relate to police officers of English and Welsh forces and to those with a UK-wide remit. They do not therefore extend to police staff, nor to Police Scotland, whose officers are already covered by a statutory offence of neglect or violation of duty under section 22 of the Police and Fire Reform (Scotland) Act 2012.\(^\text{11}\)

19. The forces with a UK-wide remit are:

- British Transport Police;
- The Civil Nuclear Constabulary;
- Ministry of Defence Police; and
- National Crime Agency.

20. If the new offence is applied in the way sought by the UK Government, police officers of all four forces would, when operating in Scotland, be covered by that offence.

21. As described in the LCM, the majority of functions of the first three of those forces are connected with the reserved matters for which each force was established. On that basis the Home Secretary can determine whether officers of those forces are covered by the new offence, and there would therefore be no requirement for an LCM. However, officers working for the National Crime Agency in Scotland are engaged in activities that are substantially devolved. It is for this reason that the extension of the offence of police corruption is covered in the LCM.

22. The new offence would carry a maximum sentence of up to 14 years imprisonment. The offence provided for in section 22 of the 2012 Act (covering Police Scotland) carries a maximum sentence of two years.

Committee consideration
23. When asked if he had any concerns over the differing levels of sentences and the different legislative frameworks in operation, the Cabinet Secretary advised that he did not have any misgivings about these issues—

“the Crown is perfectly satisfied by what we are proposing, as are the police. Those who hold the office of constable are held to account by the Police Service of Scotland. As far as charges are concerned, if they neglect or fail to uphold their office, they are dealt with. On the few occasions on which officers go beyond that and get into active criminality, we have sufficient statutory and common law arrangements to deal with that. The number of NCA officers who operate here is small. It is appropriate that there should be the extension of the powers that the Home Secretary wishes, but I think that

we deal with the police service in Scotland differently, and the Crown will address both issues through different legislation.”

24. In respect of consultation, a Scottish Government official confirmed that Police Scotland’s Counter Corruption Unit, the Scottish Police Federation (SPF) and the Association of Scottish Police Superintendents (ASPS) had indicated that they were content with the relevant provisions of the Bill.

Recommendation
25. The Committee welcomes the Scottish Government’s comments regarding the consultation that has been undertaken on the LCM.

26. The Committee is reassured that the Cabinet Secretary, and the Crown and police, do not have any concerns over the differing level of sentences under the Bill and the 2012 Act and the different legislative frameworks in operation. The Committee also notes the Cabinet Secretary’s reassurance that there are sufficient statutory and common law arrangements to deal with active criminality in this area.

27. The Committee therefore welcomes these provisions, believing it to be appropriate that all National Crime Agency officers should be subject to police corruption legislation, regardless of where they operate.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

28. The Delegated Powers and Law Reform (DPLR) Committee considered the LCM at its meeting on 30 September 2014. That Committee did not have any substantive comments to make on the LCM. A copy of the DPLR Committee report is available here: (http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82048.aspx).

CONCLUSIONS

29. Having considered the LCM, and taken evidence from the Cabinet Secretary for Justice, the Committee welcomes the provisions of the Bill that relate to devolved matters.

30. In particular the Committee welcomes the provisions relating to the rehabilitation of offenders, as they will give the Scottish Government full powers to bring forward subordinate legislation under the 1974 Act to specify areas in relation to which spent disposals from Children’s Hearings must still be disclosed. The Committee recognises that the Scottish Government is keen to make an Order specifying such areas and welcomes the UK Government’s use of this Bill as the legislative vehicle to enable this to happen.

31. The Committee therefore recommends that the Parliament approves the legislative consent motion on the UK Criminal Justice and Courts Bill, to be lodged by the Scottish Government.
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