



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Criminal Justice Committee

Wednesday 1 October 2025

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 1 October 2025

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CRIMINAL JUSTICE COMMITTEE
25th Meeting 2025, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)

*Sharon Dowey (South Scotland) (Con)

*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Angela Constance (Cabinet Secretary for Justice and Home Affairs)

Alison Morris (Scottish Government)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 1 October 2025

[The Convener opened the meeting at 10:01]

Crime and Policing Bill (UK Parliament Legislation)

The Convener (Audrey Nicoll): Good morning, and welcome to the 25th meeting in 2025 of the Criminal Justice Committee. We have received no apologies and Fulton MacGregor joins us online. Our first item of business is an oral evidence session on three legislative consent memoranda, LCM-S6-57, LCM-S6-57a and LCM-S6-57b that have been lodged by the Scottish Government in relation to the United Kingdom Crime and Policing Bill.

I welcome Angela Constance, the Cabinet Secretary for Justice and Home Affairs, and, from the Scottish Government, Alison Morris, Kristy Adams and Kathryn Lewis from the organised crime unit and Graham Robertson from the public protection unit. Thank you very much for joining us.

I refer members to paper 1 and to the letter from the Home Office that was circulated to members on Monday via an email from the clerks. I intend to allow up to 40 minutes for the evidence session. I invite the cabinet secretary to make some opening remarks on the LCMs.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Thank you, convener, and good morning, colleagues. I very much welcome the opportunity to discuss the legislative consent memorandum, the supplementary LCM and the second supplementary LCM in relation to those proposals in the UK Government's Crime and Policing Bill for which the Scottish Parliament has devolved competence.

This large and complex bill covers numerous policy areas and, although we support its overall purpose in so far as it extends to Scotland, we have not needed to accept every measure, for example in cases where we have our own legislation in place or have plans to introduce our own legislation, such as in relation to child retention abroad, subject to consultation. However, where there are benefits to Scotland, the Scottish Government is happy to propose legislative consent to the relevant provisions in the bill.

The bill covers a range of important topics, and I would like to draw your attention to a couple of its provisions. The bill provides for a new, UK-wide offence in order to disrupt adults who criminally exploit children, supporting a four-nations approach to tackling child criminal exploitation. My officials continue to work with the UK Government on the offence as further amendments to the bill are expected.

Related to the child criminal exploitation offence is the new offence of cuckooing, which will seek to criminalise individuals who take control of the home of a vulnerable individual by intimidation or other means and use it to carry out criminality. Members will be aware of the devastating impact that criminal exploitation and cuckooing can have on individuals and their families and it is hoped that the new powers will strengthen our ability to prosecute those who exploit vulnerable people.

I have recently addressed questions raised by the Delegated Powers and Law Reform Committee in relation to several delegated powers in the bill, including questions on the powers to implement international agreements on sharing information for law enforcement purposes and on the power to make consequential provision. I look forward to reading the DPLRC's report in due course.

We expect more amendments to the bill, which will trigger a further supplementary LCM to be laid shortly. My officials are still liaising with the UK Government on the detail of those new clauses. However, we expect them to include measures covering offensive weapons, child criminal exploitation prevention orders and online child sex abuse. We had initially hoped that the amendments would have been tabled in the House of Lords in sufficient time for us to lodge a third supplementary LCM in advance of this committee meeting, but we now expect the additional amendments to be tabled around mid-October.

The third supplementary LCM will also recommend extending clause 41 in relation to providing for the child criminal exploitation offence. The extension of that clause to Scotland was previously included in the draft bill but was accidentally omitted from the second supplementary LCM.

There is not enough time during my short opening remarks to go into detail on all the clauses that are contained in the LCMs, but I am more than happy to answer any questions that the committee has.

The Convener: Thank you, cabinet secretary. Those were helpful opening remarks to set the scene. I will invite members to come in with any questions that they have, but I will start with a

question on the proposals on future international agreements. The committee has done a small piece of work on the landscape with regard to international co-operation in law enforcement. I was interested to read clauses 127 and 128, which set out proposals on future international agreements as they relate to information sharing for law enforcement purposes. I am interested in hearing a wee bit more detail on those particular clauses as they relate to Scotland.

Angela Constance: That is an important aspect of the bill. It will introduce powers so that regulations can be made to implement future international agreements as they relate to the sharing of information. That is of particular importance; it is vital for Scotland's law enforcement agencies to be able to co-operate with counterparts across the UK and in Europe, particularly following Brexit, which disrupted the well-oiled arrangements that existed hitherto. Subsequent legislation has resolved matters only to an extent, leaving co-operation arrangements quite clunky and a bit more time consuming. The bill will enable better and deeper co-operation with our trusted partners, which will enhance the tools that are available to our law enforcement agencies, particularly in relation to tackling serious organised crime. We back legislative consent for the measures. Similar provision was proposed in the previous UK Government's Data Protection and Digital Information Sharing Bill in 2023, but that bill was not progressed.

The Convener: I confess that it has been quite a number of decades since I got my driving licence, which is what my other question relates to. The provisions that are set out in clause 95 would expand the purposes for which the police can access driving licence information from the Driver and Vehicle Licensing Agency by expanding the list of authorised persons who can access its database, as well as the range of offences relating to which the police can access DVLA information. I noticed in the LCM a reference to the Scottish Biometrics Commissioner's support of the provisions, which got me wondering whether the information that police officers can potentially access includes biometric data. Do you have a wee bit more detail on that?

Angela Constance: There are two aspects to what is proposed. In very broad terms, the provisions broaden the range of persons who can access the DVLA's licence data. Essentially, we want to ensure that the police in Scotland have the same access to that information as is the case elsewhere in the UK.

We have been corresponding with the UK Government on the matter, because there are some sensitivities. We wanted to be satisfied that

the purpose for access was appropriate. What has been negotiated with the UK Government is that the Scottish ministers will be statutory consultees when the regulations are prepared. That means that we will be able to involve and consult the Scottish Biometrics Commissioner, as well as Police Scotland.

I draw the committee's attention to the comments that the former Minister of State for Policing, Fire and Crime Prevention, Diana Johnson, put on the record. She made it clear that, in the same way that the current powers cannot be used to enable matching with photos, it will not be possible for the powers in the bill to be used to access DVLA information in order to match that up with photos or live facial recognition. I am paraphrasing, but she said that the proposed measures were not a "Trojan horse" for wider use. We have engaged with policing partners and the commissioner, because the commissioner had concerns about that issue in the past.

The Convener: Has the range of offences been broadened out significantly? Are specific offences set out in the provisions of clause 95?

Angela Constance: My understanding is that the provisions are about broadening the range of persons who can access the DVLA's licence data, so that those records are available for wider policy and law enforcement purposes, and to ensure that police officers can access that information quickly at the point of need when they have an operational need to do so. However, I will ask officials to address your point about offences.

Alison Morris (Scottish Government): I am not the policy expert on this, but my understanding is that the intention is to extend the provisions to a broader range of offences. At the moment, the data in question can be used only for the investigation of road traffic offences, but I understand that the detail of the relevant offences will be included in the code of practice and the regulations that are being drawn up.

Angela Constance: We can, of course, write to the committee with further information. We can give a more detailed explanation and follow up on any points, as required.

The Convener: Thank you. I am very pleased to see that the bill contains specific provisions on cuckooing, as well as a range of provisions that relate to crimes against children. That is welcome.

I will open up the discussion.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): Good morning, cabinet secretary. I have a few quick questions on procedural matters. In the initial LCM, there was a recommendation to refuse consent for elements of the bill. I think that I am right in saying that that issue has now been

resolved and that the bill has been amended satisfactorily in the UK Parliament, but I would like some clarification on that. If that means that there is now no reserved position, is it the Government's recommendation to just proceed with consent?

10:15

Angela Constance: In short, that is correct. There have been some issues on which we have entered into correspondence or dialogue at an official-to-official level. For example, the issue of proceeds of crime is both reserved and devolved, whereas entering into international agreements is, of course, entirely reserved to the UK Government. Bearing in mind that policing is devolved and that we have our own legal and criminal justice systems, the Scottish Government's position is that the legislative consent motion process has been triggered in relation to some clauses. We have come to pragmatic positions on that, but we felt that it would have been appropriate for the UK Government to seek the Scottish ministers' consent for particular clauses.

At the end of the day, we have agreed with particular provisions that are about tackling crime, keeping communities safe and cracking serious organised crime, and we have settled to be a statutory consultee on matters. We have been co-operating with pragmatism.

Jamie Hepburn: That brings me to my second question, which is about the first supplementary memorandum, LCM-S6-57a. Paragraph 11 refers to a divergence of views in relation to whether an element of the bill is reserved or not. That might be felt to be a moot point, because even though there is a difference of view on whether the element that relates to internet services is reserved, the recommendation is still that we would consent. I will, however, ask a quick question. Is there a difference of opinion on what is reserved and not reserved in any other elements of the legislation, particularly with regard to further supplementary memoranda that might be required?

Angela Constance: We sometimes get into differences of opinion on things such as online advertising, to give one example. The internet and its regulation is reserved, but if what is being promoted on the internet relates to a service or a particular action, we will, on occasion, argue that that is of relevance to our devolved competencies.

In relation to safeguards and reassurance, the Scottish Government considers that the LCM process is engaged when provisions apply to Scotland for the purpose of legislative competence. In the case that I am referring to, it relates to the steps that are required

"to prevent the advertisement, sale and supply of unlawful weapons in Scotland."

In this instance, the UK Government considers that the provisions are wholly reserved for the reasons that I have outlined—because they relate to internet services. However, we have a different view. The other area of difference is on barred lists.

It is possible to have differences of opinion whereby both sides are agreed on the principle. That is why I will ultimately come down on the side of what will help to protect communities in the here and now. There are always debates in various forums about where power should lie—those are debates that I do not stand back from—but the fact is that the Scottish Government and the UK Government want to strengthen the action that can be taken against the harms that are caused by the promotion and flogging of dangerous weapons online. I want police in Scotland to have powers to issue notifications to remove content.

There are safeguards for those who are accused of being perpetrators. The committee will be well aware of the work that we did on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill around barred and advisory lists. The provisions in the UK bill relate to specialist police forces, only two of which are relevant to Scotland: the British Transport Police and the National Crime Agency. We do not want people who have been found wanting in one law enforcement organisation to be able to get a job in another.

Jamie Hepburn: You referred to the possibility of a subsequent supplementary LCM. This might be an unfair question, because it is a great imponderable, as these things are outwith the Parliament's control, but can you foresee circumstances in which more than one additional LCM might be required?

I also have a follow-up question, which I will get out of the way now. Has the interaction between your officials and UK Government officials been positive? Are you getting good engagement? Are there any challenges?

Angela Constance: To be fair, yes. It is a frustrating process, because the way in which we legislate and the way in which Westminster legislates are pretty different. There are not necessarily parallel tracks—you will be well versed in that, Mr Hepburn. There have been occasions when we have said that we would want something to be extended to Scotland, but there has not been time at a UK level to do the necessary drafting. Of course, that is disappointing, but it has not happened often. The fact is that the pace and the timelines are not within our gift. Inevitably, there are frustrations and disagreements, but I think that, overall, we are in not too bad a place.

Jamie Hepburn: Will the committee get a good heads-up if anything is coming down the track?

Angela Constance: You will get a heads-up when I get a heads-up.

Pauline McNeill (Glasgow) (Lab): There are quite a lot of wide and varied issues in this LCM—I do not envy you, cabinet secretary.

My question is about the latest mission to reduce violence against women and girls and specifically concerns an issue on which I know that you share my view: the alarming rise in the creation of sexually explicit, artificial, deepfake images. From what I have read, I understand that the UK Government is legislating to make the creation of those images an offence. The last time that I asked a parliamentary question about the issue, I was told that the Scottish Government was considering whether there was a gap in the legislation in that regard. I do not know whether you are able to say anything about that today or whether it is too early, but I would like to know what further progress is being made on the issue of those artificial intelligence-generated images. Are you going to consider whether, after the passing of the UK bill, there might still be a gap that needs to be addressed by the Scottish Government?

Angela Constance: The information before me might not relate exactly to the question, but we will see how we get on.

We are very interested in further amendments that we anticipate the UK Government lodging around child sexual abuse and exploitation online, specifically concerning what are euphemistically called child sexual abuse manuals. There will be new offences on the possession of materials that contain advice, guidance or content on how to groom, otherwise known as “paedophile manuals”—forgive me for using that term. The volume of indecent images of children is also an issue that we will be considering with interest.

Further possible amendments might be lodged as a result of the pornography review by Baroness Gabby Bertin, which would be around the possession and publication of depictions of strangulation and suffocation in pornography. We are standing by to see the detail of that.

Were you, in any shape or form, asking about spiking?

Pauline McNeill: I know that spiking is one of the offences that is being put in, so it would be interesting to know whether that will be helpful.

Angela Constance: We are strongly of the view that we do not need further legislation on spiking. Spiking is addressed under common law as well as under the Sexual Offences (Scotland) Act 2009, so, in my view and in the view of the

Government, there is not a legislative gap around that in Scotland. Legislation is there to prosecute people who do that and to imprison them for up to five years.

Where work has been done on spiking—the Minister for Victims and Community Safety, Siobhian Brown, has led round-table discussions on the issue across the stakeholder groups and parties, and there has been considerable interest in it in the Parliament—the focus has been on raising awareness and on the work that Police Scotland does around the night-time economy in pubs and clubs. There has also been work on the pathway to report spiking and to get care. There was a need to be clear that people can and should report spiking, but they also needed a healthcare pathway.

Pauline McNeill: That is helpful. I tend to agree that, in Scotland, we sometimes do not need specific offences for things that we are already prosecuting. For example, there is a recent trend to, basically, stab people in the body to spike them, and not just spike drinks.

I would like to pick up on the AI generation of images. It is a confusing issue. I think that the Scottish Government attempted to secure amendments to a bill, but I am not sure whether it was this one. I know that there were expedited amendments in the House of Lords.

What I am clear about is that there is a gap in the law around the creation of AI images. If someone has not given their consent, that is quite clear and we can already act, but there seem to be some gaps. As you know, this is a strong interest of mine. At some point it would be useful to hear whether the Scottish Government has made an assessment of whether everything is covered in the legislation.

Angela Constance: For background, the UK Government legislated for a new offence in the Data (Use and Access) Act 2025. We had asked for provision to be made in the Crime and Policing Bill, but the UK Government was not able to add provision for Scotland. We intend to explain the position of Scotland on the current law on the sharing of deepfakes, which is an offence. We will seek views on expanding the law to cover the creation of deepfakes. The sharing aspect is covered; the issue is around the creation of deepfakes.

10:30

The Convener: My final question relates to clauses 32 to 34, which are the cuckooing provisions. The Scottish Government has been involved in a process of consultation on the provisions. In the LCMs, I note that it says that the Crown Office

“has had sight of the”

cuckooing

“provisions in the Crime and Policing Bill, and had some queries around the drafting in relation to victims providing consent for their home to be used in a particular way by exploiters”—

that is, the question of whether consent has been given. There is an indication that some technical amendments might still be required to resolve those queries. Is there any update on that?

Angela Constance: Criminal child exploitation and cuckooing have been a frequent topic of consideration at the serious organised crime task force, which I chair, along with the Lord Advocate. I am quite sure that the committee is aware of the work that was commissioned by Action for Children on the matter and that Alexis Jay led that work.

Cuckooing is an issue that involves a mixture of devolved and reserved law—there is reserved legislation on drugs and firearms, and the devolved law includes Scots common law, the Criminal Law (Consolidation) (Scotland) Act 1995 and the Criminal Justice and Licensing (Scotland) Act 2010. There is a bit of complexity in this area regarding the interaction of the laws.

In relation to cuckooing, there was a view from the Crown Office that there is a current legislative gap—although that might be overstating it—in and around the trafficking and exploitation legislation. The Crown Office was consulted at an early stage and it advised that the relevant legislation in Scotland is primarily the Human Trafficking and Exploitation (Scotland) Act 2015, but that it might not apply to all situations envisaged by the offence of cuckooing, such as those where the householder is not really being controlled by criminals or is not considered to have been recruited by them. There was therefore a requirement for a cuckooing offence in Scotland. There is agreement on that from our stakeholders.

The Crown Office had some queries around the drafting in relation to victims providing consent for their home to be used in a particular way, but officials have engaged closely with the Home Office on that, particularly around the formulation of the offence. It considered removing the element of consent altogether; however, officials were advised that the control of a property is not inherently harmful, and that a person could consent to control of their property for criminal purposes without any real harm being caused to them. It is the view that there is no justification to legislate for an offence in that scenario. Officials can perhaps put that into humanspeak for me.

Alison Morris: I would sum it up by saying that we are confident now, after discussion with the Crown Office and others, that the drafting reflects the proper balance between control of a property and the consent of an individual. Home Office officials apparently considered removing the consent requirement altogether, but it was felt that that was just a step too far.

The Convener: Thank you very much for that. We look forward to seeing whether any technical amendments are made to those provisions. If members have no more questions, I thank the cabinet secretary and her officials for their evidence; we will suspend briefly to allow them to leave.

10:35

Meeting suspended.

10:36

On resuming—

The Convener: I will open up a short discussion to allow members, if they wish, to indicate their views on the LCMs, before I move to the question of consent and any recommendation that we might wish to make to the Parliament.

As no member wishes to comment, is the committee content to recommend to the Parliament that consent should be given for the relevant provisions covered by LCM-S6-57, LCM-S6-57a and LCM-S6-57b?

Members indicated agreement.

The Convener: Should any further LCMs be lodged in relation to the Crime and Policing Bill as it makes its way through the UK Parliament, the committee will return to those later for a decision on whether to recommend consent.

Are members content to delegate responsibility to me and the clerks to approve a short factual report to the Parliament on the LCMs?

Members indicated agreement.

10:37

Meeting continued in private until 12.26.

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The deadline for corrections to this edition is:

Friday 31 October 2025

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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