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### **Criminal Justice (Scotland) Bill at Stage 1**

1. The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 24 September and seeks an explanation of the following matters:

#### **Section 34(1)(a) and (b) and Section 34(2) – Power to make further provision in relation to support for vulnerable persons**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>affirmative procedure</b>

2. Section 33(5)(a) of the Bill defines the term “mental disorder” by reference to section 328(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003. While the Scottish Ministers will have power under section 34(1)(a) of the Bill to amend section 33(1)(c), there is no power to modify the definition of “mental disorder” in section 33(5)(a). The Committee considers that it could become necessary to alter that definition in the future, for example in the event of changes to the Mental Health (Care and Treatment) (Scotland) Act 2003 definition by reference to which the term is defined in the Bill.

3. **The Committee therefore asks the Scottish Government whether it considers it necessary to take a power to amend the definition of the term “mental disorder” in section 33(5)(a) of the Bill and, if not, how the Scottish Government would propose to amend that definition in the future, should it become necessary to do so (for example when exercising the power to amend section 33(1)(c))?**

## **Section 85 – Power to modify subsections (1) to (3) of that section**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>order</b>
<b>Parliamentary procedure:</b>	<b>negative procedure</b>

4. Sections 83 and 84 of the Bill provide respectively for the general aggravation of an offence by its having a connection with people trafficking activity and the aggravation of a specific people trafficking offence by the abuse of a public position. In both cases, the court must take the aggravation into account in determining the appropriate sentence and, where the sentence imposed is different from that which would have been imposed had the offence not been aggravated, stating the extent of, and the reasons for, that difference.

5. Sections 85(1) to (3) of the Bill define the terms “a people trafficking offence”, “a public official” and “an international organisation” respectively for the purposes of sections 83 and 84. Section 85(4) grants power to the Scottish Ministers to modify sections 85(1) to (3) by regulations. Section 85(5) provides that those regulations are to be subject to the negative procedure.

### **6. The Committee asks the Scottish Government:**

- **Why the power in section 85(4) of the Bill is drawn in such wide terms? In particular, the Committee seeks an explanation as to why the power does not include greater specification as to the manner in which the provisions in primary legislation to which it refers may be modified.**
- **Whether it considers that the affirmative procedure may afford the Parliament a more appropriate level of scrutiny over the exercise of this power, considering that it enables the Scottish Ministers to make textual amendments to primary legislation?**

## **Section 86 – Use of live television link**

<b>Power conferred on:</b>	<b>the Lord Justice General</b>
<b>Power exercisable by:</b>	<b>direction</b>
<b>Parliamentary procedure:</b>	<b>none</b>

7. Section 86(1) of the Bill inserts new sections 288H – 288K into the Criminal Procedure (Scotland) Act 1995. The new provisions allow the court to determine that a detained person is to participate in specified court hearings by use of a live television link.

8. The new section 288J(1), as inserted by section 86(1) of the Bill provides that the Lord Justice General may, by directions, specify types of hearing in which a detained person may participate by live television link. Such directions may specify types of hearing by reference to the venues at which they take place, particular places of detention or categories of cases or proceedings to which they relate.

**9. The Committee asks the Scottish Government:**

- **Why it is considered appropriate for the power in section 86(1) of the Bill to be exercisable by directions which will not be subject to any level of parliamentary scrutiny?**
- **Whether it is considering publishing the directions to be issued by the Lord Justice General?**

**Power to prepare the constitution of the new Police Negotiating Board for Scotland**

10. Part 6 of the Bill establishes the Police Negotiating Board for Scotland (“the PNBS”). The PNBS makes representations to the UK and Scottish Governments in respect of police hours of duty, leave, pay and allowances, pensions and uniforms.

11. Paragraph 4(1) of the new Schedule 2A to the Police and Fire Reform (Scotland) Act 2012 provides that it is for the Scottish Ministers to prepare the constitution for the PNBS. Under paragraph 4(2), the constitution must regulate the procedure for the PNBS to reach agreement on representations it makes to the Scottish Ministers. Paragraph 4(3) lists a number of matters which the constitution of the PNBS as prepared by the Scottish Ministers may refer to, including membership, internal organisation and procedures.

**12. The Committee asks the Scottish Government:**

- **Why is it considered appropriate that the power to prepare the constitution of the PNBS is not to be exercisable through the making of subordinate legislation, and therefore subject to parliamentary scrutiny?**
- **How is it intended that this power be exercised, i.e. what matters in addition to those already prescribed in the new Schedule 2A to the Police and Fire Reform (Scotland) Act 2012 are to be addressed in the constitution of the PNBS?**

Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Tuesday 1 October 2013.

**Euan Donald**  
**Clerk to the Committee**