Draft Legislative Consent Motion

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

“That the Parliament agrees that the relevant provisions of the Anti-social Behaviour, Crime and Policing Bill, introduced in the House of Commons on 9 May 2013, relating to the abolition of the Police Negotiating Board; dangerous dogs law; and witness protection law; so far as these matters fall within the legislative competence of the Scottish Parliament or alter the functions of Scottish Ministers, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by Kenny MacAskill, Cabinet Secretary for Justice, under Rule 9B.3.1(a) of the Parliament’s Standing Orders. The Anti-social Behaviour, Crime and Policing Bill (“the Bill”) was introduced in the House of Commons on 9 May 2013. The latest version of the Bill can be found at:

http://services.parliament.uk/bills/2013-14/antisocialbehaviourcrimeandpolicingbill.html

Content of the Bill

3. The main elements of the Bill include:

- a range of antisocial behaviour measures such as replacing, amongst other things, ASBOs through the creation of criminal behaviour orders, new powers to seek injunctions to prevent nuisance and annoyance and the creation of public space protection orders;
- changes to dangerous dogs law;
- changes to firearms law;
- creation of new offences relating to forced marriage;
- reforms to policing; and
- changes to extradition law.

4. Most of the Bill does not extend to Scotland, such as the reforms to antisocial behaviour policy. Some parts of the Bill do extend to Scotland in reserved areas, such as the firearms offence changes. The parts of the Bill that extend to Scotland in devolved areas relate to the Police Negotiating Board, dangerous dogs and witness protection. Further information on these clauses is given below.
Provisions which relate to Scotland

5. The following paragraphs describe the specific provisions, for which consent is sought in terms of the Legislative Consent Motion, and provide background on their application in Scotland.

Clause 112 of the Bill – abolition of the Police Negotiating Board

6. **Policy intent:** To abolish the Police Negotiating Board (and allow for replacement bodies to be provided).

7. **Background:** The Police Negotiating Board (PNB) provides a forum in which representatives of police officers and those who manage and fund police forces can consider questions relating to police hours of duty, leave, pay and allowances, pensions, clothing and equipment. It currently operates on a UK basis and makes recommendations to the Home Secretary, Scottish Ministers and the Department of Justice in Northern Ireland. These different administrations are all required to consult the PNB before making regulations on relevant matters; for Scotland this requirement is provided in section 54(1) of the Police and Fire Reform (Scotland) Act 2012. The PNB is designated as a cross-border public authority for the purposes of section 88(5) of the Scotland Act 1998.

8. Following the recommendations of the Winsor review of police remuneration and conditions, the Home Office intends to replace the UK PNB with a Police Remuneration Review Body for England, Wales and Northern Ireland. The Scottish Government will establish a separate body to negotiate the pay and conditions of service of constables in the Police Service of Scotland.

9. The Bill contains provisions to abolish the PNB with effect for the whole UK, and to repeal sections 61 and 62 of the Police Act 1996 which establish it.

Clauses 98 and 99 of the Bill – dangerous dogs law

10. **Policy intent:** To provide further legal protection for owners of assistance dogs and to respond to a 2012 court judgement which called into question the powers of the courts in deciding what are relevant matters when considering whether a dog should be destroyed under the Dangerous Dogs Act 1991.


**Assistance dogs**

12. The owner or person in charge of a dog commits an offence if the dog is dangerously out of control. If, while the dog is dangerously out of control, it injures a person, the offence is aggravated, and carries a higher maximum sentence. The Bill extends the aggravation so as to apply where a dangerously out of control dog injures an assistance dog. The definition of assistance dog for the purposes of this offence is taken from the Equality Act 2010 and includes dogs trained to guide a blind person and dogs trained to assist a deaf person. Amendments effected by the Bill also mean that reasonable apprehension that a dog will injure an assistance dog can provide a basis for establishing that the dog is dangerously out of control.
Whether a dog is a danger to public safety

13. Under the 1991 Act, there are circumstances in which a court is required to order the destruction of a dog unless satisfied that the dog does not constitute a danger to public safety, in which event the court may decide not to order destruction. These are:

- when a person is convicted of keeping a banned breed of dog (banned breeds are any dogs of the type known as a Pit Bull Terrier, Japanese Tosa, Dogo Argentino or Fila Brasileiro);
- where a banned breed of dog has been seized without a person being convicted of an offence; and
- when a person is convicted (either the owner or, if different, the person in charge of a dog at the time of the offence) of allowing a dog (of any breed) to be dangerously out of control in any place and the dog has injured a person.

14. A 2012 High Court judgment (the Sandhu judgement) ruled that the 1991 Act did not allow the court to consider the character of the owner when assessing whether the dog posed a risk to public safety.

15. The Bill responds to the terms of judgement so as to amend the 1991 Act in relation to the test which the court must consider when assessing whether a dog is a risk to public safety. The Bill has the effect of requiring a court to consider the character of the owner or keeper, as well as the temperament of the dog and its past behaviour along with any other relevant circumstances when deciding whether the dog poses a risk to public safety.

16. In addition, there exists under the 1991 Act an Index of Exempted Dogs (“the Index”). As part of the process of being placed on the Index, a dog is required to be kept in compliance with the strict requirements of the Act meaning the owner has:

- to obtain a certificate to enable them to retain such a dog;
- to have the dog neutered or spayed;
- to ensure the dog is permanently identified with a tattoo or microchip;
- to maintain insurance against their dog injuring third parties;
- to keep the dog muzzled, on a lead in public places; and
- to ensure the dog is not left in charge of a person under the age of 16.

17. Individual dogs that are found to be a banned breed are able to be added to the Index where a court is satisfied that the specific dog does not constitute a risk to public safety. If the court decides that a specific dog which is a banned breed does not present a risk to public safety (and therefore the court does not order its destruction), an application can then be made to exempt the dog from the statutory prohibition by having it added to the Index.

18. When the court is dealing with a specific dog which is a banned breed and decides such a dog does not need to be destroyed, the court imposes a ‘prescribed period’ within which the owner of the dog is required to have their dog added to the Index.
19. The Bill’s provisions will allow the existing long-standing exemption scheme relating to the operation of the Index to be redrawn by the Scottish Ministers so as to require a court to consider whether the person who would be in charge of the dog is a fit and proper person for that purpose. While, in deciding not to order the destruction of a banned dog, the court dealing with the matter will already have considered the character of the then owner or person in charge, it will be possible to redraw the scheme to require a court dealing with the application for exemption to consider the character of any different person who is to be in charge of the dog. Any such re-writing of the exemption scheme would be within devolved competence and would therefore fall to the Scottish Ministers to undertake as regards Scotland.

Clause 134 of the Bill – witness protection

20. **Policy intent:** To further empower the police to put in place protection measures for people whose lives are at risk.

21. **Background:** The offer of “protected status” (commonly known as witness protection) is a measure that can be taken in the most serious cases of intimidation, where there is a credible and evidenced threat to the life of the person involved in criminal investigations or proceedings. The current legislation restricts eligibility to witnesses, informants, judges, jurors, police, prison staff and other officers working in the criminal justice system.

22. Current statutory provisions also do not allow the police to provide the same level of protection to people whose lives are at risk but who do not fall into one of the categories prescribed in legislation. These may include, for example, potential victims of forced marriage or other “honour-based” violence that are taken into a protection programme before any crime is committed. The changes being proposed in the Bill would maintain the current protection arrangements but allow the chief constable to consider making arrangements for all those people where there is a real and immediate threat to their life.

**Reasons for seeking a Legislative Consent Motion**

**Police Negotiating Board**

23. Clause 112 abolishes the Police Negotiating Board for the United Kingdom, with extent to England, Wales, Scotland and Northern Ireland (as provided in clause 142). Clauses 113-117 provide for a Police Remuneration Review Body to replace PNB for England, Wales and Northern Ireland. Senior officers will join the Senior Salaries Review Board.

24. The Scottish Police Federation and Association of Scottish Police Superintendents have stated that they do not wish to join the proposed Remuneration Review Body being established by the UK Government. Following consultation with Scottish members of the UK PNB, the Scottish Government intends to establish a PNB for Scotland so as to continue the collective bargaining approach to agree police pay and conditions of service. We are therefore content with the UK Government’s abolition of the PNB, which provides an opportunity for the Scottish Government to create a new body tailored to the needs of the Police Service of Scotland. The abolition of the PNB alters the executive functions of Scottish Ministers and therefore requires the legislative consent of the Scottish Parliament.
25. We intend to bring forward legislation in the forthcoming Criminal Justice (Scotland) Bill to establish a PNB for Scotland. Since the UK Government intends to abolish the PNB for England, Wales and Northern Ireland, it is sensible that the UK Bill should also abolish it for Scotland. We will ensure that suitable arrangements are made to co-ordinate commencement of the relevant provisions in the two Bills to avoid any gap between the PNB being abolished in the UK Bill and the new PNB for Scotland being established.

Dangerous dogs

26. The assistance dog amendment recognises the social and financial impact on the owners of the dog, the dog itself, and the charity providing the dog. The amendment is designed to provide better protection for assistance dog users and will hopefully help reduce the number of attacks on assistance dogs, which can cause emotional trauma for both owners and their dogs.

27. The amendments to address the issues in the Sandhu court judgement would make it possible for the court to take into account the character of the owner, any other relevant circumstances, and ensure that there is a proper balance between allowing people to retain their family pet and the need to prioritise public safety. This is a sensible response to a 2012 court judgement which called into question the existing powers of the courts in this area.

28. The Scottish Government thinks it is appropriate for the UK Government to take forward these minor changes to dangerous dogs law for Scotland at the same time as they are legislating for England and Wales. Although we could seek to legislate ourselves within a Scottish Bill, we have no current plans for wider changes to dangerous dogs law to be contained within a Scottish Bill and it seems sensible for the relevant provisions to extend to Scotland within the Bill. As such provision is therefore within the legislative competence of the Scottish Parliament, the legislative consent of the Scottish Parliament is required.

Witness protection

29. Witness protection arrangements are devolved as part of policing but the current legislation applies across the UK. There is also a high degree of co-operation between forces which allows protected persons from Scotland to be relocated to England and vice versa. We consider it is essential that the chief constable of Police Scotland has the same tools at his disposal as those in England and Wales, (as set out in paragraphs 16-18 above), to provide protection for individuals whose lives are at threat. Given that such changes are being made for England and Wales, it seems appropriate for the changes to be made for Scotland at the same time through the Bill. As this falls within the legislative competence of the Scottish Parliament, the legislative consent of the Scottish Parliament is required.

Consultation

30. In respect of the abolition of the PNB, all Scottish members of the PNB have been consulted and none have any objection to the abolition of PNB and its replacement with a Scottish body.
31. For the dangerous dogs provisions, the UK Government did not formally consult and we agree that taking forward the limited steps to clarify the law following the Sandhu court judgment does not require formal public consultation. We are aware that Police Scotland is supportive of the policy in responding to the Sandhu judgement. In relation to the assistance dog amendment, this was a late addition to the Bill and again there has been no consultation on this amendment by the UK Government. We do however think this minor change to the existing offence (so that higher penalties can be available where a dog is dangerously out of control and attacks an assistance dog) does not require a formal public consultation.

32. In respect of witness protection provisions, we have informally consulted Police Scotland and they are content with the changes being proposed and they have also confirmed they are working with ACPO and the UK Government’s Ministry of Justice on wider changes to witness protection arrangements.

Financial Implications

33. In respect of the Police Negotiating Board provisions, the Scottish Government currently pays the Home Office a contribution of 10.1% towards the costs of the PNB, amounting to approximately £50,000 annually. With the abolition of PNB, this payment will no longer be required. Detailed costs of a replacement body for Scotland will be provided as part of the accompanying documentation for the Criminal Justice (Scotland) Bill, but they are expected to be similar. The overall impact of abolishing the PNB in the UK Bill and providing for its replacement in the Criminal Justice (Scotland) Bill will therefore be cost neutral.

34. In respect of the dangerous dogs provisions, no significant additional costs should arise apart from normal minimal costs to criminal justice agencies associated with changes to criminal offences and court powers. Although courts will have higher sentencing powers in respect of dogs being dangerously out of control where an assistance dog is attacked, such cases are rare and we do not anticipate an impact on prisons.

35. In respect of the witness protection provisions, this is clearly a demand led area and it is impossible to predict how many individuals will be considered eligible for witness protection under the broader system proposed by the Bill. The new powers for the police are discretionary and it will only be if and when relevant cases arise that the new powers would be considered for use. With this in mind, we do not anticipate a significant financial impact of the provisions.

Conclusion

36. Extending the relevant provisions in the Bill to apply in Scotland is a sensible and appropriate step to ensure the effective implementation of various policy changes affecting England, Wales and Scotland. The relevant provisions are important within their specific policy areas and with such changes being made for the Police Negotiating Board, dangerous dogs and witness protection in England and Wales, we consider it is helpful for the changes to be made within the UK Bill as an effective and efficient use of the LCM procedure.

37. It is the view of the Scottish Government that it is in the interests of the Scottish people and good governance that the relevant provisions as outlined above which fall
within the executive competence of Scottish Ministers or the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

Scottish Government
May 2013