LEGISLATIVE CONSENT MEMORANDUM

FLOOD AND WATER MANAGEMENT BILL

Draft Legislative Consent Motion

1. The draft motion, which will be lodged by the Cabinet Secretary for Rural Affairs and the Environment, is:

“That the Parliament agrees that the relevant provisions of the Flood and Water Management Bill, introduced in the House of Commons on 19 November 2009, relating to reservoirs which sit on the border between Scotland and England, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment, under Rule 9.B.3.1(a) of the Parliament’s standing orders. The Flood and Water Management Bill was introduced in the House of Commons on 19 November 2009. The Bill can be found at:

http://services.parliament.uk/bills/2009-10/floodandwatermanagement.html

Content of Bill

Flood and Water Management Bill

3. The Bill covers a wide range of issues which are devolved to the Scottish Parliament and so its main provisions are only relevant to England and Wales. The provisions include flood and coastal erosion risk management and risk management: designation of features and reservoir safety improvements.

Flood and Coastal Erosion Risk Management & Risk Management: designation of features.

4. These parts deal with flood risk management and are intended to deliver greater security for people and their property from the risk of flooding and coastal erosion by creating clearer structures and responsibilities for managing that risk;

5. Scotland has already enacted legislation which encompasses the flood risk management elements of the Bill through the Flood Risk Management (Scotland) Act 2009.

Reservoirs

6. The Flood and Water Management Bill will amend the Reservoirs Act 1975 and create an improved and risk based regime to manage reservoir safety.

7. Some of the proposed amendments to the Reservoirs Act 1975 have already been introduced in Scotland through the Flood Risk Management (Scotland) Act 2009.
including provisions for flood plans and post incident reporting. The Scottish Government also intends to bring forward similar changes to those proposed to the Reservoirs Act 1975 for Scotland through a Reservoir Safety Bill during the 2010/11 legislative programme in the Scottish Parliament.

8. The only provision in the Bill which amends the Reservoirs Act 1975 which will be subject to the Legislative Consent Motion is the enabling power for cross border reservoir regulations. The enabling power will be subject to consultation with Scottish Ministers.

**Other Provisions in the Bill**

9. These parts deal with SUDS, third party assets, surface water drainage and hosepipe bans. Scotland has already enacted legislation which encompasses some of these elements of the Bill through the Flood Risk Management (Scotland) Act 2009.

**Issue Subject to the Consent of the Scottish Parliament and reasons for seeking a Legislative Consent Motion.**

10. The area of the Bill for which the consent of the Scottish Parliament is sought is the enabling power which will be inserted into the Reservoirs Act 1975 which allows the UK Government to make regulations for reservoirs which sit on the border between Scotland and England.

11. To ensure these reservoirs are subject to a single enforcement regime, the UK Parliament would need to legislate for the Scottish portion of the cross border reservoirs. In order to do this the Scottish Parliament has to agree to the UK Government legislating on this matter through an LCM under the Sewel convention.

**Financial Implications**

12. There are no financial implications.

**Conclusion**

13. The view of the Scottish Government is that it is in the interests of good governance and an effective enforcement system for reservoir safety that the provision in the Flood and Water Management Bill relating to reservoirs which sit on the border between Scotland and England, so far as these matters fall within the legislative competence of the Scottish Parliament should be considered by the UK Parliament.

Water, Air, Soils and Flooding Division
November 2009