LEGISLATIVE CONSENT MEMORANDUM

STATUTE LAW (REPEALS) BILL

Draft Legislative Consent Motion

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

“That the Parliament agrees that the relevant provisions of the Statute Law (Repeals) Bill, introduced in the House of Lords on 27 February 2008, relating to Statute Law Repeal, 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 the Cabinet Secretary for Justice under Rule 9.B.3.1(a) of the Parliament’s standing orders. The Statute Law (Repeals) Bill was introduced in the House of Lords on 27 February. The Bill can be found at: [http://services.parliament.uk/bills/2007-08/statuelawrepeals.html](http://services.parliament.uk/bills/2007-08/statuelawrepeals.html) Detailed notes on the Bill, prepared by the Scottish Law Commission and the Law Commission, are at: [http://www.lawcom.gov.uk/docs/lc308_notes.pdf](http://www.lawcom.gov.uk/docs/lc308_notes.pdf)

Content of the Statute Law (Repeals) Bill

3. The Bill results from the Statute Law Repeals Report published jointly on 29 January 2008 by the Law Commission and the Scottish Law Commission. This is the second post-devolution report published by the two Commissions. The Seventeenth Report, which contained a number of repeals within the competence of the Scottish Parliament, was implemented in 2004.

4. The current report (the Eighteenth) is part of the Law Commissions’ ongoing programme on statute law repeals. That programme has the broad aim of modernising and simplifying the statute book. The enactments dealt with in the Bill have been identified, after detailed research and consultation, as being spent, obsolete, unnecessary or otherwise not now of practical utility. The full Report can be found at: [http://www.scotlawcom.gov.uk/downloads/rep210.pdf](http://www.scotlawcom.gov.uk/downloads/rep210.pdf)

Provisions which relate to Scotland

5. Apart from the repeal of paragraph 19 of Schedule 4 to the Children (Scotland) Act 1995, which is consequential on the repeal of the Employment of Children 1973, the current Bill does not contain any specific repeals of legislation relating to Scotland only.

6. The Scottish Law Commission has identified those elements within the Bill which fall within the legislative competence of the Scottish Parliament. The relevant repeals are listed at Annex A. It is these repeals which the Parliament is asked to agree should be considered by the UK Parliament.
Reasons for seeking a legislative consent motion

7. The Scottish Law Commission advises that the Bill represents a technical “tidying-up” exercise and has no policy implications. As with the last Statute Law Repeals Bill (in 2004), the current Bill does not in practice make any substantive alteration to the current law of Scotland in relation to devolved matters.

8. The 2004 Bill did not give rise to a Sewel Motion in the Scottish Parliament. Since it did not in practice alter the law of Scotland on devolved matters the consensus opinion was that technically a Sewel Motion was unnecessary.

9. Since then, the Standing Orders of the Scottish Parliament have been amended (7th Report (Session 2) of the Procedures Committee, PR/S2/05/R7, 2005). The Parliament now has specific procedures (Chapter 9B of Standing Orders, inserted on 30 November 2005) for dealing with Legislative Consent Motions (LCMs). Chapter 9B requires an LCM to be lodged in relation to every “relevant” Bill. A relevant Bill is defined for the purposes of Chapter 9B as including a Bill which makes provision “applying to Scotland for any purpose within the legislative competence of the Scottish Parliament”.

10. Although it does not substantively alter the current law of Scotland in relation to devolved matters, the Statute Law (Repeals) Bill does contain provisions which fall within legislative competence and could properly be the subject of legislation in the Scottish Parliament. It is therefore a relevant Bill for the purposes of Standing Orders and an LCM is required. This remains the case despite the precedent set by the 2004 Bill. Standing Orders make no exception for specialist legislation of this kind. The formal consent of the Scottish Parliament is therefore required, in accordance with the procedures set out in Chapter 9B.

11. A UK Bill and accompanying LCM provides the most appropriate legislative mechanism in this instance because the overwhelming majority of the changes proposed by the two Law Commissions relate to non-devolved matters. The subject matter is technical in nature and does not raise questions of policy. There are clear benefits for end-users in making a series of technical changes to the statute book, of the kind proposed, via a single legislative instrument.

Consultation

12. Where the proposals extend to Scotland, those consulted included the Scottish Government, UK Departments responsible for reserved matters in Scotland (e.g. HM Revenue and Customs, in relation to taxes and duties), the Crown Office and other interested bodies, such as the Association of Chief Police Officers Scotland and the Police Federation for Scotland (in relation to the repeals relating to police legislation). A full list of consultees is provided in Appendix 3 to the Report (http://www.scotlawcom.gov.uk/downloads/rep210.pdf)

Financial implications

13. There are no financial implications to this Bill.
Conclusion

14. The view of the Scottish Government is that the Statute Law (Repeals) Bill, in so far as its subject matter falls within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.

Scottish Government
March 2008
Statute Law (Repeals) Bill
Provisions on matters devolved to the Scottish Parliament

The following legislation has been identified by the Scottish Law Commission as falling within the legislative competence of the Scottish Parliament. Relevant statutes and provisions are listed under the Part of the Bill in which they appear.

Part 3  Criminal Law
The following repeals:

- Conspiracy, and Protection of Property Act 1875
- Punishment of Offences Act 1837
- Criminal Justice Act 1972 (part)
- Crime and Disorder Act 1998 (section 36(3) and 108)
- Unlawful Drilling Act 1819
- Criminal Justice Act 1988

Part 6  Police
The following repeals:

- Police and Firemen (War Service) Act 1939
- Police and Firemen (War Service) Act 1944
- Police and Criminal Evidence Act 1984

Part 9  Town and Country Planning
The following repeals:

- Civic Amenities Act 1967 (part)
- Town and Country Amenities Act 1974
- Local Government, Planning and Land Act 1980 (part)
- Housing and Planning Act 1986 (part)

Part 11  Miscellaneous (Paras 11.6 to 11.9 of the Report)
The following repeals:

- Employment of Children Act 1973
- Transport Act 1985, s. 3(1)

Scottish Government
March 2008