LEGISLATIVE CONSENT MEMORANDUM

POLICE AND JUSTICE BILL

Draft Legislative Consent Motion

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

“That the Parliament agrees that the UK Parliament should consider those provisions of the Police and Justice Bill, introduced in the House of Commons on 25 January 2006, which will legislate in devolved areas in respect of the abolition of the Police Information Technology Organisation and the establishment of the National Policing Improvement Agency, the Justice, Community Safety and Custody Inspectorate, and computer misuse, and which will alter the executive competence of the Scottish Ministers on extradition matters, as laid out in LCM(S2) 4.1.”

Background

2. This memorandum has been lodged by Cathy Jamieson, Minister for Justice, under Rule 9B.3.1(a) of the Parliament’s standing orders. The Police and Justice Bill was introduced at Westminster on 25 January 2006. The Bill can be found at:

http://www.publications.parliament.uk/pa/cm200506/cmbills/119/2006119.htm

3. The Legislative Consent Motion supports the Partnership Agreement and in particular the Scottish Executive’s commitment to work for a Safer Scotland, reducing crime and re-offending.


5. The purpose of this memorandum is to outline the terms of the provisions in the Bill that are subject to the consent of the Scottish Parliament, by virtue of the Sewel Convention, because they apply to Scotland and are for devolved purposes, or alter the executive competence of the Scottish Ministers.

6. The relevant provisions relate to the following:
   a. Abolition of the Police Information Technology Organisation and establishment of the National Policing Improvement Agency for England and Wales
   b. Her Majesty's Chief Inspector for Justice, Community Safety and Custody
   c. Amendments to the Computer Misuse Act 1990
   d. Amendments to the Extradition Act 2003

7. The Bill contains other provisions which extend to Scotland, namely amendments to the

LCM(S2) 4.1

Session 2, 2006
Aviation Security Act 1982 to give the police enhanced powers of entry, stop and search at airports. This matter is reserved.

Consultation

8. The main provisions of the Bill as they relate to England & Wales were foreshadowed in a number of UK Government publications and announcements.

9. The majority of the provisions which are the subject of the Legislative Consent Motion are consequential to changes to reserved legislation or to legislative changes for England and Wales. The other provisions (computer misuse) concern a devolved matter but amend UK legislation to implement a UK obligation under a European Union Framework Decision. While these changes have not been subject to general consultation procedures specific to Scotland, both the Association of Chief Police Officers in Scotland and Her Majesty’s Chief Inspector of Constabulary for Scotland have been consulted on the provisions relating to them and have expressed support for them.

Financial Implications

10. The Bill, including specifically the proposed provisions subject to the Legislative Consent Motion, is expected to have neutral or marginal cost implications in Scotland.

Provisions in the Bill for which Consent is sought

11. The following paragraphs describe the specific provisions for which consent of the Scottish Parliament is sought, and provide background on their application in Scotland.
Abolition of the Police Information Technology Organisation and establishment of the National Policing Improvement Agency for England and Wales

Clause 1 and Schedule 1: National Policing Improvement Agency

Policy intent

12. To extend to Scotland provisions which abolish the Police Information Technology Organisation (PITO); to ensure that the proposed National Policing Improvement Agency (NPIA) can provide services to the police in Scotland where the Scottish police service agrees; and to ensure that the new governance arrangements for the development and provision, on a UK-wide basis, of IT systems and specialist police training and support services continue to take account of the interests of Scottish police forces and the SPSA.

Background

13. The Bill will establish the NPIA as a new body to provide services to the police in England and Wales. It will take on the functions previously exercised by two existing bodies, which will be abolished: the Central Police Training and Development Authority (Centrex), and the Police Information Technology Organisation (PITO). Centrex is an English and Welsh body, but, PITO is a cross border public authority with responsibility for the development of UK-wide police IT systems. Its abolition will therefore have direct implications for policing in Scotland.

14. The development of IT systems for the Scottish police forces is currently shared between PITO, the Association of Chief Police Officers in Scotland (ACPOS), the individual forces and the Scottish Police Information Strategy (SPIS), which it is proposed will become part of the Scottish Police Services Authority (SPSA) under the Police, Public Order and Criminal Justice (Scotland) Bill currently before the Scottish Parliament. Arrangements are therefore already in place to develop Scotland-wide IT systems and there is no need to retain PITO as a Scottish-only body after it is abolished for England and Wales. Clause 1(2)(b) of the Bill abolishes PITO across the UK, but the commencement provisions at clause 44 provide that the consent of the Scottish Ministers is required prior to bringing that provision into force. The consent of the Scottish Ministers is also required prior to the commencement of the consequential amendments to devolved Scottish legislation in Schedule 14 resulting from the abolition of PITO.

15. The establishment of NPIA as a body whose principal functions relate only to England and Wales, provides an opportunity to clarify the interface between the NPIA, the Scottish police forces and the SPSA. However, there will remain a need to allow for some police IT systems to be managed and developed on a UK-wide basis. Present examples would include the Police National Computer, and Ident 1 which will provide a UK-wide searchable fingerprint database.

Services to the Scottish Police Service

16. Paragraph 2(5) of Schedule 1 provides a more general power to enable the NPIA to
provide services to Scottish police forces and the SPSA where these are considered desirable by those bodies. This provision is necessary to allow the Scottish Police to make use of NPIA's services, for example, to continue the longstanding arrangement whereby Scottish police officers and support staff are able to access training provided by Centrex, such as the Strategic Command Course and training for scenes of crime officers. But the NPIA will not be able to provide any such services to Scottish police bodies without the agreement of the body itself, its chief officer or its governing Authority.

**Safeguards in the governance arrangements for the NPIA**

17. Scottish police forces will not be represented on the board of NPIA, as they currently are on the board of PITO. There is therefore a need for the legislation to safeguard the interests of Scottish police forces and the SPSA in the governance arrangements for NPIA in respect of UK-wide IT systems, and to ensure that Scotland continues to be able to influence the development and management of such systems where appropriate.

18. Such safeguards are provided by the Bill. Specifically the Bill provides for consultation of the Scottish Ministers by the Secretary of State (paragraph 6(3) of Schedule 1) prior to the setting of strategic priorities of the Agency as they will or might affect policing in Scotland. Additionally, the NPIA will be required, under paragraph 4(1) of Schedule 1, to consult the SPSA or ACPO before doing anything which will or might relate to Scottish police forces or the SPSA. This will mean that the interest of Scottish policing will be maintained in respect of systems currently managed by PITO and those which may be developed in the future by the NPIA. It will also ensure that Scottish interests are taken into account when developing training courses which will or might affect Scotland - something not available under existing legislation. Provision is also made at paragraphs 49-51 of Schedule 1 in respect of constables from Scottish Police forces who may be seconded to the NPIA. Commencement of these provisions requires the consent of the Scottish Ministers.

19. Paragraph 46(1) of Schedule 1 gives the Secretary of State the power to modify by order the objects, functions and structure of the NPIA. Under paragraph 46(6) it is specified that this may include amendment of enactments, including those of the Scottish Parliament. As the NPIA is an England and Wales body, any such amendments to devolved Scottish legislation are in practice likely to be minor and consequential in nature. Nevertheless, there require to be provisions to ensure appropriate involvement of Scottish Ministers and/or the Scottish Parliament. Appropriate amendments to the Bill will be tabled to provide such involvement, and the Legislative Consent Motion seeks the Parliament’s agreement to these provisions subject to those amendments being made.

20. The Legislative Consent Motion therefore seeks the Scottish Parliament's consent for the abolition of PITO in respect of Scotland and for the consequential amendments and repeals to devolved areas of legislation which are required as a result of its abolition and the creation of the NPIA. It further seeks consent for the governance arrangements to safeguard Scottish interests, as described above.
Advantages of using this Bill

21. It would not be possible to achieve the same legislative effect by legislating for devolved Scottish interests in the Scottish Parliament. While it would be technically possible to abolish PITO for Scotland through Scottish legislation coinciding with the Westminster legislation, this would add considerable complexity. Furthermore, it would not be possible for Scottish Parliament legislation to introduce the very necessary safeguards which will give the Scottish Ministers and the Scottish police service an important role in the governance of the NPIA’s UK-wide developments because the governance arrangements for the NPIA (an England & Wales body) can only be set by Westminster legislation.

Her Majesty’s Chief Inspector for Justice, Community Safety and Custody

Schedule 10: The Chief Inspector: consequential amendments

Policy intent

22. To ensure that the new Justice, Community Safety and Custody Inspectorate for England and Wales can continue to fulfil those devolved functions in Scotland which were previously carried out by Her Majesty’s Inspectorate of Constabulary (HMIC) (England & Wales) which is to be subsumed within the new organisation.

Background

23. The Bill will create a new Justice, Community Safety and Custody Inspectorate for England and Wales. This will combine and replace the five existing Inspectorates which cover, respectively, the Police, Crown Prosecution Service, court administration, prisons and probation service, in England and Wales.

24. There will be only a small impact on devolved matters in Scotland. This concerns the function currently exercised by HMIC (England & Wales), to inspect UK-wide bodies such as the Serious Organised Crime Agency, the Ministry of Defence Police (MDP) and the Civil Nuclear Constabulary (CNC). The functions of these bodies are generally reserved but to the extent that they relate to the prevention and detection of crime in a general sense (as opposed to eg the defence functions of MDP), they exercise functions in devolved areas. By implication, the body which inspects these organisations in Scotland also has functions in a devolved area. When, in 2002, the UK Police Reform Bill gave these functions in respect of MDP to HMIC (England & Wales), the Scottish Parliament gave its consent through a Sewel motion.

25. Whenever HMIC (England & Wales) carries out inspections of the MDP or CNC in Scotland, it does so after consulting HMIC for Scotland. The Commissioners for Revenue and Customs and the Serious Organised Crime Agency are inspected jointly by HMIC (England and Wales) and HMIC for Scotland. The same arrangements will apply to the new Inspectorate.

26. The Bill provides that instead of these marginal devolved functions being carried out by HMIC (E&W) after consulting HMIC (Scotland) or inspecting jointly with HMIC
(Scotland), they will in future be carried out by the new Justice, Community Safety and Custody Inspectorate (E&W), also after consulting HMIC (Scotland) or through a joint inspection with HMIC (Scotland) as the case may be.

Advantages of using this Bill

27. This is a minor consequential effect of a substantive change south of the border. The devolved Scottish aspects form a very small part of the overall functions of the new body, which cannot effectively be carried out in isolation from the main, reserved, functions. Legislation at Westminster with the Scottish Parliament's consent will ensure that the arrangements for inspecting the devolved Scottish functions of these bodies remain compatible with the arrangements for inspecting these bodies in respect of their mainstream reserved functions.

Amendments to the Computer Misuse Act 1990

Clause 33: Increased penalty etc for offence of unauthorised access to computer material
Clause 34: Unauthorised acts with intent to impair operation of computer, etc
Clause 35: Making, supplying or obtaining articles for use in computer misuse offences
Clause 36: Transitional and saving provision
Clause 43 and Schedules 13 and 14: Amendments and repeals

Policy intent

28. To extend to Scotland changes to the Computer Misuse Act 1990 which will meet the UK's international obligations arising from the EU Framework Decision on Attacks Against Information Systems and the Council of Europe Convention on Cybercrime.

Background

29. The EU Framework Decision on Attacks against Information systems (24 February 2005) and the Council of Europe Convention on Cybercrime (made at Budapest on 23 November 2001) are Europe-wide responses to the increasing severity of the threat from viruses, internet-based fraud and other computer-based crime. The UK is a signatory to both and is obliged to implement the EU Framework Decision through domestic law by March 2007.

30. The main source of specific law in this area is the Computer Misuse Act 1990. This Act extends to Scotland and supplements more general Scots common law which is also applicable in some instances. The 1990 Act requires to be amended - both in Scotland and across the rest of the UK - in order to fulfil the UK's obligations under the EU Framework Decision and its commitment to the Council of Europe Convention. The specific changes are:

a. to increase the maximum term of imprisonment for an offence of unauthorised access to computer material from 6 months to 2 years;
b. to clarify that all means of interference with a computer system are criminalised – in particular denial of service attacks. This involves widening the scope of the existing section 3 offence (unauthorised modification of
c. to increase the maximum term of imprisonment for the amended section 3 offence from 5 to 10 years;

d. to criminalise the making available of access data to a computer system with the intent to commit offences.

Advantages of using this Bill

31. Although a devolved matter, computer crime is by nature trans-national. For this reason, a Law Commission report in 1989 expressed the view that it would be desirable that the rules of the criminal law in relation to unauthorised access to computers should be uniform throughout the United Kingdom. That remains a desirable objective.

32. The alternative to using this Bill would be to make similar legislative changes for Scotland in the Scottish Parliament to fulfil our international obligations. However, there would then be one text for the 1990 Act that applied to Scotland and another that applied to England, Wales and Northern Ireland. This would be less than ideal because of the trans-national nature of the problems being addressed.

Amendments to the Extradition Act 2003

Clause 39 and Schedule 12: Amendments to the Extradition Act 2003 etc

Policy intent

33. To alter the executive functions of the Scottish Ministers under the Extradition Act 2003, in line with amendments being made to the Act to rectify minor faults and/or in the light of experience of operating the new legislation.

Background

34. Extradition is reserved and the Extradition Act 2003 applies to the UK as a whole. It came into force on 1 January 2004, repealing the previous extradition legislation. The 2003 Act set out two completely new legal frameworks for extradition, one for countries subject to the European Arrest Warrant (Part 1 of the Act) and one for other countries with whom the UK has extradition arrangements (Part 2). Part 3 deals with outgoing extradition requests from the UK. Since the Act came into force there have been a number of court judgements and interpretations of certain provisions of the Act (essentially in England and Wales) that have exposed the need for amendments. These are to be made in the Police and Justice Bill.

35. Under the Extradition Act certain executive functions in relation to extradition have been conferred on the Scottish Ministers. The amendments in the Police and Justice Bill are largely of a technical nature and while most do not alter the existing powers of Scottish Ministers there are a small number of amendments which would, and so would require the consent of the Scottish Parliament. These are:-

a. amendments to section 70 of the Act to allow Ministers to refuse to issue a certificate to initiate extradition proceedings where the person whose
extradition is requested has been granted leave to remain in the UK on humanitarian grounds;

b. amendments to section 93 of the Act to allow that, where a person has consented to his extradition, Ministers need not wait the permitted period of 6 weeks (to be amended to 4 weeks) in which representations may be made before ordering a person’s extradition, and need not consider any representations made after the Order is made;

c. further amendments to section 93 and the consequential insertion of a new section which will introduce restrictions on extradition following a request under Part 2 of the 2003 Act where the person who is the subject of the request has been transferred to the UK from the International Criminal Court to serve a sentence imposed by that Court;

d. amendment to section 99 of the Act in order to enable the Scottish Ministers to apply to the sheriff of Lothian and Borders instead of the High Court for an extension of the 2 month period within which they must make a final decision on an extradition request;

e. amendments to section 179 of the Act to modify one of the matters Ministers must take into account in dealing with competing extradition requests. In the given circumstances, instead of taking into account whether the person is alleged to be “unlawfully at large after conviction”, Ministers will have to consider simply whether the person is alleged “to have been convicted”.

Advantages of using this Bill

36. The Extradition Act is reserved legislation and could not be amended separately by the Scottish Parliament. Moreover, if the amendments were not applied in respect of functions of the Scottish Ministers, Scotland would not benefit from certain desirable refinements to the legislation available in the rest of the UK.

Commencement and ancillary powers for the Scottish Ministers

37. The Legislative Consent Motion also seeks approval for a number of commencement powers and ancillary powers which the Bill will confer on the Scottish Ministers. Some of these have been mentioned earlier in this memorandum. The commencement powers are in clause 44 and in addition to the powers mentioned earlier in relation to the abolition of PITO, the Scottish Ministers have the power to commence the relevant provisions that relate to the Computer Misuse Act so far as they extend to Scotland (clause 44(4)). Scottish Ministers also have power under section 42 to make any supplemental, incidental or consequential provision for the purposes of giving effect to the Act if that provision is within devolved competence. Any such order would be subject to procedure within the Scottish Parliament by virtue of clause 40.

Scottish Executive
08 February 2006