SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

Policing and Crime Bill

Background

1. This supplementary Legislative Consent Memorandum (LCM) has been lodged by Michael Matheson MSP, Cabinet Secretary for Justice. This Memorandum augments the LCM on the Policing and Crime Bill which was lodged on 23 June 2016. That Memorandum identified that a number of provisions contained within the Bill were intended to either change the law in respect of a devolved matter or affect/alter the legislative competence of the Scottish Parliament. Those provisions relate to:

   - Police maritime powers;
   - Cross-border powers of arrest;
   - Restoring littering powers of Scottish local authorities under sections 92, 93 and 94 of the Environmental Protection Act 1990;
   - Firearms.

2. That Memorandum set out the Scottish Government’s intention to pursue further discussions with stakeholders and the UK Government regarding those provisions relating to cross-border arrest. Those discussions have now been satisfactorily concluded, with amendments tabled in the House of Lords on 26 September 2016 which properly reflected the agreed policy.

3. The UK Government is planning further amendment to provisions relating to maritime enforcement which are not yet finalised and so a further supplementary LCM may yet be required. The Scottish Government also understands that there is the possibility of further amendments relating to the regulation of firearms and will lodge a further supplementary LCM if these amendments do not reflect its policy understanding.

4. The Scottish Government remains content with provision relating to restoring littering powers of Scottish local authorities. The draft motion below therefore reflects this position and supersedes that included in the initial LCM.

5. The latest version of the Bill can be found at:
   [http://services.parliament.uk/bills/2016-17/policingandcrime.html](http://services.parliament.uk/bills/2016-17/policingandcrime.html)

Summary of developments and changes to the Bill

Cross-border powers of arrest

Offences

6. Provisions in clause 105 of the Bill (inserted at Report Stage in the House of Commons) allow people suspected of serious offences in Scotland to be arrested in other parts of the UK by police from those jurisdictions, and vice versa. The Bill currently provides for serious offences to be specified in regulations made by the
Secretary of State (with the consent of the Scottish Ministers and the Department of Justice for Northern Ireland).

7. Amendments tabled by the UK Government on 26 September 2016 now specify on the face of the Bill the list of offences for which this power of arrest can be used (new Schedule 14A refers):


8. This will strengthen the reassurance and scrutiny of the limits of the power and will enable the Scottish Parliament to have the opportunity to scrutinise as part of the consent process. The Scottish Government expects these amendments will be considered at the next House of Lords committee stage which is scheduled for 26 October 2016.

9. A power to make regulations to amend the list in future will remain on the basis that the Secretary of State will bring forward regulations having first obtained the consent of the Scottish Ministers and the Department of Justice for Northern Ireland. The Scottish Ministers will be able to propose amendments that may be relevant in Scotland to the Secretary of State. The Scottish Government is reassured that this will sufficiently limit the use of the power and provide the Scottish Ministers with a robust process to propose and scrutinise any changes to the list of offences.

Rights and entitlements

10. Some of the provisions relating to the rights and entitlements of individuals subject to cross-border arrest are complex and may require updating or adjustment in the future to ensure that they work in practice. The UK Government has tabled amendments which modify how the relevant statutory rights will apply in this context (new Schedule 14B refers) and amendments to the regulation making power to amend these rights, and modifications to these rights, if required in the future:


11. The regulation making power will work in the same fashion as the power to amend the list of offences, with the Secretary of State able to bring forward regulations having first obtained the consent of the Scottish Ministers and the Department of Justice for Northern Ireland. The Scottish Government is satisfied that this will give robust assurance with regard to the future operation of these provisions.

Draft legislative consent motion

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

“That the Parliament agrees that provisions of the Policing and Crime Bill, introduced in the House of Commons on 10 February 2016, which refer to cross-border powers of arrest, restoring littering powers of Scottish local authorities and to firearms, where these matters fall within the legislative competence of the Scottish Parliament or alter
the legislative competence of the Parliament or the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government
October 2016
This Supplementary Legislative Consent Memorandum relates to the Policing and Crime Bill (UK legislation) and was lodged with the Scottish Parliament on 6 October 2016.