Sewel Memorandum

ELECTRONIC COMMERCE BILL

Description of Bill

Electronic Commerce refers to a new way of marketing goods and services, using electronic means. This involves buying and selling goods and services, money transfers, and advertising, and also includes transactions with Government. The Electronic Commerce Bill would include powers to create a statutory voluntary approvals regime for bodies offering electronic signature and confidentiality services. These services enable people to check who has signed an electronic message, that it has not been tampered with, and that it has been kept confidential.

The Bill would also ensure, as far as possible, that the law is technology neutral in its application. It will clarify the position regarding legal recognition of electronic signatures and begin the process of updating the statute book so that electronic means can be used as well as the traditional pen and paper.

Provision for which Scottish Parliament consent is required

The Bill is largely concerned with reserved matters, but includes devolved provisions in relation to the Scots law of contract and evidence. The provisions would allow electronic documents to be as validly formed as their paper counterparts and would allow for the recognition in Scots law of electronic signatures. This would be done by giving Ministers powers (by statutory instrument) to modify existing legislation for the purpose of authorising, facilitating or encouraging the use of electronic Commerce or electronic storage.

As noted in the opening section of this memorandum, Scottish Ministers would carry out the regulation making powers. It would also be for Scottish Ministers to make the order to commence the devolved provisions in the Bill. This is given effect by a clause deeming the Bill for the purposes of the Scotland Act 1998 to be a pre-commencement enactment within the meaning of that Act.

The Scottish Parliament could amend or repeal the devolved provisions.