LEGISLATIVE CONSENT MEMORANDUM

REHABILITATION OF OFFENDERS (AMENDMENT) BILL

1. The Cabinet Secretary for Justice invites the Parliament to note that the Scottish Government does not intend to lodge a Legislative Consent Motion to seek consent in respect of the Rehabilitation of Offenders (Amendment) Bill. This Bill was introduced in the House of Lords on 19 November 2009.

Background

2. This memorandum has been lodged by Kenny MacAskill, Cabinet Secretary for Justice, under Rule 9B.3.1(b) of the Parliament’s standing orders. The Rehabilitation of Offenders (Amendment) Bill was introduced to the House of Lords by Lord Dholakia on 19 November 2009. The text of the Bill can be found at:

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

Content of the Rehabilitation of Offenders (Amendment) Bill

3. The purpose of the Bill is to enact reforms proposed by the UK Government in April 2003 in its response to the report “Breaking the Circle” (published in July 2002). The report was the work of a review group on the Rehabilitation of Offenders Act 1974 (“the 1974 Act”). This review was initiated by the then Home Secretary, Jack Straw, in 2001. The review, chaired by the Home Office, brought together a range of organisations and key stakeholders to assess the difficulties with the 1974 Act, and to consider how to develop a scheme for limiting the disclosure of previous convictions while maintaining an effective balance between the need to protect the public and the resettlement needs of ex-offenders.

4. The 1974 Act provides that, after specified rehabilitation periods, convictions become “spent” for certain purposes. For example, in the case of an adult offender a conviction resulting in a fine becomes spent after five years; a conviction resulting in a three month prison sentence becomes spent after seven years; and a conviction resulting in a 12 month prison sentence becomes spent after 10 years. Prison sentences of more than two and a half years never become spent.

5. Ex-offenders do not have to declare spent convictions when applying for most jobs. Certain types of job are exempted from these provisions – for example, criminal justice agencies, jobs involving national security, senior positions in financial institutions and work involving unsupervised access to young people or vulnerable adults. Ex-offenders are required to declare convictions when applying for such positions.

6. The Bill would amend the Rehabilitation of Offenders Act 1974 to reduce the length of rehabilitation periods and would extend the Act’s provisions to determinate sentences of more than two and a half years. The same occupations as now would continue to be exempted from the Act’s provisions and ex-offenders applying for positions in exempted categories of employment would still have to declare all convictions.
Provisions which relate to Scotland

7. As currently drafted, all of the provisions in the Bill extend to Scotland. As the subject-matter of the Rehabilitation of Offenders Act 1974 is devolved, any change to the current legislation would require the consent of the Scottish Parliament through a Legislative Consent Motion. The Scottish Government has no plans to make amendments to the 1974 Act of the sort set out in the Bill.

Why no Legislative Consent Motion is being lodged by the Scottish Government

8. The UK Government is of the view that any reform of the 1974 Act should be looked at afresh and in relation to the whole of the Act, particularly since there have been significant changes to sentencing and disclosure laws south of the border since 2003. The UK Government’s position was set out in the House of Lords by Ministers during debates both at Second Reading (Lord Bach) and in Committee (Lord Tunnicliffe). Lord Bach expressed reservations about the Bill and stated that there was a need to have dialogue with Scotland as well as a public consultation. Lord Tunnicliffe reiterated the UK Government’s position in Committee and stated the following:

“We will neither support nor oppose it, as is usually the case, but we do consider that a thorough new review of the Act and its current context will be necessary before we can consider any reforming legislation.”

9. The Scottish Government are also of the opinion that any amendment to the 1974 Act should follow a comprehensive review of the whole of the Act which, among other things, would have to reflect current sentencing practice and legislation in Scotland. Lord Dholakia’s Bill does not, in our view, pay sufficient regard to these areas.

10. The Scottish Government also understands that, at this late stage in the session, the Bill is unlikely to make the significant further progress necessary to be successful in the UK Parliament. The UK Parliament website puts it thus:

“Lords Private Members' Bills are treated like other Private Members' Bills, but do not have priority over Bills introduced in the Commons. They are therefore unlikely to have much, if any, time devoted to them.”

Conclusion

11. To note that Scottish Government does not intend to lodge a Legislative Consent Motion for the Rehabilitation of Offenders (Amendment) Bill.

Scottish Government
February 2010

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2 Available at: http://www.parliament.uk/about/how/laws/private_members.cfm