Written evidence submitted by Joe FitzPatrick MSP, Minister for Parliamentary Business, Scottish Government (GSB 10)

This paper responds to the Committee’s initial request for evidence in connection with its inquiry into Great Repeal Bill powers and procedures. It provides the Committee with some relevant background to the Scottish Government’s views on the proposed Bill and the issues this Government is most concerned with. It does not, at this early stage in the inquiry, engage with technical detail, although the Scottish Government does reserve its right to comment on more specific issues once the content and approach taken by the Great Repeal Bill are revealed and developed.

The Scottish Government’s paper, Scotland’s Place in Europe published on 20th December 2016 ([www.gov.scot/Publications/2016/12/9234](http://www.gov.scot/Publications/2016/12/9234)) highlighted the constitutional implications of UK withdrawal from the EU, including matters no longer subject to EU law which are already within the Scottish Parliament’s competence (for example agriculture, fisheries, education, health, justice and environmental protection). That paper makes clear that policy responsibility will lie, as now, with the Scottish Government and decisions on the replacement of EU law will be for the Scottish Parliament. The Scottish Government is already considering the options for devolved areas and in doing so will discuss proposals with the UK Government.

New legislative constraints would be required to remove any of these areas from devolved competence on withdrawal from the EU. Such legislation would require the consent of the Scottish Parliament (as they would the consent of the National Assembly for Wales and the Northern Ireland Assembly); the Scottish Government has made clear that it would not recommend such consent is given.

Scotland’s Place in Europe noted at paragraph 181 that “Across the UK, dealing with the legal and policy consequences of leaving the EU will be a major undertaking. The UK Government has announced a "Great Repeal Bill" intended to address these issues, at least initially. The Scottish Government will discuss the plans with the UK Government as they develop, in line with well-established practice for Westminster legislation. If, in the light of that and our discussions on the proposals in this paper, the Scottish Government agrees that the Bill should include areas within devolved competence or changes to the powers of the Scottish Parliament or Scottish Ministers, the legislative consent of the Parliament will need to be sought in the normal way. The alternative would be to legislate for these matters in the Scottish Parliament.”

For the reasons outlined above it is therefore essential that the views of the Scottish Government be taken into consideration both as part of this inquiry and in the development of the Great Repeal Bill and further Brexit-related legislation. As noted above any application of the Great Repeal Bill to Scotland in devolved areas will require both the consent of the Scottish Parliament and agreement between the governments; with that agreement being required both in relation to policy objectives and the overall approach. Key to this agreement will be the meeting of the Scottish Government’s policy objectives and the Great Repeal Bill containing satisfactory provisions to ensure the Scottish Parliament and Scottish Ministers continued exercise of legislative and executive authority in devolved matters relating to Scotland.

The Scottish Government therefore welcomes the Committee’s inquiry. At this stage we offer no comments on those specific matters identified in the initial call for evidence around the adequacy or appropriateness of the UK Parliament’s current procedures for scrutinising secondary legislation, or on possible changes to those procedures. At this stage, with a lack
of detail and clarity being available on the proposed Great Repeal Bill and the powers it may confer, the Scottish Government is not in a position to offer specific suggestions on the issues relating to any proposed powers. The Scottish Government recognises the unique challenge that Brexit poses and that there will be a need to ensure that relevant laws are able to be amended to ensure that there is legal certainty and that the law works effectively from an operational and policy perspective on withdrawal from the EU.

Finally, if there is agreement that the Great Repeal Bill, or any other Brexit-related primary legislation, should contain provision relating to devolved matters, including changes to the powers of the Scottish Parliament or Scottish Ministers, planning for UK Parliamentary procedures will need to take fully into consideration the Scottish Parliament’s responsibilities, recesses and Standing Order requirements and in the usual way ensure sufficient time is allowed for the Scottish Parliament to consider and scrutinise the relevant provisions before deciding whether to consent to those provisions.

24 February 2017