SEWEL MEMORANDUM
EXTRADITION BILL

Motion **"**That the Parliament notes the provisions of the Extradition Bill and is content for those provisions conferring Executive functions on the Scottish Ministers in relation to extradition to be considered by the UK Parliament."

Background

1. Introduced in the UK Parliament on 14 November 2002, the Extradition Bill constitutes a wide ranging review of the law on extradition. It seeks to provide a quick and effective framework to extradite a person to the country where he is accused or has been convicted of a serious crime, while ensuring that his fundamental human rights are not breached.

2. The Extradition Bill will replace the Extradition Act 1989. The Government set out its proposals to reform the law on extradition in a consultation document "The Law on Extradition: A Review" in March 2001. The Bill makes provision to give effect to the proposals in the Review, although there are significant changes which reflect the results of a consultation exercise and developments since the Review was published. In particular, in respect of extradition to other European Union member states, the original proposals in the Review have been overtaken by the adoption of the Framework Decision on the European Arrest Warrant by the JHA Council of the European Union on 13 June 2002. The Bill gives effect to that Framework Decision.

Summary

3. The Bill makes provision for new extradition procedures. It provides for:

- a system where each of the United Kingdom's extradition partners is in one of two categories. There will be flexibility for a country to move from one category to the other where appropriate, depending on the extradition procedures negotiated by the UK with each extradition partner;

- the adoption of a Framework Decision on the European Arrest Warrant creating a fast track extradition arrangement with category 1 states (member states of the European Union, Norway, Iceland and Gibraltar);

- retention of the current arrangements for extradition with all states other than category 1 states with which the UK currently has bilateral treaties on extradition (category 2 territories) with important modifications to reduce duplication and complexity;

- a simplification of the rules governing the authentication of foreign documents; and

- a simplified single avenue of appeal for all cases.

The Role of Scottish Ministers in Extradition Casework

4. Extradition is a reserved matter under schedule 5 of the Scotland Act. The matters covered by the Bill are not, therefore, within the legislative competence of the Scottish Parliament.

5. At present, however, a wide range of functions in relation to extradition casework are executively devolved to Scottish Ministers. These functions are set out in an order under Section 63 of the Scotland Act (the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 (SI 1999 No1750)).

6. In the context of updating the extradition legislation a decision was taken to bring together all the provisions in relation to extradition on the face of the new Extradition Bill. In an area of this complexity it is advantageous to bring together all the provisions on the powers which may be exercised - and by whom - in a single piece of legislation. The Bill will therefore replace the relevant provisions of the existing Section 63 order. Its detailed terms ensure that decisions concerning the extradition of persons to and from Scotland will continue to be taken by Scottish courts and Scottish Ministers as appropriate.

7. Under the Sewel Convention, the consent of the Scottish Parliament is required to any provisions in a UK Bill which confer Executive functions on the Scottish Ministers, even if the subject matter of the Bill relates entirely to reserved matters. With a few exceptions (for example, those relating to national security cases, where decisions are reserved to Ministers of the UK Government) this Bill will ensure that Scottish Ministers can fulfil the full Ministerial role envisaged in the Bill in relation to extraditions to and from Scotland. It will enhance their role in certain instances - for example, they will for the first time handle US extradition requests. The necessary changes to reflect a different prosecutorial and court system will also, of course, be reflected in the Bill.

8. This Memorandum therefore sets out how the Bill will work in relation to extradition to and from Scotland.

Content of the Bill

9. **Part 1** of the Bill makes provision for extradition to Category 1 countries (as above). Category 1 countries will be designated by Order in Council. It sets out how European Arrest Warrants issued by other Category 1 countries should be handled in the UK.

10. A judicial authority in one EU state will issue a common form European Arrest Warrant. A central authority (a 'designated authority' in the Bill's terminology) will have powers to receive and certify the incoming arrest warrant. The Crown Office will be specified under a Clause 2 Order in Council as the central authority for Scotland, and will handle warrants seeking the extradition of persons believed to be in Scotland.

11. When an incoming arrest warrant has been received and certified, the person whose extradition is sought may be arrested and must be brought before the appropriate judge as soon as practicable for the initial hearing. A person may be arrested without a warrant where there are reasonable grounds to believe that a warrant has been or shortly will be issued. In

such cases the person must be brought before the appropriate judge for the initial hearing within 48 hours. The appropriate judge in Scotland is the Sheriff of Lothian and Borders. The Bill sets out in some detail the potential bars to extradition which the court must consider before authorising extradition to proceed. [Clauses 11 to 19 inclusive] An appeal against a decision to extradite the individual will lie to the High Court of Justiciary.

12. In Part 1 the Bill contains a number of specific provisions which ensure that the distinctive roles of Scottish Ministers, of the Crown Office as designated authority and of Scottish courts are safeguarded in relation to extradition from Scotland to a Category 1 country. For example;

- provisions in relation to the courts and to the functions of the prosecutor are in the correct form for Scotland; and

- given that in Scotland there is no appeal to the House of Lords in criminal matters, the English provisions in relation to such appeal are disapplied [for example, Clause 32]

Similar provisions are found in the later parts of the Bill to safeguard the Scottish position.

13. **Part 2** deals with extradition to Category 2 countries (all countries with which the UK has mutual extradition arrangements, excluding those in Category 1).

14 Requests from Category 2 countries for the extradition of a person resident in Scotland will initially be considered by Scottish Ministers, who will certify to the relevant court (again, the Sheriff Court in Lothian and Borders) that the request has been made in the correct form and by a valid judicial authority. The court may then grant a warrant for the arrest of the individual. It may also issue a warrant for provisional arrest in advance of receipt of a formal request. When considering the case for extradition, the court must take into account a number of potential bars to extradition set out in the Bill. [Clauses 78 to 82 inclusive] Where the court sees no reason to discharge the fugitive, the case will be remitted back to Scottish Ministers, who will normally order the individual's extradition to the requesting state. Again, there will be an appeal to the High Court of Judiciary against the Minister's decision to extradite.

15. **Part 3** deals with all outgoing requests from the UK to other countries (both category 1 and category 2)

16. In relation to Category 1 territories, a judicial authority (for Scotland, any sheriff) will issue a European Arrest Warrant (which must found on a domestic arrest warrant already issued). The Procurator Fiscal will apply for such a warrant and will act on the instructions of Crown Office, which will also function as the Central Authority for outgoing requests to Category 1 territories.

17. In relation to Category 2 territories, the Bill also makes provision for extradition to proceed in line under that country's relevant legislation.

18. **Part 4** deals with powers to obtain search warrants and to seize and retain evidential material. Reflecting significant differences between the English and Scottish systems in this area, Part 4 makes clear that applications for such warrants are to be made to a sheriff by the Procurator Fiscal and warrants executed in accordance with Scots criminal procedure.

19. The English law in this area is based on the provisions of the Police and Criminal Evidence Act 1984, as amended. This Act does not apply in Scotland. In Scotland the Procurator Fiscal exercises powers under both under statute and common law, for example to prepare, present and supervise the execution of a search warrant. Accordingly a number of Part 4 clauses which depend on the 1984 Act should not extend to Scotland. Other provisions do not require to extend to Scotland as existing statutory provision is considered sufficient. In particular the provisions of the Criminal Procedure (Scotland) Act 1995 will be relied upon in respect of the fingerprinting etc. of persons arrested under an extradition arrest power.

20. **Part 5** is miscellaneous and general in nature.

Scottish Executive
November 2002