MEMORANDUM

POLICE REFORM BILL

Background

1. The Police Reform Bill was introduced in the House of Lords on 24 January 2002. The main purpose of the Bill is to implement the UK Government's police reform programme in England and Wales, but the Bill also deals with other policing related matters and the Executive believes some of its provisions should be extended to Scotland.

Content of the Bill

2. The Bill's main provisions relate only to England and Wales. These include proposals to place a duty on the Home Secretary to produce an annual National Policing Plan; to establish arrangements for ensuring high standards and good practice are applied across the police service in England and Wales, including for the Home Secretary to require remedial measures to be taken when a force, or part of a force, is inefficient or ineffective; and to confer limited police powers on police employed community support officers and accredited members of the extended police family (eg street wardens).

Proposal

3. There are, however, a number of areas in which the Scottish Executive would like the Bill to make provision in relation to devolved matters. These are:

i. secondment of Scottish police officers to the Independent Police Complaints Commission for England and Wales;

ii. inspection of the Ministry of Defence Police in Scotland;

iii. nationality requirements for Scottish Police officers;

iv. liabilities of law enforcement officers from elsewhere in Europe.

Secondment of officers to the Independent Police Complaints Commission

4. The Bill will establish a new complaints system for England and Wales, with a new Independent Police Complaints Commission ("the IPPC"). To provide for maximum flexibility and to promote common standards of policing across the UK, the UK Government and the Scottish Executive wish it to be possible for officers from Scottish forces to be seconded to serve in the IPCC. The Bill makes provision for this and in addition it makes a consequential amendment to the Police (Scotland) Act 1967 ("the 1967 Act"). The effect of this amendment is to make temporary service with the IPPC a form of relevant service thereby ensuring that a constable's terms and conditions of service are preserved notwithstanding service away from his home force. To the extent that the Bill amends the 1967 Act, it is the view of the Executive that it relates to devolved matters. As this amendment is part and parcel of wider proposals which are not devolved it makes sense that the opportunity is taken now in the Bill to make the amendment.

Inspection of the Ministry of Defence Police

5. The Bill will place on a statutory footing the current voluntary arrangements for the inspection of the Ministry of Defence Police (MDP) by HM Inspectors of Constabulary for England and Wales. In order to ensure that these inspections properly reflect Scottish conditions, the Bill would require HM Inspectors for England and Wales to consult HM Inspectors of Constabulary for Scotland before carrying out any inspection of MDP in Scotland. The function of the MDP is generally a reserved matter, but to the extent that the inspections relate to the MDP functions as regards the prevention and detection of crime in a general sense (as opposed to their defence functions), the inspection of those devolved functions could be said to relate to devolved matters. The Scottish Parliament passed a motion covering similar provisions in the Armed Forces Bill on 29 March 2001, following consideration by the Justice 1 Committee on 27 March 2001. These provisions were lost from the Armed Forces Bill at the dissolution of the Westminster Parliament last year.

Nationality requirements applicable to police officers

6. Currently no person may serve as a police officer in a British police force unless he/she is a UK national or a citizen of the Irish Republic or the Commonwealth. The Bill will remove this condition, on the grounds that nationality in itself should not be a barrier to joining the police, if the individual is suitable in all other respects. The Scottish Executive would wish this provision in the Bill to extend to Scotland, primarily to avoid differences in this eligibility criterion across the UK but also because, if the bar is to be removed for England and Wales, to retain it could hinder effective recruitment in Scotland.

Liabilities of law enforcement officers from elsewhere in Europe

7. Following a decision of the Justice and Home Affairs Council of the EU, the UK has an obligation to legislate on the civil or criminal liabilities of law enforcement officers taking part in Joint Investigation Teams with officers from other member states (as well as those arising from other collaborative investigative operations under the EU Mutual Legal Assistance Convention). A very similar provision is required to support the UK's application to participate in the Schengen provisions on free movement of people, to address the civil and criminal liabilities of officers who maintain surveillance on an individual who has travelled into another participating country. In their consideration of measures now contained in section 111 of the Anti-Terrorism, Police and Security Act 2001, the Scottish and UK Parliaments previously approved provisions which allow Scottish Ministers to make regulations for the purpose of the UK implementing various EU third pillar obligations, including the Framework decision on Joint Investigation Teams and the Convention on Mutual Assistance in Criminal Matters.

8. The provisions in the Police Reform Bill would extend the liability of chief constables in Scotland in relation to any damage caused by a foreign official from another member state who is part of a team investigating in Scotland. Chief constables would however be entitled to seek recovery from other member states of the amounts paid in compensating for the damage. Other member states would be obliged to reimburse such claimed sums in full. Reciprocal arrangements would similarly apply where UK officers cause damage in a team operating in another member state. Currently, chief constables are liable in reparation for any wrongful act or omission committed by constables in the performance of their duties. There

will also be provision amending the 1967 Act so as to ensure that officials from other member states are on the same footing as our own officers concerning offences committed against them.

9. It is the view of the Executive that these provisions relate to devolved matters. Given that these obligations require to be implemented across the UK, the Scottish Executive wish to take advantage of the opportunity afforded by the Police Reform Bill in Westminster, for these provisions to be made in respect of Scotland also.

Reserved matters with an implication for Scotland

10. The Bill also contains a number of provisions in reserved areas which would apply to the whole of the UK, including some which confer new powers on the Scottish Ministers. These are set out below.

11. The Bill will make a number of changes in respect of the National Criminal Intelligence Service, which is a cross-border public authority, including allowing the post of Director General of NCIS to be opened up to non police officers; and adjusting the quorum of the NCIS Service Authority. The Bill will provide that the Home Secretary must consult the Scottish Ministers before issuing or revising a code of practice for the Director General of NCIS. or issuing directions to the Director General or the Service Authority. It will also provide for the Scottish Ministers (after consultation with the Secretary of State) to make directions to the Service Authority in certain circumstances.

12. The Bill would allow the Home Secretary to make an Order modifying the functions and structure of PITO, but only after consulting the Scottish Ministers. PITO is a cross-border public authority.

13. The Bill would amend the provisions of the Road Traffic Act 1988, the Road Traffic Offenders Act 1988 and the Transport and Works Act 1992, to provide that, throughout the UK:

- At the request of a constable, a blood sample at an accident may be taken by a registered nurse (as an alternative to a medical practitioner);
- A medical practitioner or (where there is no medical practitioner) a registered nurse, may for medical reasons advise that a blood sample should not be taken; and
- Where an individual is unconscious, or otherwise appears to be incapable, for medical reasons, of assenting to the taking of a blood sample, a constable may ask a medical practitioner to take a sample without prior consent. However, the individual's subsequent consent would be required before the sample was used.

SCOTTISH EXECUTIVE
January 2002