SEWEL MEMORANDUM

WASTE AND EMISSIONS TRADING BILL

Motion **"**That the Parliament supports the principles of the Waste and Emissions Trading Bill and agrees that the provisions in the Bill that relate to devolved matters should be considered by the UK Parliament."

Background

1. Introduced in the UK Parliament on 14 November 2002, the Waste and Emissions Trading Bill includes measures to allow the achievement of Landfill Directive targets and for the more effective operation of Emission Trading Schemes by the setting of statutory financial penalties. Both of the areas covered of the Bill relate to devolved matters. In the first place, it allows the UK Secretary of State to provide for the division of the UK's targets under the Landfill Directive between the constituent administrations, and then provides for the design of a system of landfill allowances, to allow the administrations to divide their targets amongst Local Authorities. It also transposes the Directive obligation for each administration to have a strategy to achieve reductions in biodegradable municipal waste sent to landfill. In the second place, it provides for a system of civil penalties for participants in Emission Trading Schemes who fail to meet their obligations under the schemes.

2. The Waste and Emissions Trading Bill contains new measures, that are proposed in response to the Landfill Directive, and to enhance the effectiveness of Emissions Trading Schemes. The Landfill provisions were subject to consultation through a paper jointly published by the UK Government, the Scottish Executive, the Welsh Assembly and Northern Ireland authorities entitled "Reducing Landfill." Establishment of a UK Emissions Trading scheme was the subject of an Order in Council under section 93(1) of the Scotland Act 1998 which came into force in March 2002. It was always the intention that, once Westminster Parliamentary time became available, penalties for participants in the scheme would be put on a statutory footing.

Summary

3. The Bill firstly makes provision for the achievement of Landfill Directive targets. It provides for:

- the United Kingdom Secretary of State to apportion the Landfill Directive target for the UK amongst the constituent administrations.

- the design of a system of landfill allowances, that will place a limit on the biodegradable municipal waste sent to landfill by individual local authorities, with the distribution of allowances at the discretion of each administration.

- the power for each administration to allow Local Authorities to trade their allowances within the UK

- powers for obtaining data from landfill operators to assist in the monitoring of the scheme

- civil penalties for Local Authorities who landfill in excess of their allowances

- the obligation for each administration to prepare a strategy for the reduction of biodegradable municipal waste sent to landfill.

4. The Bill then makes provision for the more effective operation of Emission Trading Schemes. It provides for:

- the establishment of civil penalties for non-compliance with the annual emissions limitation commitment under the existing UK ETS.

- a statutory power to levy a civil penalty against participants in any future English or UK emissions trading schemes who do not meet their emissions limitation commitment.

The UK Emissions Trading Scheme

5. As part of the UK *Climate Change Programme,* to which the Scottish Executive is committed to making an equitable contribution through the *Scottish Climate Change Programme,* the UK Government established a UK Emissions Trading Scheme (ETS). The UK ETS, designed to deliver reductions in greenhouse gas emissions at minimum cost, began on 2 April 2002 as a non-statutory, voluntary Scheme. The making of an ETS for Scotland would be within devolved competence given the Scheme's environmental aims, and would therefore be a function devolved to Scottish Ministers. However, in order for the scheme to operate more effectively by maximising participation, and with consistent rules across the country, it was decided that it should be introduced on a UK-wide basis. The Scottish Parliament agreed to an Order in Council being made under section 93(1) of the Scotland Act 1998. That order in Council *The Scotland Act 1998 (Agency Arrangements) (Specification) Order 2002 (S.I. 2002/261 (S 1)* specified certain functions of Scottish Ministers, including the making of an administrative ETS, for which arrangements could be made so that those functions would be exercised on behalf of Scottish Ministers by a Minister of the Crown. The Order in Council came into force in March 2002.

6. One of the ways in which an emitter of greenhouse gases can take on a target in the Scheme is through a financial incentive made available by the Government (Direct Participants). Direct Participants volunteered to take on absolute targets in return for a financial incentive. Incentives were allocated and targets set on the basis of a bidding process. Organisations were required to offer a minimum emission reduction by 2006 against a 1998-2000 baseline. An annual allocation of permits was given to each organisation based on their agreed target emission levels. Permits held can then be traded and at the end of each year, Direct Participants must hold permits equal to their actual emissions.

Content of the Bill

7. **Part 1** relates to the achievement of the Landfill Directive targets. Chapter 1 of Part 1 relates to Waste sent to Landfills. Clause 1 provides for the apportionment of targets for the landfill of biodegradable municipal waste between the constituent administrations of the United Kingdom in years that are target years under the Landfill Directive. The duty to apportion is given to the UK Secretary of State, following mandatory consultation with each

of the devolved administrations. The apportionment is to be made in terms of a maximum number of "landfill allowances" that each administration may issue.

8. Clauses 2 and 3 specify measures for the allocation of targets between the constituent administrations of the United Kingdom in years that are not target years under the Landfill Directive. This is to be done by agreement between the administrations, with a fall-back rule if no agreement can be met. Clauses 4 and 5 provide for the allocation of landfill allowances by each administration ("allocating authority"). The amount allocated to each local authority is a matter for the allocating authority (Scottish Ministers), but the overall amount must not exceed the amount specified for the year under clause 1 or 2 of the Bill. The allocating authority alter an allocation made under clause 4 and are required to give a statement detailing the amounts and basis of both the original allocation, and any alteration to it.

9. Clauses 6 and 7 give powers to each allocating authority to make regulations to allow for the borrowing and banking of landfill allowances, and for the trading and transfer of landfill allowances. Scottish Ministers therefore have the discretion as to whether to allow these activities in the case of Scottish Local Authorities.

10. Clause 8 places the duty on local authorities not to landfill in excess of their allowance, and introduces a penalty for such excess. Clauses 9 to 15 concern the arrangements for monitoring the system of landfill allowances. Each allocating authority shall designate a "monitoring authority". It is intended that in Scotland this will be SEPA. A regulation making power is given with respect to scheme regulations, and to requiring information from local authorities and from landfill operators. There are also powers to make provision for a pubic register.

11. Clause 16 refers to a strategy for England, and has no consequences for Scotland. Clause 17 obliges Scottish Ministers to have a strategy for reducing the landfill of biodegradable waste in Scotland, in line with the requirement of the Landfill Directive. Clauses 18 and 19 contain similar measures for Wales and for Northern Ireland.

12. Clauses 20 to 23 provide definitions of terms used in the Bill. Clause 24 lists activities that are exempt from the provisions, in particular the spreading of sludge on soil for the purposes of fertilisation or improvement. Clause 25 sets out provisions with respect to penalties which may be payable by local authorities. Clause 26 specifies the procedures for regulations. Chapter 2 of Part 1 relates only to Wales. Chapter 3 contains provisions for the procedure under which regulations can be made under Chapter 1, and specifying the meaning of "waste".

13. **Part 2** relates to trading of emissions quotas. Clause 31 grants the Secretary of State a statutory power to levy an automatic financial penalty against participants in any future emissions trading schemes who do not meet their emissions limitation commitments. This power will extend to Scottish Ministers in the event of any Scotland-only emissions trading schemes. The Pollution Prevention and Control (PPC) Act 1999 already provides a broad statutory framework for emissions trading. Clause 31 of the Waste and Emissions Trading Bill amends Schedule 1 of the PPC Act to allow for statutory financial penalties for breach of emissions limitation commitments. This will allow any future trading schemes covering emissions capable of causing environmental pollution of the air, water and land to be introduced using the powers in the PPC Act.

14. Clause 32 establishes a statutory basis for financial penalties for non-compliance with the annual emissions limitation commitment under the existing UK ETS. Once in place, participants will be subject to an automatic fine (initially £30 per tonne carbon dioxide equivalent) for each tonne of carbon dioxide equivalent by which they miss their annual target.

15. **Part 3** deals with matters of commencement, extent, and sets the short title of the Act.

Scottish Executive
November 2002