# SEWEL MEMORANDUM

## ASYLUM AND IMMIGRATION (TREATMENT OF CLAIMANTS, ETC.) BILL

### Motion

1. The motion to be put to the Parliament is:

**Asylum and Immigration (Treatment of Claimants, etc.) Bill**: "That the Parliament endorses the principle of creating a new offence to combat trafficking in human beings for non-sexual exploitation as set out in the Asylum and Immigration (Treatment of Claimants, etc.) Bill and agrees that the provisions to achieve this end in Scotland which relate to devolved matters should be considered by the UK Parliament".

### Background & Content of the Bill

2. The Asylum and Immigration (Treatment of Claimants, etc.) Bill was introduced in the House of Commons on 27 November 2003. The major proposals in the Bill are arranged under 8 headings: Offences, Treatment of claimants, Enforcement powers, Appeals, Removal and detention, Immigration services, Fees and General. The matters dealt with in the Bill are almost entirely reserved by Schedule 5 of the Scotland Act 1998 (as matters relating to immigration and nationality).

3. However, the Bill also includes provisions for the creation of a new criminal offence of trafficking people for non-sexual exploitation, which falls within devolved competence. The Scottish Executive proposes that those provisions should extend to Scotland. The purpose of this memorandum is to outline the terms of those provisions which, by virtue of the Sewel Convention, require the consent of the Scottish Parliament.

### Proposal

4. Clause 4 of the Bill introduces a new criminal offence of trafficking people into, or out of, the UK for the purpose of exploitation. The offence is aimed at:

- those who traffic persons into the UK in order to obtain labour or services through force or coercion, for the removal of organs, or for offences of false imprisonment or kidnapping.
- those who recruit men, women or children into these situations of exploitation, whether or not for reward or gain.
- those who control in whole or in part the activities of persons trafficked for exploitation, whether or not for reward and gain.

5. A person therefore will commit the offence if he or she arranges for a person to enter or leave the UK in order to exploit them. The offence is also committed if a person arranges travel within the UK if he or she believes that the passenger has been brought into the UK to be exploited. Exploitation encompasses slavery or forced labour, organ removal, or the use of force or threats to induce the victim to provide services. The maximum penalty proposed for such offences is six months plus a fine on summary conviction and 14 years plus a fine on indictment.

6. It is also proposed that this Bill should add the new offences to Schedule 4 (Lifestyle Offences - Scotland) of the Proceeds of Crime Act 2002. Schedule 4 lists offences which are indicative of a criminal lifestyle. This allows a court to assume in certain circumstances that assets from the preceding six years are the proceeds of crime and to calculate a confiscation order accordingly.

7. The provisions of the Asylum and Immigration (Treatment of Claimants, etc.) Bill, set out above, will enable the UK to fulfil an obligation to meet the terms of the EU Framework Decision on Trafficking in Humans and the UN trafficking protocol. They will also bring the treatment of trafficking for non-sexual exploitation into line with the treatment of trafficking for the purposes of sexual exploitation, in that the latter activity is already an offence under the Criminal Justice (Scotland) Act 2003, which created an offence of trafficking for the purpose of prostitution etc. Schedule 4 of the Proceeds of Crime Act 2002 already includes, amongst other things, offences of people trafficking for the purposes of prostitution etc.

**Financial Implications**

8. Costs associated with the introduction of the legislation are mainly administrative and expected to be minor. Once the legislation has been introduced and is in force there will additional costs associated with enforcement for the police, the Crown Office and Procurator Fiscal Service, the Courts and prisons. Statistics on the incidence of the crimes to be targeted by the proposed new offences are not available centrally but the indications are that their incidence in Scotland is lower than that in England & Wales and the introduction of specific legislation to deal with these crimes should also have a deterrent effect.

**SCOTTISHEXECUTIVE**
**January 2004**