JUSTICE (NORTHERN IRELAND) BILL
SEWEL MEMORANDUM

Motion

1. "That the Parliament agrees that an amendment should be made to the Justice (Northern Ireland) Bill to provide for the compulsory transfer of prisoners from Northern Ireland to Scotland and that this should be considered by the UK Parliament".

Background

2. The Justice (Northern Ireland) Bill, introduced in the House of Lords on 4 December 2003, defines the UK Government's commitment in the Joint Declaration of I May 2003 to fully implement the recommendations of the (Northern Ireland) Criminal Justice Review, published in March 2000.

3. The Justice (Northern Ireland) Bill makes provision for the compulsory transfer of disruptive prisoners to prisons in England and Wales. The Secretary of State for Northern Ireland has sought the agreement of Scottish Ministers to extend that provision to Scotland. He proposes to amend clause 12 of the Bill so that it would read as set out at Appendix 1 to this Memorandum (the text in bold highlight the proposed amendments to the Bill).

4. Schedule 1 to the Crime (Sentences) Act 1997 governs the transfer of prisoners between the 3 UK jurisdictions. It contains provisions to enable prisoners to be compulsorily transferred for trial or for other judicial purposes. The proposed power would also permit, for Northern Ireland prisoners only, compulsory transfer in the interests of maintaining the security or good order of prisons in Northern Ireland.

Consideration

5. The Secretary of State for Northern Ireland has indicated that this would be a reserve power, which would only be used sparingly, in the event that it was required to maintain security and good order. The Secretary of State considers the availability of this power to be important to the peace process. If the power were ever used, it would only result in a very small number of prisoners being held in Scotland at any time. In terms of the draft Memorandum of Understanding described below, any such transfers would only take place with the consent of Scottish Ministers. The Scottish Prison Service (SPS) is confident that it would be able to manage such prisoners and is discussing the proposed compulsory transfer provision with the SPS Trade Union Side.

6. A draft Memorandum of Understanding, setting out the arrangements under which prisoners may be compulsorily transferred from a prison in Northern Ireland and the safeguards available around the use of the compulsory transfer power, has been agreed between the three jurisdictions and is attached as Appendix 2. The stability of prisons in the receiving jurisdiction and the safety of staff and prisoners in them will be taken into account in any decision on a transfer.

7. The Executive supports the Secretary of State for Northern Ireland's proposal that Westminster should legislate for Scotland in respect of the compulsory transfer provision. This route will enable the changes to be introduced in the three jurisdictions at the same time and thus maintain operational and policy coherence.

Financial Effects

8. None. Any transferred prisoners would be managed within SPS's existing budgets.

Conclusion

9. The Executive invites the Parliament to support this motion.

SCOTTISH EXECUTIVE
February 2004

APPENDIX 1

Transfer of prisoners

(1) Schedule 1 to the Crime Sentences Act 1997 (c. 43) (transfer of prisoners within the British Islands) is amended as follows.

(2) In paragraph I (transfer of prisoners: general) after sub-paragraph (2) insert—

> "(2A) If it appears to the Secretary of State that –
> (a) a person remanded in custody in Northern Ireland in connection with an offence, or
> (b) a person serving a sentence of imprisonment in Northern Ireland;
>
> should be transferred to ~~England and Wales~~ **another part of the United Kingdom** in the interests of maintaining security or good order in any prison in Northern Ireland, the Secretary of State may make an order for his transfer to that other part, there to be remanded in custody pending his trial or, as the case may be to serve the whole or any part of the remainder of his sentence, and for his removal to an appropriate institution there."

(3) In paragraph 5(1) (conditions of transfer) after "this Part' insert "(other than a transfer under paragraph I (2A))".

(4) After paragraph 5 insert—

> *"Conditions of transfer under paragraph 1(2A)*
> "5A.—(1) A transfer under paragraph 1(2A) shall have effect subject to—
> (a) such a condition as is mentioned in paragraph 6(1)(a); and
> (b) such other conditions (if any) as the Secretary cf State may think fit to impose.
> (2) Such a condition as is mentioned in paragraph 6(1)(a) shall not be varied or removed.
> (3) A condition imposed under sub-paragraph (1)(b) may he varied or removed at any time."

(5) In paragraph 6—
> (a) in sub-paragraph (2)(a) after "1(1)(a) or (2)(a)" insert "or (2A)(a)";
> (b)in sub-paragraph (2)(b) after "1(1)(b) or (2)(b)" insert "or (2A)(b)".

(6) In paragraph 12—
> (a) in sub-paragraph (1) after "1(1)(a)" insert "or (2A)(a)"";
> (b)in sub-paragraph (2) after "1(1)(b)" insert "or (2A)(b)".

(7) In paragraph 13—
> **(a)in sub-paragraph (1) after "1(1)(a)" insert "or (2A)(a)";**
> **(b) in sub-paragraph (2) after "1(1)(b)" insert "or (2A)(b)".**

APPENDIX 2

MEMORANDUM OF UNDERSTANDING GOVERNING THE COMPULSORY TRANSFER OF PRISONERS FROM NORTHERN IRELAND TO OTHER UK JURISDICTIONS

1. This Memorandum of Understanding is made between the Secretary of State for Northern Ireland, the Secretary of State for the Home Department and the Scottish Ministers. It provides details of the arrangements under which prisoners may be compulsorily transferred from a prison in Northern Ireland to a prison in Great Britain under the provisions set out in Schedule 1 to the Crime (Sentences) Act 1997, as amended by the Justice (Northern Ireland) [Act] [2004] ("the power to transfer"). Accordingly, the Memorandum of Understanding is intended to record how the Secretary of State for Northern Ireland, the Secretary of State for the Home Department and the Scottish Ministers, together with their officials and relevant Executive agencies (in particular, the Northern Ireland Prison Service, Her Majesty's Prison Service, and the Scottish Prison Service) agree that the power to transfer will be used. In this Memorandum, any reference to "the receiving Minister" is a reference to the Secretary of State for the Home Department as regards a prisoner transferred to England and Wales, and to the Scottish Ministers as regards a prisoner transferred to Scotland.

2. The exercise of the power to transfer, resulting in the compulsory transfer from Northern Ireland to England and Wales and to Scotland, is intended to safeguard the security or good order of prisons within Northern Ireland. The power to transfer is to be used sparingly and only after all other appropriate options available to the Northern Ireland Prison Service have been considered.

3. The Secretary of State for the Home Department and the Scottish Ministers agree to hold and detain a small number of prisoners under the power to transfer. The number held at any one time will be subject to agreement between the Secretary of State for Northern Ireland, the Secretary of State for the Home Department and Scottish Ministers. In deciding whether or not to accept additional prisoners, account will be taken of the stability of prisons in the receiving jurisdiction and the safety of all those who live and work in them. This will include an assessment of any transfers already made under the power to transfer.

4. The compulsory transfer of a prisoner will require the consent of the receiving Minister. A prisoner may not be transferred from Northern Ireland if the receiving Minister refuses to grant consent. The Secretary of State for Northern Ireland may submit an application for transfer directly to the receiving Minister. Subject to immediate operational requirements, the Secretary of State for Northern Ireland will give adequate notice of the wish to transfer a prisoner. The receiving Minister will notify the Secretary of State for Northern Ireland as soon as a decision has been made.

5. Each application will be accompanied by the usual personal and sentencing details, a detailed history of the prisoner's non-compliance with the regime in Northern Ireland and details of the actions and interventions taken by the Northern Ireland authorities to modify the prisoner's disruptive behaviour. The receiving Minister may request additional information if required.

6. Transfers will take place on a restricted basis. A transfer will last only for as long as is necessary in the interests of security or good order in prisons in Northern Ireland. The need for the transfer will be reviewed regularly and as soon as it is assessed that it is no longer necessary the prisoner will be returned to Northern Ireland. Ministers will be involved in reviewing the case of each transferred prisoner at least every three months.

7. Under the terms of a restricted transfer, the prisoner will remain for the duration of his transfer subject to the laws governing his continued detention in Northern Ireland. For all other purposes including allocation, categorisation and discipline, the prisoner will be subject to the laws, rules and regulations governing prisons in the receiving jurisdiction. In the normal course of events, a compulsory transferred prisoner will always be returned to Northern Ireland, at least immediately prior to his release date.

8. The transferred prisoner will be entitled to the same number and length of visits as he would be entitled to had he remained in Northern Ireland. A sentenced prisoner will, subject to any reduction made following a finding of guilt for a prison disciplinary offence, be allowed at least one visit per week of up to one hour's duration. A remand prisoner will, subject to any reduction made following prison disciplinary proceedings, be allowed at least two visits per week each of a least one hour's duration.

9. The receiving Minister may require the return of a prisoner to Northern Ireland at any time. If so required, the Secretary of State for Northern Ireland will issue an order for return. Arrangements for the transfer shall be made as soon as practicable.