SEWEL MEMORANDUM (SUPPLEMENTARY)

SERIOUS ORGANISED CRIME AND POLICE BILL

Motion

1. The motion to be put to Parliament is:

"That the Parliament recognises the importance of building safe and secure communities and agrees that the provisions of the Serious Organised Crime and Police Bill that relate to devolved matters and those that relate to the executive competence of the Scottish Ministers should be considered by the UK Parliament"

New clauses after clause 120 – Offence of trespassing on designated site

2. *Policy Intent* To create a new offence of trespass on designated sites. This would ensure that all trespassers on these sites could be detained, identified and prosecuted, and would also provide a stronger deterrent to would-be trespassers.

3. *Background* The Home Office propose to introduce this new offence to address a gap in the legislation available to police (in England and Wales) to deal with intrusions at sensitive sites, such as the recent instances at Buckingham Palace and the Palace of Westminster. In England & Wales, if an intruder on a sensitive site co-operates with the police, there is no other remedy than physically intercepting them and escorting them from the area, and the police may have no legal basis on which to establish the individual's identity and motive for being there. This perceived gap in the law could have serious consequences if, for example, the intruder was planning a subsequent terrorist attack.

4. In England and Wales, the new offence would apply to sites designated by the Secretary of State. The Secretary of State may designate a site if:

- it is Crown land; or,
- it is land owned by Her Majesty in her private capacity, or by the immediate heir to the throne in his private capacity; or,
- it appears to the Secretary of State that it is in the interests of national security to do so.

5. Anyone found on a designated site as a trespasser would be committing an offence.

6. Scots law is generally sufficient as regards the operational power of the police to deal appropriately with intruders on sensitive sites. Where an intruder is intercepted by a police officer on such a site, it is likely that there will be grounds for initial suspicion that an offence has been committed, for example, a breach of the peace, housebreaking with intent, or an offence under section 57 of the Civic Government (Scotland) Act 1982. Even where investigation fails to reveal sufficient evidence to support a charge, the police would nevertheless have the power to detain the intruder and establish his identity. However, although the powers of the police in Scotland are likely to be sufficient to deal with intruders in most cases, to be certain that the ultimate criminality of the conduct concerned is the same

throughout the UK, the offence would require to be given effect in Scotland. It is therefore proposed in the interests of consistency and certainty that the new offence should apply in Scotland to a small number of designated sensitive sites.

7. It is proposed that the power to designate sites which are either Crown land or land which is the personal property of the monarch or the heir to the throne would vest in the Scottish Ministers.

8. The power to designate sites in Scotland where it is in the interest of national security to do so will rest with the Home Secretary. Legislation to give the Home Secretary this power is a reserved matter and so outwith the scope of this Sewel motion. Nevertheless, the Home Secretary has undertaken in correspondence with the First Minister to consult Scottish Ministers before making any designation in Scotland under this power.

9. No decisions have been taken as to which sites will be designated in Scotland, or in England and Wales.

10. *Advantages of utilising this Bill* This provision is not wholly devolved – it has a reserved element to it, because of its reference to national security which is reserved under the Scotland Act. It would not be possible exactly to replicate this provision in Scottish legislation. Extending this offence to Scotland will ensure that there will be no difference in the protection offered to the Royal Family when north of the border. It will also ensure that (in addition to the current police powers to detain and identify intruders) all trespassers on designated sites could be prosecuted, with the associated deterrent effect.

Scottish Executive
January 2005