SEWEL MEMORANDUM (SUPPLEMENTARY)

SERIOUS ORGANISED CRIME AND POLICE BILL

Memorandum supplement

Clauses 123 - 127 – Offence of entering or being on a designated site

1. This supplement to the Executive's Sewel memorandum of December 2004 explains the background to the provisions allowing designation of sites in Scotland on which it would be an offence to enter without lawful authority. It replaces the supplementary memorandum of January 2005, which has been withdrawn.

2. *Policy Background* The UK Government proposes in this Bill to introduce to England, Wales and Northern Ireland a new offence of trespass on a designated site. This is intended 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 and 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.

SOCAP Bill as at 31 January 2005

3. In England and Wales and Northern Ireland, 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.

4. Amendments were made in the Committee stage in the House of Commons to introduce powers in relation to sites in Scotland

- for Scottish Ministers to designates sites if it is on Crown land
- for Scottish Ministers to designate sites if it is on land owned by Her Majesty in her private capacity, or by the immediate heir to the throne in his private capacity; or,
- for the Secretary of State to designate sites if it appears to him that it is in the interests of national security to do so.

Sewel consent to SOCAP Bill

5. Further amendments have now been tabled to remove the devolved elements of these clauses from the Bill. In effect this will remove the power of Scottish Ministers to designate sites in Scotland.

6. The Secretary of State will retain the power to designate a site in Scotland, where it appears to him that this is appropriate in the interests of national security. It would then be an offence to enter, or be on, such a site without lawful authority. While legislation to give the Secretary of State this power is a reserved matter, the Home Secretary has nevertheless undertaken in correspondence with the First Minister to consult the Scottish Ministers before making any designation in Scotland under this power.

7. The provisions which will remain in the Bill in relation to unlawful entry on designated sites are reserved matters and so do not require the consent of the Scottish Parliament under the Sewel convention.

8. The Sewel motion has been revised in order to provide assurance for the Scottish Parliament that it is not consenting to the Bill in its current form, but in the form it will take after the required further amendments have been made.

Scottish Executive
1 February 2005