

CRIMINAL JUSTICE (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Criminal Justice (Scotland) Bill introduced in the Scottish Parliament on 26 March 2002:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 50-PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL – AN OVERVIEW

4. The Bill is in 12 parts.

Part 1 (Protection of the public at large) deals with the new proposals for the assessment and treatment of serious violent and sexual offenders. The Criminal Procedure (Scotland) Act 1995 will be amended to introduce a new life sentence of an order for lifelong restriction (OLR), to prescribe the procedure for assessing whether an offender meets the criteria for the new disposal and to make the interim hospital order available as a disposal in cases of insanity. This Part also provides for the establishment of a new non-Departmental public body to be known as the Risk Management Authority (RMA) and sets out the functions of the RMA as respects risk assessment and the minimisation of risk. The Risk Management Authority will have specific functions in relation to offenders for whom risk management plans are to be prepared.

Part 2 (Victims' rights) implements aspects of the Scottish Executive's Strategy for Victims. It deals with victim statements; victims' rights as respects receiving information about the release of an offender; and receiving information and making representations to the Parole Board for Scotland. It also contains provisions empowering the police to pass on information about victims of crime to prescribed bodies who can provide counselling and support.

Part 3 (Sexual offences etc.) amends the law in relation to serious and sexual offences by:

- increasing the terms of imprisonment for possession and distribution of indecent photographs of children;
- bringing certain sexual offence provisions into line with the requirements of the European Convention on Human Rights;
- enabling certain sexual offences committed abroad to be tried in sheriff courts rather than only in the High Court;
- repealing a provision in the Crime and Punishment (Scotland) Act 1997 which is no longer required;

- widening the scope of the extended sentence available presently for sexual and violent offenders to offenders convicted of abduction.

In addition, it implements certain of the recommendations of the Expert Panel on Sex Offending relating to reports for the courts. Following conviction for a sexual offence or for an offence with a significant sexual element, the court must obtain a social enquiry report. Where the offender has been convicted on indictment, the court must also obtain a psychological assessment. Additional time will be permitted for the report writers to prepare these reports. To assist report writers further in such cases where a plea of guilty is tendered and accepted they will be given a copy of the indictment or complaint amended as necessary to reflect the terms of the plea or conviction. Where such a case has proceeded to trial and conviction the judge will provide a note following trial of the salient parts of the case.

Part 4 (Prisoners etc.) deals with the custody and detention of prisoners, their release and monitoring of their movements while on release. It makes changes to the law in the areas dealing with remanding certain young people in custody and with taking prisoners from prison to another place (such as a police station) at the police's request; and will enable a prisoner arrested in Scotland who is unlawfully at large from another UK jurisdiction to be detained temporarily in a Scottish prison or young offenders institution pending their transfer back to the relevant jurisdiction.

In relation to the law covering the release of prisoners, this Part makes changes to the Prisoners and Criminal Proceedings (Scotland) Act 1993 to:

- extend the Parole Board's existing power to require the Scottish Ministers to release on licence certain classes of prisoner to all classes of prisoners;
- provide that a determinate sentence may be served consecutively to the punishment part of a life sentence and vice versa;
- alter the arrangements for revoking a licence under which a prisoner has been released from custody and the related provisions covering children.

The Repatriation of Prisoners Act 1984 will be amended to facilitate the transfer to Scotland of UK citizens who have been sentenced to imprisonment abroad for a period of less than 4 years to serve the remainder of their sentences in Scotland.

This Part will also enable the Scottish Ministers to set a condition on an offender's licence for the electronic monitoring of that offender when released from custody.

Part 5 (Drugs courts) empowers drug courts to impose interim sanctions such as short periods of custody or short periods of community service for non-compliance with a probation order or drug treatment and testing order whilst allowing the original order to continue.

Part 6 (Non-custodial punishments) makes changes to the law in relation to:

- restriction of liberty orders – by amending the Criminal Procedure (Scotland) Act 1995 to enable the transfer of these orders between courts and to make them a direct alternative to custody;
- anti-social behaviour orders – by amending the Crime and Disorder Act 1998 to provide for interim anti social behaviour orders;
- drug treatment and testing orders and probation orders – by amending the Criminal Procedure (Scotland) Act 1995 to enable the courts to impose a condition of remote monitoring;
- non-harassment orders – by amending the Criminal Procedure (Scotland) Act 1995 to provide for a specific power of arrest for the breach of a non-harassment order.
- supervised attendance orders – by amending the Criminal Procedure (Scotland) Act 1995 to make changes to the penalties for breaching a supervised attendance order and to give the courts the power to impose a supervised attendance order as a first instance disposal for adult offenders.

Part 7 (Children) clarifies the law in relation to the physical punishment of children under 16 and introduces an absolute prohibition on physical punishment of children under the age of three. Punishment involving a blow to the head or shaking or the use of an implement are also prohibited. This Part also enables the Scottish Ministers to set up pilot schemes to test the effectiveness of diverting 16-17 year olds who have committed minor offences away from the criminal justice system to the Children's Hearing System.

Part 8 (Evidential, jurisdictional and procedural matters) amends the Criminal Procedure (Scotland) Act 1995 to:

- allow challenges to certain evidence relating to fingerprints and similar data where this is contained in certificate form;
- allow DNA samples to be taken by swabbing by a constable without authorisation from a senior officer;
- allow the police to retain DNA and fingerprints given voluntarily and with the consent of the person giving the sample;
- permit the transfer of court cases across a sheriffdom boundary;
- empower a sheriff, magistrate or justice to sign, outwith the jurisdiction in which they operate, a warrant or other legal document relating to procedure within that jurisdiction;
- allow sheriff clerks to sign and issue citations for ancillary hearings associated with breach and review hearings for community disposals and drug treatment and testing orders;
- allow notice of a citation to be left at the home of the accused informing him or her where the indictment (or complaint) can be collected;

- ensure that it is competent for a court to continue a case to a future diet in circumstances where there is no evidence that service of the complaint on the accused has been effected;
- ensure that a review of a drug treatment and testing order can take place without the attendance of the Procurator Fiscal.

Part 9 (Bribery and corruption) changes the law on corruption as it relates to the international aspects of corruption and to ensure that the law complies with international obligations entered into by the UK Government.

Part 10 (Criminal records) extends the provisions of Part V of the Police Act 1997 to give the Scottish Ministers powers to:

- check that persons applying to become registered persons and those already registered to countersign applications for criminal record and enhanced criminal record certificates are suitable persons to receive criminal record information;
- refuse to register or to cancel the registration of an unsuitable person;
- notify registered persons where a new conviction against an individual is recorded subsequent to the issue of a criminal record or an enhanced criminal record certificate.

It also—

- adds to the range of persons qualifying for the enhanced criminal record certificate;
- extends the scope of the code of practice with which registered persons must comply;
- makes failure to comply with the code of practice a ground for de-registration.

Part 11 (Local authority functions) extends the funding powers for criminal justice social work to include arrest referral schemes and deferred sentences, and allows funding to be paid to groupings of local authorities.

Part 12 (Miscellaneous and general) deals with:

- changes to the feasibility study into publicly employed defence agents;
- the re-introduction of the police ranks of deputy chief constable and chief superintendent;
- the introduction of police custody and security officers;
- the disqualification from jury service of offenders who are serving community penalties;
- the removal of the mandatory requirement that juries must be secluded for a continuous period whilst they are considering their verdict;
- allowing search warrants issued in Northern Ireland in relation to premises in Scotland to be enforced on endorsement by a sheriff or JP in the jurisdiction in which the premises can be found.

This Part also deals with general matters relating to the Bill such as transitional provisions, minor and consequential amendments, repeals, interpretation, order making powers, title and commencement.

PART 1 – PROTECTION OF THE PUBLIC AT LARGE

Risk assessment and order for lifelong restriction; Disposal in case of insanity

Sections 1 and 2 and schedule 1 – Risk assessment and order for lifelong restriction; Disposal of case where accused found to be insane

5. Sections 1 and 2 amend Part XI of the Criminal Procedure (Scotland) Act 1995 to:
 - provide a new sentence to be called the order for lifelong restriction (OLR);
 - define the offences which may attract the new disposal;
 - provide the process for assessing an offender’s risk and consequent eligibility for the new disposal;
 - provide for arrangements for dealing with an offender who may have a mental disorder;
 - make the interim hospital order available to the court as an interim disposal in cases of insanity.

6. Schedule 1 provides for consequential amendments to the Prisoners and Criminal Proceedings (Scotland) Act 1993 concerning the release on licence of offenders sentenced to an OLR and to the Criminal Procedure (Scotland) Act 1995 in relation to the notification of previous conviction information, the accused’s right of appeal against sentence and the power of the sheriff to remit cases to the High Court for sentencing.

7. Section 1 amends the 1995 Act by inserting new sections 210B to 210G. It introduces a new sentence for the lifetime control of serious violent and sexual offenders who present a continuing risk to the public (the order for lifelong restriction (OLR)) and sets out the process by which such a sentence may be imposed.

8. Section 210B defines the offences for which the OLR may be imposed and prescribes that the disposal is available to the High Court only, although offenders can be remitted for sentence from the sheriff court where the offence falls within the relevant definition and it appears to the sheriff that the offender may meet the statutory criteria in the new section 210E. The relevant offences, excluding murder, are:
 - a sexual offence (as defined by section 210A of the 1995 Act);
 - a violent offence (as defined by section 210A of the 1995 Act);
 - an offence which endangers life; or
 - an offence which by its nature or circumstance indicates in the opinion of the Court a propensity to commit any of the preceding offences.

9. “Sexual offence” is defined in section 210A of the 1995 Act as:

- “(i) rape;
- (ii) clandestine injury to women;
- (iii) abduction of a woman or girl with intent to rape or ravish;
- (iv) assault with intent to rape or ravish;
- (v) indecent assault;
- (vi) lewd, indecent or libidinous behaviour or practices;
- (vii) shameless indecency;
- (viii) sodomy;
- (ix) an offence under section 170 of the Customs and Excise Management Act 1979 in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876, but only where the prohibited goods include indecent photographs of persons;
- (x) an offence under section 52 of the Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);
- (xi) an offence under section 52A of that Act (possession of indecent images of children);
- (xii) an offence under section 1 of the Criminal Law (Consolidation) (Scotland) Act 1995 (incest);
- (xiii) an offence under section 2 of that Act (intercourse with a stepchild);
- (xiv) an offence under section 3 of that Act (intercourse with child under 16 by person in position of trust);
- (xv) an offence under section 5 of that Act (unlawful intercourse with girl under 16);
- (xvi) an offence under section 6 of that Act (indecent behaviour towards girl between 12 and 16);
- (xvii) an offence under section 8 of that Act (abduction of girl under 18 for purposes of unlawful intercourse);
- (xviii) an offence under section 10 of that Act (person having parental responsibilities causing or encouraging sexual activity in relation to a girl under 16);
- (xix) an offence under subsection (5) of section 13 of that Act (homosexual offences); and
- (xx) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust)”.

10. “Violent offence” is defined in section 210A of the 1995 Act as “any offence (other than an offence which is a sexual offence within the meaning of this section) inferring personal violence”.

11. Section 210B also deals with the circumstances in which the court may make a new order called a risk assessment order (RAO). This in an order to be made by the court, either following

a motion by the prosecutor or at its own instance, to enable an assessment of the offender's risk to be undertaken and a relevant report prepared for the court.

12. Section 210B(2) provides that where an offender is convicted of an offence defined at 210B(1) and where it appears that the risk criteria set out in the new section 210E may be met, and provided that the prosecution has given prior notice to the accused of the intention to make a motion to the court, the prosecutor will ask the court to make a RAO. Alternatively, the court may make a RAO of its own accord where it is satisfied that the same statutory tests may be met. The court cannot make a RAO if the offender is already subject to an OLR or if it is satisfied that it is appropriate to make an interim hospital order under 210D(1).

13. The risk assessment order has the effect of adjourning the case for the purpose of an assessment to be carried out under section 210B(3) as to what risk is posed to the public by the offender being at liberty and for a report (a risk assessment report or "RAR") of that assessment to be prepared and submitted to the court. The RAR is to be prepared by a person accredited for that purpose by the Risk Management Authority and in a manner which will also be accredited by the RMA. The accreditation procedures are set out in section 11.

14. Section 210B(3) further provides that the RAR is authority for the offender to be taken to a place specified in the order and remanded in custody there pending the preparation of the RAR and a date being fixed for the sentencing hearing.

15. Section 210B(4) provides that when the risk assessment order is made, the case will be adjourned for 90 days for the assessment to be carried out and the risk assessment report prepared. Under section 210B(5) if cause is shown, the court may extend the adjournment for another 90 days. Where, because of circumstances outwith the control of the risk assessor, the assessor has been unable to complete the report within 180 days, the court may exceptionally grant a further extension for such period as appears to it to be appropriate. There is no right of appeal against the granting or refusal to grant a risk assessment order.

16. Section 210C deals with the risk assessment report (RAR). It provides that in preparing the RAR the assessor may take into account any previous convictions which the offender might have and also any allegations of criminal behaviour which may not have led to prosecution or where the offender was prosecuted but acquitted. The assessor must also give an opinion whether the risk mentioned at 210B(3)(a) is high, medium or low. In reaching that assessment, the assessor must have regard to any relevant guidelines or standards issued by the Risk Management Authority.

17. Section 210C sets out the process for submitting the RAR and any accompanying documents to the court and to the other parties including the offender. On receipt of the RAR, the court must set a date for the sentencing hearing.

18. Section 210C also gives the offender a right to instruct a risk assessment report to be prepared at the same time as the RAR is being prepared by the court appointed risk assessor. The report instituted by the offender will be subject to the same conditions for completion and extension as provided at 210B(5) in respect of the RAR being prepared by virtue of the RAO.

Provision is made for this report to be submitted to the court and other parties in the same fashion as the RAR.

19. Section 210C provides for the offender to object to the content or findings of the risk assessment report. The form of the objection will be prescribed by Act of Adjournal (a statutory instrument made by the High Court). In pursuance of such an objection, the prosecutor and offender will be able to produce witnesses and examine them about the content or findings of the RAR or alternative report prepared at the instruction of the offender.

20. Section 210D deals with offenders who may meet the risk criteria and may be suffering from a mental disorder. The provisions will enable the court to get information on the nature of the offender's mental disorder and how that relates to the offender's risk. To achieve this the court must, instead of making a RAO, make an interim hospital order (IHO), where it appears to the court that the offender may meet the risk criteria and also the criteria for an interim hospital order as set out in section 53(1) of the 1995 Act. Section 210D also provides that where an IHO is made, a report assessing the risk the individual presents to the public at large shall also be prepared by a person accredited for that purpose by the RMA. The report on risk is in addition to any psychiatric or medical report that is required to be submitted to the court under the IHO provisions. The process for submitting a RAR and the information it may contain as set out in section 210C(1) to (3) and the procedure for objecting to its content or findings as set out in section 210C(6)(a) and (b)(i) apply equally to this report on risk.

21. Section 210E sets out the risk criteria to be considered at the stage when the court is considering whether to make a RAO (whether following a motion by the prosecutor or of its own accord) and at the stage when imposing or considering a motion to impose an OLR. The criteria will be applied in these circumstances to cases tried before the High Court and to those remitted from the sheriff court for sentence.

22. The risk criteria are that "the nature of, or the circumstances of the commission of, the offence of which the offender has been convicted, either themselves or as part of a pattern of behaviour demonstrate that:

- there is a likelihood that, if at liberty [the offender] will seriously endanger the lives, or physical or psychological well-being, of members of the public at large;
- [the offender] is indifferent to the consequences, for members of the public at large, of the commission of such offences and is unlikely if at liberty, to accord with such standards of behavioural restraint as ordinarily prevail within society".

23. Section 210F deals with the new sentence – the order for lifelong restriction (OLR). The section provides that the OLR is a sentence of imprisonment or detention for an indeterminate period.

24. The section sets out the circumstances where a court must impose an OLR. This will be either at its own instance or following the granting of a motion for an OLR made by the prosecutor where, having regard to either the RAR, the assessment of risk report provided under the IHO, and any assessment report submitted by the offender, any evidence given under the

process for leading objections at 210C(6) and any other information before it, the court is satisfied that on the balance of probabilities, the risk criteria are met.

25. The prosecutor has the right of appeal against a refusal by the court to make an OLR on the grounds that, on the balance of probabilities, the risk criteria are met.

26. The court will not make an OLR if the offender is already subject to an OLR. If the court determines that the criteria for a hospital order contained in section 58 of the 1995 Act are met, it will make such an order and not an OLR.

27. Section 210G requires a judge (including a sheriff where the case has been prosecuted on indictment in the sheriff court), following conviction for an offence of the type listed in section 210B(1) (except murder), to prepare a report of the circumstances of the case including all information which the judge considers appropriate. This report will be done in writing as soon as practicable after the case is dealt with, unless a report has been called for under the provisions of section 20(4) of the Bill which deals with sexual offences and offences with a significant sexual element. The form of the report will be prescribed by Act of Adjournal. It is intended that such a report may be provided to and used by the assessor in preparing the RAR.

Section 2 – Disposal of case where accused found to be insane

28. Section 2 amends section 57 of the 1995 Act which provides the disposals for cases where the accused is found insane. This is where the accused is acquitted on grounds of insanity at the time of the act (or omission) constituting the offence (section 54(6)), the accused is acquitted following an examination of the facts (section 55(3)) or, following an examination of the facts, the court concludes that there are no grounds for acquitting the accused (section 55(2)). In these circumstances, the court can at present dispose of the case in the following ways:

- “(a) make an order (which shall have the same effect as a hospital order) that the person be detained in such hospital as the court may specify;
- (b) in addition to making an order under paragraph (a) above make an order (which shall have the same effect as a restriction order) that the person shall, without limit of time be subject to the special restrictions set out in section 62(1) of the 1984 Act;
- (c) make an order (which shall have the same effect as a guardianship order) placing the person under the guardianship of a local authority or of a person approved by a local authority;
- (d) make a supervision and treatment order (within the meaning of paragraph 1(1) of Schedule 4 to [the 1995] Act, or
- (e) make no order”.

29. Section 2 amends these provisions to add to the list of disposals a power for the court to make an interim hospital order (IHO) under section 53 of the 1995 Act. An IHO may be imposed by the court after it is satisfied, on the evidence of two medical practitioners, that the offender is suffering from a mental disorder that requires the offender to be remanded to the State Hospital or other appropriate hospital. Section 53 also sets in place the procedure to be followed for the imposition, renewal and cessation of an IHO.

The Risk Management Authority

Sections 3 to 13 and schedule 2 – The Risk Management Authority

30. Sections 3 to 13 and schedule 2 provide for the establishment of a new authority to be known as the Risk Management Authority (RMA) and for this authority to be a non-Departmental public body (NDPB). These sections also confer upon the RMA certain specific statutory functions in relation to the assessment and minimisation of risk posed to the public by offenders and certain accused persons.

31. Sections 3, 12 and 13 provide for the establishment of the RMA as a NDPB, and for the powers the RMA requires to operate as a NDPB and to discharge its functions in relation to the assessment and minimisation of risk. The sections also prescribe the RMA's duties in relation to account keeping and the production of annual reports. Schedule 2 makes provision concerning the constitution etc of the RMA.

32. Sections 4 to 11 set out the RMA's functions in relation to its broad remit of co-ordinating research and promulgating best practice in the field of risk assessment and the minimisation of risk and in playing a direct part in the management of high risk offenders for whom a risk management plan (RMP) is to be prepared. These functions are :

- to develop policy and carry out research in the field of assessment and management of risk posed by offenders;
- to monitor research into and promote effective practice in the assessment and minimisation of risk by issuing guidelines and standards and to commission research and pilot schemes in this area;
- to administer a scheme of accreditation and provide or secure education and training in relation to those professionals involved in the assessment and minimisation of risk;
- to monitor risk management plans for certain classes of offender.

Section 3 – The Risk Management Authority

33. This section establishes the Risk Management Authority and provides that it will exercise the functions given to it by the Bill and any other legislation to ensure effective risk assessment and the minimisation of risk. The section also defines risk as the risk the person being at liberty presents to the safety of the public at large, and covers a person convicted of an offence or a person disposed off by the court on the grounds of insanity.

34. Section 3 also introduces schedule 2, which deals with a number of matters concerning the structure and procedures of the RMA (as an NDPB). Schedule 2 provides for:

- the status of the new body;
- the procedures for membership of the new body, including appointment, resignation and removal from office;
- the procedure of the authority;

- the arrangements for remuneration, allowances and pension for members of the authority;
- the arrangements for the employment of staff and for their pensions, allowances and gratuities.

Section 12 – Functions: supplementary

35. This section makes the standard provisions required to enable the RMA to operate as a NDPB. In particular the RMA is empowered to acquire and dispose of land, enter into contracts, charge for goods and services and, with the consent of the Scottish Ministers, invest and borrow money. In addition it provides a power for the Scottish Ministers to direct the RMA in relation to the discharge of its functions.

Section 13 – Accounts and annual reports

36. This section provides for the standard account keeping and reporting procedures for a NDPB including the preparation and submission to the Scottish Ministers of annual accounts and annual reports. The Scottish Ministers must publish the RMA's annual reports and lay a copy before the Scottish Parliament.

Section 4 – Policy and research

37. This section describes the various functions the RMA will be required to undertake in relation to its policy and research role. In relation to research, the RMA will be able to compile and keep under review research and developments in the field of risk assessment and risk minimisation, including information about how relevant services are provided in Scotland. The section also empowers the RMA to carry out its own research or commission or co-ordinate research and to publish the findings. The RMA will be able to carry out pilot schemes for the purposes of developing and improving risk assessment and minimisation methods and use the results of the research and pilots to promote effective practice throughout Scotland. This will be done through issuing standards and guidelines which are dealt with in section 5. As part of this function the RMA will also be able to give appropriate advice and make appropriate recommendations to the Scottish Ministers.

Section 5 – Guidelines and standards

38. This section enables the RMA (in pursuance of its policy and research function, prescribed by section 4) to produce, by means of guidelines, a common framework including standards within which those involved in the assessment and management of risk are to operate. The standards will be defined, approved and published by the RMA. The section also provides that those involved in the assessment and minimisation of risk must have regard to the RMA's guidelines and standards when exercising their relevant risk management functions. Practitioners involved in the field of risk assessment and the minimisation of risk may also be accredited for those purposes. This matter is dealt with in section 11.

Section 11 - Accreditation, education and training

39. This section gives the RMA two roles. It enables the RMA to:

- administer any scheme set up by the Scottish Ministers for the purpose of accrediting the processes of assessing and monitoring risk and practitioners who work in the area of risk assessment and minimisation. The RMA's function in this respect extends to awarding, suspending or withdrawing accreditation;
- carry out or commission relevant educational and training activities.

40. The section also empowers the Scottish Ministers to make regulations to establish appropriate accreditation schemes for the RMA to administer. The accreditation may cover any RMA-sponsored education or training and may also recognise other relevant experience or qualifications held. For example, the accreditation may recognise relevant qualification previously obtained, or obtained from a source other than the RMA. As respects the processes of assessing and minimising risk, the accreditation will provide recognition of the effectiveness of any method and practices which may be employed in that regard.

Sections 6 to 9 – Risk management plans: preparation, further provision, implementation and review

41. As explained above, the RMA has a specific function in relation to offenders for whom a risk management plan (RMP) is to be prepared. Initially this will be for those offenders who are sentenced to an order for lifelong restriction (OLR). However, the Bill makes provision for the Scottish Ministers to make an order prescribing other categories of offenders for whom a RMP would have to be prepared. There is a statutory requirement for the authorities who have responsibilities in connection with the relevant offenders when in prison or released into the community on licence to prepare a RMP. The RMP will detail the role of those authorities involved with the offender in minimising each offender's risk. The RMA has a specific function to approve and monitor the implementation of the RMP. The provisions dealing with the preparation of the RMP, its implementation and review and the RMA's function in relation to these matters are set out in sections 6 to 9.

42. Section 6 requires that a RMP must be prepared for an offender who is sentenced to an OLR, and any other category of offender which the Scottish Ministers may, by order, prescribe. The types of offences and the process by which an offender will be assessed for an OLR, including the criteria against which his or her level of risk will be measured, are dealt with in section 1.

43. Before making an order prescribing any new category of offender for whom a RMP will be required, the Scottish Ministers must consult the RMA and any other person as considered appropriate.

44. This section also prescribes that the RMP must contain an assessment of risk, the measures to be taken to minimise this risk and how these will be co-ordinated. The form of the RMP is to be specified and published by the RMA, which may also provide guidance as appropriate on how the form should be prepared, implemented and reviewed. The authority preparing the RMP must use the published form.

45. The purpose of a RMP is to ensure that offender's risk is properly managed on a multi-disciplinary basis and will detail the role of those authorities or bodies involved in managing the

offender's risk. The RMP may place responsibility for implementing the RMP on any person who could reasonably be expected to assist with the minimisation of the offender's risk.

46. Section 7 prescribes that the bodies who will be responsible for preparing the RMP will be known as a "lead authority".

47. The identity of the lead authority following conviction will depend on the age of the offender and where the offender is liable to be detained or imprisoned.

48. There is no age limit on who may be sentenced to an OLR. If the offender is serving a sentence in prison or is being detained in a young offenders institution or is a child and is detained in some other establishment under section 208 of the Criminal Procedure (Scotland) Act 1995, the lead authority will be the Scottish Ministers. If the offender has a mental disorder and is detained in hospital under any of the provisions described in subsection (2) of section 7, the lead authority will be the State hospital or appropriate NHS authority.

49. This section also provides for a local authority to be the lead authority where the lead authority is not the Scottish Ministers or a hospital. In practice, the local authority will become the lead authority when the offender has been released from detention or imprisonment. Arrangements for transferring the lead from one authority to another, for example when an offender is released from detention or imprisonment are dealt with in section 9.

50. Section 8 sets out the preparation process for the RMP. The RMP is to be prepared within 9 months of the offender being sentenced or detained in hospital, although the RMA can grant a reasonable extension where an appeal under subsection (7) is pending. The lead authority is to consult any person or authority upon which it is considering conferring functions in relation to the implementation of the RMP and any other appropriate person. Those consulted are under a duty to comply with reasonable requests.

51. This section also requires the lead authority to submit the RMP to the RMA for approval. The RMA may either approve the plan or reject it if it does not comply with the minimum standards set out in section 6(3) or any other guidelines and standards which the RMA have prepared. If, in rejecting the RMP, the RMA considers that the lead authority has disregarded minimum standards or any relevant guideline, standard or requirement produced by the RMA in relation to the preparation of RMPs, the RMA can give reasonable directions to the lead authority or any person named in the plan concerning the preparation of a revised plan. Those receiving such a direction are obliged to comply with any reasonable direction. Those receiving such a direction may appeal to the sheriff against such a direction on the grounds that it is unreasonable.

52. Section 9 provides for the procedures for the implementation and review of RMPs. The lead authority and other bodies with responsibilities in the RMP are required to implement their respective responsibilities. The lead authority must report to the RMA annually on the implementation.

53. The section also provides a review process to be activated where there is likely to be a significant change in the offender's circumstances, for example, where the offender may be

considered by the Parole Board for release on licence. Where a change is considered, the lead authority must review the RMP. If after review the lead authority feels that the current RMP is no longer suitable or is likely to become unsuitable then that authority must prepare a revised RMP and submit it to the RMA for approval. Where, following a review, the lead authority considers that it is no longer appropriate for it to continue as “lead” (for example where an offender is being released on licence), the responsibility will pass to a different lead authority as prescribed under section 7 and the new lead authority must prepare a revised RMP and have it approved by the RMA. The RMA’s power to reject a RMP on the grounds that it does not meet agreed standards and issue directions apply equally to revised RMPs.

Section 10 – Grants to local authorities in connection with risk management plans

54. Section 10 enables the Scottish Ministers to make specific grants to local authorities subject to such conditions as they consider appropriate to assist with the preparation and implementation of the RMP. Before making such a grant the Scottish Ministers are to consult local authorities and other persons as appropriate.

55. It is expected that local authorities will bear the cost of preparing and implementing RMPs from within existing budgets on the basis that they already have a statutory duty to provide appropriate services for these offenders. However the RMA will be able to make recommendations to the Scottish Ministers concerning the granting of specific funding where it appears to the Authority that this is required to ensure that a RMP can be prepared or implemented.

PART 2 – VICTIMS’ RIGHTS

Section 14 – Victim statements

56. Section 14 confers upon victims of certain crimes the right to make a statement about the impact of the crime upon them, for use by the court.

57. Subsection (1) provides that the Scottish Ministers are to prescribe those courts or class of court in which the victim is to have the right to make a statement to the court. In addition the Scottish Ministers have the power to prescribe the offences in respect of which the victim is to have the right to make a statement.

58. Subsection (2) provides that a person who has been (or is alleged to have been) the victim of a prescribed offence, has the right to make a statement (a “victim statement”). The right to make a victim statement arises either after a decision has been made by the procurator fiscal to bring proceedings in respect of the offence or before such a decision has been made if the procurator fiscal so decides. The victim statement should deal with the way and degree to which the offence (or apparent offence) has affected, and may be continuing to affect, that person. Subsection (2) is subject to subsection (6), which makes provision for the procedure to be followed where the victim is under 14, has died or is mentally or physically incapable of making such a statement.

59. Subsection (3) provides that where a person has made a victim statement and the sentence has not yet been passed, that person has the right to make a statement which is supplementary to

or amplifies the victim statement. This will permit the victim to provide the court with the most up-to-date information concerning the effect of the offence on them.

60. Subsection (4) provides for the accused to receive a copy of the victim statement or statements from the prosecutor only after a plea of guilt or finding of guilt.

61. Subsection (5) provides that once the offender pleads or is found guilty the prosecutor must place the victim statement and any supplementary victim statement before the court and thereafter the court must have regard to the victim statement or statements prior to determining sentence on the offender.

62. Subsection (6) makes provision for the circumstances where the victim is either unable to make a statement because the victim has died, is incapable of exercising the right to make a statement because of mental or physical incapacity or is under 14.

63. Where the victim has died, the victim's right to make a statement transfers to that victim's 4 qualifying nearest relatives taken from the list in subsection (10). Where the victim died whilst under 16, in addition to the 4 qualifying nearest relatives the child's carer (this being defined in accordance with the definition of "person who cares for the child" in section 2(28) of the Regulation of Care (Scotland) Act 2001) has the right to make a statement.

64. Where the victim is incapable of giving a statement due to mental or physical incapacity, the right to make a statement transfers to that victim's qualifying nearest relative according to the list in subsection (10). Subsection (7) provides that an inability to communicate which can be addressed by human or mechanical aid can be disregarded.

65. If the victim is a child under 14 years old, the right to make a statement may be exercised by the child's carer as defined in the Regulation of Care (Scotland) Act 2001. The Scottish Ministers have the power under subsection (13) to amend the age at which the victim is to have the right to make a statement.

66. Subsection (8) defines "qualifying person" for the purpose of subsection (6) by reference to subsections (9) and (10). Subsection (10) lists certain persons with a family relationship to the victim. Subsection (9) excludes a person who is on that list from being a "qualifying person" if they are accused or suspected of being the perpetrator of or having been implicated in the offence (or apparent offence) in question.

Section 15: Victim's right to receive information concerning release etc. of offender

67. Section 15 confers rights on victims of certain crimes to receive from the Scottish Ministers certain information regarding their assailant's release into the community. Specifically subsection (4) provides that they should be informed:

- of the date of the offender's release (unless on temporary release);
- of the date of death if the offender dies before release;
- if the offender has been transferred outwith Scotland; and

- if the offender has become eligible for temporary release.

68. Subsection (1) provides for the circumstances under which information is to be provided to victims of such offences as are prescribed by the Scottish Ministers. Information as detailed in subsection (4) is to be provided to victims of certain crimes. The victim must indicate that they wish to receive the information. Where a victim qualifies they have the right to receive information unless the Scottish Ministers decide that exceptional circumstances make disclosure inappropriate.

69. Subsection (1) provides that information must be provided to victims of those crimes where the offender is convicted and sentenced on or after 1 April 1997 to a sentence of imprisonment or detention for a period of 4 years or more, life imprisonment or detention without limit of time. Subsection (2) provides that the Scottish Ministers have discretion to pass the information in subsection (4) to a victim where the offender is sentenced before 1 April 1997.

70. Subsection (3) provides that the right to receive information under the section does not apply to persons who are under 16 years of age when released.

71. Subsection (4) sets out the information that is to be supplied to the victim. Subsection (5) provides the Scottish Ministers with the power to vary this information by order, by adding descriptions of information.

72. Subsection (5) gives the Scottish Ministers the power to amend by order subsection (1)(a), which sets the number of years to which the offender must be sentenced in order for this section to apply.

73. Subsections (6) and (7) put in place similar arrangements as in section 14 to transfer the right of the victim under this section where the victim is dead, under 14 or incapable of exercising the right.

Section 16: Release on licence: right of victim to receive information and make representations

74. Section 16 confers on victims of certain crimes the right to:

- receive from the Parole Board certain information regarding Parole Board review hearings and licence conditions;
- make representations to the Parole Board prior to a decision being taken upon release (and the licence conditions) of the offender;
- make representations in certain circumstances to the Scottish Ministers prior to a decision being taken on licence conditions; and
- receive certain information concerning licence conditions from the Scottish Ministers.

75. This section applies to persons who are victims of the crimes referred to in section 15. If they are eligible to receive information under section 15, this section provides that they also have the right to make written representations before a decision is made to release the offender on

licence. Subsection (4) provides that the Scottish Ministers will issue guidance on the form of such representations. The victim is also given the right to receive certain information concerning the licence conditions to which the offender is to be subject.

76. Subsection (1) gives the victim the right to make written representations to the Scottish Ministers concerning release of their assailant. The rights set out in subsection (1) arise where the victim has indicated to the Scottish Ministers a wish under subsection (2) to make such representations. The right does not exist unless the offender is aged 16 by the date on which the case is referred to the Parole Board by the Scottish Ministers.

77. Subsection (5) provides that when the Scottish Ministers refer a case to the Parole Board for a decision on release they must fix a time within which written representations must be made to the Board for consideration and advise the victim accordingly. The Scottish Ministers will pass on the victim's representations to the Parole Board.

78. Subsection (6) provides that even if representations have not been made, the Board is obliged to inform the victim of their decision, provided the victim has under subsection (11) intimated that they wish to receive it. If the Board has recommended release it must inform the victim if licence conditions have been set and, if any of them relate to contact with the victim or the victim's family, what those conditions are, together with any additional information which the Board feels is appropriate to provide.

79. Subsections (7) and (8) deal with the situation where the offender's release on licence is automatic and the Parole Board's role is to make recommendations to the Scottish Ministers on licence conditions. Subsection (7) requires the Scottish Ministers to fix a time within which written representations must be made to the Board for consideration and to advise the victim accordingly.

80. Subsection (8) provides that in a case to which subsection (7) applies, even if representations have not been made, the Board is obliged to inform the victim (provided the victim has indicated under subsection (11) that they wish to receive the information) if it has recommended licence conditions and, if any of them relate to contact with the victim or the victim's family, what those conditions are.

81. Subsections (9) and (10) deal with the circumstances where the offender's case is not considered by the Parole Board and decisions upon licence conditions are taken by the Scottish Ministers. Subsection (9) provides that the Scottish Ministers are required to fix a time within which written representations must be made to them for consideration and to advise the victim accordingly.

82. Subsection (10) provides that, in a case to which subsection (9) applies, whether or not representations have been made (and the victim has indicated under subsection (11) that they wish to receive the information), the Scottish Ministers must inform the victim whether licence conditions have been set and, if any of them relate to contact with the victim or the victim's family, what those conditions are.

Section 17: Disclosure of certain information relating to victims of crime

83. Section 17 enables the police to pass information regarding a victim, with the victim's consent to certain bodies for the purposes of providing the victim with counselling and support. The Scottish Ministers will require to prescribe by statutory instrument the bodies to whom the police may pass information. This is likely to include such organisations as Victim Support Scotland.

84. Subsection (1) provides that a constable may pass certain information to bodies prescribed by the Scottish Ministers. This information may include the person's name, address, telephone number, e-mail address and age, plus any other information which the constable deems appropriate as long as it does not include similar information (such as name and address) relating to the alleged perpetrator. The information provided may indicate that the case is one likely to be disposed of by a children's hearing.

85. Subsection (2)(a) provides that, where the victim of the crime has died, information on any one or more of the qualifying nearest relatives as set out in section 14(10) who the constable considers would derive benefit from the counselling or support may be provided to the prescribed bodies again only with the consent of the person concerned.

86. Subsection (2)(b) provides that, where the victim of crime died as a child, information on a person who cared for that victim may be provided, for the purposes of counselling or support, to such bodies prescribed by the Scottish Ministers, again with that person's consent. A "person who cares for" another person is defined in section 2(28) of the Regulation of Care (Scotland) Act 2001 (asp 8) as "someone who, being an individual, provides on a regular basis a substantial amount of care for that person, not having contracted to do so and not doing so for payment or in the course of providing a care service".

PART 3 – SEXUAL OFFENCES ETC.

Section 18 – Amendments in relation to certain serious and sexual offences

87. Section 18 amends the Civic Government (Scotland) Act 1982, the Criminal Law (Consolidation) (Scotland) Act 1995 and the Crime and Punishment (Scotland) Act 1997.

88. Section 18(1)(a) and (b) respectively amend sections 52 (the taking, showing or distribution of indecent photographs of a children) and 52A (the possession of indecent photographs of children) of the Civic Government (Scotland) Act 1982. The amendment to section 52 will increase the period of imprisonment for conviction on indictment from three years to ten years. The amendment to section 52A will allow the prosecution of these offences on indictment, with penalties of imprisonment for up to a period of five years or a fine or both.

89. Section 18(2)(a) repeals sections 8(1) and (2) of the Criminal Law (Consolidation) (Scotland) Act 1995. Section 8(1) of that Act creates an offence of removing an unmarried girl from and against the will of her parents with the intent that she has unlawful sexual intercourse. Section 8(2) provides a defence that the accused had reasonable cause to believe the girl was 18 years of age or over. Repealing this provision will not affect the law on abduction or the prohibitions on intercourse with a girl under 13.

90. Section 18(2)(b) repeals section 15 of the Criminal Law (Consolidation) (Scotland) Act 1995 which provides a legal defence to a charge of indecent assault against a girl under 16 on the grounds that her assailant had reasonable cause to believe that the girl was his wife.

91. Section 18(2)(c) amends section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995. The amendment will enable sex offences defined in that section and committed abroad by a British citizen or resident of the United Kingdom (and recognised by the relevant country as an offence) to be tried in the sheriff court district in which the accused is apprehended or in custody or in such sheriff court district as the Lord Advocate may determine. Currently such offences may only be tried in the High Court.

92. Section 18(3) repeals section 1 of the Crime and Punishment (Scotland) Act 1997, which added a new section (section 205A) to the Criminal Procedure (Scotland) Act 1995. Section 205A makes provision for an automatic life sentence in circumstances where a person is convicted of two or more specified serious offences, but has never been brought into force.

Section 19 – Extended sentences

93. Section 19 inserts a new section 210AA into the Criminal Procedure (Scotland) Act 1995. The effect is that, where an accused is convicted on indictment of abduction, other than abduction of a woman or girl with intent to rape or ravish, that conviction is to be treated in the same fashion as a conviction for a violent offence as defined in section 210A of the 1995 Act. As a result, an extended sentence may be passed on an accused convicted on indictment of such an offence of abduction.

94. “Extended sentence” is defined in section 210A of the 1995 Act as a sentence of imprisonment which combines the term of imprisonment (“the custodial term”) which the court imposes on the offender and a further period (“the extension period”) for which the offender is to be subject to a licence.

95. A court may impose an extended sentence on a person convicted on indictment of a sexual or violent offence if it considers that the period (if any) which the offender would otherwise be subject to a licence would not be adequate for the purpose of protecting the public from serious harm from the offender. Extended sentences are available to the court for a sexual offence (as defined in section 210A(10)) for which a determinate sentence of imprisonment has been imposed or for a violent offence (as defined in section 210A(10)) for which a sentence of at least 4 years’ imprisonment has been imposed. The duration of an extended sentence is determined by the court’s opinion of the need to protect the public from serious harm from the offender, and can be up to 5 years for a violent offence and up to 10 years for a sexual offence.

Section 20 – Sexual and certain other offences: reports

96. Section 20 makes various changes to court procedures in relation to sexual offences (as defined in section 210A(10) of the Criminal Procedure (Scotland) Act 1995) and to offences which, in the opinion of the court, disclose a significant sexual aspect to the accused’s behaviour. These are based on recommendations from the Expert Panel on Sex Offending chaired by Lady Cosgrove, which produced the report *Reducing the Risk: Improving the response to sex offending* in June 2001. Section 20(1)(a) makes provision for section 20 to apply to cases where an

accused is convicted of a sexual offence, as defined in section 210A(10) of the 1995 Act (full definition provided at paragraph 9).

97. Section 20(1)(b) applies the provisions of section 20 to a case where a person is convicted of an offence the nature and circumstances of which disclose, in the opinion of the court, that there was a significant sexual aspect to the person's behaviour in committing it.

98. Section 20(2) makes provision that in a case, which falls within section 20(1) the court must before passing sentence obtain a report from the local authority on the offender's circumstances and character, and also any information concerning the offender's physical and mental condition before passing sentence. Additionally, section 20(2)(b) provides that where the qualifying case concerns a conviction on indictment, the court must obtain an assessment by a suitably qualified psychologist on the offender. Section 20(3) makes provision that, where a case proceeds to trial the trial judge, in a qualifying case under section 20(1), must prepare a report in writing as to the facts established by the evidence heard at the trial. The report must be prepared as soon as is reasonably practicable and the form of such a report will be prescribed by Act of Adjournal.

99. Section 20(4) provides that were a plea or partial plea of guilty is tendered and accepted by the prosecutor in a qualifying case under section 20(1), the narration of the facts given to the court by the prosecutor and anything said by or on behalf of the offender, when the plea of guilty is tendered, is to be recorded by shorthand notes or mechanical device.

100. Section 20(7) provides that any report under section 20(3) or any record under section 20(4) is to be sent to a local authority officer and psychologist from whom a report is requested under sections 20(2)(a) and (b) respectively.

101. Section 20(5) provides that records under section 20(4) are to be treated in a similar fashion to a record of proceedings in solemn matters under section 93(1) of the 1995 Act and that the provisions of section 93(2) to (4) of the 1995 Act will apply to such records. Section 93(1) of the 1995 Act specifies that solemn proceedings shall be recorded by shorthand notes or mechanical means. Section 93(2) provides that a shorthand writer shall retain and sign his or her notes and certify the notes complete and correct. Section 93(3) provides that a person using mechanical means to record proceedings shall certify that the record is true and complete, identify the proceedings and retain the record. Section 93(4) provides for the payment by the Scottish Parliament of making such a record.

102. Section 20(6) provides that the Scottish Ministers may by subordinate legislation amend sections 20(4) and (5) to provide for a record to be made by such other means as they think fit. This would allow for recording in the future by means of new technology.

103. Section 20(9) amends the provisions of section 201(3) of the 1995 Act. Section 201 provides that a court may adjourn a case prior to imposing a sentence for the purpose of enabling enquiries or determining the most suitable method of dealing with a case. The period that the court may adjourn for this purpose is limited by section 201(3) to three weeks where the accused is in custody and four weeks where the accused is at liberty, and eight weeks on cause shown. The amendment made by section 20(9) of the Bill extends the first two of these periods from

three and four weeks to six weeks in each case. This is to allow reporters more time to prepare the reports that are required under this section.

PART 4 – PRISONERS

Custody and temporary detention

Section 21 – Remand and committal of children and young persons

104. Section 21 amends the Prisons (Scotland) Act 1989 (“the 1989 Act”) and the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) to enable young persons to be remanded in young offenders institutions in certain circumstances. In this context, “young persons” means persons aged 14 or over but under 21 years of age.

105. A young offenders institution is defined in section 19 of the 1989 Act as a place in which offenders sentenced to detention in a young offenders institution may be kept. Subsection (1) amends this definition to allow young offenders institutions to hold persons not less than 14 but under 21 years of age who are remanded or committed for trial or sentence.

106. Subsection (2) amends section 40 of the 1989 Act so that persons committed to a young offenders institution are included in the provisions about persons who are unlawfully at large.

107. Section 51 of the 1995 Act deals with the remanding and committal of young persons. There are various provisions which set out how a court may deal with persons in different age groups and in different circumstances. Subsection (3) amends the section with the effect that:

- persons aged 14 and 15 (unless they are certified as unruly or depraved) shall be committed to the local authority, which shall then place the young persons in secure accommodation or a suitable place of safety;
- persons aged 16 and over who are subject to a supervision requirement may be committed to prison, to a local authority or to a young offenders institution; and
- persons aged 16 and over who are not subject to a supervision requirement, and persons aged 14 and 15 who have been certified by the court as unruly or depraved, shall be committed to a remand centre, if the court has been notified that one is available, or to a young offenders institution or to a prison, if the court has not been so notified.

108. Subsection (4) removes the references to remand centres in section 51(2) of the 1995 Act. The effect of this is that, while the local authority to which a person is committed must be specified in a warrant, there is no similar requirement to specify a particular remand centre.

109. Subsection (5) inserts a new subsection (2A) into section 51 of the 1995 Act to provide that, subject to section 51(4), a person committed to a remand centre under any provision of the 1995 Act shall continue to be held in a remand centre for the period of committal or until liberated in due course of law.

110. Subsection (6) amends section 51(3)(b) of the 1995 Act so that, where a committal to a local authority of a person aged 14 or 15 is revoked by a court on the basis that the person is unruly or depraved, the court may commit the person to either a young offenders institution or a prison.

111. Subsection (7) amends section 51(4) of the 1995 Act. That section currently gives sheriffs the power to revoke an order committing a person aged 14 or 15 to a remand centre or a prison if they no longer consider that the order is necessary. Instead, the young person can be committed to an appropriate local authority which may then place the person in secure accommodation or a suitable place of safety. The section is amended to give sheriffs the power also to revoke orders committing young persons aged 14 or 15 to a young offenders institution.

112. Subsection (8) adds a new subsection (5) to section 51 of the 1995 Act. The effect of the new subsection is that, wherever a court commits a person to prison or to a young offenders institution under section 51, the warrant issued by the court allows the Scottish Ministers to detain the person in either a prison or a young offenders institution, without the need for any further court order.

Section 22 - Legal custody

113. Section 22 amends the Prisons (Scotland) Act 1989 (“the 1989 Act”) to remove the need for prison officers to remain with a prisoner at all times when he or she is in the custody of the police or of a police custody and security officer, and clarifies the relationship between section 13 of the 1989 Act and section 295 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”).

114. Section 22(1) amends section 13 of the 1989 Act, which defines “legal custody” for the purposes of that Act, to provide that:

- the definition relates to prisoners and is without prejudice to section 295 of the 1995 Act; and
- in addition to the existing circumstances in which a prisoner is in legal custody, a prisoner will also be in legal custody in terms of the 1989 Act if under the control of a constable or a police custody and security officer while outside a prison;
- “constable” includes a constable under any part of the law of the United Kingdom and Channel Islands.

115. Section 22(2) amends section 295 of the 1995 Act to provide that it is without prejudice to section 13 of the 1989 Act.

Section 23 – Temporary detention of person being returned to prison in England and Wales etc.

116. Section 23 inserts a new section 40B into the Prisons (Scotland) Act 1989 (“the 1989 Act”) to provide that a person who is arrested in Scotland and is found to be unlawfully at large from another jurisdiction in the UK or the Channel Islands can be admitted to a Scottish prison or young offenders institution on a temporary basis. Admission would be with a view to returning the person to the jurisdiction from which he or she was unlawfully at large as soon as practicable.

117. Section 40(1) of the 1989 Act provides that any person in Scotland who is unlawfully at large from a Scottish prison or young offenders institution may be arrested by a constable or prison officer without a warrant and taken to the place in which he or she is required in accordance with the law to be detained.

118. By virtue of paragraph 17 of Schedule 1 to the Crime (Sentences) Act 1997, the provisions of section 40(1) of the 1989 Act and the corresponding provisions for England, Wales and Northern Ireland extend throughout the UK and Channel Islands. However, under section 40(1), the power of a constable or prison officer in Scotland in relation to a person liable to be detained in another part of the UK or in the Channel Islands extends only to taking the person to the place in which he or she is required to be detained. There is no legal power to hold such a person in custody in Scotland pending their being transported to the other jurisdiction. This has caused practical difficulties for the Scottish Prison Service.

Consecutive sentences

Section 24 – Consecutive sentences: life prisoners etc.

119. Section 24 amends the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) to provide a new power for a court, when sentencing a person for an offence committed after the section comes into force and where that person is already serving a sentence of imprisonment, to order that:

- a life sentence may commence, in the case of an existing life prisoner, on the expiry of the punishment part of the existing life sentence or, if the prisoner is already serving a determinate sentence, at the point at which the Scottish Ministers would otherwise be required to release the prisoner; and
- a determinate sentence may commence, in the case of an existing life prisoner, on the expiry of the punishment part of the existing life sentence.

120. At present, a life sentence may not be ordered to commence at a date after the date of sentence, nor may a determinate sentence be ordered to run consecutively to it. The new power will be in addition to the sentencing powers which courts already have.

121. Section 24(1) inserts a new section 204B into the 1995 Act to provide courts with this new power. Where the second bullet point above applies, the new section will only apply to solemn proceedings, since summary proceedings are covered elsewhere in the 1995 Act, as explained below.

122. Section 24(2) amends section 167 in Part IX (Summary Proceedings) of the 1995 Act to provide that, in summary proceedings, where a sentence is imposed in the circumstances described in the second bullet point above, the court may order the later sentence to start the day after the punishment part of the life sentence expires.

Release of prisoners

Section 25 – Release on licence etc. under 1989 Act

123. Section 25 amends sections 22 and 23 of the Prisons (Scotland) Act 1989 (“the 1989 Act”) which govern the early release on licence of certain prisoners sentenced to determinate terms of imprisonment prior to 1 October 1993. Although these provisions were repealed by the Prisoners and Criminal Proceedings (Scotland) Act 1993, their application to those sentenced before 1 October 1993 was preserved by that Act.

124. Under the existing law, the Scottish Ministers exercise a discretion over the release of such prisoners who are sentenced to 10 years or more and whose release on licence is recommended by the Parole Board. In the case of those sentenced to less than 10 years, the Scottish Ministers are statutorily obliged to release the prisoner on licence if recommended to do so by the Board.

125. By virtue of the amendments contained in this section any prisoner who falls to be released on licence under section 22 of the 1989 Act and who is serving a sentence of imprisonment of 10 years or more which was imposed before 1 October 1993, shall be so released on licence by the Scottish Ministers where the Parole Board recommends this. Given that the release of all life prisoners is now at the direction of the Parole Board, these amendments will remove from the Scottish Ministers any discretion over the release of any prisoner sentenced before 1 October 1993 whose release on licence is recommended by the Parole Board.

126. In addition, section 22(7) of the 1989 Act, which governs the inclusion on release, and subsequent insertion, variation or cancellation of licence conditions, is modified so that the Scottish Ministers may only include licence conditions on release, or subsequently insert, vary or cancel such conditions in accordance with the recommendations of the Board.

Section 26 – Release on licence etc. under 1993 Act

127. Section 26 amends sections 1(3) and 12 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) which apply to the early release of long-term prisoners (i.e. those sentenced to a term of 4 years or more) who were sentenced on or after 1 October 1993. It also repeals section 20(3) of that Act.

128. Section 1(3) of the 1993 Act, read with section 53 of the Scotland Act 1998, provides that after a long-term prisoner has served half of his or her sentence the Scottish Ministers may, if recommended to do so by the Parole Board, release him or her on licence. This was modified on 1 April 1995 with the effect that the Scottish Ministers are statutorily obliged to release such a prisoner who is sentenced to a term of less than 10 years, if that sentence was imposed on or after 1 October 1993 and provided that the person is not liable to deportation from the UK. In other cases, where the Board recommends early release on licence, the Scottish Ministers exercise discretion over whether or not to accept the recommendation. The amendment proposed to section 1(3) will remove the Scottish Ministers’ discretion and require them to release such a prisoner on licence if recommended to do so by the Parole Board.

129. Section 9(1) of the 1993 Act modifies the terms of section 1(3) of that Act in relation to persons liable to removal from the UK, for example those subject to an order for deportation. The modification is to the effect that the Scottish Ministers exercise discretion over whether or not to grant early release on licence in respect of such prisoners. The Board is not involved in such a decision. The Bill does not affect these provisions.

130. Section 12 of the 1993 Act provides that in the case of a life prisoner or a long-term prisoner, sentenced on or after 1 October 1993 to a term of less than 10 years, no licence condition may be included on release or subsequently inserted, varied or cancelled except in accordance with the recommendation of the Parole Board. The amendment to section 12 will bring the arrangements governing the inclusion, insertion, variation or cancellation of licence conditions for all other long-term prisoners into line with those applicable to the classes of case referred to above. It will also provide, by way of exception to this, that the Scottish Ministers may include conditions in a licence on the release of a person on compassionate grounds (under section 3 of the 1993 Act), where the Parole Board was not consulted prior to release.

131. Section 20(3) of the 1993 Act – repealed by subsection (3) – provides that sections 1(3), 12(3)(a) and 17(1)(a) of that Act may be modified by order. The provision is redundant by virtue of the amendments being made by this section and section 32 of the Bill.

Section 27 – Release on licence: life prisoners

132. Section 27 amends section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) to provide that in certain circumstances where a life prisoner who has served the punishment part of a life sentence receives a further sentence (either for life or for a term) that prisoner will not have the right to require that his or her case should be reviewed by the Parole Board at a maximum interval of 2 years, as is presently the case. It also makes a minor consequential amendment to section 5 of the 1993 Act.

133. Section 27(2) inserts new subsections (5AB) to (5AD) into section 2 of the 1993 Act. Subsection (5AB) provides that where a life prisoner, who has served the punishment part, is given one or more other sentences (whether determinate or indeterminate) at a time between his or her case being referred to the Parole Board and its being determined, the Board may, in fixing a date under section 2(5A)(b) of the 1993 Act for the next review of the case, set a date which is, if the Board considers it appropriate more than 2 years ahead.

134. New subsection (5AC) provides the Parole Board with the power to reconsider the date fixed for the next review of a life prisoner’s case under subsection (5AB) if the length of the further sentence received is either reduced or increased, or if the prisoner receives another sentence or sentences (whether for life or a determinate term) at any time before the date fixed for the hearing.

135. New subsection (5AD) provides that in setting a date for the next review of a life prisoner’s case, the Parole Board should have particular regard to the date on which the prisoner would be eligible to be released, or to be considered for release, from the other sentence or sentences to which the prisoner is subject.

136. Section 27(2) additionally amends section 2(7) of the 1993 Act to provide that until the appropriate part of any further determinate term of imprisonment has been served, the life prisoner may not require the Scottish Ministers to refer his or her case to the Parole Board. Subsection 7A, which is inserted into section 2 of the 1993 Act, defines the “appropriate part of the term”.

Section 28 – Release etc. under 1993 Act of prisoner serving consecutive or concurrent offence and non-offence terms

137. Section 28 amends the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”).

138. Section 28(2) amends section 27 of the 1993 Act to clarify the meaning of the terms “wholly concurrent” and “partly concurrent”. As it stands, the 1993 Act does not define these terms, and there has been uncertainty as to whether a sentence that is completely subsumed within another sentence is wholly concurrent with that other sentence, even though it is not the same length as the other sentence. The section provides that a wholly concurrent term must be imposed on, and must expire on, the same date as the other date. A partly concurrent term will either be imposed on the same date as another term but expire on a different date to that term, or will be imposed on a different date from that other term but before its expiry.

139. Section 28(3) amends Schedule 1 to the 1993 Act in relation to offence and non-offence terms which are consecutive and wholly and partly concurrent. Schedule 1 defines an “offence term” as a term of imprisonment on conviction of an offence and a “non-offence term” as a term of imprisonment or detention mentioned in section 5(1)(a) or (b) of the 1993 Act. A non-offence term therefore means a term of imprisonment or detention for non-payment of a fine or contempt of court.

140. Section 28(3)(a) amends paragraph 2 of Schedule 1 (consecutive terms) to provide as follows.

- Where an offence term and a non-offence term are imposed on the same date, the offence term is to be served before the non-offence term.
- Where an offence term and a non-offence term are not imposed on the same date and—
- the offence term is imposed first, then the prisoner is to serve that term first. When the prisoner is entitled to release as respects that term by virtue of section 1(1), (2) or (3) of the 1993 Act, he or she is to continue to be detained to serve the non-offence term and will only be released once the early release provisions that apply in relation to that term are satisfied.
- the non-offence term is imposed first, then the prisoner is to serve that term first. When he or she is entitled to release as respects that term by virtue of section 1(1) or (2) read with section 5(2) of the 1993 Act, he or she is to continue to be detained to serve the offence term and will only be released when so entitled by virtue of section 1(1), (2) or (3) of the 1993 Act.

- A prisoner who is not released due to a requirement to serve a further consecutive term shall start serving the further term on the day after he or she would have been released from the earlier term.

141. Section 28(3)(b) repeals paragraph 3(b) of Schedule 1 to the 1993 Act. This paragraph prohibits parole in relation to wholly concurrent terms of imprisonment.

142. Paragraph 4 of Schedule 1 to the 1993 Act (partly concurrent terms of imprisonment) is substituted by section 28(3)(c). The effect of the new paragraph is that a prisoner will only be released from custody once the early release requirements of the 1993 Act that apply to both the offence term and the non-offence term have been satisfied. Therefore, for example, although the Parole Board might direct a prisoner's release from a partly concurrent offence term, the prisoner would continue to be detained until he or she is entitled to be released from the non-offence term.

143. A new paragraph 4A is inserted into Schedule 1 to the 1993 Act by section 28(3)(c). This paragraph defines the term "the relevant provisions", where it appears in Schedule 1, by reference to the provisions that apply in relation to early release from a non-offence term.

Section 29 – Prisoners repatriated to Scotland

144. Section 29 amends the Repatriation of Prisoners Act 1984 ("the 1984 Act") to ensure that, for the purposes of early release, the sentence of a prisoner who is repatriated to Scotland is deemed to begin when the repatriation takes place. This means that all prisoners who are repatriated to Scotland will require to serve some period in custody prior to release.

145. As the Schedule to the 1984 Act stands, all long-term prisoners (i.e. those serving a sentence of imprisonment for 4 years or more, as defined in section 27(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act")) require to serve two thirds of the balance of their sentence that is outstanding, following their transfer to Scotland, before they will automatically be released on licence. Their earlier release will only be possible if recommended by the Parole Board. However, the existing Schedule to the 1984 Act does not apply to short-term prisoners (defined in section 27(5) of the 1993 Act as those serving a sentence of imprisonment for less than 4 years). The effect of this is that short-term prisoners who have served more than half of their sentence prior to their repatriation will require to be released as soon as they arrive in Scotland. This has the potential to hinder the repatriation of short-term prisoners.

146. The Bill therefore changes the 1984 Act by inserting a new version of paragraph 2 of the Schedule to the 1984 Act for prisoners who are repatriated to Scotland on or after 1 October 1997, in respect of a sentence imposed on or after 1 October 1993. This new version will ensure that, for the purposes of early release, the sentences of all prisoners will be deemed to begin on the date of their transfer to Scotland. Account will still be taken of the time that the prisoner has served in the foreign jurisdiction. However, a short-term prisoner will require to serve one half of the balance of a sentence that is outstanding following his or her repatriation to Scotland. The new Schedule does not change the existing law regarding the release of long-term prisoners. Furthermore, the new Schedule does not apply to those sentenced before 1 October 1993 (the

date when the relevant provisions in the 1993 Act came into force). The early release of such prisoners does not present difficulties and therefore the original Schedule to the 1984 Act, as amended by paragraph 5 of Schedule 2 to the Crime (Sentences) Act 1997 (“the 1997 Act”), shall continue to apply. Furthermore the original Schedule, as amended by paragraph 6 of Schedule 2 to the 1997 shall continue to apply to prisoners repatriated prior to 1 October 1997.

Section 30 – Suspension of conditions and revocation of licences under 1989 Act

147. Section 30 amends section 22 of the Prisons (Scotland) Act 1989 (“the 1989 Act”) and inserts a new section 22A so as to suspend certain conditions in a prisoner’s licence when the prisoner is being lawfully detained before the expiry of the licence. It also amends section 28 of that Act, to provide that the Scottish Ministers must revoke a person’s licence and recall him or her to prison if the Parole Board so recommends.

148. Section 30(2) specifies that section 22(6) of the 1989 Act, which obliges a licence holder to comply with the conditions in the licence, is to be subject to section 22A of that Act.

149. Subsection (1) of the new section 22A provides for the situation where a prisoner is detained in custody, notwithstanding that he or she has been released on licence from a sentence, either because the prisoner is serving a term of imprisonment which is consecutive to (or partly concurrent with) the sentence from which he or she has been released, or because, after release from custody on licence, the prisoner is detained in respect of another sentence or by virtue of being remanded in custody and the licence is not revoked. In such circumstances, the effect of certain conditions is to be suspended for the period during which the person is in prison or detention and for so long as the licence remains in force. This is because, in such a case, some of the licence conditions will either be impossible to fulfil or will no longer be appropriate, because of the prisoner’s detention in prison.

150. Section 22A(2) provides that the suspension of the conditions will take effect when the prisoner is detained and will continue throughout the period for which he or she is liable to be detained or remanded. Immediately upon release, all the conditions will come back into force, provided that the licence has not already expired.

151. Subsection (3) of the new section specifies the conditions which will still remain in force under these circumstances, namely that the offender shall be of good behaviour and keep the peace, and – if such a condition has been imposed – shall not have contact with any named person or class of person from whom he or she is prohibited from having contact by virtue of his or her licence.

152. Section 22A(4) provides that the Scottish Ministers may by order add to the conditions referred to in subsection (3) of that section as they consider appropriate or remove or vary them.

153. Subsection (4) of section 30 amends section 28 of the 1989 Act (revocation of licences). At present, the Scottish Ministers have a discretion, as regards those sentenced to a term of 10 years or more, as to whether or not to act upon a recommendation from the Parole Board that such a person who has been released on licence under the 1989 Act should have the licence revoked and should be recalled to custody. (For all other classes of prisoner to whom the 1989

Act applies and who are serving a determinate sentence the Scottish Ministers are obliged to follow a recommendation from the Parole Board to recall a person). The amendment has the effect of removing this discretion. As a consequence, section 28(1A) of the 1989 Act is rendered redundant, and hence is repealed.

Section 31 – Suspension of licence conditions under 1993 Act

154. Section 31 amends section 12 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) and adds a new section 12A to the Act, to suspend certain conditions in a prisoner’s licence when, notwithstanding the issuing of a licence, he or she is then lawfully detained in custody. This may be because the prisoner:

- continues to be detained because he or she is serving a non-offence term of imprisonment or detention (for non-payment of a fine or for contempt of court) which is consecutive or partly concurrent with the sentence from which he or she has been released on licence; or
- is detained after release on licence while the licence remains in force, for example, because of a remand warrant or a subsequent sentence.

155. In such circumstances, some of the licence conditions will either be impossible to fulfil or will no longer be appropriate, because of the prisoner’s detention in prison.

156. Section 31(2) provides that section 12 of the 1993 Act, which obliges a licence holder to comply with the conditions in the licence, is to be subject to section 12A.

157. Section 31(3) inserts section 12A into the 1993 Act. Section 12A(1) provides that where a person is detained while on licence without the licence being revoked, the effect of certain conditions is suspended for the period during which the person is in custody.

158. Subsection (2) of the new section provides that the suspension of the conditions will take effect when the prisoner is detained and will continue throughout the period for which he or she is liable to be detained or remanded. Immediately upon release, all of the conditions will come back into force, provided that the licence has not already expired.

159. Subsection (3) specifies the conditions which will still remain in force while the prisoner is detained, namely that the offender shall be of good behaviour and keep the peace, and – if such a condition has been imposed – shall not have contact with any named person or class of person from whom he or she is prohibited from having contact by virtue of the licence

160. Subsection (4) of the new section provides that the Scottish Ministers may by order add to the conditions referred to in subsection (3) as they consider appropriate or remove or vary them.

Section 32 – Revocation of licences under 1993 Act

161. Section 32 amends sections 16 and 17 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) to provide that:

- the making of an order under section 16(2) or (4) of the that Act will no longer have the effect of revoking a person's licence; and
- the Scottish Ministers will be required to revoke a person's licence and recall him or her to prison where the Parole Board has so recommended (under section 17 of the 1993 Act).

162. Section 16(7)(a) of the 1993 Act provides that where a court makes an order under section 16(2) or (4) of that Act in respect of a person released on licence, the making of the order has the effect of revoking the licence. Such an order may be made where a person who was sentenced to a determinate term for an offence commits a further offence punishable by imprisonment before the date on which he or she would have served the first sentence in full. If the person is found guilty of the second offence then, in addition to any sentence which a court may impose as a result, a period of detention may be ordered under section 16(2) or (4).

163. Section 17 of the 1993 Act provides the Scottish Ministers with the power to revoke the licence of and to recall to prison a long-term or life prisoner who was released on licence under Part I of the 1993 Act. Such an action will normally follow a recommendation to do so by the Parole Board but the Scottish Ministers may also do so if revocation and recall are, in their opinion, expedient in the public interest and it is not practicable to await such recommendation.

164. Subsection (2) repeals section 16(7)(a) of the 1993 Act. Thus an order under section 16(2) or (4) will no longer automatically have the effect of revoking a licence.

165. Subsection (3) amends section 17 of the 1993 Act to substitute new subsections (1), (1A), (1B), (2) and (3) for the existing subsections (1) to (3). These new subsections provide that:

- for a long-term prisoner (who is not detained in custody for any of the reasons set out in section 12A(1)(a) or (b) of the 1993 Act, as inserted by section 31 of the Bill), or a life prisoner who has, in either case, been released on licence and the licence is still in force, the Scottish Ministers are required to revoke the licence and recall the person to prison if recommended to do so by the Parole Board;
- in the case of a prisoner described above, the Scottish Ministers may revoke the licence and recall the person to prison if they decide that action is expedient in the public interest and that it is not practical to wait for a recommendation from the Parole Board;
- for a short-term prisoner released on licence under section 3(1) of the 1993 Act (release on compassionate grounds) who is not detained in custody for any of the reasons set out in section 12A(1)(a) or (b) of the 1993 Act, as inserted by section 31 of the Bill, the Scottish Ministers may revoke the licence and recall him or her to prison if they are satisfied that his or her health or circumstances have changed, such that if the person was in prison, he or she would not be eligible for release under section 3(1) of the 1993 Act;
- for a long-term or short-term prisoner released on licence under Part I of the 1993 Act, but detained in custody for any of the reasons set out in section 12A(1)(a) or (b) of the 1993 Act, as inserted by section 31 of the Bill, the Scottish Ministers are required to revoke the licence if recommended to do so by the Parole Board;

- for a person whose licence is revoked and is recalled to prison under subsection (1) or (1A), the Scottish Ministers shall inform that person of the reasons for the revocation and recall;
- for a person whose licence is revoked under subsection (1B), the Scottish Ministers shall inform that person of the reasons for the revocation;
- the Scottish Ministers shall refer to the Parole Board the case of a person whose licence is revoked and who is recalled under subsection (1) or (1A), or a person whose licence is revoked under subsection (1B). This will permit the Board to decide whether or not to direct the person's immediate release under section 17(4). Release from custody will depend on their being no other warrant in force for the person's detention.

Section 33 – Extended sentences: recall to prison and revocation of licences

166. Section 33 amends section 26A of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) to clarify when an extended sentence prisoner who is recalled to custody has an unconditional right of re-release. The effect is that, following the recall to custody of any prisoner serving an extended sentence, an automatic right to re-release will arise once the prisoner reaches the expiry date of his or her extension period.

167. Extended sentences are explained in paragraphs 91 and 92 above. They consist of a term of imprisonment (“the custodial term”) and a further period (“the extension period”) for which the offender is to be subject to a licence.

168. For as long as any prisoner is on licence he or she remains liable to have his or her licence revoked and to be recalled to custody in terms of section 17 of 1993 Act. However, following a prisoner's return to prison, the Parole Board must consider whether he or she should be immediately re-released. If the Parole Board decides that the prisoner should not be re-released at that stage, further consideration of his or her suitability for release will take place at regular intervals. However, it is not clear whether, as the law stands, the prisoner has an unconditional right to re-release at the end of the extension period, or whether he or she requires to be detained until the end of the extended sentence, in the event that these dates are different.

169. The dates will be different, by virtue of section 26A(5)(b) of the 1993 Act, if the custodial term that the prisoner receives is for less than 4 years. In this case, in accordance with section 26A(4) of the 1993 Act, the prisoner will be released on licence after serving half of the custodial term and will remain on licence for the duration of the extension period, which will begin on the date of the release on licence. (For those serving a term of 4 years or more the extension period begins at the expiry of the “custodial term” and not on the date on which they are released on licence.) However, at the expiry of the extension period, the prisoner's extended sentence (consisting of the aggregate of the custodial term and the extension period) will not have expired.

170. The current interpretation of section 26A(9) of the 1993 Act is that it requires a prisoner who has been recalled to custody to be detained until the expiry of the entire extended sentence, unless the Parole Board directs the prisoner's earlier release, even though this date may be considerably later than the expiry of the extension period.

171. Subsection (2) clarifies the law by providing that the reference in section 17(5) of the 1993 Act to a prisoner who is recalled to custody being liable to be detained in “pursuance of his sentence” should be construed as a liability to be detained until the expiry of the extension period.

Section 34 – Special provision in relation to children

172. Section 34 amends section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”). Section 7 provides for the early release of children who are sentenced under section 208 of the Criminal Procedure (Scotland) Act 1995 (detention of children convicted on indictment) to determinate periods of detention. Such children are treated in a comparable manner to adults except that there is no minimum period to be served before they can be considered for discretionary release, on the recommendation of the Parole Board; and that they are all issued with a licence on release, even if serving less than 4 years, so that social work supervision is available to assist their resettlement in the community.

173. The definition of a child is the same as that in the 1995 Act, namely a person:

- (i) who has not attained the age of 16 years;
- (ii) over the age of 16 years who has not attained the age of 18 years and in respect of whom a supervision order is in force; and
- (iii) whose case has been referred to a children’s hearing.

174. The amendments made by this section of the Bill to the statutory regime governing the early release of children on licence are comparable to the changes proposed for adult prisoners by sections 26, 31 and 32 of the Bill. In particular, it will be a matter for the Parole Board to decide whether a child sentenced under section 208 of the 1995 Act to a determinate term of detention should be released early on licence, and it will also be for the Board to decide whether the licence under which such a person has been released should be revoked (though in exceptional cases this decision may be taken by the Scottish Ministers without a recommendation of the Board). Certain licence conditions may also be suspended if, during the currency of the licence, the child is lawfully detained without the licence being revoked. In addition, if a child is ordered to be returned to detention for committing an offence following release but in the period during which, but for his or her early release, the child would still be serving a sentence, such an order is no longer to have the effect of revoking the licence (if it is still current).

Monitoring on release

Section 35 – Remote monitoring of released prisoners

175. Section 35 makes provision for the remote monitoring of prisoners released on licence. It provides that the Scottish Ministers may include in a release a licence a condition that the prisoner comply with such conditions as appropriate to enable the remote monitoring of the prisoner’s compliance with any other conditions of the licence or for the purpose of monitoring his or her whereabouts. An example of a licence condition that may be remotely monitored would be a condition requiring the prisoner to remain in or away from a particular place.

176. Section 35 applies, by virtue of subsection (1), to persons released on licence under section 22 of the Prisons (Scotland) Act 1989 (where the person has been sentenced prior to 1 October 1993) or under Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (in respect of persons sentenced on or after that date), except those individuals under 16 at the time of their release under section 7(5) of the 1993 Act.

177. Subsection (3) provides that where a remote monitoring condition is specified in a licence, the Scottish Ministers must designate a person responsible for monitoring the prisoner and send to that person as soon as is practicable a copy of the licence condition together with any information required to fulfil the monitoring responsibility. Subsection (4) provides that the designated person will be responsible for monitoring the prisoner according to the licence conditions from the point at which they receive the copy of the licence condition and remain responsible until the licence condition has been suspended, cancelled, revoked or is otherwise no longer in force.

178. Subsection (5) provides the Scottish Ministers with the power to replace the designated person and amend the licence to reflect this. If this occurs this replacement person will become subject to subsections (3) and (4). Subsection (6) provides that where such replacement is made the person who is replaced as the designated person must, in so far as is practicable, be notified.

179. Subsection (7) applies section 245C of the Criminal Procedure (Scotland) Act 1995 to the remote monitoring of prisoners released on licence. Section 245C makes provision for the Scottish Ministers to make such arrangements as they see fit for the remote monitoring of compliance of offenders in respect of whom the court makes a restriction of liberty order.

180. Section 35(8) provides that the Scottish Ministers have the power to designate and amend the designation of the person responsible for monitoring the prisoner without having to consult or receive a recommendation from the Parole Board.

PART 5 – DRUGS COURTS

Section 36 – Drugs courts

181. Section 36 provides for a court to be designated a drugs court and confers certain powers upon a judge when sitting as a drugs court.

182. Subsection (1) gives the Scottish Ministers the power to prescribe courts as “drugs courts”. Given the provisions of section 69 of the Bill this power is exercised by subordinate legislation subject to negative procedure. Drugs courts are defined as those especially appropriate to deal with cases involving persons dependent on, or with a propensity to misuse, drugs.

183. Subsection (2) allows Ministers to prescribe that there is to be a drugs court within a sheriffdom or sheriff court district or a commission area in which there is a district court constituted by a stipendiary magistrate. Where a sheriffdom or sheriff court district is prescribed, it is for the sheriff principal to nominate the particular sheriff court within that sheriffdom or sheriff court district that may sit as a drugs court. Similarly, where a commission

area is prescribed, it is for the clerk of the relevant district court to nominate the particular district court, constituted by a stipendiary magistrate, that may sit as a drugs court.

184. Subsection (3) provides that a court is to have the powers specified in subsection (4) when sitting as a drug court. These powers are in addition to existing powers of the court.

185. Subsection (4) sets out the additional powers that are available to the drug court and provides that it has extended powers to deal with a breach by an offender of a drug treatment and testing order and a probation order. A drug treatment and testing order (DTTO) is an order made under section 234B of the Criminal Procedure (Scotland) Act 1995 (as inserted by section 89 of the Crime and Disorder Act 1998). It is a disposal targeted on serious offenders with a dependency on drugs who consent to the imposition of the order. The offender is placed on specialist treatment programmes and is subject to regular review by the court. A probation order is an order made under section 228 of the Criminal Procedure (Scotland) Act 1995, which requires an offender to be under supervision in the community for a specified period. The principal focus of the order, which requires the offender's consent, is to challenge the offender's criminality and behaviour. It is likely that the majority of probation orders imposed by a drugs court will have additional conditions of drug treatment and regular review by the court.

186. Where the drugs court is satisfied that a failure to comply with a condition of a DTTO or a probation order has occurred, it may impose one of two sanctions:

- a sentence of imprisonment of up to 28 days (including a period of custody of less than five days – currently the minimum period that may be imposed is 5 days under section 206 of the 1995 Act); or
- a community service order of up to 40 hours (including a period of community service of less than 80 hours - currently the minimum hours of CSO that may be imposed is 80 hours under section 238 of the 1995 Act).

187. The drugs court is given the power to impose these sanctions and to permit the DTTO or probation order to continue. There is no necessity for the drugs court to revoke the DTTO or probation order when it imposes one of the sanctions under subsection (4).

188. The effect of subsection (4) is to permit the drugs court to deal with repeated failures of the offender to comply with conditions of a DTTO or probation order by imposing short periods of detention or community service without revoking the DTTO or probation order. The drugs court may therefore impose periods of imprisonment until the cumulative limit of 28 days of imprisonment is reached and periods of community service until the cumulative limit of 40 hours is reached. Subsection (5) permits the Scottish Ministers to amend by subordinate legislation the period of imprisonment or community service that may be imposed by the drugs court under subsection (4).

189. Subsection (7) makes provision for the procedure to be followed where there is an allegation that the offender has failed to comply with his or her DTTO or probation order. This procedure is in addition to the existing procedure for such allegations, namely 234G of the 1995 Act in respect of DTTOs, and sections 232 and 233 of the 1995 Act in respect of probation

orders. Subsection (7) provides that the offender may be provided with details of the alleged breach when that person attends a review hearing of a DTTO or a diet of review fixed as a condition of a probation order. This provision will enable the drugs court to deal more speedily with allegations of failure to comply.

190. Subsections (8) and (9) make provision that any court, when revoking a DTTO or probation order and imposing a sentence on the offender, must take into account any sentence of imprisonment or community service order imposed by the drugs court under subsection (4)(a) and (b).

PART 6 – NON-CUSTODIAL PUNISHMENTS

Section 37 – Restriction of liberty orders

191. Section 37 makes provision in connection with the powers of the court:

- when making a restriction of liberty order in circumstances where an offender resides or is to reside in another court district; and
- when considering an application to vary such an order in circumstances where an offender already subject to a restriction of liberty order wishes to reside in another court district; and
- when considering a breach of a restriction of liberty order.

192. Restriction of liberty orders (RLOs) were introduced in Scotland by section 5 of the Crime and Punishment (Scotland) Act 1997. RLOs require an offender to be restricted to a specified place for up to 12 hours per day or from a specified place for up to 24 hours per day, or both, for a maximum period of 12 months. Compliance with an RLO is monitored by remote monitoring equipment.

193. This section deals with the situation where an offender who has been given an RLO intends to move outwith the jurisdiction of the court which made the order. It provides that the court is to have the power to vary the terms of the order, including the arrangements for monitoring. The court in the area in which the offender is to reside will be given the power to deal with any breach, application for review or variation of the RLO as if it has made the original order.

194. The court is also to have the power to impose an RLO on an offender who resides, or is to reside, outwith the jurisdiction of the court. The court with jurisdiction for the area in which the offender resides or is to reside has the power to vary, review and deal with a breach of the order.

195. Subsection (2) amends section 245A(5)(a) of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act) to provide that, in cases where the offender resides (or is to reside) in a place outwith the jurisdiction of the court, the clerk of the court will send a copy of the RLO both to the person responsible for monitoring the offender's compliance with the order and to the clerk of a court which has jurisdiction over that place where the offender resides (or is to reside).

196. Subsection (3) amends subsection (1) of, and inserts new subsections (5) to (8) into, section 245E of 1995 Act. The amendment to section 245E(1) has the effect that where an offender with an RLO is residing outwith the jurisdiction of the court which made the order and the order has been transferred, under either sections 245A(5)(a)(ii) or 245E(7)(a) of the 1995 Act (as amended by the Bill), to a court which has jurisdiction over the offender's place of residence, any application to review the order should be made to that court to which the order has been transferred.

197. The effect of the new section 245E(5) is to provide that when an RLO is in force in respect of an offender and the offender proposes to change his or her place of residence to one outwith the district of the court which made the order, the offender may make application to the court which made the order to vary it. If the court is satisfied that arrangements can be made to monitor the offender's compliance with the order, by the means of monitoring specified in the order, in the district to which the offender proposes to take up residence, the court will have the power to vary the terms of the order to allow these arrangements to be made. In addition, if the offender's change in residence requires a change in the person responsible for monitoring compliance with the order, the court will have the power to vary the order accordingly.

198. The new section 245E(6) provides that, in cases where the RLO requires the offender to remain in a specified place or places, the court may not vary the order in response to an application by the offender to relocate to a place outwith the jurisdiction of that court without first obtaining and considering information about the place or places, including information about the attitude of any persons likely to be affected by the enforced presence there of the offender.

199. If the court is not satisfied that suitable monitoring arrangements can be put in place in the district in which the offender is to reside, the new section 245E(8) provides that the court may refuse the application or revoke the order.

200. New section 245E(7) provides that in cases where the order is varied to allow the offender to relocate to an area outwith the jurisdiction of the court, the clerk of the court is to send a copy of the revised order to:

- the clerk of the court in which the offender wishes to reside;
- the person responsible for monitoring the offender's compliance with the order before it was varied; and
- the person who is to be responsible for monitoring the offender's compliance with the order as a consequence of it being varied.

201. Section 37(4) of the Bill amends the procedures set out in section 245F of the Criminal Procedure (Scotland) Act 1995 for dealing with breach of an RLO to make provision for cases in which the offender resides outwith the jurisdiction of the court which made the order and the order has been transferred, under either sections 245A(5)(a)(ii) or 245E(7)(a) of the 1995 Act (as amended by the Bill), to a court which has jurisdiction over the offender's place of residence. The effect is to permit the court in which the offender is now resident, which has received a copy of the original order or a copy of the varied order, to issue a citation or warrant for the offender

to appear before it for a failure to comply with the order and, at the resulting hearing, to dispose of the case if a failure to comply has been established to the court's satisfaction.

Section 38 – Interim anti-social behaviour orders

202. Section 38 amends the Crime and Disorder Act 1998 (the 1998 Act) to empower a sheriff to make an interim anti-social behaviour order in an application for an anti-social behaviour order under section 19 of the 1998 Act.

203. Section 19 of the 1998 Act provides that a local authority may apply to the sheriff for an anti-social behaviour order (ASBO) on the grounds that:

- a person has acted in an anti-social manner (i.e. in a manner that caused or was likely to cause alarm or distress); or
- a person has pursued a course of anti-social conduct that caused or was likely to cause alarm or distress) to one or more persons not of the same household as himself;

and that an order is necessary to protect persons in the authority's area from further anti-social acts or conduct by the person concerned.

204. If satisfied that these conditions are fulfilled the sheriff may make an anti-social behaviour order which will prohibit the person named in the order from doing anything described in the order.

205. To provide for an interim anti-social behaviour order, this section amends sections 19, 21 and 22 of the 1998 Act, which make provision regarding anti-social behaviour orders.

206. The new subsection (2A) inserted into section 19 of the 1998 Act makes provision for the court to make a new order called an interim anti-social behaviour order ("an interim ASBO"). The subsection provides that when an anti-social behaviour order is applied for a sheriff may grant an interim order pending the final decision, if satisfied that:

- if the actions complained of were established the criteria for an ASBO may be satisfied; and
- an interim order is necessary to protect persons in the local authority area from further anti-social acts or conduct by the person against whom the order is sought.

207. The sheriff must also take account of representations made by the person against whom the order is being sought.

208. Subsection (2) amends section 21 of the 1998 Act, which regulates the procedural provisions with respect to ASBOs, to make provision for an appeal against the granting of an interim ASBO and provides that the interim ASBO may continue in force whilst subject to an appeal. Subsection (3) makes provision for an amendment to section 22 of the 1998 Act in order that a breach of an interim ASBO may be treated as a criminal offence.

Sections 39 and 40 – Requirement for remote monitoring in probation order and requirement for remote monitoring in drug treatment and testing order

209. Sections 39 and 40 amend the Criminal Procedure (Scotland) Act 1995 to allow the court, when it makes a probation order or a drug treatment and testing order (DTTO), to include as a condition of that order that the offender comply with certain restrictions on his or her movements and any requirement to enable remote monitoring of his or her compliance with those restrictions.

210. A probation order is an order made under section 228 of the Criminal Procedure Scotland Act 1995, which requires an offender to be under supervision in the community for a specified period. The principal focus of the order, which requires the offender's consent, is to challenge the offender's criminality and behaviour.

211. A drug treatment and testing order is an order made under section 234B of the Criminal Procedure Scotland Act 1995 (as inserted by section 89 of the Crime and Disorder Act 1998). A DTTO is a disposal targeted on serious offenders with a dependency on drugs who consent to the imposition of the order. The offender is placed on specialist treatment programmes and subject to regular review by the court.

212. Section 245A of the Criminal Procedure (Scotland) Act 1995 contains provisions concerning a Restriction of Liberty Order (RLO). RLOs were introduced in Scotland by section 5 of the Crime and Punishment (Scotland) Act 1997. They require an offender to be restricted to a specified place for up to 12 hours per day or from a specified place for up to 24 hours per day, or both, for a maximum period of 12 months. Compliance with an RLO is monitored by remote monitoring equipment.

213. Subject to the provisions in section 245A of the Criminal Procedure (Scotland) Act 1995, section 40 inserts a new section 234CA into the 1995 Act which provides that a DTTO may include a requirement that an offender comply with restrictions on movement for a specified period of up to 12 months. Section 39 inserts a new section 230A which provides that a probation order may also include a requirement that an offender comply with restrictions on his or her movement for a specified period of up to 12 months. Restrictions may be applied to both provisions as set out in section 245A(2) of the 1995 Act which provides the periods for which, and the places from and to which, an offender may be subject to restriction.

214. Section 40(2) amends the 1995 Act by inserting a new section 234CA. Subsection (2) of this new section provides that where such a requirement is made as part of a DTTO a copy of the order shall be sent from the clerk of the court to the person who is responsible for monitoring the offender's compliance with the requirement. Similarly the new section 230A(2) (inserted by section 39(2) of the Bill) provides for such a procedure where such a requirement is made as a condition of a probation order.

215. New section 234CA(3) provides that if the person responsible for monitoring the offender's compliance with the remote monitoring conditions of the DTTO finds that they have failed to comply with any of the requirements they should inform the supervising officer, who will inform the court. The supervising officer is the person appointed or assigned by the local authority under section 234C of the 1995 Act.

216. Section 39(2) amends the 1995 Act by inserting a new section 230A. Subsection (3) of new section 230A provides that if the person responsible for monitoring the offender's compliance with the remote monitoring conditions of the probation order finds that they have failed to comply with any of the requirements they should inform the supervising officer, who will inform the court. The supervising officer is the person appointed or assigned by the local authority under section 228(3) of the 1995 Act .

217. New section 234CA(4) provides that where the supervising officer reports an alleged breach of the remote monitoring condition in relation to a DTTO, the court may exercise the existing powers in section 234G of the 1995 Act. The new section 230A(4) inserted by section 39(2) provides that where such a breach is reported in relation to a probation order the court may exercise the existing powers in section 232 of the 1995 Act. The documentary evidence required in proceedings concerning an alleged breach of the remote monitoring condition is to be that prescribed for RLOs in section 245H. Where the court is satisfied that the offender has failed without reasonable excuse to comply with any of the requirements of the remote monitoring condition, the court is to have the powers in section 234G(2) to impose a fine, vary or revoke the order. The DTTO may continue in force notwithstanding that a remote monitoring condition is removed.

218. New sections 234CA(5) and 230A(5) respectively apply sections 245A(6), (8) to (11), 245B and 245C of the 1995 Act, in relation to the imposition of, or compliance with the requirements of, an RLO, to the arrangements for remote monitoring as a condition of a drug treatment and testing order and probation order set out in section 234CA(1) and 245A(1) respectively.

219. New section 234CA(6) modifies section 234E of the 1995 Act in relation to a drug treatment and testing order with remote monitoring requirements. Section 234E of the 1995 Act sets out the procedures for the variation of the remote monitoring conditions in a drug treatment and testing order.

220. Section 234E(1) provides that where a DTTO is in force either the offender or the supervising officer may apply to the appropriate court for variation or revocation of the order. However, new section 234CA(6) provides that where a remote monitoring condition has been included in a DTTO the monitoring officer is only able to apply for a variation or revocation in relation to the remote monitoring requirement.

221. Section 234E(3) provides that where an application for variation or revocation of a DTTO is made, the offender and the supervising officer should be heard. New section 234CA(6) provides that the responsible person should also be heard if a remote monitoring condition forms part of the DTTO.

222. Section 234E(3)(a) provides that the court may vary the order. New section 234CA(6)(d) provides that this can include increasing or decreasing the period of monitoring as set out in the order.

223. New section 230A(6) provides that where a probation order has such a requirement, a request to amend the order may come from the person responsible for monitoring the

requirement, but only in respect of that part of the order. New section 230A(7) provides that where such an application is made by the probationer or the supervising officer a copy shall be sent to the person responsible for monitoring compliance with the order. It also provides that where the responsible person applies for an amendment to the order they should copy the application to the probationer and supervising officer.

224. New section 234CA(7) provides that where such a requirement is varied in relation to a DTTO, the clerk of the court shall send a copy of the amended order to the person responsible for monitoring the offenders compliance with the order. New section 230A(7) provides that where such a requirement is varied in relation to a probation order, the clerk of the court shall send a copy of the amended order to the person responsible for monitoring the offenders compliance with the order.

225. Section 39(3) amends section 232 of the Criminal Procedure (Scotland) Act 1995 to provide that the maximum period for an extension to a requirement of a probation order is twelve months as set out in new section 230A(1).

Section 41 – Power of arrest where breach of non-harassment order

226. Section 41 amends the Criminal Procedure (Scotland) Act 1995 and the Protection from Harassment Act 1997 to provide for a statutory power of arrest, by the police, for breach of a non-harassment order.

227. The police already have powers at common law to arrest without warrant if necessary in the interests of justice, and the new statutory power of arrest given by section 34 is to be exercised without prejudice to other common law and statutory powers of arrest. Section 41 makes provision for a constable to arrest without warrant a person reasonably suspected of breaching a non-harassment order. The power may be exercised where the non-harassment order is imposed in criminal proceedings following conviction for an offence involving harassment or where it has been granted in civil proceedings following an application to the court.

228. Section 8 of the Protection from Harassment Act 1997 defines a non-harassment order (NHO) as an order which the court may grant in an action for harassment to protect a person from further harassment. The NHO prohibits the defender from specified conduct in relation to the pursuer for a specified period of time. It is for the court to determine any specified conduct or time period to be included in the order. The court may also make a NHO following conviction for an offence involving harassment. Section 9 of the 1997 Act makes provision for the penalties to be imposed following a breach of the order, and designates a breach of an order as a criminal offence.

229. Section 234A of the Criminal Procedure (Scotland) Act 1995 makes provision that where a person has been convicted of a criminal offence, the prosecutor may apply to the court for a non-harassment order requiring the offender to refrain from such conduct, in relation to the victim, as may be specified by the court in the order. It permits the court to impose a non-harassment order, the procedure to be followed before such an order may be imposed and the penalties that may be imposed for a breach of such an order.

230. Section 41(1) amends section 234A of the 1995 Act by inserting two new subsections. The new subsection (4A) makes provision for a police constable to arrest without warrant a person the constable reasonably believes is breaching a non-harassment order. The new subsection (4B) specifies that the new power of arrest created by subsection (4A) is without prejudice to any other power of arrest.

231. Section 41(2) amends section 9 of the 1997 Act by inserting two new subsections. New subsection (3) makes provision for a police constable to arrest without warrant a person the constable reasonably believes is breaching a non-harassment order. New subsection (4) specifies that the new power of arrest created by subsection (3) is without prejudice to any other power of arrest.

Section 42 – Amendments in relation to certain non-custodial sentences

232. Section 42 amends the Criminal Procedure (Scotland) Act 1995 in relation to the arrangements for supervised attendance orders (SAOs) and restriction of liberty orders (RLOs).

233. A SAO is an order available to criminal courts in Scotland, which requires an offender who has failed to pay a fine to undertake a programme of designated activities for a specified number of hours.

234. Section 235 of the 1995 Act makes provision that where an offender who is 18 years or over, fails to pay a fine and is liable for imprisonment for that failure, and the court believes that it is appropriate to do so, it may impose a SAO. Section 235 permits the court to impose a SAO of not less than 10 hours and up to a maximum of 50 hours (for a fine not exceeding level 1 on the standard scale) and up to 100 hours in any other case. Section 236 of the 1995 Act permits the court to impose a SAO on an offender aged 16 or 17 years where the offender is convicted of a summary offence and the court believes that a fine is the appropriate disposal. The court is required to consider whether the offender is likely to pay the fine within 28 days. If the offender is likely to pay within 28 days the court may impose the fine with the alternative of a fixed period of a SAO in default in payment. If the offender is unlikely to pay within 28 days the court may impose a SAO.

235. Subsection (1) amends section 235 in order that a court may exercise its powers of imposing a SAO for offenders aged 16 years and over who have defaulted in the payment of their fine. That is, it lowers the age limit to 16 years. Subsection (2) amends section 236 in order that the court may exercise its powers under section 236 for offenders aged 16 years and over, to consider whether the offender is likely to pay within 28 days and if so impose a fine with an alternative of a SAO or if the offender is unlikely to pay within 28 days, impose a SAO. That is, it extends section 236 to offenders aged 16 and over.

236. Paragraphs 4 and 5 of Schedule 7 to the 1995 Act provide that the court may impose a sentence of three months in the sheriff court and 60 days in the district court in respect of a revocation or failure to comply with a SAO. Subsection (4) amends the maximum periods of imprisonment for revocation of or failure to comply with a SAO to 30 days in the sheriff court and 20 days in the district court.

237. Restriction of liberty orders (RLOs) were introduced in Scotland by section 5 of the Crime and Punishment (Scotland) Act 1997, which resulted in the insertion of sections 245A to 245I in the 1995 Act. RLOs require an offender to be restricted to a specified place for up to 12 hours per day or from a specified place for up to 24 hours per day, or both, for a maximum period of 12 months. Compliance with an RLO is monitored by remote monitoring equipment.

238. The amendments to section 245A of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act) allow a court to impose a RLO made under that section as an alternative to imprisonment or any other form of detention.

239. Subsection (3) amends section 245A of the 1995 Act to make a RLO available to courts for offences (other than an offence for which the sentence is fixed by law) instead of imposing a sentence which includes a custodial element.

PART 7 – CHILDREN

Section 43 – Physical punishment of children

240. Section 43 clarifies the law as it applies to the exercise of physical punishment of children by their parents, guardians and other persons with charge or control of them.

241. At common law parents, guardians and other persons with charge or control of children are entitled to use force for the purpose of disciplining children if these actions are considered by the court to be justified as “reasonable chastisement”. Such punishment must be moderate and not inspired by vindictiveness. To secure a conviction for assault the prosecution has to demonstrate *mens rea* or “criminal intent” on the part of the accused, and this prevents trivial contacts or harmless warning taps being treated as an assault.

242. In addition to the common law of assault, section 12 of the Children and Young Persons (Scotland) Act 1937 contains provisions dealing with the treatment of children and young people by persons of 16 years or over who have parental responsibilities in relation to them or who have charge or care of them. That section makes it an offence for such persons to treat that child with cruelty (described as wilful assault, ill-treatment, neglect, abandoning, exposing, or causing or procuring such treatment in a way which is likely to cause unnecessary suffering or injury to health).

243. Section 12 of the 1937 Act also provides that the rights of any parent, teacher, or other person having the lawful control or charge of a child or young person to administer physical punishment to the child are not affected by the offence provision. However, a teacher’s right to administer physical punishment has effectively been removed subsequently by section 48A of the Education (Scotland) Act 1980 and section 16 of the Standards in Scotland’s Schools Act 2000. Other provisions exist to prohibit physical punishment in other public care settings.

244. Section 43 clarifies the circumstances in which physical punishment of a child will never be reasonable, and provides a non-exhaustive list of the factors which are to be taken into account when considering whether such punishment in other circumstances is reasonable.

245. At common law, only certain categories of people can physically punish a child. These are people with parental responsibilities and rights in relation to the child, and anyone to whom they delegate their right to do so. In addition, a person with a close connection with the child, and who has care and control of the child, will also be entitled to physically punish a child. This covers, for example, the position of a child's unmarried father or step-parent who does not have formal parental responsibilities and rights.

246. The provisions of section 43 apply to cases where the defence to a charge of assault is based on the claim that the assault was reasonable chastisement. If the court is satisfied that the accused person is within the category of people entitled at common law to physically punish the child in question, the prosecutor will have to prove that the punishment went beyond what was reasonable chastisement. Where the accused did not have such a right, the prosecutor need only prove that the assault, or punishment, occurred.

247. Subsection (1) sets out the factors which must be considered by the court in deciding whether or not something which is claimed to have been done to a child by way of physical punishment was justifiable. The factors are derived from judgements by the European Court of Human Rights, relating to Article 3 of the European Convention on Human Rights, which states that "No one shall be subjected to torture or to inhuman or degrading treatment".

248. The factors set out in subsection (1)(a) are the nature of what was done to the child, the reason for it and the circumstances in which it took place. It is envisaged that these should prompt the court to consider the whole circumstances of the case, including the severity of the punishment, whether it was proportionate to the child's behaviour and whether it was given in appropriate circumstances.

249. Subsection (1)(b) directs the court to consider the duration and frequency of the punishment.

250. Subsection (1)(c) directs the court to consider any effect (whether physical or mental) which the punishment has been shown to have had on the child. It does not oblige the court to obtain medical or psychiatric evidence in every case, but to consider such evidence as is produced.

251. Subsection (1)(d) directs the court to consider the child's personal characteristics, including sex, age and state of health at the time of the punishment. An example of how a court might take sex into account would be where it considers treatment which may be additionally humiliating, for example because a child's bare bottom is beaten in front of strangers of the opposite sex.

252. Subsection (2) provides that the court may also take into account any other factors which it considers appropriate in relation to the case.

253. Subsection (3) prohibits any physical punishment given to a child under the age of three, and three specified types of punishment given to a child of any age: blows to the head; shaking; and the use of an implement, such as a belt, slipper or cane. Where these are used, then the

punishment cannot be found to be justifiable assault. This list does not affect the power of the court to determine on other grounds that what was done was not justifiable. As in all cases, the prosecution will have to demonstrate an intention by the accused to punish the child. Where the child is under the age of three, proving an intention to punish should be sufficient to secure a conviction. Similarly if it can be shown that the accused intended to strike a child of any age by one of the means specified in subsection (3)(b) then that should also be sufficient to secure a conviction. It will not be necessary in either situation also to demonstrate “criminal intent” or an intention to inflict severe pain or punishment that is excessive or unreasonable in all the circumstances.

254. Subsection (4) makes clear that this section applies only in respect of children who were under 16 at the time of the supposed punishment. There is no entitlement to use physical punishment above that age. Any supposed “punishment” of a person aged 16 or over would constitute assault.

255. Subsection (5) repeals references to “assault” in the Children and Young Persons (Scotland) Act 1937 which the Bill renders unnecessary. Physical punishment of a child will be covered by the common law and by this section, while the 1937 Act will apply to cruelty, neglect and ill-treatment, which cannot be justifiable as reasonable punishment.

256. The section does not introduce new penalties, and sentences for assault will continue to be limited only by the sentencing powers of the court involved. At present, most such cases result in non-custodial sentences, and this is not expected to change as a result of the Bill.

Section 44 – Youth crime pilot study

257. Section 44 provides for the setting up of a pilot scheme to study the effectiveness of diverting 16 and 17 year old minor offenders away from the adult criminal justice system and into the children’s hearing system.

258. Subsections (1) and (2) allow the Scottish Ministers to provide for this study by way of regulations which will specify the locations and arrangements for the study.

259. Subsection (3) defines the references to Principal Reporter and children’s hearing as having the meaning in section 93 of the Children (Scotland) Act 1995.

260. Subsection (4) amends section 73 of the Children (Scotland) Act 1995 by inserting a new subsection (3A). Children’s hearings are empowered under section 70 of the Children (Scotland) Act 1995 to make a supervision requirement placing a child under compulsory measures of supervision. The hearing may attach any condition it considers appropriate to address the child’s needs. This may include for example a requirement on the child to attend a particular programme to address offending behaviour, be placed in residential accommodation, or have regular contact with a social worker. The supervision requirement may last up to one year after the date of making supervision requirement until the child reaches 18. As a child up to age 18 may have a supervision requirement made, new subsection (3A) extends the upper age limit from 18 years to 19 years in respect of areas operating a pilot scheme.

261. The study will utilise the current framework for children's hearings set out in section 93 of the Children (Scotland) Act 1995. The jurisdiction of the hearing is extended to allow children up to the age of 18 or 19 if under supervision to be dealt with. This is done by subsection (5), which amends the definition of a child in section 93 for the purposes of the study. At present a child over 16 may only be referred to the Principal Reporter if under a supervision requirement or, having been prosecuted through the criminal process, the court decides to refer the child to a children's hearing for advice and or disposal. The amendments to the definition of child in section 93 will enable a person aged 16 or 17 who offends to be referred direct to the Principal Reporter in the pilot areas.

262. Subsection (5) also amends section 93 of the Children (Scotland) Act 1995 in respect of the definition of a relevant person. A new subsection is added which provides that where the child has reached the age of 18 years, the relevant person is the person who was the relevant person for that child immediately before the child reached 18 years of age. A new subsection (2A) is added to ensure that when a children's hearing is considering the case of a person aged 18 in the pilot area the principles of section 16(1) of the 1995 Act will apply under which the children's hearing otherwise operates.

263. Subsection (6) amends section 49(6) of the Criminal Procedure (Scotland) Act 1995, which provides that a court may, and in some cases must, refer to the Principal Reporter for advice when dealing with a child aged 16 to 17½ years of age, and may subsequently refer the child to a hearing for disposal. In respect of the pilot areas, section 49 is to apply to children up to the age of 18 years.

PART 8 – EVIDENTIAL, JURISDICTIONAL AND PROCEDURAL MATTERS

Section 45 – Certificates relating to physical data: sufficiency of evidence

264. Section 45 amends section 284 of the Criminal Procedure (Scotland) Act 1995 to provide an express right of challenge against the certificate provided for in the latter section.

265. Section 284(1) of the 1995 Act, as amended by section 47 of the Crime and Punishment Act 1997, allows a certificate to be served on an accused signed by an authorised person, stating that fingerprints or other physical data were taken from a named individual at a specified time, date and place. The certificate is then deemed to be sufficient evidence of the facts contained in it. Section 284(2) gives the accused no right to challenge the certificate.

266. Section 45 amends section 284(2) to provide a right of challenge where the defence give notice to the prosecution within seven days of service of the certificate that they do not accept the evidence contained in it.

Section 46 – Taking samples by swabbing

267. Section 46 amends the Criminal Procedure (Scotland) Act 1995 to remove the requirement to obtain authorisation from an inspector before a police constable can exercise compulsory powers to take a DNA sample by mouth swab, without force.

268. This is achieved by amending sections 18, 19, 19A and 19B of the 1995 Act which contain the statutory powers to obtain samples for DNA purposes. Section 18 applies where a person has been arrested and is in custody, or has been detained under section 14 of the 1995 Act. Sections 19 and 19A apply where a person has been convicted of an offence, although 19A covers only those offenders convicted of a sexual or violent offence as defined in subsection (6). Section 19B details circumstances where a constable may use reasonable force when obtaining samples.

269. Subsection (2) amends section 18 of the 1995 Act to:

- repeal subsection (6)(d) which includes mouth swabs among the methods of taking DNA samples that require the authorisation of an officer of at least the rank of inspector; and
- insert a subsection (6A) which provides a new power for a constable or police custody and security officer (at a constable's direction) to take a DNA sample by mouth swab, without the need for authorisation by a more senior officer.

270. Subsection (3) amends sections 19 and 19A of the 1995 Act to:

- remove mouth swabs from the methods of taking DNA samples that require the authorisation of at least an inspector; and
- insert in both sections a new subsection allowing a constable, or police custody and security officer (at a constable's direction) to take DNA samples by way of mouth swab when these sections apply, without the need for authorisation by a more senior officer.

271. Subsection (4) inserts a new subsection (2) into section 19B of the 1995 Act to provide that the authority of an officer of at least the rank of inspector is required before a constable may use force to take a DNA sample by mouth swab under sections 18, 19 or 19A of that Act.

Section 47 – Retaining samples or relevant physical data where given voluntarily

272. Section 47 provides a statutory basis for the police to take, retain and use fingerprints, other prints and impressions and samples, with the written consent of an individual, either for the investigation of a particular offence or for any offence, depending on the consent given. It also makes provision for the withdrawal of such written consent.

273. Subsection (1) provides that these arrangements only apply when samples or prints cannot be taken under any other power, such as section 18 of the Criminal Procedure (Scotland) Act 1995, or a court warrant or other statutory power. This is designed to ensure that the arrangements will only be used when the police have no other power to take samples or prints and the consent of the individual is required.

274. Subsection (2) allows the police to use such samples and prints, taken with consent, in the investigation of an offence or offences. This puts on a statutory footing the current practice where the police take samples or prints with consent and check them against evidence from a scene of crime, for example mass DNA screenings in a geographical area. It also provides the

police with authority, in certain circumstances, to retain the samples and prints for use in subsequent investigations whereas presently they would be destroyed at the conclusion of the investigation in connection with which they were obtained.

275. Subsection (3) provides that the police can only use samples and prints taken with consent in the investigation of offences when the person giving the consent has agreed in writing to their use, and that this consent can be limited to the investigation of the actual offence for which the sample or print was taken. A written consent limited in this way would be analogous to the current situation where the police will use samples or prints taken with consent to investigate a particular offence and then destroy them. The wider consent will allow the police to avoid taking samples or prints repeatedly from certain people by retaining them for future investigations with the consent of the individual concerned.

276. Subsection (4) lays out how a person may withdraw consent to the sample or print being used to investigate offences. It provides that consent may be withdrawn by:

- giving notice in writing to the chief constable of the police force on whose behalf the print or sample was taken; or
- visiting any police station in that area and giving notice, either orally or in writing, to a constable or another authorised person.

277. It also provides that the person who receives the notice of withdrawal of consent must provide the person who gave the prints or sample with a written acknowledgement of receipt of the notice of withdrawal. This is intended to provide proof of the fact of withdrawal and its time and date if this becomes significant.

278. Subsection (5) provides that the withdrawal takes effect from the point when notice under subsection (4) is received. Subject to subsection (6) the sample or print, and information derived from it, is to be destroyed as soon as possible after notice of withdrawal is given.

279. Subsection (6) provides that subsections (4) and (5) do not affect the use of such samples or prints in evidence if checks made against any other sample or print were undertaken before consent was withdrawn, whether in the prosecution of the offence for which they were taken or for any other offence, depending on the consent the person has given under subsection (3). This subsection makes clear that withdrawal of consent does not affect the admissibility of any evidence the police have uncovered during the course of their investigations prior to withdrawal taking effect, or the admissibility of evidence in respect of the taking of the sample and the giving and withdrawal of consent.

280. Subsection (7) defines when a check will fall within subsection (6).

281. Subsection (8) makes clear the meanings of “sample” and “relevant physical data” in the section, which are the same as the existing meanings in the 1995 Act.

Section 48 – Transfer of sheriff court proceedings

282. Section 48 amends sections 83 and 137 of the Criminal Procedure (Scotland) Act 1995 to allow cases to be transferred from one sheriffdom to another as well as within a sheriffdom. Transfer between sheriffdoms will only be with the consent of the sheriff principals of both sheriffdoms.

283. Section 83 of the 1995 Act allows the transfer of cases from one sheriff to another within a sheriffdom, in relation to trials in solemn proceedings.

284. Section 48(1) amends subsection (1), inserts new subsections (1A) and (2A) and amends subsection (3) of section 83 of the 1995 Act to provide that:

- the sheriff may transfer a solemn case within the sheriffdom at any stage in the proceedings where, due to exceptional circumstances it is not practical for a case to be held in the respective sheriff court or any other in the sheriffdom, the prosecutor may apply to the sheriff principal for an order to transfer it to a sitting of a sheriff court, including one set up under section 66(1) of this Bill, in another sheriffdom;
- where an application is made under subsection (1A) in relation to a solemn trial, the sheriff principal may make such an order on joint motion or after giving the accused or the accused's counsel an opportunity to be heard by the sheriff, provided the sheriff principal of the other sheriffdom agrees; and
- the provisions in subsection (3) shall apply to subsection (2A).

285. Section 48(2) inserts new sections 137A and 137B into the 1995 Act. New section 137A provides that in summary proceedings, the prosecutor may, at any stage in a criminal case, apply to the sheriff to transfer it to a sitting of a sheriff court in any other district in that sheriffdom.

286. New section 137B provides that where, due to exceptional circumstances it is not practical for a case to be held in the respective sheriff court or any other in the sheriffdom, the prosecutor may at any stage in the case apply to the sheriff principal for an order to transfer it to a sitting of a sheriff court in another sheriffdom provided the sheriff principal of the other sheriffdom agrees.

Section 49 – Competence of the justice's acting outwith jurisdiction

287. Section 49 inserts a new section 9A into the Criminal Procedure (Scotland) Act 1995 to provide that a justice may sign a warrant, judgement, interlocutor or other document relating to proceedings within that jurisdiction, while they are outwith their jurisdiction, as long as they are within Scotland. A "justice" in this context will include any sheriff, stipendiary magistrate or justice of the peace.

Section 50 – Unified citation provisions

288. Section 50 amends the Criminal Procedure (Scotland) Act 1995 and the Prisoners and Criminal Proceedings (Scotland) Act 1993 to apply the citation procedure set out in section 216(5) of the 1995 Act to breach and ancillary proceedings in relation to community based disposals.

289. Section 216 of the 1995 Act enables the clerk of the court to sign and issue a citation to attend court to the offender *in lieu* of the procurator fiscal.

290. This section amends the Criminal Procedure (Scotland) Act 1995 and the Prisoners and Criminal Proceedings (Scotland) Act 1993 to create a unified citation procedure in relation to breach and ancillary proceedings in community-based disposals. This will be achieved by inserting into section 307 of the 1995 Act a definition of a unified citation procedure which is as set out in section 216 of the Act and applying it to the following sections of the Act:

- section 232 – probation orders: failure to comply with requirement;
- section 233 – probation orders: commission of further offence;
- section 234E – amendment of drug treatment and testing order;
- section 234G – breach of drug treatment and testing order;
- section 239 – community service orders: requirements;
- section 240 – community service orders: amendment and revocation etc;
- section 245E – variation of restriction of liberty order
- section 245F – breach of restriction of liberty order;
- Schedule 6 – discharge of and amendment to probation orders; and
- Schedule 7 – supervised attendance orders: further provisions.

291. The definition in section 307 of the 1995 Act is similarly applied to sections 15 and 18 of the 1993 Act which deal with the variation and breach of a supervised release order.

Section 51 – Citation other than by service of indictment or complaint

292. Section 51 amends the Criminal Procedure (Scotland) Act 1995 to introduce more flexibility in the arrangements for serving an indictment or complaint by making provision for an alternative method of citation.

293. This is achieved by amending sections 66, 140 and 141 of the Criminal Procedure (Scotland) Act 1995 to provide that in addition to the existing methods of service of an indictment or complaint, police may affix a notice on the door of an accused's home or place of business that states the date upon which the notice was left, when the case against the accused will be heard in court and that a complaint or indictment can be collected from a specified police station. The effect of such a notice is that the accused has been duly cited to appear at court.

294. Section 66 of the 1995 Act makes provision concerning service of an indictment upon the accused in solemn proceedings. Section 66(4) provides that the accused shall be served with a copy of the indictment and of the list of the names and addresses of the witnesses to be cited by the prosecution. Section 51(1) amends section 66(4) of the 1995 Act by re-enacting the previous provisions for service but with new provision to permit service to be effected by the police leaving a notice attached to the door of the accused's dwelling-house or place of business. The notice must specify the date on which it was left, inform the accused that a copy of his or her

indictment and list of witnesses may be uplifted from a specified police station and call on the accused to attend at the diet at which his or her case shall be called. It also provides that the form of such notice shall be specified by Act of Adjournal.

295. Under new subsection (4A), the date upon which the notice is left on the accused's door is deemed to be the date on which service was effected. Under new subsection (4B), the date upon which service is effected using the new procedure of citation must be in accordance with the rules in section 66(6) of the 1995 Act. That is, the notice attached to the door must call on the accused to attend at a case to be tried in the sheriff court at a first diet not less than 15 days after service or at a trial diet in the High Court not less than 29 days after service.

296. Thereafter section 51(1) amends subsections (7), (8), (11), (13) and (14) of section 66 of the 1995 Act to make reference to the new form of citation. The amendment to subsection (7) permits service of the new form of citation by any officer of law. The amendment to subsection (8) provides that no objection to the new form of citation can be upheld on the basis that the officer was not in possession of the warrant of citation and that it is not necessary to produce the execution of citation of the indictment. The amendment to subsection (11) provides that there may be no objection to the evidence of the officer who served the new form of citation on the grounds that the officer's name is not on the list of witnesses. The amendment to subsection (13) permits any deletion or correction to the new form of citation to be authenticated or signed by the procurator fiscal or the person serving the notice on the accused. The amendments to subsection (14) permits the deletion or correction of the new form of citation to be authenticated by the initials of the person serving the notice.

297. Section 51(2) of the Bill amends section 140(2) of the 1995 Act by inserting a reference to the new section 141(2A) inserted by section 51(3) of the Bill. Section 140 makes provision for the form and *induciae* (the period of notice of the hearing date that the accused is entitled to receive) of citation of accused persons and witnesses in summary proceedings. Section 141 makes provision for the procedure of citation in summary proceedings. The effect of the amendment to section 140(2) is to permit the new form of citation to operate alongside the provisions for citation set out in sections 140 and 141.

298. Section 51(3) inserts new subsections (2A) and (2B) into section 141 of the 1995 Act. New subsection (2A) sets out the mechanism of the new form of citation in summary proceedings by permitting a citation to be attached to the accused's dwelling-house door or to the door of his or her place of business, in the form to be specified by Act of Adjournal. The notice must specify the date on which it was attached, informing the accused from which specified police station the complaint may be uplifted and requiring him or her to appear and answer the complaint at a specified diet. New subsection (2B) makes provision that the date of the notice is to be deemed to be the date on which service is effected and the date from which the *induciae* is to run.

299. Section 51(3) also amends subsections (3), (5) and (7) of section 141 of the 1995 Act. The effect of the amendment to subsection (3) is to insert a reference to the new form of citation as being an effective form of citation. Subsection (5) is amended to permit a reference to the new form of citation so that the production of any letter or communication in writing, purporting to be from or on behalf of the accused cited in the new way, infers that the accused received the

citation and that such evidence may be relied upon where the accused fails to attend the relevant court diet, as specified in section 144(4). Subsection (7) is amended to permit an execution of the new form of citation to be used in evidence, to prove to the court that service has been effected.

Section 52 – Adjournment at first diet in summary proceedings

300. Section 52 amends sections 144 and 145 of the Criminal Procedure (Scotland) Act 1995 and introduces a new section 145A into that Act. Section 144 makes provision for the procedure to be followed at the first diet, or calling, of a case in summary proceedings. This section of the Bill amends section 144(9) to permit a reference to section 145A and designates a diet adjourned under section 145A as a first calling of a case and hence, subject to the provisions of section 144.

301. Section 145 of the 1995 Act makes provision for the court to adjourn a case, without recording a plea from the accused, at the first calling to allow the accused to appear in person to answer the complaint; to allow for time for enquiry into the case or for any other cause that the court thinks reasonable subject to the limits in subsections (2) and (3). Section 145(2) restricts the total period that an accused may be held in custody under this section to 21 days, with each particular adjournment being restricted to no more than seven days except on cause shown. Section 145(3) restricts the period to which a case may be adjourned in any one period to twenty-eight days, where the accused is released on bail or ordained to appear.

302. The new section 145A permits the court to adjourn the case at the first calling, where the accused is not present and irrespective of whether the procurator fiscal is able to provide evidence that the accused has been cited to attend court, subject to the restrictions provided in subsections (2) and (3). Subsection (2) specifies that the court may permit the adjournment where the purpose is to allow the accused the opportunity of answering the complaint or for further time for enquiry into the case or for any other reasonable cause. Subsection (3) restricts any one adjournment granted under this subsection to a period of 28 days, irrespective of whether the accused is in custody or at liberty.

303. The effect of the introduction of section 145A is to permit the court to continue the case in the absence of the accused or where the prosecutor is unable to provide evidence to the court that the accused has been cited to appear at the diet. In addition, section 145A permits adjournments of up to 28 days in order to allow the accused to answer the complaint, for further time for enquiry or for any other reasonable cause.

Section 53 – Review hearing of drug treatment and testing order

304. Section 53 amends section 234F of the Criminal Procedure (Scotland) Act 1995 to provide that a review hearing of a drug treatment and testing order can take place in the absence of the procurator fiscal.

305. A drug treatment and testing order is an order made under section 234B of the Criminal Procedure Scotland Act 1995 (as inserted by section 89 of the Crime and Disorder Act 1998). Section 234F of Criminal Procedure (Scotland) Act 1995 provides for the periodic review of this order.

306. Though section 234F does not specify that the procurator fiscal is required to be present at the review hearing of a drug treatment and testing order, in practice the courts have shown a reluctance to deal with the review in the absence of the procurator fiscal. However, in order to clarify the law section 53 provides that a review hearing can be held whether or not the procurator fiscal is present.

PART 9 – BRIBERY AND CORRUPTION

Sections 54 and 55 – Bribery and corruption: foreign officials etc.; Bribery and corruption committed outwith the UK

307. Sections 54 and 55 amend the law on corruption. These provide that it will be an offence:

- to bribe or corrupt a foreign official or a foreign public body; and
- where conduct of a UK national or UK registered company takes place outwith the UK and would, if done in Scotland, constitute an offence of corruption and bribery.

308. Section 1 of the Public Bodies Corrupt Practices Act 1889 states:

- “(1) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatsoever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanour.
- (2) Every person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant of any public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanour.”.

309. The 1889 Act provides definitions for a number of key terms used in the Act including:

“public body” means any council of a county or of a city or town, a council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law or otherwise to administer money raised by rates in pursuance of any public general Act but does not include any public body as above defined existing elsewhere than in the United Kingdom”;

“public office” means any office or employment of a person as a member, officer, or servant of such public body”;

“person” includes a body of persons, corporate or unincorporated;

“advantage” includes any office or dignity, and any forbearance to demand any money or money’s worth or valuable thing, and includes any aid, vote, consent, or influence, or pretended aid, vote, consent, or influence, and also includes any promise or procurement of or any gift, loan, fee, reward, or advantage, as before defined”.

310. The Prevention of Corruption Act 1906 extended the law of corruption into the private sector. Section 1 of the 1906 Act creates an offence of corrupt transactions with agents. It states:

“(1) If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal’s affairs or business, or for showing to forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal’s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal;

he shall be guilty of a misdemeanour, and shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.

311. Sections 1(2) and (3) define “consideration” as including “valuable consideration of any kind”; “agent” as including “any person employed by or acting for another person” and as a “person serving under the Crown or under any corporation or any municipal, borough, county, or district council, or any board of guardians”; and “principal” as including “an employer”. The other sections deal with the level of prosecution of the offences.

312. Section 2 of the Prevention of Corruption Act 1916 concerns the presumption of corruption in certain cases. It states:

“Where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906, or the Public Bodies Corrupt Practices Act, 1889, it is proved that any money, gift, or other consideration has been paid or given to or received by a person

in the employment of His Majesty or any Government Department or a public body by or from a person, or agent of a person, holding or seeking to obtain a contract from His Majesty or any Government Department or public body, the money, gift, or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved.”.

313. Section 4(2) and (3) defines “public body” as it was designated in the 1889 Act and includes “local and public authorities of all descriptions”; the expressions “agent” and “consideration” are defined by reference to the definition for those terms in the 1906 Act.

314. Section 54(1) ensures that both the common law offence of bribery, and existing corruption legislation, extend to persons holding public office outside the UK, that is, foreign officials or a foreign public body. Section 54(2) provides that amendments made by section 108(2) to (4) of the Anti-terrorism, Crime and Security Act 2001 to the Prevention of Corruption Act 1906, the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1916 are to have effect in Scotland.

315. Section 108(2) of the 2001 Act extends section 1 of the 1906 Act (corrupt transactions with agents) to include transactions in which the principal’s affairs and business, and the agent’s functions have no connection with the UK and are carried on outside the UK. Section 1 of the 1906 Act states that an “agent” includes any person employed by or acting for another, and that “principal” includes an employer.

316. Section 108(3) of the 2001 Act amends section 7 of the 1889 Act (interpretation relating to corruption in office) by extending the definition of “public body” to include any body which exists outside the UK.

317. Section 108(4) of the 2001 Act amends section 4(2) of the 1916 Act (which defines public bodies to include local and public bodies of all descriptions) by extending it to cover authorities that exist outside the UK.

318. Section 55 of the Bill gives Scottish courts the extra-territorial jurisdiction over bribery and corruption offences committed abroad by UK nationals and bodies incorporated under UK law. It enables common law offences and those offences specified in subsection (3), when committed by UK nationals and bodies incorporated under UK law, to be prosecuted in Scotland, wherever those offences take place. As regards legal persons, the section applies to any body incorporated under the law of any part of the UK. It therefore applies not only to companies but also, for example, to limited liability partnerships.

319. Subsection (2)(b) makes express provision that Scottish partnerships may be prosecuted in the Scottish Courts in respect of bribery and corruption offences committed outwith the United Kingdom. In particular the subsection makes provision that where it can be proved that the act occurred with the consent or connivance of, or can be attributed to, a partner or partners, that partner or partners as well as the partnership may be prosecuted.

320. Subsection (2) applies section 11(3) of the 1995 Act to cases to which section 55 of the Bill applies. Section 11(3) of the 1995 Act makes provision for certain offences committed outside Scotland to be tried in any sheriff court district in Scotland in which the person is apprehended or in custody or in such sheriff court district as the Lord Advocate may determine.

321. Subsection (3) details the statutory offences to which this section applies (i.e. section 1 of the Public Bodies Corrupt Practices Act 1889 and the first two offences under section 1 of the Prevention of Corruption Act 1906).

322. Subsection (4) provides a definition of a “national of the United Kingdom”, for the purposes of subsection (1) and refers to the British Nationality Act 1981 for a number of definitions. The 1981 Act defines a British Citizen as someone born or adopted, descended from or registered or naturalised in the UK; a British dependent Territories citizen as someone born, adopted, descended from or registered or naturalised in a dependent territory of the UK; a British National (Overseas) or a British Overseas citizen as a person who was a citizen of the UK or Colonies before the 1981 Act and does not become a British citizen or a British Dependent Territories citizen on the commencement of the 1981 Act; a British subject as a person who was a citizen of the UK and Colonies under the British Nationality Act 1948, other any other enactment and certain other categories; a British protected person as a person connected with a territory that is a protectorate or protected state or trust territory under the 1948 Act and not a under the law of any part of the UK. It therefore applies not only to companies but also, for example, to limited liability partnerships.

PART 10 – CRIMINAL RECORDS

Section 56 – Registration for criminal record purposes

323. Section 56 amends Part V of the Police Act 1997 (“the 1997 Act”).

324. Part V of the 1997 Act (sections 112 to 127) provides for the issue by the Secretary of State (now the Scottish Ministers) of certificates showing criminal conviction and criminal record information.

325. There are three types of certificates:

- a criminal conviction certificate (section 112);
- a criminal record certificate (sections 113 and 114); and
- an enhanced criminal record certificate (sections 115 and 116).

326. The criminal conviction certificate shows unspent convictions (in terms of the Rehabilitation of Offenders Act 1974) or states that there are no such convictions. Both criminal record certificates and enhanced criminal record certificates show unspent and spent convictions (in terms of the Rehabilitation of Offenders Act 1974). Enhanced criminal record certificates show in addition any information which a chief constable considers relevant to the position for which the individual is being considered and which can be included in the certificate without harming the interests of the prevention or detection of crime. The conviction information disclosed in the certificates relates to information contained in records held in the Scottish

Criminal Records Office (SCRO) and in records obtained by SCRO from the Police National Computer.

327. Applications for criminal record certificates under section 113 of the Act and enhanced criminal record certificates under section 115 must be countersigned by a person listed in the register maintained under section 120 of the Act (“a registered person”).

328. Subsection (2) inserts a new section 120A into the 1997 Act. The new section gives the Scottish Ministers power to refuse to include a person in the register maintained under section 120 of the Act, if they consider that the registration of that person is likely to make it possible for an unsuitable person to have access to criminal record information. The Scottish Ministers are also given power to remove a person from the register if they believe that the registration of that person has resulted in such information becoming known to an unsuitable person (subsection (2) of the new section).

329. Subsection (3) of the new section sets out the factors which the Scottish Ministers should have regard to when considering whether a person is suitable to have access to the information. These are:

- information relating to that person which concerns a conviction within the meaning of the Rehabilitation of Offenders Act 1974, including a spent conviction or a caution;
- whether that person is included in any list kept under section 81 of the Care Standards Act 2000 - that is, any list held by the Secretary of State for Health of individuals who are considered unsuitable to work with vulnerable adults.
- any information provided by the chief constable of a police force in Scotland in response to a requirement by the Scottish Ministers to provide information for the purposes of the new discretion;
- any information provided by the chief constable of a police force in England, Wales or Northern Ireland in response to a request by the Scottish Ministers to provide information for the purposes of the new discretion;
- any decision of the Scottish Ministers to refuse or withdraw registration or to refuse (because a breach of the Code of Practice on the use of information provided to registered persons) to issue a certificate; and
- any decision to refuse or withdraw registration under the provisions of Part V as it applies in another part of the UK.

330. Subsection (4) of the new section requires a chief constable of a police force in Scotland to comply with requests for information in relation to the new section.

331. Section 56(3) amends section 115 of the Police Act 1997 to enable the Scottish Ministers to issue enhanced criminal record certificates in relation to individuals included or seeking inclusion in certain lists prepared for the purposes of Part II of the National Health Service (Scotland) Act 1978. It also enables the Scottish Ministers to issue such certificates to individuals appointed or seeking appointment under section 39(2) of the Children (Scotland) Act

1995 as a member of a children's panel or a Children's Panel Advisory committee, or joint advisory committee; and persons (curators ad litem, reporting officers and "safeguarders") included or seeking to be included in a panel established by virtue of section 101(1) of that Act.

332. Section 56(4) inserts a new section 119A into the Police Act 1997. This requires any person who holds in Scotland records of criminal convictions to make the records available to the Scottish Ministers in relation to their powers to cancel the inclusion of any person on the register. "Person" for this purpose does not include a public body or holder of public office, unless the person is a Scottish public authority. The new section also provides for the prescribed fee to be paid to the police authority in respect of information provided.

333. Section 56(5) amends section 120 of the Police Act 1997 to provide that the duty to register is qualified by the new provisions conferring on the Scottish Ministers the discretion to refuse to include a person on the register. The section also provides that the Scottish Ministers may make regulations about the maintenance of the register in relation to the nomination of a person to countersign applications, a refusal or cancellation of a nomination, and the period after which a person refused registration or removed from the register may reapply.

334. Section 56(6) amends section 122 of the Police Act 1997. Section 122 makes provision for the Scottish Ministers to publish a code of practice, in connection with the use of information by registered persons under the 1997 Act. Section 56(6)(a) amends section 122 to permit the code of practice to be extended to cover, not only the use of information provided to registered persons, but also the discharge of any function of a registered person under the 1997 Act. Subsection (6)(b) amends section 122 to permit the Scottish Ministers to remove from the register, as a result of a failure to comply with the code of practice or for countersigning an application at the request of a body that has failed to comply with the code.

335. Section 56(7) inserts a new section 124A into the Police Act 1997 to provide that, where the Scottish Ministers have refused a person registration or where the person has been removed from the register because he or she has not complied with the code of practice, the person should be notified in writing of the action and the reason for it. A copy should also be sent to the Secretary of State.

336. The new section provides the person with a right to request in writing a review of the decision and to be notified of the results of the review. A copy is also to be sent to the Secretary of State.

337. Section 56(7) also inserts a new section 124B, which provides for the Scottish Ministers to maintain a list of all persons in respect of whom a criminal record certificate or an enhanced criminal record certificate has been issued under sections 113 to 116 of the Act. The Scottish Ministers are given power to make regulations about the maintenance of this list. The section also empowers Ministers to notify the person who countersigned the application for the certificate or certain other persons of new convictions or relevant matters of which Ministers become aware after issuing a certificate. It also requires the Scottish Ministers in making regulations under section 124A to allow the listed person an opportunity to make representations regarding notification under subsection (3), and the Scottish Ministers should have regard to any such representations before making notification. The regulations may also require the person

who would receive the notification (except a Minister of the Crown) to provide such information as they have which may be relevant to the exercise of the discretion to notify.

PART 11 – LOCAL AUTHORITY FUNCTIONS

Section 57 and 58 – Advice, guidance and assistance to persons arrested or on whom sentence deferred; Grants to local authorities discharging certain functions jointly

338. Sections 57 and 58 amend the Social Work (Scotland) Act 1968 to provide that:

- local authority functions are extended where directed by the Scottish Ministers to provide certain services to persons within their area following arrest or where the court has deferred sentence and to enable the Scottish Ministers to make grants to the authorities in respect of expenditure incurred by them in providing those services; and
- the Scottish Ministers may make grants under section 27A of the Social Work (Scotland) Act 1968 to the lead authority of a local authority grouping set up to carry out the prescribed services set out in section 27 of that Act.

339. Section 57(2) inserts a new section 27AA into the Social Work (Scotland) Act 1968. This provides that it shall be a local authority function, if so directed by the Scottish Ministers, to provide services to persons who have been arrested and detained in police custody or those on whom sentence has been deferred, for such a period and on such conditions as the court may determine, under section 202(1) of the 1995 Act.

340. Subsection (2) permits the Scottish Ministers to authorise funding for a local authority to fund services provided to individuals taken into custody with the intention of identifying the particular needs of and directing the individual to the relevant services available to assist the individual from the local authority or other agencies. The Scottish Ministers may also authorise funding for an authority to fund provision for assistance to individuals who are subject to a deferred sentence, and in particular, where the court has directed the offender to obtain assistance from the relevant social work services.

341. Section 57(3) amends section 27A of the Social Work (Scotland) Act 1968 to allow the Scottish Ministers to make grants to local authorities in respect of the functions introduced by new section 27AA.

342. Section 56(5) of the Local Government (Scotland) Act 1973 provides that two or more local authorities may discharge any of their functions jointly. Section 58 of the Bill inserts a new subsection (1A) into section 27A of the Social Work (Scotland) Act 1968 to provide that where local authorities have formed themselves into a grouping, the Scottish Ministers may make grants to a nominated local authority from this grouping. The provision permits local authorities to group together and to provide services and discharge their functions jointly, in respect of a particular function or service or over a number of functions or services. Each local authority within the group will continue to be responsible for providing criminal justice social work service functions as required by section 27 of the 1968 Act for the persons within their area. Where such a grouping exists, it may identify a particular local authority to receive funds from

the Scottish Ministers on the grouping's behalf for the provision of such functions or services that are discharged jointly.

PART 12 – MISCELLANEOUS AND GENERAL

Miscellaneous

Section 59 – Public defence

343. Section 59 amends the Legal Aid (Scotland) Act 1986 to allow a feasibility study into solicitors employed by the Scottish Legal Aid Board providing representation in criminal cases to continue after 1 October 2003.

344. Section 28A of the Legal Aid (Scotland) Act 1986 was inserted by the section 50 of the Crime and Punishment Act 1997 and amended by section 9(7) of the Convention Rights (Compliance) (Scotland) Act 2001. It provides for the Scottish Legal Aid Board directly to employ solicitors to provide representation in criminal cases.

345. Section 28A(2) provides for a maximum of 6 solicitors (full time or equivalent) to be employed by the Scottish Legal Aid Board at any time. This is repealed to allow the Board to employ additional solicitors in any new pilot location. Section 28A also provides that any solicitor employed by the Board on a casual or temporary basis shall require to be a solicitor registered on the Criminal Legal Assistance Register. This is also being repealed as section 25A (3) requires any solicitor providing criminal legal assistance to be so registered.

346. Section 28A(3) authorises the Board to make such preparations for the feasibility study detailed in subsection (1) as will enable it to begin the study as soon as regulations made under subsection (1) come into force. As the study began in 1999, this provision is now unnecessary.

347. Section 28A(10) requires the Scottish Ministers to lay before the Scottish Parliament within 3 years of the date in which regulations were made under subsection (1) a report on the results of the feasibility study. Such a report was laid in September 2001, so this provision is now spent. Section 59(b) of the Bill inserts a new subsection (9A) to provide that a further report on the continuing progress of the study shall be laid before the Scottish Parliament by the end of 2008.

348. Section 28A(11) provides that section 28A and the provisions of the Act referred to in subsection (12) shall cease to have effect 5 years after the date on which regulations made under section 28A(1) first came into force (i.e. 1 October 2003). This subsection, along with subsections (12), (13) and (14), which make provisions consequential to subsection (11), are repealed by this section.

349. Section 28A(15) has the effect of ensuring that nothing in section 28A shall prevent the commencement of sections 26 to 28 of the Legal Aid (Scotland) Act 1986. These sections have now been commenced, so this subsection is also repealed.

Section 60 – Reintroduction of ranks of deputy chief constable and chief superintendent

350. Section 60 amends the Police (Scotland) Act 1967 (“the 1967 Act”) to provide for the reintroduction of the ranks of deputy chief constable and chief superintendent.

351. Subsection (2) inserts a revised section 5 and a new section 5A into the 1967 Act. The revised section 5 provides that:

- each police force should have a deputy chief constable;
- the ranks which may be held in a police force should include that of assistant chief constable, as formerly; but there will no longer be a requirement for every force to have at least one assistant chief constable;
- the appointments and promotion procedures set out in section 26 of the Act should be followed for deputy as for assistant chief constables;
- sections 4(4) and (7) of the Act should apply to deputy chief constables in the same way as they apply to chief constables and assistant chief constables;

352. The revised section 5A provides that:

- the deputy chief constable may exercise or perform all of the powers and duties of the chief constable of that force where the chief constable is absent, incapacitated or suspended, there is a vacancy in that post, or at any other time with the consent of the chief constable;
- a person holding the rank of assistant chief constable may be designated by the police authority to exercise or perform all of the powers and duties of the chief constable of that force where both the chief constable and the deputy chief constable are absent, incapacitated or suspended, or there is a vacancy in both of those posts;
- only one person may be designated by the police authority to act as described above at any one time;
- the exercise of the powers set out in subsections (1)(a) or (b) or (2) of section 5A for a continuous period of more than three months will require the consent of the Scottish Ministers;
- the above is without prejudice to any other enactments which provide for the exercise by any other person of any powers of a chief constable.

353. All of these provisions formerly applied to the assistant chief constable designated as deputy to the chief constable. They will now apply to the deputy chief constable.

354. Subsection (3) amends section 7 of the 1967 Act to add deputy chief constable and chief superintendent to the list of ranks which may be held in a police force.

355. Subsection (4) amends section 26(2A)(b) of the 1967 Act so that the section applies to officers above the rank of chief superintendent (i.e. the same ranks as were formerly described as “above superintendent”).

356. Subsection (5) amends section 31 of the 1967 Act so that it applies to the rank of deputy chief constable as well as to chief constables and assistant chief constables.

Section 61 – Police custody and security officers

357. Section 61 amends the Police (Scotland) Act 1967 (“the 1967 Act”) to give statutory powers to certain civilian support staff who are to be employed by police authorities. The section also provides for police authorities to contract out the employment of such staff.

358. Subsection (2)(a) amends section 9(1) of the 1967 Act to provide that as well as employing civilian staff directly a police authority may appoint civilian staff on a contracted out basis.

359. Subsection (2)(b) inserts a new subsection (1A) in section 9 of the 1967 Act to provide that such staff as are employed or appointed and who hold a certificate that they are authorised to perform certain functions are to be known as “police custody and security officers”. It also inserts a new subsection (1B) which provides that the powers of the police custody and security officers are to be as set out in section 9(1C) and their duties as are mentioned in section 9(1E). Both of these provisions are also inserted into the 1967 Act by section 61(2)(b) of the Bill.

360. Subsection (2)(b) also inserts a new section 9(1D) which defines “legal custody”, “relevant physical data” and “relevant premises”.

361. Subsection (3) inserts a new section 9A into the 1967 Act to provide for the certification of police custody and security officers. It gives chief constables power to issue a certificate as detailed in section 9(1A) (inserted by subsection (2)(b)). Such a certificate can only be given if the chief constable is satisfied that the person is a suitable person for the job and has received sufficient training to enable them to perform their functions. The chief constable can revoke the licence if these conditions are not satisfied, and suspend the certificate pending consideration of whether it should be revoked.

362. Subsection (3) also inserts a new section 9B into the 1967 Act to make it an offence for a person to make a statement which they know to be false, or to recklessly make a statement that is false, for the purpose of obtaining a certificate.

363. Subsection (4) amends section 33 of the 1967 Act to provide that inspectors of constabulary can refer allegations of misconduct on the part of a police custody and security officer to that officer’s chief constable.

364. Subsection (5) amends section 39 of the 1967 Act to provide that police custody and security officers are treated in the same way as constables in relation to wrongful acts or omissions carried out by them as set out in this section, although this is subject to any agreement made as part of the contract for that persons services where the employment of that person has been contracted out by the police authority.

365. Subsections (6) to (12) make amendments to sections 40 to 45 of the 1967 Act respectively to ensure that police custody and security officers are dealt with in the same way as

constables in relation to various matters arising from or connected with their employment. These are:

- complaints against officers;
- assault on officers;
- causing or attempting to cause disaffection;
- impersonation of officers;
- offences by officers;
- warrant to search for police accoutrements and clothing.

366. Subsection (14) amends section 102(5) of the Criminal Justice and Public Order Act 1994 to provide for police custody and security officers carrying out functions in compliance with warrants and orders, in place of persons on whom the obligation to perform the function was originally placed by the warrant or order.

367. Subsection (15) amends section 307(1) of the 1995 Act to amend the definition of an “officer of the law” to include police custody and security officers.

Section 62 – Disqualification from jury service

368. Section 62 amends Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 to disqualify for a specified period offenders subject to certain community disposals from serving on juries. These disposals are probation orders, drug treatment and testing orders (DTTOs), community service orders (CSOs) and restriction of liberty orders (RLOs).

369. Both probation orders and DTTOs may be imposed by the court where it is of the opinion it is expedient to do so. Both CSOs and RLOs are imposed by the court as a direct alternative to a custodial sentence.

370. The section also provides for disqualification from jury service in Scotland of those persons who receive equivalent English and Northern Irish community orders and DTTOs. Persons who are convicted and receive a community disposal in England and Wales and Northern Ireland are disqualified from jury service in these jurisdictions. If these persons move to Scotland, this section provides that they will also be disqualified from jury service in Scotland.

371. Section 1(1)(d) of, and Part II of Schedule 1 to the 1980 Act list individuals who are disqualified from jury service.

372. Subsection (1) inserts a new sub-paragraph into Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 to add to the list of those disqualified from jury service. It provides that persons who have been convicted of an offence and as a result were given one or more specified community disposals will be disqualified from serving on a jury.

373. This subsection will apply except where the persons who have received a relevant order are rehabilitated persons for the purposes of the Rehabilitation of Offenders Act 1974. The 1974

Act provides for a rehabilitative period after which the conviction imposed is treated as spent. Section 5 of the 1974 Act specifies the rehabilitation periods in respect of specific disposals.

374. The rehabilitation period for a person given a CSO or a RLO is ten years, as these disposals were imposed as a direct alternative to a custodial sentence. The rehabilitation period of a person given a probation order or a DTTO is five years. These rehabilitation periods are subject to a reduction by half for persons under the age of eighteen years.

375. Subsection (2) provides, that subject to subsection (3), the provisions in subsection (1) will apply even if the community disposal was made before that subsection is brought into force. Consequently any person who is subject to a relevant order (and is not yet rehabilitated in accordance with the 1975 Act) will be disqualified from serving on a jury from the date on which the provision is brought into force. Subsection (3) provides that a person who has been cited for jury service or was serving on a jury and who would otherwise be disqualified from jury service on the coming into force of that subsection would not be excused or disqualified from jury service. The effect of the two subsections is that subsection (2) retrospectively disqualifies individuals who are subject to the various orders set out in subsection (1) from serving on a jury, unless (under subsection (3)) the individual has already been cited to appear as a juror.

Section 63 – Separation of jury after retreat

376. Section 63 amends section 99 of the Criminal Procedure (Scotland) Act 1995 to provide judges with the power to allow jurors to go home overnight even after they have retired to consider their verdict.

377. Section 99(4) of the 1995 Act provides that the judge may give appropriate instructions as regards the making of arrangements for overnight accommodation for the jury and for their continued seclusion if such accommodation is provided. This section is traditionally read as making the seclusion of the jury mandatory.

378. Section 63 inserts a new subsection to provide the court with the power to allow the jury to separate after it has retired to consider its verdict, if this is considered appropriate.

Section 64 – Warrants issued in Northern Ireland for search of premises in Scotland

379. Section 64(1) provides that a search warrant granted by a magistrate or county court judge in Northern Ireland to search premises in Scotland may be endorsed by a sheriff or justice of the peace in Scotland within whose jurisdiction the premises may be found, and such endorsement authorises the search of the premises in Scotland as if the Scottish judge had originally granted the search warrant.

380. Subsection (2) prescribes the manner of endorsement as that specified by section 4(1) of the Summary Jurisdiction (Process) Act 1881. Under section 4, a process may be issued and endorsed by a court of summary jurisdiction by proof of the handwriting of the officer making the endorsement, such proof being by oath or declaration before a sheriff or justice of the peace. A form of endorsement is set out in the Schedule to that Act.

FINANCIAL MEMORANDUM

PART 1 – PROTECTION OF THE PUBLIC AT LARGE

The Risk Management Authority

Costs on the Scottish Administration

381. Additional costs will be incurred in the establishment of the Risk Management Authority. Provision has been made in the Scottish Executive spending plans for £3m in 2002/03 and £5m in 2003/04.

Costs on local authorities

382. Local authorities already provide services for offenders. It is expected therefore that local authorities will provide the services to support high risk offenders for a risk management plan out of existing budgets. However, where it can demonstrate that meeting the necessary requirements to manage the offender's risk adequately is not possible within the local authority's budget, this would be drawn to the RMA's attention and the Risk Management Authority may request appropriate ring-fenced funding from the Scottish Executive. Such requests would not necessarily be approved, but would be given serious consideration by the Scottish Executive.

Costs on other bodies, individuals and businesses

383. Where the offender is in prison (or a hospital because of a mental disorder) the same arrangements as described above will apply. Other agencies, such as the police, who do not have a lead interest in the risk management of these offenders will be expected to provide any service required from existing budgets. The number of high risk offenders covered by these arrangements will be very low. There will be no cost implications for individuals or businesses.

PART 2 – VICTIMS' RIGHTS

Costs on the Scottish Administration

384. The cost for implementing the victim statement scheme is difficult to estimate at this stage. The intention to pilot the scheme in two or three areas initially, will contain costs and allow the Scottish Executive to test out resource implications before taking a decision on extending the scheme. There are resource implications for the Crown Office and the police including the provision of additional staff, a programme of training and the evaluation of the scheme. It is estimated that a total of £700,000 for a two-year period to cover the pilots will meet these costs and can be met from existing budgets.

Costs on local authorities

385. It is not anticipated that there will be any significant costs to local authorities. If, in practice, there is a demand for a small level of additional support, this will be funded by the Scottish Executive.

Costs on other bodies, individuals and businesses

386. In developing the pilot schemes there may be costs to other organisations such as Victim Support Scotland, in which case this will be funded by the Scottish Executive.

PART 3 – SEXUAL OFFENCES ETC.

Sexual and certain other offences: reports

Costs on the Scottish Administration

387. Additional costs will fall on the Scottish Court Service in providing for the introduction of tape-recording equipment to courts. This is estimated at £270,000 annually, with an additional one off capital cost of £50,000. These costs will be met from within existing budgets.

388. There will be additional costs associated with the requirement to obtain social enquiry reports and psychological assessments, estimated at £50,000 annually. The Scottish Executive will meet these costs. There will also be additional costs in judicial time for the preparation of notes by trial judges which will be met from planned resources, as will any other financial implications arising from these proposals.

Costs on local authorities

389. None.

Costs on other bodies, individuals and businesses

390. None.

PART 4 – PRISONERS ETC.

Remote monitoring of released prisoners

Costs on the Scottish Administration

391. The use of this additional provision will result in increased costs to the Scottish Executive for the services of the electronic monitoring provider. These costs will be met from the Justice Department general offender services budget.

Costs on local authorities

392. None.

Costs on other bodies, individuals and businesses

393. None.

PART 5 – DRUGS COURTS

Costs on the Scottish Administration

394. There may be a marginal increase in “100% Funding” (of criminal justice social work services) requirements from local authorities for the management of short community service orders. This will be met from within the existing baseline.

Costs on local authorities

395. The creation of drugs courts is likely to result in some additional costs to local authority social work departments (where the sanction imposed is a community service order). However, it is intended that this provision be used sparingly, and as such any additional costs are likely to be minimal. These costs will be met by the Scottish Executive through 100% Funding, as above.

Costs on other bodies, individuals and businesses

396. It is intended that this provision be used sparingly, and as such any additional costs are likely to be minimal. Any additional costs to the Scottish Prison Service (where the sanction imposed is custody) are likely to be offset by a decrease in the number of new custodial sentences as offenders who might normally be sentenced to custody are given community disposals by a drugs court.

PART 6 – NON-CUSTODIAL PUNISHMENTS

Requirement for remote monitoring in drug treatment and testing order and probation order

Costs on the Scottish Administration

397. It is anticipated that the amendments to introduce remote monitoring in probation and drug treatment and testing orders will result in increased costs to the Scottish Executive for the services of the electronic monitoring provider. These costs will be met from the Justice Department general offender services budget. There may also be a marginal increase in 100% Funding requirements from local authorities for assessment purposes. This will be met from within the existing baseline.

Costs on local authorities

398. There may be marginal additional costs to local authorities for assessment. This will be met by the Scottish Executive through 100% Funding, as above.

Costs on other bodies, individuals and businesses

399. None.

Amendments in relation to certain non-custodial sentences

Costs on the Scottish Administration

400. It is anticipated that the amendments in respect of supervised attendance orders might lead to an increase of around 1000 additional orders per annum. Assuming a unit cost of £600 per order this suggests increased costs of £0.6m per annum, which can be accommodated within the existing baseline

Costs on local authorities

401. Local authorities are responsible for the delivery of supervised attendance orders with funding provided under the 100% Funding arrangements for criminal justice social work. The additional costs incurred by authorities as a result of the anticipated increase in the number of orders will be directly funded by the Scottish Executive through these arrangements.

Costs on other bodies, individuals and businesses

402. None.

PART 7 – CHILDREN

Physical punishment of children

Costs on the Scottish Administration

403. It is not expected that changes to the law on physical punishment of children will lead to substantial increases in numbers of prosecutions and convictions for assaulting children. Any assault on a child which merited imprisonment would almost certainly be covered by the existing law.

404. It is expected that there will be a need to explain the change in the law to parents and carers, and an information booklet might cost £30,000. This cost will be met from within existing budget provision.

Costs on local authorities

405. None.

Costs on other bodies, individuals and businesses

406. None.

Youth crime feasibility study

Costs on the Scottish Administration

407. Costs will be incurred for additional recruitment and training of children's panel members, new programme costs and support for the Scottish Children's Reporter Administration. The Group commissioned to study the feasibility of the schemes has made

estimates of £0.5m per pilot area. More precise costings will be determined once pilot areas have been identified. £1 million provision has been made available to operate and evaluate the pilots. There may be additional costs to promote awareness of the pilot programmes. These will be met from existing resources.

Costs on local authorities

408. Costs will be incurred for additional recruitment and training of children's panel members and new programme costs. The resources identified above for the pilot areas will be available and the Scottish Executive will continue to share recruitment and training costs with local authorities from within existing resources.

Costs on other bodies, individuals and businesses

409. There will be staffing and capital costs, primarily for the Scottish Children's Reporter Administration. As identified above, existing resources will meet these.

PART 8 – EVIDENTIAL, JURISDICTIONAL AND PROCEDURAL MATTERS

PART 9 – BRIBERY AND CORRUPTION

410. No costs from these Parts are expected to fall on the Scottish Administration, local authorities or other bodies, individuals and businesses.

PART 10 – CRIMINAL RECORDS

Costs on the Scottish Administration

411. There will be some additional costs associated with the proposed arrangements for vetting those who apply to become registered persons and for notifying subsequent convictions to employers. These costs are estimated at under £500,000 and will be met from within existing budget provisions.

Costs on local authorities

412. None.

Costs on other bodies, individuals and businesses

413. None.

PART 11 – LOCAL AUTHORITY FUNCTIONS

Costs on the Scottish Administration

414. It is estimated that there will be no additional costs in respect of the provision to provide funding to groups as opposed to individual local authorities. The extension of funding powers under the 100% Funding arrangements for criminal justice social work will allow piloting of two specific initiatives i.e. arrest referral and structured deferred sentences. Full year costs from 2003-04 for arrest referral and deferred sentence pilots is estimated at £0.5m and £1m per annum respectively from within the existing baseline.

Costs on local authorities

415. Local authorities will be responsible for the delivery of these new initiatives but will be directly funded by the Scottish Executive through the 100% Funding arrangements for the costs incurred.

Costs on other bodies, individuals and businesses

416. None.

PART 12 – MISCELLANEOUS AND GENERAL

Public defence

Costs on the Scottish Administration

417. The extension of the public defence solicitors office (“the PDSO”) should not involve any significant additional costs for legal aid. Firstly, the PDSO solicitors will only be substituting for private solicitors who would be paid from the Legal Aid Fund; and secondly, the basic administrative procedures have now been set up and tested. These should be easily transported to any new site(s). Any additional costs would only relate to the initial setting-up of any new offices or the costs of any associated research and would be met from within existing budget provision.

Costs on local authorities

418. None.

Costs on other bodies, individuals and businesses

419. None.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

420. On 22 March 2002, the Minister for Justice (Mr Jim Wallace) made the following statement:

“In my view, the provisions of the Criminal Justice (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 50) as introduced in the Scottish Parliament on 26 March 2002

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

421. On 25 March 2002, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Criminal Justice (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Criminal Justice (Scotland) Bill (SP Bill 50) as introduced in the Scottish Parliament on 26 March 2002

CRIMINAL JUSTICE (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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