Passage of the

Custodial Sentences and Weapons (Scotland) Bill 2006

SPPB 117
Passage of the
Custodial Sentences and Weapons (Scotland) Bill 2006

SP Bill 80 (Session 2), subsequently 2007 asp 17

SPPB 117
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
- Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the
Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Finance Committee reported to the Justice 2 Committee on the Bill at Stage 1. Its report is included in the Stage 1 Report at Annexe A. However, the oral evidence taken by the Finance Committee was not included in that Report. Extracts from the Official Report relating to the oral evidence taken, and from the minutes of the relevant meeting, are, therefore, included in this volume.

At its meeting on 9 January 2007, the Justice 2 Committee noted the Scottish Executive’s interim response, dated 8 January 2007, to the Stage 1 Report. As this was noted without debate, no material relating to this meeting is included in this volume.

Before starting Stage 2 proceedings, the Justice 2 Committee agreed to change the order in which the sections and schedules of the Bill would be considered at Stage 2. An extract from the minutes of the meeting at which that decision was taken is included in this volume.

Forthcoming titles

The next titles in this series will be:

- SPPB 118: Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill 2007
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Custodial Sentences and Weapons (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to restate and amend the law relating to the confinement and release of prisoners; to make provision relating to the control of weapons; and for connected purposes.

PART 1

THE PAROLE BOARD FOR SCOTLAND

1 The Parole Board for Scotland

(1) There shall continue to be a body to be known as the Parole Board for Scotland (the “Parole Board”).

(2) The Parole Board has the function of advising the Scottish Ministers in relation to any matter referred to it by them in relation to the release of prisoners.

(3) The Parole Board has such other functions as are conferred on it by virtue of this Act and any other enactment.

(4) In carrying out any of its functions in relation to a person in respect of whom a risk management plan has been prepared under section 6(1) of the Criminal Justice (Scotland) Act 2003 (asp 7), the Parole Board must have regard to the plan.

(5) Schedule 1 makes further provision about the Parole Board.

2 Parole Board rules

(1) The Scottish Ministers may make rules about the practice and procedure of the Parole Board.

(2) Rules under subsection (1) may, in particular, include provision for or in connection with—

(a) authorising cases referred to the Parole Board by virtue of this Act to be dealt with, in whole or in part, by a specified number of members of the Board in accordance with such procedure as may be specified in the rules,

(b) enabling the Parole Board to require any person, other than a prisoner whose case the Board is dealing with, to—
(i) attend a hearing before the Board,
(ii) give evidence to it, or
(iii) produce documents,
(c) requiring cases referred to the Board, or matters specified in the rules that are
preliminary or incidental to the determination of cases, to be determined, or other
actions so specified to be taken, within periods so specified,
(d) specifying matters which may be taken into account by the Parole Board in
dealing with cases.

(3) Rules under subsection (1) which include provision such as is mentioned in subsection
(2)(b) may also include provision applying subsections (4) and (5) of section 210 of the
Local Government (Scotland) Act 1973 (c.65) with such modifications as may be set out
in the rules but subject to the limitation that any penalty under subsection (5) of that
section as so applied must be restricted to a fine not exceeding level 2 on the standard
scale.

PART 2
CONFINEMENT AND RELEASE OF PRISONERS
CHAPTER 1
INTRODUCTORY

3 Application of Part 2
This Part does not apply in relation to a sentence (other than a life sentence) imposed on
a person for an offence committed before the coming into force of the Part.

4 Basic definitions
(1) In this Part—
“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c.46),
“custody and community prisoner” means a person serving a custody and
community sentence,
“custody and community sentence” means a sentence of imprisonment for a term
of 15 days or more,
“custody-only prisoner” means a person serving a custody-only sentence,
“custody-only sentence” means a sentence of imprisonment for a term of less than
15 days; and includes a sentence of detention imposed under section 206(2) of the
1995 Act (detention for up to 4 days in summary case),
“custody part” has the meaning given by section 6(2),
“life prisoner” means a person on whom a life sentence is imposed,
“life sentence” means—
(a) a sentence of life imprisonment for an offence for which that sentence is
not the sentence fixed by law (a “discretionary life sentence”),
(b) a sentence of life imprisonment for murder or for any other offence for which that sentence is the sentence fixed by law (a “mandatory life sentence”), or
(c) a sentence of imprisonment for an indeterminate period constituted by an order for lifelong restriction under section 210F of the 1995 Act,
“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),
“Parole Board” means the Parole Board for Scotland, and
“punishment part” has the meaning given by section 15(2).
(2) The Scottish Ministers may by order amend the definitions of “custody and community sentence” and “custody-only sentence” in subsection (1) by substituting a different term for the term mentioned in those definitions.
(3) References in this Part to release on community licence are references to the release on licence of a custody and community prisoner.
(4) References in this Part to release on life licence are references to the release on licence of a life prisoner.

CHAPTER 2
CONFINEMENT, REVIEW AND RELEASE OF PRISONERS

Custody-only prisoners

5 Release on completion of sentence
As soon as a custody-only prisoner has served the term of imprisonment specified in the prisoner’s sentence the Scottish Ministers must, subject to section 22, release the prisoner unconditionally.

Custody and community prisoners

6 Setting of custody part
(1) When imposing on a person a sentence of imprisonment for a term of 15 days or more for an offence, the court must make an order specifying a custody part.
(2) The custody part is that part of the sentence which represents an appropriate period to satisfy the requirements for retribution and deterrence.
(3) An order specifying a custody part must specify that the custody part is one-half of the sentence unless the court considers it appropriate, taking into account the matters mentioned in subsection (4), to specify a greater proportion of the sentence.
(4) Those matters are—
(a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment or complaint as that offence,
(b) any previous conviction of the person, and
(c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.
(5) In specifying a custody part the court must ignore any period of confinement which may be necessary for the protection of the public.

(6) The court may not make an order specifying a custody part which is greater than three-quarters of the sentence.

(7) An order specifying a custody part constitutes part of a person’s sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

(8) This section applies to a person sentenced to an extended sentence as if any reference to a sentence were a reference to the confinement term of the extended sentence.

(9) In subsection (8), “confinement term” and “extended sentence” have the meanings given by section 210A(2) of the 1995 Act.

(10) The Scottish Ministers may by order amend subsection (3) by substituting a different proportion of the sentence for the proportion mentioned in that subsection.

7 Joint arrangements between Scottish Ministers and local authorities

(1) The Scottish Ministers and each local authority must jointly establish arrangements for the assessment and management of the risks posed in the local authority’s area by custody and community prisoners.

(2) For the purposes of assisting the Scottish Ministers in making a determination under section 8(1), the Scottish Ministers and the appropriate local authority must during the custody part of a custody and community prisoner’s sentence assess in accordance with arrangements established under subsection (1) whether subsection (3) applies in respect of the prisoner.

(3) This subsection applies if the prisoner would, were the prisoner released on community licence on the expiry of the custody part, be likely to cause serious harm to members of the public.

(4) In this section, “appropriate local authority”, in relation to a custody and community prisoner, means the local authority for the area in which the prisoner—

(a) resided immediately before the imposition of the custody and community sentence, or

(b) intends to reside on release on community licence.

(5) If, by virtue of subsection (4), two or more local authorities are the appropriate local authority in relation to a custody and community prisoner, those authorities may agree that the functions conferred on them by subsection (2) and section 25(3) may be carried out by only one of them.

8 Review by Scottish Ministers

(1) Before the expiry of the custody part of a custody and community prisoner’s sentence the Scottish Ministers must, subject to section 22, determine whether subsection (2) applies in respect of the prisoner.

(2) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.
Part 2—Confinement and release of prisoners

Chapter 2—Confinement, review and release of prisoners

9 Consequences of review

(1) This section applies where the Scottish Ministers make a determination under subsection (1) of section 8 in respect of a prisoner.

(2) If the Scottish Ministers determine that subsection (2) of that section does not apply in respect of the prisoner, they must release the prisoner on community licence on the expiry of the custody part of the prisoner’s sentence.

(3) If the Scottish Ministers determine that subsection (2) of that section applies in respect of the prisoner, they must, before the expiry of the custody part of the prisoner’s sentence, refer the prisoner’s case to the Parole Board.

(4) This section is subject to section 22.

10 Review by Parole Board

(1) Subsection (2) applies where a custody and community prisoner’s case is referred to the Parole Board under section 9(3).

(2) Before the expiry of the custody part of the prisoner’s sentence, the Parole Board must determine whether section 8(2) applies in respect of the prisoner.

11 Release on community licence following review by Parole Board

(1) Subsection (2) applies where the Parole Board determines under section 10(2) or 13(3) that section 8(2) does not apply in respect of a prisoner.

(2) If section 22 does not apply the Parole Board must—

(a) direct the Scottish Ministers to release the prisoner on community licence, and

(b) specify conditions to be included in the licence.

(3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on community licence.

(4) In the case of a determination under section 10(2) the direction must be implemented on the expiry of the custody part of the prisoner’s sentence.

12 Determination that section 8(2) applicable: consequences

(1) This section applies where the Parole Board determines under section 10(2) or 13(3) that section 8(2) applies in respect of a prisoner.

(2) The Parole Board must—

(a) give the prisoner reasons in writing for its determination, and

(b) fix the date on which it will next consider the prisoner’s case.

(3) If on the day of the determination at least 4 months of the prisoner’s custody and community sentence remain to be served before the three-quarter point then, subject to subsection (5), the date fixed under subsection (2)(b) must occur during the relevant period.

(4) In subsection (3)—

“relevant period” means—
(a) where more than 2 years of the prisoner’s sentence remain to be served before the three-quarter point, the period of 20 months ending immediately before the second anniversary of the determination (or, in a case where the determination was made under section 13(3), the last determination),

(b) where the three-quarter point occurs during the period of 20 months ending immediately before the two anniversary of the determination (“the 20 month period”), the period of 4 months ending with the three-quarter point, “three-quarter point”, in relation to a prisoner’s custody and community sentence, means the day on which a prisoner will have served three-quarters of the prisoner’s sentence.

(5) If the Parole Board considers it appropriate, the date fixed under subsection (2)(b) may, in a case where the relevant period is that mentioned in paragraph (b) of the definition of that expression in subsection (4), be some other date during the 20 month period.

(6) If on the day of the determination less than 4 months of the prisoner’s sentence remain to be served before the three-quarter point, the Parole Board must specify conditions to be included in the prisoner’s community licence.

(7) Subsection (8) applies where the Parole Board has fixed a date under subsection (2)(b).

(8) On the prisoner’s request, the Board may, if it considers it appropriate to do so, replace that date by fixing under that subsection an earlier date when it will next consider the prisoner’s case.

(9) This section is subject to section 21.

13 Further referral to Parole Board

(1) This section applies where the Parole Board fixes a date under section 12(2)(b) for considering a prisoner’s case.

(2) The Scottish Ministers must, subject to section 22, refer the prisoner’s case to the Parole Board before that date.

(3) The Parole Board must determine whether section 8(2) applies in respect of the prisoner.

14 Release on community licence on completion of custody part

(1) Before a custody and community prisoner has served three-quarters of the prisoner’s custody and community sentence, the Scottish Ministers must refer the prisoner’s case to the Parole Board.

(2) As soon as a custody and community prisoner has served three-quarters of the prisoner’s custody and community sentence, the Scottish Ministers must, subject to section 22, release the prisoner on community licence.

(3) The Parole Board must specify conditions to be included in the prisoner’s community licence.

(4) Subsection (2) does not apply in relation to a prisoner whose licence has been revoked by virtue of section 31(1) or (4).
Life prisoners

15 Setting of punishment part

(1) When imposing a life sentence on a person the court must make an order specifying a punishment part.

(2) The punishment part is that part of the person’s life sentence which, taking into account—

(a) in the case of a mandatory life sentence, the matters mentioned in subsection (3),

(b) in the case of a discretionary life sentence or an order for lifelong restriction under section 210F of the 1995 Act, the matters mentioned in subsection (4),

the court considers appropriate to satisfy the requirements for retribution and deterrence.

(3) Those matters are—

(a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment as that offence,

(b) any previous conviction of the person, and

(c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.

(4) Those matters are—

(a) any period of imprisonment which the court considers would have been appropriate for the offence had the court not imposed a sentence, or made an order, such as is mentioned in subsection (2)(b) for it, and

(b) the part of that period of imprisonment which, by virtue of section 6, the court would have specified as the custody part.

(5) In specifying a punishment part the court must ignore any period of confinement which may be necessary for the protection of the public.

(6) An order specifying a punishment part must specify the punishment part in years and months.

(7) It does not matter that a punishment part so specified may exceed the remainder of the person’s natural life.

(8) An order specifying a punishment part constitutes part of a person’s sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

16 Referral to Parole Board

Before the expiry of the punishment part of a life prisoner’s sentence, the Scottish Ministers must, subject to section 22, refer the prisoner’s case to the Parole Board.

17 Review by Parole Board

(1) Subsection (2) applies where a life prisoner’s case is referred to the Parole Board under section 16.

(2) Before the expiry of the punishment part of the life prisoner’s sentence, the Parole Board must determine whether subsection (3) applies in respect of the prisoner.
(3) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

18 Release on life licence following review by Parole Board

(1) Subsection (2) applies where the Parole Board determines under section 17(2) or 20(3) that section 17(3) does not apply in respect of a life prisoner.

(2) The Parole Board must—
   (a) direct the Scottish Ministers to release the prisoner on life licence, and
   (b) specify conditions to be included in the prisoner’s licence.

(3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on life licence.

(4) In the case of a determination under section 17(2) the direction must be implemented on the expiry of the punishment part of the prisoner’s sentence.

19 Determination that section 17(3) applicable: consequences

(1) This section applies where the Parole Board determines under section 17(2) or 20(3) that section 17(3) applies in respect of a life prisoner.

(2) The Parole Board must—
   (a) give the prisoner reasons in writing for its determination, and
   (b) fix the date on which it will next consider the prisoner’s case.

(3) Subject to section 21, the date fixed under subsection (2)(b) must occur before the expiry of the period of 2 years beginning with the Parole Board’s determination.

(4) Subsection (5) applies where the Parole Board has fixed a date under subsection (2)(b).

(5) On the prisoner’s request, the Board may, if it considers it appropriate to do so, replace that date by fixing under that subsection an earlier date when it will next consider the prisoner’s case.

20 Further referral to Parole Board

(1) This section applies where the Parole Board fixes a date under section 19(2)(b) for considering a prisoner’s case.

(2) The Scottish Ministers must, subject to section 22, refer the prisoner’s case to the Parole Board before that date.

(3) The Parole Board must determine whether section 17(3) applies in respect of the prisoner.

Referral to Parole Board: postponement

21 Referral to Parole Board: postponement

(1) Subsection (2) applies where—
   (a) a prisoner’s case is referred to the Parole Board under this Part (the “referred case”),
(b) after the referral another sentence of imprisonment is imposed on the prisoner (the "new sentence"),
(c) when that sentence is imposed, the Board has not fixed a date for considering the prisoner’s case, and
(d) the prisoner would not be eligible for release in relation to the new sentence on the date which would (apart from this section) have been fixed for considering the referred case.

(2) The Parole Board must fix in accordance with subsection (5) a different date for considering the referred case.

(3) Subsection (4) applies where—
(a) the Parole Board fixes a date for considering the referred case,
(b) before that date, a new sentence is imposed on the prisoner, and
(c) the prisoner would not be eligible for release in relation to the new sentence on that date.

(4) The Parole Board must—
(a) fix in accordance with subsection (5) a different date for considering the referred case, and
(b) if a further new sentence is imposed on the prisoner in relation to which the prisoner would not be eligible for release on that different date, the Board must fix in accordance with that subsection a further different date.

(5) A date is fixed in accordance with this subsection if—
(a) it is a date which would have been fixed in relation to the new sentence if that were the only sentence imposed on the prisoner, and
(b) it replaces any date previously fixed for considering the referred case.

Effect of multiple sentences

22 Effect of multiple sentences

(1) This section applies where a person is serving, or liable to serve, two or more sentences of imprisonment (a “multiple sentence prisoner”).

(2) A multiple sentence prisoner must not be released by virtue of this Part until the prisoner has served—
(a) any custody-only sentence,
(b) the custody part of any custody and community sentence, and
(c) the punishment part of any life sentence, imposed on the prisoner.

(3) Where a multiple sentence prisoner is released on licence by virtue of this Part, the prisoner is released—
(a) if none of the sentences the prisoner is serving is a life sentence, on a single community licence,
(b) if any of those sentences is a life sentence, on a single life licence.

(4) A multiple sentence prisoner’s case must not be referred to the Parole Board under this Part before the date on which the case would have been so referred in relation to the sentence referred to in subsection (5).

(5) That sentence is whichever of any—

(a) custody and community sentence, or

(b) life sentence,

imposed on the prisoner includes the custody part or, as the case may be, punishment part which expires after the expiry of any other custody part or punishment part so imposed.

**Compassionate release on licence**

23 **Compassionate release on licence**

(1) Where the Scottish Ministers are satisfied that there are compassionate grounds justifying the release on licence of a person, the Scottish Ministers may release the person on licence.

(2) Before releasing a custody and community prisoner or a life prisoner under subsection (1) the Scottish Ministers must consult the Parole Board.

(3) The Scottish Ministers need not consult the Parole Board if it is impracticable to do so.

**Chapter 3**

**Community and life licences**

24 **Release on community licence on Parole Board’s direction**

(1) This section applies where by virtue of section 11(2)(b), 12(6), 14(3) or 33(4)(b) the Parole Board specifies conditions which are to be included in a prisoner’s community licence.

(2) The Scottish Ministers—

(a) must include those conditions in the prisoner’s community licence,

(b) on the direction of the Parole Board, may—

(i) vary or cancel conditions, or

(ii) include further conditions in the licence,

(c) may not include in the licence conditions other than those mentioned in paragraphs (a) and (b).

25 **Community licences in which Scottish Ministers may specify conditions**

(1) This section applies where by virtue of section 9(2) or 23(1) the Scottish Ministers release a prisoner on community licence.

(2) The Scottish Ministers may—
(a) include in the licence such conditions as they consider appropriate,
(b) vary or cancel conditions,
(c) include in the licence such further conditions as they consider appropriate.

(3) Before exercising any of the powers conferred by subsection (2), the Scottish Ministers
must, in pursuance of arrangements established under section 7(1), co-operate with the
appropriate local authority.

(4) In subsection (3) “appropriate local authority” has the same meaning as in section 7.

Life licences

26 Release on life licence: conditions

(1) This section applies where by virtue of section 18(2)(b) or 33(4)(b) the Parole Board
specifies conditions which are to be included in a prisoner’s life licence.

(2) The Scottish Ministers—
(a) must include those conditions in the prisoner’s life licence,
(b) on the direction of the Parole Board, may—
(i) vary or cancel conditions, or
(ii) include further conditions in the licence,
(c) may not include in the licence conditions other than those mentioned in
paragraphs (a) and (b).

Supervision

27 Release on licence of certain prisoners: supervision

(1) Where a person (other than a person liable to removal from the United Kingdom) falling
within subsection (2) is released on licence by virtue of this Part, the Scottish Ministers
must make the release subject to the supervision condition.

(2) A person falls within this subsection if the person is—
(a) a life prisoner,
(b) a custody and community prisoner serving a custody and community sentence of
6 months or more,
(c) any other custody and community prisoner in respect of whom the Parole Board
determines under section 13(3), that section 8(2) applies,
(d) a person released on licence by virtue of section 23(1),
(e) a person subject to an extended sentence (as defined in section 210A of the 1995
Act),
(f) a person subject to the notification requirements in Part 2 of the Sexual Offences
Act 2003 (c.42), or
(g) a child (as defined in section 307(1) of the 1995 Act) subject to a sentence of
detention under section 208 of that Act.

(3) The supervision condition is a condition requiring the prisoner—
(a) to be under the supervision of a relevant officer of the local authority specified in the licence, and
(b) to comply with requirements imposed in relation to the supervision by the relevant officer.

The reference in subsection (1) to a person liable to removal from the United Kingdom is a reference to—

(a) a person liable to deportation under section 3(5) of the Immigration Act 1971 (c.77) who has been notified of a decision to make a deportation order,
(b) a person liable to deportation under section 3(6) of that Act,
(c) a person who has been notified of a decision to refuse the person leave to enter the United Kingdom,
(d) a person who is an illegal entrant within the meaning of section 33(1) of that Act,
(e) a person liable to removal under section 10 of the Immigration and Asylum Act 1999 (c.33).

In subsection (3) “relevant officer”, in relation to a local authority, means an officer of the authority employed by it in the discharge of its functions under section 27(1) of the Social Work (Scotland) Act 1968 (c.49).

**Duration of licence**

**Prisoner to comply with licence conditions**

Where a prisoner is released on licence by virtue of this Part, the prisoner must, while the licence is in force, comply with the conditions specified in the licence.

**Suspension**

**Suspension of licence conditions while detained**

(1) Subsection (2) applies where—

(a) the Scottish Ministers release a prisoner on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a), and
(b) while the licence is in force the prisoner continues to be, or is, detained in prison by virtue of this Part, any other enactment or any rule of law.
Part 2—Confinement and release of prisoners
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(2) Any condition in the licence other than a condition mentioned in subsection (3) is suspended for the relevant period.

(3) Those conditions are any conditions (however expressed) requiring the prisoner—
(a) to be of good behaviour and to keep the peace,
(b) to refrain from contacting a person, or class of person, specified in the licence (or to refrain from doing so without the approval of a person specified in the licence).

(4) The relevant period is—
(a) the period during which the prisoner remains detained in prison, and
(b) the licence remains in force.

(5) The Scottish Ministers may by order amend subsection (3) by amending conditions or adding or removing conditions.

Revocation

31 Revocation of licence

(1) If—
(a) a prisoner is released on licence by virtue of this Part,
(b) the prisoner is not detained as mentioned in section 30(1)(b), and
(c) subsections (2) and (3) apply,
the Scottish Ministers must revoke the licence and recall the prisoner to prison.

(2) This subsection applies if—
(a) the prisoner breaches a licence condition, or
(b) the Scottish Ministers consider that the prisoner is likely to breach a licence condition.

(3) This subsection applies if the Scottish Ministers consider that it is in the public interest to revoke the licence and recall the prisoner to prison.

(4) If—
(a) a prisoner is released on licence by virtue of this Part,
(b) the prisoner is detained as mentioned in section 30(1)(b), and
(c) subsections (2) and (5) apply,
the Scottish Ministers must revoke the licence.

(5) This subsection applies if the Scottish Ministers consider that it is in the public interest to revoke the licence.

(6) Where—
(a) a prisoner’s licence is revoked by virtue of subsection (1), and
(b) the prisoner is at large,
the prisoner is deemed to be unlawfully at large.
32 Referral to Parole Board following revocation of licence

(1) Subsection (2) applies where the Scottish Ministers revoke a licence by virtue of section 31(1) or (4).

(2) The Scottish Ministers must—
   (a) inform the prisoner of the reasons for the revocation, and
   (b) subject to section 22, refer the prisoner’s case to the Parole Board.

33 Consideration by Parole Board

(1) This section applies where a prisoner’s case is referred to the Parole Board by virtue of section 32(2)(b) or subsection (10).

(2) The Parole Board must determine whether subsection (3) applies in respect of the prisoner.

(3) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

(4) If the Parole Board determines that subsection (3) does not apply it must—
   (a) direct the Scottish Ministers to release the prisoner on licence, and
   (b) specify conditions to be included in the licence.

(5) Where a direction is given under subsection (4)(a) the Scottish Ministers must release the prisoner on community licence or, as the case may be, life licence.

(6) If the Parole Board determines that subsection (3) applies, it must fix the date on which it will next consider the prisoner’s case.

(7) The date fixed under subsection (6) must, subject to section 21, fall within the period of 2 years beginning with the Parole Board’s last consideration of the prisoner’s case.

(8) Subsection (9) applies where the Parole Board has fixed a date under subsection (6).

(9) On the prisoner’s request, the Board may, if it considers it appropriate to do so, replace that date by fixing under that subsection an earlier date when it will next consider the prisoner’s case.

(10) The Scottish Ministers must refer the case to the Parole Board before the date fixed under subsection (6).

34 Effect of revocation

(1) Where a prisoner’s community licence is revoked by virtue of section 31(1) or (4), the prisoner must be confined until the expiry of the prisoner’s sentence.

(2) Where a prisoner’s life licence is revoked by virtue of section 31(1) or (4), the prisoner must be confined until the prisoner dies.

(3) This section is subject to section 33(4)(a).

Single licence

35 Multiple licences to be replaced by single licence

(1) This section applies where a prisoner—
(a) is released on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a) as respects any sentence of imprisonment (the “original sentence”), and
(b) while the licence remains in force, another sentence of imprisonment is imposed on the prisoner (the “subsequent sentence”).

(2) Where—
(a) the prisoner is to be released on licence by virtue of this Part as respects the subsequent sentence, and
(b) the licence as respects the original sentence remains in force,
the prisoner must be released on a single licence as respects both the original sentence and the subsequent sentence.

The single licence replaces the licence as respects both the original sentence and the subsequent sentence.

The single licence must include the conditions which were in the licence as respects the original sentence immediately before that licence was replaced.

The single licence remains in force (unless revoked) for the longer of the periods for which the licences as respects—
(a) the original sentence, or
(b) the subsequent sentence,
would (apart from this section and if not revoked) have remained in force.

(6) Where—
(a) the prisoner is to be released unconditionally under this Part as respects the subsequent sentence, and
(b) the licence as respects the original sentence remains in force,
the licence as respects the original sentence continues in force (unless revoked).

CHAPTER 4
CURFEW LICENCES

Curfew licences

(1) Subsection (2) applies in relation to a custody and community prisoner who—
(a) is serving a sentence of imprisonment for a term of 3 months or more, and
(b) is of a description specified by the Scottish Ministers by order.

(2) The Scottish Ministers may release the prisoner on licence (a “curfew licence”) before the expiry of the custody part of the prisoner’s sentence.

(3) A curfew licence must include a curfew condition.

(4) The Scottish Ministers may release a prisoner on curfew licence only—
(a) after the later of—
(i) the day on which the prisoner has served the greater of one-quarter or four weeks of the prisoner’s sentence, or
(ii) the day falling 135 days before the expiry of the custody part of the sentence, and
(b) before the day falling 14 days before the expiry of the custody part.

5 (5) In determining whether to release a prisoner on curfew licence, the Scottish Ministers must have regard to the need to—
(a) protect the public at large,
(b) prevent re-offending by the prisoner, and
(c) secure the successful re-integration of the prisoner into the community.

10 (6) The Scottish Ministers may include in a curfew licence such other conditions as they consider appropriate.

15 (7) Where a prisoner is released on curfew licence, the prisoner must, while the licence is in force, comply with the conditions specified in the licence.

(8) A curfew licence remains in force until the expiry of the custody part of the prisoner’s sentence.

(9) An order under subsection (1)(b) may include provision—
(a) applying provisions of this Part to curfew licences subject to modifications specified in the order,
(b) amending the periods of time mentioned in subsection (4).

37 Curfew conditions

(1) A curfew condition is a condition which requires the person to whom it relates to remain at a place specified in the condition for periods so specified.

(2) A curfew condition may—
(a) require the person not to be in a place, or class of place, so specified at a time or during a period so specified,
(b) specify different places, or different periods, for different days.

(3) A curfew condition may not specify periods which amount to less than nine hours in any one day (excluding the first and last days of the period for which the condition is in force).

38 Monitoring of curfew conditions

(1) A person’s compliance with a curfew condition is to be monitored remotely.

(2) Section 245C of the 1995 Act (contractual and other arrangements for, and devices which may be used for the purposes of, remote monitoring) applies in relation to the imposition of, and compliance with, a curfew condition as that section applies in relation to the making of, and compliance with, a restriction of liberty order.

(3) The Scottish Ministers must designate in a curfew licence a person who is to be responsible for the remote monitoring.

(4) The Scottish Ministers may replace the person designated under subsection (3) (or last designated under this subsection) with another person designated with the responsibility for the remote monitoring.
(5) As soon as is practicable after designating a person under subsection (3) or (4), the Scottish Ministers must send the person—
(a) a copy of the curfew condition, and
(b) any other information they consider necessary for the fulfilment of the person’s responsibility.

(6) If a designation is made under subsection (4), the Scottish Ministers must, in so far as it is practicable to do so, notify the person replaced.

CHAPTER 5
GENERAL

39 No release on weekends or public holidays

(1) Where (but for this subsection) a prisoner would fall to be released by virtue of this Part on a day which is a Saturday, Sunday or public holiday, the prisoner must instead be released on the last preceding day which is not a Saturday, Sunday or public holiday.

(2) In subsection (1), “public holiday” means any day on which, in the opinion of the Scottish Ministers, public offices or other facilities likely to be of use to the prisoner in the area in which the prisoner is likely to be following release will be closed.

CHAPTER 6
APPLICATION OF PART 2 TO CERTAIN PERSONS

40 Persons detained under mental health provisions

(1) Where a transfer for treatment direction under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) has been made in respect of a person serving a sentence of imprisonment, this Part applies to that person as if—
(a) the person continues to serve the sentence while detained in hospital, and
(b) the person had not been removed to hospital.

(2) Where a person is conveyed to and detained in a hospital pursuant to a hospital direction under section 59A of the 1995 Act, this Part applies to that person as if, while so detained, the person were serving a sentence of imprisonment imposed at the time the direction was made.

41 Application to young offenders and children

(1) This Part applies in relation to the persons mentioned in subsection (2) as it applies in relation to custody-only prisoners.

(2) Those persons are—
(a) a person on whom detention is imposed under section 207(2) of the 1995 Act for a period of less than 15 days,
(b) a person sentenced to be detained under section 208 of that Act for such a period.

(3) This Part applies in relation to the persons mentioned in subsection (4) as it applies in relation to custody and community prisoners.
(4) Those persons are—

(a) a person on whom detention is imposed under section 207(2) of the 1995 Act for a period of 15 days or more,
(b) a person sentenced to be detained under section 208 of that Act for such a period.

(5) This Part applies in relation to the persons mentioned in subsection (6) as it applies in relation to life prisoners.

(6) Those persons are—

(a) a person sentenced under section 205(2) or (3) of the 1995 Act to be detained without limit of time or for life,
(b) a person on whom detention without limit of time or for life is imposed under section 207(2) of that Act,
(c) a person sentenced to be detained without limit of time under section 208 of that Act.

(7) In this Part as applied by subsections (1), (3) and (5), references to imprisonment are to be read as references to detention; and cognate expressions are to be construed accordingly.

42 Fine defaulters and persons in contempt of court

(1) This Part applies in relation to the persons mentioned in subsection (2) as it applies in relation to custody-only prisoners.

(2) Those persons are—

(a) a person serving by virtue of section 219(1) of the 1995 Act a period of imprisonment or, as the case may be, a period of detention in a young offenders institution,
(b) a person serving a period of imprisonment or, as the case may be, a period of detention in a young offenders institution for contempt of court.

(3) Subsection (1) does not apply in relation to—

(a) a person on whom the court imposes before the coming into force of this Part—

(i) a period of imprisonment in default of payment of a fine under paragraph (a) of section 219(1) of the 1995 Act, or
(ii) imprisonment for failure to pay a fine, or any part or instalment of a fine, under paragraph (b) of that section, or

(b) a person found in contempt of court, where the conduct which is treated as contempt of court occurs (or first occurs) before the coming into force of this Part.
PART 3

WEAPONS

Licensing of knives, swords etc.

43 Licensing of knife dealers

After section 27 of the Civic Government (Scotland) Act 1982 (c.45) insert—

“Licensing and regulation of knife dealers

27A Knife dealers’ licences

(1) A licence, to be known as a “knife dealer’s licence”, is required for carrying on business as a dealer in any article mentioned in subsection (2).

(2) Those articles are—

(a) knives (other than those designed for domestic use);
(b) knife blades (other than those designed for domestic use);
(c) swords;
(d) any other article—

(i) which has a blade; or

(ii) which is sharply pointed,

and which is made or adapted for use for causing injury to the person.

(3) In subsection (1), “dealer” means a person carrying on a business which consists wholly or partly of—

(a) selling;
(b) hiring;
(c) offering for sale or hire;
(d) exposing for sale or hire;
(e) lending; or
(f) giving,

to persons not acting in the course of a business or profession any article mentioned in subsection (2) (whether or not the activities mentioned in paragraphs (a) to (f) are carried out incidentally to a business which would not, apart from this section, require a knife dealer’s licence).

(4) In subsection (3), “selling”, in relation to an article mentioned in subsection (2)—

(a) includes—

(i) selling such an article by auction;

(ii) accepting goods or services in payment (whether in part or in full) for such an article; but

(b) does not include selling (by auction or otherwise) such an article by one person on behalf of another;

and “sale” is to be construed accordingly.
(5) For the purposes of subsection (3), an article is not to be treated as being exposed for sale if it is exposed for sale (by auction or otherwise) by a person other than the owner.

(6) The Scottish Ministers may by order modify subsection (2) so as to—

(a) add articles or classes of article;
(b) amend descriptions of articles or classes of article;
(c) remove articles or classes of article.

27B Applications for knife dealers’ licences: notice

(1) A licensing authority must cause public notice to be given of every application made to them for the grant or renewal of a knife dealer’s licence.

(2) Sub-paragraph (8) of paragraph 2 of Schedule 1 applies to the giving of public notice under subsection (1) as it applies to the giving of public notice under sub-paragraph (7) of that paragraph.

27C Knife dealers’ licences: conditions

(1) In granting or renewing a knife dealer’s licence, a licensing authority—

(a) must attach to the licence such conditions as are specified (in particular or in general) by order by the Scottish Ministers;
(b) may, without prejudice to paragraph 5 of Schedule 1, attach to the licence different conditions in relation to different articles or different classes of article;
(c) may, without prejudice to that paragraph, attach to the licence conditions for or in connection with—

(i) the keeping of records by the holder of the licence;
(ii) the storage of articles mentioned in section 27A(2); and
(iii) the display of such articles.

(2) An order under subsection (1)(a) may provide for different conditions to apply to different articles or different classes of article.

27D Provision of information to holder of knife dealer’s licence

(1) Subsection (2) applies where the holder of a knife dealer’s licence (“the dealer”)—

(a) is required by the licence to obtain information of a type specified in the licence from a person; and
(b) the dealer requests (whether orally, in writing or otherwise) the information from the person.

(2) A person, or any person acting on behalf of the person, who knowingly or recklessly provides false information in response to a request under subsection (1)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
27E Knife dealers' licences: warrants to enter, search and seize articles

(1) Subsection (2) applies if a justice of the peace or sheriff is satisfied by evidence on oath that—
   (a) subsection (3) applies; and
   (b) subsection (4) or (5) applies.

(2) The justice of the peace or sheriff may grant a warrant authorising a constable or an authorised officer—
   (a) to enter and search the premises specified in the warrant; and
   (b) to seize and remove any relevant article.

(3) This subsection applies if there are reasonable grounds for suspecting that a person (the “suspect”) is carrying on in any premises an activity in respect of which a knife dealer’s licence is required under section 27A.

(4) This subsection applies if no knife dealer’s licence is in force in respect of the activity.

(5) This subsection applies if a knife dealer’s licence is in force in respect of the activity but there are reasonable grounds for suspecting that the suspect has failed, or is failing, to comply with a condition of the licence.

27F Powers of constables and authorised officers

(1) A constable or an authorised officer may use reasonable force in executing a warrant granted under section 27E(2).

(2) Where a constable who is not in uniform is about to enter, is entering or has entered any premises under the powers conferred under section 27E(2) he must, if required to do so by a person in or upon the premises, produce his identification.

(3) Where an authorised officer is about to enter, is entering or has entered any premises under the powers conferred under section 27E(2) he must, if required to do so by a person in or upon the premises, produce his authorisation.

(4) If a constable has been required to produce his identification under subsection (2) he is not entitled to enter or search the premises or, as the case may be, remain there or continue to search the premises until he has produced it.

(5) If an authorised officer has been required to produce his authority under subsection (3), he is not entitled to enter or search the premises or, as the case may be, remain there or continue to search the premises until he has produced it.

(6) Any person who—
   (a) fails without reasonable excuse to permit a constable, or an authorised officer, acting in pursuance of a warrant granted under section 27E(2) to enter and search any premises; or
   (b) obstructs the entry to, or search of, any premises by a constable or an authorised officer so acting,
is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Any relevant article which has been seized and removed under a warrant granted under section 27E(2) may be retained until the conclusion of proceedings against the suspect.

(8) For the purposes of subsection (7), proceedings in relation to a suspect are concluded if—

(a) he is found guilty and sentenced or otherwise dealt with for the offence;
(b) he is acquitted;
(c) proceedings for the offence are discontinued;
(d) it is decided not to prosecute him.

(9) In this section, “suspect” is to be construed in accordance with section 27E(3).

27G Power to inspect documents

(1) Subsection (2) applies where—

(a) a constable or an authorised officer has reasonable grounds for suspecting that an activity in respect of which a knife dealer’s licence is required under section 27A is being carried on; and
(b) no such licence is in force in respect of the activity.

(2) The constable or authorised officer may—

(a) require a relevant person to produce any records or other documents connected with the activity,
(b) inspect any such records or documents, and
(c) take copies of, or extracts from, any such records or documents.

(3) A relevant person who—

(a) is required under subsection (2) to produce records or documents; and
(b) fails without reasonable excuse to do so,
is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Before exercising the power conferred by subsection (2)—

(a) a constable who is not in uniform must produce his identification to the relevant person;
(b) an authorised officer must produce his authorisation to the relevant person.

(5) For the purposes of this section, a person is “relevant” if the constable or authorised officer has reasonable grounds for believing that the person has access to the records or documents.

27H Sections 27E to 27G: interpretation

(1) In sections 27E and 27F—
“premises” includes a vehicle or vessel;
“relevant article” means an article mentioned in any of paragraphs (a) to (d) of subsection (2) of section 27A.

(2) In sections 27E to 27G, “authorised officer” means an officer of a licensing authority authorised by the authority for the purposes of section 27E, 27F or, as the case may be, 27G.

27J Forfeiture orders

(1) Subsection (2) applies where a person (“the offender”) is convicted of an offence under subsection (A1) or (2) of section 7 in relation to a relevant article—

(a) seized by virtue of a warrant granted under section 27E(2); or
(b) in the offender’s possession or control at the relevant time.

(2) The court by which the offender is convicted may make an order for forfeiture (a “forfeiture order”) in respect of the relevant article.

(3) The court may make a forfeiture order—

(a) whether or not it also deals with the offender in respect of the offence in any other way; and
(b) without regard to any restrictions on forfeiture in any enactment.

(4) In considering whether to make a forfeiture order, the court must have regard to—

(a) the value of the relevant article; and
(b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(5) In this section—

“relevant article” means an article mentioned in any of paragraphs (a) to (d) of subsection (2) of section 27A;

“relevant time” means—

(a) the time of the offender’s arrest for the offence; or
(b) the time of his being cited as an accused in respect of the offence.

27K Effect of forfeiture order

(1) A forfeiture order under section 27J(2) operates to deprive the offender of any rights he has in the property to which it relates.

(2) The property to which a forfeiture order relates must be taken into the possession of the police.

(3) The court by which the offender is convicted may, on the application of a person who—

(a) claims property to which a forfeiture order relates; but
(b) is not the offender from whom it was forfeited,
make an order (a “recovery order”) for delivery of the property to the applicant
if it appears to the court that he owns it.

(4) An application under subsection (3) must be made—

(a) in such manner as may be prescribed by Act of Adjournal; and

(b) before the end of the period of 6 months beginning with the date on
which the forfeiture order was made.

(5) An application may be granted only if the applicant satisfies the court that—

(a) he had not consented to the offender’s having possession of the property;
or

(b) he did not know, and had no reason to suspect, that the offence was
likely to be committed.

(6) If a person has a right to recover property which, by virtue of a recovery order,
is in the possession of another, that right—

(a) is not affected by the making of the recovery order at any time before the
end of the period of 6 months beginning with the day on which the order
is made;

(b) is lost at the end of that period.

(7) The Scottish Ministers may by order make provision for or in connection with
the disposal of property forfeited under a forfeiture order in cases where—

(a) no application under subsection (3) has been made before the end of the
6 month period beginning with the day on which the forfeiture order was
made; or

(b) no such application has succeeded.

(8) An order under subsection (7) may in particular make provision for—

(a) dealing with any proceeds from the disposal;

(b) investing money; and

(c) auditing accounts.

27L Offences by partnerships

Where an offence committed by a partnership under—

(a) section 5 (in so far as the offence relates to a knife dealer’s licence);

(b) section 7 (in so far as the offence so relates);

(c) section 27D;

(d) section 27F; or

(e) section 27G,
is proved to have been committed with the consent or connivance of, or to be
attributable to any neglect on the part of, a partner, the partner as well as the
partnership is guilty of the offence and is liable to be proceeded against and
punished accordingly.
27M Appropriate licence required
Where a person carries on a business which—
(a) by virtue of section 24 requires a second-hand dealer’s licence; and
(b) by virtue of section 27A requires a knife dealer’s licence,
the person requires the appropriate licence in respect of each activity.

27N Remote sales of knives, etc.
(1) This section applies where, in connection with the sale of an article mentioned in section 27A(2)—
(a) the premises (“the relevant premises”) from which the article is despatched in pursuance of the sale are not the same as those where the order for the article is taken, and
(b) the relevant premises are in Scotland.
(2) For the purposes of this Act, the sale of the article is to be treated as taking place on the relevant premises.

27P Duty to avoid conflict between conditions of licences
(1) Subsection (2) applies where an application is made to a licensing authority for the grant or renewal of a second-hand dealer’s licence by the holder of a knife dealer’s licence issued by that authority.
(2) In granting the application, the licensing authority must not impose any condition which conflicts, or is inconsistent, with a condition of the knife dealer’s licence.
(3) Subsection (4) applies where an application is made to a licensing authority for the grant or renewal of a knife dealer’s licence by the holder of a second-hand dealer’s licence issued by that authority.
(4) In granting the application, the licensing authority must, in accordance with paragraph 10 of Schedule 1, vary the terms and conditions of the second-hand dealer’s licence to avoid any conflict or inconsistency with the terms or conditions of the knife-dealer’s licence.

27Q Offences in relation to knife dealers’ licences: exceptions
The Scottish Ministers may by order provide that an offence under—
(a) section 5 (in so far as the offence relates to a knife dealer’s licence);
(b) section 7 (in so far as the offence so relates);
(c) section 27D;
(d) section 27F; or
(e) section 27G,
is subject to such exceptions as may be specified in the order.
Orders under sections 27A to 27Q

(1) Any power conferred by section 27A(6), 27C(1)(a), 27K(7) or 27Q to make orders is exercisable by statutory instrument.

(2) A statutory instrument containing an order under any of those sections is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Knife dealers’ licences: further provision

(1) The Civic Government (Scotland) Act 1982 (c.45) is amended in accordance with subsections (2) and (3).

(2) In section 6(1)(a) (powers of entry to and search of unlicensed premises), after “Act” insert “(other than a knife dealer’s licence)”.

(3) In section 7 (offences etc.)—
(a) before subsection (1) insert—
“(A1) Any person who without reasonable excuse does anything for which a licence is required under section 27A without having such a licence is guilty of an offence and liable—
(a) on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
(b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.”,

(b) in subsection (1)—
(i) after “under” insert “any provision of”, and
(ii) after “Act” insert “other than section 27A”,

(c) in subsection (2)—
(i) the word “and” immediately after paragraph (a) is repealed, and
(ii) after that paragraph, insert—
“(aa) in a case where the licence is a knife dealer’s licence, to a fine not exceeding level 5 on the standard scale; and”,

(d) in subsection (4), after “conviction,” insert—
“(a) in a case where the application is for a knife dealer’s licence, to a fine not exceeding level 5 on the standard scale; and
(b) in any other case.”.

Sale etc. of weapons

In section 141 of the Criminal Justice Act 1988 (c.33) (prohibition on sale etc. of certain weapons), after subsection (11) insert—
“(11A)The Scottish Ministers may by order made by statutory instrument—
(a) provide for exceptions and exemptions from an offence under subsection (1) above;
(b) provide for it to be a defence in proceedings for such an offence to show the matters specified or described in the order.

(11B) An order under subsection (11A) may make different provision for different purposes.

(11C) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.”.

Swords

46 Sale etc. of swords

(1) The Criminal Justice Act 1988 (c.33) is amended in accordance with subsections (2) and (3).

(2) After section 141 insert—

“141ZA Application of section 141 to swords: further provision

(1) This section applies where the Scottish Ministers make an order under subsection (2) of section 141 directing that the section shall apply to swords.

(2) The Scottish Ministers may include in the order provision for or in connection with modifying section 141 in its application to swords.

(3) The Scottish Ministers may in particular—

(a) provide for defences to offences under subsection (1) of section 141 (or offences under that subsection as modified),

(b) increase the penalties specified in subsection (1) of section 141 (or that subsection as modified) so as to make a person liable—

(i) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or both,

(ii) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both,

(c) create an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) relating to the provision, without reasonable excuse, of false information by a person acquiring a sword in circumstances specified in the order.

(4) In making provision under subsection (3)(a) the Scottish Ministers may make provision for or in connection with—

(a) the granting, and revocation, by them of authorisations in relation to the acquisition of swords,

(b) enabling them to specify conditions in such authorisations,

(c) requiring persons to whom authorisations are granted to comply with such conditions,

(c) making it an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) to fail to comply with any such conditions.
(5) Defences specified under subsection (3)(a) may relate to swords in general or to a class, or classes, of sword specified in the order.

(6) The penalty is—
  (a) imprisonment for a term not exceeding 12 months, or
  (b) a fine not exceeding level 5 on the standard scale,
  or both.”

(3) In subsection (4) of section 172 (extent), after “124” insert—
  “section 141ZA;”.

**PART 4**

**GENERAL**

47 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of or for giving full effect to this Act or any provision of it.

(2) An order under subsection (1) may modify any enactment (including this Act), instrument or document.

48 Rules, regulations and orders

(1) The powers conferred by this Act on the Scottish Ministers to make rules, regulations and orders are exercisable by statutory instrument.

(2) Each of those powers includes power to make—
  (a) different provision for different purposes,
  (b) supplementary, incidental, consequential, transitory, transitional or saving provision.

(3) Subject to subsection (4), a statutory instrument containing rules, regulations or an order under this Act (other than an order under section 50) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) A statutory instrument containing—
  (a) an order under section 4(2) or 36(1)(b), or
  (b) regulations under paragraph 3(1) or 17 of schedule 1,
may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

49 Minor and consequential amendments and repeals

(1) Schedule 2 (which contains minor amendments and amendments consequential on the provisions of this Act) has effect.

(2) The enactments mentioned in the first column in schedule 3 are repealed to the extent set out in the second column.
50 Short title and commencement

(1) This Act may be cited as the Custodial Sentences and Weapons (Scotland) Act 2007.

(2) This Act (other than this section and section 48) shall come into force on such day as the Scottish Ministers may by order appoint.

(3) Different days may be appointed under subsection (2) for different purposes.
SCHEDULE 1
(introduced by section 1(5))

THE PAROLE BOARD FOR SCOTLAND

Membership

1 The Parole Board is to consist of no fewer than 5 members (including a convener) appointed by the Scottish Ministers.

2 The membership of the Parole Board must include—
   (a) a Lord Commissioner of Justiciary,
   (b) a registered medical practitioner who is a psychiatrist,
   (c) a person who the Scottish Ministers consider has knowledge and experience of the supervision or aftercare of released prisoners,
   (d) a person who the Scottish Ministers consider has knowledge and experience of the assessment of the likelihood of offenders causing serious harm to members of the public,
   (e) a person who the Scottish Ministers consider has knowledge and experience of—
      (i) the way in which, and
      (ii) the degree to which,
      offences perpetrated against members of the public affect those persons.

3 (1) The Scottish Ministers must comply with any provision about the procedure, including requirements as to consultation, to be followed in appointing members of the Parole Board as they may, by regulations, prescribe.

   (2) Without prejudice to the generality of section 48(2), such regulations may make different provision for different kinds of member of the Parole Board, including the kinds of member holding an office or, as the case may be, possessing a qualification mentioned in paragraph 2.

Tenure of appointments

4 Subject to paragraphs 5 to 9, a person is appointed as a member of the Parole Board for such period (being a period of at least 6 years and no more than 7 years) as is specified in the person’s instrument of appointment.

5 A person ceases to be a member on the day the person attains the age of 75 years.

6 If a member such as is mentioned in paragraph 2(a) ceases to hold the office of Lord Commissioner of Justiciary, that person ceases to be a member of the Parole Board.

7 If a member such as is mentioned in paragraph 2(b) ceases to be—
   (a) a registered medical practitioner, or
   (b) a psychiatrist,
    that person ceases to be a member of the Parole Board.

8 A member may at any time resign by giving notice in writing to that effect to the Scottish Ministers.
9 A person ceases to be a member on the day an order is made under paragraph 14 removing the member from the Parole Board.

10 A person may be reappointed as a member of the Parole Board only if the person—
   (a) has ceased to be a member for a period of not less than 3 years, and
   (b) has not previously been reappointed under this paragraph.

11 A person who has resigned from the Parole Board may be reappointed under paragraph 10.

12 A person who ceases to be a member by virtue of an order under paragraph 14 must not be reappointed under paragraph 10.

10 Carrying out of functions

13 The convener of the Parole Board is to have regard to the desirability of securing that every member is given the opportunity to participate appropriately in the carrying out of the Parole Board’s functions on not fewer than 20 days in each successive period of 12 months beginning with the day of the member’s appointment.

15 Removal of members

14 A member may be removed from the Parole Board only by order of the tribunal constituted under paragraph 16.

15 The tribunal may order the removal of a member only if—
   (a) an investigation is carried out at the request of the Scottish Ministers, and
   (b) following the investigation, the tribunal finds that the member is unfit to be a member of the Parole Board by reason of inability, neglect of duty or misbehaviour.

16 The tribunal is to consist of the following persons appointed by the Lord President of the Court of Session—
   (a) either a Senator of the College of Justice or a sheriff principal (who is to preside),
   (b) a person who is, and has been for at least 10 years—
      (i) an advocate, or
      (ii) a solicitor, and
   (c) one other person who is not an advocate or a solicitor.

17 The Scottish Ministers may, by regulations—
   (a) make provision—
      (i) enabling the tribunal, at any time during an investigation, to suspend a member from the Parole Board, and
      (ii) as to the effect and duration of a suspension,
   (b) make further provision about the tribunal as the Scottish Ministers consider necessary or expedient, including provision about the procedure to be followed by and before it.
Remuneration, allowances and other expenses

18 Members of the Parole Board are to be paid such—
   (a) remuneration, and
   (b) expenses,
   as the Scottish Ministers may determine.

19 The expenses of the Parole Board under paragraph 18 and any other expenses incurred by the Parole Board in carrying out its functions are to be defrayed by the Scottish Ministers.

Reporting and planning

20 The Parole Board must, as soon as practicable after the end of the reporting year, send to the Scottish Ministers a report on the performance of the Parole Board’s functions during that year.

21 The Parole Board must, as soon as practicable after the beginning of each planning period, send to the Scottish Ministers a plan in relation to that planning period—
   (a) providing details as to how the Parole Board intends to carry out its functions,
   (b) setting out performance objectives and targets in relation to its functions.

22 (1) The reporting year of the Parole Board is—
   (a) the period beginning with the day on which section 1(1) comes into force and ending with 31 March next following that day, and
   (b) each successive period of 12 months ending with 31 March.

23 (2) The planning period of the Parole Board is—
   (a) the period beginning with the day on which section 1(1) comes into force and ending with the third occurrence of 31 March following that day, and
   (b) each successive period of 3 years ending with 31 March in the third year.

25 The Scottish Ministers must lay a copy of—
   (a) a report sent to them under paragraph 20,
   (b) a plan sent to them under paragraph 21,
   before the Scottish Parliament.

SCHEDULE 2
(introduced by section 49)

MINOR AND CONSEQUENTIAL AMENDMENTS

Criminal Procedure (Scotland) Act 1995 (c.46)

1 (1) Section 210A of the 1995 Act (extended sentences for sex and violent offenders) is amended as follows.

35 (2) In subsection (1)(b), before “licence” insert “community”.

(3) In subsection (2)—
(a) in paragraph (a), for “custodial” substitute “confinement”,
(b) in paragraph (b), before “licence” insert “community”.

(4) In subsection (6), for “custodial” substitute “confinement”.

(5) In subsection (10), for the words from “licence” to “1993” substitute—

“community licence” has the same meaning as in Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00);
“relevant officer”, in relation to a local authority, means an officer of that authority employed by them in the discharge of their functions under section 27(1) of the Social Work (Scotland) Act 1968 (supervision and care of persons put on probation or released from prison etc.).”.

Criminal Justice (Scotland) Act 2003 (asp 7)

2 (1) Section 40 of the Criminal Justice (Scotland) Act 2003 (remote monitoring of released prisoners) is amended as follows.

(2) In subsection (1)—

(a) for the words from “licence” to the end of paragraph (b) substitute “community licence or life licence under Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00)”, and
(b) for the words from “7(5)” to “proceedings)” substitute “41 of that Act (application of that Part to young offenders and children)”.

(3) In subsection (8), for paragraphs (a) and (b) substitute—

“(a) section 24(2) of the Custodial Sentences and Weapons (Scotland) Act 2007 (community licences: Scottish Ministers to include only licence conditions specified by Parole Board), or
(b) section 26(2) of that Act (life licences: Scottish Ministers to include only licence conditions specified by Parole Board).”.

Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)

3 (1) The Police, Public Order and Criminal Justice (Scotland) Act 2006 is amended as follows.

(2) In section 91 (assistance by offender: reduction in sentence), in subsection (8)(b), for “section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)” substitute “section 15(2) of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00)”.

(3) In section 92 (assistance by offender: review of sentence), in subsection (5), for the words from “whether” to the end of the subsection substitute “on licence under Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00) is to be treated as still serving the sentence for so long as the licence remains in force.”

(4) In section 94 (section 92: further provision), in subsection (3)(b)—

(a) for “or unconditionally under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)” substitute “under Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00)”, and
(b) the words from “before” to “full” are repealed.
### SCHEDULE 3
*(introduced by section 49)*

**REPEALS**

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Custodial Sentences and Weapons (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to restate and amend the law relating to the confinement and release of prisoners; to make provision relating to the control of weapons; and for connected purposes.

Introduced by: Cathy Jamieson
On: 2 October 2006
Supported by: Hugh Henry
Bill type: Executive Bill
These documents relate to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

CUSTODIAL SENTENCES AND WEAPONS (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 Custodial Sentences and Weapons (Scotland) Bill introduced in the Scottish Parliament on 2 October 2006:

   • 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 80–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.

PART 1 – THE PAROLE BOARD FOR SCOTLAND

Section 1 - The Parole Board for Scotland

4. This section provides for the continuation of the Parole Board for Scotland. It was established by section 18 of the Prisons (Scotland) Act 1989 and continued by section 20 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Subsection (2) sets out its key function as being to advise the Scottish Ministers in relation to any matter they refer to it in relation to the release of prisoners. Provision is also made at subsection (3) for the Board to carry out other functions given to it in other provisions of the Bill or in any other legislation.

5. Subsection (4) requires the Board to have regard to the risk management plan when considering the case of a person for whom one has been prepared under section 6(1) of the Criminal Justice (Scotland) Act 2003. Section 6(1) of the 2003 Act requires that a Risk Management Plan be prepared for an offender who is made subject of an Order for Lifelong Restriction (OLR). OLRs became available to the courts on 19 June 2006. The OLR is a sentence for serious sexual and violent offenders and is broadly equivalent to a life sentence insofar as the offender remains on licence for the remainder of his or her life.

6. Subsection (5) provides that further provisions concerning the Parole Board (constitutional issues, membership, etc) are set out at schedule 1. These are explained later in this document.

Section 2 - Parole Board rules

7. Subsection (1) provides that the Scottish Ministers may make rules to regulate the Parole Board’s proceedings. Subsection (2) details some of the particular types of provisions which may be included in the rules. There is the power, amongst other things, to:

- authorise cases to be dealt with, in whole or in part, by a specified number of members of the Board;
- enable the Board to require persons, other than the prisoner whose case the Board is dealing with, to:
  - attend a Board hearing,
These documents relate to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

- give evidence to the Board, or
- produce documents;

- prescribe time limits for the determination of cases and for the performance of other actions; and

- specify the matters which may be taken into account by the Board when dealing with cases.

8. Subsection (3) allows the Parole Board Rules to apply the terms of subsections (4) and (5) of section 210 of the Local Government (Scotland) Act 1973:

- Subsection 210(4) of that Act provides the power to request a person to attend (as mentioned above) provided that any expenses incurred are paid and provided that the person is entitled to refuse to produce documents or answer questions, on grounds of privilege or confidentiality, if this could have been done were the matter to have been raised in proceedings in a court of law.

- Subsection 210(5) of that Act provides that any person who refuses or wilfully neglects to attend a hearing to give evidence, or who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or other document which he is required or is liable to be required to produce shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale (though this may be raised to level 2 in the rules). It also provides for a penalty of imprisonment for a term not exceeding three months but this penalty cannot apply when section 210(5) is applied to hearings before the Parole Board by virtue of the Parole Board Rules.

PART 2 – CONFINEMENT AND RELEASE OF PRISONERS

CHAPTER 1: INTRODUCTORY

Section 3 - Application of Part 2

9. Other than a life prisoner, this Part only applies to a sentence imposed on a person for an offence committed after the coming into force of this Part. Section 42 deals with the application to those imprisoned other than following conviction of an offence.

Section 4 - Basic definitions

10. This section provides definitions of various terms used in the Bill.

11. Subsection (2) gives Scottish Ministers the power to amend, by order, the definitions of “custody and community sentence” and “custody-only sentence” by substituting a different period for the period mentioned (which is 15 days).

12. Subsections (3) and (4) provide that:

- release on community licence is a reference to the release on licence of a custody and community prisoner; and
• release on life licence is a reference to the release on licence of a life prisoner.

CHAPTER 2: CONFINEMENT, REVIEW AND RELEASE OF PRISONERS

Custody-only prisoners

Section 5 - Release on completion of sentence

13. This section provides that a custody-only prisoner (i.e. a prisoner sentenced to a term of less than 15 days) will spend the entire sentence in prison and then be released unconditionally.

Custody and community prisoners

Section 6 - Setting of custody part

14. This section describes the arrangements for setting the custody part of a custody and community sentence. This is a sentence for a term of 15 days or more. Subsection (1) provides that, for sentences of 15 days or more, the court must make an order specifying the custody part. Subsection (2) defines the custody part as being the part of the sentence which satisfies the requirements for retribution (or punishment) and deterrence.

15. Subsection (3) provides that the custody part will be a minimum of one half of the overall sentence. This may be increased, as provided for at subsection (4), if the court considers it appropriate to do so when taking into account:

- the seriousness of the offence or of the offence combined with other offences of which the person is being convicted of on the same indictment or complaint;
- any previous convictions; and
- the timing and nature of a guilty plea.

16. Subsection (5) provides that when setting the custody part, the court must take no account of any period necessary for the protection of the public. The question of risk (or the protection of the public) will be assessed during the custody part of the sentence and, if necessary, will be decided by the Parole Board.

17. Subsection (6) prevents the court from setting a custody part in excess of three-quarters of the sentence. Subsection (7) provides that the custody part forms part of the sentence for appeal purposes.

18. Subsections (8) and (9) apply this section to extended sentence prisoners. When a custody part is set in these cases it is set by reference to the confinement term of the extended sentence, that is the part of the sentence which does not include the extra period of supervision on licence that a court may specify in an extended sentence (known as the “extension period”). Subsection (10) gives the Scottish Ministers the power to amend, by order, the minimum custody part.
Section 7 - Joint arrangements between Scottish Ministers and local authorities

19. Subsections (1) and (2) require joint working arrangements to be put in place between the Scottish Ministers and local authorities in relation to the assessment and management of the risks posed by custody and community prisoners. The Scottish Ministers and each local authority shall jointly assess whether an individual prisoner is likely to cause serious harm to members of the public if he or she were to be released on community licence on the expiry of the custody part of the sentence.

20. Subsection (4) defines the appropriate local authority as either the one in which the offender resided immediately prior to the offence or the one the offender intends to reside in upon beginning the community part of his or her sentence on licence. Subsection (5) provides that in the event of the two authorities being different they can agree between them which one should carry out the functions conferred on them under this section or section 25(3) (which also confers a function on the Scottish Ministers and local authorities to work together).

Section 8 - Review by Scottish Ministers

21. This section provides that the Scottish Ministers must determine, before the expiry of the custody part of the sentence, whether or not a custody and community prisoner is likely to cause serious harm to members of the public if he or she were released on community licence.

Section 9 - Consequences of review

22. This section requires that where the Scottish Ministers have assessed that a prisoner need not be referred to the Parole Board under section 8, then he or she must released on community licence. Where a prisoner has been assessed as likely to cause serious harm to the public, subsection (3) requires the Scottish Ministers to refer his or her case to the Parole Board. This is subject to section 22, which is explained below.

Section 10 - Review by Parole Board

23. This section places a duty on the Parole Board to review the case of a prisoner, referred to it by the Scottish Ministers under section 9(3), before the custody part of the prisoner’s sentence expires.

Section 11 – Release on community licence following review by Parole Board

24. This section provides that where the Parole Board has determined that a prisoner is not likely to cause serious harm to the public if released when the court-imposed custody part of the sentence expires or after a further review by the Board, the Board shall direct that the prisoner be released on community licence and shall specify the conditions to be included in the licence. Subsection (3) provides that where the Parole Board has made such a direction that the Scottish Ministers must release the prisoner on a community licence. In the case of a determination after the first referral by the Scottish Ministers, subsection (4) obliges the Scottish Ministers to give effect to the Parole Board’s direction by releasing the prisoner on the expiry of the custody part.
Section 12 - Determination that section 8(2) applicable: consequences

25. This section applies where the Parole Board has determined, as a result of an initial referral or of a further review, that a prisoner is likely to cause serious harm to the public on release. Subsection (2) requires that the Parole Board give its reasons in writing and set a date for a further review. However, if there are less than four months before the three-quarters point of the sentence, when the prisoner must be released on community licence, there will be no further review. Four months is considered to be the shortest period of time in which there may occur a significant change in the risk that the prisoner presents.

26. Subsections (3) to (5) provide details about when the next review can take place, which must be a maximum of two years after the (most recent) refusal to direct release.

27. Subsection (6) provides that if there are less than 4 months to serve before reaching the three-quarters point, the Parole Board must specify the licence conditions to be included by the Scottish Ministers on the prisoner’s community licence. Subsection (7) provides that where the Parole Board has set a date for further review under subsection (2)(b), subsection (8) gives the Parole Board the option of replacing that date with an earlier one if the prisoner requests this.

Section 13 - Further referral to the Parole Board

28. This section applies where the Parole Board has fixed a date under section 12(2)(b) to determine whether or not the prisoner would cause the public serious harm if not confined. Subsection (2) provides that the Scottish Ministers must refer the prisoner’s case to the Parole Board before that date. Subsection (3) requires the Parole Board to determine whether or not the prisoner would be likely to cause serious harm to the public if not confined.

Section 14 - Release on community licence on completion of custody part

29. Subsection (1) provides that the Scottish Ministers must refer the custody and community prisoner’s case to the Parole Board before he or she has served three-quarters of the sentence. Subsection (2) provides that the Scottish Ministers must release the prisoner on a community licence once three-quarters of the sentence have been served, provided that such release is not prohibited by section 22. Subsection (3) requires the Board to specify conditions to be included in the licence. Subsection (4) provides that the obligation to release at the three-quarter point does not apply in the case of an offender who has been recalled to custody in consequence of the revocation of a community licence.

Life prisoners

Section 15 - Setting of punishment part

30. This section sets out the provisions for setting the punishment part of a life sentence. The period will be specified in an order made by the court. Subsection (1) provides that the court must specify the punishment part in an order. Subsection (2) defines the punishment part as being that part of the sentence which, taking into account certain specified matters, the court considers appropriate to satisfy the requirements for retribution and deterrence. It is only once
These documents relate to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

This period has been served in full that the offender can be released on life licence, but this will only happen following a direction from the Parole Board, as explained below.

31. Subsection (3) details the matters the court must take account of when setting a punishment part for someone with a mandatory life sentence (such as for murder), namely

- the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment;
- any previous convictions;
- where appropriate, the timing of any guilty plea;

Subsection (4) deals with the relevant matters for those with a discretionary life sentence or an order for lifelong restriction. They are:

- the determinate period of imprisonment the court considers would have been appropriate had the court not imposed a discretionary life sentence or an order for lifelong restriction; and
- the part of that period of imprisonment which the court would have specified as the custody part, by reference to the matters set out in section 6(4)

32. Subsection (5) provides that the court, when setting the punishment part, must take no account of the risk the person may present to the public. In effect, the matter of risk will be dealt with by the Parole Board on the expiry of the punishment part. The Board will consider the case for continued detention and direct the Scottish Ministers accordingly.

33. Subsections (6), (7) and (8) provide that the punishment part, which must be expressed in years and months, may exceed the person’s life expectancy, and forms part of the person’s sentence for the purposes of any appeal or review.

Section 16 - Referral to Parole Board

34. This section requires the Scottish Ministers to refer a life prisoner’s case to the Parole Board before the expiry of the punishment part. This is subject to section 22, which applies to prisoners with more than one sentence.

Section 17 - Review by Parole Board

35. This section requires the Parole Board, on referral of the case by the Scottish Ministers under section 16, to determine before the expiry of the punishment part of the sentence whether or not the life prisoner, if not confined, would be likely to cause serious harm to the public.

Section 18 - Release on life licence following review by Parole Board

36. Where the Parole Board is satisfied (either at the first review before the punishment of the sentence expires or at a subsequent review) that it is no longer necessary to confine a life prisoner for the protection of the public, it must direct the Scottish Ministers to release him or her on life licence and must specify conditions to be included in the licence. Where the direction
is given at the first review before the punishment part expires, the Scottish Ministers are obliged to give effect to that direction on the expiry of the punishment part. Subsection (3) provides that where the Parole Board has directed that a prisoner be released, that the Scottish Ministers must release the prisoner on a life licence.

**Section 19 - Determination that section 17(3) applicable: consequences**

37. This section provides that where the Parole Board is satisfied that it is necessary to continue to confine a life prisoner for the protection of the public, it must give the prisoner details of its reasons in writing and fix a date for a further review of the case. This must, subject to section 21 (whose effect is explained below), be within two years of the most recent review. Subsection (4) provides that where the Parole Board has set a date for further review under subsection (2)(b), subsection (5) gives the Parole Board the option of replacing that date with an earlier one if the prisoner requests this.

**Section 20 - Further referral to Parole Board**

38. This section provides that where the Parole Board fixes a date under section 19(2)(b) the Scottish Ministers must refer the case before that date in order to allow the Board to consider the case. The Board is to determine whether the prisoner would be likely to cause the public serious harm if not confined.

**Referral to Parole Board: postponement**

**Section 21 - Referral to Parole Board: postponement**

39. Subsections (1) and (2) require the Parole Board to postpone the date which it would otherwise have fixed for the review of a prisoner’s case where he or she receives another sentence after the case has been referred to the Board but before the Board have fixed a date for considering the referral. This applies where the prisoner would not be eligible for release from the subsequent sentence on the date which would otherwise have been fixed. In such circumstances, subsection (2) obliges the Board to fix a different date.

40. Subsections (3) and (4) deal with the situation in which the Board has fixed a date to review a particular case and the prisoner subsequently receives a further sentence from which he or she would not be eligible for release at that date. In this event, the Board must fix a different date for considering the case.

41. Subsection (5) provides that, in either of these scenarios, the date fixed must be the date which would have been set if the prisoner were only subject to the subsequent sentence. It replaces any other dates fixed previously.

**Effect of multiple sentences**

**Section 22 - Effect of multiple sentences**

42. Subsection (1) provides that this section applies to a person serving, or liable to serve, two or more sentences of imprisonment. This person is defined as a “multiple sentence prisoner”. Subsection (2) provides that a multiple sentence prisoner must not be released before
having served any custody-only sentence, the custody part of any custody and community sentence, and the punishment part of any life sentence. In other words all of the compulsory periods of confinement imposed on the prisoner have to be served before the prisoner can be released.

43. Subsection (3) provides that where a multiple sentence prisoner is released on licence, the licence will be a community one where he or she is not subject to a life sentence, and otherwise he or she will be released on a life licence.

44. Subsections (4) and (5) together provide that a multiple sentence prisoner’s case must not be referred to the Parole Board before the date on which the case would have been referred if the only sentence the prisoner were subject to were the sentence whose custody part or, as appropriate, punishment part, expires after all other custody or punishment parts which he or she is required to serve. This means that a prisoner’s case may only be referred shortly before the expiry of all custody parts (and, if the person is a life prisoner, all punishment parts) of those sentences to which the prisoner is subject. In practice, the referral will be made before the expiry of the last custody part or community part, with enough time to allow the Board to consider whether to direct release on licence on the expiry of the latest-expiring custody part or punishment part.

_Compassionate release on licence_

**Section 23 - Compassionate release on licence**

45. Subsection (1) enables the Scottish Ministers to release prisoners on licence at any time if they are satisfied there are compassionate grounds for doing so.

46. Subsections (2) and (3) require the Scottish Ministers, before releasing a prisoner other than a custody-only prisoner under this section, to consult the Parole Board, unless it is impracticable to do so.

**CHAPTER 3: COMMUNITY AND LIFE LICENCES**

_Community licences_

**Section 24 - Release on community licence on Parole Board’s direction**

47. Where the Parole Board specifies conditions to be included on a community licence by virtue of sections 11(2)(b), 12(6), 14(3) or 33(4)(b), the Scottish Ministers must include these conditions (and no others) in the community licence. The Scottish Ministers may vary or cancel the conditions or include further conditions, if so directed by the Parole Board but not otherwise.

**Section 25 - Community licences in which Scottish Ministers may specify conditions**

48. This section provides that the Scottish Ministers can include such conditions as they consider appropriate in the case of a prisoner being released on community licence either on the expiry of the custody part (in a case where the Scottish Ministers released the prisoner without referring the case to the Parole Board) or as a result of being granted compassionate release. They may also vary or cancel conditions or include such further conditions as they consider
appropriate. Subsection (3) provides that in exercising such powers they must co-operate with the appropriate local authority, as defined in section 7.

Life licences

Section 26 - Release on life licence: conditions

49. Where the Parole Board specifies the conditions to be included in a prisoner’s life licence, the Scottish Ministers must include these conditions (and no others) in the life licence. If so directed by the Parole Board, the Scottish Ministers may vary or cancel the conditions or include further conditions, but not otherwise.

Supervision

Section 27 - Release on licence of certain prisoners: supervision

50. This section provides that where a prisoner (other than a person liable to removal from the United Kingdom) is: a life prisoner; a custody and community prisoner with a sentence of 6 months or more, or such a prisoner who is detained in custody beyond the court-imposed custody part; a prisoner released on compassionate grounds; an extended sentence prisoner; a sex offender; or a child, the Scottish Ministers must include a supervision condition on the licence.

51. Subsection (3) states that a supervision condition is a condition requiring the offender to be supervised by an officer of the local authority specified in the licence and to comply with any of that officer’s requirements in relation to supervision.

52. Subsection (4) specifies those persons referred to in subsection (1) as being liable to removal from the United Kingdom.

53. Subsection (5) provides that the “relevant officer” referred to in subsection (3)(a), in relation to a local authority, is an officer of that local authority employed by it in the capacity of a social worker.

Duration of licence

Section 28 - Period during which licence in force

54. Subsection (1) provides that where a custody-only prisoner has been granted compassionate release, the licence remains in force until the sentence expires.

55. Subsection (2) provides that, where a custody and community prisoner is released on community licence, the licence remains in force until the sentence expires.

56. Subsection (3) provides that, where a life prisoner has been released on life licence, the licence remains in force for the remainder of the prisoner’s life.
These documents relate to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

Prisoner to comply with licence conditions

Section 29 - Prisoner to comply with licence conditions

57. This section requires a prisoner to comply with all conditions specified in his or her licence.

Suspension

Section 30 - Suspension of licence conditions while detained

58. This section provides that if a custody and community prisoner or a life prisoner is detained in custody, for whatever reason, during a period when their licence is still in force, then the licence conditions - with certain exceptions - are suspended. As provided for at subsections (4)(a) and (b), the suspension remains in place for so long as the prisoner is confined in prison or for so long as the licence remains in force.

59. The exceptions are set out in subsection (3), namely: the condition that the prisoner be of good behaviour and keep the peace, and any condition that the prisoner must not contact a named person or class of persons. These conditions continue in force, and breach of them can lead to the licence being revoked.

60. Subsection (5) allows Scottish Ministers, by order, to add to these conditions and to cancel or vary them.

Revocation

Section 31 - Revocation of licence

61. Subsection (1) enables the Scottish Ministers to revoke an offender’s licence and recall him or her to custody. Subsection (4) deals with the situation in which an offender is still on licence but is detained in custody for any reason. In such a situation, Ministers have the power to revoke the licence.

62. Subsections (2), (3) and (5) provide that, whether or not the prisoner is in custody at the time, the licence may only be revoked if two conditions are met: first, that the prisoner either has breached a licence condition or is considered to be likely to do so; and secondly that Ministers consider that it is in the public interest to revoke the licence.

63. Subsection (6) provides where a prisoner’s licence has been revoked and the prisoner is at large (or, in other words, has not been returned to custody) then he or she is deemed to be unlawfully at large.

Section 32 - Referral to Parole Board following revocation of licence

64. This section provides that where the Scottish Ministers have revoked a prisoner’s licence, they must inform the prisoner of the reasons for doing so and, subject to section 22 (governing multiple sentence prisoners), refer the case to the Parole Board.
Section 33 - Consideration by Parole Board

65. This section applies where a prisoner whose licence has been revoked has his or her case referred to the Parole Board. Subsection (2) provides that the Board must determine under subsection (3) whether or not the prisoner, if released, would be likely to cause serious harm to members of the public. Subsection (4) provides that where the Board considers subsection (3) does not apply, it must direct the Scottish Ministers to release the prisoner on licence and must specify licence conditions for inclusion in the licence. Subsection (5) provides that where the Parole Board have made such a direction that the Scottish Ministers must release the prisoner on a community licence or a life licence as appropriate.

66. Subsection (6) provides that, where the Parole Board considers that the prisoner would be likely to cause serious harm, the Board must fix a date for when it will next review the prisoner’s case. Subsection (7) provides that this date must be within 2 years of the Board’s previous consideration (subject to section 21). Subsection (8) provides that where the Parole Board has set a date for further review under subsection (6), subsection (9) gives the Parole Board the option of replacing that date with an earlier one if the prisoner requests this. Subsection (10) requires the Scottish Ministers to refer the case to the Board before the date which is fixed.

Section 34 - Effect of revocation

67. Where the Board does not direct a prisoner’s release following the revocation of his or her licence, subsection (1) provides that a custody and community prisoner must be detained until the expiry of the sentence. In the case of a life prisoner, subsection (2) provides that the prisoner must be detained for the remainder of his or her life.

Single licence

Section 35 - Multiple licences to be replaced by single licence

68. Subsection (1) provides that this section applies to offenders who have been released on licence under this Part and who have received another sentence of imprisonment while that licence remains in force. Subsection (2) provides that, if the original licence is still in force at the time when the prisoner is to be released on licence from the subsequent sentence, then he or she is to be released on a single licence covering both sentences. Subsection (3) provides that the single licence replaces the original one while subsection (4) requires that the single licence is to include all conditions from the previous licence.

69. Subsection (5) provides that the new single licence will remain in force, unless revoked, until all licences which would otherwise have been imposed would have expired. Subsection (6) provides that in the case of a prisoner being released unconditionally from a subsequent sentence the licence from the original sentence will remain in place, unless revoked, in the same way as it would have done had the subsequent sentence not been imposed.
CHAPTER 4: CURFEW LICENCES

Section 36 - Curfew licences

70. Under this section the Scottish Ministers may release, on licence, a custody and community prisoner who is serving a sentence of 3 months or more and is of a description to be specified by order by the Ministers. Such an order is subject to the affirmative resolution procedure. Subsection (3) provides that the licence must include a curfew condition, which is described in section 37.

71. Subsections (2) and (4) specify the period during which a prisoner may be released on a curfew licence. Subsection (2) states that it shall be before the expiry of the custody part of the sentence. Subsection (4) provides that the Scottish Ministers may only release a prisoner after the later of: the day on which the prisoner has served one-quarter or four weeks of the sentence (whichever is the greater), or the day following 135 days before the expiry of the custody part of the sentence. In addition, release must be before the day falling 14 days before the expiry of the custody part.

72. Subsection (5) provides that in determining whether to release a prisoner under this section, the Scottish Ministers must have regard to the need to protect the public, prevent re-offending and secure the successful re-integration of the prisoner into the community. Subsections (6) to (8) provide that the Scottish Ministers may include in a curfew licence any other conditions they consider appropriate; that prisoners released on curfew licence must comply with any conditions on it; and that the curfew licence remains in force until the expiry of the custody part of the sentence.

73. Subsection (9) provides that an order made under subsection (1)(b) may apply, with or without modification, relevant provisions of Part 2 of the Bill to curfew licences. It may also amend the periods of time mentioned in subsection (4).

Section 37 - Curfew conditions

74. Subsection (1) defines a curfew condition as being one that requires a person to remain at the place specified in the condition for the periods which are specified. Subsection (2) provides that it may also require the person not to be in a particular place, or class of place, at a specified time or during a specified period and may also specify different places and periods for different days. However, subsection (3) states that it cannot specify, in respect of the condition to remain at a certain place, periods amounting to less than nine hours in any one day (excluding the first and last days of the period for which the condition is in force).

Section 38 - Monitoring of curfew conditions

75. Subsection (1) provides that an offender’s compliance with a curfew condition will be monitored remotely. Subsection (2) applies section 245C of the 1995 Act in relation to the imposition of, and compliance with, a curfew condition as that section applies to the monitoring of restriction of liberty orders. Section 245C, read with section 38(2) and also with section 118 of the Scotland Act 1998, requires the Scottish Ministers to make regulations specifying the devices which may be used for the remote monitoring of compliance with the curfew condition.
76. Subsection (3) requires the Scottish Ministers to designate in the licence who will be responsible for the remote monitoring, and subsection (4) provides that the Scottish Ministers may replace the responsible person with another person. Subsection (5) requires the Scottish Ministers to send, as soon as practicable after designating any person as the responsible person, a copy of the curfew condition to that person, together with any other relevant information which Ministers consider the person may need for the fulfilment of the remote monitoring responsibility. Subsection (6) provides that, where the Scottish Ministers exercise their power under subsection (4) to designate a new responsible person, they must, where practicable, notify the person who has been replaced.

CHAPTER 5: GENERAL

Section 39 - No release on weekends or public holidays

77. This section provides that where a prisoner is due to be released on a Saturday, Sunday or a public holiday, then he or she will instead be released on the day immediately preceding that day. The reference to “public holiday” is to be read by reference to any holidays in the area in which the prisoner is likely to be upon release.

CHAPTER 6: APPLICATION OF PART 2 TO CERTAIN PERSONS

Section 40 - Persons detained under mental health provisions

78. This section provides that Part 2 of the Bill applies to the following categories of prisoner as if they had continued to serve their sentence in prison rather than in a hospital:

- those transferred to hospital under a transfer direction made in accordance with section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003; and

- those conveyed to and detained in a hospital for treatment of a mental disorder in accordance with section 59A of the Criminal Procedure (Scotland) Act 1995.

Section 41 - Application to young offenders and children

79. This section deals with the application of the provisions of Part 2 to young offenders and children. A young offender is a person who is under 21 years old at the point of sentence (and who is not a child). A child a person who is under 16 years old or who is under 18 years old and in respect of whom a supervision requirement is in force.

80. Where the sentence on a young person or child is of less than 15 days, Part 2 applies to them as if they were a custody-only prisoner. Where the sentence is of 15 days or more, it applies as if they were a custody and community prisoner. And where the sentence is indeterminate, it applies as if they were a life prisoner.

81. Subsection (7) provides that references to “imprisonment” in Part 2 are to be read as references to detention and cognate expressions are to be construed accordingly. This is because young offenders and children are sentenced to detention and not to imprisonment.
Section 42 - Fine defaulters and persons in contempt of court

82. This section provides that Part 2 of the Bill will apply as it applies to custody-only prisoners to:
   - those who are in custody as a result of a failure to pay a fine, and
   - to persons who are in custody having been found in contempt of court.

This means that these categories of person will serve their full sentence in custody regardless of the length of the period of custody imposed on such a person.

83. Subsection (3) states that this section will only apply where the relevant act which leads to imprisonment or detention occurs after the coming into force of Part 2.

PART 3 – WEAPONS

84. Part 3 of the Bill contains two sets of provisions relating to the control of swords, non-domestic knives and other weapons. The first set of provisions relates to the licensing of sellers of knives etc. while the second introduces new provisions relating to restricting the sale etc. of swords and other weapons.

Licensing of knives, swords etc.

Section 43 - Licensing of knife dealers

85. This section inserts new provisions on the licensing of sellers of knives etc. into the Civic Government (Scotland) Act 1982 and amends existing provisions of the 1982 Act to accommodate this new regime. The provisions should be read alongside the 1982 Act.

The 1982 Act

86. The 1982 Act makes provision for a civic government licensing system, operated by local authorities (as the “licensing authority”). Sections 1 to 8 of, and Schedule 1 to, the 1982 Act contain general provisions which apply to the licensing of all activities covered by the 1982 Act. These include:
   - procedures for application and renewal, variation and suspension of licences;
   - powers of entry and search of both licensed and unlicensed premises; and
   - offences in connection with carrying out unlicensed activities, failure to comply with licence conditions, making false statements and failure to notify changes of circumstances.

87. Sections 10 to 43 of the 1982 Act make specific provision in relation to the licensing of e.g. taxis and private hire cars, public entertainment, second hand dealers, metal dealers, street trading and window cleaning. These supplement the general provisions and, with the exception of those for metal dealers, are “optional provisions” (defined in section 9 of the 1982 Act) – they do not apply in an area unless the licensing authority decides that they should. Section 44 of the 1982 Act allows further activities to be designated and brought within the licensing scheme.
88. Section 43 of the Bill inserts new sections 27A to 27R into the 1982 Act. These new provisions are not “optional provisions”, and will apply automatically in every local authority area. Section numbers 27I and 27O are omitted deliberately.

89. Section 27A (Knife dealers’ licences) provides that a “knife dealer’s licence” is required to carry on business as a dealer in knives and other specified articles. A licence is not therefore required for private sales between individuals.

90. Section 27A(2) provides that the section applies to knives, knife blades, swords or other bladed or pointed articles designed or adapted for causing injury (e.g. arrows or crossbow bolts). Knives and knife blades designed for domestic use are excluded. Section 27A(6) allows the list of articles covered by the section to be altered by an order made by Scottish Ministers.

91. Section 27A(3) gives a wide definition of a “dealer” and includes those whose business involves not only selling knives etc. but also hiring, lending, giving and offering or exposing for sale or hire such items. The subsection only applies to businesses which sell to private purchasers and therefore sales etc. to persons acting in the course of business or a profession are excluded from these licensing provisions.

92. Sections 27A(4) and (5) clarify the meaning of “selling”, particularly in relation to sale by auction. These provisions ensure that the requirements for a licence apply to the owner of the goods rather than to any intermediary such as an auction house or online marketplace.

93. Section 27B (Applications for knife dealers’ licences: notice) requires the licensing authority to publicise applications for the grant or renewal of knife dealers’ licences. This replaces the general public notice provisions in paragraphs 2(7) and (9) of Schedule 1 to the 1982 Act, which require notice to be given only for certain classes of licence application. Section 27B(2) applies paragraph 2(8) of the Schedule to the 1982 Act, which requires the notice to be published in a newspaper stating the particulars of the application and the process for making objections and representations.

94. Section 27C (Knife dealers’ licences: conditions) makes provision for the conditions to be attached to knife dealers’ licences. Under paragraph 5 of Schedule 1 to the 1982 Act, the licensing authority has a general power to grant or renew licences subject to such “reasonable conditions” as it thinks fit. Section 27C allows the licensing authority to include conditions in relation to record-keeping and the storage and display of knives etc. It also gives Scottish Ministers the power to specify minimum conditions which must be included in all licences. These conditions may be specified in either particular or general terms, and different conditions may be specified for different classes of article, e.g. different conditions for swords and for knives.

95. Section 27D (Provision of information to holder of knife dealer’s licence) provides for a new offence of providing false information to the holder of a knife dealer’s licence. Section 27D provides that where the dealer requests information from a person (either the customer or a third party) and that person knowingly or recklessly provides false information, then that person is guilty of an offence. The maximum penalty on summary conviction is a fine of up to level 3 on the standard scale (currently £1,000).
96. Sections 27E (Knife dealers’ licences: warrants to enter, search and seize articles) to 27H (Sections 27E to 27G: interpretation) provide powers of entry, inspection, search and seizure in relation to licensed and unlicensed premises.

97. Sections 27E and 27F (Powers of constables and authorised officers) replace section 6 of the 1982 Act, which is disapplied in relation to knife dealers’ licences by section 44(2) of this Bill. They provide that a justice of the peace or sheriff may grant a warrant authorising entry and search of premises and the seizure and removal of relevant articles. The power is broader than that contained in section 6 of the 1982 Act in that it includes power to seize and remove articles and that authority may be given to an authorised officer of the licensing authority (e.g. a trading standards officer) as well as to a police constable. Section 27F(6) provides that it shall be an offence to obstruct or fail to permit such a search, with a maximum penalty on summary conviction of a fine of up to of level 3 on the standard scale.

98. Section 27G (Power to inspect documents) provides that where it is suspected that unlicensed activity is taking place, police constables and authorised officers of the licensing authority have the power to inspect and copy records held by persons having access to such documents. It is an offence for such persons to fail to produce records or documents requested without reasonable excuse. That offence is punishable on summary conviction with a fine of up to level 3 on the standard scale. Section 5 of the 1982 Act already provides, among other things, a power of entry and inspection in respect of licensed premises.

99. Sections 27J (Forfeiture orders) and 27K (Effect of forfeiture order) provide for the forfeiture of articles where an offender is convicted of offences of dealing without a licence or failure to comply with licence conditions. Following conviction, the court may make a forfeiture order, forfeiting any items seized under warrant or which the offender had at the time of arrest or when cited in respect of the offence. The order deprives the offender of any rights he has in the property. Rights of third parties are protected by the inclusion of provisions for owners of goods to recover them.

100. Section 27L (Offences by partnerships) contains provisions about offences committed by partnerships which supplement the standard provisions of the 1982 Act.

101. Section 27M (Appropriate licence required) and 27P (Duty to avoid conflict between conditions of licences) deal with the interaction between the new knife dealer licensing provisions and the existing provisions on second-hand dealers’ licences in the 1982 Act. Section 27M makes it clear that where a person carries on business as a dealer in second-hand knives etc., then both a knife dealer’s licence and a second-hand dealer’s licence will be required (assuming that the licensing authority requires second-hand dealers’ licences for these classes of item). Section 27P avoids any conflict between the requirements of these licences, effectively providing that the terms of the knife dealer’s licence take precedence.

102. Section 27N (Remote sales of knives, etc.) seeks to deal with remote sales, e.g. by mail order, telephone or internet. The licensing provisions in the 1982 Act are generally based on where the business as a dealer is carried out. While the responsible local authority will therefore be clear in the case of shops, it may be difficult to determine for some remote sales. Section 27N therefore provides that where orders are taken and articles are despatched from separate
103. Section 27Q (Offences in relation to knife dealers’ licences: exceptions) provides a power for Ministers, by order, to provide for exceptions to the new offences created in the Bill and to the existing offences in sections 5 and 7 of the 1982 Act as they relate to knife dealers’ licences.

104. Section 27R (Orders under sections 27A to 27Q) sets out the Parliamentary procedure for the four new order-making powers:

- 27A(6) – power to modify the articles or classes of article for which a knife dealer’s licence is required;
- 27C(1)(a) – power to specify conditions to be attached to a knife dealer’s licence;
- 27K(7) – power to make provision for the disposal of property forfeited under a forfeiture order; and
- 27Q – power to specify exceptions to the offences.

All orders under these powers are to be made by statutory instrument and are subject to negative resolution procedure in the Scottish Parliament.

Section 44 - Knife dealers’ licences: further provision

105. This section makes a number of amendments to the provisions of the Civic Government (Scotland) Act 1982 to accommodate the new licensing provisions inserted by section 43. Section 44(2) disapplies section 6 (powers of entry to and search of unlicensed premises) of the 1982 Act, as alternative provision has been made in new sections 27E to 27H.

106. Section 44(3) increases the penalties for offences set out in section 7 of the 1982 Act:

- Paragraph (a) provides that dealing without a knife dealer’s licence is an offence punishable by imprisonment for up to 12 months or a fine up to the statutory maximum (currently £5,000) or both, or on indictment by imprisonment for up to 2 years or an unlimited fine or both. Paragraph (b) disapplies the general section 7(1) offence which is triable only summarily and for which the maximum penalty is a fine of level 4 on the standard scale (currently £2,500).
- Paragraph (c) provides that a licence holder guilty of failure to comply with a condition attached to a knife dealer’s licence is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale (currently £5,000) rather than the usual maximum fine of level 3.
- Paragraph (d) provides that a person who, in making an application for a knife dealer’s licence, knowingly or recklessly makes a false statement is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale rather than the usual maximum of level 4.
Sale etc. of weapons

Section 45 - Sale etc. of weapons

107. Section 45 inserts new subsections (11A) to (11C) into section 141 of the Criminal Justice Act 1988. Subsection (11A) provides that Scottish Ministers may make an order which provides for exceptions, exemptions and defences to an offence under section 141(1) of the 1988 Act (manufacturing, sale etc. of prohibited weapons). Subsection (11B) provides that any such order need not necessarily apply to all section 141(1) offences but may, for example, make different provisions for different items or circumstances. In terms of subsection (11C), all such orders are subject to affirmative resolution procedure in the Scottish Parliament.

Swords

Section 46 - Sale etc. of swords

108. Section 46 contains new provisions relating to restricting the sale etc. of swords. It adds a new section into the Criminal Justice Act 1988 which is to be read alongside section 141 of that Act. Section 141 contains the power to make restrictions on offensive weapons.

109. Section 141(1) of the 1988 Act provides that any person who manufactures, sells or hires, or offers for sale or hire, exposes or has in his or her possession for the purpose of sale or hire, or lends or gives to any other person, a specified offensive weapon is guilty of an offence. Section 141(4) also prohibits the importation of these weapons. The weapons to which the section applies are specified in the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 (SSI 2005/483), and include knuckledusters, swordsticks, handclaws, stealth knives and push daggers. Antique items are excluded.

110. Section 46(2) of the Bill inserts a new section 141ZA (Application of section 141 to swords: further provision) into the 1988 Act. This new section provides that where Ministers make an order under section 141 directing that it shall apply to swords, they may include provision in the order to modify the effect of section 141. Section 141ZA(3) expands on the power to modify provided by section 141ZA(2) by setting out some of the modifications that may be made. The list of potential modifications in subsection (3) is not exhaustive.

111. Section 141ZA(3)(a) provides that the order may provide for defences to the offences under section 141(1). Section 141ZA(5) provides that the defences may relate to swords in general or to classes of swords.

112. Section 141ZA(3)(b) provides that the order may increase the penalties specified in section 141(1). Currently this section provides that a person found guilty of an offence is liable on summary conviction to imprisonment for a term not exceeding six months and/or to a fine not exceeding level 5 on the standard scale. Subsection (3)(b) allows the order to provide for penalties of up to 12 months imprisonment and/or a fine not exceeding the statutory maximum on summary conviction, or up to 2 years imprisonment and/or an unlimited fine on conviction on indictment.
113. Section 141ZA(3)(c) provides that the order may create an offence where a person acquiring a sword provides false information. This will allow creation of an offence similar to that in section 27D(2) of the 1982 Act (inserted by section 43 of this Bill) where a person gives false information to a knife dealer. However, the offence that may be created by the order is not restricted to the seller being a knife dealer. The maximum penalty which may be provided by the order is specified by section 141ZA(6).

114. Section 141ZA(4) enables Scottish Ministers to make provision in relation to a defence under section 141ZA(3)(a) for authorisation to be granted by Ministers. Such authorisation may be made subject to conditions and breach of those conditions may be made an offence. The maximum penalty which may be provided by the order is specified by section 141ZA(6).

115. Section 141ZA(6) provides that the maximum penalty which may be provided for an offence under the powers granted by sections 141ZA(3)(c) and (4)(c) is 12 months imprisonment and/or a fine of level 5 fine on the standard scale on summary conviction.

116. Section 46(3) amends section 172 (extent) of the 1988 Act to provide that new section 141ZA extends only to Scotland.

SCHEDULE 1: THE PAROLE BOARD FOR SCOTLAND (INTRODUCED BY SECTION 1(5))

Membership

117. Paragraph 1 provides that the Parole Board must consist of a minimum of 5 members, one of whom will be the convener. The members will be appointed by the Scottish Ministers. Paragraph 2 specifies the five categories of person who must be reflected in the Board’s membership.

118. Paragraph 3 allows the Scottish Ministers to make regulations specifying the procedure, including requirements as to consultation, to be followed in appointing members to the Board. The Scottish Ministers must comply with any such regulations. The regulations may make different provisions for different kinds of members.

Tenure of appointments

119. Paragraph 4 and 5 provide that members must be appointed for a period of between 6 and 7 years, though a member will cease to be such as soon as he or she has reached the age of 75.

120. Paragraph 6 provides that if the member who is a Lord Commissioner of Justiciary ceases to hold that office, he or she also ceases to be a member of the Board. Similarly, paragraph 7 provides that if the member appointed as a psychiatrist ceases to be a registered medical practitioner or a psychiatrist, he or she ceases to be a member of the Board.

121. Paragraph 8 provides that a member may resign at any time by giving the Scottish Ministers written notice. Members may also be removed from office under paragraph 14 of this schedule (as explained below), and cease to be a member on the day on which such an order is made.
122. Paragraphs 10 to 12 deal with reappointment. They provide that a member may be reappointed to the Board so long as he or she has not been a member for the previous 3 years and has not previously been reappointed. Members who have previously resigned from the Board can be reappointed, but a person who has been removed from office by virtue of an order under paragraph 14 (as explained below) may not be reappointed.

Carrying out functions

123. Paragraph 13 requires the convener to have regard to the desirability of ensuring that all members are given the opportunity to participate in the Board’s functions on not fewer than 20 days in each successive period of 12 months. The 12 month period begins on the first day of the member’s appointment.

Removal of members

124. Paragraphs 14 to 17 deal with the removal of members from the Parole Board. Members may only be removed from the Board by order of a tribunal constituted under paragraph 16. This is to consist of either a Senator of the College of Justice or a sheriff principal (who will preside over the proceedings), an advocate or a solicitor with at least 10 years’ standing, and one other person who is not an advocate or a solicitor.

125. The tribunal may only act if it has been requested to carry out an investigation by the Scottish Ministers. It may then only order a member’s removal if, following investigation, it finds that member unfit to continue to be a member of the Board by reason of inability, neglect of duty or misbehaviour.

126. The Scottish Ministers may make regulations to enable the tribunal to suspend a member from the Board during the investigation. These regulations may also make provision for the effect and duration of that suspension, and for any other matters pertaining to the tribunal, including the procedure to be followed by and before it, that the Scottish Ministers may deem appropriate.

Remuneration, allowances and other expenses

127. Paragraphs 18 and 19 provide that Board members are to be remunerated for their service and also receive reimbursement of any reasonable expenses incurred in carrying out their duties. Rates of pay and repayment of expenses are determined and paid for by the Scottish Ministers.

Reporting and planning

128. Paragraph 20 provides that the Board must, as soon as practicable after the end of each reporting year (as defined in paragraph 22), submit a report to the Scottish Ministers on the performance of its functions during the year. Paragraph 21 requires that the Board also submit, as soon as practicable at the beginning of each planning period (as defined in paragraph 22), a plan providing details as to how it will carry out its functions and setting performance targets in relation to those functions.
129. Paragraph 22(1) provides that the reporting period is the period beginning when section 1 of Part 1 of this Bill comes into force and ending on the following 31 March, and then each 12 month period ending 31 March.

130. Paragraph 22(2) provides that the planning period is the period beginning when section 1 of Part 1 of this Bill comes into force and ending on the third occurrence thereafter of 31 March, and then each successive 3 year period ending 31 March.

131. Paragraph 23 requires the Scottish Ministers to lay a copy of the annual report and the plan before the Scottish Parliament.

FINANCIAL MEMORANDUM

INTRODUCTION

132. This document relates to the Custodial Sentences and Weapons (Scotland) Bill introduced in the Scottish Parliament on 2 October 2006. It has been prepared by the Scottish Executive to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

133. As the Bill covers two distinct policy areas, custodial sentences and restrictions on the sale of non-domestic knives and swords, this document sets out the details of the costs on the Scottish Administration, costs on local authorities, and costs on other bodies, individuals and businesses for the two policy areas that appear in the Bill.

RELEASE AND POST CUSTODY MANAGEMENT OF OFFENDERS

134. These provisions make a number of changes to the law relating to the release and post custody management of offenders in Scotland. The Bill delivers the Scottish Executive’s commitments to end automatic and unconditional early release of offenders (as provided presently by the Prisoners and Criminal Proceedings (Scotland) Act 1993) and to achieve greater clarity in sentencing. The Bill implements the changes announced in the Executive’s publication Release and Post Custody Management of Offenders, published on 20 June 2006.

135. Public protection is of paramount importance. Reducing re-offending rates can have an impact on the cycle of the same individuals returning to custody. To achieve this requires work with individual offenders. Under the new provisions, sentences of 15 days or more will be managed in a way that combines custody and community parts that will be able to be tailored to the risk of harm posed by individual offenders and to the scope for rehabilitating all offenders. The new arrangements are not intended to affect the range of disposals available to the courts although the courts will, when imposing a sentence of 15 days or more, be required to state the minimum period to be spent in custody for the purposes of retribution (in other words, punishment for the crime) and deterrence.
136. These new measures do not stand alone. They are part of the Executive’s wider programme of reform of the justice system. In criminal justice terms, they will build on the operational offender management structures introduced by the Management of Offenders etc. (Scotland) Act 2005. There will be joint working arrangements, akin to those in the 2005 Act that deal with sex and violent offenders, which will be adapted proportionately to take account of the offence and the sentence. This will ensure sentence management benefits from the greater integration of the activities of criminal justice agencies already underway.

137. The changes have cost implications for the Scottish Prison Service (SPS), the local authorities (in terms of criminal justice social work), the police, the courts and the Parole Board for Scotland. The new process and the cost implications for each stage is discussed in the following paragraphs.

Costs on the Scottish Administration

138. The Scottish Executive currently funds the range of services provided by the Scottish Prison Service, Criminal Justice Social Work Services and the Parole Board for Scotland. Details of current spending levels are provided in the table below.

<table>
<thead>
<tr>
<th>Service</th>
<th>2006/07 £m</th>
<th>2007/08 £m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Prison Service</td>
<td>397</td>
<td>428</td>
</tr>
<tr>
<td>Criminal Justice Social Work Services</td>
<td>94.4</td>
<td>96.4</td>
</tr>
<tr>
<td>Parole Board for Scotland</td>
<td>0.8</td>
<td>0.8</td>
</tr>
</tbody>
</table>

139. The following paragraphs examine the costs that will arise for those bodies for each of the stages of the new custody/community process.

Sentencing

140. The new arrangements will put in place a structure for managing those offenders from the point of sentence. All sentences of 15 days or more will comprise a custody part and a community part. The offender will always be on licence during the community part. The statutory minimum for the custody part will be 50% but this can be increased to 75% by the court (for “punishment” purposes) or at a later stage following a review by the Parole Board on grounds of risk. During the custody part, an offender’s risk and needs will be assessed on a regular basis to ensure that the offender is an acceptable risk to move, on licence, to the community part of the sentence. In the community there will be a range of measures aimed at reducing reoffending and helping offenders rehabilitate.

141. The sentencing provisions set out in Part XI of the Criminal Procedure (Scotland) Act 1995 require that the sentence is pronounced in open court at the time of conviction. The new arrangements will not change that requirement though the court will be required to make an order specifying the extent of the custody part. As this is part of the sentencing process, we do not anticipate that this will place an additional burden on the courts.
142. In 2004/05 there was a total of 2,522 appeals against sentence. The new arrangements could potentially lead to an increase in the number of appeals against sentences. Any increase is almost certain to stem from those offenders who are given more than the 50% minimum custody part. While it is not possible to predict how many appeals against sentence will arise as a result of the new procedures, Scottish Court Service (SCS) is confident that a small increase in numbers should be capable of being absorbed within existing resources. The estimated costs for appeals against sentence are £865, of which £825 is judicial costs and £40 SCS staff costs. A 2% rise in the number of appeals against sentence would result in 50 new appeals at a cost of £43k for the SCS. Appeals against sentence will also impact on the Crown Office and Procurator Fiscal Service and the Scottish Prison Service. It is not possible at this stage to quantify the numbers involved, but any increase would have a corresponding impact on resources.

143. The Custody Part, Risk Assessment and Decision to Release

(i) the number of offenders whose custody part will be more than 50% and by how much; and
(ii) the proportion of offenders referred to the Parole Board on grounds of risk for a possible extension of the court imposed custody part.

This is in the context of current SPS projections of the prisoner population of increases in the order of 200-300 by year 3 rising to 500-600 by year 5.

144. While the new approach to consideration of release is based on risk of harm rather than length of sentence, we only have information on current prisoners and patterns of activity. The flow chart attached at Annex A considers those released in 2005-06. The proxy for “high risk of harm” is based on those convicted and sentenced to more than one year for a sexual or violent offence (and with a history of such convictions). We make the assumption that this group would be referred to the Parole Board to remain in custody beyond the minimum custody part of the combined sentence.

145. Prison numbers will be affected by Parole Board decisions to retain offenders in custody. The current Parole Board data shows the average proportion recommended for parole over the last 5 years was 50.6% with the remainder staying in custody until the current maximum two-thirds point of their sentence. On the basis that this pattern continues, we assume that under the new arrangements half of those (approximately 435 cases) referred to the Parole Board will be able to progress to the community part of the sentence and the other half will remain in custody up to the 75% maximum custody part of the combined sentence.

146. The measures in the Bill provide that if assessments show that there is a likelihood that the offender, if placed in the community at the end of the court imposed custody part would cause serious harm to the public, the case will be referred to the Parole Board for it to consider whether the offender should continue to be detained. In addition to this new function, the Board will continue to deal with offenders sentenced under the 1993 Act.
These documents relate to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

147. The assumptions of this new role for the Parole Board and the consequences of the period of ‘parallel running’ with the 1993 Act are set out below. They are based on costs and throughput contained in the Parole Board Annual Report 2005.

<table>
<thead>
<tr>
<th>Table summarising Parole Board unit costs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cost per:</strong></td>
</tr>
<tr>
<td>Prisoner interview</td>
</tr>
<tr>
<td>Case considered at meeting</td>
</tr>
<tr>
<td>Tribunal</td>
</tr>
</tbody>
</table>

148. In 2005, the Board considered the cases of 764 offenders sentenced to 4 years or more who became eligible for consideration for parole between the half-way and two-thirds stage of sentence (under present arrangements in the Prisoners and Criminal Proceedings (Scotland) Act 1993, Scottish Ministers are obliged to refer these case to the Board). The cost of this process in 2005 was £208k. For information: 363 (47.5%) of the 764 cases were recommended for parole on the first or subsequent consideration of their case by the Board. The remainder would be eligible for release at the two-thirds point of sentence.

149. The Board’s 2005 Annual Report also provides the information that there were 186 life prisoner Tribunals and 32 extended sentence prisoner Tribunals in 2005. The cost for these was £190k (218 Tribunals x £871).

150. Consideration of release under the 1993 Act arrangements in 2005 was therefore £398k in total.

151. Under the new proposals, continued detention will be considered by a Tribunal (as is the case presently with life sentence prisoners). The Parole Board Rules will be amended to require the Tribunal to reach a unanimous decision in every case. This will enable Tribunals to comprise in the future 2 Board members (at present it consists of 3). The Chair will still be a “legal” member. The effects of a two member Tribunal should reduce the costs per Tribunal by around £250 (a lay member’s fee and a pro rata reduction in travel and subsistence) from £871 to £621.

152. Under the new proposals, and based on the figures contained in the flow chart at Annex A and in paragraph 148, it is estimated that some 870 offenders in total will be referred to the Board for consideration for continued detention. This figure assumes that 50% of those in Group 4 and all of those in Group 5 will be referred. The cost for considering these at a Tribunal will be around £540k (870 x £621).

153. The 186 life prisoner Tribunals and 32 extended sentence prisoner Tribunals (paragraph 149) will cost £135k under the new arrangements (218 Tribunals x £621).

154. Consideration of continued detention under the new arrangements is therefore £675k. The difference between the current and the new arrangements is an additional £277k.

155. As mentioned above, there will be a period of parallel running with the 1993 Act arrangements once the new arrangements are introduced. To begin with the majority of the Board’s work will continue to be with those sentenced under the 1993 Act. Over a period of
time, however, this ‘wedge’ will reduce and the balance of work will shift to dealing with cases referred under the new arrangements.

156. Offenders appearing before the Parole Board sitting as a Tribunal are presently entitled to assistance by way of representation. Under the new arrangements, offenders whose cases are being considered for further detention would require a tribunal-type arrangement which would entitle them to legal aid. Paragraph 152 estimates that the Parole Board will consider something in the region of 870 cases per year. As an indicative cost, the average cost for a life sentence prisoner Tribunal (in legal aid terms) is £707 per case. This results in an estimated total cost of £612K. These costs are likely to start feeding through in years 2 – 3. The legal aid costs for these tribunals would be funded entirely from the Executive through the Scottish Legal Aid Board.

157. The Bill requires assessment of the risk of harm to apply to all those sentenced to 15 days or more. The Scottish Prison Service (SPS) has developed an Integrated Case Management (ICM) system. It currently applies only to offenders subject to post-release supervision, i.e. those sentenced to 4 years or more, sex offenders sentenced to 6 months or more, offenders on extended sentences and offenders serving life sentences (in total about 3000 a year). It provides for the compilation of information relating to offending track record, risk and needs of each offender, assessment, initial interviews with each prisoner, social work input and integrated case conferences for each offender. Some offenders may require specific psychology reports or specialist assessment. The proposals in the Bill will require a similar system to apply to all those whose sentence will be managed through custody and community – in effect 9,241 admissions to custody.

158. An analysis of the current ICM costs shows that each 1,000 extra offenders receiving ICM requires 18-19 staff + associated costs. This cost will be higher at smaller prisons. The cost per 1,000 prisoners is estimated at £560k a year. SPS estimate the costs from these proposals at £5-6m a year. These costs will increase in line with increased population projections. In addition we have estimated the cost of the local authority component of the risk assessment process as being in the region of £500k, bringing the joint additional cost of the sentence management and risk assessment process to £5.5-6.5m. It is anticipated that the need for, and extent of, supervision by criminal justice social work services of individual offenders will be largely determined by the joint assessment by SPS and local authorities of the risk of serious harm to the public the offender is likely to present on release.

159. In addition, there are certain central one-off costs associated with such a large-scale change, such as the IT costs associated with providing extra processing capacity. These are estimated at £200k, using the introduction of ICM as a guide. These funds are required to pay for the step change in server and IT processing capacity represented by the increase in the number of new offenders requiring the service.

Transition to the Community

160. The Executive currently provides direct funding to local authorities for delivery of community-based supervision of offenders by criminal justice social work services. Funding covers a range of services including the preparation of reports for courts, delivery of community
disposals and the statutory supervision and voluntary assistance to offenders on release from custody. The throughcare budget for offenders released from custody amounts to £9.3m for 2006-07. This covers the cost of statutory supervision of those released from custody on licence/order, including the social work input to the Integrated Case Management System (150) during the custody part of the sentence and expenditure on voluntary throughcare where requested by those offenders not subject to statutory supervision on release. In addition it meets the cost of the throughcare addiction service for those offenders facing drug related difficulties on release and the cost of reports required by the Parole Board and SPS.

161. In relation to the community, the proposals would see all offenders (except the few on short sentences of less than 15 days) being subject to a custody and community sentence. When the offender moves to the community part of the sentence he/she will be subject to licence conditions and supervised, where necessary, by criminal justice social work services. At present, statutory supervision is mainly limited to those sentenced to over 4 years in custody (and since February 2006 sex offenders who receive a sentence of 6 months or more). The costs to local authorities would therefore come from the much higher numbers of offenders subject to some form of community intervention or supervision during the community part of the combined sentence. There would also be some extra costs resulting from the additional number of risk assessments and from the need to continue the support services, such as drug treatment provided in the prisons into the community, to make best use of the new approach.

162. Based on the latest figures (2005-06), it is estimated, when account is taken of those currently subject to statutory supervision requirements on release, that the new arrangements would result in an additional 8,600 offenders per annum moving from the custody part of their sentence to the community part on licence. The licence period for these offenders will vary between 8 days and 2 years, during which period they will be liable to recall to custody if in breach of the terms of their licence. Of the additional 8,600 offenders who will be subject to licence conditions, over 50% serve sentences of between 15 days and less than 6 months with a resulting licence period of between 8 days and 3 months. The remaining group, which is estimated to number 3,700, is split roughly equally between those sentenced to between 6 months and less than 12 months in custody and those sentenced to 12 months and less than 4 years in custody.

163. For supervision to have any meaningful impact existing social work practice experience suggests that a minimum supervision period of 3 months in the community is essential. While those subject to combined sentences of 6 months or less will not routinely be subject to supervision, they will nevertheless be released on licence for the remainder of their sentence with the prospect of recall to custody for those failing to comply with their licence conditions. Those whose sentences will attract the combined structure approach and who have been sentenced to between 6 months and 4 years will receive varying levels of supervision in the community as indicated by the risk assessment. Those offenders sentenced to 4 years and more and sex offenders sentenced to 6 months or longer, i.e. those currently subject to statutory supervision requirements on release, will continue to be subject to mandatory statutory supervision requirements.

164. The cost of supervision is principally determined by the amount of contact between the supervising officer and the offender. Current figures suggest that the annual unit cost of delivering statutory supervision is approximately £3,200 which equates in broad terms to
60 hours input by the supervising social worker. We are anticipating that for the additional group of 3,700 offenders who would become eligible to receive some form of supervision on release as part of their combined sentence, there should be an average of 40 hours input at a cost of £2,000 per offender, to cover work in prison and in the community. The overall additional cost of providing supervision to all offenders serving a combined sentence of 6 months and over is therefore estimated to cost a maximum of £7.45m.

165. In certain instances, local authorities may decide to commission voluntary organisations to deliver all or part of the supervision aspects of an offender’s licence. Where this occurs, the resource consequences would be contained within the additional maximum figure of £7.45m for local authorities set out above.

166. It will also be open to the Scottish Ministers and to the Parole Board to impose a licence condition of electronic monitoring at a cost of up to £1,000 per offender per month. We have assumed that this might be necessary for a 3 month period to aid reintegration for 10% of the extra 3,700 offenders sentenced to between 6 months and 4 years, at a cost of an extra £1.1m. This cost would fall to the Scottish Executive to meet through its contractual arrangements with the private sector contractor.

167. Criminal justice social work services will continue to be funded directly by the Scottish Executive through section 27A of the Social Work (Scotland) Act 1968. From April 2007, funding will be directed to community justice authorities, which have responsibility for distributing funds to constituent local authorities according to the area partnership plan. Local authorities, therefore, would not require to incur additional costs from within their overall budgets since the Scottish Executive will fully reimburse the community justice authorities the cost of the community component of the new arrangements.

**Breaches of licence and recall to custody**

168. The Police are responsible for preventing crime, keeping the peace, protecting and reassuring the community, upholding the law firmly and fairly and pursuing and identifying those who break the law. Within this context, the police will be advised when an offender is released on licence under the terms of the Prisoners and Criminal Proceedings (Scotland) Act 1993. There are 2 activities for the police in relation to licensees: enforcing recall orders issued by the Scottish Ministers and advising the Scottish Ministers of possible criminality.

169. The police’s role will not change under the new arrangements. As mentioned at paragraph 162, however, modelling shows that the new arrangements might result in 8,600 offenders per annum serving part of their sentence on licence in the community. It should be noted, though, that these are not new offenders; under the current arrangements they would still be in the community though not subject to licence conditions. Applying licence conditions to this group of offenders will allow the police, if required, to take action if necessary which could result in individuals being returned to custody without the need to process matters through the courts, thus helping to reduce reoffending and acting in the interest of public safety. Assuming a 15% breach rate serious enough to involve return to custody under the new arrangements would mean a rise in potential recalls of 1,290 cases. Any additional burden will stem from an increased volume of recall orders requiring enforcement and a rise in the volume of Police Reports needing to be
forwarded to the Scottish Executive Justice Department’s Parole and Life Sentence Review Division. The Association of Chief Police Officers in Scotland estimate that this will result in an additional cost on police of £31k.

170. Currently, those who have been released from a life sentence, from a sentence of over 4 years, from an extended sentence of less than 4 years, or who are sex offenders serving a sentence of more than 6 months, have licence conditions attached to their release. Breach of those can result in a recall to custody. The average number in prison in 2005-06 per day who had been recalled was 400. There were 2,500 prisoners per night on average who were eligible for recall conditions, 16% of this long-term prisoner group. The long-term prisoner group may not however be a good guide to the recall rate for short-term prisoners.

171. Considering these factors leads to a tentative conclusion that most of those in Group 3 of the flow chart and 75% of those in Group 4 (the others are already currently covered by licence conditions) will breach the terms of that supervision and return to custody. It is estimated that a small percentage of those in Group 2 will breach their conditions although they are not included in the population estimates as the numbers are thought to be low. We are assuming for this exercise that no-one in Group 1 commits a breach serious enough to result in recall for any statistically significant period of time.

172. Breach rates will also impact on the Parole Board by increasing the number of cases for consideration of re-release. In certain circumstances recalled offenders may be offered the opportunity to state their case at an oral hearing\(^1\) (a tribunal-type arrangement); otherwise the case will be considered by the Board at one of its meetings.

173. In 2005, 365 cases (253 determinates, 32 extendeds, 32 lifers and 48 cases recalled directly by Scottish Ministers) were referred to the Board for consideration of recall to custody. Consideration of whether or not to recall these cases would have cost £50k (365 cases – 48 recalled by Scottish Ministers = 317 cases x £157 per case (see para. 147)). The proposals transfer the duty to recall offenders to custody to the Scottish Ministers (PLSRD) which would reduce the Parole Board costs by £50k.

174. Of the cases referred, 265 (73%) comprising 214 determinates, 35 extendeds and 16 lifers were recalled to custody (the other 27% received warning letters or other disposals). The cost for considering the 214 determinate cases at a Board meeting would have been £34k. The 48 extended and life sentence cases would have been dealt with at a Tribunal at a cost of £42k. In addition, 7 cases included an oral hearing at a cost of £6k. The overall cost to the Board of consideration of re-release would have been £132k.

175. 9,241 offenders sentenced to 15 days or more were released from prison in 2005/06. Based on the foregoing assumptions, it is estimated that an additional 396 cases (5% of Group 2 + 15% of Group 3 + 15% of ¾ of Group 4) for consideration of re-release will arise. This group will be made up of combined sentence offenders, some of whom will have received extended sentences.

\(^1\) In the recent cases of *R v Parole Board (England and Wales)* *ex parte Smith and West*, the House of Lords held that the common law requirement of fairness required that, in effect, recalled determinate sentence offenders should, in certain circumstances, be offered an oral hearing before the Parole Board decides the case for re-release.
Working from the numbers provided at 166 we make the assumption that 14% of this group will be extended sentence prisoners whose continued detention will require to be heard by a re-release tribunal.

176. Following the decision in R v Parole Board (see footnote) the Board held oral hearings for recalled determinate sentence offenders for the first time during 2005. When considering cases for re-release, the Board predicts a rise in oral hearings from 2% at present to 10% with the remaining 90% of cases being dealt with at Board meetings. The expected increase is based on the number of oral hearings held during this year to date. The combined costs arising from these additional numbers is set out in the table below.

<table>
<thead>
<tr>
<th>396 additional recalls</th>
<th>Oral hearings</th>
<th>Board meeting</th>
<th>Tribunal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>341 combined sentence</td>
<td>34</td>
<td>341</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>55 combined sentence extended</td>
<td>-</td>
<td>-</td>
<td>55</td>
<td>-</td>
</tr>
<tr>
<td>Cost</td>
<td>£21k</td>
<td>£54k</td>
<td>£34k</td>
<td>£109k</td>
</tr>
</tbody>
</table>

177. The saving of £50k mentioned at 165, offset against the additional costs in the table above means an additional cost of £59k.

178. The main cost of continued imprisonment beyond the court imposed custody part is therefore the difference between the current prison projections and the new population estimates arising from these assumptions including breach rates. This is 100 extra prisoners in year 1, rising to 700 by year 3 and 900 after 4 years. It seems reasonable to include a range of assumptions for prisoner numbers which can run from a minimum estimate (taking account of all contributory factors) through a more likely level to a top end estimate that would apply within a reasonable timeframe. This allows for consideration of peaks in daily population rates (sometimes 5% over average) and increases in the trend of imprisonment. This suggests that the range should be between 700 and 1100 additional places. Based on £40k per prisoner place, the cost of custody for the minimum of the range (700) is £4m in the first year rising to £28m by year 3. SPS estimate that these additional offenders will result in an additional ongoing cost of £5m a year e.g. for court attendance, transfer between prisons, etc.

179. To ensure ECHR compliance, adequate additional capacity will need to be provided to match growth in prisoner numbers. 700-1100 additional prisoners, over and above the current projected increase, would be likely to cost £28-44m per year (based on £40k per prisoner place). In addition, depending on how these places are provided and whether the new places are on or off the balance sheet there is a demand for capital. This can include elements such as reversionary interest\(^2\) for off-balance-sheet provision, capital for on-balance-sheet provision and

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\(^2\) Privately-managed prisons operate under contract over a 25 year period and SPS pay the contractor for the Prisoner Places provided over this period. Such payment includes the operating cost of the service and the cost of providing the (building) asset which will transfer to SPS (at nil cost) at the end of the contract period. Because the expected life of the buildings (60 years) exceeds the contract life (25 years), the accounting rules require SPS to recognise the net book value (NBV) of the asset at the end of the 25 year contract period at the commencement of the contract. This NBV is calculated as 35/60ths of the original cost of the asset which is then discounted back to the start of the contract period using the defined discount rate (3.5%). Over the contract period, this discounted NBV is increased annually by removing one year of discounting.
These documents relate to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

sums such as land acquisition (SPS would need £1-2m for acquisition of land). These sums will depend on future decisions about the precise implementation route and range from £25-162m as shown in the attached table.

Costs on local authorities

180. No additional costs will have to be met by local authorities. While criminal justice social work is delivered by local authorities, as described at paragraph 167 they would not require to incur additional costs from within their overall budgets since the Scottish Executive will fully reimburse the community justice authorities the cost of the community component of the new arrangements.

Costs on other bodies, individuals and business

181. There are no costs on other bodies, individuals or business.
These documents relate to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

Table summarising recurring and non-recurring costs against bodies (note: 1. recurring cost increases due to potential increases in prisoner numbers; 2. there are no savings for any of the bodies concerned.)

<table>
<thead>
<tr>
<th>£m Custodial Sentences</th>
<th>Year 1</th>
<th>Year 5</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Recurring costs</td>
<td>Non-recurring costs</td>
</tr>
<tr>
<td>Scottish Administration</td>
<td>14.84</td>
<td>i. 25.2-37.2</td>
</tr>
<tr>
<td>Of which: SPS*</td>
<td>9.5</td>
<td>i. 25.2-37.2</td>
</tr>
<tr>
<td>Continued detention and recall to custody (178)</td>
<td>4.0</td>
<td>-</td>
</tr>
<tr>
<td>Risk Assessment (157-159)</td>
<td>5.0</td>
<td>0.2*</td>
</tr>
<tr>
<td>Escorting (178)</td>
<td>0.5</td>
<td>-</td>
</tr>
<tr>
<td>Land Acquisition (179)</td>
<td>-</td>
<td>2.0</td>
</tr>
<tr>
<td>i. PPP reversionary interest* (179)</td>
<td>-</td>
<td>23-35</td>
</tr>
<tr>
<td>ii. Public Sector Capital (179)</td>
<td>-</td>
<td>100-160</td>
</tr>
<tr>
<td>Criminal Justice Social Work (160-167)</td>
<td>4.1*</td>
<td>-</td>
</tr>
<tr>
<td>Courts (141-142)</td>
<td>0.04</td>
<td>-</td>
</tr>
<tr>
<td>COPFS (142)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Police (168-169)</td>
<td>0.03</td>
<td>-</td>
</tr>
<tr>
<td>Scottish Executive</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Parole Board</td>
<td>0.06</td>
<td>-</td>
</tr>
<tr>
<td>Detaining in custody (146-156)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Recalls (170-177)</td>
<td>0.06</td>
<td>-</td>
</tr>
<tr>
<td>Scottish Legal Aid Board (156)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Electronic Monitoring (166)</td>
<td>1.11</td>
<td>-</td>
</tr>
<tr>
<td>Other bodies</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>14.84</td>
<td>i. 25.2-37.2</td>
</tr>
</tbody>
</table>

* Range represents costs against 700-1100 prisoners
* IT development
* figures against i. and ii. represent different scenarios: i. the new prison/s cost if private sector and ii. the new prison/s cost if public sector
* figure based on assumption that it will take 3 months to get things up and running-hence calculation for 9 months costs in the first year.
RESTRICTIONS ON THE SALE OF KNIVES AND SWORDS

Background

182. Part 3 of the Bill introduces new provisions in relation to restrictions on the sale etc. of swords and other weapons and establishes a mandatory licensing scheme for the sale of non-domestic knives, swords and similar weapons. Full details of the background, objectives and effect of the Bill’s provisions can be found in the accompanying Policy Memorandum and in the preceding Explanatory Notes (supplemented by the Delegated Powers Memorandum).

Costs on the Scottish Administration

183. While the Bill makes provision for the creation of new offences relating to the sale etc. of swords and in relation to knife dealers’ licences, we expect that there will be relatively few offences prosecuted in the courts and that a sentence of imprisonment will be the result in only exceptional cases. This is based on experience of other licensing regimes under the Civic Government (Scotland) Act 1982, where compliance is generally good, and we have no reason to suggest that knife dealers will be any less respectful of the law. In 2004/05 there were 142 convictions for offences against any of the licensing provisions, all of which resulted in a fine, caution or admonition.

184. While the introduction of the new licensing scheme and offence provisions will lead to some increase, this may be compared with over 3,400 convictions for weapon carrying offences in the same period. The main objective of Part 3 of the Bill is to place new restrictions on the availability of swords, non-domestic knives and similar articles; thereby helping to prevent these weapons falling into the wrong hands. If the provisions achieve that objective in only a handful of cases then any additional costs arising from the swords and knives provisions in this Bill for the courts or prison service (and the police – see below) are likely to be balanced by a reduction in their costs for dealing with weapon carrying offences.

185. Indeed, if the Bill is successful in limiting the extent to which swords and non-domestic knives fall into the wrong hands, it will lead to a reduction in the prevalence of knife or sword carrying and thus the number of possession offences and other incidents of knife-related violence. This could lead to a reduction in the police, prosecution and court resources needed to deal with these offences and a reduction in the cost to the health service of dealing with the consequences of knife-related violence. However, it is not possible to estimate at this stage the scale of these effects.

Costs on Local Authorities

186. While local authorities will incur costs in relation to the operation of the licensing scheme, both in processing applications for licences and in enforcement, these costs will be recoverable through licence fees. Local authorities will also have the flexibility to specify licence conditions appropriate to their locality and to the circumstances of individual businesses. The costs of administering the new licences are likely to be marginal, since they will make use of the systems already established under the Civic Government (Scotland) Act 1982 for licensing other activities.
187. As with other licensing schemes, local authorities will have significant discretion regarding the operation and enforcement of the knife dealers licensing scheme and hence the associated costs. Local authorities will also be able to determine appropriate fees for licence applications, in order to implement the principle of cost recovery. The exact cost of the scheme will therefore be a matter for individual local authorities but the scheme should be cost-neutral overall with respect to local authorities. COSLA’s response to Tackling Knife Crime – A Consultation strongly supported this approach (see the section of the Policy Memorandum dealing with consultation).

188. While the costs of a licensing scheme will be a matter for individual local authorities, bearing in mind the circumstances of their locality, some indication of the range of likely costs may be obtained from the cost of obtaining a licence under the various other schemes currently in operation. However, this can only provide a very rough guide as the discretion available to local authorities means that costs vary significantly from scheme to scheme and between local authorities. Examples of the rates currently charged by councils for existing licences is available on the websites of Aberdeen, Angus, Borders, Clackmannanshire, East Renfrewshire, Edinburgh, Glasgow, Moray and North Lanarkshire Councils3.

Costs on Other Bodies, Individuals and Businesses

189. As is made clear above, responsibility for monitoring and enforcement of the licensing scheme will fall on trading standard officers employed by the local authorities rather than on the police. It is envisaged that the need for police involvement will mostly be limited to support of local authority activity in instances where there is a risk of public disorder and it is anticipated that such instances will be rare. The Bill will also provide the police with powers of entry and search (upon obtaining a warrant) which will enable them to act on intelligence received from other sources which give them reason to suspect that a dealer is carrying out unlicensed activity or is failing to comply with licence conditions. This will enable intervention at an earlier stage than at present and the associated costs are likely to be lower than the costs of detecting offences and enforcing the law post-sale. As noted above, any reduction in the prevalence of knife or sword carrying and incidents of knife-related crime arising from the new restrictions on the availability of swords and non-domestic knives provided for in the Bill could produce savings for the police. The enforcement issues associated with the sale of swords and non-domestic knives are being considered by the short life working group on knives and offensive weapons established by the Executive’s Violence Working Group. ACPOS are represented on both groups.

3 http://www.aberdeencity.gov.uk/ACCI/web/site/Licences/RM/lic_Licensing_Home.asp
http://www.angus.gov.uk/services/view_service_detail.cfm?serviceid=1086%a1
http://www.scotborders.gov.uk/life/applyingfor/licences/5249.html
http://www.clacksweb.org.uk/regulation/licensing/fees/
http://www.edinburgh.gov.uk/internet/Attachments/Internet/Business/Licensing/licenses/Fee%20List/fee_list_2006.pdf
http://www.northlan.gov.uk/business+and+employment/licensing/licensing+fees/miscellaneous+licensing+fees.html
http://www.renfrewshire.gov.uk/wps/portal/?utf8/s7_0/A%70/7_0/0/376/cmd/ad/ar/sa/fireAptrixPortletAction=6_0_2E6/ce7_0/4VE/p/5_0/4FQ.d/57PC7_0/4VE_aptrixPortletAction=UpdateAptrixPortletContext&WCM_Context=http://ilwwcm.renfrewshire.gov.uk/ilwwcm/publishing.nsf/Content/Navigation-cs-BusinessLicenceHomepage
190. The main financial burden will fall on businesses who continue to sell swords, non-domestic knives and similar weapons. The balance of responses to Tackling Knife Crime – A Consultation suggested that costs for business were reasonable (see the section of the Policy Memorandum dealing with consultation). The main cost will be the annual licence fee (see above). Businesses which sell swords or knives should already have procedures in place to ensure that they comply with the provisions on minimum age of persons to whom a knife etc. may be sold, recently amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006. The licensing scheme will place some additional demands on businesses e.g. in respect of record keeping and storage of items to comply with licence conditions, but the cost of compliance will depend on the precise conditions in the licence set by the local authority. Any licence conditions would have to be reasonable, proportionate and should not jeopardise the continuing operation of the business. Local authorities will also have the flexibility to specify licence conditions appropriate to their locality generally and to the circumstances relevant to individual businesses. Similarly, the new powers in relation to restrictions on the sale etc. of swords, will, once exercised by Scottish Ministers, require businesses to extend their current procedures to verify the age of a purchaser to include confirmation of the purchaser’s intended purpose for the weapon to confirm that a transaction is lawful.

191. The knife dealers licensing scheme relates only to businesses who sell to the public and does not apply to businesses selling only to the trade or professionals. The effect of this is that the requirement to hold a licence should apply at only the final stage in the chain between manufacturer and end customer. This reduces the impact on business.
22,520 liberations into the community from prison in 2005/06

12,972 remand, fine defaulters and sentences of 14 days or less – no risk assessments or community disposals

9,241 determinate prisoners sentenced to 15 days or more are risk assessed as follows

307 life sentenced, recalls and other prisoners treated in the same way as before

What is the prisoner’s sentence length?

15 days to less than 6 months

Is the prisoner a current or previous sex offender or has a main crime which is one of violence or indecency?

NO

Group 1: 4,656 liberations. Classified as the lowest risk prisoners they will be subject to licence restrictions in the community

YES

Group 2: 1,964 liberations. Classified as low risk prisoners, they will be subject to licence restrictions in the community.

6 months to less than 1 year

Is the prisoner a current or previous sex offender or has a main crime which is one of violence or indecency?

NO

Group 3: 1,293 liberations. Classified as medium risk prisoners, they will receive intervention in the community.

YES

1 year to less than 4 years

Is the prisoner a current or previous sex offender or has a main crime which is one of violence or indecency?

NO

Group 4: 925 liberations. Classified as high risk prisoners, they will receive supervision. May refer some to Parole Board. Intensive intervention in the community.

YES

4 years and over

Is the prisoner a current or previous sex offender or has a main crime which is one of violence or indecency?

NO

Group 5: 403 liberations. Classified as very high risk prisoners. They will be referred to the Parole Board. Intensive intervention in the community.

YES
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

192. On 2 October 2006, the Minister for Justice (Cathy Jamieson MSP) made the following statement:

“In my view, the provisions of the Custodial Sentences and Weapons (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

193. On 29 September 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Custodial Sentences and Weapons (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
INTRODUCTION
1. This document relates to the Custodial Sentences and Weapons (Scotland) Bill introduced in the Scottish Parliament on 2 October 2006. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 80–EN.

POLICY OBJECTIVES OF THE BILL - GENERAL
2. The Custodial Sentences and Weapons (Scotland) Bill contains provisions on two broad policy areas: provisions on custodial sentences and provisions relating to knives and swords.

3. Parts 1 and 2 of the Bill contain provisions relating to custodial sentences. These provisions deliver the Scottish Executive’s commitments to end automatic and unconditional early release of offenders (as provided presently by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended)) and to achieve greater clarity in sentencing. The policy is described in detail in the Executive’s publication Release and Post Custody Management of Offenders¹, published on 20 June 2006. These parts of the Bill are considered in detail at paragraphs 6-58 of the Policy Memorandum.

4. Part 3 of the Bill contains provisions relating to non-domestic knives and swords. The objective of this part of the Bill is to put in place safeguards which will help to prevent these potentially dangerous weapons falling into the wrong hands. The Bill therefore provides for the introduction of new restrictions on the sale of non-domestic knives and swords. These provisions are part of the Executive’s reform of knife crime law and are a vital component of a wider package of measures designed to tackle knife crime and violence more generally. This part of the Bill is considered in detail at paragraphs 59-117 of the Policy Memorandum.

5. The effects of the Bill on equal opportunities, human rights, island communities, local government, sustainable development etc are considered in detail at paragraphs 118-136 of the Policy Memorandum.

¹ http://www.scotland.gov.uk/Publications/2006/06/20120843/0
CUSTODIAL SENTENCES

Policy Objectives

6. The objectives of Parts 1 and 2 of the Bill are twofold. In practical terms, the provisions will end the current system of automatic and sometimes unconditional release and replace it with a new management regime for custodial sentences that will:

- Provide a clearer, more understandable system for managing offenders while in custody and on licence in the community.
- Take account of public safety by targeting risk.
- Have victims’ interests at its heart.

Through this process we intend to enhance public protection, reduce re-offending and increase public confidence in the justice system in a way that will fulfil society’s expectations for punishment and deterrence.

Background

7. Public protection is of paramount importance. Reducing re-offending rates can have an impact on future levels of crime. To achieve this requires work with individual offenders. Under the new provisions, sentences will be managed in a way tailored to the risk of harm posed by individual offenders and to the scope for rehabilitating all offenders. The new arrangements are not intended to affect the range of disposals available to the courts although the courts will, when imposing a sentence of 15 days or more, be required to state the minimum period to be spent in custody for the purposes of retribution (in other words, punishment for the crime) and deterrence.

8. A transparent sentencing regime will improve public confidence in the criminal justice system. Victims in particular need transparency and certainty to help them come to terms with a crime and its aftermath. The lack of clarity in the current arrangements can lead to confusion and cause further distress at a traumatic time.


10. The Commission’s report contained 11 recommendations for a new regime, the basis of which would:

\(^2\) [http://www.scottishsentencingcommission.gov.uk/publications.asp](http://www.scottishsentencingcommission.gov.uk/publications.asp)

\(^3\) [http://www.scottishsentencingcommission.gov.uk/publications.asp](http://www.scottishsentencingcommission.gov.uk/publications.asp)
This document relates to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

- make a substantial contribution to the promotion of public confidence in the criminal justice system;
- be expressed in clear statutory provisions that are easy to understand;
- enable the punishment of offenders in a manner proportionate to the gravity of their offending;
- so far as possible promote the rehabilitation and resettlement of offenders;
- promote the deterrence of offenders from further offending and contribute to the deterrence of would-be offenders from becoming involved in crime; and
- improve the protection of the public.

Summary of Key Proposals

11. The Bill will provide for the following:

- For sentences of 15 days or more, a combined sentence management structure comprising a period in custody (the custody part) which will be a minimum 50% of the sentence and a period on licence in the community (the community part). The courts will set the custody part when passing sentence.
- The courts will have the power to increase the custody part (up to a maximum of 75%) at the time of sentence for the purposes of retribution and deterrence (punishment).
- The courts will explain the consequences of the combined structure when imposing the sentence.
- An offender’s risks and needs will be reviewed during the custody part. If there are indications that the offender still presents a risk of serious harm to the public at the end of the custody part (provided that this is not the maximum 75%), the case will be referred to the Parole Board for Scotland to consider whether or not the offender should continue to be detained in custody on grounds of risk. The Parole Board cannot order an offender to be detained beyond the period imposed by the court.
- The community part will be a minimum 25% of the sentence. The offender will be on licence throughout the duration of the community part. Conditions will be attached to the licence to allow for a variable and flexible package of measures and obligations that the offender must meet.
- Serious breaches of licence conditions which show that the offender is an unacceptable risk to public safety will result in the offender being recalled to custody.
- For sentences of less than 15 days the offender will spend the full period in custody and will be released unconditionally.
- The statutory provisions that support the Parole Board for Scotland will be amended to reflect its revised role and functions under the new arrangements.

12. These new measures do not stand alone. They are part of the Executive’s wider programme of reform of the justice system. In criminal justice terms, they will build on the operational offender management structures introduced by the Management of Offenders etc. (Scotland) Act...
2005. There will be joint working arrangements, akin to those in the 2005 Act that deal with sex and violent offenders, which will be adapted proportionately to take account of the offence and the sentence. This will ensure sentence management benefits from the greater integration of the activities of criminal justice agencies already underway.

13. The new measures are a radical departure from the current arrangements. An appropriate operational framework, which will build on the integration work already begun, will be put in place to ensure that the new measures have maximum impact in terms of reducing reoffending and enhancing public protection. Work on planning for the delivery of the new processes is already underway.

**Key Information**

14. The provisions in the Bill are for offenders who are given a determinate sentence. The arrangements for life prisoners will not change and are re-enacted in the Bill. Offenders subject to the 1993 Act requirements at the time of being sentenced will be dealt with under those provisions until their sentence expires.

**Combined structure**

15. There will be a system for managing the offender’s sentence covering both the custody part and the community part of the sentence. This combined structure approach will apply to all sentences of 15 days or more and will allow for better tailoring around the risk of serious harm posed and the individual’s needs. The implications of the sentence will be explained at the time it is imposed. The statutory minimum for the custody part will be 50% but this can be increased up to 75% by the court for “punishment” purposes. The custody part can also be increased at a later stage following review by the Parole Board for Scotland on grounds that the offender still poses a risk of serious harm to the public.

16. Once an offender has served the custody part he/she will move on licence to the community part of the sentence. Conditions will be attached to the licence to reflect the offender’s risk and needs and to ensure better reintegration into the community to enhance public protection and reduce reoffending. Serious breaches of a community licence condition could see the offender returned to custody for the remainder of the sentence.

17. The Bill provides that Scottish Ministers may, by order, vary the minimum sentence length to which the combined structure applies.

**Custody part**

18. The minimum custody (“punishment”) part that the court can order is 50% of the sentence; the maximum is 75%. The Bill sets out the factors that the court can take into account when increasing the custody part beyond 50% of the sentence. The custody part can be appealed both by the offender and the Crown (for unduly lenient sentences). Scottish Ministers may, by order, vary the proportion that the statutory minimum custody part bears to the total sentence.

19. During the custody part, the risk of serious harm to the public that an offender may pose will be assessed on a regular basis as part of the sentence management process. There will be
provision for joint working arrangements between Scottish Ministers (in practice the Scottish Prison Service) and the Local Authorities to enable the appropriate risk assessment and risk management processes to be set up. The level of the joint working and the assessment required will be proportionate to the nature of the crime and the length of the sentence. Risk will be assessed on the basis of up-to-date sentence management information compiled with input from the relevant bodies with responsibility for managing the offender and the sentence. This will include previous convictions, response in custody (including interventions aimed at reducing the risk of reoffending), and the offender’s plans when placed in the community. As the offender is in custody at this point, provision is made for the Scottish Ministers to refer potentially high risk offenders to the Parole Board for Scotland to review the case for continued detention on grounds of risk of serious harm to the public.

**Detaining the prisoner beyond the court imposed minimum custody part**

20. Assessment of whether an offender’s risk makes him/her suitable to move to the community part will be made against the test of the risk of serious harm to public safety. This assessment will take account of a variety of factors including the nature and likelihood of reoffending. Information about an offender’s risk will be compiled, as appropriate, under the processes to be set up for joint working while the offender is in custody. Assessments and planning will be carried out by the Scottish Ministers with input from the local authority criminal justice social work services. If the assessment shows that there is a likelihood that the offender, if placed in the community at the end of the custody part, would cause serious harm to the public, the case will be referred to the Parole Board for it to consider the case for continued detention.

21. Where a case is referred to the Parole Board it may, in effect, either direct that the offender continues to be kept in custody or direct that the offender moves to the community part of the sentence. If the offender moves to the community part, Scottish Ministers must place the offender on licence. The Parole Board will direct Scottish Ministers to attach conditions to the offender’s licence that it considers appropriate to the circumstances of the offence and the offender including supervision by a local authority criminal justice social worker until the end of the sentence.

22. If the Parole Board considers that the offender would be a risk of serious harm, it will not direct that he or she progresses to the community part. If there are still more than 4 months remaining before 75% of the custody period elapses, the Board will look at the case again. Four months is the minimum period of time in which it is considered that an offender can make a meaningful change to the status of his or her risk. The maximum period between reviews will be 2 years. Where the offender has less than 4 months remaining before 75% of the custody part elapses, the Parole Board will not look at the case again, but instead will specify conditions to be attached to the community licence. In these cases, the licences must include a requirement that the offender is supervised by a local authority criminal justice social worker until the end of the sentence.

**Community part**

23. All sentences of 15 days or more will have a community part of at least 25% of the sentence. This will ensure that the offender is subject to some form of restriction for the entire sentence and also help them reintegrate back into the community. It is hoped that providing such support
as is considered necessary for the individual offender’s risk and needs will contribute to reducing reoffending.

24. The offender will be on licence for the entire community part. Conditions will be attached to the licence. If the offender moves to the community part at the end of the court imposed custody part, Scottish Ministers will set the licence conditions. If the offender’s case is referred to the Parole Board, it will set the licence conditions. All offenders with a sentence of 6 months or more will have a supervision condition attached to their licence. This is to ensure that section 27(1)(ac) of the Social Work (Scotland) Act 1968 will apply to all these cases whether or not the case has been referred to the Parole Board thus giving practical effect to the proposed joint working arrangements. Supervision will be proportionate to the case of the offender and the risk posed. All offenders referred to the Parole Board for it to consider the case for continued detention will also be given a supervision condition when they move to the community part.

25. Licence conditions can be varied during the community part to take account of changes in an offender’s circumstances. This will enable appropriate management of the offender throughout the community part. For large numbers of offenders (particularly those with shorter sentences) it may be enough to require the offender “to be of good behaviour”, thus putting the onus on them to take control of his or her life and not re-offend. At the other end of the spectrum a full package of conditions will be available, such as attending drug or alcohol counselling, restrictions on visiting certain places/locations and undertaking intensive supervision where necessary.

26. The new Community Justice Authorities, created by the Management of Offenders etc. (Scotland) Act 2005, assume their full functions from April 2007. Ways of reshaping services around the needs and risks of particular groups of offenders within these new structural arrangements are already being taken forward. The new structure will allow a longer period to work with offenders but the focus will be on them taking responsibility for their future behaviour. There will be a supporting framework for the community part that will allow for a variable package of measures to manage the offender’s individual needs and risk of serious harm posed.

Breaches of community licence

27. Under the 1993 Act, Scottish Ministers and the Parole Board can revoke an offender’s licence and order a return to custody for breaches of condition(s) if satisfied that this is necessary for the protection of the public. The Bill will separate this function by giving Scottish Ministers alone this power. This measure, supported by the Sentencing Commission for Scotland, will result in a more transparent, effective and swifter recall system.

28. An offender will be told why they have been recalled. Scottish Ministers must refer the case to the Parole Board for it to consider the case for the offender’s continued detention. Before directing an offender’s return to the community on licence, the Board must be satisfied that it is no longer necessary for the purpose of public protection to continue to detain the offender.

29. If the Parole Board considers that it is not necessary to detain the recalled offender it will direct Scottish Ministers to return the offender to the community, on licence, immediately. Unless revoked again, the offender’s licence will be in place until the end of the sentence. When
directing that an offender be returned to the community, the Parole Board will direct the conditions to be attached to the offender’s licence.

Sentences of less than 15 days

30. The Bill provides that offenders sentenced to less than 15 days will spend the full period in custody. They will be released unconditionally at the end of the sentence.

Life Prisoners

31. The provisions for the imprisonment and release on life licence for offenders who are given a life sentence are presently set out in the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended). There is substantial jurisprudence to indicate that the current provisions and operational processes remain fit for purpose in terms of compliance with the European Convention on Human Rights. It is not proposed to amend the law as respects the treatment of life sentence prisoners. The provisions are re-enacted in this Bill. The measures in the Bill will apply to those given a life sentence for an offence for which the punishment is fixed by law (murder), to those on whom the court imposes a “discretionary” life sentence (for an offence other than murder), to those given an Order for Lifelong Restriction and to children sentenced to detention without limit of time.

32. On expiry of the court imposed punishment part, the life sentence prisoner will have the right to have his or her case for continued detention reviewed by the Parole Board. The Board will either direct the Scottish Ministers to release the prisoner on life licence or order his or her continued detention. Where the Board does not direct release, the case must be reviewed no later than 2 years after the date of the last review.

33. Life sentence prisoners who are released will remain on licence for their lifetime. The conditions may be varied to take account of changes in the offender’s circumstances. All life prisoners will be supervised by a local authority criminal justice social worker.

Children convicted on indictment and sentenced to detention

34. Section 208 of the Criminal Procedure (Scotland) Act 1995 provides that where a court sentences a child to detention, Scottish Ministers will direct where the child is to be detained and prescribe the conditions of that detention. It is the Executive’s policy that, wherever possible, children will not be detained in prison or a Young Offenders Institution. In practice children normally serve the period of detention, up to around him or her reaching 18 years of age, in secure accommodation. At present, the provisions covering the release of adult offenders in the 1993 Act apply to sentenced children except that they are released on licence regardless of the length of the sentence imposed by the court. The new arrangements will also apply to children sentenced to detention and there will always be a supervision condition attached to their licence.

Extended sentences

35. The courts will retain the power to order an additional period of supervision (extended sentence) provided currently by section 210A of the Criminal Procedure (Scotland) Act 1995. This disposal applies to sexual or serious violent offences and is aimed at enhancing public protection. It is used where the court considers that the period that would otherwise be spent on
licensure (the community part under the new proposals) is not adequate for the purposes of protecting the public from serious harm.

**Other powers to manage offenders**

36. The arrangements introduced through the Management of Offenders etc. (Scotland) Act 2005 known as Home Detention Curfew are re-enacted in the Bill. These measures can provide a useful incentive in appropriate cases. However, exercise of this option would be subject to strict controls, prescribed in the Bill, e.g. high risk offenders and sex offenders will be automatically excluded.

**Release on compassionate grounds**

37. The Bill re-enacts the provisions that allow Scottish Ministers to release offenders on licence on compassionate grounds subject to prior consultation with the Parole Board if circumstances permit.

**Offenders subject to deportation**

38. Offenders who are to be deported will be subject to the same sentence management arrangements as other offenders.

**The Parole Board for Scotland**

39. The Parole Board for Scotland exists under the provisions of the Prisons (Scotland) Act 1989 and the Prisoners and Criminal Proceedings (Scotland) Act 1993. Currently the Board’s main duties are to:

- Recommend that Scottish Ministers release, on licence, determinate sentence prisoners serving 4 years or more from the half-way point of sentence until the two thirds point (when they must be released automatically on licence) and impose conditions on the release licence.
- Direct that Scottish Ministers release, on life licence, at a point after the expiry of the court imposed punishment part, a life sentence prisoner if satisfied that it is no longer necessary for the protection of the public to detain the prisoner and impose licence conditions.
- Recommend Scottish Ministers to revoke the licence of any offender and recall him/her to custody.
- Direct the Scottish Ministers to re-release any offender who has been recalled to custody.
- Recommend the inclusion, subsequent insertion, variation or cancellation of licence conditions.

40. The Board will remain as a Tribunal Non-Departmental Public Body and will continue (for as long as is required) to discharge its functions under the 1993 Act. Provision will be made for it to take on the following functions:

- Consider the case of an offender who meets the statutory criteria to be detained beyond the court imposed custody part on grounds of risk of serious harm to the public.
• Direct that Scottish Ministers move such offenders to the community if the Board considers that the risk test is not met and direct that Scottish Ministers include conditions on the community licence.

• As at present, direct that Scottish Ministers release, on life licence, at a point after the expiry of the court imposed punishment part, a life sentence prisoner if satisfied that it is no longer necessary for the protection of the public to detain the prisoner and impose licence conditions.

• As at present, consider the case for re-release of a recalled offender and, direct that Scottish Ministers return such offenders to the community on the appropriate terms if the Board considers that continued detention is not necessary for the protection of the public.

• As at present, direct that Scottish Ministers set, vary or remove licence conditions in cases referred to them.

• As at present, consider the case of an offender who makes an appeal against a recall to custody following a breach of Home Detention Curfew condition(s).

41. Release and Post Custody Management of Offenders contained a commitment to review the "constitution and title of the Parole Board … to ensure that it is fit for purpose". It has been concluded, after consideration, that the title remains fit for purpose. However, the constitution will change to include a person who has knowledge and experience in the assessment of the risk of harm to the public posed by offenders and a person who has knowledge and experience of victims’ interests.

Associated measures

42. The Bill applies the new arrangements to offenders detained under mental health provisions. The effect of these is that any time directed to be spent in hospital will count as part of the offender’s original sentence. The Bill also deals with fine defaulters and those in contempt of court and arrangements for offenders serving more than one sentence.

43. The practice of consecutive or concurrent sentencing will end. Each sentence will be treated individually for sentence calculation purposes.

44. There will be no equivalent of section 16 of the 1993 Act, which provides that where a person commits an imprisonable offence before the expiry of a custodial sentence previously imposed, a court may order the person to serve the balance of the original sentence before beginning to serve any sentence for the new offence. This is because the prisoners concerned will serve the whole of the minimum custodial term (in other words the punitive part of the sentence) in prison and any return to prison thereafter will be because the person has seriously breached the conditions of his or her licence and in so doing presents an unacceptable risk. However, there would be nothing to prevent a court from taking into account the fact that an offence had been committed during service of the community part of a previous sentence when imposing any sentence for the offence.

45. The new measures mean that all offenders sentenced to 15 days or more will serve the community part of the sentence on licence. This removes the need for the equivalent of section
14 of the 1993 Act which sets out the general arrangements for the release of a short-term prisoner (except a sex offender whose offence was committed after 30 September 1998) who is subject to a supervised release order.

46. Offenders sentenced for non-payment of fine, contempt of court etc (known as non-offence terms) will serve the full term in custody. This is because the entire period is taken to be the “punishment”.

Consultation

47. The new measures derive from the recommendations in the Sentencing Commission’s report Early Release from Prison and Supervision of Prisoners on their Release. This report followed a detailed consultation by the Sentencing Commission based on the consultation paper of the same title published in June 2005. In total, 50 official responses were received. These came from criminal justice organisations (12), local authorities (11), the voluntary sector (11), other national organisations (1) and individuals (15). A full analysis of the responses is contained in the Sentencing Commission’s final report.

48. The overwhelming majority of respondents to the Consultation consider that the law should continue to provide that part of a sentence should be served in the community. They consider that the arguments in favour of such a regime are in essence to maintain good order in prisons, to encourage prisoners to address their offending behaviour by participation in prisoner programmes, and to provide a prisoner after release with compulsory supervision and support (in the case of long-term prisoners).

49. The majority do not consider that the size of the prison population should determine the existence and nature of the release regime although a number note the potential impact on the population that would arise from the abolition of automatic early release.

50. On the case for and against there being different schemes applying to short and long term prisoners, a number considered the current division at four years to be an artificial one. However, others suggested it would need to continue for pragmatic reasons, for example, the impracticality of operating discretionary release, involving the Parole Board, for the large number of short-term prisoners.

51. A number of respondents felt that automatic and/or unconditional early release should continue for offenders who pose little or no risk to the public, who were felt to be the majority of short-term prisoners. A third view was that the existing procedures for the early release of long-term prisoners should be retained (i.e. automatic release on licence at two-thirds of sentence) on the basis that it is more sensible to have high risk offenders re-integrated into the community on supervision rather than releasing them at the end of sentence with no supervision.

52. Several respondents indicated that while all early release should not be discretionary, neither should it be automatic in the form that it is at present. Rather, the system should be changed to one of two-part sentencing whereby offenders are sentenced to a period in custody followed by a period on supervision in the community.
53. Many of those who were of the view that all early release should be discretionary expressed strong views that automatic early release should be discontinued since it results in the true length of prison sentences bearing little resemblance to the sentence imposed by the court. It was suggested that this undermined the authority of the court, and had no value in terms of prisoner management since prisoners are released early irrespective of their behaviour in prison.

54. As regards the points at which prisoners should become eligible to be considered for early release, some thought the status quo (i.e. 50% and two thirds) as good as any whereas others thought that they should be later in the sentence and a few thought they should be sooner.

55. In light of the commitment to bring forward early legislative plans to reform the current system of automatic and sometimes unconditional release and achieve greater clarity in sentencing, and given the recent comprehensive consultation undertaken by the Sentencing Commission, it was concluded that no further consultation was required before introducing this legislation. The Executive’s plans are detailed in *Release and Post Custody Management of Offenders*, published on 20 June 2006.

**Alternative Approaches**

56. The Executive has made it clear that the existing system for releasing offenders that determines the point of release by length of sentence, not risk of serious harm, is no longer fit for purpose. The current system is also difficult to understand and this can be particularly distressing for victims. Retaining the status quo, while legally competent, is therefore not a viable policy option.

57. Requiring offenders to serve the full period of the sentence in custody was considered. Apart from the significant resource implications, it was concluded that this option was not the most effective way to achieve the Executive’s policy of reducing reoffending/breaking patterns of offending. Under such a structure offenders would have to be released unconditionally at the end of the sentence. There would be no incentive for offenders to address their offending behaviour while in custody, or for those who were prepared to do offence focused work to have that continue in the community.

58. *Release and Post Custody Management of Offenders* noted that the role proposed for Scottish Ministers (in practice the Scottish Prison Service and the Scottish Executive Justice Department, acting under delegated authority) in referring cases to the Parole Board and recalling offenders for breach of community licence conditions would be reviewed to ensure that these proposals were the best way of dealing with such cases. The Executive has concluded that these arrangements are the most practical, effective and efficient way of delivering these aspects of the new policy. There remains scope for fine tuning of how the Scottish Ministers’ functions are split between SPS and the Justice Department, but these do not affect the terms of the Bill and accompanying documents.
KNIFE CRIME: RESTRICTIONS ON THE SALE OF NON-DOMESTIC KNIVES AND SWORDS

Policy Objectives

59. The objective of Part 3 of the Bill is to put in place new restrictions on the sale of swords and non-domestic knives which will help to prevent these dangerous weapons falling into the wrong hands. These provisions are part of the Executive’s reform of knife crime law and are a vital component of a wider package of measures designed to tackle knife crime and violence more generally.

Background

60. Every year in Scotland, far too many people are scarred, injured and killed by knives and swords. Murder statistics show that knives and other sharp items continue to be the most common method of killing in this country. The latest figures show that 72 of 137 homicides in 2004/05 involved the use of knives. These weapons consistently account for around half of all murders each year. In these statistics, ‘knives’ includes the use of other sharp or pointed weapons but more detailed information on weapon type is not collected so a breakdown of weapon types cannot be provided.

61. National statistics report on knife carrying offences but do not contain information on weapon use for other offences, which can involve the use of knives (for instance ‘assault’). However, an analysis of data for Strathclyde indicates that there were 1,301 knife attacks in 2004/05. Of these, 1,100 were in a public place and involved the use of a non-domestic knife.

62. As national statistics do not collect information on weapon types, the available data does not identify sword use. However, swords are designed as deadly weapons, are likely to result in serious injury if used, and reports from the police and from hospitals make clear that swords are being used to commit crimes and to inflict injury. Indeed, advice from the police is that the use of swords is becoming more common, with ‘samurai’ swords in particular becoming a weapon of choice for growing numbers of young men with criminal intentions. This is a similar picture to that presented by a previous study at Glasgow A&E units reported in evidence presented to the Justice 2 Committee during their consideration of the Police, Public Order and Criminal Justice (Scotland) Bill. This study indicated that 23% of A&E attendances involved assault with a knife, with approximately one murder for every thirty incidents involving a knife.

63. Other available information indicates that the incidence of knife crime is actually higher than that shown in reported crime statistics. A recent survey undertaken in the Accident & Emergency department of Glasgow Royal Infirmary indicates that only around half of all knife attacks are reported to the Police. Over the period February to August 2006 use of a knife or other sharp weapon was recorded in 19% of 758 A&E attendances, of which only 49% had been reported to police. This is a similar picture to that presented by a previous study at Glasgow A&E units, which indicated that 23% of A&E attendances involved assault with a knife, with approximately one murder for every 30 incidents involving a knife.

4 http://www.scottish.parliament.uk/business-committees/justice2/02-05/j205-3202.htm#Col1829 (col. 1849)
64. While comparisons are not straightforward, figures for the rest of the UK indicate that knife crime is much more common in Scotland than elsewhere. Other evidence presented to the Justice 2 Committee\(^5\) showed that the murder rate involving knives is three and a half times higher in Strathclyde than anywhere else in the UK. International comparisons are more difficult still as data definition, collection and interpretation is subject to wide variation, but the comparative figures available indicate that the incidence of knife crime is much higher in Scotland than in other comparable countries.

65. Further information can be found in ‘Homicide in Scotland 2004/05’\(^6\) (which also provides details of UK and international comparisons) and ‘Criminal Proceedings in Scottish Courts 2004/05’\(^7\).

**Legal Background**

66. Scots law has always regarded an attack with an offensive weapon as a serious aggravation of the common law crime of assault. Successive legislation has also introduced tighter and more specific controls to tackle the carrying and sale of knives and target the prevention of crime. A wide range of powers is now in force and there is a range of penalties available to the court, including fines and imprisonment. These powers and penalties are set out in a number of pieces of legislation. The short summary here concentrates on offences relating to sale, with further offences relating to possession and carrying of weapons being contained in the Criminal Law (Consolidation) (Scotland) Act 1995.

67. The **Restriction of Offensive Weapons Act 1959** prohibits the manufacture, sale or hire, the exposure or possession for the purposes of sale or hire, or the lending or giving to another person, of a flick knife or gravity knife. The maximum penalty on summary conviction is imprisonment for a term not exceeding 6 months, or a fine not exceeding level 4 on the standard scale (currently £2,500), or both.

68. The **Criminal Justice Act 1988** (Section 141) makes it an offence to manufacture, sell or hire, expose or possess for the purposes of sale or hire, or lend or give to another person any specified offensive weapon. The importation of these weapons is also prohibited. Seventeen weapons have been specified as offensive weapons for the purposes of this Act; including sword sticks, push daggers, death stars and butterfly knives. The maximum penalty on summary conviction is six months imprisonment, or a fine not exceeding level 5 on the standard scale (currently £5,000), or both.

69. The **Criminal Justice Act 1988** (section 141A) as amended recently by the Police, Public Order and Criminal Justice (Scotland) Act 2006 also prohibits the sale of swords and non-domestic knives (also any blade, razor blade, axe, any bladed or sharply pointed article or any item made or adapted for causing personal injury) to a person under 18 (16 for knives or blades designed for domestic use). The maximum penalty on summary conviction is imprisonment for a term not exceeding 6 months, or a fine not exceeding level 5 on the standard scale (currently £5,000), or both.

\(^5\) [http://www.scottish.parliament.uk/business/committees/justice2/or-05/j205-3202.htm#Col1829](http://www.scottish.parliament.uk/business/committees/justice2/or-05/j205-3202.htm#Col1829) (col. 1846)  
\(^7\) [http://www.scotland.gov.uk/Publications/2006/04/25104019/0](http://www.scotland.gov.uk/Publications/2006/04/25104019/0)
70. The **Knives Act 1997** makes it an offence to market a knife in a way which indicates that it is suitable for combat. The maximum penalty on summary conviction is imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (currently £5,000) or both. The maximum penalty on conviction on indictment is imprisonment for a term not exceeding 2 years, or a fine, or both. Section 35 of the Criminal Proceedings etc. (Reform) (Scotland) Bill (as introduced) would have the effect of raising the maximum term of imprisonment on summary conviction to 12 months.

**A Partnership for a Better Scotland – Review of Knife Crime**

71. Tackling knife crime is a priority for the Executive. As part of the commitment in the Partnership Agreement (‘A Partnership for a Better Scotland’) to supporting stronger, safer communities, the Executive undertook to ‘review the law and enforcement on knife crime’. The objectives of the Review were to ensure that the law in Scotland is clear, to ensure it protects innocent victims and to provide a stimulus for a positive change in the culture of Scotland in relation to knives and violent crime through strengthening knife crime law.

72. The Review therefore set out to examine the current law on knife crime to identify any gaps in the legislation and any aspects which had become outdated or required strengthening. As will be clear from even the brief summary above, existing law on knife crime is generally clear, strong and comprehensive. However, the Review identified improvements which could be made to powers of arrest and sentencing for knife crime offences and highlighted a significant gap in the comparative lack of controls on the sale of knives and swords.

**First Minister’s Five Point Plan on Knife Crime**

73. The outcome of the Review was announced in November 2004, when the First Minister set out a Five Point Plan on knife crime. In doing so, he made clear that his strong view, and that of the Executive, was that far too many young men in Scotland viewed the carrying of knives or offensive weapons as an acceptable practice when it is not.

74. The Five Point Plan set out to reinforce the message that the carrying and use of knives is not, cannot, and will never be, acceptable. The Plan involved:

- Doubling the maximum sentence for possessing a knife from two years to four years;
- Strengthening police powers of arrest for the carrying of knives or offensive weapons and ensuring that the police make more use of stop and search powers;
- Increasing the minimum purchasing age for non-domestic knives from 16 to 18;
- Introducing a licensing scheme for the sale of non-domestic knives and similar objects; and
- Banning the sale of swords.

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8 [http://www.scotland.gov.uk/Publications/2003/05/17150/21952](http://www.scotland.gov.uk/Publications/2003/05/17150/21952)
75. The first three points of the Plan were implemented in the Police, Public Order and Criminal Justice (Scotland) Act 2006⁹ and came into effect on 1 September 2006.

76. The 2006 Act:

- increased the maximum sentence for carrying a knife in public or in a school from two years to four years (bringing it into line with the penalty for carrying offensive weapons);
- removed limitations on police powers of arrest for such offences (previously the power of arrest was limited to circumstances in which the police were not satisfied as to the person’s identity or place of residence, or where arrest was considered necessary to prevent the commission of a further offence involving a knife or offensive weapon); and
- increased the minimum age of persons to whom non-domestic knives may be sold from 16 to 18 (bringing the age limit into line with those for alcohol and fireworks).

77. This part of the Bill takes forward the final two points of the Plan concerning the introduction of restrictions on the sale of non-domestic knives and swords. These provisions have been developed following consideration of the responses to the Executive’s proposals set out in Tackling Knife Crime - a Consultation, further details of which are provided in the section below on ‘Consultation’.

**Other Action on Knife Crime**

78. It should be clear that the Bill’s provisions on knife crime are as a result of the Executive’s Review of the law on knife crime. However, it would be wrong to view the reform of the law on knife crime in isolation.

79. In considering the Bill’s provisions on knives and swords it is essential to see them in the context of the Executive’s wider programme of actions to tackle knife crime and violence more generally. It must be emphasised that the Bill does not represent the only action which the Executive is taking on knife crime but instead is just one component, albeit a vital one, of that wider package of measures.

80. The package includes shorter-term measures (such as the recent knife amnesty, which resulted in over 12,500 weapons being surrendered)¹⁰ and longer-term measures (such as the educational initiative launched by the Minister for Justice on 24 August¹¹, recognising that such a deep-seated problem cannot be solved overnight and demands a mixture of approaches.

81. An essential element of the package is the Lord Advocate’s new guidelines on the prosecution of knife crime, which came into effect at the end of the knife amnesty. These guidelines will ensure that knife crime is dealt with both quickly and effectively, with the

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prospect of more severe punishment for re-offenders. Under the guidelines, those caught carrying or using a knife will normally be kept in police custody until they appear in court. Where they have previous convictions for a similar offence the Crown will oppose bail and will normally prosecute the case before a judge and jury and, therefore, before a court with higher sentencing powers.

82. Enforcement action on knife crime also forms a central part of the package of measures. This is a key part of the work of the Violence Reduction Unit (VRU), which has been established by the Police, with the assistance of the Executive, to oversee a year-long Safer Scotland initiative to address knife crime and violence more generally. These enforcement initiatives include: the use of new hand-held metal detectors funded by the Executive; a crackdown on knife carrying following the end of the amnesty which removed a further 1,000 weapons from the streets in 5 weeks; utilising stop and search powers to target knife crime hot-spots; and the deployment of airport style metal detectors at railway stations. Further information on the VRU and its work can be found on the ‘Action on Violence’ website.12

Consultation

83. In June 2005 the Scottish Executive published Tackling Knife Crime: A Consultation,13 which sought views on options for restricting the availability of swords and knives.

84. Tackling Knife Crime set out a range of options for banning the general sale of swords and introducing a licensing scheme for the sale of non-domestic knives. It asked 15 specific questions under the headings of: banning the sale of swords; banning the sale of samurai swords; licensing individual purchasers of swords; licensing the sale of swords; licensing the sale of non-domestic knives and banning the purchase of non-domestic knives from unlicensed sellers.

85. A total of 181 responses were finally received and the 178 responses received before the end of 2005 were included in the Analysis of Responses published in March 2006. Responses were published at the same time.14

86. 110 responses were from individuals and 68 from groups (including local authorities, community safety partnerships, legal representatives, and the police). A large number of respondents were individuals and groups with a special interest in owning and using bladed implements, representing a wide range of sporting, cultural, religious and trade interests (including antique collecting, fencing, highland dancing, historical re-enactment, martial arts and import, export and manufacture).

87. Four petitions were also received with 4,303 signatures in total. Three were MSP-sponsored petitions to ‘Back Action on Knife Crime’ and supported the First Minister’s Five Point Plan. The other was submitted to the Public Petitions Committee of the Scottish Parliament by the ‘Save Our Swords’ campaign and opposed “the introduction of any ban on the sale or possession

13 http://www.scotland.gov.uk/Publications/2005/06/27110147/01518
15 http://www.scotland.gov.uk/Publications/2005/11/30165358/53589#a20
of swords in Scotland which are used for legitimate historical, cultural, artistic, sporting, economic and religious purposes’’. The MSP-sponsored petitions had a total of 2,284 signatures while the ‘Save Our Swords’ petition had 2,019 signatures.

88. Of those respondents who gave specific answers to the consultation questions, a narrow majority were in favour of a licensing scheme to control the sale of non-domestic knives. The suggested licence conditions and consequent costs for businesses were generally thought to be reasonable.

89. Respondents were strongly opposed to a general ban on the sale of swords and a specific ban on the sale of ‘samurai’ swords. However, there was support for the alternative option of controlling the availability of swords through a licensing scheme. A large majority of responses were in favour of a wide range of people and purposes being exempted from any ban on swords.

90. A narrow majority of respondents were against individual licences for the purchasers of swords and there was a clear preference for the alternative option of licensing sword sellers. The clear consensus was that the onus of a licensing scheme should be placed on retailers rather than individual purchasers. There was also a consensus that unlicensed retailers should be prevented from selling non-domestic knives or swords.

**Consideration of Alternative Approaches**

91. *Tackling Knife Crime – A Consultation* considered a range of options for restricting the availability of swords and non-domestic knives. As well as the options represented by the provisions in this Bill, the paper considered the options of: a complete ban on the sale of swords (with no exceptions); a ban on specified types of swords, such as ‘samurai’ swords – with and without exceptions; a licensing scheme for those wishing to purchase swords (along similar lines to the firearms licensing scheme), banning the purchase of swords by anyone who was not a member of an approved organisation (effectively a licensing scheme for groups whose members wished to purchase swords); and making it a criminal offence to purchase a non-domestic knife or sword from an unlicensed seller.

92. Further details of these options are set out in *Tackling Knife Crime* and in the Analysis of Responses to the consultation.

93. The Executive gave careful consideration to all the options and the responses to our consultation, including those who argued that there was no need to legislate on this matter. However, we cannot and will not ignore the fact that these weapons, in the wrong hands, can be lethal. The Executive therefore remains convinced that legislation is required to introduce new controls on the sale of non-domestic knives and swords.

94. Part 3 of the Bill therefore sets out to address that need and fill the gap in current legislation by ensuring that the Scottish Ministers will have appropriate powers to ban the sale of swords and requiring businesses who wish to sell swords or non-domestic knives to be licensed. The ban on the sale of swords will be implemented by using the powers in existing legislation, modified by the Bill, to make it an offence for anyone to sell swords (subject to certain defences, which will allow swords to be sold for specified approved purposes). The mandatory licensing
scheme for the commercial sale of swords and non-domestic knives is to be reinforced by making it a criminal offence for businesses to sell such articles without a licence. The terms of the licensing scheme are intended to further reinforce the limited defences to a ban on the sale of swords by requiring licensed swords sellers to make appropriate checks on the *bona fides* of potential purchasers.

**Banning the Sale of Swords**

95. The Bill provides for the introduction of a ban on the sale of swords by enhancing Ministers’ existing powers to enable them to make an order prohibiting the sale of swords subject to specified defences. It is intended that these defences will relate to legitimate religious, cultural and sporting purposes.

96. The ban on sale of swords builds on the model of the existing statutory ban on offensive weapons in section 141 of the Criminal Justice Act 1998. Section 141 provides that any person who manufactures, sells or hires, or offers for sale or hire, exposes or has in his or her possession for the purpose of sale or hire, or lends or gives to any other person a designated offensive weapon shall be guilty of an offence. The import of any such weapon is prohibited by section 141(4) of the 1988 Act. The power provided by this section has been used in the past to ban a wide range of offensive weapons, including swordsticks and push daggers, as specified in the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005.

97. This power could have been used to introduce a blanket ban on swords. However we recognise that, unlike the items prohibited by section 141 at present, there are legitimate uses for swords that should continue to be permitted. The approach adopted is therefore to build on the provisions of section 141, but allow them to be adapted in their application to swords to allow for legitimate uses.

98. The Bill’s provisions reflect this approach. It is intended that the order made under the Bill’s provisions will provide that it shall be an offence to sell, hire, lend or give a sword – to avoid creating loopholes and enhance enforceability. Unlike other orders made under section 141, it is envisaged that the order relating to swords will not make it an offence to expose or offer for sale a sword. This avoids making sellers guilty of an offence before they have had an opportunity to check the purchaser’s intended use and confirm that it is for a permitted purpose.

99. There are defences under section 141 in respect of weapons which are made available to a museum or gallery or used for cultural, artistic or educational purposes if lent or hired from a museum or gallery, and in respect of weapons used for the purposes of the Crown or of a visiting force. These defences will also apply to the prohibition on the sale of swords.

100. In addition, the Bill allows defences for other purposes to be specified by Order and Ministers will use this power to provide exceptions to the ban on sale for specified purposes including: religion, culture (highland dancing, theatre, film, television, antique collecting, re-enactment and living history) and sport (fencing and those martial arts organised on a recognised sporting basis).

101. An exception to section 141 is currently made for antique weapons, which are defined as weapons over 100 years old at the time of the alleged offence. It is intended to use the powers provided by the Bill to except a wider range of antique swords. This reflects the approach adopted in firearms legislation (specifically section 58(2) of the Firearms Act 1968) and will cover antique swords “sold, transferred, purchased, acquired or possessed as a curiosity or ornament”. This will mean that additional historic swords (for example from the Second World War), would also be included within the exception for antiques.

102. These additions to the existing defences under section 141, and the other modifications of those powers in respect of swords, will address the issue of the legitimate uses of swords such as:

- Antique Collecting – the preservation of the past by many individual collectors in this country is often to the benefit of our museums and national heritage bodies.
- Fencing – fencing swords are used in organised events across the UK and internationally;
- Film, television and theatre – swords are frequently used as props in period dramas;
- Manufacture – sword-smiths in Scotland manufacture swords, in some cases to extremely high specifications, involving traditional techniques and attracting international interest and renown;
- Martial arts – swords are used in many martial arts organised on a national and international basis;
- Re-enactment – re-enactment societies do much to bring significant aspects of Scotland’s history to life, using quality reproduction weapons;
- Religion – the sword is of particular religious significance to Sikhs; and
- Scottish Highland dancing – the traditional Scottish sword dance, when authentically performed, inevitably involves swords.

103. For swords, there will also be a defence for activities carried out with the authority of the Scottish Ministers. Such authority would require to be applied for in writing and, if granted, would be subject to appropriate conditions. This will permit individual applications to be made to Ministers where exceptional cases arise outwith the permitted purposes otherwise provided for.

**Licensing the Sale of Swords and Non-Domestic Knives**

104. The Bill provides for the introduction of a new mandatory licensing scheme for the commercial sale of swords and non-domestic knives. The scheme will apply to those persons who carry on the business of a dealer in swords, non-domestic knives and similar items. The licence will be known as a knife dealer’s licence.

105. The Civic Government (Scotland) Act 1982 provides a framework for this legislation. The Bill’s provisions build on the current provisions of this Act, applying those provisions and also modifying and extending them where necessary to adapt them to the licensing of the sale of
swords and non-domestic knives. Local authorities will act as licensing authorities in same way as with other licensing schemes under the 1982 Act.

106. It will be a criminal offence for a business to sell swords or non-domestic knives to the public without a licence. The maximum penalty for such an offence on indictment will be two years imprisonment and/or a fine (with a maximum of 12 months imprisonment and/or a fine not exceeding the statutory maximum under summary procedure).

107. The licensing scheme will apply to swords and non-domestic knives and knife blades (i.e. knives and knife blades other than those designed for domestic use). This means that dealers selling only domestic knives, such as cutlery and DIY products, will not require a licence. This draws the same distinction between domestic and non-domestic knives as section 75 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 which amends Section 141A of the Criminal Justice Act 1988 to increase the minimum age of sale for non-domestic knives from 16 to 18.

108. The Bill also gives powers to Ministers to provide that a licence will not be required in order to sell designated articles. It is intended that this power will be used to provide that a licence will not be required to sell folding pocketknives, sgian dubhs or kirpans where the blade is less than 7.62 centimetres (3 inches). This would reflect the current law on carrying knives in public (section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995), which provides a specific exception for penknives of this size and provides defences in law for knives (such as kirpans and sgian dubhs) carried for religious reasons or as part of a national costume. Dealers who wish to sell larger versions of these knives will however require a licence.

109. In addition to swords and non-domestic knives (and non-domestic knife blades), a licence will be required to sell any other articles which have a blade or are sharply pointed and which are made or adapted for use for causing injury to the person (for instance, arrows or crossbow bolts).

110. A licence will also be required for businesses hiring, lending, giving, offering or exposing for sale swords, non-domestic knives and similar items to avoid creating an enforcement loophole. While any business selling swords or non-domestic knives to the public will require a licence, businesses who sell exclusively to other businesses or professions will not require to be licensed. Any businesses selling swords or non-domestic knives by auction will require a licence, but auction houses selling such items on behalf of others will not require to be licensed (unless they wish to sell such items on their own behalf). The requirement for a licence will not apply to those who are only engaged in private transactions that do not take place in the course of business.

111. The requirement for a licence will apply to persons with retail outlets or other places in a local authority’s area where transactions take place in the course of business; for example, those who trade from market stalls or from vehicles. A licence will be required even where the dealing in such knives is incidental to the dealer’s primary business. The Bill provides that anyone also licensed as a ‘second-hand dealer’ under the 1982 Act shall have their licence conditions adjusted appropriately, if required, to ensure that they do not conflict with the terms of their knife dealer’s licence.
112. The legislation will also apply to Scottish businesses who sell over the internet or by mail order. Those with retail premises will apply to their local authority in the normal way. Internet-only dealers, who distribute goods from premises in Scotland and wish to continue to sell swords or non-domestic knives, will need to apply to the local authority where their distribution premises are located for a licence.

113. The Bill provides powers which the Scottish Ministers intend to use to set strict licence conditions and specify types of licence conditions which must be attached to all knife dealer’s licences. Local authorities will be able to determine the details of any conditions not specified by Ministers and will be able to impose additional licence conditions suitable for their locality or appropriate to individual businesses. The Bill provides for different conditions to apply to different types of item.

114. The Scottish Ministers will use the power to set minimum conditions for both sword and non-domestic knife dealers. These conditions will include:

- requiring retailers to record a description of the type of sword or non-domestic knife sold;
- requiring retailers to keep records of those to whom they sell swords or non-domestic knives;
- restricting the display of swords or non-domestic knives on the licensed premises to ensure that they are not visible from the street or any entrance to a dealer’s premises;
- enabling local authorities to specify such further conditions relating to storage as are appropriate to the locality or individual premises, e.g. storage in locked cases or preventing visible display within the shop itself;
- enabling local authorities to specify the means by which identity should be established, e.g. by photographic means or utility bills.
- enabling local authorities to require other security measures appropriate to the premises, e.g. overnight storage of swords and non-domestic knives, or use of CCTV; and
- enabling local authorities to specify the packaging requirements for swords and non-domestic knives sold by mail or otherwise.

115. In respect of swords, the Scottish Ministers will use the power conferred by the Bill to require that dealers record full details of the intended use of any sword, take reasonable steps to confirm that it is for an authorised purpose, and record what steps they took to do so.

116. The Bill provides that it will be an offence for the licence holder to break any of the conditions of their licence. It will also be an offence for a person knowingly to provide false information to a seller in connection with the purchase of a sword or knife, where the seller is required to collect that information by a condition of their licence. The maximum penalty for these offences on summary conviction will be a fine not exceeding level 5 and level 3 on the standard scale, respectively (currently £5,000 and £1,000).

117. The Bill will confer powers on local authority trading standard officers and the police to enter premises where unlicensed dealing in knives is suspected of taking place, or where a dealer
is suspected of breaching conditions of their licence. In the case of unlicensed premises, the powers allow documents and records to be inspected and copied. The Bill will also allow articles to be seized, with the prospect that the dealer would forfeit all swords or knives seized or in stock should he or she be convicted of the offence. Similar forfeiture powers are contained in the Knives Act 1997 in relation to the sale of combat knives and material likely to stimulate or encourage violent behaviour involving knives. Part II of the Proceeds of Crime (Scotland) Act 1995 already contains provisions on forfeiture, but these apply only to property which has been used for the purpose of committing, or facilitating the commission of, an offence, or was intended to be used for that purpose.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal Opportunities

What is the policy for? Who is the policy for? What are the desired and anticipated outcomes?

118. Our provisions on custodial sentences will end automatic, unconditional release of offenders and achieve greater clarity in sentencing. The relevant measures in the Bill are intended to enhance public protection and reduce reoffending. These measures are part of the developing package of reforms to the criminal justice system that is intended to benefit all the people of Scotland. The desired and anticipated outcome is a reduction in reoffending which in turn will lead to safer communities.

119. Tackling knife crime is a priority for the Executive. As part of the commitment in the Partnership Agreement (A Partnership for a Better Scotland) to support stronger, safer communities, the Executive undertook to ‘review the law and enforcement on knife crime’. The objectives of the Review were to ensure that the law in Scotland is clear, to ensure it protects innocent victims, and to provide a stimulus for a positive change in the culture of Scotland in relation to knives and violent crime through strengthening knife crime law.

Do we have full information and analyses about the impact of the policy upon all equalities groups? If not, why not?

120. The effects of the Bill have been carefully considered in relation to their potential impacts on different equality groups. The policies that will be implemented through the Bill will apply across all of Scotland and there is no intention that the Bill’s provisions will have a differential or discriminatory impact on equality groups. It is the Executive’s view that the Bill does not impact in any differential or discriminatory sense upon groups which are defined by personal attributes or characteristics such as gender, marital status, age, race, disability, religion, sexual orientation, language, social origin or political belief. Membership of the Parole Board will be subject to the public appointments process, as prescribed by the Office of the Commissioner for Public Appointments in Scotland.

Has the full range of options and their differential impacts on all equality groups been presented?

121. The policy on the release and post custody management of offenders has been the subject of full and comprehensive consultation with a wide range of stakeholders. A wide range of equality groups, as well as groups representative of equality issues (such as the Commission for
Racial Equality, Equal Opportunities Commission, Disability Rights Commission Scotland and Age Concern Scotland), were included in the consultation process. A basic objective of the Executive’s policy is enabling everyone, but especially victims and offenders, to understand the effects of sentences.

122. The introduction of a licensing scheme for the sale of non-domestic knives and the banning of the general sale of swords has been subject to full and comprehensive public consultation. A wide range of organisations, trade and sporting, cultural and religious bodies were consulted. As the kirpan (a ceremonial sword or dagger) is of particular significance to Sikhs, the consultation paper Tackling Knife Crime was specifically drawn to the attention of Sikh religious groups.

123. The Executive have had previous discussions about the kirpan with Sikh representatives of the Interfaith Council. At that time, Sikh representatives were concerned that Sikhs could be charged for carrying a kirpan in public. An explanation of the legal position was provided i.e. while it is an offence to carry a sword or dagger in public, it is a defence in statute that an article is carried for religious reasons, although it is up to the individual to satisfy the police, and ultimately the courts, that the article is being carried for religious reasons.\(^\text{17}\)

124. Consideration has been given to whether Sikhs could be indirectly discriminated against by a ban to be introduced on the sale of swords. The Executive wish to avoid this and, as made clear above, it is intended that swords sold for religious purposes (which will include the Sikh kirpan) will be an exception to the ban on the sale of swords. In addition, it is intended that shops selling only smaller kirpans will be exempt from the licensing scheme.

What are the outcomes and consequences of the proposals? Have the indirect, as well as the direct, effects of the proposals been taken into account?

125. The outcomes and consequences are as set out in the answer to the first of these six questions on equal opportunities. Both the indirect and direct effects have been fully taken into account. In its widest context, the policy is intended to build on the reforms to the criminal justice system that are already underway or in place aimed at delivering a safer Scotland for all, by enhancing public protection, reducing reoffending and tackling knife crime.

How have the policy-makers demonstrated that they have mainstreamed equality?

126. As discussed elsewhere in this policy memorandum, the policy provisions in the Bill have been the subject of extensive consultation. Throughout the policy development process the Executive has been vigilant for the possibility of discriminatory or significantly differential impacts. There is a representative of the ethnic community on the Sentencing Commission and Victim Support Scotland is also represented.

127. The Sentencing Commission for Scotland received no representations in response to Early Release from Prison and Supervision of Prisoners to suggest that the provisions of the Bill will impact negatively upon equality interests. The Equal Opportunities Commission pointed out that the Equality Act will require any new arrangements to ‘consider how men and women in the

\(^{17}\) See sections 49 and 49A of the Criminal Law (Consolidation) (Scotland) Act 1995.
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criminal justice system have different needs and develop different approaches with the equality duty in mind’.

128. As specific provision will be made to avoid potential indirect discrimination on religious grounds (as explained above), it is not anticipated that Part 3 of the Bill will have a differential effect on women or men, on different social groups, on disabled or non-disabled persons or on different ethnic groups. This apart, the Executive has received no representations in response to Release and Post Custody Management of Offenders or Tackling Knife Crime to suggest that the provisions of the Bill will impact negatively upon equality interests.

How will the policy be monitored and evaluated? How will improved awareness of equality implications be demonstrated?

129. The Scottish Executive is committed to monitoring the outcome of the proposals to end automatic, unconditional early release and to provide clarity in sentencing. A range of approaches will be used, such as prison statistics and community justice statistics. Evaluation will form part of the plans for implementation that are being taken forward in tandem with the legislation.

Human Rights

130. It is considered that the provisions on the release and post custody management of offenders are compatible with Convention rights, as defined in the Human Rights Act 1998. Consideration has been given to whether the new release arrangements should apply to those who committed the relevant offence before the date on which the Bill’s provisions will be commenced. This raises an issue about the application of Article 7(1) of the European Convention on Human Rights (ECHR). A decision has been taken that the new arrangements (other than those for life sentence prisoners) will only apply to those convicted of offences committed after the commencement of the provisions. The provisions for life sentence prisoners are, in essence, a restatement of the current law and so the same issue does not arise.

131. The restrictions on the sale of swords and non-domestic knives provided for in this Bill are considered to be compatible with the European Convention on Human Rights. The Bill provides the power to make exceptions to the ban on the sale of swords and these exceptions will be framed so as to enable those undertaking legitimate activities (for example religious activities) involving swords to continue to have access to such swords.

Impact on island communities

132. The provisions of the Bill apply equally to all communities in Scotland. The measures provided for have no differential effect on island communities. No consultation responses raised specific issues regarding island communities.

Impact on local government: Custodial Sentences

133. The current statutory supervision responsibilities of local authorities for offenders in the community extend principally to those sentenced to custodial sentences of 4 years and over and those sex offenders serving sentences of more than 6 months. The measures provide for all
prisoners serving sentences of 15 days or longer being subject to licence conditions on release. The intensity and extent of supervision by local authority criminal justice social work services of those on licence will be determined in large part by the joint assessment to be carried out by SPS and authorities of the degree of risk of serious harm likely to be presented by the offender on release from custody. The measures will lead to local authorities contributing to large numbers of additional risk assessments and to supervising much higher numbers of offenders during the community part of the sentence.

Impact on local government: Restrictions on the sale of swords and non-domestic knives

134. It is intended that the provisions of this part of the Bill will form part of the licensing framework which exists under the Civic Government (Scotland) Act 1982 and which is administered by local authorities. Enforcement of the licensing scheme will mainly be a matter for local authorities trading standards departments. Like other licensing schemes, local authorities will have significant discretion as to how the scheme will operate in their areas, with the power to specify licence conditions appropriate to their locality.

135. Similarly, the Bill provides local authorities with considerable discretion in setting licence fees. This will enable local authorities to ensure that the costs of enforcing the scheme can be recovered. Further information on the issues for local government is set out in the section above on licensing and in the Financial Memorandum.

Sustainable Development

136. The measures contained in this Bill have no impact on sustainable development.
CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Executive in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Custodial Sentences and Weapons (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Executive and have not been endorsed by the Scottish Parliament.

INTERPRETATION

3. In this Memorandum:

   “the 1982 Act” means the Civic Government (Scotland) Act 1982;
   “the 1988 Act” means the Criminal Justice Act 1988;
   “the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993; and
   “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995.

OUTLINE OF BILL PROVISIONS


5. The Bill is divided into 4 Parts and, in summary, provides for the following:

   • Part 1 provides for the continued existence of the Parole Board for Scotland, and schedule 1, which is introduced by this Part, provides for its constitution;

   • Part 2 provides a comprehensive set of measures for the confinement, review and release of prisoners which will replace those currently set out in the 1993 Act;
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- **Part 3** provides a series of measures on weapons, including restrictions on the sale of swords and non-domestic knives; and
- **Part 4** contains general, ancillary and commencement provisions.

6. Further information about the Bill’s provisions are contained in the Explanatory Notes and Financial Memorandum published separately as [SP Bill 80–EN], and in the Policy Memorandum published separately as [SP Bill 80–PM].

**APPROACH TO USE OF DELEGATED POWERS**

7. The Bill contains a number of delegated powers provisions which are explained in more detail below. The Executive has had regard when deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill to:

- the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances quickly, in the light of experience, without the need for primary legislation;
- the need to make proper use of valuable Parliamentary time;
- the need to allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation;
- the need to ensure that other areas of local authority licensing can be developed in a coherent and consistent way;
- the likely frequency of amendment;
- the possible need to change provisions in a co-ordinated way;
- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament; and
- ensure that knife and sword dealers are regulated through flexible measures which can be applied in an appropriate manner based upon the industry’s success, or otherwise, with respect to self policing.

8. In deciding which form of Parliamentary procedure is appropriate, a balance must be struck between the different levels of scrutiny involved in the negative and affirmative resolution procedures. In the Bill the balance reflects the view of the Executive on the importance of the matter delegated by Parliament.
PART 1 – THE PAROLE BOARD FOR SCOTLAND

Section 2 – power to make rules for the proceedings of the Parole Board for Scotland
Power conferred on: the Scottish Ministers
Power exercisable by: rules made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

9. Section 2 enables the Scottish Ministers to make rules about the practice and procedure of the Parole Board for Scotland. In particular, these may include provision authorising cases referred to the Board to be dealt with, in whole or in part, by a specified number of members of the Board in accordance with such procedure as may be specified in the rules. The rules may also specify periods within which certain actions must be performed, and may require persons to attend to give evidence, or to produce documents, at proceedings of the Board. The rules may, further, provide for penalties for those who fail to attend, if they are required to do so. This may be achieved by applying section 210(4) and (5) of the Local Government (Scotland) Act 1973, with such modification as may be set out in the rules. (In this way, the Board could require a person’s attendance to give evidence or to produce documents, provided that the person was paid their necessary expenses and provided that he or she could not be compelled to answer any question or produce any document which could not be compelled were the matter to be conducted in a court of law. There is provision for a penalty for non-compliance.)

Reason for taking power

10. This power is considered necessary and appropriate to enable the Scottish Ministers to prescribe in detail the practices and procedures to be put in place to ensure that the Board is able to discharge its statutory functions. (For comparison, the current rules, made under section 20(4) and (4A) of the 1993 Act, are set out in SSI 2001/315.) It is desirable to retain a degree of flexibility over the detailed provisions which will regulate the Board’s procedures and this is best achieved by allowing a comprehensive set of rules to be made by subordinate legislation.

Choice of procedure

11. An order containing rules will be subject to annulment in pursuance of a resolution of the Scottish Parliament (section 47). The negative resolution procedure is considered appropriate given the desirability for flexibility in the use of the new power. The existing rules are made under negative resolution procedure and this has not given rise to adverse comment or difficulty.
PART 2 – CONFINEMENT AND RELEASE OF PRISONERS

Section 4(2) – power to amend definitions of “custody and community sentence” and “custody-only sentence”

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision
12. Section 4(2) enables the Scottish Ministers to amend by order the definitions of “custody and community sentence” and “custody-only sentence” referred to in subsection (1) of this section and to substitute a different term from that mentioned in these definitions. At present, the Bill defines “custody and community” sentence as a sentence of imprisonment for a term of 15 days or more; and a “custody-only sentence” as a sentence of imprisonment of less than 15 days.

Reason for taking power
13. The power to amend the definitions is necessary to provide Scottish Ministers with the flexibility required to accommodate changing trends in sentencing, types of offences and management of offenders. By way of example, on the basis of future data it may be shown that the custody and community sentence is more effective for sentences of a longer period than the 15 days currently prescribed. Should this prove to be the case, it may be beneficial to alter the definitions to ensure that sentences are managed as effectively as possible.

Choice of procedure
14. An order made under this section must be laid in draft before, and approved by a resolution of, the Scottish Parliament (section 48(4)). As an alteration to the period of imprisonment in the definition of “custody-only sentence” and “custody and community sentence” will result in potentially significant changes to, for example, the way a number of prisoners serve their sentences (by spending, longer or shorter periods in custody), it is considered that the affirmative procedure is appropriate.

Section 6(10) – power to amend proportion of sentence specified as custody part

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision
15. Section 6(10) enables the Scottish Ministers to amend, by order, the provision at subsection (3) of this section (which defines a “custody part” as a minimum of one half of the sentence) and substitute a different proportion of the sentence.

16. Section 6(1) provides that the court, when imposing a sentence of 15 days or more (a custody and community sentence), must make an order specifying the period that will be spent in custody (the custody part). Section 6(2) states the custody part of the sentence is that part that
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represents the appropriate period to satisfy the requirements for retribution and deterrence. Section 6(3) provides that the custody part will be a minimum of one half of the sentence unless the court considers, taking into account the matters prescribed in subsection 6(4), that it is appropriate to specify a greater proportion of the sentence than one half. In such cases, the court may not make an order specifying a custody part that is greater than three quarters of the sentence.

Reason for taking power

17. The power to amend the proportion is necessary to enable the Scottish Ministers to increase or decrease the minimum custody part should it prove necessary, against the possibility of future changes in sentencing patterns, to ensure that it is fit for purpose in delivering the element of the sentence required for the purposes of retribution and deterrence.

Choice of power

18. An order under this section will be subject to annulment in pursuance of a resolution of the Scottish Parliament (section 48). The negative resolution procedure is considered appropriate given the desirability for flexibility in the use of the new power. Any use of the power would need to take account of the fact that no custody part may exceed three quarters of the sentence (by virtue of section 6(6)) and there will also always remain the power of the court to increase the custody part, up to a maximum of three quarters, if it considers it appropriate to do so by reference to the requirement of retribution and deterrence.

Section 30(5) – power to amend licence conditions to be suspended while prisoner being detained

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

19. Section 30 deals with the situation in which a prisoner who has been released on licence is in custody for any reason during the currency of the licence (without the licence being revoked). All conditions apart from those specified in subsection (3) are suspended for the period the person is in custody. Section 30(5) enables the Scottish Ministers, by order, to amend subsection (3), and they may do so by amending the conditions or adding or removing conditions.

Reason for taking power

20. It is thought that the two conditions specified at present in subsection (3), namely the requirement to be of good behaviour and to keep the peace, and also to refrain from contacting a person, or class of person, are the only ones which are, generally speaking, likely to be capable of being breached by a prisoner in custody. Other conditions, such as a prohibition on foreign travel or a requirement to attend supervision at the local authority, are inappropriate for a person who is confined. However, it is considered necessary to take the present power so that the specified conditions can be modified if future developments render that necessary.
Choice of procedure

21. An order under this section will be subject to annulment in pursuance of a resolution of the Scottish Parliament (section 48). The negative resolution procedure is considered appropriate given the relatively limited nature of the enabling power and the desirability for flexibility in the use of the new power.

Section 36(1)(b) – Power to amend description of prisoners eligible for release on curfew licence

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

22. Under this section the Scottish Ministers may release, on licence, a custody and community prisoner who is serving a sentence of 3 months or more and who is of a description specified by order. Subsection 36(3) provides that the licence must include a curfew condition. This is a condition that requires the person to whom it relates to remain at the place specified in the condition for specified times. In addition, it may also require a person not to be in a specified place for specified periods. Compliance will be electronically monitored. There are time limits specified in section 36(4) which regulate when a person may be released on licence under this section. As the Policy Memorandum states, the provisions re-enact the measures contained in the Management of Offenders etc. (Scotland) Act 2005.

23. The order-making power covers, first, the power to specify descriptions of prisoner who may be released on licence under section 36 (on what is known as home detention curfew). The Policy Memorandum indicates that groups such as high risk offenders and sex offenders will be excluded. Secondly, the order may, by section 36(9), apply provisions in Part 2 of the Bill to curfew licences and may modify those provisions as appropriate. Finally, the order may modify the period during the sentence specified in section 36(4) when a prisoner may be released on home detention curfew.

Reason for taking power

24. The central reason for taking the power is to allow the Scottish Parliament the opportunity to consider the categories of prisoner who may be released on home detention curfew. Without an order under section 36(1)(b), no prisoner may be so released. As explained below, the order is subject to the affirmative procedure. Beyond that, the reason for the power is twofold. First, it allows Ministers to apply relevant provisions on Part 2 of the Bill to those released on home detention curfew. Secondly, it allows Ministers to amend the time limits which apply to the release of prisoners on home detention curfew, should that prove necessary or desirable in the future in the light of experience.

Choice of power

25. An order made under this section must be laid in draft before, and approved by a resolution of, the Scottish Parliament (section 48(4)). We consider that the affirmative procedure is appropriate in order to allow the Parliament the fullest opportunity to consider and debate the application of the home detention curfew provisions.
Section 38(2) – monitoring of curfew condition  
Power conferred on: the Scottish Ministers  
Power exercisable by: regulation made by statutory instrument  
Parliamentary procedure: negative resolution of the Scottish Parliament

Provision

26. As mentioned above, certain prisoners may be released on home detention curfew. They must be subject to a curfew condition, and section 38(1) provides that compliance with this is to be monitored remotely. Section 38(2) applies section 245C of the 1995 Act (which deals with contractual and other arrangements for remote monitoring devices in respect of prisoners with a restriction of liberty order) in relation to curfew conditions. Under section 245C(3), as applied by section 38 of the Bill, the Scottish Ministers must make regulations specifying the devices which may be used for remotely monitoring an offender’s compliance with a curfew condition.

Reason for taking power

27. It is necessary to specify devices by which compliance with the curfew condition may be monitored. This is so that the person designated under section 38 as being responsible for the remote monitoring knows what device or devices can be used in order to carry out this function.

Choice of procedure

28. An order specifying relevant devices will be subject to annulment in pursuance of a resolution of the Scottish Parliament (section 245C(4), read with section 118 of the Scotland Act). The negative resolution procedure is considered appropriate given the relatively limited nature of the enabling power and the desirability for flexibility in the use of the new power, especially in order to keep pace with any technological or other developments which relate to the design or manufacture of remote monitoring devices. The order is likely to be technical in nature and it is thought unlikely that members will routinely want to debate which devices should be prescribed.

Paragraph 3 of Schedule 1 – power to regulate the procedure for appointing Parole Board members  
Power conferred on: the Scottish Ministers  
Power exercisable by: regulation made by statutory instrument  
Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

29. Paragraph 3(1) of schedule 1 confers a power on the Scottish Ministers to make regulations governing the procedure for appointing members to the Parole Board, including any requirements as to consultation.

Reason for taking power

30. The Board will continue to be a Tribunal Non Departmental Public Body (NDPB). As Tribunal NDPBs do not fall under the auspices of the Office of the Commissioner for Public Appointments in Scotland (OCPAS), which governs the procedures for public appointments to other Scottish public bodies, this power is considered necessary and appropriate to enable the
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Parliament to regulate the way in which Scottish Ministers make appointments to the Board to enable it to undertake its functions appropriately. (As a matter of practice, past appointments to the Parole Board have been made in accordance with OCPAS procedures.)

31. The power extends to allowing the regulations to make different provision in relation to the different kinds of Board member. This is considered desirable to allow the procedures to be tailored to the particular requirements which may be appropriate in certain situations.

Choice of power

32. An order made under this section must be laid in draft before, and approved by a resolution of, the Scottish Parliament (section 48(4)). We consider that this is appropriate in order to allow the Parliament to consider and debate the proposed regulations.

Paragraph 17 of Schedule 1 – power to regulate the suspension of a Parole Board member pending consideration for removal of office

Power conferred on: the Scottish Ministers

Power exercisable by: order made by statutory instrument

Parliamentary procedure: affirmative resolution of the Scottish Parliament

Provision

33. Paragraph 17 of schedule 1 confers a power on the Scottish Ministers to make regulations for the suspension of a Parole Board member pending an investigation into his or her fitness for office on the grounds set out in paragraph 15(b) of the schedule. The investigation will be carried out by a tribunal constituted under paragraph 16. The regulations may also make provision for the effect and duration of the suspension, the procedure to be followed by the tribunal and any further matter which is considered necessary or expedient.

Reason for taking power

34. This power is considered necessary to enable Scottish Ministers to make provisions for the procedure to be followed by and before a tribunal (constituted under paragraph 16). Such a tribunal is constituted to carry out an investigation at the request of Scottish Ministers in order to ascertain whether a member of the Board is no longer fit for office by reason of inability, neglect of duty or misbehaviour.

Choice of procedure

35. An order made under this section must be laid in draft before, and approved by a resolution of, the Scottish Parliament (section 48(4)). We consider, given the serious nature of the function exercised by the tribunal, affirmative procedure is appropriate in order to allow the Parliament to consider and debate the proposed regulations.

PART 3 – WEAPONS

36. Sections 43 to 46 make provision in relation to weapons. Sections 43 and 44 establish a new scheme for the licensing of knife etc. dealers, section 45 amends existing provisions in the
1988 Act on the sale etc. of offensive weapons, and section 46 makes new provision in relation to restrictions on the sale etc. of swords.

37. Section 43 of the Bill inserts new sections 27A to 27R into the 1982 Act. Order-making powers are conferred by sections 27A(6), 27C(1)(a), 27K(7) and 27Q. Section 27R contains the general subordinate legislation provisions in respect of these powers. Section 27R(1) provides that all powers to make orders are exercisable by statutory instrument. Section 27R(2) provides that all of these powers are subject to negative resolution procedure.

**New section 27A of the 1982 Act**

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Order made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

**Provision**

38. Section 43 of the Bill inserts a new section 27A into the 1982 Act to provide for the licensing of those who carry on a business as a dealer in any article mentioned in section 27A(2). The articles so mentioned are knives, knife blades, swords and other bladed or sharply pointed articles made or adapted to cause injury. Knives and knife blades designed for domestic use are excluded. Section 27A(6) provides a power for the Scottish Ministers to modify subsection (2) so as to add, remove or amend descriptions of articles or classes of article.

**Reason for taking power**

39. While section 27A(2) sets the broad policy intent, it is important to provide a degree of flexibility in the scope of the licensing scheme. In particular, as set out in the Policy Memorandum (paragraph 108), it is intended that this power would be used initially to remove folding pocketknives, *sgian dubhs* and *kirpans* where the blade is less than 7.62 centimetres (3 inches) from the scope of the scheme. Over time, it may be possible to remove other articles from the scope of the scheme in light of changing experience on the ground of the use of bladed/pointed weapons. Equally, it may be necessary to bring other weapons within the scope of the scheme.

**Choice of procedure**

40. Orders made under this section will be subject to annulment in pursuance of a resolution of the Scottish Parliament (section 27R(2)). The negative resolution procedure is considered appropriate given the limited nature of the enabling power and the need for flexibility in the use of the new power. The power is likely to be used to refine the provisions in the Bill by excluding certain specific weapons, but not departing substantially from the categories of articles that are set out in the Bill. It is anticipated that any additional articles specified would be similar to those already specified.
New section 27C of the 1982 Act
Power conferred on:   The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision
41. Section 43 of the Bill inserts a new section 27C into the 1982 Act to provide for the setting of conditions to be attached to knife dealers’ licences. Section 27C(1)(a) requires licensing authorities to attach to knife dealers’ licences such conditions as are specified by the Scottish Ministers by order.

Reason for taking power
42. While licensing authorities already have general powers to attach conditions under the 1982 Act, it is considered necessary to set minimum conditions that will apply across Scotland. The intended use of the power is set out at paragraphs 114 and 115 of the Policy Memorandum. The conditions may be specified in particular or in general, allowing, in the latter case, licensing authorities some flexibility to tailor conditions to individual circumstances.

Choice of procedure
43. Orders made under this section will be subject to annulment in pursuance of a resolution of the Scottish Parliament (section 27R(2)). The negative resolution procedure is considered appropriate given the limited nature of the enabling power and the need for flexibility in the use of the new power. The provision at section 27C(1)(c) illustrates the types of conditions that may be included in any order.

New section 27K of the 1982 Act
Power conferred on:   The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision
44. Section 43 of the Bill inserts new sections 27J and 27K into the 1982 Act. These provide for the making of forfeiture orders by the court when a person is convicted of certain offences in connection with knife dealers’ licences, and set out the effect of such orders. Section 27K(7) provides a power for the Scottish Ministers to make provision for or in connection with the disposal of property forfeited under a forfeiture order once a 6 month period (a period intended to protect any interests of third parties) has passed. Similar provision is made in section 7 of the Knives Act 1997 and in the Knives (Forfeited Property) Regulations 1997 (SI 1997/1907).

Reason for taking power
45. It is not anticipated that the offences which may lead to the making of forfeiture orders, and therefore the forfeiture orders themselves, will be frequent occurrences. However, the articles which may be forfeited may be of some continuing value. It is therefore important that procedures for the disposal of such property, and for the application of the proceeds, are clear.
46. Orders made under this section will be subject to annulment in pursuance of a resolution of the Scottish Parliament (section 27R(2)). The negative resolution procedure is considered appropriate given the technical and procedural nature of the enabling power.

**New section 27Q of the 1982 Act**

*Power conferred on:* The Scottish Ministers  
*Power exercisable by:* Order made by statutory instrument  
*Parliamentary procedure:* Negative resolution of the Scottish Parliament

**Provision**

47. Section 43 of the Bill inserts a new section 27Q into the 1982 Act. This provides that the Scottish Ministers may, by order, provide exceptions from the new offences created by sections 27D, 27F and 27G, and in sections 5 and 7 of the 1982 Act so far as they relate to knife dealers’ licences.

**Reason for taking power**

48. It is not intended that this power would be used at the outset. However, limited circumstances may be identified in the future where application of the offences provided in the Bill would be inappropriate. For example, if a test purchasing scheme proves to be necessary as part of the enforcement of the provisions, then a person involved in making test purchases may be open to prosecution under the section 27D offence of providing false information to a dealer. Section 105(2) of the Licensing (Scotland) Act 2005 similarly provides for the disapplication of the offence in section 105(1) to allow test purchasing by children and young persons.

**Choice of procedure**

49. Orders made under this section will be subject to annulment in pursuance of a resolution of the Scottish Parliament (section 27R(2)). The negative resolution procedure is considered appropriate given the intention to use the power in very limited circumstances for the purpose of ensuring compliance with the licensing scheme.

**Section 45 – Sale etc. of weapons**

*Amendment of section 141 of the 1988 Act*

*Power conferred on:* The Scottish Ministers  
*Power exercisable by:* Order made by statutory instrument  
*Parliamentary procedure:* Affirmative resolution of the Scottish Parliament

**Provision**

50. Section 45 of the Bill amends section 141 of the 1988 Act. Section 141(1) provides that any person who manufactures, sells or hires, or offers for sale or hire, exposes or has in his or her possession for the purpose of sale or hire, or lends or gives to any other person a designated offensive weapon shall be guilty of an offence. The import of any such weapons is prohibited by section 141(4). A wide range of weapons has been designated in the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 (SSI 2005/483). Defences are available relating to functions carried out on behalf of the Crown or of a visiting force and making weapons available to
museums and galleries. New section 141(11A) confers a power for Ministers by order to provide for exceptions and exemptions from an offence under section 141(1), and to specify new defences. Similar provision is proposed for England and Wales in clause 40 of the Violent Crime Reduction Bill, currently being considered by the House of Lords.

**Reason for taking power**

51. The amendments made by section 44 recognise that, while use or trading in weapons specified under section 141 is rarely justified, there may be legitimate circumstances where such use can be allowed. The power contained in new section 141(11A) provides useful flexibility to deal with additional circumstances identified in the future.

**Choice of procedure**

52. Orders made under new section 141(11A) must be laid in draft before and approved by a resolution of the Scottish Parliament. The affirmative resolution procedure is considered appropriate to ensure that the Parliament can consider whether and in what circumstances additional defences should be provided.

**Section 46 – Sale etc. of swords**

*New section 141ZA of the 1988 Act (as it modifies the existing order-making power in section 141)*

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Order made by statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

**Provision**

53. Section 46 of the Bill inserts a new section 141ZA into the Criminal Justice Act 1988. As described in connection with section 45, section 141(1) of the 1988 Act provides that any person who manufactures, sells or hires etc. a designated offensive weapon shall be guilty of an offence. Swords, other than swordsticks, have not yet been specified under this section.

54. New section 141ZA supplements section 141 in its application to swords. It provides that, where Ministers make an order under section 141(2) applying that section to swords, they may include in that order provision for or in connection with modifying section 141. Those modifications may include new defences, increased penalties, and the creation of a new offence of providing false information. It also allows the order to establish a system of authorisations, allowing individual uses of swords to be permitted.

**Reason for taking power**

55. Section 46 does not provide a new order-making power as such, but modifies the existing power in section 141 in relation to swords. While section 141 could have been used to introduce a blanket ban on swords, it is recognised that there are legitimate uses for swords that should continue to be permitted. The intended use of the power is set out in detail in the Policy Memorandum (paragraph 95 et seq.), in particular in relation to the defences which it is proposed would be contained in the order.
56. The approach taken here may be contrasted with that in section 45 applying to offensive weapons more generally. While swords and offensive weapons could have been dealt with together by providing a more general modification of section 141, the more extensive provision envisaged in relation to swords justifies the separate treatment.

Choice of procedure

57. Orders made under section 141(2), including those relating to swords, must be laid in draft before and approved by a resolution of the Scottish Parliament. No change has been made to the parliamentary procedure relating to these orders.

PART 4 – GENERAL

Section 47 - Ancillary provision

<table>
<thead>
<tr>
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<th>Scottish Ministers</th>
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Provision

58. Section 47 of the Bill confers on Scottish Ministers a power to make by order such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate. Section 47(2) ensures that the power extends to the modification of any enactment (including the Bill), instrument or document.

Reason for taking power

59. Any body of new law, particularly one contained in a significant reform measure such as the Bill, gives rise to the need for a range of ancillary provisions.

60. The Executive considers that the power to make such provision should extend to the modification of enactments, including this Bill.

61. Without the power to make incidental, supplemental and consequential provision, it may be necessary to return to Parliament, through subsequent primary legislation, to deal with a matter which is clearly within the scope and policy intentions of the original Bill. That would not be an effective use of either the Parliament’s or the Executive’s resources.

62. For example, there will be a need to make transitional and transitory provision dealing with the treatment of prisoners who are already subject to the provisions of the 1993 Act, particularly if such prisoners are subsequently convicted for a later offence and come under the provisions of the Bill in relation to that offence.

63. The Executive considers it prudent to include a power to make saving provisions also. This will guard against the risk that any change in the law inadvertently leads to a situation where an accused person may avoid criminal trial or punishment, or be treated unfairly by virtue of the transition from the existing law to the new law.
64. Again, taking the example mentioned above, provisions of the 1993 Act which are repealed by the Bill will need to be saved in so far as they relate to existing prisoners whose sentence is managed under the provisions of the 1993 Act. The power to make savings is therefore clearly necessary and must be combined with a power to modify enactments (because the saved provisions are contained in an Act).

65. The Executive also expects that there will be a need for supplemental provision to give full effect to the provisions of the Bill. For example, other legislation which mentions sentences of imprisonment or release from such sentences may need to be amended to take into account the new sentencing and release regime. Such changes may be required to both primary and secondary legislation and it is felt more appropriate to do much of this by ancillary orders under Section 47 rather than weighing down the Bill with a large volume of minor supplemental and consequential provisions.

Choice of procedure

66. Given that the power conferred by this section can only be used in connection with the provisions of the Bill, it is clear that the orders made under this power will not contain core substantive provisions and it is therefore submitted that the negative procedure is considered appropriate.

Section 50(2) – Commencement

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: None

Provision

67. Section 50 of the Bill provides that Scottish Ministers may by order appoint a day when the provisions of the Bill shall come into force. Such an order may appoint different days for different purposes.

Reason for taking power

68. A large prison reform measure, such as that contained in this Bill will not come into force on Royal Assent, or indeed on a single day. The Executive considers that the provisions of the Bill should be commenced at different times as Scottish Ministers think appropriate or expedient.

Choice of procedure

69. The decision on when and to what extent the Bill is commenced is an administrative issue for Scottish Ministers. As is usual, therefore, the Executive considers that the commencement powers should not be subject to any Parliamentary procedure.
Justice 2 Committee

16th Report, 2006 (Session 2)

Stage 1 Report on the Custodial Sentences and Weapons (Scotland) Bill

Volume 1: Report

Published by the Scottish Parliament on 22 December 2006
Justice 2 Committee

16th Report, 2006 (Session 2)

Stage 1 Report on the Custodial Sentences and Weapons (Scotland) Bill

Volume 1: Report

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Justice 2 Committee

Remit and membership

Remit:
To consider and report on matters relating to the administration of civil and criminal justice, the reform of the civil and criminal law and such other matters as fall within the responsibility of the Minister for Justice, and the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigations of deaths in Scotland.

Membership:

Mr David Davidson (Convener)
Jackie Baillie
Bill Butler (Deputy Convener)
Colin Fox
Maureen Macmillan
Mr Michael Matheson
Jeremy Purvis

Committee Clerking Team:

Clerk to the Committee
Tracey Hawe

Senior Assistant Clerk
Anne Peat

Assistant Clerk
Steven Tallach
INTRODUCTION

1. The Custodial Sentences and Weapons (Scotland) Bill was introduced on 2 October 2006 by Cathy Jamieson, the Minister for Justice. On 4 October 2006 the Parliament designated the Justice 2 Committee as lead Committee for this Bill. Under Rule 9.6 of the Parliament’s standing orders, it is for the lead committee to report to the Parliament on the general principles of the Bill.

2. The Justice 2 Committee received reports from both the Finance and Subordinate Legislation Committees following their respective scrutiny of the Bill. These reports are attached as Annexes to this report and are referred to as appropriate in the body of this report.

3. All evidence provided to the Justice 2 Committee is included at Annexes D and E to this report.

4. The Committee observes that the timetable within which the Committee was required to issue its call for evidence, consider the evidence received, set up and hold the necessary oral evidence sessions and then draft and consider this report, was tight in the extreme and afforded the Committee little flexibility in terms of evidence sessions. The Committee notes that legislation, particularly recent legislation, can require quite significant development during the course of its parliamentary passage.

5. It is important that Committees and potential witnesses are given sufficient time to consider proposals in Bills at stage 1. The Committee is aware that some stakeholders did not feel in a position to make submissions due to the short timescales and that the speed at which the legislative process moved had created difficulties for others. The Committee notes that the Minister for Parliamentary Business is presently undertaking a review of the legislative process and welcomes the Convener’s involvement in this process.
BACKGROUND AND CONSULTATION

6. The Bill’s policy memorandum states that the objectives of parts 1 and 2 of the Bill are twofold; to end the current system of automatic unconditional release and replace it with a new system of combined custodial and community sentences. For the first time, all offenders will be under restriction for the full sentence.¹

7. The new system is intended to “provide a clearer, more understandable system for managing offenders while in custody and on licence in the community, take account of public safety by targeting risk and have victims’ interests at heart.” In turn this is expected to enhance public protection, reduce re-offending and increase public confidence in the justice system. The Bill’s policy memorandum states that the new arrangements are not intended to change the range of disposals available to the courts. Notwithstanding this, the provisions of the Bill will affect every offender admitted to prison and could also make significant changes to the processes and procedures undertaken in prisons and in the community.

8. Existing sentencing and release arrangements have been criticised as lacking in clarity. The current statutory regime is contained in the Prisoners and Criminal Proceedings (Scotland) Act 1993, most recently amended by the Management of Offenders (Scotland) Act 2005. Amongst other things, the 2005 Act ended unconditional early release for sex offenders serving sentences of six months or more and introduced a scheme known as Home Detention Curfew for certain categories of offender.

9. In general terms, early release is dictated at present by sentence length. For those serving short sentences (i.e. those sentenced to less than four years), with the exception of sex offenders as mentioned in the preceding paragraph, Scottish Ministers are under a duty to release the prisoner after one half of the sentence has been served. Though no supervision requirements are currently applied to this group, a released offender may be returned to custody if convicted of an imprisonable offence before expiry of the original sentence and so ordered by the court.

10. Long-term prisoners (those sentenced to four years or more) may be released on licence, if the Parole Board so decides, after serving one half of the sentence. The Parole Board is currently responsible for setting licence conditions and the licence, unless previously revoked, expires at the end of the sentence imposed by the court. If the Parole Board does not recommend release after one half of the sentence is served, Scottish Ministers are obliged to release on licence after two-thirds of the sentence is served. Some long-term prisoners are also entitled to be considered for earlier release on Home Detention Curfew.

11. The Bill’s proposals derive from recommendations made by the Sentencing Commission for Scotland (the Sentencing Commission) in its report published in January 2006². The Sentencing Commission is an independent judicially-led body

¹ Letter from Deputy Minister for Justice, 6 December 2006
² Early Release from Prison and Supervision of Prisoners on their Release
set up by the Scottish Executive in November 2003. Its report made a number of recommendations, including:

- At the time when the custodial sentence is imposed the sentencer should explain what the sentence means in terms of time to be served in custody and time served in the community.

- The overall sentence must be proportionate to the gravity of the offence.

- It must be made explicit that the term of custody imposed should be the minimum period to be served to satisfy the criminal justice requirements of punishment and deterrence and the protection of the public.

- Legislation for a new statutory regime should expressly provide that when having regard to sentences imposed under the previous regime, the court must also have regard to the rights of early release under that previous regime.

- There should be separate regimes for those sentenced to terms of 12 months or less and those sentenced to more than 12 months. For those sentenced to 12 months or less, the full term should be served in custody but offenders should be eligible for conditional release on Home Detention Curfew (HDC) after serving not less than one-half of the sentence.

- For those sentenced to 12 months or less who require more robust supervision than HDC, the courts should, when imposing the custodial sentence, be able to order a period of supervision, not less than 12 months and not more than 2 years, in addition to the term in custody.

- For those sentenced to more than 12 months, the sentence should be in two parts: a custodial sentence and a community sentence. The custodial part of the sentence should be the minimum term considered by the court to be required for the purposes of punishment, deterrence and public protection and the community part should normally bear a fixed proportionate relationship to the custodial part. In addition to this, it is recommended that the court should be given the power to order, at the time of sentencing, a longer community part (subject to a statutory maximum) where there is considered to be an ongoing risk of re-offending or alternatively that the court should have the power to order that there be no community part or that the community part should be shorter than the fixed proportion of the custody part.

12. Given the Scottish Executive’s stated intention to reform the system of automatic unconditional early release and achieve greater clarity in sentencing and the Sentencing Commission’s comprehensive consultation prior to publication of its report, the Executive did not undertake further consultation before publishing its own legislative plans in Release and Post Custody Management of Offenders. This Bill takes forward those plans.

13. This Committee was involved with the scrutiny of the Management of Offenders (Scotland) Act 2005 which has now been commenced. The Management of Offenders (Scotland) Act 1995 created eight new Community Justice Authorities (CJAs) responsible for planning, co-ordinating and managing offender services in the community. The 2005 Act created an obligation on Scottish Ministers (through the Scottish Prison Service (SPS)), CJAs and local authorities to co-operate with each other in order to carry out their respective functions relating to the management of offenders. CJAs have an important role to play in establishing local partnerships to provide the services, supervision and opportunities envisaged by this Bill.

14. Part 3 of the Bill contains two new measures in relation to weapons. Firstly, the Bill provides for the introduction of a mandatory licensing scheme for the commercial sale of non-domestic knives swords and similar items. Secondly, the Bill seeks to further restrict the availability of swords by enabling Ministers to specify a number of legitimate purposes for which swords can be bought when adding swords to other weapons which cannot be bought and sold. The Executive believes that the Bill puts in place safeguards to help prevent potentially dangerous weapons from falling into the wrong hands.4

15. The Policy Memorandum notes that these provisions form part of the Executive’s reform of knife crime law and are a component of a wider range of measures designed to tackle knife crime and violence more generally.5 The provisions supplement existing provisions contained in the Restriction of Offensive Weapons Act 1959, the Criminal Justice Act 1988, the Criminal Law (Consolidation) Scotland Act 1995 (as amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006) and the Knives Act 1997.

16. The provisions build on a review of knife crime law which was undertaken by the Executive earlier in this Parliamentary session. The review formed the basis of a five-point plan on knife crime, announced by the First Minister in November 2004. The five-point plan involved doubling the maximum sentence for possession of a knife, strengthening police powers of arrest for the carrying of knives or offensive weapons, increasing the minimum purchasing age for non-domestic knives from 16 to 18, introducing a licensing scheme for the sale of non-domestic knives and banning the sale of swords. The first three of these measures were implemented by the Police, Public Order and Criminal Justice (Scotland) Act 2006, and the last two measures are taken forward by the current Bill.6

17. This Committee was also involved with the scrutiny of Police, Public Order and Criminal Justice (Scotland) Act 2006 which introduced the first three measures in the five-point plan.

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4 Official Report, 24 October 2006, cols 2884-2885
5 Policy Memorandum, para 59
6 Policy Memorandum, paras 73-77
18. The Committee issued a call for evidence and received 40 written submissions split evenly between those addressing the custodial sentences parts of the Bill (parts 1 and 2) and those relating to knives and swords (part 3 of the Bill).

19. The Committee took oral evidence as follows:-

24 October 2006

Jane Richardson, Annette Sharp, Brian Cole and Charles Garland, Justice Department, Scottish Executive, and Rachel Gwyon, Scottish Prison Service;

Gery McLaughlin, Paul Johnston and Andrea Summers, Justice Department, Scottish Executive.

7 November

Alan Baird, Convener, Criminal Justice Standing Committee, Association of Directors of Social Work; and Lindsay MacGregor, Policy Manager, Councillor Eric Jackson and Councillor Alison Hay, COSLA;

Superintendent William Manson and Detective Superintendent James Cameron, ACPOS; Clive Murray, National President, Association of Scottish Police Superintendents; and Detective Chief Superintendent John Carnochan and Will Linden, Senior Intelligence Analyst, Violence Reduction Unit, Strathclyde Police;

Derek Turner, Assistant Secretary for Scotland, and Kenny Cassels, Vice Chair, Prison Officers Association.

14 November

Neil Paterson, Director of Operations, Victim Support Scotland; and Susan Matheson and Donald Dickie, Scottish Consortium on Crime and Criminal Justice;

Cyrus Tata, Co-Director, Centre for Sentencing Research, The Law School, University of Strathclyde; Richard Sparks, Professor of Criminology, Law School, University of Edinburgh; and Bill Whyte, Director, Criminal Justice Social Work Development Centre.
21 November

Fiona Moriarty, Director, Scottish Retail Consortium;

Professor Alexander Cameron, Chairman, and Niall Campbell, Member, Parole Board for Scotland; Professor Roisin Hall, Chief Executive, and Robert Winter, Convener, Risk Management Authority; and

Dr Andrew McLellan, HM Chief Inspector of Prisons, and John McCaig, HM Deputy Chief Inspector of Prisons.

28 November

Ian Gunn, Governor, HMP and YOI Cornton Vale and Bill McKinlay, Governor, HMP Barlinnie;

Johann Lamont MSP, Deputy Minister for Justice, Tony Cameron, Chief Executive, Scottish Prison Service, Valerie MacNiven, Head, Criminal Justice Group, and Charles Garland, Legal and Parliamentary Services, Scottish Executive; and

Mark Hodgkinson, Chief Officer, Northern Community Justice Authority, and Chris Hawkes, Chief Officer, Lothian and Borders Community Justice Authority.

20. The Committee would like to express its thanks to all those who gave us their views. In addition to the written and oral evidence received, the Committee is grateful for the assistance provided by its advisers Fergus McNeill and Susan Wiltshire, both of the Scottish Centre for Crime and Justice Research at the University of Glasgow.

PARTS 1 AND 2 - ISSUES CONSIDERED BY THE COMMITTEE

General

21. The policy objectives of the Bill; to provide a clearer, more understandable system for managing offenders while in custody and on licence in the community, to take account of public safety by targeting risk and to have victims’ interests at its heart were welcomed by all from whom the Committee heard. However there were concerns about:

- the Bill’s provisions potentially leading to the misdirection of limited resources which would run counter to the aim of reducing re-offending and that the very wide range of offenders to be encompassed might mean resources being diverted away from those who do present a serious risk of harm.

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8 Risk Management Authority written evidence and Andrew Coyle, International Centre for Prison Studies, King’s College London written evidence
• the problems in risk assessing those on very short sentences\textsuperscript{9}

• whether there will be sufficient space in Scotland’s prisons for the additional numbers of prisoners anticipated\textsuperscript{10}

• the adequacy of funding for criminal justice social work services\textsuperscript{11} and the resource and workforce implications for the prison service arising from the extension of Integrated Case Management (ICM) to a much greater number of prisoners and ex-prisoners requiring post-release supervision and

• the increase in workload for the Parole Board for Scotland.

The need for change
22. The Committee agrees with many of the criticisms of the existing regime of unconditional early release based on length of sentence and reductions in sentences for guilty pleas. The system has been criticised as being complex, not meaning what it says and having a lack of clarity about the true length and effect of custodial sentences thus producing public mistrust and being weighted in favour of the offender.\textsuperscript{12}

23. These are potent arguments for change and in line with the witnesses from whom we heard, the Committee supports the policy objectives of the Bill including an end to automatic unconditional early release. However, the Committee notes the evidence it has received from many expert witnesses (in relation to sentencing, risk assessment and management, imprisonment and prisoner resettlement) which calls into question whether the measures in the Bill, as currently constituted, can achieve the stated objectives.

24. The Committee has therefore carefully considered the Bill’s proposals with a view to determining its own view of the extent to which the proposals meet the stated objectives and what the likely impact and resource implications will be, having regard to all evidence received.

Gender impact
25. The Committee was interested to know what analysis had been undertaken of likely gender impact of the Bill’s proposals. The Bill’s policy memorandum states that the policies will apply across all of Scotland and there is no intention that they will have any differential or discriminatory impact. The Committee was advised that no specific research on gender impact had been carried out for the purposes of this Bill.\textsuperscript{13} In its evidence, COSLA and ADSW state that there are specific gender issues not addressed by the proposed legislation, that many of

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\textsuperscript{9} The Parole Board for Scotland, Official Report, 21 November 2006, cols 3001-3002
\textsuperscript{10} Prison Officers Association, Official Report, 7 November 2006, col 2948, Scottish Parliament Finance Committee
\textsuperscript{11} Scottish Parliament Finance Committee
\textsuperscript{12} Early Release from Prison and Supervision of Prisoners on their Release – Sentencing Commission for Scotland
\textsuperscript{13} Letter from Scottish Executive Justice Department, 30 November 2006
Scotland’s short-term prisoners are women and COSLA/ADSW are not currently well-equipped to work with women offenders.  

26. The Committee draws the Minister’s attention to this evidence on gender issues and recommends that the Minister considers what work might be required to address this gap.

Parole Board for Scotland

27. Part 1 and schedule 1 of the Bill make provisions relating to the Parole Board for Scotland. Section 2 extends the powers of the Board to cite witnesses to appear before a hearing of the Board to give evidence or to provide documents. The Board welcomed this extension of its powers particularly in relation to oral hearings to consider re-release of recalled determinate sentence prisoners. The Board also welcomed inclusion amongst its membership of a person with knowledge and experience of the way in which and the degree to which offences perpetrated against members of the public affect those persons.

28. Not included in the Bill, but mentioned at paragraph 151 of the Financial Memorandum to the Bill, is the proposal that Parole Board Rules be amended to require a Tribunal to reach a unanimous decision in every case and for Tribunals to consist of 2 Board Members (as opposed to the current 3).

29. The Board stated that it was concerned at the proposal to reduce Tribunal numbers as this seemed to contradict the provision to expand the Board membership and breadth of experience, the latter being the primary strength of the Board. It was also concerned with the requirement for unanimity of Tribunal decisions. Existing arrangements allow for a majority decision to be made when required. In the view of the Board, membership of three for a tribunal (as the name suggests) is a consistent position for tribunals and the uneven number allows for majority decision. This was also the view of the Scottish Consortium on Crime and Criminal Justice (SCCCJ). A further concern of the Board was that the requirement for unanimity might not be compatible with the right to a fair trial under Article 6 of ECHR, as the need to reach the same decision may pressure decision makers to come to a common view.

30. The Executive confirmed that the issue of tribunal numbers and unanimity would be one for Parole Board Rules. Consultation and involvement of the Parole Board in discussions on rule changes would take place with the objective of creating the best structure to ensure that the Board is able to undertake its business in the most efficient and effective way. The intention in relation to decision-making is for release to be directed by a Tribunal only where both members are in agreement. Where there is no unanimous agreement on release, the prisoner must remain in custody. The Committee notes that the Executive’s opinion, based on legal advice, is that the Bill is ECHR compliant and the requirement for unanimity would not conflict with ECHR.

14 COSLA/ADSW, written evidence
15 Official Report, 21 November 2006, col 3003
16 Official Report, 14 November 2006, col 2966
17 Parole Board for Scotland, written evidence
18 Letter from Scottish Executive Justice Department, 30 November 2006
31. The Committee has been advised that work on revision of the Parole Board Rules is being undertaken in parallel with the passage of this Bill in order to ensure that the new rules are operational around the time the Bill is implemented. Other changes to the Board’s responsibilities are discussed later in this report under the heading of *Breach and recall*.

32. Given the range of issues to be discussed and decided upon in the context of the Parole Board Rules, the Committee welcomes the Deputy Minister’s undertaking to provide a first draft of the proposed rule changes by February 2007. The Committee expects to be kept involved of the development of the rules as they progress through the consultation process.

**SENTENCING**

33. The Bill provides that all offenders sentenced to a term of less than 15 days will spend the entire sentence in prison and thereafter be released unconditionally. For sentences of 15 days or more there will be a combined sentence management structure comprising a custody and a community part. The custody part of any such sentence will be a minimum of 50% of the sentence up to a maximum of 75% and the courts will be required to set the custody part when passing sentence. A number of issues arose in evidence and occurred to the Committee in relation to clarity of sentencing.

34. Some witnesses drew attention to what might be described as the perverse logic of the proposed regime whereby those sentenced to 14 days or less will spend the entire sentence in custody but those sentenced to more than 14 days need only spend 50% of the sentence in custody.

35. Someone sentenced to 20 days might only spend 10 days in prison (4 days less than someone sentenced to 14 days) albeit that the remainder of that 20 day sentence will be served on licence in the community. One written submission stated that this provision could affect how a sheriff might determine the length of a shorter sentence, for example in the circumstances where an offender has already spent 10 days on remand, a lawyer may argue for a sentence of more than 2 weeks to ensure immediate release on licence. It was thought that this provision could give rise to unequal and disproportionate treatment as “a person sentenced to 14 days in custody will often serve more time in custody than a person given a supposedly longer headline sentence of 21 days”.

36. In evidence, officials stated that the advice available to ministers when formulating this policy was that a period of 15 days in the community was the minimum amount of time required to begin to engage practically with someone. Less than 15 days would be too short a time to engage, although it would still be possible to provide signposting (referral to a relevant agency). In 15 days, some start could be made to help people reduce their risk of re-offending through practical measures.

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19 Professor Sheila Bird, written evidence
20 Cyrus Tata, written evidence
21 Official Report, 28 November 2006, col 3074
37. Whatever cut-off point is chosen for custody and community sentences to apply, an anomaly will exist for sentences nearest to that point. However decisions on thresholds must be based on a clear rationale. The Committee therefore seeks a clearer explanation of why the 15 day cut-off has been chosen.

Recalibration
38. As a preliminary point and as noted in paragraph 11, the Sentencing Commission recommended that for any new regime, in order to avoid any increase in the length of time most offenders would serve in custody, it would be appropriate for sentencers to recalibrate the sentences imposed under any new scheme. Recalibration should be downwards to reflect the entitlement to early release of a person who had been sentenced for a comparable offence under the present regime and in terms of proportionality, to take account of the additional burdens of post-release supervision.

39. Cyrus Tata asked what the rationale was for omitting this provision in the Bill as someone sentenced to 18 months under present sentencing arrangements could currently be released unconditionally after 9 months (having served 50% of the sentence) but under the Bill’s proposals, the same sentence will be imposed but the court could set the effective custody period at 75% - in effect 3 months longer. In his view this raises issues of proportionality and will lead to a rise in the prison population.22

40. The Bill does not make provision for recalibration. As advised by the Deputy Minister “nothing in the Bill requires judges to change their sentencing practice.”23 Bill Whyte stated that in his view, judges will in fact recalibrate sentences so as to ensure that prisoners spend exactly the same length of time in prison.24 The Committee was told that Ministers have taken the view that it would not assist clarity of sentencing if the future legislation tried somehow to merge the two regimes...that the sentencing regime should be left as it is for the time being and that further recommendations on consistency in sentencing are still be considered by ministers.25

41. The Committee understands that the Bill is not intended to alter the setting of headline sentences and notes the Minister’s comments in relation to the potentially confusing effect of merging sentencing regimes. However the Bill’s provisions are likely to alter sentencing practice by requiring, for the first time in determinate sentences, the setting of the custody part. The Committee is of the view that the implications of this significant change in sentencing practice require further consideration in the light of the evidence received in relation to recalibration. The Minister is therefore invited to consider this and revert to the Committee prior to commencing Stage 2.

22 Cyrus Tata, written evidence
23 Official Report, 28 November 2006, col 3061
24 Official Report, 14 November 2006, col 2986
25 Scottish Executive official, 28 November 2006, cols 3061and 3062
Setting the Custody Part

42. The intention is not to alter the means by which overall or headline sentences are set. The Bill’s provisions only concern the way in which sentences are managed once they have been decided by the courts.\(^{26}\) For the sentencer, the only change proposed is a requirement to set a custody part for all determinate sentences of more than 15 days.\(^{27}\) In light of the evidence received, it did not appear to the Committee that this had been particularly clearly stated in the Bill.

43. In later correspondence, the Deputy Minister sought to clarify the provisions by stating that “the new regime will only apply to those cases where a judge has decided (in the same way as s/he would now), in light of all the circumstances of the offence and the offender that firstly, a term of imprisonment is the most appropriate disposal and, secondly, what the length of that term will be.”\(^{28}\)

44. Section 6 of the Bill states that the custody part of a sentence is “that part of the sentence which represents an appropriate period to satisfy the requirements for retribution and deterrence.” The custody part of a sentence must be one-half of the overall sentence, unless the court considers it appropriate to specify a greater proportion of the sentence to be spent in custody (up to a maximum of three-quarters of the total sentence).

45. Subsection 6(4) sets out the three matters to be taken into account by the court when making a decision to increase the proportion to be spent in custody beyond one-half of the sentence;

- the seriousness of the offence or of other relevant offences,
- previous convictions and
- the timing of any guilty plea.

and subsection 6(5) states “in specifying a custody part the court must ignore any period of confinement which may be necessary for the protection of the public.”

46. Sheriff Fiona Reith stated that the three factors to be taken in to account are “very restricted” and that it appeared that the court can proceed to fix a custody part with reference simply to these three restricted matters.\(^{29}\) She questioned whether that was really the intention of the Bill. The Sheriffs’ Association stated that “protection of the public is a factor to which sentencing judges have customarily attributed high importance in determining the appropriate sentence to impose” and asked whether it is the intention to remove that factor from the judicial sentencing process.\(^{30}\)

47. Cyrus Tata questioned the rationale for allowing individual sentencers to increase the custody part of a sentence to 75% stating that no reason had been

\(^{26}\) Official Report, 28 November 2006, col 3061
\(^{27}\) Official Report, 28 November 2006, col 3067
\(^{28}\) Letter from Deputy Minister for Justice, 6 December 2006
\(^{29}\) Sheriff Fiona Reith QC, written evidence
\(^{30}\) Policy Memorandum, para 7
given for this. The Committee notes that if individual sentencers set a custody component of more than 50%, then this has the potential to seriously impact upon the costs contained in the Financial Memorandum.

48. The Committee did not receive a clear explanation of why the 75% maximum had been chosen. The Sheriffs’ Association also commented that in considering whether to impose an increased custody part it would appear that there would be double application of the same factors already taken account of when setting the overall ‘headline’ sentence in the first place.

49. The Minister re-stated that section 6 of the Bill applies once a sentence is passed i.e. once the sentencer has decided, as they do now, that having regard to all the information available at the time of conviction (including an offender’s risk as it presents at that time) imprisonment is the most appropriate disposal.

50. Executive officials advised that the restriction on sentencers not to consider the protection of the public when specifying an increase to the minimum custody part was because this would be considered at the end of the custody part allowing “real-time factors to be taken into account in deciding about release”.31 In other words, the minimum custody part imposed by a court is intended to have the effect of punishment, as opposed to protection of the public (albeit that whilst someone is imprisoned, the risk to the public is reduced). At a later stage, public protection is considered through the risk assessment to be undertaken prior to decision-making about release.

51. Given the evidence received by the Committee there appears to be confusion about the rationale behind and the effects of section 6 of the Bill and that there is the potential for unintended consequences such as sentencers being required to apply the same factors twice. The Committee welcomes the Minister’s undertaking32 to consider the evidence with a view to deciding whether any clarifying amendments are required at stage 2. The Committee requests a response to this particular point prior to the commencement of stage 2.

Ministers powers to vary the proportion of the custody part

52. Subsection 6(10) makes provision for Scottish Ministers to vary by order, subject to negative procedure, the one-half proportion that the statutory minimum custody part is of the total sentence. This power was of considerable concern to the Subordinate Legislation Committee. It was of the view that there was ambiguity in this unlimited provision which could be interpreted as allowing Ministers, by this route, to increase the custody part of a sentence beyond three-quarters.

53. In its response to the Subordinate Legislation Committee, the Executive stated that the power is not intended to extend to increasing the maximum custody proportion of the sentence and advised that it would amend the Bill to ensure that any use of this power would be subject to affirmative resolution. The Subordinate Legislation Committee welcomed the use of the affirmative procedure but stated

31 Scottish Executive official, Official Report, 28 November 2006, col 3068,
32 Letter from Deputy Minister for Justice, 6 December 2006
that “the power was at the boundary of what was appropriate by way of delegated power. The ambiguity relates to a power of considerable significance and the Committee considered that it was preferable for it to be removed.” The Subordinate Legislation Committee asked us to examine this ambiguity and the possible removal of the provision by way of amendment.

54. **Given the concerns of the Subordinate Legislation Committee the Committee recommends that the Minister looks again at subsection 6(10), its ambiguity and risk of future re-interpretation and reverts to the Committee prior to the commencement of stage 2.**

*Post sentencing reports*

55. There was concern that the Bill’s provisions concerning decision-making about release would give rise to an increased routine requirement for reports by sentencers. This would be “an unacceptable additional burden to the work of sheriffs and would be quite disproportionate to what would be likely to be the actual need for reports” In the view of the Parole Board however it would be difficult for it to make a judgment when dealing with those on very short sentences without a trial judge or sheriff’s report.

56. The Committee is not clear to what extent there will be additional burdens for reports from sentencers. From evidence given to the Finance Committee it appears that there is recognition that additional work may be required in respect of indictment cases. What is not clear however is whether sheriffs sitting in summary cases (in 2001, 63% of all criminal cases in Scotland were heard in sheriff courts on summary procedure) will be required to provide such reports. If there is such a requirement, this will clearly have resource implications. The Committee understands that this is one of the issues being looked at by the Custodial Sentences Planning Group on which the Sheriffs’ Association and the Parole Board are both represented.

57. **The Committee draws attention to the concerns regarding the additional burdens that could be placed on sentencers and requests that these are considered by the Planning Group.**

*Efficacy and effects of short-term sentences*

58. The threshold for triggering the combined sentence is 15 days, although in terms of section 4(2) Scottish Ministers may by order amend the definitions of “custody and community sentence” and “custody-only sentence” by substituting a different term. In evidence to the Subordinate Legislation Committee the Executive stated that its reason for this power was that “post-implementation evaluation might show custody and community sentences are more effective for sentences longer than 15 days.”

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33 Report of the Subordinate Legislation Committee, para 22
34 Sheriffs’ Association, written evidence
35 Official Report, 21 November 2006, cols 3006-3007
36 http://www.scottish.parliament.uk/business/research/pdf_subj_maps/smda01-08.pdf
37 Report of the Subordinate Legislation Committee, para 9
59. As the proposals in the Bill stand, for sentences under 15 days, the entire period will be spent in custody. For sentences of 15 days or more a combined custody / community sentence will be imposed. By common consent there will be an adverse effect on prisoner numbers. The Bill’s Financial Memorandum makes reference to a likely increase of between 700 and 1100 prisoners. The Memorandum states that the main cost of continued imprisonment beyond the court imposed custody part is the difference between the current prison projections and the new population estimates arising from the assumptions made about breach rates. The proposals in the Bill could result in 8,600 offenders per annum serving part of their sentences on licence in the community (whereas under existing arrangements, such offenders are likely to be released unconditionally without any form of licence).

60. As there will be more offenders released on licence as a result of this Bill, there will inevitably be more breaches of licence / supervision conditions which will result in a return to custody, thereby increasing the prison population. The Committee was told that this projected increase in prison numbers could lead to Scotland having the highest imprisonment rate in Western Europe, more than double that of Finland, Sweden, Denmark and Norway and even more than Hungary and Bulgaria.  

61. Prison numbers in Scotland are already at an all-time high and the problems of overcrowding in Scotland’s prisons have been highlighted by many observers. In evidence to us, Dr Andrew McLellan, HM Chief Inspector of Prisons, drew attention to his annual report and his observations about the effects of overcrowding; for example making it easier to get drugs into prison, prisoners being locked up for long periods and the difficulties for prisoners to access work and education or training opportunities. He stated that the impact of the Bill could be enormous and “whatever the merits of the Bill, the increase in overcrowding that the Scottish Prison Service estimates will be a significant cost. There may also be a cost in public safety.”

62. Over-crowding in prisons impacts on the ability to provide and meaningfully undertake rehabilitative work in custody designed to address and reduce risk. The Committee is aware that many staff working with offenders are over-stretched but that they are most effective when able to work jointly with other agencies, prioritise their workloads and target the skills and resources where the greatest need or risk lies. Efforts to join up services, for example through the Community Justice Authorities (CJAs) and the Prison Service, could quite possibly be undermined by the numbers coming in and leaving prisons as a result of this Bill.

63. When considering how best to target resources and to manage public expectations in terms of the management and appropriate supervision of offenders, the Committee was told by the SCCCJ “that the threshold could screw it all up, to put it bluntly, by putting the resources in the wrong places and thereby depriving people who need more resources”. They suggested that if the

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38 SCCCJ, written evidence
39 http://www.scottishexecutive.gov.uk/Publications/2006/10/26121221/0
40 Official Report, 21 November 2006, col 3025
41 Official Report, 14 November 2006, col 2973
threshold for post-release supervision was increased to 6 months, some 7 - 8000 offenders would be taken out of the system. The RMA stated their preference would be for a cut-off point of sentences of one-year. In addition to questioning the low threshold for post-release licences and supervision, several witnesses and written submissions suggested that rather that requiring post-release licences for those serving short sentences, more strenuous efforts should be made to replace such short sentences with more robust community proposals. The SCCJ, COSLA, ADSW and the CJA chief officers all drew attention to the workforce and resource pressures that could be exacerbated by the Bill’s provisions. These concerns underline a rationale to limit the numbers of very short-sentence, low risk-of-harm prisoners coming into custody, in order that efforts can be focussed on those prisoners who pose a greater risk.

64. Much research has been conducted into the usefulness or otherwise of short-term custodial sentences. The Committee was told by ADSW that the Bill would not make an impact in relation to short-term sentences and that “if we want to make an impact, we would be better to take those currently serving short-term sentences – a massive number of people – out of the prison system and work with them in what are known as community link centres.”

65. Councillor Jackson stated on behalf of COSLA and ADSW that “the majority view is that people given short-term sentences could be better served by community disposals.” SCCJ said that it “would like sentences of less than 6 months to be phased out,” ACPOS said that it “would probably agree that short sentencing does not work, but a short sentence can sometimes be the only means of respite for a community.” The Prison Officers Association said that it was not productive to send someone to prison to serve a very short sentence and that all that can be done is to patch them up, stabilise them and put them back in the community. Richard Sparks stated that in order not to create additional expectations or further demand for prison service resources, a relatively high threshold for the provision of this bill will be required.

66. Many studies have shown the significant cost of incarceration as compared to the costs of community disposals. The Scottish Executive published the following information for the year 2003-04: the cost of 6 months in prison is £16,342, the average cost of a probation order is £1157, the average cost of a community service order is £1432, the average cost of a supervised attendance order is £410 and the average cost of a restriction of liberty order is £9000.

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43 See ‘A Comparative Review of Alternatives to Custody: Lessons from Finland, Sweden and Western Australia’; para 2.2.1; Eley. S et al: Justice 1 Committee Report, April 2005
44 Official Report, 7 November 2006, col 2925
45 Official Report, 14 November 2006, col 2939
46 Official Report, 7 November 2006, col 2927
47 Official Report, 7 November 2006, col 2939
48 cp(s)a section 306: Costs, Sentencing Profiles and the Scottish Criminal Justice System 2004/05, Scottish Executive, November 2006
49 This figure covers only “standard” Probation Orders and not those which include participation in intensive projects
67. In their evidence, the CJA chief officers said that “the thresholds are wrong and the proportionality is wrong…we need a clearer threshold that is arrived at more rationally”\textsuperscript{51} and called for an examination of effective practice both nationally and internationally asking “why pass a Bill that has ineffectiveness built in?” A high threshold, along the lines of the Finnish model, could result in people who would otherwise serve custodial sentences being subject to longer community disposals which would mean them being taken out of the system altogether\textsuperscript{52}. Currently in Finland, prisoners given sentences of less than two years are supervised in the community with appropriate safeguards.

68. The Committee notes that in the view of the Executive “conditional imprisonment is not presently a sentencing option for the courts and so to introduce such a measure would amount to a new sentencing option. Such a move would be outwith the scope of this Bill.”\textsuperscript{53} Notwithstanding this, the Committee asks the Minister whether conditional sentences could be considered as a form of early release. The Committee would be grateful for a response prior to the commencement of stage 2.

69. The Committee shares the apprehensions of a number of those who gave evidence about the likely effects of the thresholds currently set out in the Bill and whether these thresholds provide for the most effective targeting of resources.

70. The Committee notes that the Finance Committee has serious concerns in relation to the provision of accommodation for the additional prisoners proposed. In its report to us, the Finance Committee stated that it is very concerned that the planning process to consider the impact of the additional anticipated prisoners is as such an early stage.

71. Given the expected operational impact on prisons, the Committee was very disappointed that the prison governors invited to give evidence appeared unable to comment on the areas under their respective operational responsibilities likely to be affected by the Bill.

Clarity and transparency of sentencing

72. Clarity of sentencing is an important consideration for reasons of public confidence and for informing witnesses and offenders. Most of our witnesses, including Victim Support Scotland, welcomed the principle of combination sentences and, referring to the set of principles within which it will operate, stated “the public will find it easier to comprehend than those under which the present system operates. However if victims are to understand how the system works, the sentencer will have to give in court an appropriate and clear explanation of how the custody and community components of the sentence will work.”\textsuperscript{54} Further, in order to assist offenders in understanding the effect of a sentence, Victim Support Scotland recommended changing the entry point for the victim notification scheme downwards from the current 4 years to around 12 months.

\textsuperscript{51} Official Report, 28 November 2006, col 3097
\textsuperscript{52} Official Report, 14 November 2006, col 2987
\textsuperscript{53} Letter from Scottish Executive Justice Department, 15 December 2006
\textsuperscript{54} Official Report, 14 November 2006, cols 2962-2963
There was also support from the SCCCJ for combination sentences however because of the various contingencies that might significantly alter the effect of the sentence after it had been passed, they were of the view that any explanation of the sentence would be too complex; a view shared by the Sheriffs Association and ADSW. Both the SCCCJ and the Sheriffs’ Association provided examples of the statements they envisaged having to be made in court by sentencers when attempting to explain the effects of the sentence imposed. Cyrus Tata stated that in order to improve clarity and transparency, sentences themselves must be looked at as opposed to sentence management.

73. In response, the Minister stated that “there are two separate issues: there is the stage at which the sentence is announced and there is the process by which it can be shifted. There is a separate discussion about the extent to which the general public should be engaged and involved in the movement of individual sentences and how that is dealt with. We know with some certainty that the minimum amount of time that the offender can expect to spend in custody will be stated at the first stage. That is significant, because at present one thing is said but something entirely different happens.”

74. The Committee notes that the Bill is not intended to do anything to change sentencing practice. However, our evidence did not necessarily support this assertion. Our evidence suggested that the Bill might result in more short-term prison sentences. For example in the view of Mark Hodgkinson “at present, sheriffs have a stark choice between a community sentence and a custodial one, but under the bill, there will be a much more softened system in which sheriffs can combine both…it is clear that the Bill will mean that more people will spend longer in prison.” None of the witnesses from which the committee heard expressed the view that more short-term sentences would be a good thing.

75. Victim Support Scotland commended the innovative work being done to demystify the workings of criminal justice in England and Wales and said that in Scotland there was a need for something like that and for the “system as a whole to be more transparent in engaging with communities to build confidence…not just sentencing information but a wider process of engagement.”

76. The Committee draws attention to the research commissioned in 2002 by the Parliament’s Justice 1 Committee into Public Attitudes Towards Sentencing and alternatives to imprisonment and particularly its conclusions about the need to restore public confidence by providing better information about constructive alternatives to prison and the need to address public expectations of what sentencing and punishment can achieve. The Committee notes that in 2004-5 the number of community disposals imposed by the courts exceeded, for the first time, the number of custodial sentences imposed. However the Committee would invite the

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55 SCCCJ, written evidence and Sheriffs’ Association, written evidence
56 Official Report, 14 November 2006, col 2978
57 Official Report, 28 November 2006, cols 3064-3065
58 Official Report, 28 November 2006, col 3096
59 Official Report, 14 November 2006, col 2965
60 http://www.scottish.parliament.uk/business/committees/historic/justice1/reports-02/j1r02-pats-01.htm
Executive to re-consider this research and what work still requires to be done to create greater public confidence in Scotland’s justice system and in the benefits of disposals other than custodial sentences

Procedures and resources for assessment of needs and or risk

77. The current process of assessment in prisons is community integration planning. At present, every prisoner who comes through the door is assessed on a needs basis which could include housing, drugs or alcohol services and mental health provision.61 Those with sentences of under 31 days are signposted but not placed on any specific programme; those serving sentences of 31 days or more also receive an initial assessment but are expected to leave prison with a Community Integration Plan62 and those serving sentences of more than 4 years come into the relatively new ICM System.

78. The ICM system currently applies to around 3000 offenders a year, those subject to post-release supervision i.e. those sentenced to 4 years or more, sex offenders sentenced to 6 months or more, offenders on extended sentences or those serving life sentences.63 The ICM system uses information relating to offending history, risk and needs of the offender, assessment, interviews with each prisoner, social work input and integrated case conferences for each offender and, where appropriate, psychological reports.

79. As stated in the Financial Memorandum “the proposals in the Bill will require a similar system to apply to all those whose sentences will be managed through custody and community – in effect 9241 admissions to custody.”64 Each 1,000 extra offenders receiving ICM will require around 18 staff (using the predictions in the Bill, the proposals will require a further 175 staff) with associated costs. SPS estimates that the costs from these proposals are likely to be around £5-6m a year.

80. Under the Bill’s proposals, assessment of all offenders’ levels of risk and the need for public protection will be undertaken during the custody part of the sentence. It is not clear who is to undertake this assessment.

81. The Policy Memorandum (para 19) states that during the custody part of a sentence, the risk of serious harm to the public that an offender may pose will be assessed on a regular basis. Joint working between the SPS and local authorities will enable appropriate risk assessment and risk management processes to be set up and if a risk of serious harm to the public is suspected at the end of the custody part of the sentence, the case will be referred to the Parole Board. Crucially at this stage it is not clear who will make this referral.

82. After referral it will be for the Parole Board to consider whether the offender should be detained in custody on grounds of risk however the Parole Board cannot order detention beyond 75% of the total sentence, as this is the maximum period of custody that could have been imposed by the court. The Parole Board will not

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61 Bill Mckinlay, Official Report, 28 November 2006, col 3049
62 Scottish Prison Service Business Plan 2006 para 6
63 Financial Memorandum para 157
64 Ibid
have the powers to order that an offender be detained in custody beyond the 75% point.

83. An understandable assumption had been made that the SPS was likely to be responsible for carrying out the required assessments and making any necessary referrals to the Parole Board, however we were told by Tony Cameron “that it has not been decided that the SPS will do any such thing; the Scottish Ministers will do it”. In subsequent correspondence to the Committee, the Minister confirmed that “the Bill provides for joined-up arrangements with the appropriate local authority and the SPS working together in assessing an offender’s risk, during the custody and community parts of the sentence” and that the matter of process was being looked at by the Custodial Sentences Planning Group.

84. In his written evidence, Chris Hawkes (Lothian and Borders CJA) drew attention to Social Enquiry Reports which are pre-sentence reports required before many are sentenced to custody. He suggested that these reports could be used for initial assessment, at least for those serving short sentences, and that the Bill could be amended to include a requirement for all determinate sentences to be preceded by a Social Enquiry Report to be used as an early marker for those who may require consideration by the Parole Board.

85. The fact that the processes for the required assessments are being looked at is welcomed. However, the Committee must express its concern at being asked to scrutinise legislation in relation to which key decisions such as this and assumptions are still at a formative stage. It makes it difficult for the Committee and indeed for some of those asked to give evidence to the Committee to express views on the provisions contained in the Bill and prevents the Parliament being able to scrutinise effectively the whole proposed package of measures.

86. Leaving aside the issue of who will make the assessment, the process of risk assessment will not be a matter of public record. Concern was expressed by a Committee member that this could be regarded as a reduction in transparency of process as sentencers presently announce their decisions in public courts based on issues of risk and the need for public protection.

87. There was considerable concern about the numbers of offenders to be covered as a result of the requirement for assessment. The Bill requires assessment of the risk of harm to apply to all those sentenced to 15 days or more and the Financial Memorandum states that the proposals in the Bill are likely to apply to 9241 people which is more than the number of probation orders in Scotland at present.

88. ADSW was worried that “collectively, we will miss something in the risk assessment process” and that they would not be able to consider all the relevant information given the volume of prisoners for whom assessments and

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65 Official Report, 28 November 2006, col 3069
66 Letter from Deputy Minister for Justice, 6 December 2006
67 Chris Hawkes, written evidence
68 Official Report, 28 November 2006. col 3068
recommendations are required.” 69 SCCCJ stated that “risk assessments and the large number who will be incarcerated will use up resources that could be used much more effectively and give much better value for money” and “given the effort and resources required to carry out the risk assessment of thousands of people serving sentences of 15 days or more, we are not convinced that it can be done in any meaningful way.” 70

89. The Risk Management Authority was set up to develop policy in risk assessment and management and to set standards for and issue guidance to those involved in the assessment and management of risk. It said it was concerned about the Bill’s proposals for risk assessments for offenders serving very short sentences and stated that the proposals for conducting risk assessments for every such offender were not in line with best practice in risk management. In its view it would neither be practicable nor necessarily appropriate to conduct formal risk assessment for offenders serving short sentences of under a year and that this could result in false public expectations; 71 and “for those who serve sentences as short as 15 days there is no way that anything recognisable as a risk assessment could be done…although it may be possible to do some blunt needs assessment”. 72

90. It appeared to the Committee during the course of the evidence gathering that “risk assessment” was being used as a generic term to refer to assessments whether these were needs assessments or risk assessments (either of re-offending or of harm). These terms are not interchangeable and care needs to be taken to ensure that there is no ambiguity about what is being referred to.

91. Clarity is required about the circumstances in which reference is being made to the risk of re-offending, risk of harm or the risk of serious harm. Given the Bill’s objectives to achieve both greater transparency and better risk management, more information is required about precisely what kind of risk assessment processes are anticipated, about who will carry them out and about exactly how they are expected to contribute to reducing re-offending. If different risk and need assessment processes are expected for shorter and longer term prisoners, these differences need to be made more explicit so that false expectations are not created.

Release on licence and licence conditions

92. The Executive states that “for the first time, all offenders will be under restriction for the full sentence.” 73 Those serving sentences of less than 15 days will spend the entire period in custody. Offenders sentenced to between 15 days and 6 months will be released on licence although from the Committee’s evidence it would appear that the licence conditions for this group are likely to be of good behaviour, not re-offend and not leave the country.

69 Official Report, 7 November 2006, col 2920
70 Official Report, 14 November 2006, cols 2967 and 2969
71 RMA, written evidence
72 Official Report, 21 November 2006, col 3005
73 Letter from Deputy Minister for Justice, 6 December 2006
93. In the view of many witnesses, licences for those serving sentences of 6 months or less might well be meaningless or be no different to the situation that applies to similar prisoners released under the current legislation or indeed the public generally. For Richard Sparks “failed or nominal supervision is a huge problem for the reputation of the criminal justice system and setting up an unmanageable expectation that more and more supervision will instantly be provided may create another problem.”

94. The Committee was told by the Minister that all offenders serving sentences of 6 months or more will receive statutory supervision but that the intensity will depend on the risk assessment. All extended sentence prisoners and sex offenders will also have a supervision condition as part of their licences. The nature and extent of the proposed supervision is far from clear. For example, COSLA’s evidence to the Finance Committee seems to assume that those sentenced to less than four years will not normally be supervised by a qualified social worker; nor is it expected that they will undertake offence-focused work.

95. It was noted in evidence that no licence conditions are set-out in the Bill. In terms of sections 24 and 25 of the bill, the setting of standard conditions for community licences is left entirely to Scottish Ministers (or whoever is undertaking the assessment) or where cases are referred to it, to the Parole Board.

96. The Committee notes that the Minister is on record as saying there is no intention to prescribe standard licence conditions in this Bill. However, the Committee remains of the view that standard licence conditions should be included on the face of this Bill.

97. Criminal Justice Social Work currently supervises around 600 offenders serving sentences of 4 years or more who are released on licensed parole. There are currently around 3800 prisoners serving sentences of between 6 months and 4 years who will become liable for supervision in terms of the Bill’s provisions. Around 4800 prisoners are currently serving custodial sentences of between 15 days and 6 months.

98. ADSW drew attention to the need to use scarce resources such as social workers to greatest effect. In its estimation, around 100 new staff will be needed to implement the Bill’s supervision requirements. Not all of these need be qualified social workers and the bill also envisages a role for the voluntary sector presumably in terms of lower level supervision. For that sector too there will undoubtedly be issues of capacity and resources and a need to recruit appropriate staff.

99. COSLA/ADSW proposed a 3-tier approach to post-custodial supervision. Broadly tier 1 would apply to those serving sentences of less than 6 months, there would be no social work involvement in the assessment and the support offered would amount to signposting to voluntary sector services, presumably with no

74 Cyrus Tata, Official Report, 14 November 2006, col 2979
75 Parole Board, Official Report, 21 November 2006, col 3921
76 Official Report, 14 November 2006, col 2980
77 Letter from the Deputy Minister for Justice, 6 December 2006
78 All information from COSLA/ADSW, written evidence
element of compulsion to attend involved. Tier 2 would apply to those serving sentences of 6 months to a year who would receive risk assessment from prison social workers and then have an unqualified case worker who would not be expected to undertake offence-focused work. Tier 3 would apply to those serving 1 to 4 years; such prisoners would receive a risk assessment from prison social workers and would have a qualified case worker, only if serving more than a year and assessed as posing a risk of serious harm.

100. The issue of resources was raised both with us and with the Finance Committee. The Finance Committee noted the distinction between funding levels for the SPS and the funding of criminal justice social work and questioned whether funding for criminal justice social work services adequately reflected the stated aim to address levels of re-offending.

101. There was concern on the part of ADSW that if the proposals are not properly resourced, services will be diluted with the result that there is increased likelihood of re-offending and of offenders causing harm. Though the vast majority of released prisoners will not present a risk of serious harm, very many of them will return to their chaotic lives and complex problems and will therefore be at high risk of re-offending. For several witnesses, inadequate resourcing of post-release services for this group raised concerns about re-offending not just about public safety but also about public confidence in the system.

102. Whilst the Committee accepts the view that the limited resources should be directed at those who pose the most significant risk of serious harm, it is concerned that the evidence suggests that for the vast majority of released prisoners, who may not pose a risk of serious harm but who may well pose a significant risk of re-offending, the type, quality and scope of post-release support and supervision being proposed is very unclear.

103. The Committee would like an explanation of why, in the light of COSLA’S evidence to the Finance Committee, it seems to be assumed in the planning process that high risk of re-offending (but low risk of harm) offenders with complex needs do not require access to qualified social workers undertaking offence-focused as well as resettlement work. This assumption seems anomalous given that those on probation, (generally a lower risk group) will be receiving supervision from qualified social workers.

**Breach and recall**

104. The Committee was told by ACPOS that at present if someone breaches the terms of their licence, the supervising social worker reports that to the Parole Board seeking recall. If recall is ordered, a warrant is issued and the police will deal with it. If the police arrest a suspected offender who is then found to be subject to licence, the police notify the courts or social work who will then intervene. At present, this is a small part of police business but it occurs on a daily basis. ACPOS was concerned that there might be greater input required by the police in relation to provision of information to the Parole Board as a result of this Bill.

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79 Official Report, 7 November 2006, col 2925
80 Official Report 7 November 2006, col 2936
105. The 1993 Act provides that Scottish Ministers and the Parole Board can revoke an offender’s licence and order a return to custody for any breach if necessary for the protection of the public. This Bill takes the responsibility for recall away from the Parole Board and places it solely with Scottish Ministers.

106. Section 31 states that Scottish Ministers must revoke the licence and recall the prisoner to prison if a licence condition is breached or if Ministers consider that the prisoner is likely to do so, subject to Ministers considering that it is in the public interest to do so. Section 32 of the Bill requires that when a licence is revoked, Scottish Ministers must refer such cases to the Parole Board. In terms of section 33, the Parole Board must then consider whether the prisoner would, if not confined, be likely to cause serious harm to members of the public.

107. The view of SCCCJ is that to revoke a licence and recall an offender to custody on every occasion would be unproductive. Having prisoners’ licences revoked and returning them to custody only for them to be re-released by the Parole Board would be time consuming and limited in value and might lead Scottish Ministers to use the public interest exception to allow prisoners who have breached their licences to remain at liberty. Prisoners might soon realise that they had no good reason to comply with any post-release requirements and this will have a clearly detrimental effect on public confidence. Sheriff Reith suggested that it would be helpful if there was a compulsitor to back up the licence conditions set.

108. It seems that these provisions could create a situation where low risk of harm prisoners (likely to be those serving shorter sentences but also those most likely to breach conditions) could be frequently recalled by Scottish Ministers and then re-released by the Parole Board thus perpetuating the “revolving door effect.”

109. In written evidence to the Committee, the Minister stated that flexibility to recall a prisoner was required to allow Ministers to recall where they have reasonable cause to believe (but not necessarily evidence) that a person on licence poses a threat to the public – a public interest test. It is also important that those on licence realise that if they do not observe the conditions of licence that they are liable to be returned to custody.

110. On the specific point of different tests, the Minister stated that if the test for recall was that of serious harm, it would allow prisoners to disregard any or all of their licence conditions provided there is not a risk of serious harm. On the other hand, if the test for the Board was the public interest test, those whose breach was a relatively minor one would not be re-released but would be returned to prison, without there being any question of risk. In the view of Ministers, applying different tests for recall and then continued detention following recall is an entirely sensible and reasonable approach as it aims to protect the public and encourage prisoners to observe their licence conditions.81

111. Will all offenders not regarded as presenting a risk of harm and serving a community part of a sentence of less than a year who breach the licence conditions by committing a minor offence be recalled by Scottish Ministers?

81 Letter from Deputy Minister for Justice, 6 December 2006
How will the police know whether an offender was already on licence. Would reliance be placed on an offender’s honesty?

112. The Committee would be grateful for clarification of these points and for details of the information chain. In particular, the Committee would welcome further detail on what the notification process will be both for the police in terms of those coming out of prison on licence and in terms of notifying Scottish Ministers of those who have committed an offence while on licence.

113. If all those serving sentences of less than a year are recalled for minor breaches, this will have a considerable impact on the Parole Board given the numbers that will require to be considered for re-release using the public harm test.

114. The Bill’s financial memorandum draws attention to the recent cases of *R v Parole Board [England and Wales] ex parte Smith and West*, in which the House of Lords held that in certain circumstances recalled determinate sentence offenders should be offered an oral hearing before the Parole Board decides the case for release. We were told by the Parole Board that “eventually, oral hearings could be required in the great majority of cases…it is likely there will be significant resource implications for us.”⁸² There was concern from ADSW that resources will be deflected from the needs of offenders to preparing more breach reports for the Parole Board as more people might end up going back into the prison system.⁸³

115. The Committee is not wholly convinced by the different tests for breach of licence and recall to custody, particularly in relation to the management of those who do not comply with licence conditions but who do not present a risk of serious harm.

*Home Detention Curfew (HDC)*

116. The Management of Offenders (Scotland) Act 2005 introduced a system of early release known as Home Detention Curfew with remote monitoring for low risk offenders whereby the SPS can use its discretion to release certain prisoners on HDC or licence before becoming eligible for automatic early release. All releases on HDC are remotely monitored and subject to standard conditions. Only certain categories of prisoners are eligible and eligible prisoners must be serving a sentence of at least 3 months and must have spent a minimum of 4 weeks in custody.

117. Chapter 4 of the Bill under consideration, at sections 36 to 38, makes specific reference to release on curfew licence and re-enacts the provisions in the Management of Offenders (Scotland) Act 2005 into this Bill with the effect that certain prisoners serving sentences of 3 months or more may be released by the SPS (on behalf of Scottish Ministers) before serving half of the custodial sentence imposed.

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⁸² Official Report, 21 November 2006, col 3024
⁸³ Official Report, 7 November 2006, col 2925
118. In determining whether to release on HDC, regard must be had to protection of the public at large, prevention of re-offending by the prisoner and securing the successful re-integration of the prisoner into the community. Tony Cameron (SPS) advised that there have been 700 releases on HDC with 308 on HDC at the time of giving evidence.

119. In her evidence to us, the Minister advised that the provisions for HDC provided for in this bill would not be commenced until the system has bedded in but that Ministers might wish to consider making it available in the future “at the earliest stages, we do not want the explicit clarity about the custody part and the community part of the sentence to be clouded by the notion that home detention curfew could be introduced at the same time.”

120. Despite what the Committee was told, it is clear that Ministers are reserving the right to bring in HDC with the potential effect that whatever transparency, clarity and public confidence there might be around the proposed new system, it will be undermined at some point in the future by the use of HDC.

121. It would also appear from what the Minister said that those sentenced under the existing regime would continue to be considered for HDC with the consequence that initially at least there will be a dual system running in prisons which could give rise to questions about fairness and equal treatment whilst at the same time being a tool that is required to be used by prisons in order to free up places. Given the pressure that prisons are likely to be under in terms of capacity the Committee is concerned that HDC will be used as a system of “backdoor” early release. This is unlikely to assist clarity of sentencing or public confidence.

122. The Committee welcomes the Minister’s statement that HDC is not intended to be used at least in the initial period of this Bill’s implementation. Nevertheless, the Committee is concerned that its continued existence as an option is likely to lead to a lack of clarity and transparency. The Committee would therefore be grateful to know whether the Minister has in mind a timescale within which consideration is likely to be given to the use of HDC in conjunction with the provisions of this Bill.

PART 3: WEAPONS

Background

123. The Bill provides for the introduction of a mandatory licensing scheme for the commercial sale of non-domestic knives, swords and similar items. The Bill also seeks to further restrict the availability of swords by providing that swords may be added to the list of weapons which cannot be bought and sold. Ministers will however be able to specify a number of legitimate purposes for which swords can be bought.

84 Section 36(5) of the Bill
85 Official Report, 28 November 2006, col 3066
86 Official Report, 28 November 2006, col 3066
124. There was general support amongst witnesses for any action which might have the effect of reducing the incidence of knife crime in Scotland, and it was recognised that these proposals must be seen as part of a wider jigsaw of measures designed to combat knife crime.87

**Licensing the Sale of Non-Domestic Knives and Swords**

*Introduction*

125. The Bill introduces a mandatory licensing scheme for the commercial sale of swords and non-domestic knives. The new ‘knife dealer’s licence’ will be required by all those who carry on a retail business dealing in swords, non-domestic knives or any other similar article. This includes articles with a blade, or articles which are sharply pointed and made or adapted for use causing injury to the person, such as arrows and crossbow bolts. The licensing scheme is modelled on other licensing schemes which are already provided for in the Civic Government (Scotland) Act 1982 and will be administered by Local Authorities.

126. A licence will be required for businesses selling, hiring, lending, giving, offering or exposing for sale swords, non-domestic knives and similar articles. Licences will be required by businesses selling such articles at trade fairs, markets and other such outlets operating from temporary premises, as well as for more permanent outlets. The need for a licence will also apply to Scottish based businesses who sell over the internet or by mail order.

127. Dealers who sell only domestic knives, such as cutlery and DIY products will not require a licence, nor will dealers who sell only to persons acting in the course of a business or profession. Private sales are also excluded from the scope of the provisions.

128. Ministers may also provide that a licence is not required to sell certain designated articles. The Executive intends that a licence will not be needed to sell folding pocket-knives, sgian dubhs or kirpans where the blade is less than 3 inches, which reflects the existing law on carrying knives in public, contained in the Criminal Law (Consolidation) (Scotland) Act 1995.88

129. The Bill allows Ministers to specify the types of conditions which must be attached to all licences. Local Authorities may also impose additional conditions suitable for their locality or appropriate to the individual business. According to the Policy Memorandum, minimum conditions will be likely to include:

- Requirements for records to be kept of the type of item sold, and to whom it is sold (including conditions specifying the means by which identity is to be established, eg photographic means or the use of utility bills);

- Restrictions on the display of items to ensure they are not visible from the street or entrance to the premises;

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87 See for example, Official Report, 14 November, cols 2992-2993 and Official Report, 7 November 2006, col 2931
88 Policy Memorandum, para 108
• Restrictions on the storage of items and requirements to take appropriate security measures, such as the use of CCTV; and

• Restrictions on the packaging requirements for items sold by mail or otherwise.

130. Selling a sword or non-domestic knife to the public without a licence will be an offence punishable by a maximum of two years imprisonment and/or a fine on indictment (or 12 months imprisonment and/or a fine under summary procedure). Other offences include the breach of licence conditions by a retailer and the provision of false information to a seller in connection with a purchase. The two offences will be punishable with a fine not exceeding level 5 and level 3 on the standard scale (currently £5000 and £1000) respectively.

Sources of Knives
131. A number of submitters, such as ASPS and the Scottish Police Authorities Convenors Forum expressed fears that the provisions of the Bill could simply divert sales towards internet and mail order outlets which are based outside Scotland and thus outwith the scope of the Bill. COSLA suggested that the Bill would require monitoring by the police to see whether the locus of sales shifts or whether cutting off local sources reduces crime. The Executive suggests that monitoring of the licensing provisions of the Bill will principally be a matter for local authorities through trading standards officers.

132. The Violence Reduction Unit (VRU) noted these concerns, and has attempted to combat this possibility by providing leaflets at airports warning of the likely confiscation of weapons purchased abroad, and contacting major internet auction sites with a view to discouraging their involvement in such sales. Police are also liaising with colleagues in England and Wales to ensure that a national approach is taken on the issue. It was noted that currently there are no statistics on the sources of knives used in crime but that this was beginning to change.

133. Executive officials do not think that the provisions will lead to the development of an illicit market in knives, as they do not prevent trading in knives as long as it is done responsibly. However, they do believe that the licensing scheme will help to restrict access to ‘problem knives’. The Executive noted that ‘problem knives’ tend to be owned and bought by people who do not generally have access to the internet or to credit cards (which are the usual way of acquiring such goods over the internet).

134. The Deputy Minister acknowledged the problems of internet and mail order sales, but noted that licensing would bring the trade into the open. She noted that licensing sought to manage and control a significant part of the trade and therefore added significantly to the capacity to confront knife crime, even though it does

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89 See also Robert Edminson, written evidence
90 Official Report, 7 November 2006, col 2931
91 Letter from Scottish Executive on part 3 of the Bill, 27 November 2006
92 Official Report, 7 November 2006, col 2944
93 Official Report, 24 October 2006, col 2893
necessarily deal with it all. She stated that the Bill ‘is part of the solution, but not all of it’.  

135. The Committee notes the Deputy Minister’s comments and welcomes the acknowledgment that this Bill can provide only a partial solution to the problem of knife crime. The Committee believes that the Executive should continue to work to ensure that robust statistics on the sources of knives are developed and monitored in order to inform further action on knife crime.

 Scope of the provisions

136. A number of written submissions questioned whether the Bill would be effective in reducing knife crime, and expressed the view that offenders might instead resort to using domestic knives. However, the Committee heard evidence from the VRU that while domestic knives were used in assaults committed in the home, most assaults on the street used weapons such as locking knives which are more portable and can be easily concealed. The VRU supports the proposals in the Bill in the belief that they will assist in reducing access to such weapons and will send out a message to communities within Scotland.

137. In relation to the scope of the provisions, the VRU also told the Committee that while serious damage could be inflicted with any knife, even with a blade of less than 3 inches (folding pocket knives with blades not exceeding 3 inches are exempt from current legal prohibitions on the carrying of knives in public places), it is the types of weapons which are covered by the Bill which are mostly used in assaults.

138. The Executive told the Committee that statistics from Strathclyde police showed that of 1300 stabbing incidents, 1100 were in a public place and were committed with a non-domestic knife. Officials are confident that in the vast majority of cases, the problem is caused by the type of knives that they are seeking to regulate.

139. The inclusion of arrows and crossbow bolts within the scope of the provision was criticised, on the basis that this was not previously consulted on.

140. Fencing groups also criticised the application of the provisions to their sport. Fencing groups believed that the licensing scheme should not apply to the lending, giving and hiring of swords by clubs and coaches, in order to allow newcomers to access equipment to learn the sport. Clarification was also requested that clubs and coaches could continue to act as agents for equipment sale.

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94 Official Report, 28 November 2006, col 3087
95 See the Law Society of Scotland, David Neilson, the Muzzle Loaders Association of Great Britain and British Association for Shooting and Conservation, written evidence, and correspondence from Paul Macdonald in relation to Petition PE893.
96 Official Report, 7 November 2006, col 2941
97 Official Report, 7 November, col 2919
98 Official Report, 24 October 2006, col 2889
99 John Campbell, written evidence
100 SportScotland and Scottish Fencing Ltd, written evidence
interests believed that their sport should not be treated in the same way as a system designed to control the availability of dangerous weapons.

141. The Executive notes that the ban on lending, hiring etc. will be subject to exceptions for legitimate purposes such as fencing, and that private individuals not carrying on a business will be able to lend swords without the need for a licence where the intended use is for a legitimate purpose.101

142. The Committee is content with scope of the provisions as set out in the Bill in relation to weapons.

Other Issues

143. The Prison Officers Association highlighted a possible anomaly in current knife crime legislation with the Committee, pointing out that offences relating to the carrying of knives in public places do not appear to apply to the carrying of knives in prisons (prisons do not appear to be treated as public places for the purposes of the relevant legislation). The Scottish Executive notes that carrying a knife in prison is a breach of prison rules and may affect eligibility for HDC. It may also be taken into account in risk assessments required by section 7(1) of the Bill, thereby potentially impacting on the proportion of the sentence served in prison. Criminal proceedings may also be taken if possession of the knife is accompanied by threats or other conduct constituting breach of the peace or if there is evidence that the person has brought the knife into the prison.102 However, it has been argued that the simple act of carrying a knife in a prison (without good reason) should amount to a criminal offence and not just a breach of prison rules.

144. The Committee believes that possession of a knife in prison should constitute a criminal offence and requests that the Scottish Executive considers this matter further, and responds to the Committee prior to commencement of stage 2 proceedings.

Definitions

145. Although the Bill provides that the licensing scheme will not apply to knives ‘designed for domestic use’, it does not seek to define the difference between such knives and other types of knives. This has given rise to some concerns from retailers. The Scottish Retail Consortium (SRC) indicated that while the Executive has allayed a number of these concerns, some concerns still remain regarding potential ‘grey areas’.103 The SRC104 and COSLA noted that, without a definition, there could be potential difficulties for trading standards officers who will be required to administer the legislation.105

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101 Letter from Scottish Executive on part 3 of the Bill, 27 November 2006
102 Letter from Scottish Executive on part 3 of the Bill, 27 November 2006
103 Official Report, 21 November 2006, cols 2996-2997
104 Official Report, 7 November 2006, col 2932
105 For example, Whitby and Co notes that folding pocket-knives, sgian dubhs or kirpans where the blade is less than 3 inches may be exempt under the Bill. However, court cases such as McAuley v Brown (2003 SLT 736) have held that a folding knife with a blade that automatically locks open is a lock knife and not a folding pocket-knife. However, if the locking mechanism does not work, it is a folding pocket-knife.
146. The SRC note that the provision of non-statutory guidance could help to ensure that a consistent and transparent approach is taken to enforcing the legislation, and COSLA thought that a joint approach to the provision of such guidance could be taken by local authorities and the Executive.  

147. The Executive, whilst happy to offer guidance, note that the definition will ultimately be a matter for the courts. The Deputy Minister was anxious to avoid putting complex definitions in legislation where it was more likely to create loopholes than solutions and re-iterated that the Executive was keen to work with local authorities to produce guidance. The lack of a definition did not concern the VRU, who noted that “once we can get our heads around what constitutes a non-domestic knife, we will find it easy to reach a definition.”

148. The Committee is content with the definitions in the Bill.

Licence conditions
149. The SRC believes that there should be consistency in licence conditions, with the same conditions applying across every local authority area. The SRC argues that additional licence conditions being imposed by individual local authorities could result in higher costs for retailers and a need for additional training for staff. The Executive has made it clear that it intends to set some licence conditions at a national level, but leave room for some local flexibility to allow local authorities to respond to circumstances in their own areas.

150. COSLA recommended to the Committee that an additional condition should be imposed on licences requiring that dealers display relevant notices. COSLA also put forward a number of other suggested conditions which related to keeping articles securely, undertaking criminal record checks, staff training, annual registration, and notification of licensees’ details to the police.

Licence conditions for the sale of swords
151. The Executive intends that dealers will be required to record full details of the intended use of any sword and to take reasonable steps to confirm that it is intended for use that constitutes an authorised purpose. They must also record what steps they took to do so. As with buying of other knives, photographic ID may be required if the local authority imposes such a licence requirement.

152. The VRU note that the conditions in relation to swords must be robust enough to ensure that the individual selling the sword can explain who they sold it to and the circumstances in which it was sold. The VRU suggest that proof of

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106 Official Report, 21 November 2006, col 2997 and 7 November, col 2933
107 Official Report, 24 October 2006, col 2888
108 Official Report, 28 November, col 3085
109 Official Report, 7 November, col 2942
110 Official Report, 21 November, col 2997
111 Official Report, 21 November, col 2998
112 Official Report, 28 November 2006, col 3086
113 Suggested notices to be displayed included the offences under the Criminal Justice Act 1988 for selling knives etc. to persons under 18 years of age, and the display of the dealer’s licence itself, including details of what weapons can be sold, at what time and in what place.
114 COSLA/ADSW, supplementary written evidence
115 Policy Memorandum, para 115
membership of relevant clubs should be supplied. ASPS note that such a system is not without precedent, as it is currently applied to firearm sales.\textsuperscript{116} As noted later in this report, such suggestions were of concern to some individuals and organisations that may not be organised on a ‘club’ or national basis.

153. The Committee is content that the proposed licence conditions are proportionate.

Impacts on retailers and local authorities

154. Some individual retailers and trade associations contacted the Committee with concerns that the licensing scheme will place undue burdens on both retailers and local authorities.\textsuperscript{117} A number of alternative suggestions for restricting access to knives were put forward, such as the idea of restricting sales of non-domestic knives on the basis of blade length.\textsuperscript{118}

155. The VRU notes that retailers may be unhappy with the proposed provisions but argues that the problem of knife crime is so acute in Scotland that any legitimate objection against licensing must be weighed against the potential benefits of any such scheme.\textsuperscript{119}

156. Retailers of fencing equipment had particular concerns regarding the Bill. They suggest that requiring retailers to keep CCTV records is impractical, especially in relation to temporary sales premises at competitions, and request that retailers operating in a number of areas be able to obtain a single licence.

157. The Executive has said that retailers will require a licence for each local authority area in which they have retail premises (including any temporary outlets), a dispatch centre, or internet sales operation. The Executive also notes that temporary licences will be available for sales at sporting competitions, antique fairs etc. at a reduced cost.\textsuperscript{120}

158. The Committee is content with the provisions of the Bill. However, the Committee notes the comments it has received in evidence from retailers, and recommends that the Executive reviews the operation of the licence provisions at a later date, to ensure that the system contains no unnecessary bureaucracy.

Costs

159. Local Authorities will be empowered to recover the costs of the licensing scheme by charging licence fees. It was suggested in oral evidence that the cost of a licence may be in the order of £50, although COSLA later submitted additional evidence outlining comparable licences which have fees ranging between £72 and £500.\textsuperscript{121}

\textsuperscript{116} Official Report, 7 November 2006, cols 2946-2947
\textsuperscript{117} Gun Trade Association, British Association for Shooting and Conservation and Whitby and Co, written evidence
\textsuperscript{118} David Neilson and Whitby and Co, written evidence
\textsuperscript{119} Violence Reduction Unit, written evidence
\textsuperscript{120} Letter from Scottish Executive on part 3 of the Bill, 27 November 2006
\textsuperscript{121} Official Report, 7 November 2006, col 2934 and COSLA, supplementary written evidence
160. COSLA notes that local authorities have already implemented a number of supposedly cost-neutral schemes, which cumulatively represent a growing burden on them. COSLA suggests that the cost recovery model has potential to move the cost of the scheme onto local authorities in ways that are not cost-neutral.\textsuperscript{122}

161. The SRC believe that larger retailers will be able to absorb the costs of the licence, provided that onerous additional conditions are not attached. It was noted that smaller retailers, for whom non-domestic knives may not be a large part of their business, may simply stop selling such products.\textsuperscript{123} For those retailers, the costs of installing additional security systems, audit trails, till prompts etc. will make it not worthwhile to continue selling such articles.\textsuperscript{124}

162. The Committee supports the introduction of a licensing system for the commercial sale of non-domestic knives.

**Banning the Sale of Swords**

163. Ministers intend to bring forward subordinate legislation to add swords to existing lists of weapons which cannot be sold. The Bill will also modify existing legislation to allow Ministers to set out exceptions for specified legitimate purposes. The Executive intends to make an order providing that it will be an offence to sell, hire, lend or give a sword. The current defences contained in the Criminal Justice Act 1998 in relation to the lending of swords to or by museums and galleries will continue to apply. In addition, the Bill allows other defences to be specified by order, to provide exceptions to the ban.\textsuperscript{125}

164. These specified purposes are intended to address a number of legitimate uses of swords, such as:

- Antique collecting;
- Fencing;
- Film, television and theatre;
- Manufacture;
- Martial Arts organised on a recognised sporting basis;
- Re-enactment and living history;
- Religion; and
- Scottish Highland dancing.

165. In addition, there will also be a defence for activities carried out with the authority of the Scottish Ministers. Such authority can be applied for in writing,

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\textsuperscript{122} Ibid
\textsuperscript{123} Official Report, 21 November 2006, col 2998
\textsuperscript{124} Ibid
\textsuperscript{125} Policy Memorandum, paras 95-103
and made subject to appropriate conditions. This is intended to allow for exceptional cases which arise outwith the otherwise permitted purposes.126

**Effectiveness of provisions**

166. A number of submitters queried whether crime committed with swords was really a problem. They noted that swords are not easily carried, cannot be concealed easily and, in the case of antique or martial arts swords, are often worth considerable sums of money.127

167. The Public Petitions Committee also referred PE893 from Paul Macdonald to the Justice 2 Committee for consideration. The petition calls for the Scottish Parliament to oppose the introduction of any ban on the sale or possession of swords which are used for legitimate historical, cultural, artistic, economic and religious purposes. The petition has acquired more than 2500 signatures. At its meeting on 5 December 2006 the Committee agreed to consider the issues raised by the petition as part of its stage 1 scrutiny of the Bill.

168. A number of those who submitted written evidence set out what they saw as alternatives to the current proposals, including the licensing of individual swords, or the issuing of a licence to those people who use them.128

169. The Executive states that while current data does not allow a breakdown to be carried out of the use of swords as part of criminal activity, they are designed as deadly weapons and can cause serious injury. The Executive notes that hospital records and police reports do disclose instances of swords being used to commit crime and inflict injury and that this seems to be becoming more common.129

**Definitions and exceptions**

170. Some groups, such as COSLA and those involved in fencing, historical fencing (with blunt swords), and martial arts requested further clarification of the meaning of the term ‘sword’.130 The Executive considers that, while it will ultimately be a matter for the courts, “the term ‘sword’ is one which will be readily understood without the need for elaboration”.131

171. A number of individual groups involved in pursuits such as historical fencing, paganism and re-enactment also queried how the Bill would affect their activities.132 Martial Arts groups were particularly concerned at any exception being made for martial arts which are organised on a recognised sporting basis, as they note that many martial arts groups are not organised on a ‘recognised’ national basis. The Executive notes that the exceptions are intended to focus on

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126 Ibid
127 The Gun Trade Association, the Northern To-Ken Society, the British Kendo Society, Bujinkan Brian Dojo (Scotland) and James Reilly, written evidence
128 Traditional Martial Arts and Budo Kai Institute, and British Kendo Association, written evidence
129 Official Report, 24 October 2006, col 2885
130 COSLA/ADSW, the Gun Trade Association, Aberdeen Swordsmanship Group, Bujinkan Brian Dojo (Scotland) and Robert Edminson, written evidence
131 Letter from Scottish Executive on part 3 of the Bill, 27 November 2006
132 Aberdeen Swordsmanship Group, National Association of Re-enactment Societies, Bujinkan Brian Dojo (Scotland) and John Campbell, written evidence
the purpose for which the sword is being used, rather than the organisation involved.\(^{133}\)

172. A number of martial arts groups also questioned whether the Bill would affect how swords are to be stored and transported, for example, in transit to tournaments. Executive officials have confirmed the Bill will not alter the requirements for the transportation of swords.\(^{134}\)

173. The Deputy Minister acknowledged the detailed evidence received by the Committee on sword use and committed to consulting further during the development of the subordinate legislation which will create the exceptions. She noted that the legislation should not unnecessarily capture those people who have an entirely legitimate purpose in using swords.\(^{135}\)

174. The Committee notes the evidence received on definitions and exceptions and expects that the Executive will undertake detailed consultation with these groups prior to producing the relevant subordinate legislation. The Committee would be grateful for clarification of the Executive’s proposed timetable for producing this subordinate legislation prior to the commencement of stage 2.

175. The Committee supports the imposition of a ban on the sale of swords, subject to the specified exceptions which are proposed by Scottish Ministers.

**Policy Memorandum**

176. Under Rule 9.6.3 the Committee is required at Stage 1 to consider and report on the Policy Memorandum prepared by the Scottish Executive which accompanied the Bill when introduced.

177. The Committee is of the view that the policy memorandum clearly states the policy objectives of the Bill. The Committee is not convinced however that there is sufficient detail in either the policy memorandum or the Bill itself to explain how the policy objectives are actually to be achieved by the Bill’s provisions. In terms of consultation on parts 1 and 2 of the Bill this was undertaken principally by the Sentencing Commission whose report on *Early Release from Prison and Supervision of Prisoners on their Release* was published in January 2006. Given that recent consultation and the Executive’s commitment to bring forward early legislative plans to remove automatic early release, no further consultation was thought necessary by the Executive.

178. The Committee notes that parts 1 and 2 of the Bill do not take forward all of the Sentencing Commission’s recommendations. The main recommendations of

\(^{133}\) Letter from Scottish Executive on part 3 of the Bill, 27 November 2006

\(^{134}\) Letter from Scottish Executive on part 3 of the Bill, 27 November 2006. It remains an offence to have a bladed or sharply pointed weapon in a public place without lawful reason or authority. The Executive notes that transporting a sword to training or a tournament would appear to be a good reason, but that ultimately it will be a matter for the Courts to determine.

\(^{135}\) Official Report, 28 November, col 3088
the Sentencing Commission not taken forward in this Bill or having been significantly altered are:

- that legislation for the new statutory regime should expressly provide that when having regard to sentences imposed under the previous regime, the court must also have regard to the rights of early release under that scheme;

- that there should be separate regimes for those sentenced to terms of 12 months or less and those sentenced to more than 12 months (specifically that those sentenced to 12 months or less the full term should be served in custody but there would be an eligibility for conditional release on HDC at the halfway point); and

- for those sentenced to more than 12 months, combined sentences would be in two parts: a custodial and a community part and that the court should be given the power to order, at the time of sentencing, a longer community part where there is a risk of re-offending or alternatively that there should be no community part or that the community part should be shorter.

179. The Committee is content with the consultation undertaken in relation to part 3 of the Bill.

180. The Committee notes the alternative approaches considered by the Executive. Although certain options have been discounted by the Executive for policy reasons, the Bill contains flexibility (by way of subordinate legislation provisions) to alter some of the thresholds and contains scope to adjust how functions are split between the SPS and the Justice Department. It may be necessary to use these flexibilities to address concerns raised.

181. Paragraphs 25 and 26 draw attention to a possible gap that may exist in relation to provisions specifically for women prisoners. As stated in the Policy Memorandum the policies implemented by the Bill are intended to apply across all of Scotland and there is no intention that there will be any differential or discriminatory effect. Whilst this is the case it is important to acknowledge that different groups or sectors will have different needs and where services in the community are being considered and planned for it is important the specific needs such as those of women and for example people whose first language is no English have no barriers to access. It is not just a case of there being no intention for the provisions to have a differential impact; it may be that it is appropriate, in some circumstances that there is a differential impact.

182. The Committee notes that the Executive consider that the provisions on the release, post custody management of offenders and the restrictions on the sale of swords and non-domestic knives are compatible with the European Convention of Human Rights. Consideration was given to whether the proposed release arrangements should apply to all those who committed a relevant offence before the date on which the Bill's provisions are commenced. This raises an issue about the application of Article 7(1) of the European Convention on Human Rights. The decision was taken that the new arrangements (other than those for life sentence
prisoners) will only apply to those convicted of offences after the commencement of the provisions.

183. Although not in the Bill, reference is made in the Bill's Financial Memorandum to the intention to review the Parole Board Rules to require a Tribunal to reach a unanimous decision in every case and for Tribunals to consist of 2 members (as opposed to the existing 3). The Parole Board stated in evidence that it had concerns about the requirement for unanimity and that this might not be compatible with the right to a fair trial under Article 6 of ECHR. The Committee has drawn the Minister's attention to this view.

Issues Raised by the Finance Committee

184. The Finance Committee reported to this Committee on the Financial Memorandum. The scrutiny for this Bill was level 3, the most detailed level and involved taking both written and oral evidence. The Finance Committee concluded that it had serious concerns in relation to the provision of funding for the Bill and the provision of accommodation for the additional prisoners as a result of the Bill’s implementation.

185. In its report, the Committee recommended that the lead Committee seeks assurances from the Minister that every effort will be made to secure adequate funding within cabinet negotiations during the Spending Review process. On this point, the Minister responded to this Committee stating that “whenever we decide on a policy or a legislative approach, resource consequences accompany it and we must argue for them to be met. As I have said, there is no point in having an aspiration to take a policy approach if we do not have the means to deliver it…we have said in the financial memorandum that the resource consequences will have to be met.”

186. The Finance Committee explored the progress of planning how to accommodate the additional prisoner places expected to be required as a result of this Bill. The Finance Committee was very concerned to be told that planning was at such an early stage and asked the lead committee to raise the issue with the Minister, given the potential cost of delays in the provision of accommodation. The Committee draws the concern about planning for the additional prisoner numbers to the attention of the Minister and would be grateful for a response from the Minister on this point.

187. The Finance Committee noted the concerns of the Parole Board regarding the savings of £50,000 stated in the Financial Memorandum as likely to accrue as a result of the Board not requiring the consider recall cases. In the Board’s view it may be necessary for any such savings to be allocated elsewhere within the Board’s budget. The Finance Committee recommended that the Executive Bill team should ensure that this is taken into account during future discussions with the Parole Board. The Committee therefore draws this recommendation to the attention of the Minister.

136 Official report, 28 November 2006, col 3085
188. The Finance Committee also took evidence on the expected administrative burden that could fall on sheriffs as a consequence of the Bill’s provisions and invited the lead committee to explore the possible costs of the administrative burden of the production of post-sentencing reports on sheriffs with the Minister. The Committee has raised this with the Minister and notes that this is one of the issues to be considered by the working group.

189. The Finance Committee observed that as one of the key priorities of the Bill is a reduction in re-offending, the lead committee was invited to explore with the Minister whether strategic direction towards a reduction in re-offending is reflected within funding provision for criminal justice social work services. The Committee therefore invites the Minister to address this point in the response to this report.

Issues Raised by the Subordinate Legislation Committee

190. In its report, the Subordinate Legislation Committee was generally content with the Executive’s responses to the issues raised. It is noted that the Subordinate Legislation Committee intends to monitor closely at stage 2, the provision in section 4(2) – power to amend definitions of certain sentences. The only substantive concern raised was in relation to section 6(10) – power to alter the proportion of sentence forming the “custody part”. The Committee’s concerns are noted and have been drawn to the attention of the Minister for a response prior to commencement of Stage 2.

CONCLUSION

191. This is a complex Bill and there are a number of questions to be answered and issues to be clarified by the Executive. Notwithstanding this, the Committee, by majority, recommends that the Parliament agrees to the general principles of this Bill.

SUMMARY OF RECOMMENDATIONS

192. The Committee draws the Minister’s attention to this evidence on gender issues and recommends that the Minister considers what work might be required to address this gap. (para 26)

193. Given the range of issues to be discussed and decided upon in the context of the Parole Board Rules, the Committee welcomes the Deputy Minister’s undertaking to provide a first draft of the proposed rule changes by February 2007. The Committee expects to be kept involved of the development of the rules as they progress through the consultation process. (para 32)

194. Whatever cut-off point is chosen for custody and community sentences to apply, an anomaly will exist for sentences nearest to that point. However decisions on thresholds must be based on a clear rationale. The Committee

137 Colin Fox dissented on the basis that although he agreed with the Bill’s policy objectives, he awaited the Minister’s answers to the questions asked, before agreeing to the general principles of the Bill. David Davidson abstained.
therefore seeks a clearer explanation of why the 15 day cut-off has been chosen. (para 37)

195. The Committee understands that the Bill is not intended to alter the setting of headline sentences and notes the Minister’s comments in relation to the potentially confusing effect of merging sentencing regimes. However the Bill’s provisions are likely to alter sentencing practice by requiring, for the first time in determinate sentences, the setting of the custody part. The Committee is of the view that the implications of this significant change in sentencing practice require further consideration in the light of the evidence received in relation to recalibration. The Minister is therefore invited to consider this and revert to the Committee prior to commencing Stage 2. (para 41)

196. The Committee notes that if individual sentencers set a custody component of more than 50%, then this has the potential to seriously impact upon the costs contained in the Financial Memorandum. (para 47)

197. Given the evidence received by the Committee there appears to be confusion about the rationale behind and the effects of section 6 of the Bill and that there is the potential for unintended consequences such as sentencers being required to apply the same factors twice. The Committee welcomes the Minister’s undertaking\(^{138}\) to consider the evidence with a view to deciding whether any clarifying amendments are required at stage 2. The Committee requests a response to this particular point prior to the commencement of stage 2. (para 51)

198. Given the concerns of the Subordinate Legislation Committee the Committee recommends that the Minister looks again at subsection 6(10), its ambiguity and risk of future re-interpretation and reverts to the Committee prior to the commencement of stage 2. (para 54)

199. The Committee draws attention to the concerns regarding the additional burdens that could be placed on sentencers and requests that these are considered by the Planning Group. (para 57)

200. The Committee notes that in the view of the Executive “conditional imprisonment is not presently a sentencing option for the courts and so to introduce such a measure would amount to a new sentencing option. Such a move would be outwith the scope of this Bill.”\(^{139}\) Notwithstanding this, the Committee asks the Minister whether conditional sentences could be considered as a form of early release. The Committee would be grateful for a response prior to the commencement of stage 2. (para 68)

201. The Committee shares the apprehensions of a number of those who gave evidence about the likely effects of the thresholds currently set out in the Bill and whether these thresholds provide for the most effective targeting of resources. (para 69)

\(^{138}\) Letter from Deputy Minister for Justice, 6 December 2006

\(^{139}\) Letter from Scottish Executive Justice Department, 15 December 2006
202. Given the expected operational impact on prisons, the Committee was very disappointed that the prison governors invited to give evidence appeared unable to comment on the areas under their respective operational responsibilities likely to be affected by the Bill. (para 71)

203. The Committee draws attention to the research commissioned in 2002 by the Parliament’s Justice 1 Committee into Public Attitudes Towards Sentencing and alternatives to imprisonment and particularly its conclusions about the need to restore public confidence by providing better information about constructive alternatives to prison and the need to address public expectations of what sentencing and punishment can achieve. The Committee notes that in 2004-5 the number of community disposals imposed by the courts exceeded, for the first time, the number of custodial sentences imposed. However the Committee would invite the Executive to re-consider this research and what work still requires to be done to create greater public confidence in Scotland’s justice system and in the benefits of disposals other than custodial sentences. (para 76)

204. The fact that the processes for the required assessments are being looked at is welcomed. However, the Committee must express its concern at being asked to scrutinise legislation in relation to which key decisions such as this and assumptions are still at a formative stage. It makes it difficult for the Committee and indeed for some of those asked to give evidence to the Committee to express views on the provisions contained in the Bill and prevents the Parliament being able to scrutinise effectively the whole proposed package of measures. (para 85)

205. Clarity is required about the circumstances in which reference is being made to the risk of re-offending, risk of harm or the risk of serious harm. Given the Bill’s objectives to achieve both greater transparency and better risk management, more information is required about precisely what kind of risk assessment processes are anticipated, about who will carry them out and about exactly how they are expected to contribute to reducing re-offending. If different risk and need assessment processes are expected for shorter and longer term prisoners, these differences need to be made more explicit so that false expectations are not created. (para 91)

206. The Committee notes that the Minister is on record as saying there is no intention to prescribe standard licence conditions in this Bill. However, the Committee remains of the view that standard licence conditions should be included on the face of this Bill. (para 96)

207. Whilst the Committee accepts the view that the limited resources should be directed at those who pose the most significant risk of serious harm, it is concerned that the evidence suggests that for the vast majority of released prisoners, who may not pose a risk of serious harm but who may well pose a significant risk of re-offending, the type, quality and scope of

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140 http://www.scottish.parliament.uk/business/committees/historic/justice1/reports-02/j1r02-pats-01.htm
post-release support and supervision being proposed is very unclear. (para 102)

208. The Committee would like an explanation of why, in the light of COSLA’S evidence to the Finance Committee, it seems to be assumed in the planning process that high risk of re-offending (but low risk of harm) offenders with complex needs do not require access to qualified social workers undertaking offence-focused as well as resettlement work. This assumption seems anomalous given that those on probation, (generally a lower risk group) will be receiving supervision from qualified social workers. (para 103)

209. Will all offenders not regarded as presenting a risk of harm and serving a community part of a sentence of less than a year who breach the licence conditions by committing a minor offence be recalled by Scottish Ministers? How will the police know whether an offender was already on licence. Would reliance be placed on an offender’s honesty? (para 111)

210. The Committee would be grateful for clarification of these points and for details of the information chain. In particular, the Committee would welcome further detail on what the notification process will be both for the police in terms of those coming out of prison on licence and in terms of notifying Scottish Ministers of those who have committed an offence while on licence. (para 112)

211. The Committee is not wholly convinced by the different tests for breach of licence and recall to custody, particularly in relation to the management of those who do not comply with licence conditions but who do not present a risk of serious harm. (para 115)

212. The Committee welcomes the Minister’s statement that HDC is not intended to be used at least in the initial period of this Bill’s implementation. Nevertheless, the Committee is concerned that its continued existence as an option is likely to lead to a lack of clarity and transparency. The Committee would therefore be grateful to know whether the Minister has in mind a timescale within which consideration is likely to be given to the use of HDC in conjunction with the provisions of this Bill. (para 122)

213. The Committee notes the Deputy Minister’s comments and welcomes the acknowledgment that this Bill can provide only a partial solution to the problem of knife crime. The Committee believes that the Executive should continue to work to ensure that robust statistics on the sources of knives are developed and monitored in order to inform further action on knife crime. (para 135)

214. The Committee is content with scope of the provisions as set out in the Bill in relation to weapons. (para 142)

215. The Committee believes that possession of a knife in prison should constitute a criminal offence and requests that the Scottish Executive
considers this matter further, and responds to the Committee prior to commencement of stage 2 proceedings. (para 144)

216. The Committee is content with the definitions in Part 3 of the Bill. (para 148)

217. The Committee is content that the proposed licence conditions are proportionate. (para 153)

218. The Committee is content with the provisions of section 47 the Bill. However, the Committee notes the comments it has received in evidence from retailers, and recommends that the Executive reviews the operation of the licence provisions at a later date, to ensure that the system contains no unnecessary bureaucracy. (para 158)

219. The Committee supports the introduction of a licensing system for the commercial sale of non-domestic knives. (para 162)

220. The Committee notes the evidence received on definitions and exceptions and expects that the Executive will undertake detailed consultation with these groups prior to producing the relevant subordinate legislation. The Committee would be grateful for clarification of the Executive's proposed timetable for producing this subordinate legislation prior to the commencement of stage 2. (para 174)

221. The Committee supports the imposition of a ban on the sale of swords, subject to the specified exceptions which are proposed by Scottish Ministers. (para 175)
ANNEX A – REPORT FROM THE FINANCE COMMITTEE

The Committee reports to the Justice 2 Committee as follows—

Introduction

1. Under Standing Orders, Rule 9.6, the lead Committee in relation to a Bill must consider and report on the Bill's financial memorandum at stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee on the Financial Memorandum (FM) of the Custodial Sentencing and Weapons (Scotland) Bill, for which the Justice 2 Committee has been designated by the Parliamentary Bureau as the lead committee at Stage 1.

3. The Committee agreed to adopt level 3 scrutiny in considering the Bill, which involved seeking written evidence from organisations financially affected by it, then taking oral evidence from the Scottish Prison Service and from the Executive Bill Team. The Committee took evidence from representatives of both organisations on 14 November 2006.

4. The Committee received submissions from the Association of Chief Police Officers in Scotland; COSLA; Crown Office and Procurator Fiscal Service; Scottish Legal Aid Board; and South Lanarkshire Council. All of this evidence is set out in the Annexe to this report.

5. The Committee would like to express its thanks to all those who submitted their views.

Objectives and the Financial Memorandum

The Bill

6. The Bill is in two parts. The first part makes changes relating to custodial sentences to end automatic and unconditional early release of offenders. The Policy Memorandum and Explanatory notes set out the specific detail of these changes but broadly for sentences of 15 days or more, there will be a combined sentence comprising a period in custody (custody part) which will be a minimum of 50% of the sentence and a period on licence in the community (community part). Courts will have powers to increase the custody part up to a maximum of 75% of the sentence. For sentences of less than 15 days, the offender will spend the full period in custody and will be released unconditionally.

7. The second part relates to knives and swords. The outcome of a review of knife crime was announced in 2005 and this set out a five-point plan. The first three points were implemented as part of the Police, Public Order and Criminal Justice (Scotland) Act 2006 and this Bill seeks to implement the final two points of the plan. These are: to introduce a licensing scheme for the sale of non-domestic knives and similar objects; and to ban the sale of swords.

Costs

Custodial Sentences

8. The total year 1 recurring costs on the Scottish Administration are estimated as £14.84 million. The total non-recurring costs in year 1 will either be in the range £25.2m - £37.2m or £102.2m - £162.2m. Eventual recurring costs are anticipated to be between £47.07m - £65.07m.

Prisoner population

9. The main costs will arise as a result of an increase in prisoner numbers, with the FM giving a range of between 700 and 1100 additional places required over and above the current projected increase in prison population. The table on page 30 of the Financial Memorandum shows additional recurring costs in the first year for the Scottish Prison
Service (SPS) of £9m, with eventual recurring costs of between £37m - £55m. The FM implies that additional prisons could be required and a range of £25.2m - £37.2m is given if built by the private sector and £102.2m - £162.2m if public sector.

Appeals
10. It is assumed that the new arrangements could result in an increase in appeals and this is estimated to be £43,000. However it is indicated that the Scottish Court Service believes this can be absorbed into existing budgets.

The Parole Board for Scotland
11. Under the new proposals, continued detention will need to be considered by a Tribunal (the Parole Board for Scotland) (as is currently the case with life sentence prisoners). This is estimated to cost £675,000 which is an increase of £277,000. Legal aid could also be increased to £612,000.

12. The requirement for there to be an assessment of the risk of harm will apply to all those sentenced to 15 days or more. This is estimated to cost £5.5m to £6.5m. In addition, there could be increased IT costs of £200,000.

13. There would also be additional costs to the Parole Board as a result of an increase in the number of cases for consideration of re-release. This is estimated as £59,000.

“Community part”
14. As the vast majority of offenders will now have a community part of their sentence, then there will be additional costs to local authorities for community intervention or supervision (or Community Justice Authorities when they are established). This is estimated at £7.45m, which the FM suggests will be reimbursed by the Executive.

15. Electronic monitoring can be imposed as a licence condition and this is estimated as costing an additional £1.1m. The cost would fall on the Executive.

Police
16. The Association of Chief Police Officers in Scotland estimates that this part of the Bill will cost an additional £31,000.

Knives and Swords
17. There could be an increase in the number of offences due to the new licensing scheme and offence provisions, but the FM states that if the Bill is successful then there will be a reduction in the prevalence of knife/sword carrying and other knife-related violence and therefore, this could lead to a reduction in the resources required. However, this is not quantified.

18. Local authorities will incur costs through having to administer a licensing scheme. However, the Executive anticipates these will be recovered through licence fees.

Summary of evidence

Provision of funding
19. The Committee has discovered during its consideration of other financial memoranda, including the Adoption and Children (Scotland) Bill and the Adult Support and Protection (Scotland) Bill, that although the FMs reflect the resources required for the Bills, the resources had not been guaranteed by Ministers, pending the Spending Review process.

20. The submission from the SPS explicitly states that “SPS would need the new resources to be provided in line with the rate of increase in prison population.” Representatives of the SPS were asked whether they had received assurances from the Scottish Executive that such funding was secure for the implementation of the provisions within the Bill and responded stating:
“We see the decision on funding being taken through the spending review rather than the Executive giving a firm commitment at this time.”

21. This issue was followed up by the Committee during the evidence session with Executive officials who added that:

“The only thing I can say by way of assistance is that commitment is given in the financial memorandum that ministers recognise that the facilities and structures need to be in place before the new arrangements can be brought on stream.”

22. The Committee appreciates that Executive officials were not in a position to confirm in oral evidence that adequate funding will be provided and that the timing of this Bill is such that funding cannot be absolutely guaranteed until after the Spending Review process is complete.

23. However, given the importance of securing funding for the additional prison places anticipated to ensure this Bill does not compound issues of overcrowding, the Committee recommends that the lead Committee seeks assurances from the Minister that every effort will be made to secure adequate funding within cabinet negotiations during the Spending Review process.

Accommodating an increase in prisoner numbers

24. The Scottish Prison Service is currently undertaking investment to expand and modernise the prison estate. This includes extending four existing sites and seeking to build two new prisons. The proposed new prison on the existing Low Moss prison site is currently seeking planning permission and the development of a new private prison is underway in West Lothian. The evidence from SPS reflected that the additional places provided by these developments seek to address an existing shortfall in prison capacity:

“…over the next few years, we will try to build up sufficient capacity. We hope to align capacity with the projected prisoner population in a few years’ time. That is not taking into account any implications in the bill. The projection is that the prisoner population will continue to increase by about 100 to 200 prisoners per annum. So, in a few years’ time, we will have another shortfall of places if the figures fall out as they are projected. That will be addressed in the next phase of the development plan…

Over time, the opportunities to build more accommodation—more efficient prisons on the existing sites will dry up. If that happens, we will need to look at other ways of delivering that accommodation… We will need to consider other options such as new prison sites and the cost of delivering those.”

25. In relation to timescales for building new prisons, the Financial Memorandum states that: “A realistic estimate is that overall a new prison might take up to 8 years from the initial proposal to taking its first prisoners…” This estimate incorporates the potential for developments being delayed within the planning process.

26. The Financial Memorandum states that the Bill is likely to result in an additional 700 to 1100 prisoners. A number of the assumed costs in the FM are based on this figure. The SPS submission states that: “SPS was fully involved, with Ministers and Executive officials, in considering the impact of the measures and the costs… We therefore agree and support the figures in the Financial Memorandum which relate to the expected impact on the SPS.” In relation to accommodating these prisoners it also states that “as a rule of thumb a new prison might comprise 700 places.”

27. The progress of planning how to accommodate these additional prisoner places was explored during the evidence session with SPS representatives, including exploring the

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141 Pretswell, Official Report Col 4184-5, 14 November 2006
142 Richardson, Official Report Col 4189, 14 November 2006
option of extending existing prisons or building new prisons on separate sites. The SPS responded that:

“At this stage, we have no plans for how we could deliver that provision, so we have tried to express it in financial terms in the financial memorandum, rather than presenting it as a fixed way of delivery.”

28. This statement raises concern as it shows that the planning process for the provision of adequate accommodation for the increase in prisoner numbers has not commenced. Set against a context of the prison service’s current development programme exhausting options for existing prison expansion to achieve adequate capacity for existing prisoner numbers, it would appear that any plans to implement the Bill would require at least one additional prison. Assuming a new prison is required and the lead in time for its opening is 8 years as suggested in the FM, it would seem the provision of additional accommodation required for the Bill is already behind schedule.

29. The anticipated further rises in prisoner numbers exclusive of the impact of the Bill, and long lead in times for new prisons opening would appear to further highlight the need for a greater sense of urgency in planning for increased capacity required as a result of the Bill.

30. The estimates provided within the FM appear to assume that accommodation will be provided in line with the increase in prisoner numbers. The Committee is therefore very concerned that the planning process for how the additional prisoners anticipated from the implementation of this Bill will be accommodated is at such an early stage. Given the potential cost of delays in the provision of accommodation for 700 to 1100 additional prisoners, the Committee recommends that the lead committee raises this issue with the Minister.

**Anticipated savings for the Parole Board**

31. The Parole Board for Scotland submission to the Justice 2 Committee states that:

“Paragraph 173 of the FM advises that savings of £50,000 will accrue as a result of the Parole Board not being required to consider cases involving the recall to custody of licences. That is not correct...Certainly there will not be fewer cases to be considered at each casework meeting as any reduction resulting from recall cases being considered only by the Scottish Ministers will be more than offset by the costs incurred in dealing with the anticipated increase in the number of recalled offenders who will have their cases referred to the Board for consideration of re-release.”

32. Members explored the basis for the assumption that a £50,000 saving will be realised, given the concerns of the Parole Board for Scotland, with Executive officials who stated that:

“we are in discussion with the board on a number of areas, including possible reductions in its workload in relation to the number of tribunals that it has to hold.”

33. The Committee acknowledges the logic that a reduction of the Parole Board’s workload in one sphere, when considered in isolation from other provisions of the Bill, could produce a saving. However, given the pivotal role which the Parole Board will be required to play in the new arrangements proposed by the Bill and the additional funding required to support this work, the Committee appreciates the concerns of the Board that any such savings could require to be re-allocated to another area of their work. The Committee recommends that the Executive Bill team should ensure this is taken into account during future discussions with the Parole Board.

**Administrative burden on sentencing sheriffs**

34. The Bill requires that information should be provided to the Parole Board about the offence or offences that resulted in long term imprisonment. At present High Court judges produce

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143 Richardson, Col 4191, Official Report, 14 November 2006
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a report following an offender’s trial which is relied on by the Parole Board. The Parole Board for Scotland submission to the Justice 2 Committee suggests that, should sheriffs be required to produce similar reports under the Bill, this will present a considerable burden.

35. Executive officials confirmed in oral evidence that sheriffs would be expected to produce post-sentencing reports. Officials also explained that the implementation group, which has representation from the Sheriff Association, will look at any information that is required to be provided by judges and sheriffs.144

36. The Committee considers that, as the Executive is aware of the increased burden of the production of information by sheriffs, including ensuring this issue is covered within the ongoing work of the implementation group, the estimated cost of this could have been factored into the FM. Members of the lead committee may wish to explore the possible costs of the administrative burden of the production of post-sentencing reports on sheriffs with the Minister.

Knives and swords

37. The FM states that local authorities will incur costs through having to administer a licensing scheme and anticipates these will be recovered through licence fees and therefore cost neutral. The COSLA submission suggests that cumulatively a number of small-scale, supposedly cost neutral policies represent a growing burden on local authorities. In addition, the ACPOS submission states that: “it is anticipated that there could be an additional volume of licensing queries, including background checks, to be dealt with by the police service. Forces may therefore seek reimbursement of costs from the licence fee levied by local authorities.”

38. In oral evidence Executive officials referred to local authorities' ability to set fees to ensure their costs, including administrative costs mentioned by COSLA, are covered stating that it is the responsibility of local authorities to set a fee that covers all their costs.145 The Committee appreciates that the fee is within the gift of local authorities and would encourage them, in setting fees, to ensure that the possibility of the police service seeking reimbursement of costs is factored into the fee level set. The Committee suggests that COSLA may wish to enter into discussions with ACPOS on this basis.

Expected reduction in re-offending

39. The COSLA submission states that: “Services such as probation and community sentences, court-based social work, throughcare, supervision, supported accommodation, services specifically for women offenders, and drug and alcohol rehabilitation all need to be properly resourced if the risk of harm and re-offending is to be effectively reduced and if offenders are to be fully integrated into their communities. Local authority community-based disposals are not currently funded at a level which can realistically achieve the expected reduction in re-offending.”

40. Members explored whether the existing underfunding of local authority community based disposals had been taken into account in the preparation of the FM with Executive officials. Officials noted that the increased funding in this area in recent years (rising from £2.5m in 2002-03 to £9.3m in 2006-07) reflected the priority the Executive places on these services. As discussions are continuing on this issue between COSLA and the Executive, the Committee would encourage COSLA to calculate an estimate for the existing shortfall in funding and extrapolate from those figures the likely additional shortfall in funding resulting from the implementation of the Bill, to strengthen COSLA’s position in negotiations.

41. The supplementary evidence received from Executive officials states that funding for local authority criminal justice social work services for delivery of reports to courts and management of offenders in the community increased from £67m in 2002-03 to a projected

144 Richardson, Col 4191, Official Report, 14 November 2006
145 McLaughlin, Col 4192, Official Report, 14 November 2006
£103m in 2007-08. The budget for the Scottish Prison Service has risen from £290.2m in 2002-03 to a projected £427.3m in 2007-08\textsuperscript{146}.

42. The Committee notes the increasing funding requirements of the Scottish Prison Service between 2002-03 and 2007-08 a proportion of which reflects the growing problem of increases in prisoner numbers, in part as a result of re-offending. The Committee also notes the distinction in funding levels between this service and funding criminal justice social work services, which aims amongst other things to reduce re-offending. As one of the key priorities of the Bill is a reduction in re-offending, the lead committee may wish to explore with the Minister whether strategic direction towards a reduction in re-offending is reflected within funding provision for criminal justice social work services.

Private sector / public sector prison construction

43. The FM provides for a range of costs for any additional prisons required and a range of £25.2m - £37.2m is given if built by the private sector and £102.2m - £162.2m if public sector.

44. Members requested information from Executive officials on the cost of public versus private prisons over 25 years to clarify whether the substantial difference was because the figures provided in the FM only reflect a cost differential over 5 years.

45. The response provided from the Scottish Prison Service provides information on the cost per prisoner per annum for a 700 cell prison over 25 years and suggests that the Private Build Private Operate option would be the least expensive option compared to Private Build Public Operate or the Public Sector Comparator option. It goes on to state that the non-recurring costs range from £23m to £160m and reflects that the lower figure relates to private sector provision of a 700 place prison which is ‘off-balance sheet’ for SPS (like HMP Kilmarnock and HMP Addiewell) and the higher relates to 1,100 places via two new prisons which are provided either by the public or private sector but are not classified as off-balance sheet for SPS. The response also notes that the procurement exercise for the planned prison at Bishopbriggs will be an open competition between the private sector and the public sector (in the form of an in-house SPS bid). The Committee draws this supplementary information to the attention of the lead committee.

Conclusion

46. The Committee has serious concerns in relation to the provision of funding for the Bill and the provision of accommodation for the additional prisoners anticipated as a result of the Bill’s implementation.

47. On the issue of funding, given the importance of securing funding for the additional prison places anticipated to ensure this Bill does not compound issues of overcrowding, the Committee recommends that the lead Committee seeks assurances from the Minister that every effort will be made to secure adequate funding within cabinet negotiations during the Spending Review process. [paras 19 to 23]

48. On the issue of accommodation provision, the Committee is very concerned that the planning process for how the additional prisoners anticipated from the implementation of this Bill will be accommodated is at such an early stage. Given the potential cost of delays in the provision of accommodation for 700 to 1100 additional prisoners, the Committee recommends that the lead committee raises this issue with the Minister. [paras 24 to 30]

\textsuperscript{146} The Scottish Executive Draft Budget 2007-08, p.169, Table 9.16
Annexe

Custodial Sentences and Weapons (Scotland) Bill

Approach paper

Background
The Custodial Sentences and Weapons (Scotland) Bill ('the Bill') is an Executive Bill.

The Bill
The Bill is in two parts. The first part makes changes relating to custodial sentences to end automatic and unconditional early release of offenders. The Policy Memorandum and Explanatory notes set out the specific detail of these changes but broadly for sentences of 15 days or more, there will be a combined sentence comprising a period in custody (custody part) which will be a minimum of 50% of the sentence and a period on licence in the community (community part). Courts will have powers to increase the custody part up to a maximum of 75% of the sentence. For sentences of less than 15 days, the offender will spend the full period in custody and will be released unconditionally.

The second part relates to knives and swords. The outcome of a review of knife crime was announced in 2005 and this set out a five-point plan. The first three points were implemented as part of the Police, Public Order and Criminal Justice (Scotland) Act 2006 and this Bill seeks to implement the final two points of the plan. These are: to introduce a licensing scheme for the sale of non-domestic knives and similar objects; and to ban the sale of swords.

Costs
Custodial Sentences
The total year 1 recurring costs on the Scottish Administration are estimated as £14.84 million. The total non-recurring costs in year 1 will either be in the range £25.2m - £37.2m or £102.2m - £162.2m. Eventual recurring costs are anticipated to be between £47.07m - £65.07m.

Prisoner population
The main costs will arise as a result of an increase in prisoner numbers, with the FM giving a range of between 700 and 1100 additional places required over and above the current projected increase in prison population. The table on page 30 of the Financial Memorandum shows additional recurring costs in the first year for the Scottish Prison Service (SPS) of £9m, with eventual recurring costs of between £37m - £55m. The FM implies that additional prisons could be required and a range pf £25.2m - £37.2m is given if built by the private sector and £102.2m - £162.2m if public sector.
Appeals
It is assumed that the new arrangements could result in an increase in appeals and this is estimated to be £43,000. However it is indicated that the Scottish Court Service believes this can be absorbed into existing budgets.

The Parole Board for Scotland
Under the new proposals, continued detention will need to be considered by a Tribunal (the Parole Board for Scotland) (as is currently the case with life sentence prisoners). This is estimated to cost £675,000 which is an increase of £277,000. Legal aid could also be increased to £612,000.

The requirement for there to be an assessment of the risk of harm will apply to all those sentenced to 15 days or more. This is estimated to cost £5.5 m to £6.5m. In addition, there could be increased IT costs of £200,000.

There would also be additional costs to the Parole Board as a result of an increase in the number of cases for consideration of re-release. This is estimated as £59,000.

“Community part”
As the vast majority of offenders will now have a community part of their sentence, then there will be additional costs to local authorities for community intervention or supervision (or Community Justice Authorities when they are established). This is estimated at £7.45m, however this will be reimbursed by the Executive.

Electronic monitoring can be imposed as a licence conditions and this is estimated as costing an additional £1.1m. The cost would fall on the Executive.

Police
The Association of Chief Police Officers in Scotland estimates that this part of the Bill will cost an additional £31,000.

Knives and Swords
There could be an increase in the number of offences due to the new licensing scheme and offence provisions, but the FM states that if the Bill is successful then there will be reduction in the prevalence of knife/sword carrying and other knife-related violence and therefore, this could lead to a reduction in the resources required. However, this is not quantified.

Local authorities will incur costs through having to administer a licensing scheme. However, it is anticipated these will be recovered through licence fees.
Thank you for your letter of 18th October inviting me to give oral evidence on behalf of SPS on the above Bill on 14th November. I attach the SPS response to the questionnaire you circulated with your letter.

Unfortunately I shall be out of the country on 14th November and unable to give evidence in person. I would nominate Willie Pretswell (Finance Director), Rachel Gwyon (Director of Corporate Services) and Eric Murch (Director of Partnerships and Commissioning) to attend in my place and answer the Committee’s questions. I hope this arrangement is satisfactory.

Yours sincerely

Tony Cameron
Chief Executive

Questionnaire

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Financial Memorandum for the Custodial Sentences and Weapons (Scotland) Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee’s scrutiny.

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

3. Did you have sufficient time to contribute to the consultation exercise?

SPS was fully involved, with Ministers and Executive officials, in considering the impact of the measures and the costs ahead of publication of the Bill. We therefore agree and support the figures in the Financial Memorandum which relate to the expected impact on the SPS. The requirement is for additional running costs of £37.55 m p.a. by year 5 and capital provision of £25.5-162.2m. These resources, and the services to which they relate, would provide for the expected additional 700-1100 prisoners per day over that same time-frame. The funds would provide not only for accommodation and programmes, but other related services such as risk assessment and integrated case management, and escorting. I attach a chart showing how the impact of the provisions might look over time, compared with our existing population projections and availability of accommodation.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Yes

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

SPS is funded through the Scottish Executive’s budgetary processes. SPS would need the resources set out in the Financial Memorandum to be made available through that process. As can be seen from the chart, not all the impact would be felt immediately on implementation. SPS would need the new resources to be provided in line with the rate of increase of prison population and for the new provision and services to be available before the extra prison numbers were experienced. The cost estimates are based on 2005-06 figures and do not build in an estimate for inflation.
6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Modelling the substantial effects of this legislation is complex. SPS statisticians already provide projections on an annual basis which use the observed trends in sentencing behaviour over the past 34 years to project the future prison population levels, assuming sentencing behaviour remains unchanged. For example, our projections take no account of factors such as demography or recorded crime as no statistical relationship has been established. They have nonetheless a track record of accuracy over a number of years.

The Bill has required us to model predictions which apply certain assumptions about changes in arrangements. For example we have assumed that:

- All measures in the Bill relating to sentence management are implemented at the same time
- The Bill applies a "risk of harm" test which we have assumed to correlate to those convicted and sentenced to more than 1 year for a sexual or violent offence and with a history of such convictions
- 15% of those reaching the end of the “custody part” of their sentence are therefore likely to be referred to the Parole Board for a decision on whether they should remain in custody
- the Parole Board might direct 50% of those offenders to proceed to the community part of their sentence. Looking at the last 5 years of Parole Board cases 50.5% of those considered by the Board have been recommended for Parole. The remainder will remain in custody until the ¾ point of their sentence
- once released, 15% of those with supervision (not just licence conditions) in the community might commit a breach of the terms sufficiently serious to require a recall to custody

The estimates in the Financial Memorandum will be accurate if, collectively, these assumptions are borne out in practice and shown to be accurate. We have used existing data on current trends, where possible, to inform and underpin our assumptions. Additionally, the Financial Memorandum includes a range of likely increase in population. This is because the numbers are estimated to increase over time, for example quite markedly between years 4 and 5. SPS can also experience "spikes" on any given day or week over and above the average population, perhaps as high as 5%. The underlying trend of the prison population is also upwards and will affect the rate of increase in population due to the implementation of these measures. Detailed work has been done by SPS and Scottish Executive analysts and statisticians to prepare and support the predictions.

The timescales required for providing the resources and services for the estimated increase in prisoners numbers need to be considered. Precisely how prisoner places are best provided still needs to be worked through as an implementation issue. It may be possible to provide some places in houseblocks, as has been done recently at Cornton Vale. On the other hand a new prison, such as at Addiewell, provides extra accommodation on a different scale and at lower unit cost to the taxpayer. As a rough rule of thumb a new prison might comprise 700 places and require around £100m initial capital investment if provided in the public sector and circa £30m pa in running costs once open. As has been SPS experience at Low Moss, obtaining planning permission can be a slow process. A realistic estimate is that overall a new prison might take up to 8 years from the initial proposal to taking its first prisoners. The precise combination of methods selected to provide the extra places will need to ensure the new resources are available at the right rate to meet demand and are procured in the most economical, efficient and effective way possible.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The aims of the Bill to provide for improved sentence management throughout the full course of the sentence support the work already initiated by SPS. CJAs, criminal justice social work departments, the voluntary sector and police forces will be able to use SPS’s new Integrated Sentence Management System for managing offenders and reducing their re-offending. SPS is content that those costs are accurately reflected in the Financial Memorandum.
8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Scottish Ministers have supported the Scottish Prison Service over a number of years by enabling us to provide an estate fit for the 21st century. Around £1.5m per week is being invested. In recent times for example that funding has enabled SPS to eliminate slopping out at Barlinnie, Perth and Edinburgh. 240 new prisoner places have been provided at the Open Estate and Cornton Vale and modernised houseblocks and improved facilities have already been provided at Glenochil, Perth, Polmont and Edinburgh. There is more to come. This work will improve the facilities and services which can be offered to the existing prison population.

What the Financial Memorandum shows is the increased demand for additional prisoner places. Whilst the costs are shown to year 5 an important point is that these costs are ongoing. New accommodation could be expected to have a lifetime of 25 years. Each 700 places might therefore cost the public purse not too far off £1bn cash over the contract’s lifetime.

SPS is content that all the costs, which we envisage so far, are included in the Financial Memorandum.

SUBMISSION FROM ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND

I refer to your correspondence dated 18 October 2006 in connection with the above subject, which has been considered by members of the Finance Management Business Area and can now offer the following by way of comment.

As you will be aware, ACPOS recently provided written and oral evidence on the practical aspects of the Bill to the Justice 2 Committee. The following comments are offered in relation to the Financial Memorandum associated thereto.

Members note that it is anticipated that the majority of costs in relation to the custodial sentencing aspects of the Bill, will fall mainly on the Scottish Prison Service, Criminal Justice Social Work Services and the Parole Board for Scotland. Police forces will be involved through the proposed Multi Agency Public Protection Arrangements (MAPPA). It is difficult to accurately quantify costs relative to any new piece of legislation however, in general terms, funding will be required in this case for staff training and I.T. In addition, formal arrangements with other agencies will be necessary for the acquisition, storage, sharing and deletion of information, and costs associated with attending case conferences and carrying out risk assessments, will also need to be taken into account. The extent of the impact on the volume of work for the Scottish Police Service is not yet known.

ACPOS has previously commented on the additional burden arising from the increased volume of recall orders requiring enforcement and an enhanced volume of Police Reports. It has been estimated that this could cost around £31k per annum.

Weapons

Members welcome this part of the Bill which aims to reduce the number of bladed weapons in circulation and use. Whilst the responsibility for monitoring and enforcement will fall on trading standards officers, it is anticipated that there could be an additional volume of licensing queries, including background checks, to be dealt with by the police service. Forces may therefore seek reimbursement of costs from the licence fee levied by local authorities.

I trust that the foregoing is of assistance to you.

Yours sincerely

Harry Bunch
Acting General Secretary
SUBMISSION FROM COSLA

Background

1. The Convention of Scottish Local Authorities (COSLA) is the umbrella organisation representing 31 of Scotland’s 32 councils. We welcome the opportunity to give evidence to the Finance Committee on the financial memorandum attached to the Custodial Sentences and Weapons (Scotland) Bill which has wide-ranging implications for local government. COSLA supports the overall policy objectives of the Bill which broadly represent an ambition to achieve safer communities and to prevent re-offending which is shared by all in local government.

2. However, COSLA considers that the financial memorandum needs to be scrutinised and further developed in a number of areas to ensure effective implementation. These areas are outlined below in:
   • Section one: Custodial Sentences
   • Section two: Weapons

Section one: Custodial Sentences

3. The financial memorandum outlines that £7.45m will be available to oversee those subject to supervision over 6 months. This equates to £2,000 per offender. COSLA does not consider this allocation to be adequate. We estimate that the unit cost for supporting a high risk offender averages nearer £5,000 (including Social Enquiry Report costs, Keyworker Drug and Alcohol costs, employability services, resettlement facilitation, costs of breach, and offence-focussed work) and for lower risk offenders the unit cost is closer to £3,500, with a requirement for around £10m to oversee those subject to supervision over 6 months alone (see appendix 1).

4. Caution must be exercised with regard to the estimates for additional financial burden. This is a new approach based on risk of harm rather than length of sentence but we only have information on current prisoners and patterns of activity. Services such as probation and community sentences, court-based social work, throughcare, supervision, supported accommodation, services specifically for women offenders, and drug and alcohol rehabilitation all need to be properly resourced if the risk of harm and re-offending is to be effectively reduced and if offenders are to be fully integrated into their communities. Local authority community-based disposals are not currently funded at a level which can realistically achieve the expected reduction in re-offending.

30. Increased levels of
   • monitoring and supervision of attendance;
   • report writing, in particular Social Enquiry Reports;
   • brokering and signposting to appropriate support and interventions; and
   • license breaches

will all generate increased workloads and the need for additional staff and, in turn, additional office accommodation. There will be significant implications for prison-based, court-based and community-based Social Workers due to the increased assessments, reports and supervision required as a result of this legislation. There will also be an increased demand on accommodation and supported accommodation costs for prisoners released from prison.

Section two: Weapons

5. A cost recovery model is the suggested form of financing the licensing scheme. However, it must be recognised that over the years, a number of small-scale, supposedly “cost neutral” schemes have been implemented by local authorities. Being small-scale, they do not individually warrant a dedicated member of staff. However, cumulatively, they represent a growing burden on local authorities. There are a relatively small number of businesses that sell knives and the cost recovery model suggested has potential to move the cost of the
scheme on to local authorities through additional administration and regulation in ways which will not be “cost neutral”.

Conclusion

6. COSLA welcomes the general direction of the Custodial Sentences and Weapons (Scotland) Bill. However, we propose that the potential it has for impacting on both community safety and reduced offending, will be very much dependent on the level of resourcing made available to implement it effectively. As highlighted above we do not believe that financial memorandum adequately accounts for the costs which local authorities will incur from the introduction of this Bill.

Vicki Lewis
Policy Manager

Appendix 1: A Tiered Approach to Post Custodial Supervision

<table>
<thead>
<tr>
<th>Tier One (voluntary sector provision)</th>
<th>Tier 2 (resettlement type services)</th>
<th>Tier 3</th>
</tr>
</thead>
</table>
| Serving less than six months (excl fine default): average period on licence of 7 weeks (50%) | (a) Serving 6 mths - 1 yr: average period on licence 4.5 mths (50%)
(b) of those serving 1-4 years/assessed as not a risk of serious harm: average period on licence: 15 mths (50%) | Serving 1-4 years and assessed as risk of serious harm: average period on licence 7.5 mths (25%) |
| 2005-06: 4,795 liberations | (a) 1,959
(b) 1,536¹ | 2005-6: 230² |
| No involvement from SW in assessment | Risk assessment from Prison SW | Risk assessment from Prison SW |
| No case worker | Unqualified case worker | Qualified case worker |
| Sign posting to services – particular issue will be housing for any one who is in prison for more than 13 weeks | Provision of standard services: accommodation (100%), employability (100%) and substance misuse key working (10%) | Provision of standard services: accommodation, employability and substance misuse key working (10%) |
| No involvement in offence-focussed work | (a) No involvement in offence-focused work
(b) Some limited offence-focussed work if on licence for more than 6 months | Intensive offence-focused work if on licence for more than 6 mths (but in the absence of offence-focussed work undertaken in SPS this element would increase substantially) |
| No involvement of SW in breach | SW breach report (25%) | SW breach report (25%) |
| Notional unit cost of £700 | Around £3,500 for a full year of service | Around £5,000 for a full year service |
| Cost for service around £3,500,000 | Cost of service based on average length of licence: around £8,500,000 | Cost for average of 7.5 mths to each client: £875,000 |

¹ 87% of the liberations in this sentence length i.e. excluding convictions of non-sexual crimes of violence and crimes of indecency
² 13% of the liberations in this sentence length i.e. those with convictions of non-sexual crimes of violence and crimes of indecency
SUBMISSION FROM CROWN OFFICE AND PROCURATOR FISCAL SERVICE

Consultation

As a Scottish Executive Department COPFS has not been involved in the formal consultation, but has been closely consulted by Justice Department in the development of the proposals and has been able to comment on relevant financial assumptions. COPFS’ views are accurately reflected in the Financial Memorandum. COPFS officials continue to work with Justice Department colleagues on the planning, and in due course, implementation of the Bill.

Costs

Paragraph 142 (custodial sentences) and paragraphs 183-185 (restrictions on sale of knives and swords) accurately reflect the potential financial implications for COPFS. For the reasons stated in the Memorandum, it is not possible to quantify the costs (or, in the case of knives and swords, possible savings) but a modest increase in appeals against sentence could be absorbed within existing resources. The margin of uncertainty is associated with emerging sentencing practice in a novel area.

Wider Issues

COPFS has no reason to believe that the wider associated costs have not been accurately reflected in the Financial Memorandum and officials have not identified future unseen costs that might be caused by subordinate legislation or more developed guidance.

SUBMISSION FROM SCOTTISH LEGAL AID BOARD

Consultation

Q.1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
A.1. The Board provided comments to the Justice Department on potential costs arising from proceedings before the parole Board.

Q.2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
A.2. Those comments have been reflected in the Financial Memorandum.

Q.3. Did you have sufficient time to contribute to the consultation exercise?
A.3. N/A.

Costs

Q.4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
A.4. The only legal aid costing relates to proceedings before the Parole Board, and appears to reasonably reflect the potential costs for the Scottish Legal Aid Fund.

Q.5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
A.5. As legal aid expenditure is demand-led, any additional expenditure will be met by the Scottish Executive.
Q.6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

A.6. The Financial Memorandum appears to reasonably reflect these matters.

Wider Issues

Q.7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

A.7. N/A.

Q.8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

A.8. Although there will be some resource cost in relation to considering any necessary changes to subordinate legislation, or developing guidance, this is unlikely to be significant.

SUBMISSION FROM SOUTH LANARKSHIRE COUNCIL

Questionnaire

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
   - N/A

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
   - N/A

3. Did you have sufficient time to contribute to the consultation exercise?
   - N/A

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
   - Financial implications are noted in the Bill in terms of the additional roles and responsibilities for Local Authorities. The Bill proposes that these would be self-financing, but as a local authority we would have to ensure that this was the case. Further, more detailed research would need to be carried out in this area.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
   - see answer to Q4 – further research required

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
   - the timescales are not discussed in the Financial Memorandum, however, we can assume that they will be consistent with the preparation for and implementation of the Bill. Cost estimates unknown at this stage.

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
   - no comment
8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
- until such times that Councils begin the preparation for the introduction of the Bill, associated costs can not be estimated with any certainty

Misc Comments:

The Bill proposes that Local Authorities will have the powers to set additional conditions relating to storage, security, proof of age/identity and packaging of mail order items. SLC would suggest that the Scottish Executive should set at least minimum standards rather than each local authority setting their own different standards.

SUPPLEMENTARY SUBMISSION FROM SCOTTISH EXECUTIVE

I refer to Mr McNulty’s letter of 14 November enclosing a copy of the minute of the Committee’s meeting during which consideration was given to the Custodial Sentence and Weapons (Scotland) Bill’s Financial Memorandum. Scottish Prison Service colleagues will be providing separately the information on cost differentials between public and private sector prisons.

The Committee also asked for supplementary information on the year-on-year increases in funding for local authorities for community based disposals from 2005-06 and including the anticipated increase in 2007-08. Funding of local authority criminal justice social work services for delivery of reports to courts and management of offenders in the community is provided through section 27(1) of the Social Work (Scotland) Act 1968. The funding is ringfenced to ensure that resources are directed to the specific functions set out in section 27(1). Total provision of offender services has increased from £67m in 2002-03 to a projected figure of £103m in 2007-08. Within this overall sum the following funding has been allocated in recent years for delivery of throughcare ie statutory supervision of prisoners on release from custody and voluntary assistance to eligible short term prisoners following completion of their sentence:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002-03</td>
<td>£2.5m</td>
</tr>
<tr>
<td>2003-04</td>
<td>£4.5m</td>
</tr>
<tr>
<td>2004-05</td>
<td>£5.3m</td>
</tr>
<tr>
<td>2005-06</td>
<td>£7.2m</td>
</tr>
<tr>
<td>2006-07</td>
<td>£9.3m</td>
</tr>
</tbody>
</table>

Funding of throughcare for 2007-08 has yet to be finalised.

I hope the Committee finds this helpful.

Yours sincerely

Jane Richardson
Parole and Life Sentence Review Division

SUPPLEMENTARY SUBMISSION FROM SCOTTISH PRISON SERVICE

I refer to Mr McNulty’s letter of 14 November enclosing a copy of the minute of the Committee’s meeting during which consideration was given to the Custodial Sentence and Weapons (Scotland) Bill’s Financial Memorandum.

The Committee asked for supplementary information on the cost differential between a private sector prison and a public sector prison over a 25-year period. The most recent independent work on this question was carried by PricewaterhouseCoopers (PwC) and published in the document Financial Review of the Scottish Prison Service’s Estates Review in 2002. This report concluded:

‘On the basis of the work (carried out on the SPS Estates Review), the PPP Private Build Private Operate option, by a significant margin, offers a lower economic cost than either the PPP Private
Build Public Operate option or the Public Sector Comparator (PSC). While the PPP Private Build Public Operate option potentially offers savings by comparison with the PSC, significant practical issues regarding its deliverability would require to be addressed in detail before it would be regarded as a viable option. Even if these practical issues were to be addressed, there remains a considerable gap between the most optimistic PPP Private Build Public Operate option and the PPP Private Build Private Operate option.’

The report also contained the following table showing the Net Present Value (NPV) figures in terms of Prisoner Place per Year for a 700 cell prison over 25 years for comparative purposes:

<table>
<thead>
<tr>
<th>Option</th>
<th>NPV per Prisoner Place per Annum (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PSC option</td>
<td>24,521</td>
</tr>
<tr>
<td>PPP Private Build Public Operate option</td>
<td>19,299-24,521</td>
</tr>
<tr>
<td>PPP Private</td>
<td>11,785</td>
</tr>
</tbody>
</table>

The proposed new prison at Bishopbriggs, East Dunbartonshire, subject to planning permission, will be procured by open competition between the private sector and public sector (in the form of an in-house SPS bid). The outcome of this process will provide a real and up-to-date comparison of the cost differential between alternative service providers.

In respect of the costs included in the Financial Memorandum, as I stated at the Committee meeting on 14 November, the additional places could be provided in a number of ways (eg additional places on existing sites, new places on new sites etc) however at this stage no decisions have been taken on the best option. Further work will be required to inform this decision-making process. The Financial Memorandum therefore contains a range of costs to reflect the range of additional prisoners resulting from the Bill and to accommodate the range of delivery options. We are content that the overall recurring costs and capital expenditure of providing 700-1,100 new places are covered in the financial figures.

The recurring costs associated with the Continued detention and recall to custody have been calculated as £40k per place (based on the SPS actual average cost per prisoner place for 2005 06 calculated on a resource accounting basis) – providing a cost range of £28-44m recurring cost for 700-1,100 additional prisoners.

The non-recurring costs (excluding £2m for land acquisition) range from £23-£160m reflecting the volume range of additional places to be provided (based on 700-1,100 prisoners) and the alternative ways of providing these places (additional houseblocks or new prisons). The bottom end of the range (£23m) relates to the provision of 700 new places via a new private sector prison which is off-balance sheet for SPS (like HMP Kilmarnock and HMP Addiewell) and is based on an estimate of the Reversionary interest value that would score as capital expenditure. The top of the range figure (£160m) relates to the provision of 1,100 new places via 2 new prisons which are provided either by the public sector (and would score as capital expenditure) or by the private sector but are not classified as off-balance sheet for SPS. The range would also accommodate a mixture of delivery options.

I hope the Committee finds this helpful.

Yours sincerely

Willie Pretswell
Director, Finance and Business Services
ANNEX B – REPORT FROM THE SUBORDINATE LEGISLATION COMMITTEE

The Committee reports to the lead committee as follows—

Introduction

1. At its meetings on 31 October and 21 November, the Subordinate Legislation Committee considered the delegated powers provisions in the Custodial Sentences and Weapons (Scotland) Bill at Stage 1. The Committee submits this report to the Justice 2 Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

2. The Executive provided the Parliament with a memorandum on the delegated powers provisions in the Bill.1

3. The Committee’s correspondence with the Executive is reproduced in Annexes 1 and 2.

Delegated Powers Provisions

4. The Committee considered each of the delegated powers provisions in the Bill. The Committee approves without further comment: sections 38(2), 43 (inserting new section 27C of the 1982 Act), 46 and 50(2) and paragraph 3 of Schedule 1.

Section 2 – Parole Board Rules

5. The Committee was content with the power in this section and that it is subject to negative procedure. However, the Committee asked the Executive why it took the approach of applying provisions of the Local Government (Scotland) Act 1973 rather than inserting a tailor made power into the Bill to cover such matters.

6. In its response at Annex 2, the Executive indicated that there is merit in retaining substantially the same drafting approach as is taken in existing legislation, but it did not elaborate on what that particular merit is.

7. The Committee is content however with the drafting approach taken.

Section 4(2) – power to amend definitions of certain sentences

8. The Committee was concerned to note the extremely wide nature of this Henry VIII power, which confers on Ministers an order-making power to amend the definitions of custody-only and custody and community sentences by submitting a different duration from that set out in Section 4(1). It was concerned about the profound effect which this power could have on the operation of the Bill, and asked the Executive for justification of this.

9. In its detailed response, the Executive indicated that:

   - post-implementation evaluation might show custody and community sentences are more effective for sentences of longer than 15 days;
   - any exercise of the power would be evidence based;
   - it enables a change of the demarcation point in response to a change in trends;
   - affirmative procedure is appropriate; and
   - the Executive is reviewing the power with a view to limiting how far the demarcation point can be shifted.

1 Delegated Powers Memorandum
10. The Committee is content with the Executive’s response and that the power is subject to affirmative procedure. It also welcomes the Executive’s undertaking to review the scope of the power, and agreed that it will monitor the issue closely at Stage 2.

Section 6(1) – reference to “sentence .... of 15 days or more” rather than “custody and community sentence”

11. The Committee noted that section 6(1) imposes a duty on sentencing courts to fix a “custody” part of “sentences...of 15 days or more”. As it does not use the term “custody and community sentence”, any alteration in the definition of that term (by exercise of power in section 4(2)) would not affect the duty of the sentencing court. The Executive was asked whether this was intended or inadvertent.

12. In its response, the Executive indicated that the intention for the power in section 4(2) is that it should alter the length of sentences which are “custody-only” and “custody and community sentences” and that it should in turn affect the duty in section 6(1). The Executive further explained that, if the power in section 4(2) was exercised with section 6(1) in its current form, section 47 (power to make incidental etc provision) would be relied on to amend section 6(1). The Executive has agreed to look again at section 6(1) with a view to making this connection clearer and remove any ambiguity.

13. The Executive did not indicate in its response whether the terms of section 6(1) are intentional or inadvertent.

14. The Committee however is content with the Executive’s response, and welcomes its commitment to review this provision. The Committee agreed to monitor the position at Stage 2.

Section 6(10) – power to alter the proportion of sentence forming the “custody part”

15. The Committee was extremely concerned about this wide Henry VIII power and that it is subject only to negative procedure.

16. The Committee asked the Executive –

- to clarify the interaction between the power to alter the “default” custody part, in particular whether it is intended that Ministers could increase it beyond ¾ of a sentence;
- if so, how the courts are to operate a default custody part in excess of ¾ of sentence;
- the effect on section 6(6) which would be rendered meaningless if Ministers could increase the “default” custody part in excess of ¾ of sentence;
- justification for taking a Henry VIII power on a fundamental aspect of the Bill;
- whether it was intended that section 47 (power to make incidental, supplementary provision etc) would be used to alter the ¾ proportion in section 6(6); and
- to justify use of the negative procedure.

17. In its response, the Executive indicated that –

- the power to vary the “default” custody part is intended to take account of sentencing trends;
- the custody part will never exceed ¾ of sentence;
- the power to vary does not extend to overriding the ¾ limit set in section 6(6);
- following future assessment, it might be considered that different proportions (as “custody parts”) work better for different types of offender and so resources can be more effectively targeted; and
- it accepts that the power should be subject to affirmative procedure.
18. The Committee considered that 2 alternative interpretations were possible in respect of section 6(10). The first is the one which the Executive places on the power (namely that the power does not extend to enabling fixing custody parts of ¾ or greater) because the power only relates to section 6(3) and so cannot override section 6(6).

19. This interpretation relies on the following chain of argument – namely that it must be assumed that Parliament, in considering the legislation, intended all subsections in section 6 to have force otherwise they would not have been enacted; any exercise of the power in section 6(10) to specify a proportion of ¾ or greater, would wholly remove the effect of subsection (6); this could not have been what Parliament intended and so the power does not extend to so doing.

20. On balance, the Committee considered the above to be the most likely interpretation. However, it observed there was an alternative interpretation - namely that there is ambiguity in the section, the opportunity could have been taken to remove the ambiguity, but that opportunity was not taken; therefore as there is no express limitation on the power, it is not so limited by section 6(6). Doubt would therefore remain as to the extent of the power.

21. The Committee noted that the Executive had said its intention was never to vary the custody part to more than ¾. However, as drafted, the provision could potentially allow a future Executive to interpret section 6(10) differently.

22. The Committee felt the power was at the boundary of what was appropriate by way of a delegated power. The ambiguity relates to a power of considerable significance and the Committee considered that it was preferable for it to be removed.

23. The Committee is content, in principle, with the power and that it will be amended by the Executive to subject to affirmative procedure.

24. Given its concerns, the Committee recommends to the lead committee that it examines the ambiguity of this provision and the possible removal of the power by way of amendment.

Section 30(5) – power to amend, add or remove licences conditions during detention in prison

25. The Committee noted that this is a Henry VIII power which is subject to negative procedure. The Executive had indicated in the DPM that the power is necessary so that specified conditions which shall not be suspended, can be modified if future developments render that unnecessary. The Committee asked the Executive for an explanation of how the power is to be used; what “future developments” it had in mind; and for justification of negative procedure.

26. In its response, the Executive has offered as a hypothetical example which is the possible widespread use of the internet in prisons. An offender’s licence may contain a condition preventing access to the internet. If so, the Executive considers that it would be desirable to enforce that condition in prison.

27. The Committee notes that although the power does enable textual amendment of the Bill, it relates to an area which is largely administrative.

28. The Committee is content with the Executive’s response and with the power, and it accepts, in light of the administrative nature of the power, that negative procedure is appropriate.

Section 36(1)(b) and (9)(a) and (b) – curfew licences

29. The Committee noted that the power in section 36(1)(b), taken along with section 36(9)(b), is a Henry VIII power subject to affirmative procedure that enables the variation of time limits set out in the Bill. It raises similar concerns to those realised by the Committee in relation to sections 4(2)
and 6(10) regarding the width of the power and the potential impact on fundamental aspects of the Bill.

30. The Committee asked the Executive to elaborate on the power and to further justify the use of a Henry VIII power; to provide further information on the types of prisoner who are to be specified; and to explain why a delegated power is necessary in relation to section 36(9)(a).

31. In its response, the Executive indicated that it is necessary to have flexibility in the “window” in which curfew licenses can be made. It drew the Committee’s attention to the differences between curfew licenses and ordinary community licenses – curfew licenses will be issued before expiry of the custody part, and these attract a higher level of restriction. The Executive believed that it would have been confusing, and would have obscured the main purpose of the provisions in part 2 of the Bill, if it had had to deal with curfew licenses.

32. The Committee is content with the Executive’s justification of the power, and that this is subject to affirmative procedure.

Section 43 – inserts new section 27A into the Civic Government (Scotland) Act 1982: power to modify description of articles requiring a “knife dealer’s licence”

33. The Committee noted that this is a Henry VIII power (subject to negative procedure) which enables Ministers to modify definitions, and therefore vary items covered by the scheme. It considered that a possible alternative approach might have been to enable Ministers to prescribe the size of a knife/blade/other articles covered by section 27(A)2 and make different provisions for different types. In the Committee’s opinion, this alternative approach would appear to achieve flexibility without enabling modification of primary legislation by secondary legislation. The Committee asked the Executive whether alternative approaches were considered and if so, why they were disregarded.

34. In a full response, the Executive provided its justification for the power by referring to the need to have some flexibility in defining what items are to be covered, and that in its view it strikes the right balance between transparency and accountability to Parliament.

35. The Committee is inclined to agree with the Executive that placing definitions in the Bill would convey the Parliament’s view on the significance of the scheme.

36. The Committee therefore recommends that some definitions should be placed on the face of the Bill. It is content with the power and that it is subject to negative procedure.

Section 43 – inserts new section 27K into the 1982 Act: power to prescribe manner of application for “recovery order” by Act of Adjournal

37. The Committee asked the Executive for further explanation of the need for this power and why it was not included in the Delegated Powers Memorandum. It also asked whether the Lord President of the Court of Session had been consulted on the need for the power.

38. The Executive apologised to the Committee for omitting this power from the DPM and, having consulted with the Lord President, confirmed that he is content.

39. The Committee is content with the power and that this is not subject to Parliamentary procedure.

Section 43 – inserts new section 27Q into the 1982 Act: power to provide exceptions to certain offences under the 1982 Act

40. The Committee asked the Executive how it intends to use this Henry VIII power and why it is necessary for the power to be cast as wide as it is.
41. In its response, the Executive quoted the example of test purchasing as being the only exercise of the power anticipated. It also referred to an Order which exempts certain items from the offence of sale to persons under 18 years.

42. Whilst the Committee considers that a power to make exemptions is reasonable in principle and precedented, in the absence of further examples for use of the power and explanation from the Executive, it is not possible to be sure whether the power is wider than necessary.

43. The Committee is content with the power in principle and that it is subject to negative procedure. It recommends however that the lead committee should press the Executive for examples of other exercises of the power and on how it is to be exercised in relation to test purchasing, so as to enable further consideration of the power and its scope.

Section 45 – power to create exceptions in section 141 of the Criminal Justice Act 1988

44. The Committee noted that this is a Henry VIII power which enables the amendment of an offence created in primary legislation and asked the Executive to justify its reasons for this power.

45. In a full response, the Executive indicated that the power is intended to make exceptions for the purposes of film, theatre and television and possible further activities which emerge following practical operation of the scheme.

46. The Committee is content with the Executive’s response and with the power which is subject to affirmative procedure.

Section 47 – power to make incidental, supplemental etc provision

47. The Committee asked the Executive to explain why it was necessary that this power should extend to enabling modification of the Bill itself.

48. In its response, the Executive indicated that on occasion, the best way to make ancillary provision may be to insert text into the Bill as this makes the law clearer for readers of the Bill or Act. It added that the breadth of the textual amendment must still be confined to an ancillary matter.

49. The Committee accepts that whilst making the law clearer to readers is helpful, the scope of the power here is not confined to that purpose.

50. The Committee is content that the power is subject to negative procedure, however where the power is exercised so as to amend primary legislation (including the Bill) it recommends that the instrument should be subject to affirmative procedure.

Schedule 1, para 17 – regulations on the tribunal, its procedure and suspension of members

51. The Committee noted that there was no right of appeal in the Bill against a decision of the Tribunal removing or suspending a member from office. It therefore asked the Executive about its intention in this regard and whether it had or intended to consult with the Scottish Committee of the Council on Tribunals (SCCT).

52. In its response, the Executive indicated that there is to be no right of appeal. It confirmed that it will wait for a suitable legislative vehicle to bring the Parole Board within the remit of the Scottish Committee of the Council of Tribunals. It added that as a matter of best practice and ongoing policy, the SCCT would be consulted on relevant matters relating to the Parole Board.

53. The Committee is content with the Executive’s response, and with the power which is subject to affirmative procedure.
ANNEX 1

LETTER FROM THE SUBORDINATE LEGISLATION COMMITTEE TO THE SCOTTISH EXECUTIVE

Section 2 – Parole Board Rules

1. While the Committee is content that the powers in this section are subject to negative procedure, the Committee wonders why the Executive decided to take the approach of applying the provisions of Section 210 of the Local Government (Scotland) Act 1973 rather than inserting a tailor made power into the Bill. The Executive is asked to comment.

Section 4(2) – power to amend definitions of certain sentences

2. The Committee was concerned to note the extremely wide nature of this Henry VIII power, which confers on Ministers an order-making power to amend the definitions of custody-only and custody and community sentences by substituting a different duration from that set out in section 4(1). The Committee was concerned that the power could have a profound effect on the operation of the Bill as it affects the number of prisoners who are entitled to unconditional release, and who are brought into the scheme for community licence and curfew orders.

3. The point raised by the Committee at para 7 below is relevant here. If it is intended that the duty of the court to fix a custody part should apply to all sentences of 15 days or more (as section 6(1) provides) regardless of the definitions of custody-only and custody and community sentences, the Executive is asked why there be a need for the power in section 4(2)?

4. The Committee considered this power alongside the powers in sections 6(10) and 36(1)(b) (with 36(9)(b). The Committee’s comments on these other sections are set out below, however the attention of the Executive is drawn to the Official Report of the Committee’s meeting on 31 October where the strength of the Committee’s concerns on the use of the powers are set out in detail (cols 2052-2054).

5. On the power in section 4(2), the Committee asks the Executive to elaborate on the scope of the power and to provide further justification for using a Henry VIII power for this potentially fundamental aspect of the Bill.

Section 6(10) – power to alter the proportion of sentence forming the “custody part”

6. The Committee notes that section 6(1) (to specify a custody part) applies to a person on whom a sentence of 15 days or more has been imposed. It does not use the term “custody and community sentence” with the result that, if the power in section 4(2) to vary definitions of custody-only and custody and community services is exercised, such a variation will not affect the duty in section 6(1). It will still be triggered by a sentence of 15 days or more regardless of the definitions of those sentences. The Committee is not clear whether this is intentional or inadvertent and asks the Executive for clarification.

7. The Committee is extremely concerned about the wide Henry VIII power in section 6(10) which allows Ministers to vary the “default” custody part; and the principle of using a statutory instrument to change penal sentences.

8. The Committee noted that use of the power could allow the default custody part to become substantially more or substantially less than one half. The Committee observed that in relation to increasing the default custody part, two interpretations were possible. Either the power in section 6(10) is restricted by section 6(6) or it is not. It is not expressly restricted but arguably is implicitly restricted. The Committee questioned the Executive’s intention with reference to this power. In particular, if the power is not restricted by section 6(6), how is a court to fix the custody part, should the default proportion become greater than ¾ of sentence and what, if any, knock on effect would this have on the length of sentence which is to be fixed.
9. If the default custody part becomes significantly less, one potential effect is that it becomes correspondingly harder for a court to justify exercising its discretion to fix a higher proportion than the lowered default proportion.

10. The Committee wondered whether section 47 (Ancillary Provision) could be used to amend the $\frac{3}{4}$ maximum in section 6(6), if it were argued that, say, 80% would achieve the policy objective.

11. The Committee also noted with concern that this significant power is subject only to negative procedure. It also notes that a similar power in Sections 36(1)(b) is subject to affirmative procedure.

12. The Executive’s attention is again drawn to the Official Report of the meeting and the Committee’s discussion on this section (cols. 2054-2058).

13. **The Executive is asked to**
   - clarify the relationship/interaction between subsections (3), (6) and (10); in particular, the Committee wishes to establish whether the Executive considers the power at subsection (3) to be limited by subsection (6) – if it is not so limited, the Committee asks for explanation as to how courts are to apply a “default” custody part in excess of $\frac{3}{4}$ of sentence;
   - elaborate on the scope of the power and to provide further justification for using a Henry VIII power in relation to this fundamental aspect of the Bill;
   - clarify the effect on subsection (6) if the custody-part in subsection (3) was to be changed for example to $\frac{1}{2}$;
   - clarify whether section 47 (Ancillary Provision) could be used to amend the $\frac{3}{4}$ maximum in section 6(6); and
   - provide justification for the use of negative procedure?

Section 30(5) – power to amend, add or remove licence conditions during detention in prison

14. The Committee notes that this is a further Henry VIII power subject to negative procedure which empowers Ministers to vary the licence conditions. It notes the justification offered by the Executive that the power is necessary in order that the specified conditions, which shall not be suspended, can be modified if future developments render that unnecessary. The Committee considers this justification rather vague.

15. **The Committee asks the Executive how it intends to use this power, and what possible “future developments” it has in mind.**

Section 36(1)(b) and (9)(a) and (b) – curfew licences

16. The Committee notes that the power in section 36(1)(b), taken along with 36(9)(b), is a Henry VIII power subject to affirmative procedure that enables the variation of time limits set out in the Bill. This power raises similar concerns that are expressed above in relation to the powers in sections 4(2) and 6(10), regarding the width of the power and the potential impact on fundamental aspects of the Bill.

17. **The Executive is asked to**–
   - elaborate on the scope of the power and to provide further justification for using a Henry VIII power on this fundamental aspect of the Bill; and
   - provide further information on the types of prisoner who are to be specified, in order that the Committee can assess the delegated power; and
• explain further why a delegated power is required in relation to section 36(9)(a).

Section 43 – inserts new section 27A into Civic Government (Scotland) Act 1982: power to modify description of articles requiring a “knife dealer’s licence”

18. The Committee noted that this is another Henry VIII power (subject to negative procedure) which enables Ministers to modify definitions, and therefore vary items covered by the scheme. It considered that a possible alternative approach might have been to enable Ministers to prescribe the size of a knife/blade/other articles covered by section 27(A)2 and make different provisions for different types. In the Committee’s opinion, this alternative approach would appear to achieve flexibility without enabling modification of primary legislation by secondary legislation. The Executive is asked whether alternative approaches were considered and if so, why they were disregarded.

Section 43 – inserts new 27K into the 1982 Act: power to prescribe manner of application for “recovery order” by Act of Adjournal

19. The Committee notes that the DPM is silent on this power. It is therefore unclear whether the Executive consulted with the Lord President on the need for such a power.

20. Rule 9.4A of the Parliament’s Standing Orders provides that for any Executive Bill “which contains any provision containing power to make subordinate legislation” a DPM should be provided which sets out information on the power and upon whom it is conferred, why it is appropriate to delegate the power, and the procedure if any to which the exercise of the power will be subject to.

21. The Executive is asked for further explanation of the need for this power, why this was not included in the DPM, and whether the Lord President was consulted on the need for such a power.

Section 43 – inserts new section 27Q into the 1982 Act: power to provide exceptions to certain offences under 1982 Act

22. The Committee notes with concern that this is another Henry VIII power. It notes that the Executive’s justification for the power is that it would be used (but not at the outset) to except test purchasing from the offences. No other exception is mentioned, although the Committee notes from the DPM that the intention is to use the power in limited circumstances. The Committee concludes that the power might possibly be drawn more widely than is necessary.

23. The Executive is asked how it intends to use this power beyond the example quoted, and why it is necessary for the power to be cast as wide as it is.

Section 45 – power to create exceptions in section 141 of the Criminal Justice Act 1988

24. Again, the Committee notes with concern that this is a Henry VIII power which enables the amendment of an offence created in primary legislation. It notes that the justification given for this power is that legitimate uses of weapons may be identified in the future. The Committee considers that it might be assumed that the purpose of the power is to amend section 141 of the Criminal Justice Act 1988 to reflect the knife dealer’s licence scheme introduced by sections 43-44 of the Bill; however the power is not tailored in this way, this justification has not been offered and such consequential provision could have been made using the powers in section 47 (ancillary provision). Accordingly, no justification has been given other than stating that new matters may emerge in the future. The Executive is asked to justify its reasons for this power.

Section 47 – power to make incidental, supplementary, consequential, transitory, transitional or saving provision, including modification of primary legislation
25. The Executive is asked why it is necessary to extend this power so as to enable amendment of the Bill itself.

Schedule 1, para 17 – regulations on the tribunal, its procedure and suspension of members

26. The Committee notes that the Bill does not provide for any right of appeal against a decision of the Tribunal removing or suspending a member from office. It is not clear to the Committee whether such a right of appeal is intended and, if it is, whether the intention is that the right to appeal is to be provided for in the Regulations. If that is the intention, the provision confers a power not a duty to make such Regulations as Ministers consider necessary or expedient. Accordingly, it would not be mandatory to make regulations containing an appeal right.

27. The Executive is asked –

- to confirm what, if any, intentions it has in relation to a right of appeal; and
- for its comments on whether placing an appeal in regulations would strike the right balance between primary and secondary legislation.

28. The Committee also notes that there is no provision requiring consultation with the Scottish Committee of the Council on Tribunals. The Executive is asked to confirm whether it intends to consult with the Scottish Committee, and if so, whether it intends to do so by placing a formal duty to do so in the Bill.

ANNEX 2

LETTER FROM THE SCOTTISH EXECUTIVE TO THE SUBORDINATE LEGISLATION COMMITTEE

I refer to your letter to the Scottish Executive’s Constitution and Parliamentary Secretariat on the above. For ease of reference, I have taken the paragraphs and questions from the Committee’s letter and incorporated those together with answers in the letter set out below.

Section 2 – Parole Board Rules

1. While the Committee is content that the powers in this section are subject to negative procedure, the Committee wonders why the Executive decided to take the approach of applying the provisions of Section 210 of the Local Government (Scotland) Act 1973 rather than inserting a tailor made power into the Bill. The Executive is asked to comment.

Answer: As the Committee is aware, section 20(4A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) currently contains a provision which is very similar to that set out in section 2(3) of the Bill. This provision was inserted by section 5(1)(c) of the Convention Rights (Compliance) (Scotland) Act 2001. The Executive considers that there is merit in retaining this recently-added provision in substantially the same terms.

Section 4(2) – power to amend definitions of certain sentences

2. The Committee was concerned to note the extremely wide nature of this Henry VIII power, which confers on Ministers an order-making power to amend the definitions of custody-only and custody and community sentences by substituting a different duration from that set out in section 4(1). The Committee was concerned that the power could have a profound effect on the operation of the Bill as it affects the number of prisoners who are entitled to unconditional release, and who are brought into the scheme for community licence and curfew orders.

3. The point raised by the Committee at para 7 below is relevant here. If it is intended that the duty of the court to fix a custody part should apply to all sentences of 15 days or more (as section 6(1) provides) regardless of the definitions of custody-only and custody and community sentences, the Executive is asked why there would be a need for the power in section 4(2)?
4. The Committee considered this power alongside the powers in sections 6(10) and 36(1)(b) (with
36(9)(b) The Committee’s comments on these other sections are set out below, however the
attention of the Executive is drawn to the Official Report of the Committee’s meeting on 31 October
where the strength of the Committee’s concerns on the use of the powers are set out in detail (cols
2052-2054).

On the power in section 4(2), the Committee asks the Executive to elaborate on the
scope of the power and to provide further justification for using a Henry VIII power for
this potentially fundamental aspect of the Bill.

Answer: It may prove, on the basis of future data and in the light of post implementation evaluation
of the proposals as they stand, that custody and community sentences are more effective for
sentences of a longer period than the 15 days currently prescribed for. The power allows the
demarcation line to be moved on the basis of evidence but without the need for new primary
legislation to allow the Scottish Ministers to respond effectively and promptly to changing
circumstances in sentence management. The section 4(2) power will also allow the Scottish
Ministers to make changes, if required, to respond effectively to trends.

The affirmative resolution will require a full Parliamentary debate before any changes could be
made. If the Executive considered it appropriate to exercise this power, it is unlikely that the new
terms that would be substituted would, in practice, be substantially different from the current cut-off
point. However, any proposed change would be evidence-based. On that basis, the Scottish
Executive accepts that this power could be narrowed without losing the desired effect by setting a
limit beyond which the demarcation line could not be moved. Further consideration will be given to
what that demarcation point might be. This maintains the desired degree of flexibility whilst, we
trust, answering the Committee’s concern about the breadth of the power.

The clear intention behind the power in section 4(2) is to alter the length of sentence where the
custody and community sentence provisions apply. This includes the setting of a custody part
under section 6(1). If the power in section 4(2) was used, the ancillary powers in section 47 of the
Bill would be used to amend section 6(1) accordingly. Nevertheless the Executive is looking at the
terms of section 6(1) with a view to making this clearer.

Section 6(10) – power to alter the proportion of sentence forming the “custody part”

5. The Committee notes that section 6(1) (to specify a custody part) applies to a person on whom
a sentence of 15 days or more has been imposed. It does not use the term “custody and
community sentence” with the result that, if the power in section 4(2) to vary definitions of custody-
only and custody and community services is exercised, such a variation will not affect the duty in
section 6(1). It will still be triggered by a sentence of 15 days or more regardless of the definitions
of those sentences. The Committee is not clear whether this is intentional or inadvertent and
asks the Executive for clarification.

6. The Committee is extremely concerned about the wide Henry VIII power in section 6(10) which
allows Ministers to vary the “default” custody part; and the principle of using a statutory instrument
to change penal sentences.

7. The Committee noted that use of the power could allow the default custody part to become
substantially more or substantially less than one half. The Committee observed that in relation to
increasing the default custody part, two interpretations were possible. Either the power in section
6(10) is restricted by section 6(6) or it is not. It is not expressly restricted but arguably is implicitly
restricted. The Committee questioned the Executive’s intention with reference to this power. In
particular, if the power is not restricted by section 6(6), how is a court to fix the custody part, should
the default proportion become greater than ¾ of sentence and what, if any, knock on effect would
this have on the length of sentence which is to be fixed.

8. If the default custody part becomes significantly less, one potential effect is that it becomes
correspondingly harder for a court to justify exercising its discretion to fix a higher proportion than
the lowered default proportion.
9. The Committee wondered whether section 47 (Ancillary Provision) could be used to amend the \( \frac{3}{4} \) maximum in section 6(6), if it were argued that, say, 80% would achieve the policy objective.

10. The Committee also noted with concern that this significant power is subject only to negative procedure. It also notes that a similar power in Sections 36(1)(b) is subject to affirmative procedure.

11. The Executive’s attention is again drawn to the Official Report of the meeting and the Committee’s discussion on this section (cols. 2054-2058).

12. The Executive is asked to

- clarify the relationship/interaction between subsections (3), (6) and (10); in particular, the Committee wishes to establish whether the Executive considers the power at subsection (3) to be limited by subsection (6) – if it is not so limited, the Committee asks for explanation as to how courts are to apply a “default” custody part in excess of \( \frac{3}{4} \) of sentence;
- elaborate on the scope of the power and to provide further justification for using a Henry VIII power in relation to this fundamental aspect of the Bill;
- clarify the effect on subsection (6) if the custody-part in subsection (3) was to be changed for example to \( \frac{1}{2} \);
- clarify whether section 47 (Ancillary Provision) could be used to amend the \( \frac{3}{4} \) maximum in section 6(6); and
- provide justification for the use of negative procedure?

Answer: Section 6(10) gives the Scottish Ministers the power to amend subsection (3) by substituting a different proportion of the sentence for the proportion mentioned (which is one-half). This is the minimum proportion of the sentence which the court must specify as the custody part. The Committee has pointed out that the provisions of subsection (10) may be in tension with subsection (6), which prevents the court from specifying a custody part of more than 75%. The intention here is to provide the Scottish Ministers with the power to vary the custody part to take account of sentencing trends but it will never be more than 75%. That is why the power relates only to subsection (3).

The Scottish Ministers’ policy is that all community and custody prisoners will spend a period on licence in the community. This seeks to assist offenders in rehabilitating back into the community while subject to a number of relevant and testing licence conditions.

Future data may prove that alternative custody periods are more appropriate for certain offenders. For example, it may prove that, for certain types of offender, a shorter custody element and longer community element is more effective, allowing resources both in prisons and the community to be better targeted in a more effective and efficient manner.

The Executive also accepts that this power should be subject to affirmative procedure.

Clarification on the point raised in paragraph 7 has already been provided earlier in this letter.

Section 30(5) – power to amend, add or remove licence conditions during detention in prison

13. The Committee notes that this is a further Henry VIII power subject to negative procedure which empowers Ministers to vary the licence conditions. It notes the justification offered by the Executive that the power is necessary in order that the specified conditions, which shall not be suspended, can be modified if future developments render that unnecessary. The Committee considers this justification rather vague.

14. The Committee asks the Executive how it intends to use this power, and what possible “future developments” it has in mind.
Answer: This section applies to offenders who are in custody while also on licence, but without that licence having been revoked. In this type of situation, all licence conditions other than those set out in subsection (3) will be suspended for the period that the person remains in custody (and, of course, while the licence is still in force).

The Delegated Powers Memorandum makes the point that the 2 conditions set out in subsection (3) are, generally speaking, the only ones likely to be capable of being breached while in prison. However, there may in the future be conditions to which this same reasoning may apply. To take a hypothetical example, let us suppose that the use of the internet were to become widespread in jail in years to come. An offender’s licence may contain a condition that prevents access to the internet (for instance, if the individual has been convicted of internet pornography offences). In such a situation, it would be desirable to be able to enforce that condition were any person subject to it to be detained in circumstances to which section 30 applies.

Section 36(1)(b) and (9)(a) and (b) – curfew licences

15. The Committee notes that the power in section 36(1)(b), taken along with 36(9)(b), is a Henry VIII power subject to affirmative procedure that enables the variation of time limits set out in the Bill. This power raises similar concerns that are expressed above in relation to the powers in sections 4(2) and 6(10), regarding the width of the power and the potential impact on fundamental aspects of the Bill.

16. The Executive is asked to—

- elaborate on the scope of the power and to provide further justification for using a Henry VIII power on this fundamental aspect of the Bill; and
- provide further information on the types of prisoner who are to be specified, in order that the Committee can assess the delegated power; and
- explain further why a delegated power is required in relation to section 36(9)(a).

Answer: This section broadly re-enacts the home detention curfew provisions that were inserted into the Prisoners and Criminal Procedure (Scotland) Act 1993 by section 15 of the Management of Offenders etc. (Scotland) Act 2005. The policy behind this provision is to enable the Scottish Ministers to provide low tariff offenders who meet certain criteria with an incentive of progressing to the community part of the sentence before reaching the end of the custody part. Release would be subject to a number of conditions, one of which would be electronic monitoring.

The Scottish Ministers are required to make an order specifying who might be eligible for a ‘curfew licence’, referred to in common parlance as a home detention curfew licence. The order is subject to affirmative resolution. Placing the power in an order allows the other provisions in the Bill to be implemented and to work in practice for a period before any parliamentary consideration of the licence curfew provision takes place. In addition, there are groups of offenders who will not be eligible for home detention curfew licences. These are likely to be the same as those provided for in the Management of Offenders etc. (Scotland) Act and include, for example, sex offenders or offenders liable to be deported.

Subsection 36(9)(a) provides that provisions of Part 2 of the Bill can be applied, subject to modifications specified in the order. The power conferred by section 36(9)(a) is necessary due to the nature of curfew licences. It permits provisions of the Bill to be applied to home detention curfew licences but with modifications which may be needed due to the differences between a home detention curfew licence and an "ordinary" licence.

Home detention curfew licences are unusual in that they permit release from custody before the expiry of the custody part. A higher level of restriction is a key feature of a home detention curfew licence compared with a typical licence issued on the expiry of a prisoner's custody part. Therefore it may be appropriate to modify the effect of the provisions of the Bill which deal with licences when applying these provisions to home detention curfew licences. These provisions (which are principally contained in chapter 3 of Part 2) are quite correctly drafted to deal with licences issued after a prisoner is released from the custody part (or punishment part) of a sentence. It would be
confusing to have dealt directly with the particularities of home detention curfew licences in these provisions and this would have obscured the core purpose of these provisions. For example, sections 26 and 27 which deal with conditions may be applied to persons on home detention curfew licences but such an application will need to contain modifications to account for the mandatory home detention curfew condition.

Similarly the sections dealing with the decision as to whether or not to release a prisoner on the expiry of the custody part will need to be applied to persons released on home detention curfew licence. This will require modifications to cater for the fact that the prisoner is not in custody at the time of the decision but has been released under the restrictive home detention curfew licence. Again, it would have obscured the main purpose of these provisions if they had been drafted in such a way as to account for prisoners released on home detention curfew licence.

Finally, the committee will note that home detention curfew licences will only be available in respect of particular categories of prisoner (see the power in section 36(1)). It may be appropriate to make different modifications for different categories of prisoner.

Subsection 36(9)(b) is necessary to allow the Scottish Ministers the flexibility to alter the “window” within which prisoners can be released on home detention curfew licence and the proportion of the sentence that offenders must have served. The power is subject to the affirmative procedure and so would require full Parliamentary discussion.

In light of all of the above, the Executive believes it is more appropriate for the relatively complex and technical modifications that will be made under this power to be set out in subordinate legislation rather than add such material to the face of the Bill. Nevertheless the Executive recognises the importance of the home detention curfew licence provisions which is why it considers it imperative that an order under section 36(1) (which encapsulates the powers in section 36(9)) be subject to the affirmative resolution procedure.

Section 43 – inserts new section 27A into Civic Government (Scotland) Act 1982: power to modify description of articles requiring a “knife dealer’s licence”

17. The Committee noted that this is another Henry VIII power (subject to negative procedure) which enables Ministers to modify definitions, and therefore vary items covered by the scheme. It considered that a possible alternative approach might have been to enable Ministers to prescribe the size of a knife/blade/other articles covered by section 27(A)2 and make different provisions for different types. In the Committee’s opinion, this alternative approach would appear to achieve flexibility without enabling modification of primary legislation by secondary legislation. The Executive is asked whether alternative approaches were considered and if so, why they were disregarded.

Answer: As indicated in the Delegated Powers Memorandum, the Executive considers it essential that the coverage of the licensing scheme for swords and knives should be flexible in order that it is capable of responding to developments arising during the practical operation of the scheme. This might either permit the sellers of some items to be excluded from the scheme or require that sellers of other weapons are brought within the scheme. For example, it is proposed to use these powers to exempt dealers who sell only smaller pen-knives, skian dhus or kirpans – it is possible though that a convincing case might also be made for the exclusion of other smaller knives not designed for domestic purposes, but which have at this stage not been brought to our attention. As a further example, police advice at present is that smaller pen-knives are not a problem item but, if a specific design of pen-knife were developed which police intelligence indicated was becoming a problem, then the regulations could be used to require that those selling it were properly licensed.

The Executive is of the view that the arrangements proposed strike the right balance between transparency and accountability to Parliament on the one hand and, on the other, the danger of over-defining the coverage of the scheme in the Bill and risking the exclusion of dangerous items which may be brought to our attention by the police at some point in the future.

Where such flexibility is required in a regulatory scheme the Executive considers it appropriate that primary legislation should provide that the rules of the scheme can be specified in regulations. The
Executive therefore considered whether the definition of the weapons to be subject to licensing should be entirely specified in regulations – which would have permitted the maximum flexibility. However, what the Executive has done in this instance is to aim for the maximum specificity and transparency possible in the primary legislation itself by setting out in detail the intended coverage of the scheme on the face of the Bill in section 27A(2).

The Executive takes the view that this gives a clear indication as to the type of items which may be added, removed or adjusted in the exercise of the power under section 27A(6) in a way which a definition contained only in regulations would not. The Executive is also of the view that it would undesirable to use valuable Parliamentary time to simply add, adjust or remove individual types of knives etc. from the scheme when such fine tuning is more efficiently dealt with by regulations.

In addition, the Executive considers that the power is a narrow one in contrast, for instance, to that contained in section 44 of the Civic Government (Scotland) Act 1982 which provides wide powers to specify new activities which may be subject to a licensing regime. In the case of the section 27A(6) power, exercise of the power would be restricted to modifying the items for which a ‘knife dealers’ licence’ is required and the Executive’s view is that this limits the coverage of the scheme to items associated with weapons such as knives and would exclude the potential to extend to the scheme to items which are in no way similar to such items (e.g. anything which is not a weapon or an item necessary for the functioning of a weapon).

Section 43 – inserts new 27K into the 1982 Act: power to prescribe manner of application for “recovery order” by Act of Adjournal

18. The Committee notes that the DPM is silent on this power. It is therefore unclear whether the Executive consulted with the Lord President on the need for such a power.

19. Rule 9.4A of the Parliament’s Standing Orders provides that for any Executive Bill “which contains any provision containing power to make subordinate legislation” a DPM should be provided which sets out information on the power and upon whom it is conferred, why it is appropriate to delegate the power, and the procedure if any to which the exercise of the power will be subject to.

20. The Executive is asked for further explanation of the need for this power, why this was not included in the DPM, and whether the Lord President was consulted on the need for such a power.

Answer: The Executive acknowledges that the Delegated Powers Memorandum does not refer to this power and apologises for this oversight. As the Delegated Powers Memorandum indicates, section 27K (and 27J) are based on the seizure provisions of the Knives Act 1997 and the Knives (Forfeited Property) Regulations 1997 (S.I. 1997/1907) which contain identical provisions in respect of the Act of Adjournal. The Executive concluded that the same power was required in this Bill for the same reasons as it was provided for in the 1997 Act. The Executive did not therefore formally consult with the Lord President on this matter but has discussed it with the Lord President’s Office, who have confirmed that they are content.

Section 43 – inserts new section 27Q into the 1982 Act: power to provide exceptions to certain offences under 1982 Act

21. The Committee notes with concern that this is another Henry VIII power. It notes that the Executive’s justification for the power is that it would be used (but not at the outset) to except test purchasing from the offences. No other exception is mentioned, although the Committee notes from the DPM that the intention is to use the power in limited circumstances. The Committee concludes that the power might possibly be drawn more widely than is necessary.

22. The Executive is asked how it intends to use this power beyond the example quoted, and why it is necessary for the power to be cast as wide as it is.
**Answer:** The Executive is of the view that this power a narrow one in that it is restricted to creating exceptions to the offences specified in primary legislation. This takes a similar approach to other weapons legislation – for example the Criminal Justice Act 1988 (Offensive Weapons) (Exemption) Order 1996 (S.I. 3064/1996) provides that section 141A(3)(c) (sale of knives or certain articles with blade or point to persons under 18) shall not apply to a folding pocket-knife (if the cutting edge of its blade does not exceed 7.62 centimetres (3 inches)) or a cartridge razor blade (as defined in regulation 2(b) of the Order).

The power is drafted in this way so as to ensure that, in light of practical operation of the scheme, any exceptions which it is desirable to introduce to the scheme will apply not only to the offences inserted by the Bill but also to those offences provided for in the Civic Government (Scotland) Act 1982. As the Delegated Powers Memorandum indicates, the Executive envisages that this power may be used to modify the provisions of the Act in order to enable a test purchase regime to be put in place. At this stage, the Executive does not anticipate other immediate use of the power.

**Section 45 – power to create exceptions in section 141 of the Criminal Justice Act 1988**

23. Again, the Committee notes with concern that this is a Henry VIII power which enables the amendment of an offence created in primary legislation. It notes that the justification given for this power is that legitimate uses of weapons may be identified in the future. The Committee considers that it might be assumed that the purpose of the power is to amend section 141 of the Criminal Justice Act 1988 to reflect the knife dealer’s licence scheme introduced by sections 43-44 of the Bill; however the power is not tailored in this way, this justification has not been offered and such consequential provision could have been made using the powers in section 47 (ancillary provision). Accordingly, no justification has been given other than stating that new matters may emerge in the future. The Executive is asked to justify its reasons for this power.

**Answer:** The Delegated Powers Memorandum notes that these provisions are intended to enable the Executive to make similar provision to that made for England and Wales in clause 40 (now clause 43) of the Violent Crime Reduction Bill. As with the Westminster provisions, it is intended that this power will be used to make exceptions to section 141 of the Criminal Justice Act 1988 for the purposes of film, theatre and television. While these exceptions are relevant to knives and swords they also have wider application to other offensive weapons currently proscribed under section 141 – hence the separate powers here as an addition to those in section 47.

In addition, the Executive considers it essential that prohibitions on the sale, manufacture etc. of weapons should be appropriate to the weapons in question. Section 141(1) of the Criminal Justice Act 1988 covers a very wide range of activities and the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 (S.S.I. 2005/483) which is made under section 141(2) of the 1988 Act provides a long list of weapon types in relation to those activities. There may be good reasons which emerge during the practical operation of these prohibitions as to why some of those activities are acceptable in relation to some of those weapons. It is the Executive’s view that Ministers should have the power to adapt the weapons regime in section 141 to accommodate justifiable activities in relation to weapons which would otherwise be caught as offences under the provisions.

**Section 47 – power to make incidental, supplementary, consequential, transitory, transitional or saving provision, including modification of primary legislation**

24. The Executive is asked why it is necessary to extend this power so as to enable amendment of the Bill itself.

**Answer:** The Committee notes that the power to make ancillary provisions includes power to amend the Bill itself. The Executive considers it important to have the ability to make ancillary provisions in this way to assist in maintaining the coherence and accessibility of the legislation. As outlined in the Delegated Powers Memorandum for the Bill, ancillary orders made be necessary to make minor supplementary provisions. In some circumstances the best way to achieve the desired result may be to insert text into the relevant Bill provision. This helps to make the law clearer for the end users of the legislation.
For example, if the power were to be used to add a minor supplementary procedure, placing the new procedure beside the substantive provision in the Bill to which it relates would save readers and users of the legislation from having to look at more than one instrument to obtain the complete picture. Allowing this power to be used to amend other enactments (including the Bill itself) does not affect the breadth of the power. It can be used only to deal with a matter which is clearly within the scope and policy intentions of the original Bill.

Schedule 1, para 17 – regulations on the tribunal, its procedure and suspension of members

25. The Committee notes that the Bill does not provide for any right of appeal against a decision of the Tribunal removing or suspending a member from office. It is not clear to the Committee whether such a right of appeal is intended and, if it is, whether the intention is that the right to appeal is to be provided for in the Regulations. If that is the intention, the provision confers a power not a duty to make such Regulations as Ministers consider necessary or expedient. Accordingly, it would not be mandatory to make regulations containing an appeal right.

26. The Executive is asked –

- to confirm what, if any, intentions it has in relation to a right of appeal; and
- for its comments on whether placing an appeal in regulations would strike the right balance between primary and secondary legislation.

27. The Committee also notes that there is no provision requiring consultation with the Scottish Committee of the Council on Tribunals. The Executive is asked to confirm whether it intends to consult with the Scottish Committee, and if so, whether it intends to do so by placing a formal duty to do so in the Bill.

Answer: A public appointment is not a contract of employment. Parole Board members receive a statement of terms and conditions under which they accept the offer of a public appointment. The terms and conditions make members aware of the removal process and under which circumstances they may be instigated. The current removal regulations (SSI 2003/184) do not contain a right of appeal, and the Executive does not consider it necessary to provide for one. There will, of course, be a right of challenge by way of judicial review if the circumstances support such an action.

The Committee also queries the inclusion of a provision requiring consultation with the Scottish Committee of the Council of Tribunals (SCCT). Bringing the Board within the auspices of the SCCT requires primary legislation (and is outwith the scope of this Bill). We await a suitable legislative opportunity. In the meantime, as a matter of best practice and ongoing policy, the SCCT would be consulted on relevant matters pertaining to the Parole Board.

Scottish Executive Justice Department
ANNEX C – EXTRACTS FROM THE MINUTES

JUSTICE 2 COMMITTEE

EXTRACT FROM MINUTES

22nd Meeting, 2006 (Session 2)

Tuesday 19 September 2006

Present:

Jackie Baillie  Bill Butler (Deputy Convener)
David Davidson (Convener)  Maureen Macmillan
Stewart Maxwell  Jeremy Purvis

Apologies were received from Colin Fox MSP.

Forthcoming Custodial Sentences and Weapons (Scotland) Bill: – appointment of adviser: The Committee agreed to appoint an adviser to assist in its scrutiny of the Bill and agreed a suggested remit and person specification for the post of adviser.
Present:

Jackie Baillie
David Davidson (Convener)
Maureen Macmillan
Jeremy Purvis

Bill Butler (Deputy Convener)
Colin Fox
Stewart Maxwell

Also present: Bill Aitken MSP and John Swinney MSP.

**Custodial Sentences and Weapons (Scotland) Bill (in private):** The Committee agreed from whom to seek written and oral evidence and to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any witness expenses in the inquiry.
Present:

Jackie Baillie          Cathy Craigie (Committee Substitute)
David Davidson (Convener)  Colin Fox
Maureen Macmillan        Stewart Maxwell
Jeremy Purvis

Also present: Bill Aitken MSP.

Apologies were received from Bill Butler MSP.

**Custodial Sentences and Weapons (Scotland) Bill:** The Committee took evidence from—

Jane Richardson, Annette Sharp, Brian Cole and Charles Garland, Justice Department, Scottish Executive, and Rachel Gwyon, Scottish Prison Service;

Gery McLaughlin, Paul Johnston and Andrea Summers, Justice Department, Scottish Executive.

**Custodial Sentences and Weapons (Scotland) Bill: – appointment of an adviser (in private):** The Committee agreed its preferred candidate for appointment as adviser.
JUSTICE 2 COMMITTEE

EXTRACT FROM MINUTES

29th Meeting, 2006 (Session 2)

Tuesday 7 November 2006

Present:

Jackie Baillie
David Davidson (Convener)
Kenny MacAskill (Committee Substitute)
Jeremy Purvis
Cathy Craigie (Committee Substitute)
Colin Fox
Maureen Macmillan

Apologies were received from Bill Butler MSP and Michael Matheson MSP.

Custodial Sentences and Weapons (Scotland) Bill: The Committee took evidence from—

Alan Baird, Convener, Criminal Justice Standing Committee, Association of Directors of Social Work; and Lindsay MacGregor, Policy Manager, Councillor Eric Jackson and Councillor Alison Hay, COSLA;

Superintendent William Manson and Detective Superintendent James Cameron, ACPOS; Clive Murray, National President, Association of Scottish Police Superintendents; and Detective Chief Superintendent John Carnochan and Will Linden, Senior Intelligence Analyst, Violence Reduction Unit, Strathclyde Police;

Derek Turner, Assistant Secretary for Scotland, and Kenny Cassels, Vice Chair, Prison Officers Association.
Justice 2 Committee 16th Report, 2006 (Session 2) – ANNEX C

JUSTICE 2 COMMITTEE

EXTRACT FROM MINUTES

30th Meeting, 2006 (Session 2)

Tuesday 14 November 2006

Present:

Jackie Baillie
David Davidson (Convener)
Jeremy Purvis

Colin Fox
Maureen Macmillan

Apologies were received from Bill Butler MSP and Michael Matheson MSP.

Also present: Fergus McNeill and Susan Wiltshire (Committee advisers)

Decisions to take business in private: The Committee agreed to take items 3 and 4 in private. The Committee also agreed to reflect on the main themes arising from evidence received in relation to the Custodial Sentences and Weapons (Scotland) Bill in private at subsequent meetings.

Custodial Sentences and Weapons (Scotland) Bill: The Committee took evidence from—

Neil Paterson, Director of Operations, Victim Support Scotland; and Susan Matheson and Donald Dickie, Scottish Consortium on Crime and Criminal Justice;

Cyrus Tata, Co-Director, Centre for Sentencing Research, The Law School, University of Strathclyde; Richard Sparks, Professor of Criminology, Law School, University of Edinburgh; and Bill Whyte, Director, Criminal Justice Social Work Development Centre.

Custodial Sentences and Weapons (Scotland) Bill – consideration of written evidence (in private): The Committee considered the written evidence received and agreed to seek further written and oral evidence.

Custodial Sentences and Weapons (Scotland) Bill (in private): The Committee considered the main themes arising from the evidence session, to inform the drafting of its Stage 1 report.
Present:

Bill Butler  Colin Fox
David Davidson (Convener)  Maureen Macmillan
Michael Matheson  Jeremy Purvis

Apologies were received from Jackie Baillie MSP.

Also present: Fergus McNeill and Susan Wiltshire (Committee advisers)

**Custodial Sentences and Weapons (Scotland) Bill:** The Committee took evidence from—

Fiona Moriarty, Director, Scottish Retail Consortium;

Professor Alexander Cameron, Chairman, and Niall Campbell, Member, Parole Board for Scotland; Professor Roisin Hall, Chief Executive, and Robert Winter, Convener, Risk Management Authority; and

Dr Andrew McLellan, HM Chief Inspector of Prisons, and John McCaig, HM Deputy Chief Inspector of Prisons.

**Custodial Sentences and Weapons (Scotland) Bill (in private):** The Committee considered the main themes arising from the evidence session. The Committee agreed to invite the governors of HMP Barlinnie and HMP Cornton Vale to give oral evidence on the Bill at the next meeting of the Committee.
Justice 2 Committee 16th Report, 2006 (Session 2) – ANNEX C

JUSTICE 2 COMMITTEE

EXTRACT FROM MINUTES

33rd Meeting, 2006 (Session 2)

Tuesday 28 November 2006

Present:

Jackie Baillie  Bill Butler
David Davidson (Convener)  Colin Fox
Maureen Macmillan  Michael Matheson
Jeremy Purvis

Custodial Sentences and Weapons (Scotland) Bill: The Committee took evidence from—

Ian Gunn, Governor, HMP and YOI Cornton Vale and Bill McKinlay, Governor, HMP Barlinnie;

Johann Lamont MSP, Deputy Minister for Justice, Tony Cameron, Chief Executive, Scottish Prison Service, Valerie MacNiven, Head, Criminal Justice Group, and Charles Garland, Legal and Parliamentary Services, Scottish Executive; and

Mark Hodgkinson, Chief Officer, Northern Community Justice Authority, and Chris Hawkes, Chief Officer, Lothian and Borders Community Justice Authority.

The Committee also agreed to consider an approach paper and draft report on the Bill in private at future meetings.

Custodial Sentences and Weapons (Scotland) Bill (in private): The Committee considered the main themes arising from the evidence session.
JUSTICE 2 COMMITTEE

EXTRACT FROM MINUTES

34th Meeting, 2006 (Session 2)

Tuesday 5 December 2006

Present:

Jackie Baillie
David Davidson (Convener)
Maureen Macmillan
Jeremy Purvis

Bill Butler
Colin Fox
Michael Matheson

Also present: Fergus McNeill and Susan Wiltshire (Committee advisers)

**Custodial Sentences and Weapons (Scotland) Bill (in private):** The Committee considered an issues paper and agreed to consider a draft report, in private, at its next meeting.
Present:

Jackie Baillie
David Davidson (Convener)
Maureen Macmillan
Jeremy Purvis

Bill Butler
Colin Fox
Michael Matheson

Also present: Fergus McNeill and Susan Wiltshire (Committee advisers)

**Custodial Sentences and Weapons (Scotland) Bill (in private):** The Committee considered a draft Stage 1 report and agreed various changes. The Committee agreed to consider a revised draft report in private at its next meeting.
JUSTICE 2 COMMITTEE

EXTRACT FROM MINUTES

36th Meeting, 2006 (Session 2)

Tuesday 19 December 2006

Present:

Jackie Baillie  Bill Butler
Mr David Davidson (Convener)  Colin Fox
Maureen Macmillan  Mr Michael Matheson
Jeremy Purvis

Also present: Fergus McNeill (Committee adviser) and Susan Wiltshire (Committee adviser)

Custodial Sentences and Weapons (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. A number of changes were agreed, one by division. The report was agreed, subject to certain specified changes being made.
Justice 2 Committee

16th Report, 2006 (Session 2)

Stage 1 Report on the Custodial Sentences and Weapons (Scotland) Bill

Volume 2: Evidence

Published by the Scottish Parliament on 22 December 2006
ANNEX D – ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

26th Meeting, 2006 (Session 2) 24 October 2006

Justice 2 Committee Official Report 24 October 2006

Supplementary written evidence
   Letter from Scottish Executive Justice Department, 30 November 2006

29th Meeting, 2006 (Session 2) 7 November 2006

Written evidence
   Convention of Scottish Local Authorities and Association of Directors of Social Work
   Association of Chief Police Officers in Scotland
   Association of Scottish Police Superintendents
   Violence Reduction Unit, Strathclyde Police
   Prison Officers Association

Justice 2 Committee Official Report 7 November 2006

Supplementary written evidence
   Convention of Scottish Local Authorities and Association of Directors of Social Work
30th Meeting, 2006 (Session 2) 14 November 2006

Written evidence
- Victim Support Scotland
- Scottish Consortium on Crime and Criminal Justice
- Cyrus Tata, Co-Director, Centre for Sentencing Research, Law Department, Strathclyde University

Justice 2 Committee Official Report 14 November 2006

Supplementary written evidence
- Safeguarding Communities-Reducing Offending (SACRO)
- Cyrus Tata, Co-Director, Centre for Sentencing Research, Law Department, Strathclyde University

32nd Meeting, 2006 (Session 2) 21 November 2006

Written evidence
- Scottish Retail Consortium
- Parole Board for Scotland
- Risk Management Authority

Justice 2 Committee Official Report 21 November 2006

Supplementary written evidence
- Parole Board for Scotland

33rd Meeting, 2006 (Session 2) 28 November 2006

Written evidence
- Lothian and Borders Community Justice Authority
- Letter from Scottish Executive on part 3 of the Bill, 27 November 2006

Justice 2 Committee Official Report 28 November 2006

Supplementary written evidence
- HMP Cornton Vale
- HMP Barlinnie
- Letter from Deputy Minister for Justice, 6 December 2006
- Letter from Scottish Executive Justice Department, 15 December 2006

ANNEX E – OTHER WRITTEN EVIDENCE

Aberdeen Swordsmanship Group

AllstarUhlmann UK

Professor Sheila Bird

British Association for Shooting and Fishing
British Kendo Association

Bujinkan Brian Dojo (Scotland)

Mr Rennie Cameron

Mr John Campbell

Andrew Coyle, Professor of Prison Studies, King’s College London

Crown Office and Procurator Fiscal Service

Mr Robert Edminson

Faculty of Advocates Criminal Bar Association

Mr Charlie Gordon MSP

Gun Trade Association

Roger Houchin, Centre for the Study of Violence, Glasgow Caledonian University, 13 December 2006

Law Society of Scotland

Mr Paul Macdonald (Petition)

Muzzle Loaders’ Association of Great Britain

National Association of Re-enactment Societies

Mr David Neilson

Northern To-Ken Society

Mr James Reilly

Sheriff Fiona Reith QC

Scottish Fencing Limited

Scottish Police Authorities Conveners Forum

Sheriffs’ Association

Sportscotland

Traditional Martial Arts and Budo Kai Institute

Whitby & Co
On resuming—

Custodial Sentences and Weapons (Scotland) Bill: Stage 1

The Convener: Item 3 is the Custodial Sentences and Weapons (Scotland) Bill. Members should have the bill and accompanying documents together with the two Scottish Parliament information centre briefings on the bill.

I welcome the Scottish Executive officials who have joined us. We allocated an hour for this agenda item—we will still have an hour, despite the fire alarm. Different officials are working on different elements of the bill. First, there will be a short presentation on the custodial sentences element, followed by questions. After that, the officials will swap over and we will follow the same format for the weapons element of the bill.

I welcome Jane Richardson, Rachel Gwyon, Annette Sharp, Brian Cole and Charles Garland, who I think are all from the Scottish Executive Justice Department. I invite Jane Richardson to give her presentation.

Jane Richardson (Scottish Executive Justice Department): As you can see, there are quite a few of us here. Given that the custodial sentences element of the bill is about the management of sentences from beginning to end, we thought that it would be helpful to the committee if we were all represented. Rachel Gwyon is from the Scottish Prison Service; Brian Cole is from the Justice Department’s community justice services division; Annette Sharp and I deal with the parole aspects and general planning of the custodial sentences element of the bill; and Charles Garland is our legal adviser.

I will give a brief presentation to set the context, touching briefly on the background to where we are and giving an overview of the main measures in the bill. I will try to explain and put in context how the plans are intended to fit with the measures that are already in operation and working.

In early 2005, Scottish ministers gave a commitment to end the arrangements for the early release of offenders, which are set out in the Prisoners and Criminal Proceedings (Scotland) Act 1993. Ministers stated clearly that they wanted arrangements that allowed a structured management approach to sentences so that the risks presented by offenders, and offenders’ needs, could be catered for more appropriately and more proportionately. Ministers also wanted the effects of sentences to be clearer so that the public, victims and offenders could understand them from when they were imposed.

Scottish ministers asked the Sentencing Commission for Scotland to examine early release and supervision of offenders as one of its early tasks, and it proceeded to do that. It consulted in June 2005 and produced its report in January 2006. The report set out a series of recommendations, but the underlying findings were that any new measures should contribute to promoting public confidence in the criminal justice system and provide clear statutory provisions that are easily understood by all. They should enable offenders to be punished proportionately, but they should also promote, as far as possible, the rehabilitation and resettlement of offenders. The commission also recommended that any new measures should improve public protection and, perhaps aspirationally, that they should deter would-be offenders.

Scottish ministers welcomed the report and said that they would consider those important core objectives when they planned the new measures. The plans were published on 20 June in the publication “Release and Post Custody Management of Offenders”.

I will outline the key measures in the bill that are designed to manage the sentences of all offenders. It is important to stress that the measures are about sentence management. They will come into play when the judge has decided on the appropriate disposal—custody—and the length of the sentence. In other words, the measures will not change the courts’ sentencing powers. The measures deal with life-sentence prisoners and those who are given a determinate custody sentence by the courts. The life-sentence measures in the 1993 act will not change, but for ease we are re-enacting all the measures in one bill.

The key feature of the provisions is that all offenders will be under some form of restriction for the entire period of the sentence. Sentences of 15 days or more will be subject to a combination of custody and community parts. The community part will be on licence and will often include supervision. One objective is to make sure that there is a clearer split between punishment and risk. The provisions allow the court to set what might be described as a punishment part, which is called a “custody part” in the bill. That will be a minimum of half the sentence but it can increase to three quarters. The bill explains the circumstances in which the court might find it appropriate to increase the custody part to three quarters of the sentence.

The effect of the sentence will be explained in court when the sentence is imposed. When the custody part is set, a risk test will be applied throughout the stages of the sentencing process. The risk test is explained in the bill as being concerned with the...
During the custody part, the risk presented by the offender will be assessed using up-to-date sentence management information. There will be input from the relevant bodies that are responsible for managing the offender both while the offender is in custody and when they proceed to the community part of the sentence. Joint working is therefore a key feature of the proposals and there is explicit provision in the bill for joint working arrangements between Scottish ministers—in practice, the Scottish Prison Service—and local authorities. The idea is to enable risk assessment and risk management processes to be set up and to continue throughout the sentence.

15:00

The outcomes of the risk assessment while the offender is in custody will determine whether consideration should be given to keeping them in custody beyond the period imposed by the court on the ground of risk. The Parole Board for Scotland will still be the body responsible for finally deciding whether the individual poses an unacceptable risk. Offenders so assessed will be referred to the Parole Board so that it can take that decision. If the Parole Board concludes that the risk test has been met, it will direct Scottish ministers to keep the offender in custody for up to a maximum of three quarters of the total sentence. Depending on the length of the sentence, the bill allows for a continuous review process by the Parole Board in the event that the risk posed by the offender reduces during the work done with them while they are in custody. That will be considered by the board with a view to moving the individual to the community part of the sentence.

Once the offender has completed the custody part of the sentence, they will move to the community part and spend the rest of the sentence on licence in the community. Conditions will be attached to the licence that will be proportionate to the risk presented by the offender and the offender's needs. Again, the aim is to try to ensure better reintegration into the community, enhance public protection and reduce reoffending. The conditions will include mandatory supervision for a number of offenders, but that does not prevent supervision from being made available to any offender in appropriate circumstances. The offender will remain on licence for the duration of the sentence, but, with public protection in mind, will be subject to recall to custody for a serious breach of any of the licence conditions.

To help the committee to put the new provisions in context, Scottish ministers have said that they should not be viewed as standalone provisions; they will build on provisions already in place and structures that have already been set up, primarily under the Management of Offenders etc (Scotland) Act 2005. The community justice authorities established under the 2005 act will play a significant role at the local level.

An important aspect of the planning for the new arrangements will be the Prison Service's integrated case management system, which will be an essential part of the new support framework that will allow appropriate work to be done with the offender in custody with a view to their benefiting from that work and to moving it into the community.

Work is in hand to construct an appropriate operational framework for the new measures to build on the integration work started under the 2005 act. We have set up a planning group made up of all the various interests—the key organisations—involving in delivering that part of the criminal justice system. We hope that, by doing that, we will be able better to target available resources and to channel them in a way that enhances public protection, benefits the offender and assists in reducing reoffending.

The Convener: Thank you. That was very helpful, particularly your clarity about the process of handling the chain of measures, if I may put it that way.

To help with the management of the meeting, I suggest that the committee divide its questions into two sections. We will ask questions that are relevant to the officials who are before us; we will then invite the other panel of officials to give a presentation and answer questions.

What are the resource implications of the demands that the bill will place on the Parole Board? What preparatory work is being done to ensure that the Parole Board can meet those demands?

Jane Richardson: We acknowledge that a significant burden will be placed on the Parole Board, which, along with the whole system, will have a period of dual running while the current arrangements are phased out and the new arrangements are phased in. We have already started planning for that. The Parole Board participates fully in the planning group that I mentioned. The appropriate resources and structure will have to be in place before the Parole Board takes on the new functions.

The Convener: Several other issues arise. It would be helpful for the committee to have details about the changing rules of engagement for the Parole Board. We note the move from three-member tribunals to two-member tribunals. If the two members fail to come to an agreement, another loop will obviously have to be brought into play. Will you give a little more detail on the
reasons behind that change and how effective you think that it will be? What will happen if the two members of a tribunal cannot reach a unanimous decision?

Jane Richardson: I will answer the practical part of the question and my colleague Charles Garland may want to confirm the thinking on the legal aspects. We have had discussions with the Parole Board on that. The Scottish ministers obviously want to ensure that the board is fit for purpose, which means ensuring that sufficient resources and the appropriate operational framework are in place before the new arrangements are introduced. We want to ensure that the board is as efficient and effective as possible. In coming to the conclusion that a two-member panel—always with one legally qualified member—is appropriate, our view was that such a practice is operational in England and Wales and seems to work effectively. In consultation with the Parole Board, we decided that the practice may be appropriate for Scotland.

To summarise the decision about what will happen if the two members cannot agree and there is no unanimous decision, the view is that the individual will not be released.

Charles Garland (Scottish Executive Legal and Parliamentary Services): That is my understanding, too. As Jane Richardson explained, the intention is to create under section 2 new Parole Board rules that will set out the ways in which the board will consider cases for release. The intention is to draft those rules as the bill is in progress, as they are an important aspect of the measures and will need to be in place when the legislation is commenced. With existing cases, the intention is that, broadly, those will continue to be dealt with under the Parole Board rules as they stand now.

The Convener: Forgive me for being simplistic, but I am not a lawyer and I have not been involved in the Parole Board system. You seem to be saying that, if the tribunal is not satisfied that there are grounds for release—which includes cases in which one member is satisfied but the other is not, so there is no unanimous decision—release will not be granted. The fixed situation is that nobody will be released until a tribunal agrees unanimously that release is suitable for the individual.

Jane Richardson: Under the framework for release, individuals will always be released on licence at the 75 per cent point of the sentence. The Parole Board will have the power to direct the Scottish ministers to keep an individual in prison until that point of the sentence, after which they will be released on licence. If an individual is detained until the 75 per cent point, a fairly robust framework of licence conditions will be put in place to support the individual during the period of the sentence that they spend in the community, which will include appropriate measures for public protection.

The Convener: Thank you for that clarity.

Did anything go wrong with the three-member tribunal? Was there a particular reason for the change, or was it simply a question of efficiency and the fact that the new system has worked elsewhere?

Jane Richardson: It was a question of efficiency and effectiveness elsewhere. We looked to other models for some assistance.

Mr Stewart Maxwell (West of Scotland) (SNP): I want briefly to follow your questions, convener.

Having read the bill, I came to the conclusion, which has just been confirmed, that somebody would be released after 75 per cent of the sentence. A Scottish Parliament information centre briefing on the custodial sentences part of the bill says on page 18:

“Offenders who present as a high risk of re-offending and/or who pose an unacceptable threat to public safety will be referred to the Parole Board by the Scottish Ministers with a recommendation that the custody part of the offender’s sentence should be extended beyond the minimum term set down by the court at time of sentence”—in other words, towards 75 per cent of the sentence.

Jane Richardson: The minimum referred to in that briefing is the 50 per cent minimum, which—I say this without pre-empting any sentencing decisions by courts—may be seen as the norm for the punishment part.

Mr Maxwell: I accept that, but the question is whether offenders who present as a high risk of reoffending and/or who pose an unacceptable threat to public safety will be released after 75 per cent of their sentence.

Jane Richardson: Yes.

Mr Maxwell: Why?

Jane Richardson: Good question. Ministers have considered the point, and the debate has run for a considerable time. As the committee may have noticed, there is a slight departure from the Sentencing Commission’s recommendations. The issue is whether an individual is either kept in custody for the full period of the sentence—obviously, that is the ultimate way of protecting the public—or kept under supervision in the community for a period of the sentence. In other words, the question is whether the sentence ends, the prison doors open and the individual walks away, or the work done in the prison setting is taken forward to the community part of the sentence.
There is also an issue of incentive for the offender to work with the authorities to address their risks and needs. If the individual knows that the sentence will be whatever the court imposes, with no incentive to get conditional liberty in the community, it is difficult to motivate them. My colleague from the Scottish Prison Service might want to say more about that.

Mr Maxwell: I accept everything that you say. I support alternatives to custody and I think that the idea of an incentive is great. However, do you think that it is reasonable to release an individual who completes 75 per cent of the sentence but has been assessed and identified all the way through as presenting a high risk of reoffending and/or posing an unacceptable risk to public safety? Twenty-five per cent of their sentence, which could be in custody, still remains. I accept the other points, but I am curious why a line in the sand has been drawn at 75 per cent, with no flexibility to keep someone in custody for 100 per cent of the sentence.

Jane Richardson: As I said, after thinking through the options, the Scottish ministers have decided that it would be appropriate to deal with offenders by managing them both in custody and in community settings in all circumstances.

Mr Maxwell: I still do not understand why. You say that the Scottish ministers have decided that, but why?

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): You need to ask the ministers.

Mr Maxwell: This is the bill team. I am sure that they have some knowledge of what has been going on in the Executive.

Jane Richardson: I am sorry—I might not be making myself very clear. The policy is that the individual, even when they are high risk, should be managed in the community rather than disappearing at the end of the sentence. As I mentioned, they would be subject to a full package of measures, including restrictive conditions if necessary. The licence conditions would be made clear to the individual, and if they breached the conditions—or any one of them—seriously, the Scottish ministers could recall the individual to custody for the full period of the sentence.

It is a balancing act between providing an incentive for people to do something while they are in custody to address their offending behaviour and not reoffend when they are in the community, and just locking up an individual for the full period with no prospect of release. It would prove quite difficult for the prison service and the local authorities to work with such an individual and better manage their risk.

The Convener: In fairness to the officials who are here today, the committee is taking evidence from several agencies and the minister, and I am sure that we will take that issue further.

Cathie Craigie: It seems to me that if someone comes before the board after 50 per cent of their sentence is served, there is not really much incentive to change their behaviour and come back when 75 per cent of their sentence is served. There is not much of an incentive to redress the imbalance. What consultation responses did you get to that particular part of the bill? What did members of the Parole Board, the public and other interested parties say?

Jane Richardson: First, the bill sets out provisions for a continuous review of the individual’s detention and custody beyond the minimum period imposed by the court. Of course, that would depend on the length of the sentence. However, the broad rule of thumb is that individuals who are given a fairly lengthy sentence could be seen as more risky, if I can describe it like that. Individual offenders will be assessed throughout the period of their custody. If the risk assessment test shows them to be high risk, they will be referred to the board, but that referral will not be automatic; it will be only for those who are assessed as high risk. If the board agrees with the Scottish ministers’ recommendation and directs that the individual is not released at that point, then depending on the time they have left to serve—and if it is a long sentence, 50 per cent or 75 per cent of it could be a quite considerable time—the offender will be referred back to the board. The board might therefore direct the individual’s release before the 75 per cent point in the sentence if the individual has been working to address their offending behaviour or particular needs. I think that that answers your question about how an incentive is provided.

Cathie Craigie: Okay. So what were the responses to the consultation?

Jane Richardson: The consultation on the measures was done through the Sentencing Commission for Scotland’s work. The Scottish ministers then took the recommendations of the Sentencing Commission and published the white paper containing the plans in June. That was the publication of the plans; it was not the consultation. Although it would have been welcome, we did not receive much in the way of comment on the plans. What we did receive was broadly favourable, but more general than the specific issues about which you have asked.

Colin Fox: A very general question leaps out at me when I read the bill and explanatory notes. Will the commitment of the Scottish Executive Justice
Department and this Parliament to reducing the overall numbers of people in prison be compromised by the measures in the bill that seek to put people in jail and make them stay there, so that more people will be in jail for longer? What consideration have you given to the impact that this bill might have on that commitment?

**Rachel Gwyon (Scottish Prison Service):** The Scottish Prison Service has considered the proposals and the objectives to improve clarity of sentencing and integrated management. We have also had to model the impact of the proposals. In the financial memorandum is a collection of numbers where we have tried to set out assumptions of the percentage of people who might trigger assessment beyond the 50 per cent point in their sentence, and the assumptions that we have had to make in estimating how many people might breach their conditions of release and be recalled. I am happy to talk members through those figures subsequently, if they would like. The measures in the bill will have quite a sizeable impact on the daily prison population, because a proportion of the people who have been given sentences will stay with us longer. The financial memorandum looks complicated because different paragraphs refer to different numbers. I have a chart that may help.

**The Convener:** We would be grateful if after the meeting all of you, including your colleagues on the other panel, would review the questions that have been asked. If you believe that it is appropriate for you to send short notes to the committee to clarify some points, that will be helpful. You may take our queries away with you and send something back in. I am conscious of the time and members would like to raise a number of issues.

**Colin Fox:** I am grateful for your clarification and for the figures that you are able to send us. I do not have the financial memorandum to hand, but can you give us an estimate here and now?

**Rachel Gwyon:** In short, the proposals will add between 700 and 1,100 prisoners every day to the prison population.

**Colin Fox:** I look forward to seeing the chart later.

**Maureen Macmillan (Highlands and Islands) (Lab):** I want to follow up on the previous questions about release after 75 per cent of a sentence has been served. I understand the reason for that provision—you want offenders to be integrated into the community by the time that their sentences come to an end. However, I note that if the approach is not successful an offender can be recalled into custody, presumably for the rest of his or her sentence, so it is possible for an offender to be in custody for more or less 100 per cent of his or her sentence. In that situation, how will the offender be integrated into the community? Is it proposed that there should be some kind of integration after 100 per cent of the sentence has been served?

**Brian Cole (Scottish Executive Justice Department):** Because it is essentially a determinate sentence, there will be no statutory requirements after 100 per cent of the sentence has been served. We anticipate that local authorities will offer voluntary assistance to offenders in that situation, but there will be no statutory hold over such offenders. Anyone who is currently released from a determinate sentence is eligible for voluntary assistance from local authority criminal justice social work. Individuals in the situation that we are discussing would qualify for such assistance.

**Maureen Macmillan:** Do you think that a voluntary arrangement with criminal justice social work is sufficient?

**Brian Cole:** Because it is a determinate sentence, there is no statutory requirement on the various agencies concerned after the sentence has been served. That is why we are requiring people to be released after they have served 75 per cent of their sentence, if they have not been released at an earlier stage.

**Maureen Macmillan:** However, it is possible for an offender to spend more or less 100 per cent of their sentence in prison, if they are recalled from the community because of their bad behaviour.

**Brian Cole:** Yes.

**Jane Richardson:** It is worth bearing it in mind that the court has the power to impose an extended sentence—in other words, an extended period of supervision can be retained. That only half-answers your question, because a determinate sentence will end at some stage. However, the judiciary has welcomed the fact that we have retained the power for the court to extend sentences for particularly risky offenders.

**Maureen Macmillan:** Will it be able to do that while the sentence is being served?

**Jane Richardson:** There will be a custodial period and then extended extension, if that makes sense, of sentences for up to 10 years for sexual and violent offences.

**Brian Cole:** That extension is imposed at the point of sentence.

**Maureen Macmillan:** How does the court get involved?

**Jane Richardson:** It is a sentence, so the court would—
Maureen Macmillan: I am trying to work out what will happen at the end of the sentence if almost 100 per cent of it has been served. How will we put in place an arrangement that provides for extended supervision of an offender after release? When an offender has used up their sentence, is there any way for the case to be referred back to the court?

Jane Richardson: No, as Brian Cole explained.

Maureen Macmillan: So it would fall to criminal justice social work, using whatever resources it had.

Jackie Baillie: Am I right in saying that ministers would not be able to set any licence conditions, because 100 per cent of the sentence had been served?

Jane Richardson: Yes.

Jackie Baillie: The exception being sex offenders, for whom ministers retain that right.

Jane Richardson: Sex offenders would be subject to registration, which is a slightly different arrangement. When a sentence of whatever length comes to an end, any conditions imposed during the period in the community on licence will also come to an end.

Maureen Macmillan: I want to explore a little further the workings of the Parole Board. Who will give evidence to the Parole Board when somebody comes up for parole? Where is the evidence gathered from?

Jane Richardson: I will explain the present arrangements and then explain how we think the new provisions will work. As my colleague said, we are presently drafting the rules.

At the moment, the law says that anyone who receives a determinate sentence of four years or more will have their case reviewed at the halfway point, to see whether they will be considered for parole. The case is referred to the Parole Board, which will consider it at a meeting and determine whether the individual will be released on licence.

If the individual received a life sentence, the review is carried out by a tribunal—a court-like body that will consider the risk posed by the individual and consider whether it would be appropriate to release them on life licence. Under the new arrangements, that is the system that we want to apply to all cases that are referred to the Parole Board.

Maureen Macmillan: Will having only two members on the Parole Board offer a wide enough range of experience?

Jane Richardson: Yes. We want the board to be fit for purpose, but we have to be aware of the legal and human rights requirements. We have therefore considered how things work elsewhere. There will always be a legal member.

Maureen Macmillan: Once the tribunal has made its decision, how will information be disseminated to victims? Will victims be able to give a statement to the tribunal?

Jane Richardson: The arrangements for victim representation will obviously continue, but they will be adapted to take account of the new circumstances. Any member of the public can make representations, and the victim notification scheme will continue.

Maureen Macmillan: And people with a need to know will be informed of the outcome.

Jane Richardson: Yes. Indeed, we are taking steps in the legislation to ensure that the Parole Board includes someone with experience of working with victims, or with experience of actually being a victim. We will enshrine that requirement in the legislation.

Maureen Macmillan: Such a person would be able to inform their colleagues, even if they did not sit on every tribunal.

Jane Richardson: Yes.

Cathie Craigie: There will be a significant increase in the number of cases going before the tribunal of the Parole Board. How will risks be assessed? What role will the new proposals give to the Risk Management Authority?

Jane Richardson: The bill contains the risk test, as it were, but obviously we have to build a structure below the risk test, to give a framework for assessing risk and for referring cases to the Parole Board. Earlier, I mentioned the planning group that has been set up to consider the diverse work streams that will have to be set in place before we can implement the new arrangements. The Risk Management Authority is involved in that work and will advise on the tools and the structure that will enable proper risk assessments.

My colleagues might want to say something about the work that local authorities and the prison service are doing on assessing risk.

Brian Cole: The risk assessment process will involve a joint approach by the SPS and local authorities. However, the SPS, acting on the Scottish ministers' behalf, will make the final decision on whether to refer a case to the Parole Board. The joint approach will use the tools that the RMA recommends.

Cathie Craigie: Who will make up the Risk Management Authority?

Jane Richardson: It already exists.
Cathie Craigie: Yes, but who makes up the RMA?

Jane Richardson: It is a non-departmental public body that has a board that comprises a number of public appointments from various disciplines. It is supported by a management structure and operates under a clear, three-pronged remit that was set out in the Criminal Justice (Scotland) Act 2003 to provide, broadly speaking, a centre of excellence for risk assessment and risk management.

Cathie Craigie: The offender’s response in custody will be an important part of the risk assessment process. Are you confident that offenders will have access to appropriate rehabilitation opportunities?

Rachel Gwyn: A lot will depend on the length of the sentence. Somebody who qualifies for the combined sentence with a 16-day sentence will need to be inducted into prison, be risk assessed and go to a tribunal by day 8. It is not as feasible to do as much programme work with somebody in that period of time as it is if their sentence is four years. On a four-year sentence, the assessment of whether the offender represented a risk of harm would be made at the two-year point.

We will develop our integrated case management system, which started earlier this year and aims to get much better information from a range of sources, including risk assessment, psychological assessment, social work input, drug and rehabilitation input and all the work that we already do on offender outcomes, such as housing, employment, family relationships, health and drug work. In preparation for the bill’s implementation, we have started to work with other agencies, such as the Parole Board and the Risk Management Authority, on an appropriate risk management tool for risk of harm. We had to use a proxy measure for our estimates for the bill and we are working with those agencies on what the actual risk assessment tool will look like.

Cathie Craigie: Have the resource implications for the organisations that are responsible for rehabilitation and throughcare been considered? Can you cope?

Rachel Gwyn: Yes. We have included in the financial memorandum the costs for the extension of the integrated case management system, which will need to go from applying to about 3,000 prisoners to applying to between 9,000 and 12,000 every year. It will cost us between £5 million and £6 million per annum for the extra staffing to roll out that increased service. I ask Brian Cole to respond on throughcare.

Brian Cole: We have done similar calculations for the bill’s impact on criminal justice social work services and related agencies for offenders who are released on licence. Our current estimate for the cost of supervision in the community plus the contribution to the risk assessment process, which is in the financial memorandum, is somewhere in the region of £7.95 million.

Colin Fox: I will focus on the community part of sentences. The explanatory notes to the bill talk about the different levels of supervision that an offender may expect when serving their sentence in the community, such as the licence restrictions and the intervention that they could anticipate. Will you elaborate on what that intervention will mean in practice and who will carry out the supervision?

Brian Cole: In the bill, we propose a cut-off point of six months for supervision intervention to kick in. It is recognised that those who are serving sentences of six months or less—and of course 15 days and more—will be subject to licence, but given the short duration of the sentence, the maximum period will be no more than three months. Professional opinion suggests that not a great deal can be done in terms of supervision for a period as short as three months or less. For those serving more than six months, we anticipate that supervision will be undertaken by local authority criminal justice social workers. The intensity of the supervision will be informed by the risk assessment undertaken during the course of the sentence. For those who present a higher risk, the level of supervision will be more intensive. That supervision will not just involve the work done by local authority social workers; it is the extent to which people can be plugged into services, for example treatment services for those with a drug problem.

Colin Fox: What does that supervision entail, for example for somebody who has been sentenced to a year, who has done half in custody and who has another six months under licence or restriction? What is the nature of the programmes in which they would be involved with criminal justice social workers?

Brian Cole: Again, it depends on the nature of the offence for which they were convicted. It will be a combination of reporting requirements to the supervising officer—in certain instances, the supervising officer will be undertaking home visits to the offender—and consideration of the circumstances of the offender, for example the extent to which they may need to undertake other work. It could be work in relation to their offending behaviour; for example, we are at the early stages of rolling out an accredited general offending programme. It would be a 26-week programme, in which various aspects of the offending behaviour would be considered with the offender. It could be plugging into Alcoholics Anonymous groups or it could be treatment services and so on. Basically, it will be informed by the risk assessment.
Colin Fox: At the other end of the scale, so to speak, the bill proposes that those offenders who are sentenced to fewer than 15 days will spend their entire sentence in custody. What consideration has been given to the impact on those offenders, considering that early release is to do with managing them in prison and encouraging them not to reoffend? Has there been any examination of the impact of the fact that there has been taken away and that those offenders will face the whole 15 days in custody?

Jane Richardson: It is fair to say that the number of individuals who get a sentence of fewer than 15 days is small. They tend to be fine defaulters, who have gone through all the alternatives available to the court, such as helping the individual to pay the fine or giving them a supervised attendance order. My colleague will correct me if I have gone off script here—

Colin Fox: We like it when you go off script.

Brian Cole: Supervised attendance orders in respect of fine defaulters have been available nationally since 1998. They offer an alternative to courts to the custody approach. We are piloting provisions in Glasgow district court and Ayr sheriff court whereby those prescribed courts which would otherwise have the option of custody for those who are fine defaulting on less than £500, do not have the ability to sentence such fine defaulters to custody and have a mandatory requirement to make use of SAOs. That does not mean to say that those fine defaulters may not ultimately end up in custody; for example, if they have breached the SAO, the court, in dealing with that breach, may decide on custody. However, certainly at the first cut, it avoids custody for those fine defaulters.

Colin Fox: It is curious that someone who has been sentenced to 14 days will serve 14 days but that someone who has been sentenced to 21 days will serve 10 or 11 days. If a judge ever sentences me to 14 days, I must remember to ask him for an extra week.

The Convener: I do not think that Mr Fox is seeking legal representation at this stage.

Jackie Baillie: I want to ask specifically whether you have carried out any gender analysis of the proposal, as I am genuinely worried about the disproportionate impact that we know there is on women and their families when women default on fines. Have you considered that? Have you done any research into how often supervised attendance orders are used and in what context? I think that the proposal will have unintended consequences.

Brian Cole: We have not conducted research in the context of the bill, but we have examined carefully the role and position of supervised attendance orders. In addition to the pilot schemes in Glasgow district court and in Ayr sheriff court, we are running separate pilot schemes in Dumbarton and Paisley, which provide the courts with the option of using supervised attendance orders as a disposal of first instance. That is to say, when one of those courts is disposed to impose a fine but believes that the offender does not have the means to pay, the court has the option of imposing a supervised attendance order in the first instance instead of imposing a fine and going through the business of the person defaulting.

Both sets of pilot schemes are well under way, and ministers will want to think carefully about the impact of those schemes in addressing the issues in relation to women offenders who find themselves defaulting on fines. One of the considerations in selecting Glasgow district court for the pilot scheme was the large number of women fine defaulters who were appearing before that court and then finding themselves in Cornton Vale.

Jackie Baillie: I take it that, although there is work in progress, no specific gender analysis of the proposal has been carried out.

Brian Cole: That is correct.

Rachel Gwynon: When we gave evidence on the Criminal Proceedings etc (Reform) (Scotland) Bill about the fine enforcement officers that are being introduced, the Justice 1 Committee asked us the same question. I sent a written response a few months ago, which we can dig out. We found that having fine enforcement officers was likely to have a beneficial impact on the number of women who are with us each day, but that at a couple per year the figure was not large enough to be statistically significant. I do not know whether that helps. We would be happy to make that answer available in writing as well.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I have two brief questions. The first is of a more general nature. Paragraph 163 of the explanatory notes to the bill states:

“For supervision to have any meaningful impact existing social work practice experience suggests that a minimum supervision period of 3 months in the community is essential.”

However, the preceding paragraph states clearly that more than 50 per cent of those who serve sentences are sentenced to less than six months; therefore, the licence period is between eight days and three months. The bill will place Scotland third behind Russia and America in respect of the proportion of the country’s population that is in prison, and it will make our prison population by far the biggest in the European Union, yet if we are to believe what paragraph 163 says about the
conditions to ensure a meaningful impact, the bill will have no impact on rehabilitation for more than half the prison population.

Brian Cole: Yes. Paragraph 163 refers to a minimum period of three months’ supervision for it to have any effective impact. Those who serve sentences of six months or less will, of course, still be subject to licence, and the licence will be fairly minimal, stating that they shall be of good behaviour. That is not to say that such individuals may not be plugged into services if that is achievable, but they will not be subject to the supervision requirements that apply to those who serve sentences of more than six months.

Jeremy Purvis: So it is fair to say that there will be no meaningful impact for more than 50 per cent of the record prison population—which, with the bill, will top 9,000.

Brian Cole: As I said, attempts will be made to get those who are serving sentences of less than six months into services. The issue is the extent to which supervision, as offered by local authority criminal justice social work departments, will be possible and effective during that period.

Jeremy Purvis: The bill states that Scottish ministers—I understand that, in practice, it will be the Scottish Prison Service—and local authorities must establish arrangements for the assessment of prisoners. That will apply whether or not the inmate comes from the local authority area or intends to go to there. They might not indicate that they intend to go there, but that is a matter to be discussed further down the line; the local authority must be involved in the assessment. However, the financial memorandum does not seem to mention the costs of local authorities taking part in that. It seems to mention only SPS costs.

Rachel Gwyon: An extra £500,000 per year will be added for the social work input to increased integrated case management. The cost is currently £5 million to £6 million, so the new total will be £5.5 million to £6.5 million. That is covered in paragraph 158 of the financial memorandum.

Jeremy Purvis: So that is included. It looked as if the Scottish Prison Service was saying that its additional costs would be £5 million to £6 million, but the bill says that the risk assessment is joint and the cost to local authorities will be about a tenth of that. I thought that the split would probably be 50:50, but perhaps you can come back to us with a bit more detail.

The Convener: Perhaps the panel could send us a note on that.

Jeremy Purvis: On the non-recurring capital costs, the financial memorandum mentions “the new prison/s”. Can we have a bit more detail on the forecast? Obviously, we are talking about a new prison, but the phrase “the new prison/s” is slightly broader. Surely there must be a bit more detail on how many more prisons we will need in Scotland to lock up our record number of people.

Rachel Gwyon: At the moment, we have an assessment of the number of additional prisoners per night whom we expect to be in our care as a result of the measures in the bill. In addition, the projections are increasing in any case. Some 700 to 1,100 additional prisoner places will be required, but that does not necessarily translate into the number of prisons. I am not trying to avoid your question, but there are different ways of providing accommodation. Sometimes it comes in chunks of a few hundred places in house blocks.

As a rough rule of thumb, when we are considering the number of whole prisons, we tend to say that 700 places is equivalent to approximately one prison. That would cost about £100 million if it was built in the public sector. We have given the capital reversion rates that would apply if it was built in the private sector. However, the figure of 700 to 1,100 places does not translate into a number of whole prisons. We have to examine the number of additional places and start working through how those people should be accommodated. That will have to be worked through further down the track.

Jeremy Purvis: So, at this stage, the financial memorandum can only be extremely broad.

Rachel Gwyon: It gives the most precise estimates that we can produce, given the number of underlying assumptions that we have to make.

The Convener: We will leave it there. As I said earlier, if anyone on the panel wishes to send us more information on the issues that arose today, they are welcome to do so. Similarly, if members have further questions, they can submit them to the clerk, who will write for further clarification on behalf of the committee.

I thank the panel. I am sorry that we were a little pressed for time—I want to ensure that we have time to hear from the next panel—but I thank you for coming along. The committee appreciates the offers that you made.

I welcome the lady and gentlemen from the Scottish Executive Justice Department: Andrea Summers, Gery McLaughlin and Paul Johnston. I invite Mr McLaughlin to make an opening statement.

Gery McLaughlin (Scottish Executive Justice Department): I am here to talk about part 3 of the bill, which deals with weapons and provides for restrictions on the sale and availability of swords and non-domestic knives. The objective of part 3...
is to put in place safeguards to help to prevent such potentially dangerous weapons from falling into the wrong hands. The provisions form part of the Executive’s reform of knife-crime law and are a vital component of the wider package of measures to tackle not only knife crime but violence more generally. I should emphasise that they are not the only component, although they are the only one that is dealt with in the bill.

The committee may be familiar with the background to the measures, but the stark facts on knife crime bear repeating. The homicide stats show that knives and other sharp items continue to be the most common method of killing in Scotland. In 2004-05, 72 of the 137 homicides were committed with knives. Those figures are comparably much higher than those in England and Wales and among other, international comparators.

On swords, the available data do not allow us to identify how common the use of such implements is, but swords are designed as deadly weapons and are likely to result in serious injury if so used. From police and hospital reports, it is clear that swords are being used to commit crimes and inflict injury. Advice from the police is that the use of swords is becoming more common.

On knives, the breakdown of data for Strathclyde shows that, in 2004-05, there were 1,301 knife attacks. Of those, 1,100 were in a public place and involved a non-domestic knife.

As the review of knife crime underlined, tackling knife crime is a priority for the Executive. The partnership agreement, in the section on supporting stronger, safer communities, makes a commitment that the Executive will “review the law and enforcement on knife crimes.”

The outcome of the review was announced in November 2004, when the First Minister presented a five-point plan on knife crime. Three of the five points were legislated for in the Police, Public Order and Criminal Justice (Scotland) Act 2006, which came into force at the start of last month. The act doubled the maximum sentence for carrying a knife in public or in a school from two to four years. It also removed limitations on police powers of arrest for those offences and increased the minimum age of those to whom non-domestic knives may be sold from 16 to 18.

The Custodial Sentences and Weapons (Scotland) Bill will implement the final two points of the five-point plan. The bill will ensure that the Scottish ministers have appropriate powers to ban the sale of swords, with exceptions, and to require businesses that sell swords and non-domestic knives to be licensed. The provisions in the bill were developed after consideration of the responses to “Tackling Knife Crime: A Consultation”, on which I can give further details if the committee so wishes.

The first element of the weapons provisions in the bill is a general ban on the sale of swords. Section 141 of the Criminal Justice Act 1988 provides for a ban on offensive weapons generally. Section 45 of the bill will provide for the creation of exceptions to those offensive weapon provisions through a general method. Those exceptions could include some uses of swords. However, section 46 is more specific and will enhance ministers’ existing powers by enabling them to introduce a ban on the sale of swords and to make the prohibition subject to specified defences. Those defences will be the use of swords for legitimate religious, cultural and sporting purposes.

As I said, the bill builds on the model of the ban on offensive weapons in section 141 of the 1988 act, but it will adapt the application to swords to allow for legitimate uses. Exceptions will be made for religious purposes, for cultural purposes, including Highland dancing, theatre, film, television, antique collecting, re-enactment and living history, and for sporting purposes, including fencing and martial arts activities that are organised on a recognised sporting basis. Exceptions will also be made for antique swords in line with the current provisions in firearms legislation. Finally, there will be an exception for other activities that are carried out with the authority of the Scottish ministers, after application to them. The aim is to deal with any exceptional cases that have not been provided for.

The bill also deals with the licensing of sellers of non-domestic knives and other items. The bill provides for the introduction of a new mandatory licensing scheme for the commercial sale of those items. The scheme will apply to people who carry out the business of dealing in those items. It will be a criminal offence for businesses to sell swords or non-domestic knives to members of the public without a licence. The framework on which the provisions build is the Civic Government (Scotland) Act 1982, which deals with licensing generally. Local authorities will act as licensing authorities for the knife licences, as they do for other licensing schemes. The bill will apply to those who run a business in Scotland, including those who sell over the internet.

The requirement for a licence will apply to the sale of swords, knives and knife blades other than those that are designed for domestic use, which is the same approach that was taken in the Police, Public Order and Criminal Justice (Scotland) Act 2006, which changed the age at which people can buy such items. Dealers that sell only domestic knives such as cutlery or do-it-yourself products will not need a licence. Also, auction houses that
sell items on behalf of others will not have to be licensed, unless they wish to sell such items on their own behalf. Businesses that sell exclusively to other businesses or professionals—sorry, professions—will not have to be licensed.

The requirement for a licence will not apply to those who are engaged only in private transactions and who are not involved in a business. A licence will not be required to sell small folding pocket knives, sgian dubhs or kirpans if the blade is no longer than 7.62cm or 3in. A licence will be required to sell any other articles that have a blade or a sharp point and those that are made or adapted to cause injury, such as arrows or crossbow bolts. As well as the requirement for a licence to sell such items, a licence will be required for businesses that hire, lend, give, offer or expose them for sale. The intention is to cover all the territory and close any loopholes.

The bill will provide powers, which ministers intend to use, to set strict licence conditions and to specify types of licence conditions that must be attached to all knife dealers’ licences. That will leave open the possibility that the type of condition may be specified by ministers, while the details are set by individual local authorities. As is the case with other licensing schemes, local authorities will be able to determine the details of any conditions not specified by ministers and impose additional licence conditions suitable for their locality or appropriate for the individual business, should they see the need.

It will be a criminal offence for the licence holder to break the conditions of the licence. It will also be an offence for a person knowingly to provide false information to a seller in connection with the purchase of such items when the seller is required to collect the information as a condition of the licence.

The bill will confer powers on local authority trading standards officers and the police, upon attaining a warrant, to enter premises where unlicensed dealing in knives is suspected of taking place or where a dealer is suspected of breaching the conditions of their licence. The bill will allow articles to be seized in such searches, with the prospect of the dealer forfeiting any knives or swords seized or in stock should he or she be convicted of an offence.

16:00

The Convener: Thank you for that. I ask members to be as tight with their questioning as possible, and I will try to demonstrate how to do that.

One or two issues come out of what you said, including the need for a licence for retail sales of knives. As you said, retailers of knives that are designed for domestic use will not need a licence, but the bill does not appear to contain a definition to clarify the difference between a domestic and a non-domestic knife. You have mentioned one or two DIY products that are not domestic but have blades and could be modified simply. If there is no definition, how can a retailer know exactly where it stands on what it wishes to sell and whether it needs a licence?

Gery McLaughlin: Ultimately, the definition will be a matter for the courts, but the bill says that a licence will be needed except for knives that are designed for a domestic purpose. Cutlery and DIY products are clearly designed for a domestic purpose, but if retailers are in doubt, we could offer guidance. The same approach was taken in the Police, Public Order and Criminal Justice (Scotland) Act 2006, under which the age of sale was increased to 18 for such items other than domestic knives but remains at 16 for domestic knives so that young people or couples setting up house can still obtain DIY products or sets of cutlery.

The Convener: I am not aware that stores challenge someone who buys a bread knife, for example, but will that become an obligation?

Gery McLaughlin: If a retailer sells only bread knives, it will not need a licence. If it sells a wider range of products, it will be required to satisfy itself that they are only for domestic purposes, and if that is so, it will not need a licence. If the retailer is uncertain or thinks that the products are for purposes other than domestic, it will require a licence. Guidance will be issued through the licensing scheme, and as trading standards officers become experienced in the scheme, local authorities will no doubt be able to give retailers a view on whether they need to be licensed.

The Convener: It sounded from what you said a moment ago that the courts will define. That is usually a bit too late, as people will want to know in advance whether they need a licence. Is there any intention in the Scottish Executive Justice Department to define more clearly exactly what a domestic knife is? If you need to write to us on that question, that is fine, but I have seen blades from hunting knives that, with a different handle, would look exactly the same as those used in domestic situations—some butchery knives for example. Is there a move to have a clearer definition?

Gery McLaughlin: The definition that we are proposing and that Parliament will vote on is the one in the bill. We can provide guidance to supplement that definition, but the law will be the wording in the bill. Therefore, ultimately it will be a matter for the courts. However, it will be down to individuals to exercise common sense on whether something is for use around the home.
I do not know how many committee members were present at the recent demonstration on knife safety—I think that it was in this committee room.

**The Convener:** I was there.

**Gery McLaughlin:** There was a clear distinction between the domestic knives and the ones that were not designed for domestic purposes. It is that categorisation that we are attempting to capture in the legislation.

**Maureen Macmillan:** It was as a result of that demonstration that I wanted to ask you about screwdrivers. We were told that a large Phillips screwdriver was a favoured weapon. I note what you said about under-16s not being allowed to be sold domestic knives. Will that provision in any way prevent under-16s from being sold such screwdrivers?

**Gery McLaughlin:** The licensing scheme will cover knives, knife blades and any other sharp, pointed objects that are designed to injure people. It will not cover screwdrivers as such. I would take issue with some of the information that was provided in the demonstration. It gave the strong impression that a number of crimes are committed with normal domestic knives, screwdrivers and so on. As I have said, the statistics from Strathclyde on stabbing attacks show that of 1,300 incidents, 1,100 were in a public place and committed with a non-domestic knife. Of the other 200, I am not sure how many were committed in a domestic situation where we would expect it to be more likely that a domestic knife would be used. In the vast majority of cases, the problem is caused by the type of knives that we are seeking to regulate.

**Maureen Macmillan:** Thank you—that is helpful.

**Mr Maxwell:** You mentioned that a business selling to a business will be exempt and that a business selling to a profession—first, you used the word “professional” but changed it to “profession”—will be exempt. Will you clarify what you meant by a business selling to a profession?

**Gery McLaughlin:** The example I would give is a company selling medical knives—scalpels—to hospitals. Such a company will be exempt from the legislation; that will also be the case if the company is selling to individual surgeons who have a professional need for such knives. If, however, such a company were to make a habit of selling medical knives to the general public—to someone coming in off the street—it would require to be licensed. The objective of the legislation is to regulate when we feel we have to, but to try to avoid regulating when we think that there is no need. We consider that there is no need to regulate businesses selling to businesses or to professions who may have a use for such knives.

**Mr Maxwell:** I accept that, and I agree with you on the business-to-business aspect; I was just trying to clarify what you meant when you said “profession”. You gave a good example. What if somebody was a butcher—would that be defined as a profession? Boning knives are a lethal weapon, but they are a legitimate part of a butcher’s profession.

**Gery McLaughlin:** I shall ask one of my legal colleagues for their view on that.

You pointed out my change of wording from “professional” to “profession”. I was trying to stick to the wording in the bill; in section 43, which inserts section 27A into the 1982 act, subsection (3) talks about “persons not acting in the course of a business or profession”.

**Paul Johnston:** Paul Johnston will deal with the question about butchers.

**Paul Johnston (Scottish Executive Legal and Parliamentary Services):** If a butcher was seeking to purchase a knife for use in their shop, they would be acting in the course of their business or profession, so the seller would not require a licence.

**Mr Maxwell:** So butcher-supplies companies would be exempt, even though any member of the public could walk in—

**Paul Johnston:** No. They would not be exempt if there was any prospect of them selling those butchers’ knives to persons other than butchers. If they were possibly going to be selling them to private individuals, they would require a licence. They would have to be clear that they were selling knives only to persons who were acting in the course of their business or profession.

**Mr Maxwell:** So it would be their responsibility to identify whether the individual was a bona fide butcher.

**Paul Johnston:** Yes.

**Gery McLaughlin:** It is more a question of businesses that operate as suppliers to the trade not needing a licence. Businesses that do that but which also open their doors to the general public—or advertise to the general public—will require a licence.

**Mr Maxwell:** Perhaps I misheard you, but you said that sports would be exempt. Is that correct?

**Gery McLaughlin:** Exemptions would be made for sporting purposes.

**Mr Maxwell:** Would that include fishing knives?

**Gery McLaughlin:** No. I referred specifically to fencing and martial arts organised on a normal basis.
Mr Maxwell: I know that you specifically said that, but most of us would define fishing as a leisure pursuit or a sport.

Gery McLaughlin: The exemptions that I was talking about related to the prohibition on the sale of swords.

Mr Maxwell: Fishing knives would not be exempt.

Gery McLaughlin: They are not covered by the ban on the sale of swords. We are licensing sellers of knives that are not intended for use at home. Fishing knives are not intended for use at home, so people or businesses selling those knives would require a licence.

The Convener: In other words, somebody who was carrying a shotgun would have to have their licence on them and the situation would be the same for a ghillie or for someone who does a lot of offshore fishing, for example for large coarse fish, and who would come and go carrying one of those knives.

Gery McLaughlin: We have moved to a separate issue. We are talking about licensing the sellers rather than the carriers. There is a distinction between those approaches.

The Convener: You gave figures for offences that are committed with non-domestic knives. Is there any evidence, or has any research indicated, that the bill might lead to people purchasing a domestic knife or implement and using it as an alternative to whatever it is that they use and commit crime with now?

Gery McLaughlin: That is perhaps a risk, but we are attempting to deal with the risk that we know exists. As I said, non-domestic knives were used in 1,100 out of 1,300 attacks. Those knives tend to be folding or locking knives. Someone can slip a folded knife in their pocket and there is no chance of them stabbing themselves, but when the knife is open and locked, there is no risk—that it might bend when they try to use it forcibly so they are sure of injuring the other person. Such knives and the much larger combat-style knives are what we are dealing with in the bill.

Colin Fox: COSLA's submission suggests that anyone who really wants to buy a knife will always find a way round any licensing restrictions. What consideration has been given to the possibility that the proposals in the bill will lead to more illicit trading in knives or that people will get knives from abroad via the internet or magazines?

Gery McLaughlin: On the suggestion that people who want a knife will always be able to get one, we are attempting to regulate the sale of knives through imposing licence conditions rather than to stop it absolutely. I do not think that what we are doing will lead to the development of a black market in knives. If people operate as knife sellers without a licence, the proposals in the bill will ensure that by doing so they are committing a criminal offence and can be arrested for it. Currently, if the police come across people selling knives in what could be regarded as an irresponsible manner, there is nothing that they can do about it. In the future, the police will be able to check that the person has a licence and if they do not they will be subject to penalties through the courts.

Colin Fox: I take that point, which is interesting. You mentioned that 1,100 of the 1,300 attacks in Strathclyde were carried out with non-domestic knives. Do you have an idea of where those 1,100 knives were purchased? How many of them were obtained via sales internationally or might, following the application of the provisions in the bill, still find their way to offenders?

Gery McLaughlin: I do not know the origin of the 1,100 knives because such information is not part of the data, but I assume that most of them were bought in Scotland.

Colin Fox: Given that 200 attacks were carried out using domestic knives, would it be fair to say that you hope that the bill will address the 1,100 non-domestic knives that were used in the assaults that you mentioned?

Gery McLaughlin: The bill will certainly do something about the sale of those knives. We know that the 200 other attacks did not occur in a public place. A number of assaults might have taken place in non-public places with non-domestic knives, so the number of assaults carried out with non-domestic knives might be more than 1,100.

Colin Fox: The licence conditions are fairly strict. A number of responses to the committee, particularly from retailers, flagged up concerns about conditions such as requiring a retailer to keep records of everybody that it sells a knife to and to obtain photographic evidence of every purchaser’s identity. Retailers have asked us whether the Executive has thought about putting restrictions on the sale of knives without licensing conditions, such as not allowing them to advertise either in their windows or at all. In other words, could restrictions have been levied without a strict licensing scheme such as that which is in the bill?

16:15

Gery McLaughlin: That was certainly considered, because questions about the licence conditions were covered in the consultation. I accept that retailers objected to the conditions as making them do something more than they do at present, but a number of other consultation
respondents supported the conditions strongly and suggested that we go further. Restricting display is intended to be one licence condition that will be imposed.

Colin Fox: So your view is that the licensing scheme in the bill will bring a number of advantages that can be achieved only through such a scheme.

Gery McLaughlin: Yes, it means that the provisions apply to businesses that deal in the items.

Mr Maxwell: I want briefly to follow Colin Fox’s point about buying knives on, for example, the internet. International purchases had not really crossed my mind, but there seems to be a large trade in knives through magazines and mail order. Many companies are not based in Scotland—they may be based elsewhere in the UK or perhaps even Ireland. Did you consider any ways of trying to tackle the problem of supply through mail order or magazines? A lot of so-called hunting and pseudo-military magazines sell the items.

Supplementary to that, I note that all the offences are about the sale of knives. There is no offence on the individual who does not have a legitimate use for the knives that they buy. Have you had any discussions or thoughts about offences on the individual purchaser?

Gery McLaughlin: I will start with your second point on the offences on individuals. Ministers have decided to adopt an approach that concerns restrictions on sale rather than purchase. However, individuals purchasing a sword or knife who knowingly provide the seller with false information would commit an offence, so there would be a penalty for someone not having a legitimate purpose for buying a sword.

On sales to Scotland from elsewhere, as I said in response to a previous question, I imagine that most swords that are bought here are purchased from a retailer in Scotland. We have discussed the issue with the police, and their view is that the majority of problem knives—as they see them—tend to be owned and bought by people who, generally speaking, do not have access to the internet or credit cards, which are the usual ways of acquiring goods from elsewhere. Having said that, the powers in the bill would provide us with the means to limit imports if it was chosen to use them in that way. Ministers are considering that, and perhaps the Deputy Minister for Justice will want to say more on that when he appears.

Jeremy Purvis: I want to ask just one question, although I have probably not noticed the answer when reading through the bill. What would be the grounds for a local authority to refuse a licence? Are they the same as under the 1982 act for window cleaners?

Gery McLaughlin: Indeed they are, and perhaps that is why they are not obvious when reading through. The provisions on knife licensing build on the provisions in the 1982 act that deal with the application procedure for a licence and the local authority consideration of it. The provisions include phrases such as “fit and proper person”. Do you want me to go into more detail about that?

Jeremy Purvis: No, if the grounds are identical to those in the 1982 act under which a local authority can refuse a licence for a window cleaner, I am familiar with them.

Cathie Craigie: Mr McLaughlin reminded us that those who sell swords on a commercial basis will be required to take steps to confirm that a person who wishes to purchase a sword wants to do so for a legitimate purpose. How will that work in practice?

Gery McLaughlin: The general sale of swords will be banned—it will be an offence to sell a sword, other than for the accepted legitimate purposes that I set out. Sellers will be asked to get confirmation that the sword will be used for one of the legitimate purposes. For commercial sellers, the measure will be reinforced through the licensing scheme. The licensing conditions will require sellers to take details of the intended use and to take down the information that was given that convinced them of the intended use. That might be a membership card from a society or a letter from a Scottish country dancing teacher. The licensing scheme will reinforce the requirement for commercial sellers. Individual sellers will be subject to the same requirement, although not to the licensing scheme. We imagine that most individuals will sell to people whom they know and who are part of the same club or society or to people who respond to an advert in a specialist magazine.

Cathie Craigie: You mentioned that a buyer might provide a letter from a dance teacher or a club membership card. Nowadays, it is easy to produce letters and membership cards on computers. Will individuals be required to provide some form of identification?

Gery McLaughlin: Sellers will be required to take down identifying details of individuals to whom swords are sold. Although you did not say so, the point that lies behind your question is that people may provide wrong information. That is why it will be an offence to do so. We cannot reasonably expect sellers to conduct extensive background checks on individuals every time that they make a sale. However, we can ensure that, if the police find someone who has a sword and who seems to have had no good reason for buying it, the person would be guilty of the offence of...
acquiring the sword in that way and, presumably, of using it in the wrong way.

Cathie Craigie: Did you consider introducing a requirement for people who want to purchase a sword for a legitimate reason to provide photographic identification?

Gery McLaughlin: Photographic identification may be required. Paragraph 114 of the policy memorandum states that the conditions that are set by ministers will require retailers “to keep records of those to whom they sell swords or non-domestic knives”.

We did not state specifically that photographic ID will be required, but I understand that several local authority licensing schemes require photographic ID. For instance, in Edinburgh, photographic ID is required to purchase some second-hand goods. The requirement is increasingly common, so some local authorities may well add it to their schemes. As I said, they will be able to add to the base conditions that the ministers set.

Cathie Craigie: Would it not be sensible for the Scottish Executive to add that condition to give uniformity of process throughout local authorities, rather than leave the matter up to each local authority?

Gery McLaughlin: I understand your point, but in striking a balance between what should be set centrally and what should be set locally, ministers decided that that matter will be set locally. However, the ministers have said that they will review the provisions in the light of experience of the operation of the licensing scheme, so, in due course, photographic ID may become a central requirement.

Mr Maxwell: I was interested in the suggestion that people might need to prove membership of a society by showing a membership card. How would that work? How would the retailer determine whether a society or organisation was legitimate? Will there be a list of approved organisations? Could I set up an organisation called the west of Scotland sword appreciation society and allow all my pals to be members of it? Would that be legitimate? Will such organisations need to be approved?

Gery McLaughlin: The idea of requiring specific organisations to be authorised was one option on which we consulted. However, ministers have decided not to go down that route, so we are not proceeding with that option.

Mr Maxwell: How would the retailer know whether the membership card that I presented was legitimate?

Gery McLaughlin: That comes back to the issue of what we can reasonably expect retailers to do. That is why it is an offence for someone to give false information.

Mr Maxwell: However, if I set up such a society along with six pals, the information that I gave would not be false. It would be true.

Gery McLaughlin: It depends on what the society is, what its objectives are and whether they fall within one of the legitimate exceptions. For example, a fencing society would come within one of the legitimate exceptions. Presumably, the person would explain that to the retailer. Specialist retailers have a general knowledge of the background to their activities. Although a retailer might not be able to spot a particularly good forgery or misinformation, a person who turned up with a rather less believable story than that of an MSP with a membership card might be turned away.

Colin Fox: Stewart Maxwell’s stories are always unbelievable.

Mr Maxwell: I have a final small question. There is a trade and export market that sells Scottish replica swords and weapons to tourists and collectors. How will that trade be affected?

Gery McLaughlin: Our intention is that exports would be an exception. It would be unreasonable to require tourists who happen to be in the country to provide the membership evidence that we have discussed. Therefore, swords that are for immediate export would fall within one of the exceptions to the general ban on the sale of swords. However, such sales would continue to be covered by the licensing scheme.

Maureen Macmillan: How dangerous are the swords that are used for Scottish highland dancing and re-enactments? Surely they cannot be too sharp, given that dancers will not want to get their feet cut. What swords are we talking about here?

Gery McLaughlin: You are right that Scottish country dancing swords are probably the least dangerous. Re-enactment swords also tend to be blunt, although that is not always the case. However, such swords can be sharpened.

Maureen Macmillan: Okay, that is fair enough.

The Convener: I thank the panel very much. As I mentioned to the previous panel, if after reviewing what has been said this afternoon the witnesses want to make additional points, they can send those to the clerks and we will be happy to consider them.

As agreed earlier, we move into private session. I thank our panels of witnesses and members of the public for attending.

16:28

Meeting continued in private until 18:20.
LETTER FROM SCOTTISH EXECUTIVE JUSTICE DEPARTMENT, 30 NOVEMBER 2006

The Committee took evidence from Scottish Executive and Scottish Prison Service officials on Tuesday 24th October about the Custodial Sentences and Weapons (Scotland) Bill. The Convenor invited officials to write to the Committee with points of clarification where appropriate. We appreciate this opportunity and have provided further information below. I apologise for the delay in getting this information to you.

To set the context, I think it is worth keeping in mind that the proposals in the custodial sentences element of the Bill do not introduce an additional “sentencing option”. Their purpose is to reform the way sentences are managed so that offenders will be subject to restrictions from the beginning of their sentence through to the end. Other than for sentences of less than 15 days, all offenders will also now spend time on licence in the community in addition to the period in custody. This will allow offence-related and rehabilitative work begun in custody to be followed through to the community part, providing the prospect of true end-to-end offender management. The conditions placed on an individual on release from the custody element of the sentence will be informed by the joint risk assessment and his or her response to work begun in custody.

Areas where further clarification might be helpful to the Committee are preceded by the questions, shown in bold italics, below.

Parole Board

Was there a particular reason for the change [from a three member to a two member tribunal], or was it simply a question of efficiency and the fact that the new system has worked elsewhere? What will happen if the two members of a tribunal cannot reach a unanimous decision?

The Committee will recall that officials confirmed at the evidence session on 28th October that neither of these matters are in the Bill. They are procedural issues for the Parole Board Rules (which the Committee will see). The outcome of the consideration on these matters will not affect the policy as set out in the Bill. As regards the matter of members on a tribunal, we are already consulting the Parole Board about the best structure while ensuring that the Board is able to do its business in the most efficient and effective way.

Mention was also made of the experience in England and Wales. However, the Parole Board for England and Wales’s report shows that tribunals there still comprise 3 members. Clearly we will keep this in mind in our ongoing discussions with the Parole Board for Scotland on the drafting of the Parole Board Rules. However, I can confirm that Scottish Ministers are committed to ensuring that the Board is legally competent and that it is properly resourced, but resourced in the most efficient and adequate way while at the same time securing best value for money.

The Committee noted the proposal for unanimity in Parole Board decisions. This is mentioned in paragraph 151 of the Financial Memorandum and is also commented upon in the Parole Board's evidence, in paragraph 10. It may be helpful to expand a little on the proposal. The intention is that when the Board sits as a tribunal (which we anticipate will be the case in most of the references under the Bill) the prisoner concerned may only have his or her release directed by the tribunal where both members agree that this direction is appropriate. In other words, both members will make up their minds about the case, but the tribunal itself may only direct release where that is the unanimous view of both members. Where there is no unanimous agreement on release, the tribunal must not direct release. This will mean that prisoners will no longer be released where one of the tribunal members is not satisfied that this is appropriate.

Monitoring after end of sentence

It is possible that a recalled offender could spend almost 100% of the sentence in custody. In that situation, how will the offender be reintegrated into the community?

Officials explained the community part licence process and confirmed that this would end when the sentence expired. However, the Committee might find it helpful to have some more information on the community component. We would like to take the opportunity to remind the Committee that all offenders receiving a custody and community sentence (those given a sentence of 15 days or more) will spend a period in custody and a period in the community on licence. Licence conditions
will be tailored to individual risk and needs. This means that for the first time all offenders will be subject to some form of restriction for the entire length of the sentence. This offers additional support to a large group of offenders who under the current arrangements would be released automatically and unconditionally at the half-way point of sentence without any means of control or support.

While licence conditions that relate to a sentence expire when the sentence ends, other measures are in the process of being put in place with a view to improving public protection from the highest risk offenders. Joint working arrangements between the police, the local authorities and the Scottish Prison Service will be achieved by adopting the Multi Agency Public Protection Arrangements (MAPPA). The network of MAPPAs will ensure improved management of sexual and violent offenders in the community, including those offenders whose sentences are spent but who the statutory authorities consider to be people who may cause serious harm to the public. This group will, where needed, be able to apply for voluntary assistance from their local authority to assist with their re-integration. The Community Justice Authorities (established under the Management of Offenders (Scotland) Act 2005) have an important role to play in building the local partnerships that will offer the sorts of rehabilitative services that these offenders, and others, will need on their release.

As well as the arrangements described above, the “sex offenders register” was introduced in 1997 by the Sex Offenders Act 1997 (the provisions are now contained in the Sexual Offences Act 2003). It has proved an invaluable tool for the police to monitor convicted sex offenders within their area. There is no central register as such; individual sex offenders notify their details to the local police and are identified on the Scottish Criminal Records Office's Criminal History System. The police use the register to manage offenders within the community and to identify potential suspects when a sexual crime is committed. Provisions in the Police, Public Order and Criminal Justice (Scotland) Act 2006 include giving the police the power to take data and samples from sex offenders if such data is not already held; requiring registered sex offenders to provide passport details; and giving the police powers to enter and search sex offenders homes for risk assessment purposes.

It is also possible for a Sexual Offences Prevention Order (SOPO) to be made. The police and courts must be satisfied that an offender has acted in such a way as to give reasonable cause to believe that a SOPO is necessary to protect the public or any particular members of the public from serious sexual harm from the offender. For example, in relation to an offender with convictions for sexually assaulting children who is, following his release, found to be loitering around schools and talking to children, the police may have reasonable cause to believe that there is a risk of the offender re-offending, in which case he may apply to the court for a SOPO. The prohibitions are specific to each case but, for example, an order could prohibit an offender who has a history of offending against children from being alone in the company of children or from being involved with organisations that would bring him into close contact with children. Any prohibition would need to be justified in relation to the risk and would need to be capable of being policed effectively. The prohibition must be necessary to protect the public or particular members of the public from serious sexual harm. A SOPO has effect for a fixed period which will be specified in the order. The period must be no less than 5 years. A person guilty of an offence of failing to comply with a SOPO is liable on conviction on indictment, to 5 years imprisonment.

Courts will still be able to impose extended sentences for serious sexual and violent offenders. This occurs at the point of sentencing and has the effect of adding an additional “extended” period to the community part of the sentence, increasing the period during which licence conditions (and the possibility of recall to custody if required) can be applied.

In addition, the courts now have at their disposal the Order for Lifelong Restriction (OLR). This a new sentence which provides for the lifelong supervision of high risk violent and sexual offenders and allows for a greater degree of intensive supervision than is the current norm. The OLR was made available to the High Court to use from 20 June 2006. OLRs will target those offenders who are assessed as posing the highest risk to the public. An offender who is sentenced to an OLR will, for the first time, be subject to a risk management plan that will be in place for the rest of the offender's life whether in custody or on licence in the community. Once they have served the punishment part of the sentence that the court considers is right for the crime itself, the Parole
Board for Scotland will consider when the risk they pose is acceptable enough to allow the offender to be released into the community. This means that there is no guarantee that the offender will be released immediately after the punishment part expires.

Prison population

**Will the commitment of the Scottish Executive Justice Department and this Parliament to reducing the overall numbers of people in prison be compromised by the measures in the bill that seek to put people in jail and make them stay there, so that more people will be in jail for longer?**

In line with the undertakings given on 24th October the chart showing the expected increase in the prison population is attached at Annex 1. This shows the anticipated number of designed cells available to SPS; what the population is expected to be without these measures; what it is estimated to be with these measures; and the assumed breach rates during the community part of the sentence. (An explanation of the dip in the design capacity can be found in the Scottish Prison Service’s published Business Plan if required.)

SPS annual population projections, which have a track record of accuracy over a number of years, use observed trends in sentencing behaviour over the last 34 years to project the population for future years. They assume that sentencing behaviour remains unchanged. The methodology takes no account of potentially related factors such as demographics or recorded crime as no statistical relationship has been established between those factors and the prison population.

The chart modelling the effects of the Bill’s measures contains, for the first time, predictions. These apply certain assumptions about change in behaviour. It is the first time that SPS has been required to model such potentially very large changes in population. The assumptions we have made are:

- Implementation affects all new sentences at the same time i.e. there is no phasing of implementation by sentence type or length;
- The “risk of harm” test might correlate to those convicted and sentenced to more than 1 year for a sexual or violent offence and with a history of such convictions. This “test” was applied to those leaving custody in 05-06;
- Around 15% of offenders reaching the 50% custody point might therefore be referred to the Parole Board for a decision on whether they should remain in custody;
- The Parole Board would direct 50% of those referred to proceed immediately to the community part of their sentence, with the remainder staying in custody until the ¾ point of their sentence. Our evidence is that, of those referred to the Parole Board over the last 5 years, the Board has recommended 50.5% for release;
- 15% of those on full supervision in the community (with an initial sentence over 4 years or related to sex or violence, and not previously covered by licence conditions such as attached to a life licence) will commit a breach of their licence serious enough to result in a return to custody. This assumption is based on rates of current community disposal breaches serious enough to result in custody, and in lifer recall rates.

If the above assumptions prove to be incorrect or under-stated, the estimated effect on the population will be different from that shown in the chart. The resources required to implement the measures would then be different. In this regard it might assist the Committee for us to clarify the point quoted from the SPICe briefing that “offenders who present as a high risk of re-offending and/or who pose an unacceptable threat to public safety will be referred to the Parole Board by Scottish Ministers. This is not correct in every regard. The test in the Bill is a test of “harm” not of risk of “re-offending”. That is very important in the context of the potential impact of these measures on the prison population. Re-offending and return to custody rates are also in the public domain and are closer to 50% than the 15% assumed here as meeting the “harm” test for referral to the Parole Board. It might be helpful to note that SPS, CJSW and Community Justice Authorities are all working to reduce re-offending already through the arrangements provided for in the Management of Offenders legislation.

In reading the transcript, there is a point of clarification which might assist the Committee. The evidence pointed to the fact that it will be the Scottish Ministers who take the decision on whether or not to refer a prisoner to the Parole Board at the end of the custody part of his sentence. SPS
and local authority criminal justice social work departments will have roles and responsibilities in relation to the risk assessment that will inform that decision. When the Bill was published on 3rd October it was also announced that an independent review would look at the Scottish Ministers’ involvement in the decision making process in individual cases including the role proposed for the Scottish Ministers in deciding whether an offender should be referred to the Parole Board. This review will clarify the precise arrangements which should apply to that decision making process as it is implemented. Recommendations on the implementation route are expected by the end of 2007.

Community part and supervision

Are you confident that offenders will have access to appropriate rehabilitation opportunities?

Have the resource implications been considered?

What does supervision entail?

The new arrangements for combined sentences will explicitly place the responsibility for taking up opportunities for rehabilitation and for future good behaviour on the offenders with a range of sanctions in place if they fail to comply with their licence conditions. Within this new approach, the nature of offender management will be tailored to the risks posed by, and the needs of, the offender rather than one standard package. This will require a new shared understanding of what is generally understood to be the nature of supervision with CoSLA, ADSW and the voluntary sector.

Supervision will be an automatic condition for sex offenders serving sentences of 6 months or longer, offenders given a custody part in excess of 50% by the courts, those whose cases have been referred to the Parole Board and those serving sentences of 4 years or longer who, historically, have been subject to statutory supervision requirements on release. The intention is therefore that all offenders serving a sentence of 6 months or longer will receive some form of statutory supervision as a condition of release on licence. The intensity of supervision will vary from offender to offender and will be informed by the joint risk assessment which will be carried out. The risk assessment will have regard to a range of factors including the nature of the offence, the offender’s response during the custody period and the anticipated circumstances on release.

Most of the under 6 month group will not require what we understand as the standard statutory supervision by qualified criminal justice social workers. The needs of this group – and the time available to work with them – suggests that we need to take a different approach. This is much more about getting this group into contact with the range of services that they need – such as drug treatment or accommodation services – to stabilise their lifestyles and to move them away from offending. It is a service more akin to signposting them on and brokering access to services than supervision by social work. It puts the onus, quite explicitly, on the offender to be of good behaviour, makes them responsible for what they do and provides the criminal justice system with sanctions if they fail to accept this responsibility.

For those serving 6 months or over, the intensity and nature of the supervision will be informed by the joint risk assessment, which will also suggest whether a qualified supervising officer is needed. The risk assessment will have regard to a range of factors including the nature of the offence, the offender’s response during the custody period and the anticipated circumstances on release. Offenders recalled to custody until the end of their sentence will, where needed, be able to apply for voluntary assistance from their local authority to assist with their re-integration.

Making all offenders subject to restrictions for the full sentence enhances public protection but recognise the considerable challenge in making sure that the community licence structure is delivered adequately and proportionately. The joint Planning Group is already looking at how best to deliver.

The Planning Group I mentioned above, which includes members from the Association of Directors of Social Work, COSLA, Sacro and the voluntary sector, will be looking amongst other issues at the most appropriate arrangements for supervision and will offer recommendations on how best these should be developed.
There are some offenders for whom a custodial sentence might not be the most effective way of getting them to change their offending behaviour. We are looking at ways in which community disposals might be better utilised. While this is not dealt with specifically within this Bill the Committee might find it useful to be reminded that this is just one of an ongoing serious of measures aimed at transforming Scotland’s criminal justice system.

Custody only

*Has any gender analysis of this proposal been carried out?*

The Committee was interested in the effects the legislation will have on fine defaulters in the context that many of these are women. While no specific research was carried out in relation to this for the purpose of this Bill, Ms Gwyon from Scottish Prison Service mentioned that she would make available a letter sent previously to the Justice 1 Committee on this matter. A copy of that letter is attached at Appendix 2.

The information in this letter has been contributed to and agreed by Scottish Prison Service.

I trust the Committee will find this information useful and of interest.

**Appendix 1**

<table>
<thead>
<tr>
<th>Design Capacity vs Average Prisoner Population (financial years)</th>
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<tbody>
<tr>
<td><img src="graph.png" alt="Graph showing design capacity vs average prisoner population" /></td>
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</table>
CRIMINAL PROCEEDINGS ETC (REFORM) (SCOTLAND) BILL

Thank you for the follow-up queries from the Committee relating to any potentially differential impact of the Bill’s provisions on women or young people as regards prison numbers.

As we understood it, Committee members were interested in any breakdown we could provide relating to the figures we had already given. In addition, an interest was expressed in whether young people were more likely to offend whilst on bail or breach bail and whether this might have a statistically significant bearing on the likelihood of an aggravated sentence being given.

We have looked at the data we have on fine default. In 2004-05 the average daily prison population of fine defaulters was 61. 4 of these were women (6.6%). 7 were young offenders (under 21) (11.5%). These figures compare with the following proportions of our overall prison population: 4.9% female; 21.1% young offenders. The overall context is that 0.9% of the total prison population are fine defaulters compared with 0.9% of young offenders and 1.2% of women.

The numbers involved are very small and we have been advised that statistically it is hard to draw any conclusions. It seems that the female population is made up of a slightly higher proportion of fine defaulters than the male prison population so to the extent that the Bill’s fine enforcement arrangements should help reduce the numbers sentenced for fine default, it may be that women stand to benefit to a slightly greater extent.

Although it is possible to establish the proportions of those receiving bail that are women or young people, the figures showing those bailed and having previous convictions are not broken down in this way. As such it is not possible, using our current information, to provide a breakdown of the gender or age impact for our estimate of the 25-35 potential extra prisoners per night arising from the new bail provisions. This figure was obtained by examining the numbers who had previously received bail for one of the offences set out whilst having a previous relevant conviction as set out in the Bill.

Finally we have looked at some research conducted by the Scottish Executive: Offending on Bail: An Analysis of the Use and the impact of Aggravated Sentences for Bail Offenders. This is published on the Scottish Executive website at www.scotland.gov.uk/Publications/2004/03/18848/32719. The research found that younger accused were more likely to offend on bail and females were less likely to offend. But it also found that “an offender’s gender, age and type of offence…committed were found to have no statistically significant bearing on the likelihood of an aggravated sentence being given”. The research also states that in the vast majority of cases (90%) where an aggravated sentence was given, the aggravation represented 50% or less of the total sentence.

It seems that within our initial estimate of an overall slight impact, we can establish no potentially differential impact on either women or young people of any statistical significance. I hope this additional information is helpful to the Committee.
Introduction

The Convention of Scottish Local Authorities (COSLA) and the Association of Directors of Social work welcome the opportunity given by the Scottish Parliament Justice 2 Committee to contribute to the scrutiny of the Custodial Sentences and Weapons (Scotland) Bill which has wide-ranging implications for local government. COSLA and ADSW support the overall policy objectives of the Bill which broadly represent an ambition to achieve safer communities and to prevent re-offending which is shared by all in local government.

However, COSLA considers that the Custodial Sentences and Weapons (Scotland) Bill needs to be scrutinised and further developed in a number of areas to ensure effective implementation. These areas are outlined below in:

Section one: Custodial Sentences
Section two: Weapons

Section one: Custodial Sentences

This evidence on the Custodial Sentences element of the Bill is provided jointly by COSLA and ADSW. Whilst we welcome the increased emphasis on community-based sentences as an approach to reduce reoffending, we recognise that the measures contained in the Bill will result in considerable additional pressures on local government and on Criminal Justice Social Work services in particular.

The Bill offers an opportunity not only to reduce the ever-growing prison population but also to tackle Scotland’s high rates of re-offending. While the Bill focuses on offenders sentenced to between 6 months and 4 years, there is a clear opening to make a much-needed impact on re-offending rates among those sentenced to between 15 days and 6 months. To stop the revolving door of prison/re-offending we need to re-examine areas for improvement to meet the needs of this group.

Clearly, making provision to reduce re-offending based on individual risk of re-offending rather than length of sentence will require commensurate additional capacity. COSLA and ADSW consider that for reasons of effectiveness and efficiency, qualified social workers should be deployed to work with high risk serious offenders while para-professionals focus their work on lower risk offenders.

Provisions of the Bill requiring particular scrutiny

Minimum Custodial Sentences

While for some persistent, “low-level” offenders, a short prison sentence may provide sufficient impetus to break the offending cycle, for the majority of offenders very short custodial sentences are ineffective in deterring, punishing, reforming or rehabilitating. There is also a disproportionately high financial cost to processing very short-term prisoners into and out of prison. For reasons of both effectiveness and cost, therefore, COSLA and ADSW agree in principle that short sentences are ineffective and it is COSLA’s view that they should be used only as a sentence of last resort for those most persistent low-level offenders. Any resulting upward drift in sentence length, however, would clearly be unwelcome and should be closely monitored.

Alternatives to custody for breach of licence and for fine defaulting should be sought for the same reasons of effectiveness and cost. There are questions around whether breach always warrants custody. The current breach rate is around 25% and it is anticipated that breach rates will only further increase with the introduction of the Bill.
**Appropriate Authority**

Subsection (4) defines the appropriate local authority as either the one in which the offender resided immediately prior to the offence or the one the offender intends to reside in upon beginning the community part of her or his sentence on licence. This lack of clarity as to appropriate authority will inevitably lead to uncertainty over exactly which authority is responsible and takes no account of the difficulties in tracking offenders effectively across boundaries, especially those on short-term sentences.

It is further suggested by COSLA and ADSW that offenders should be imprisoned as close to their family or likely future accommodation as possible to maximise the likelihood that they retain relationships and settle sustainably on their release. Young offenders and women offenders, in particular, currently face specific issues in being placed in institutes or prisons, respectively, often at a considerable distance from their home, and ways of overcoming this potential dislocation need to be sought.

**Risk Assessment**

COSLA and ADSW welcome the recognition that joint working arrangements should be put in place between Scottish ministers and local authorities in relation to the assessment and management of the risk posed by custody and community prisoners. There are two elements of risk which require to be assessed and managed – risk of harm and risk of re-offending. It should also be noted that level of risk posed is not necessarily associated with the length of sentence. Domestic abuse, for example, can draw a relatively low tariff yet risks to partners and children can be extremely high.

It is essential that Criminal Justice Social Workers are jointly involved in risk assessments together with colleagues from the Scottish Prison Service to ensure appropriate conditions are attached to licences, that key transitional arrangements are in place and that local provision is made available and used. Indeed, COSLA and ADSW consider that it is essential that local authority social workers attached to prisons are actively engaged in sentence planning and delivery of appropriate interventions and programmes from the outset to assess and manage risk of harm and risk of re-offending. This joint process of risk assessment between Scottish Prison Service and local authority Social Workers raises difficulties related to the contract culture within SPS which would benefit from consideration.

There are significant resource issues arising from the assessment process. Criminal Justice Social Workers will be engaged in a large number of additional risk assessments as a consequence of this Bill and its requirement to assess the risk of harm from all those sentenced to 15 days or more.

**Supervision**

“Supervision” is a wide term which requires closer definition as it can range from signposting and brokerage to monitoring and direct support and one-to-one programme delivery. Local authority social workers support:

- rehabilitation and re-settlement of the offender, including support to secure appropriate housing, find employment, address substance misuse, and make a positive contribution to their community;
- prevention or reduction of further offending through participation in programmes;
- protection of the public from harm through monitoring and supervision, liaison with police, ensuring compliance with licence etc; and
- the family of the offender.

There are currently around 4800 prisoners serving custodial sentences of 15 days to 6 months. The Bill sets out that only those sentenced to over 6 months in custody will be required to receive supervision. Those offenders sentenced to between 15 days and 6 months custody will be released on licence unless they are assessed as specifically needing supervision.

Whilst it is the case that not every prisoner released will require full supervision, it is likely that the majority of offenders, including those at the lowest end of the tariff scale, would benefit from an assessment of their wider welfare needs and, at the very least, signposting to provision – be it registering with a GP or accessing training. We consider that more needs to be done at
all levels of offending if we are to break the cycle of re-offending, building on the role of prison-based social workers.

Across the Community Justice Authorities, there will be different organisations with the skills and knowledge to deliver this signposting or “brokerage” role. There may also be merit in exploring further the concept of “link centres” or hubs in the community which bring together the range of services and facilities to support offenders under one roof.

COSLA and ADSW support the proposition that the level of “supervision” required should be proportionate and tailored to the risk of both harm and of re-offending that each individual offender presents. Whilst for the purposes of assumptions for allocating resources and identifying additional needs, it is possible to identify around 3 different tiers of supervision (see appendix 1), in practice, each individual’s supervision package will need to be individually tailored to meet their specific requirements.

At the high end of the tariff scale, it should be noted that the impact which supervision can have on reducing further offending must be kept in perspective - more can be expected by the public and media than can realistically be achieved.

Supervision will, however, be a condition on the licence for:
- Life prisoners;
- Custody and community prisoners with sentence of 6 months or more;
- Prisoners released on compassionate grounds;
- Extended sentence prisoners;
- Sex offenders; and
- Children.

There are currently around 3800 prisoners serving sentences of between 6 months and 4 years who will be eligible for supervision. Criminal Justice Social Work currently supervise around 600 offenders across Scotland and, clearly, will be engaged in supervising much higher numbers of offenders during the community part of the sentence and will require a commensurate increase in resources.

Community Sentences
COSLA and ADSW welcome the community sentence element as an effective means of reducing re-offending. Offenders need to be seen to take responsibility for their behaviour in the community - punishment through deprivation of liberty alone does not necessarily result in reform. Community sentences focus on taking responsibility, making reparation and being assisted into an inclusive community.

The success of community sentences will, however, be dependent on:
- research into what works, with findings communicated to politicians and senior managers;
- the range of fully-resourced measures in the community to reduce re-offending and to help offenders rehabilitate;
- transitional care arrangements for drug and alcohol addictions widely available within prisons and linking effectively with service providers in the community;
- universally-available programmes based on effective practice, delivered to consistent, accredited standards.

There are also specific gender issues which are not addressed by the proposed legislation. Many of Scotland’s short-term prisoners are women and we are not currently well-equipped to work with women offenders.

Communication
COSLA and ADSW perceive a need to publicise and explain community and hybrid sentences to the wider public and in particular, a need for shared messages from Ministers, MSPs and Councillors.
Workforce issues
It is anticipated that the proposed measures will only intensify existing recruitment, retention and training issues across Social Work. There are capacity issues not only for Social Work Services but for voluntary sector and other partner agencies in securing sufficient people with the appropriate skills to deliver this challenging agenda. We estimate, for example, that a 10% increase in Social Work staff would be required to deliver the measures in this Bill.

We propose that qualified social workers should be deployed to work with the higher risk offenders while a range of para-professionals and voluntary organisations will be best placed to work effectively with lower risk offenders. While the arrangements for who delivers the latter role and how it is commissioned or contracted will be best determined locally, through the Community Justice Authorities, agreement is required nationally on the skills, functions and menu of services which should be available to low risk offenders.

Shared responsibility for successful delivery through partnership
In order for the Bill to achieve its stated policy objectives it is crucial that partnership is built into the provisions, in particular to require all relevant agencies to work jointly and to contribute to the rehabilitation of offenders. This partnership also relates to the Judiciary as for this Bill to have any impact it is essential that the influential law professions are on board and recognise the impact that a combined structure sentence can have on the rehabilitation and resettlement of offenders.

Finance
The financial memorandum outlines that £7.45m will be available to oversee those subject to supervision over 6 months. This equates to £2,000 per offender. COSLA and CJSW do not consider this allocation to be adequate. We estimate that the unit cost for supporting a high risk offender averages nearer £5,000 (including Social Enquiry Report costs, Keyworker Drug and Alcohol costs, employability services, resettlement facilitation, costs of breach, and offence-focussed work) and for lower risk offenders the unit cost is closer to £3,500, with a requirement for around £10m to oversee those subject to supervision over 6 months alone (see appendix 1). COSLA and ADSW will provide more detailed estimates of costings to the Finance Committee.

Caution must be exercised with regard to the estimates for additional financial burden. This is a new approach based on risk of harm rather than length of sentence but we only have information on current prisoners and patterns of activity. Services such as probation and community sentences, court-based social work, throughcare, supervision, supported accommodation, services specifically for women offenders, and drug and alcohol rehabilitation all need to be properly resourced if the risk of harm and re-offending is to be effectively reduced and if offenders are to be fully integrated into their communities. Local authority community-based disposals are not currently funded at a level which can realistically achieve the expected reduction in reoffending.

Increased levels of
- monitoring and supervision of attendance;
- report writing, in particular Social Enquiry Reports;
- brokering and signposting to appropriate support and interventions; and
- license breaches
will all generate increased workloads and the need for additional staff and, in turn, additional office accommodation. There will be significant implications for prison-based, court-based and community-based Social Workers due to the increased assessments, reports and supervision required as a result of this legislation. There will also be an increased demand on accommodation and supported accommodation costs for prisoners released from prison.

Section two: Weapons
COSLA broadly agrees with the terms in Part 3 of the Custodial Sentences and Weapons (Scotland) Bill in relation to the regulation of knife and sword sales and welcomes the increased role of Local Authorities in the regulation of knife sales and the prevention of knife crime. The proposed Bill has the potential to bring a consistent approach to the licensing and regulation of the sale of knives and swords.
However, COSLA proposes a number of areas below that require further consideration.

**Unlicensed Dealers**
Premises where unlicensed dealing in knives is suspected or where a dealer is suspected of breaching conditions of their licence may be entered in order to ascertain whether the provisions of the Act is being complied with. However, these powers are only available after a warrant has been granted by a sheriff or Justice of the Peace. The Bill, as it currently stands, supplies no provisions to enter an unlicensed premise without a warrant nor is this available under the Civic Government (Scotland) Act 1982.

COSLA suggests that the legislation be amended to **include powers allowing Local Authority Officers and Constables to enter unlicensed premises in order to check compliance with legislation.** In addition, if there is reasonable belief that an offence has been committed, there should be the **power to seize goods and documents.** COSLA also considers that a power to **test purchase** knives would be helpful.

**Private Sales**
The provisions could be open to abuse by **second-hand dealers** who could sell knives, owned by private parties, for sale in their shop premises. These items could potentially be sold on behalf of another on a commission basis and this situation would not be subject to licensing and the consequent conditions. Similarly, non-domestic knives sold **privately at auction** will not invoke licensing conditions. COSLA considers that **due diligence** should be required of all sellers.

**Knife dealers’ licence conditions**
COSLA recommends that the Bill should be amended to place a condition on dealers to **display a notice** stating the offences in the Criminal Justice Act 1988 as amended regarding the sale of knives etc. to persons under 18 years. We also suggest that current provisions such as the Knives Act are taken into account to ensure that the **marketing** of knives is controlled and that inappropriate use is not promoted. Clarity is also required on **licensing of sales of knives and swords from temporary points of sale** across Scotland, for example at events and festivals.

**Definition**
The Bill contains no definition of a “non domestic” knife. This could lead to enforcement problems. COSLA suggests that there should be an amendment to ensure that the Bill clearly **demonstrates a definition of “sword” and clarity to ensure craft knives, trimming knives, bush knives, and kukri or Ghurkha knives are captured within this definition.**

**Monitoring**
We propose that knife crime should be monitored by the Police to capture the types of knives used following the introduction of this legislation to ensure that knife purchase is not simply displaced from non-domestic to domestic or from points of sale in Scotland to points of sale in England or abroad, beyond the reach of the legislation.

**Global Market**
While internet and mail order sales from depots within Scotland can be monitored and regulated within the scope of this legislation, **sales made from England** or beyond will not be subject to such regulation.

**Resourcing**
A cost recovery model is the suggested form of financing the licensing scheme. However, it must be recognised that over the years, a **number of small-scale, supposedly “cost neutral” schemes have been implemented by local authorities.** Being small-scale, they do not individually warrant a dedicated member of staff. However, **cumulatively, they represent a growing burden on local authorities.** There are a relatively small number of businesses that sell knives and the cost recovery model suggested has potential to move the cost of the scheme on to local authorities through additional administration and regulation in ways which will not be “cost neutral”. 
Conclusion

COSLA and ADSW welcome the general direction of the Custodial Sentences and Weapons (Scotland) Bill. However, we propose that the potential it has for impacting on both community safety and reduced offending, will be very much dependent on its comprehensiveness, its integration with the wider community justice and community safety agendas, and the level of resourcing made available to implement it effectively.

Appendix 1: A Tiered Approach to Post Custodial Supervision

<table>
<thead>
<tr>
<th>Tier One (voluntary sector provision)</th>
<th>Tier 2 (resettlement type services)</th>
<th>Tier 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serving less than six months (excl fine default): average period on licence of 7 weeks (50%)</td>
<td>(a) Serving 6 mths -1 yr: average period on licence 4.5 mths (50%) (b) of those serving 1-4 years/assessed as not a risk of serious harm: average period on licence: 15 mths (50%)</td>
<td>Serving 1-4 years and assessed as risk of serious harm: average period on licence 7.5 mths (25%)</td>
</tr>
<tr>
<td>2005-06: 4,795 liberations</td>
<td>(a) 1,959 (b) 1,536</td>
<td>2005-6: 230</td>
</tr>
<tr>
<td>No involvement from SW in assessment</td>
<td>Risk assessment from Prison SW</td>
<td>Risk assessment from Prison SW</td>
</tr>
<tr>
<td>No case worker</td>
<td>Unqualified case worker</td>
<td>Qualified case worker</td>
</tr>
</tbody>
</table>
| Sign posting to services – particular issue will be housing for any one who is in prison for more than 13 weeks | Provision of standard services: accommodation (100%), employability (100%) and substance misuse key working (10%) | Provision of standard services: accommodation, employability and substance misuse key working (10%)
| No involvement in offence-focused work | (a) No involvement in offence-focused work (b) Some limited offence-focused work if on licence for more than 6 months | Intensive offence-focused work if on licence for more than 6 mths (but in the absence of offence-focused work undertaken in SPS this element would increase substantially) |
| No involvement of SW in breach | SW breach report (25%) | SW breach report (25%) |
| Notional unit cost of £700 | Around £3,500 for a full year of service | Around £5,000 for a full year service |
| Cost for service around £3,500,000 | Cost of service based on average length of licence: around £8,500,000 | Cost for average of 7.5 mths to each client: £675,000 |

These are broad costs and include management, accommodation etc. However it may that the establishment of such a significant service will demand a major capital investment in accommodation. A very rough calculation suggests that an additional 100 staff would be required across Scotland to provide case-working and offence focussed work to the tier two and three services: an increase of about 10% in the staff group based on the 2005 figures. This is assuming that associated services e.g. accommodation, employability etc were provided by other agencies and therefore social work would not have a capital cost for their accommodation.

1 87% of the liberations in this sentence length i.e. excluding convictions of non-sexual crimes of violence and crimes of indecency
2 13% of the liberations in this sentence length i.e. those with convictions of non-sexual crimes of violence and crimes of indecency
SUBMISSION FROM THE ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND

Thank you for your correspondence addressed to Sir William Rae, ACPOS Honorary Secretary, dated 10 October 2006. I would offer the following written submission on behalf of the ACPOS Offender Management Portfolio in relation to the above Bill. Unfortunately, I am not in the country to give evidence myself on 7th November 2006 and have therefore arranged for Detective Superintendent James Cameron, Chair of the Offender Management Working Group and Detective Superintendent William Manson, Lead on the ACPOS Management of Offenders Implementation Team will attend the Scottish Parliament, in my absence.

ACPOS has been a member of the recently formed Custodial Sentences and Weapons Bill Working Group and will be taking part in the sub groups which will have responsibility for scoping the impact of the proposed legislation.

It is noted that the Bill contains provisions on the two broad policy areas of custodial sentences and that of swords and non domestic knives.

Custodial Sentences

The replacement of the system for automatic release for some offenders is welcomed and the new system should provide a risk assessed and managed return into the community. The punishment aspect of the sentence followed by supervision in the community should be easily understood by the offender, criminal justice professionals and the general public.

The release of offenders into the community must be a considered release with due regard to risk of harm based on risk assessment as opposed to many offenders in the previous system who often ‘did their time’.

The Integrated Case Management process now being used within the Scottish Prison Service will provide an effective structure for the management of offenders whilst in custody. It is vital that the release of offenders is influenced by effective risk assessment in relation to the risk that person may pose to the community and not only be based on behaviour whilst in a prison environment.

There is likely to be an increase in the number of offenders released on supervision which may increase the burden on Criminal Justice Social Work staff. This increase has yet to be fully scoped, however it is also likely that if there is an increase in offenders being supervised in the community there is likely to be an increase in offenders breaching the terms of their supervision and being returned to prison. Cross border powers of detention and responsibility for prisoner escort and transfer should be clearly defined.

It is important that a system is developed to ensure that if an offender presents a serious risk of harm to the community or is seriously breaching the conditions of supervision they are returned to custody without delay and this provision should be achievable outside office hours.

The release of prisoners into the community must link into the proposed Multi Agency Public Protection Arrangements (MAPPA). This will allow for defensible decision making and management of the identified risks involved. The MAPPA in respect of Registered Sex Offenders will be in place by March 2007, however the arrangements for violent offenders will not be operational until later. The MAPPA is only suitable for the management of Sex and Violent offenders.

Information sharing protocols between partner agencies supported by the concordat and within the ‘duty to cooperate’ are still in the process of development. It is essential that criminal justice partners have clear information sharing guidelines to ensure accurate risk assessment and to inform effective offender management.

Weapons

Restriction on the sale of non domestic knives and swords is welcomed by ACPOS.
Due consideration has been given to those with a legitimate reason for trading in such articles with the minority of the community who may have a legitimate reason for possessing them.

The enforcement aspects of the legislation seem to be proportionate and achievable to assist in tackling an aspect of knife crime within a violence reduction strategy.

The damage inflicted daily across Scotland through the use of such weapons is clearly evidenced through the work of the Violence Reduction Unit and Health information from Accident and Emergency Departments. Restriction on the availability of non domestic knives and swords is likely to encourage retail responsibility and may reduce the volume of combat designed weapons in the community over time.

SUBMISSION FROM THE ASSOCIATION OF SCOTTISH POLICE SUPERINTENDENTS

The Association of Scottish Police Superintendents is grateful for the opportunity to comment on the general principals of the above Bill.

While the Association is generally supportive of the need to consider alternatives to custody to ensure that the prison population is reduced and that prison is retained as the ultimate sanction for serious offenders, there are concerns that financial and political considerations may dictate the agenda. The Association considers that there is a need for increased investment in non-custodial penalties which are positive and offer better chances of rehabilitation of offenders, particularly young offenders in the early stages of their criminal career.

The Association believes that sentencing policy should take cognizance of the protection of the community as well as the rehabilitation of the offender. It is felt therefore, that community penalties should be directed at those who commit minor offences or do not have a substantial criminal record. Such penalties are not considered suitable for those who have committed serious crime or habitual recidivists. Nor should the more serious sexual cases ordinarily be eligible for a community disposal.

The Scottish criminal courts already have available to them a wide range of sentencing disposals ranging from imprisonment to absolute discharge. Until relatively recently the range of non-custodial sentences available to the courts has been largely limited to: admonition; caution; absolute discharge; the fine and the probation order. In 1979 the Community Service Order (CSO) was introduced and this has been followed by the Compensation Order (1980); the Supervised Attendance Order (1990) and, more recently, the Drug Treatment and Testing Order and the Restriction of Liberty Order (1998).

In 2000, only 13% of those convicted of crimes and offences were given a custodial sentence. However, over the last half century the average daily prison population has increased threefold from around 2,000 in 1950 to 5,869 in 2000. In the last decade an increasing number of convicted offenders have been sent to prison both in absolute and proportionate terms. In 1990, 12,969 of 176,558 persons with a charge proved against them received a custodial sentence (7%). Ten years later the number of persons with a charge proved in court had fallen by 33 per cent to 118,009 but of these, 15,265 (13%) were sentenced to a period of imprisonment.

This upward trend in the use of imprisonment has coincided with an increase in the average length of sentence handed down by courts in recent years. While, in 1990 the average custodial sentence imposed was 187 days, in 2000 this had increased to 217 days. Both of these factors have had an impact on the steady growth of the prison population. One result has been overcrowding, particularly in local prisons. In March 2001 the average population of Scottish prisons peaked at 6,253 against a capacity of 5,896. In comparative terms Scotland has one of the highest incarceration rates in the European Union. The great majority of custodial sentences handed down by Scottish Courts are for short periods. In 2000 for example, 82% of custodial sentences were for 6 months or less.

In 2000, 7,703 people (23% of entire prison population) were imprisoned for defaulting on a fine. Of those, 29% had been fined for crimes involving dishonesty, 29% for miscellaneous offences (which
include simple assault, breach of the peace and drunkenness) and 20% for offences involving motor vehicles. The average fine outstanding in 2000 was £241 and the average length of imprisonment for fine default was 11 days.

As at 31 March 2001 the Scottish Prison Service employed 4,586 staff and operated 17 penal establishments (including HMP Zeist) at a total cost of £250.6m. The average annual cost per prisoner place in 2000-01 was £28,114. The approximate cost of keeping an offender in prison for 6 months (£14,057) can be compared with £1,936 which was the estimated average cost of a probation order in 1990-2000 or £1,828 for a community service order.

Consideration of costs alone, of course, can say nothing about the relative effectiveness of custodial and non-custodial sentences in reducing re-offending. One way of assessing effectiveness, though not without its problems, is to examine reconviction rates. Several recent studies have suggested that community-based disposals such as probation or community service lead to lower (23% - 27%) reconviction rates than the use of custody.

The Association sees a number of benefits in increasing the pool of available sentencing options. However, the Association would caution that in considering alternatives to custody, a careful balance should be struck between the rights of offenders and the protection of society and communities. The imposition of a non-custodial part sentence should never be financially driven – it should be driven by the desire to find the appropriate disposal for the case at hand.

Of specific concern to the Association would be the supervision of prisoners released on licence and whether that role would fall on the police or the local authority. Police forces currently monitor Curfew Orders which to do properly involves an enormous amount of time and use of resources. It would not be possible for forces to redeploy resources from the front line to yet another duty which has been placed upon us.

In relation to Part 3 of the Bill regarding the licensing and regulation of knife dealers, the Association supports the general provisions contained therein. Any legislation which attempts to control the sale of such items is to be applauded. However there are so many other ways in which knives, swords and other lethal weapons could be obtained, such as the internet or through mail order.

The Association would like to have seen specific conditions contained within the Bill in respect of the Knife Dealer's Licence. Exactly what will the records maintained by the dealer actually record, i.e. age of purchaser, address, reason for purchase, identification produced etc. The Association would also wish to know what checks would be carried out prior to issuing a licence and would police forces be allowed to comment on eligibility.

Chief Superintendent Clive Murray, President of the Association of Scottish Police Superintendents, will be attending the meeting of the Justice 2 Committee on Tuesday 7 November 2006 where he will give evidence. I trust these comments are of assistance to you and if the Association can be of any further assistance, please do not hesitate to contact us at the address listed.

SUBMISSION FROM VIOLENCE REDUCTION UNIT, STRATHCLYDE POLICE

The proposal for the licensing of the sale of swords and knives is fully supported by the Violence Reduction Unit. Clearly many retailers will be unhappy about such a move but the problem of knife carrying and associated violence in Scotland is so acute that any legitimate objection against licensing must be weighed against the potential benefits of such a scheme. There is a need to limit the immediacy of access to such weapons and to place a barrier between those who wish to use such a weapon and the commission of such heinous acts.

The use of knives is neither a new or increasing problem in Scotland and in particular the West of Scotland. Over a 10-year period (1993-2002), there were 885 murders in Scotland, 669 of which were in Strathclyde, out of which approximately 50% were committed with a bladed weapon.
The use of knives is maybe historically linked to Glasgow and the West Coast, the knife is also one of the most common weapons currently used across the whole of Scotland, with the frequency of use dependent on the seriousness of the assault. For example, Tayside Police report that 45% of attempted murders, 12% serious assaults where committed with a knife, whereas, Lothian & Borders report 31% for murder, 33% for attempted murder and 9.5% for Serious Assault. The pattern for the rest of the force areas is similar with knives being less common in less serious incidents.

Unlike a firearms assault, the seriousness of a knife injury is sometimes completely random and is influenced by many other situational factors such as availability of emergency services, speed of response, did the knife cut a major artery or organ. Even the most innocuous stab wounds with a blade less than 3 inches can be life threatening. Considering the random nature of knife assault, then the murder figure in Scotland could be significantly higher.

A recent study of knives recovered within Strathclyde (Violence Reduction Unit) indicates that the most common weapon is the ‘lock knife’. If this is extrapolated it would then suggest that this knife is the most common used in assaults, attempted murders and murders, challenging the stereotype that the knife mainly comes from the kitchen drawer. The fixed blade knife is next most common, which includes the kitchen knife, however, this group also contains a variety of other knives including hunting and the ‘Rambo’ style blade. Detailed examination of the knife type indicated that 77% of all knives either used in an assault or apprehended in a search were non-domestic in origin.¹

The behaviour displayed with the knife may have a resultant effect on the type of knife carried (and vice versa), with locking knives being kept most usually in the carriers underwear, whereas, it is unlikely that fixed blade knives would be secreted in the same area (for personal safety reasons). Alternatively, kitchen knives may be predominantly used in domestic attacks and larger ceremonial knives/swords may just be primarily for intimidation purposes.

Where the knives are being sourced is important. There is some evidence to suggest that some are still being sourced in the home (primarily fixed blade) weapons. This is indicative of the availability of that type of weaponry in the family home. However, the more common lock knife is not being sourced from the home. Intelligence suggests that these are being sourced through shops and other outlets (not necessarily major retailers). Licensing retailers and applying appropriate proportionate condition will help to stem the number of knives available on the street.

Any person who seeks a licence to sell non-domestic knives should be a fit and proper person with no convictions for crimes of dishonesty or violence. Identity must be sought from customers seeking to purchase non-domestic knives and a record of said individuals should be kept. It is the opinion of the Violence Reduction Unit that non-domestic weapons must be stored in a secure way and not be openly displayed in shop windows.

Although swords may primarily be used for intimidation and show there have been a number more serious incidents involving a sword including 5 murders, 41 attempted murders and 196 serious assaults since 2000. In the last year alone there has been 10 attempted murders and 48 serious assaults where the primary weapon is a sword. (Strathclyde figures only).²

It is the opinion of the VRU that the swords used in such attacks and threats are low-grade imitations such as the £30 set of three samurai swords. It is unlikely that the attacks would be carried out using a genuine samurai sword at a cost of thousands of pounds. Legislating for swords based on there relative merits such as quality and price would be difficult and even more difficult to police. It is therefore, the opinion of the Violence Reduction Unit that any such legislation should make provision for those with a genuine need to purchase said items such as sporting use or members of historical societies.

Legislating and licensing alone will not make a sustained substantial difference to the level of serious violence within Scotland. Tackling the problem will require societal change and work is

¹ 05/7/04-04/7/05
² 27/10/2005-26/10/2006
ongoing in the long-term to achieve such ambitious goals, however by limiting the access to both swords and knives and decreasing the opportunity that these weapons are used in the commission of violence it will save lives.

SUBMISSION FROM PRISON OFFICERS ASSOCIATION

The POA have been invited to give evidence to the Justice 2 committee of the Scottish Parliament on the above bill. We thank the committee and welcome the opportunity to do so.

In doing so we must first make our position clear on this Union commenting on sentencing policy. We have always in the past steadfastly refused to become involved in commenting on this area of the Criminal Justice System primarily because of our apolitical stance on these areas and also the fact that our membership in the main are Civil Servants whose role it is to implement Government policy without fear or favour.

It would therefore seem appropriate that we try to curtail our comments to the potential impact of the proposals on both the staff and the service itself.

Having read through the proposals it seems clear that the move from what is considered by most practitioners to be automatic 50% remission at present to a situation whereby Sheriffs and Judges can in some circumstances determine that an individual must serve 75% of the sentence in Prison custody will place an additional burden on already strained and overcrowded Prisons. The consultation itself seems to already recognize that there is little or no information available regarding those prisoners who have at present been released having served 50% of the sentence reoffending and being returned to serve the remaining 50% of their sentence. If as proposed there is greater scrutiny of a prisoner’s time in the non custodial part of their sentence and they are made to return to serve the remaining part this again will place further pressures on overcrowding. We are not at this juncture advocating against merely point out the further pressures on a system which currently houses the highest prison population yet experienced.

Turning to the proposal that sentences of 15 days or less should be served wholly in custody. It is difficult to try and understand what exactly the prison service is to do with these people other than to keep them in secure custody and whilst this is one of the primary aims of the service it is also incumbent on us to try to address offending behaviour. A sentence of 15 days or less does no more than allow us to warehouse prisoners who in the main given the level of sentencing will have committed a minor misdemeanour which would call into question whether prison was the most appropriate response or if some other alternative to prison should have been considered prior to sentencing.

The role of the Parole Board in the bill causes concern, certainly not over their competency in the ability to implement the new proposals, more so in the logistics of administering the new proposals in what we perhaps wrongly perceive as a substantial increase in work load without it would appear a substantial increase in resources.

In summary, the proposals in our opinion have far reaching resource implications for a service that for the last five years has been subjected to a flat line budget on running costs which to date has seen us shed in the region of 700 operational prison officer jobs. This has been required to meet the needs of 5% savings year on year to take into account annual inflation and any negotiated increase in staff salaries and as far as this Union is concerned is a situation that is no longer sustainable. The implications in the Bill are such that there would be a considerable increase in the administration work required to be done by Prison Officers in providing the parole board with reports on more prisoners than has been required in the past and that the estimates by the Prison Service of an additional 18 to 19 staff per 1000 prisoners at a cost of £5-6million a year seems in our opinion very conservative.

We hope these brief written comments and short summary are helpful to the committee and are ones that we can hopefully elaborate or expand on during oral examination.
Weapons

It would not be our intention to comment in any great depth on the proposals to license non domestic knives and swords. However, given that it is an integral part of the Executive’s strategy to combat knife crime we thought it incumbent on ourselves to draw to the committee’s attention what we believe to be a serious anomaly in the current situation.

As it stands just now it is a crime to carry certain types of knives in public and anyone caught will be subject to prosecution. The anomaly exists in that a prisoner caught within the confines of a Prison is not subject to the same provisions and as far as our preliminary investigations can find out neither the police nor procurators fiscal are in a position to do anything about it under what we believe to be the wrong assumption that Prisons are not public places. This perception in our opinion is at complete odds with the Scottish Executive’s smoking bill which quite clearly has designated Prisons for the purposes of the act public places. Whilst we appreciate that this current bill under consideration might not be able to address the problem we believe that it is of such a serious nature that it has be addressed as a matter of some urgency not only that it seems so wrong in principle but that it would appear to be in conflict with the Executive’s campaign on zero tolerance to assaults on public sector workers.

Again if the committee feels that we can assist with anymore information during oral evidence then we are happy to do so.
Custodial Sentences and Weapons (Scotland) Bill: Stage 1

14:14

The Convener: Item 2 is our second evidence-taking session on the Custodial Sentences and Weapons (Scotland) Bill at stage 1. I welcome from the Scottish Parliament information centre Graham Ross and Frazer McCallum, who have come along to assist us, and Susan Wiltshire, who is one of the committee’s advisers on the bill.

I also welcome our first panel: Alan Baird, convener of the criminal justice standing committee of the Association of Directors of Social Work; Lindsay Macgregor, a policy manager with the Convention of Scottish Local Authorities; and, also from COSLA, Councillor Eric Jackson.

I will start the questions. The bill provides for Scottish ministers—which boils down to the Scottish Prison Service in this instance—and local authorities to establish joint arrangements for the assessment and management of the risks that are posed by all custody and community prisoners. What discussions, if any, have taken place regarding those joint working arrangements? Are you able to provide any detail on how the new arrangements will work in practice and what improvements they will bring?

Alan Baird (Association of Directors of Social Work): The speed with which the legislative process has moved has made it difficult for us to have any detailed discussions with colleagues from the Scottish Prison Service. It is important that we strengthen the emerging relationships between local authority social work departments and the Scottish Prison Service in relation to the Management of Offenders etc (Scotland) Act 2005.

Social workers have a long history of working in prisons. Prison social work has been a feature for many years, and we need to strengthen its position if we are to undertake successfully what will amount to a very considerable increase in the number of people who social workers and their Prison Service colleagues will be expected to assess.

The Convener: From what you have said, I assume that you are going to set up a working arrangement with the Scottish Prison Service to deal with the bill. Can you highlight to the committee any action that you are taking in that regard?

Alan Baird: We have on-going dialogue with the Scottish Prison Service. Councillor Jackson is a member of the SPS board—that has been particularly helpful as we move towards the new...
arrangements. The detailed discussions will very much depend on establishing exact roles and responsibilities relative to the risk of harm posed by offenders who are serving sentences of less than four years but more than 15 days. We in social work must be very careful to use our resources in a way that is proportionate to the level of risk of harm that individuals pose.

An implementation group has been doing some work in relation to the bill. The Scottish Prison Service and the ADSW, through me, are involved with the various streams that go from court to custody to the community. The main discussions, which have already started, will take place in that group, which will be chaired by the Scottish Executive.

Councillor Eric Jackson (Convention of Scottish Local Authorities): I am a recent addition to the work of the Scottish Prison Service, where my influence has been limited to date. It sends out a wonderful message that the Prison Service has embraced someone joining its board from a local authority background. It clearly wants to build bridges.

We must always bear in mind the locus of the new community justice authorities and the focus to the discussion that they will bring. I will attend an SPS board meeting tomorrow, to which local authority conveners have been invited. The SPS has created liaison officer posts for all the CJAs. Those posts have now been taken up, which will assist greatly in the process.

We must always bear in mind the locus of the new community justice authorities and the focus to the discussion that they will bring. I will attend an SPS board meeting tomorrow, to which local authority conveners have been invited. The SPS has created liaison officer posts for all the CJAs. Those posts have now been taken up, which will assist greatly in the process.

The Convener: Given Mr Baird’s opening comment about the speed of the legislative process, the committee would welcome short, focused written communications to keep us in touch with the joint work as it progresses. The work is obviously at an early stage.

Alan Baird: I am happy to provide briefings to update the committee.

The Convener: That is excellent. Thank you.

Under the new arrangements, how much input will local authorities and social work services have to the risk management process while offenders are in custody? How will that input vary between different categories of offender?

Councillor Jackson: It is essential that local authorities, the ADSW and the SPS work together throughout the process. It is not as if, while somebody is a prisoner with the SPS, they should not have access to social workers, and the process should flow from their time in prison to when they come out of prison.

Alan Baird: I agree. It is an enormous challenge to sort out exactly where priority should be given. It is clear that the bill gives top priority to those who are likely to cause serious harm and to be serving longer sentences. However, a word of caution is required. Those who serve short sentences might not have been imprisoned for violent offences, but their past might suggest that there is a risk of their causing harm, so we cannot afford not to be involved in assessing the risk that they represent. Given the nature of human behaviour, there is every possibility that even those who have been assessed as low risk and are serving short sentences could go on to commit fairly serious offences.

The Convener: Are you suggesting that all records on the individual should be considered during your assessment?

Alan Baird: We must consider all the records. My worry is that, collectively, we will miss something in the risk assessment process, and I am concerned about how we can consider all the records, given the sheer volume of prisoners on whom we will carry out assessments and make recommendations.

Mr Kenny MacAskill (Lothians) (SNP): The committee understands that an extra £500,000 will be allocated for social work input to the integrated case management system. Given the increased number of offenders to be assessed, is that sum adequate?

Alan Baird: From the ADSW’s point of view, the overall cost is more likely to be around £12.5 million; whereas the figure of £7.45 million is given in the financial memorandum.

We take a tiered approach and put the greatest amount of work and supervision into those who pose the highest risk. However, questions arise about how we reduce reoffending. There needs to be a strong connection between the bill and the Management of Offenders etc (Scotland) Act 2005. If we have prisoners who are serving between 15 days and six months, we will continue to have a revolving door, and we propose that a considerable sum of money should be spent in trying to break the cycle and reduce reoffending in the community. If we do not do that, prison numbers will rise considerably, as you heard from Rachel Gwyon, who said that the proposals will add 700 to 1,100 extra prisoners to the daily prison population.

We are trying to consider the whole system—from prisoners who serve 15 days right up to those who serve four years. How much money do we need to provide not only the proper risk assessments but the appropriate level of supervision that is proportionate to the risk of harm?

Councillor Jackson: There are two types of risk that we must take into account. The first is the risk of harm, and the second is the risk of reoffending. If we are to make a difference to the
revolving-door problem to which Alan Baird referred, we must look seriously at the risk of reoffending.

Mr MacAskill: The Executive hopes that the new arrangements under which all offenders who serve a sentence of 15 days or more will be subject to some form of restriction in the community will help to address the problem of reoffending. Is there any evidence that offenders who have been subject to community intervention after a period in custody are less likely to reoffend than those who do not receive any intervention?

Councillor Jackson: Alan Baird will say whether there is concrete evidence of that. The experience of professionals who work in the area, including the experience of most of the Scottish Prison Service, suggests that programmes that are delivered for short-term prisoners do not work—they are not particularly effective. The same programmes delivered in the community would have far more chance of success. That reflects the artificiality of short-term sentences. When people who have been in prison for only a few weeks or a couple of months come out, they want to forget about that period in their lives and everything associated with it. If programmes were delivered in the community, they would have far more meaning to people.

Mr MacAskill: Is there any empirical evidence to which Alan Baird could refer us, either today or in a written submission?

Alan Baird: There are statistics available. I do not want to quote them wrongly this afternoon, but I am happy to try to provide them for the committee. Are members seeking evidence on the difference between the reconviction rates of those who have served a custodial sentence and those who have been subject to some form of supervision?

Mr MacAskill: We are seeking evidence on the difference between the reconviction rates of those who served a custodial sentence, followed by some community intervention, and those who have merely served a custodial sentence.

Alan Baird: I am happy to provide the committee with that information.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I thank COSLA and the Association of Directors of Social Work for their joint submission, which I have found useful.

The bill provides for all offenders with a combined sentence of six months or more to have a supervision condition attached to their licence, once they are released. The Executive has estimated that that will result in an additional 3,700 offenders becoming eligible to receive some form of supervision on release. That is slightly different from the figure that you have provided, but not enough to argue over. How much of an impact will the bill have on resources for criminal justice social work services? Is it possible that any positive effects of supervision may be diluted by the increase in the number of those who require supervision?

Councillor Jackson: It is early days and we are still working on costings. We need to be realistic about costings and to have a robust system for estimating them. There is also an issue of capacity. All members of the committee will be aware of the difficulty that we have had in previous years in getting enough social workers.

Alan Baird: It is particularly important that we use scarce resources—in this case, qualified social workers—to greatest effect. Our written evidence highlights the importance of having a paraprofessional grade. “Changing Lives: Report of the 21st Century Social Work Review” emphasised the need to train staff not to the level of qualified social workers but so that they can work with lower-level offenders. Criminal justice social work has a good history with Scottish vocational qualifications and criminal justice assistants. A number of lower-level offenders need to be directed to a range of services, and it is important that those services are available when they are needed. That will allow qualified social workers to work at what we describe as tier 3—with offenders who pose the highest risk of harm to the community.

14:30

The Convener: How many new staff will you need and how quickly will you be able to put them on the park? After all, if the legislation is passed, it will not be that long before it is implemented.

Alan Baird: First, I should point out that yesterday’s headline in The Herald, which said that 500 new staff would be needed, somewhat misrepresented our position. We think that 100 new staff will be needed, although not all of them will necessarily have to be qualified social workers. However, we still need to break down that figure between qualified social workers and the paraprofessionals I was talking about. If the need is for qualified social workers, we will have a bit of a problem, because we do not have great numbers of them around at the moment.

The Convener: How long will it take to train up brand new social workers?

Alan Baird: Prospective social workers need to undertake the four-year honours degree course, which was started up only last year. We would certainly need to increase the number of those taking such courses.
The Convener: I am sorry to push you, but surely if this four-year degree course was introduced only last year, people on it will not be available for employment for another two or three years.

Alan Baird: Before the course was introduced, we had a fast-track system and the social work diploma. We are now moving from the diploma to the degree. Although people are still coming through the system, they are not coming through at the rate that will be required if the bill is passed and its provisions implemented next year.

Councillor Jackson: That is why it is important for us to quantify those who need the direct intervention of a qualified social worker and those who can be handled under the supervision of qualified social workers. We need to clarify the term “supervision”, because it can cover, at the bottom end, signposting and brokerage and, at the top end, one-to-one sessions with those who pose the most risk.

Colin Fox (Lothians) (SSP): I am struck by the figures, which suggest that an additional 3,700 or 3,800 cases will need to be supervised. In your submission, you say that at the moment criminal justice social work in Scotland supervises 600 offenders. Surely that leap from 600 to 3,800 is a bit stark.

Alan Baird: Of course, the 600 figure refers to those serving four years or more who would be released on some form of licensed parole. The 3,700 figure refers to the number of people serving sentences of from six months to four years. You are right to say that it represents a massive increase in the work that we will be required to carry out.

Colin Fox: So the 3,700 will be additional to the 600 offenders who are supervised at the moment.

Alan Baird: Absolutely.

Colin Fox: I am not really interested in whether 100 or 500 new staff will be needed to implement the bill, because the convener has already touched on the time lag between the bill’s implementation and new social workers coming into the system. Can you outline the difference between paraprofessionals and criminal justice social workers?

Alan Baird: A paraprofessional does not have a social work qualification, but is trained in key areas. For example, certain people employed in the Scottish Ambulance Service or the legal profession are able to undertake a variety of duties and responsibilities, but not those set out in the Social Work (Scotland) Act 1968. Although they play a supportive role, they are also able to work independently in some situations with the support and under the supervision of qualified staff such as senior social workers.

Colin Fox: Would a paraprofessional be able to intervene in situations or supervise offenders, or do such jobs require four years’ training?

Alan Baird: They are able to take on brokerage duties and certain low-level jobs that might be termed welfare work. For example, they might deal with some of the chaos surrounding the housing, debt and poverty issues that mark offenders’ lives and underpin offending behaviour. Such issues need to be sorted out before the offending behaviour can be dealt with directly. Paraprofessionals might work independently, but they might also work alongside qualified colleagues.

The Convener: As the people who are on the front line, how appropriate do you think it is for unqualified staff to supervise released prisoners? I presume that the proposal comes from the Executive.

Alan Baird: They would not be unqualified; they would be partly qualified. We have to link that back to the earlier points on risk assessment. It is only once we have done a risk assessment that we can determine what work needs to be undertaken with or by any individual. Until such assessments are undertaken, I will not be sure what the figures will be or how we should respond to any one individual.

Cathie Craigie: I am interested in that part of the evidence and that the ADSW is willing to take responsibility for staff that the bill would bring into the system. Can you outline the difference between paraprofessionals and criminal justice social workers?

Councillor Jackson: We have been talking about social workers and local authorities, but the voluntary sector has a significant role to play, although work by that sector would be commissioned through local authorities and through the newly formed community justice authorities. There are people in the voluntary sector who are delivering services for us at the moment—we see an expanded role for them.

Alan Baird: I am not sure exactly what information Cathie Craigie is looking for.

Cathie Craigie: In appendix 1 of your briefing, you provided a list of the different tiers of support. Will you paint a picture of that for the committee, so that we can understand more about what is available at the moment and how that might change to take account of the legislation?
Alan Baird: It all starts with a social inquiry report. Such reports take up considerable time—perhaps more time than colleagues and I would like them to. We are not sure what the impact on social inquiry reports might be in relation to sheriffs making recommendations on the custodial part of a sentence, which can be between 50 per cent and 75 per cent of the total. That should be borne in mind.

A lot of work is being done on community disposals, community service, probation and the developing through-care scene. Through-care is being done jointly with the Scottish Prison Service and, as Councillor Jackson said, colleagues in the voluntary sector, to prepare people for release from long-term sentences. We must ensure that, under the bill, we are in a position to offer offenders a wide range of services linked to local need.

I am concerned that we might end up doing more breach reports for the Parole Board for Scotland because people end up going back into the prison system—my worry is that will deflect us from dealing with the needs of offenders.

We have touched on the volume aspect, which is of great concern to me and colleagues. More people will be working in the prisons, but there will also be more in the community too. My concern is that we could dilute some of the services if the changes are not resourced properly. By diluting them, we increase the likelihood of reoffending and of offenders causing harm. Does that answer your question?

Cathie Craigie: That is fine.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Reference has been made to the issue of the revolving door. The documents accompanying the bill state that social work practice shows that services that are provided in the community for less than three months are not effective in reducing reoffending behaviour. Given that the bill, in its current form, will not change that situation for half the prison population, do you believe that there are any measures in the bill that will actually reduce reoffending?

Alan Baird: I do not believe that the bill will have an impact in relation to short-term sentences. By and large, if we want to make an impact, we would be better to take those currently serving short-term sentences—a massive number of people—out of the prison system and work with them in what are known as community link centres, where we can bring together key professionals in an effort to reduce reoffending. I do not see reducing reoffending as a key part of the bill; that is not where its emphasis lies. What I am trying to do is connect the bill with the agenda for reducing reoffending—the target is a 2 per cent reduction by 2008—and to consider what contribution social work can make to helping Scotland become a safer community.

Jeremy Purvis: Does COSLA have a view on that?

Councillor Jackson: While the bill might not specifically have such an impact, I am looking at it in the context of everything else that is going on in the criminal justice field and the efforts that are being made to reduce reoffending. The widely held view on short-term sentences is that a lot of the people who are serving such sentences could be better served—for their own sake and as far as the community is concerned—by having a non-prison disposal. That is not to say that there should be an end to short sentences, because there must be some capacity to deal with those people who just will not take the opportunity that is offered to them. However, there is a widely held belief among my colleagues that we could do far more for people on short-term sentences and that we could relieve some of the pressure that is on the Scottish Prison Service to deal with the higher end of risk management.

Jeremy Purvis: From the point of view of COSLA and the ADSW, how credible is the proposition that individuals can at least, while they are in prison—even for a short sentence—be signposted to services in the community, so that they could start a number of programmes at that stage?

Alan Baird: That is happening to some extent at the moment, through the transitional arrangements, particularly in relation to drugs in prison. Attempts are being made to establish a stronger connection for short-term prisoners during their sentences and to help them to find their way to appropriate resources, bringing continuity to those services both in the prison and in the community. However, those efforts are limited to substance abuse only.

A range of other issues, such as mental health, homelessness, poverty and dysfunctional families, could be dealt with much more effectively if we held on to people within the community. The disruption caused between the community and prison makes it difficult to do much more than signpost the right service. As Councillor Jackson said earlier, the voluntary sector could do a lot more to build services around individuals. There is evidence of that in Edinburgh through the community link centres, but I do not think that it happens enough at the moment.
either housing officers visit people in prison or prisoners are allowed out to visit housing officers before they are released. There is a level of continuity at the moment; we just need to boost it.

Jeremy Purvis: I want to be clear about the combined position of COSLA and the ADSW, especially in relation to paragraph 6 of the joint submission. Is it your view that part of the increased expenditure attached to the bill would be more effectively spent on services in the community if there was an end to short-term sentences? As I said before, 48 per cent of the average daily prison population are serving sentences of less than three months, so we could use that period as a definition of short-term sentences.

Councillor Jackson: I do not think that we would tie the idea to money that might come with the bill, but that is our combined position. I represent a range of views, so some people will not subscribe to what I am saying. However, the majority view is that it is more cost effective to handle many people in the community rather than in prison, because of prison costs and the lack of effect that some of the programmes delivered with short-term sentences have.

Alan Baird: I agree with Councillor Jackson.

Jeremy Purvis: On the period of time, I gave the example of three months. Is your view that, other than last-resort sentences for persistent low-level offenders, there should be a phasing out of sentences of less than three months?

Councillor Jackson: The majority view is that people given short-term sentences could be better served by community disposals.

Jeremy Purvis: Is that the same for the ADSW?

Alan Baird: Yes.

Jeremy Purvis: I want to move on to licence conditions being breached. Do you envisage a situation under the bill in which more offenders are returned to custody for breach of licence? In your evidence, you indicated some alternatives to returning to custody for breach of licence. What are they?

Alan Baird: I want first to pick up on short-term sentences, which are linked. Clearly, a high breach rate is likely with short-term sentences. The criteria mention being of good behaviour for up to six months. I guess that we should all be of good behaviour, and because someone is subject to licence it does not mean that they should be any different from those of us sitting around the room today.

On the wider point, which part of the submission are you referring to?

Jeremy Purvis: Forgive me for not having the paragraph to hand. I thought that I read that you were looking at alternatives to returning to custody for breach of licence—you might be able to help me out.

It is paragraph 7—the paragraph following the one I mentioned earlier—of the ADSW and COSLA joint submission, which states:

“There are questions around whether breach always warrants custody.”

Councillor Jackson: We have arrived at the same issue. Should people who breach automatically be put back in prison, or could another disposal take into account the fact that they have breached their conditions without there being a need for them to go back into custody? We have not thought through to the nth degree what that would mean, but we can come back to you.

Jeremy Purvis: That would be welcome.

I have a brief question that follows on from Mr Baird's comment about the social inquiry report. The committee may itself consider the issue, but can you tell us in what proportion of cases a social inquiry report is asked for when sentences are given in courts?

Alan Baird: The proportion is likely to be high when prison is being considered, but I do not have the figures in front of me. The number of social inquiry reports has risen considerably over the past few years. Sheriffs like them for many different reasons, for example they give good background information and options for sentencing. I wonder—this is only a thought—whether they will look more to social workers to help them to make recommendations on the percentage of a sentence that is to be served in custody.

Jeremy Purvis: Or indeed for recommendations on some of the conditions that should apply.

Alan Baird: Yes.

Jeremy Purvis: But that would not necessarily be a negative thing. If we put aside the resources issue for a moment, as a point of principle it would be a positive step towards good practice.

Alan Baird: You must take account of the number of social inquiry reports that are currently being produced and whether the figure is already higher than it should be. I would like it to be reduced, which might give us more capacity if sheriffs want to seek recommendations or the views of social work staff on whether the custodial part should make up 50 per cent or 75 per cent of the sentence.

Maureen Macmillan (Highlands and Islands) (Lab): I will go back to risk assessment and ask
you to clear up a point for me. Perhaps you clarified it in your oral evidence, but if you did I did not pick up on it.

Paragraph 11 of the ADSW and COSLA joint submission states:

“This joint process of risk assessment between Scottish Prison Service and local authority Social Workers raises difficulties related to the contract culture within SPS which would benefit from consideration.”

Can you tell us about that contract culture?

Alan Baird: From my perspective, the contract culture has been very much part of the way in which the SPS has operated for many years. Currently, the SPS has a contract with each local authority in whose area a prison is situated. In the past, that has caused some difficulty in relation to the extent to which we are able to meet, with the resources that are available, the obligations that attach to the contracts. I would like a discussion to open up on the best way to provide social work services in prisons, particularly given the increased level of joint working that we have talked about today and which should happen under the 2005 act. There is a duty to co-operate. I would like to see a performance framework that covers expectations of both statutory and non-statutory work within prisons. There is now an opportunity, which has not existed in the past, to have a dialogue.

Maureen Macmillan: That is helpful.

I want to ask you about the role of the voluntary sector in more detail. I know from the committee’s youth justice inquiry that the voluntary sector plays a huge part in delivering youth justice services. There is a lot of expertise in the voluntary sector. I know that there is expertise in the area that we are talking about now. Organisations such as Sacro and Apex Scotland operate programmes in prisons and also do work on the outside.

The Executive has said that it expects that local authorities might commission voluntary organisations to deliver all or part of the supervision aspects of an offender’s licence. How much do local authorities rely on the voluntary sector? What is the policy on voluntary sector engagement?

Councillor Jackson: Local authorities rely on the voluntary sector significantly, but capacity issues will exist in the voluntary sector. One reason for establishing the criminal justice authorities—I mean community justice authorities; I make that mistake sometimes—was to bring people together to thrash out such issues. The voluntary sector will have a significant role, but we need to talk to it about its capacity to deliver. Given that the CJAs are still in their relative infancy, those discussions continue.

Maureen Macmillan: How much do you propose to involve the voluntary sector? One complaint from the voluntary sector about youth justice was that it was never involved in strategic planning or making strategic decisions—it was always brought in at the last minute. Will the voluntary sector have more of a strategic role?

Alan Baird: The situation has already changed—the community justice authorities have changed that. I am a member of a scrutiny panel that met last week to consider area management plans. Two members of the five-person panel were from the voluntary sector. It was clear from the management plans that the sector plays an increasingly important and vital role in the development of services, which will strengthen in coming years.

Maureen Macmillan: Which voluntary organisations are likely to be partners? I know about Sacro and Apex Scotland. Are there others?

Alan Baird: NCH has a good track record of working with offenders and my authority, Dundee City Council, has been an integral part of group work for offenders for some time. Victim Support Scotland is a major player in dealing with victims and that role is strengthening. I am sure that David McKenna, the organisation’s chief executive, will be happy that I have made those comments. It is important to note that several smaller, local voluntary organisations are vital to meeting local needs and have identified gaps. Locally and nationally, the voluntary sector will play a significant role.

Councillor Jackson: The issue for CJAs will be how we involve all those organisations. It is fairly easy to bring on board bigger organisations, but we must ensure that smaller, local organisations feel that they are part of the scheme that we are operating and the new world that we face.

Maureen Macmillan: I presume that you are considering service level agreements and so on locally. How does that fit in with what you said about qualified social workers and paraprofessionals? I am aware that although many voluntary organisations employ qualified social workers, many have people who are not qualified social workers but who have deep expertise in a narrow band. I presume that you would recognise such expertise.

Alan Baird: Absolutely. In some respects, that is no different from the situation in criminal justice services in local authorities, which have a mixed bag of people who are qualified in social work and people who are qualified in other areas but who have commitment, passion and great experience. All those aspects need to be harnessed to provide the right services to individuals in the community.
Maureen Macmillan: However, you are still anxious that the voluntary sector does not have enough capacity.

Alan Baird: The increase in numbers that we have talked about means that it is a challenge for us all to ensure that we find the right resources and train people in the required way. Unfortunately, I do not have an answer to all that this afternoon.

Maureen Macmillan: Thank you. That is helpful.

Councillor Jackson: The aim is to build capacity in the community.

The Convener: Representatives of the voluntary sector will give evidence next week.

Cathie Craigie: Community justice authorities have been mentioned. They are in their infancy. Are they ready to take on the additional work that will be generated if the bill is enacted?

15:00

Councillor Jackson: They are in their shadow year at the moment, and will go live in April. It is fair to say that some authorities are further ahead than others. We have to ensure that we share best practice and the experiences of the authorities that are further ahead.

The Convener: We turn now to weapons. I am conscious of the time, but a lot of vital evidence is emerging this afternoon.

Jackie Baillie (Dumbarton) (Lab): I will be swift, convener.

In its response to the Executive’s consultation, COSLA suggested that anyone who really wanted to purchase a knife would find a way around the licensing restrictions. A number of business activities are already covered by licensing schemes. Why do you think that a licensing scheme for knife dealers would not be a useful step forward?

Councillor Jackson: Lindsay Macg McGregor has more expertise than I do in this area.

Lindsay Macgregor (Convention of Scottish Local Authorities): In itself, the bill will not reduce knife crime, but COSLA believes that it will send out the right messages and that it will be a useful part of a bigger jigsaw.

We are not saying that everybody will automatically divert their purchasing power, but we will have to keep an eye on the situation. The police will have to monitor it closely over the next few years to see whether the locus for sales shifts to internet mail order, for example, or whether the cutting off of local sources reduces knife crime—as we hope it will. COSLA welcomes the bill, but it must be part of a much bigger picture of measures to address knife crime.

Jackie Baillie: Does COSLA foresee any problems in enforcing the proposed licensing scheme?

Lindsay Macgregor: Not particularly; not in most places. The extent of knife crime is surprising, even in small towns. It is not just an urban issue. However, trading standards officers and other officers in local authorities already have pretty good relations with their business communities, and they know the kind of places that will be licensed, therefore licensing will not be a major issue. However, some little points might have to be ironed out and the definitions will have to be clear. There might be a burden on second-hand dealers that pay other licence fees. How can we ensure that people go along with the scheme voluntarily rather than having to be forced to do so?

In our written submission, we point out the resource issues for local authorities. Pieces of legislation such as the bill are important, but they are not necessarily accompanied by resources that allow there to be a single dedicated post in each local authority. The work might take up one eighth or one twentieth of somebody’s time. There will be fees, but we have to ensure that they cover such costs. With more and more small pieces of legislation, the costs accumulate, and can amount to a greater burden on local authorities.

We have warned you about those kinds of issues. We have also pointed out one or two matters that might have to be explored further. How will the legislation be enforced when people sell swords, for example, at sports events? How can we ensure that local licensing arrangements are not a burden on local enterprises that will be captured by the licensing regime? One or two anomalies will have to be sorted out to ensure that the legislation can be fully implemented.

Jackie Baillie: That was a helpful response. No doubt we will come back to ironing those issues out.

One issue troubles me: the bill makes no distinction between a domestic knife and a non-domestic knife. Perhaps we do not need one, but I am not sure that some of the cleavers that I have seen in kitchens around Scotland would be regarded as domestic knives. Will the lack of a definition be confusing for retailers as they wonder whether they need to apply for a licence or not?

Councillor Jackson: It probably will be.

Jackie Baillie: Have you given any thought to a definition?

Lindsay Macgregor: We have not as yet. We can simply see that, without a definition, there may be difficulties in enforcing the legislation. We also recognise the pros and cons that are involved. Certainly, the proposal merits further discussion.
Jackie Baillie: Is it the place of the Executive to offer guidance to local authorities in this regard?

Lindsay Macgregor: Joint responsibility is probably involved, as trading standards officers and others bring a great deal of expertise to the area. They also know what makes sense in the context of their expertise.

Jackie Baillie: You spoke of anomalies in the conditions that are applied by authorities throughout Scotland. Obviously, the bill allows for the Scottish ministers to set minimum conditions by way of statutory instrument and for authorities to impose additional conditions. What conditions are likely to be applied to the licensing schemes that the local authorities will run? What additional conditions will authorities seek to impose?

Lindsay Macgregor: I cannot give a full answer to the question, but I can get further information for you. Depending on the circumstances, all sorts of things might be relevant, for example showing proof of age in the shop and applying local curfews to knife sales. Trading standards colleagues are best placed to provide further information on the matter.

Jackie Baillie: It would be helpful if we could receive that.

The Convener: It would be extremely helpful if the COSLA representatives would ask their trading standards colleagues to submit information to the clerks.

Councillor Jackson: We will do that.

The Convener: Thank you.

Maureen Macmillan: Further to Jackie Baillie’s question, perhaps it would be an idea to require some sort of identification. I understand that some local authorities require the production of photographic ID when purchasing certain second-hand goods. Would it be a good idea to make that a licence condition for non-domestic knife purchases?

Lindsay Macgregor: Trading standards officers are considering that issue at the moment, alongside their consideration of due diligence factors, such as being clear about the purchaser’s purpose and intent when buying an item. There are different ways of imposing conditions.

Maureen Macmillan: Instead of leaving the decision to individual local authorities, should the Scottish ministers impose the production of photographic ID as a standard licence condition?

Lindsay Macgregor: A balance has to be struck in terms of the additional burden that is placed on authorities. In some areas of Scotland, the requirement will be a fairly sensible one, whereas it will be less of an issue in other areas. In the latter areas, it could be seen as an additional burden for no good reason.

Colin Fox: I have two relatively straightforward questions. First, have you got to the point in your discussions where you have an idea of the charge that an authority will make for a knife dealer licence?

Lindsay Macgregor: I believe that it will be around £50.

Colin Fox: Why is it pitched in that way?

Lindsay Macgregor: That is the rate for a number of other similar licences. We need to strike a balance between the charge not being too burdensome and having some meaning. The thinking on the matter is not fully developed as yet.

Colin Fox: Secondly, was any consideration given to an alternative to a licensing scheme? I am thinking of something that would have the same impact on the availability of knives but that does not go down the licensing route.

Lindsay Macgregor: I have no idea whether the Scottish Executive has pursued any other line.

Colin Fox: Did COSLA come up with any alternatives in its deliberations?

Lindsay Macgregor: Hand in hand with the approach that is being taken on licensing, we are looking at the promotion and marketing of knife sales. We want to see whether anything more needs to be done alongside—but not instead of—the bill. There is room for us to carry on exploring the issue to see how we can maximise the impact of the scheme. The feeling is that knives can be inappropriately promoted and marketed. We want to see whether measures can be included in the bill—or implemented alongside the bill’s provisions—to lower the image of knives, as that is part of the issue in terms of knife crime.

Colin Fox: As you say in your submission, in addition to clamping down on promotion, you want the bill to place “a condition on dealers to display a notice stating the offences”.

Lindsay Macgregor: Yes, absolutely. We want to raise awareness in general. The Scottish Executive and local authorities can work together on that.

Mr MacAskill: I am interested in the suggestion that the cost of a licence should be only £50, on the basis that it should not be too burdensome. Surely we want the cost to be burdensome so that a knife is not seen as simply another commodity? If some onus is to be placed on those who engage in the selling of knives, perhaps a significant cash requirement would be one way of filtering out those who are simply trying to make a fast buck.

Councillor Jackson: We need to balance that against the fact that some people sell knives for
specific purposes, such as to meet the needs of gamekeepers.

**Lindsay Macgregor:** Our starting point is that the majority of those who currently sell knives probably do so for reasons that are okay. However, the amount of bureaucracy involved in the licensing scheme might put off some retailers but not those who sell fishing knives and so on. We need to strike the right balance.

**The Convener:** I thank the panel for answering our questions this afternoon. We look forward to receiving the documents that were promised would be sent to the clerks. We will now arrange for the second panel of witnesses to sit at the table.

Good afternoon, gentlemen, and welcome to the next part of our evidence taking this afternoon. I welcome our second panel of witnesses: Superintendent William Manson and Detective Superintendent James Cameron, who are both from the Association of Chief Police Officers in Scotland; Chief Superintendent Clive Murray, who is the national president of the Association of Scottish Police Superintendents; and Detective Chief Superintendent John Carnochan and Will Linden, who are both from Strathclyde police's violence reduction unit.

I will start off the questioning. How do police forces in Scotland currently deal with breaches of licence and recall to custody? I will leave it to the witnesses to sort out who should answer that question. I know that they are all bursting with information.

**Chief Superintendent Clive Murray (Association of Scottish Police Superintendents):** The police approach can involve different ways of dealing with that, but it is fairly simple. If we arrest an offender whom it transpires is subject to licence arrangements, we notify the courts or social work and they then intervene. At the moment, it is not that much of a police function.

**The Convener:** In other words, recall to custody in not the province of the police, but the police will act on it.

**Chief Superintendent Murray:** We will act on it and detain the offender. If the offender is recalled to custody, we will facilitate the arrest from the individual’s abode or wherever they are, and put them back into the criminal justice system.

**The Convener:** In other words, the police are not the lead on the recall.

**Chief Superintendent Murray:** That is correct.

15:15

**The Convener:** Can you give us an estimate of how much police time is spent on dealing with breaches of licence and recalls to custody?

**Detective Superintendent James Cameron (Association of Chief Police Officers in Scotland):** It is a small part of our business, but it occurs on a daily basis. It is difficult to quantify, because the people who figure in that process become part of the everyday warrants system, and we usually return them to prison as the result of a warrant being issued. It is difficult to quantify what percentage of our business that constitutes, but it is a daily event.

**The Convener:** What are the triggers for recall and how are the police called to deal with it?

**Detective Superintendent Cameron:** There are a number of triggers for recall, mostly through the social work support for individuals in the community. If someone breaches the terms of their licence or whatever order they are subject to, the supervising social worker reports back to the Parole Board for Scotland, asking for a recall to prison. If it is decided that a recall is required, a warrant is granted. There is also some form of recall to prison by the commission of a further offence, although that is less to do with the licensing arrangements at the moment.

**The Convener:** How long does it take from somebody being put into the system to the police being called in to recover them?

**Detective Superintendent Cameron:** That is difficult to quantify. It depends on the nature of the breach of licence for which they are being recalled. I understand that a report is submitted by the social worker to enable the Parole Board to make its decision. There is some concern about the length of time that that takes, but that is a matter for social work. It is not an instant process. The police react as soon as they can, once they have received the arrest warrant for the individual. It is more a question of the social work process.

**The Convener:** Do your organisations have a view on how that process works?

**Detective Superintendent Cameron:** Yes. The quicker it works, the better. If the process is about reducing reoffending, it needs to be speedy. In my view, people should quickly be recalled to courts to answer for the difficulties that they present to the community.

**Mr MacAskill:** I am conscious of the comments that you have made about quantifying time. The Executive estimates that the bill might result in an extra 8,600 offenders a year serving part of their sentence on licence, which could result in 1,290 being recalled. What impact would that have on police resources?
Detective Superintendent Cameron: It is not as simple as looking at the process of recalling individuals to prison. As you heard a moment ago from our social work colleagues, it is about the impact that the individuals have on crime and the level of risk in terms of reoffending and causing serious harm to the community. Anything that increases reoffending in the community will create extra work for the police and extra suffering for the community that has to deal with the outcomes of the process. It is not a matter of simply quantifying the time that it takes police officers to arrest individuals and take them back into the system; it is about the effect that the new system will have on offenders’ living in the community.

Mr MacAskill: The Executive has also stated that allowing the police to return individuals to custody without needing to go through the courts will help to reduce reoffending. Although that may be the case in the short term, is it your experience that individuals who are returned to custody for breaching licence conditions ultimately desist from engaging in criminal activity?

Detective Superintendent Cameron: Clearly, there is a need, on occasions, for respite for the community, and the only way to provide that is to place offenders in custody. I was interested in the earlier question and response about three-month sentences. There is no simple equation, as such a sentence may be based on a course of conduct rather than an individual event. Although I might support the view that a three-month sentence is inappropriate, there is a lot more detail than the length of service to be looked into. That is another issue for us to address.

Chief Superintendent Murray: In relation to reoffending, we can be clear about one thing: when individuals are in prison, they do not reoffend. It should be no surprise that having record prison attendance has led to reduced levels of crime. Over recent periods, the police have been effective in detecting crime, which has led to more people being presented to the courts and being sent to prison. As a consequence of that, we have a reducing crime rate.

The Convener: We do not want to pry into police intelligence. However, while we are considering the bill, the local police forces will want to keep a watching brief on those individuals who, in their opinion, might be a risk. Is that something on which you will seek to input into our evidence taking over the next couple of weeks? I am talking about the role that you have or assume in the community when somebody is out on licence.

Chief Superintendent Murray: Our role in the community is fairly clear: we work with partners to make the best-informed decision on the risk that an individual presents. We have gone through the bill in some detail and we believe that there are areas in which further clarity is required about the police role in risk assessment, such as the input that will be required from the police in relation to information that is provided to the parole board and the information that will be required from the police in the context of a breach of community licence. Particularly in relation to sex offenders, we have built up a strong partnership with criminal justice social work and others in the criminal justice system in transferring relevant information so that the best decisions are made.

Mr MacAskill: What is your evidence for the statement that the reduction in some crime figures has been the result of imprisonment as opposed, for example, to there being fewer young males? Throughout the generations in our society—and, indeed, across societies—it is usually young males who perpetrate crime.

Chief Superintendent Murray: I cannot give you scientific information. Anecdotally, I can tell you that the feeling among senior police officers who are involved in day-to-day policing in the community is that, once the chronic recidivists are incarcerated, crime levels go down. There is plenty of information on that from on-going analysis in each of the communities—we call them police divisions—across Scotland. There are certain key offenders who commit crime far in excess of other offenders. Invariably, when those offenders are in the community, crime levels go up.

Mr MacAskill: How does the fact that we are locking up more of those people square with the increase in the levels of some of the most serious offences?

Chief Superintendent Murray: Can you repeat that, please?

Mr MacAskill: I do not follow your logic. Some of the more serious aspects of criminality are increasing—statistical evidence shows that they are on the up. How do you square increasing custodial sentences with the fact that the levels of some serious crimes are increasing? Surely, your logic would dictate that they would be coming down.

Chief Superintendent Murray: We regularly receive clear detail of the amount of crime that is going on in communities. From the information that we receive, we see a correlation between chronic recidivists—offenders who commit crime within communities regularly—being placed in prison and crime levels going down.

Detective Superintendent Cameron: The difficulty in making one law fit all is that there are those who fall out with the distinct definitions. The recidivist is a fine example of that. The police are just waiting for certain individuals who are in
prison at the moment to come out of prison so that they can catch them and put them back in. That is the harsh reality. We must find a way of treating those people differently from individuals who are in prison for three months when they should not be there. That is the reality. We must take different steps rather than make one size fit all. The start of that process must be to assess an individual’s risk when they are in prison, and it should extend to assessing their risk when they come out of prison and before they go in the next time. We need to join up the process a bit more and make it tailored to the individual, which I think it is intended to be.

Superintendent William Manson (Association of Chief Police Officers in Scotland): A distinction must be made between reoffending and the risk of harm to the community. All too often, we get wound up with the purely statistical nature of reoffending, whereas the risk of harm is much more important. The development of multi-agency public protection arrangements throughout Scotland as a result of the passing of the Management of Offenders etc (Scotland) Act 2005 will go some way towards assisting us to concentrate on the risk of harm as opposed to purely on statistics.

Jeremy Purvis: I want to develop that point. Sheriffs will have decided that some of the 48 per cent of all offenders who are serving prison sentences of less than three months are a danger to society, which is why they are in prison. I presume that those people will not stop being a danger to society once they are released into the community after five and a half weeks. In that context, the bill includes additional conditions on release that can be tailored to individuals.

Probably more than half of the submission from the Association of Scottish Police Superintendents consists of statistical analysis, which leads to one conclusion: imprisonment has not been the right approach for the large majority of those who are serving short-term prison sentences. What are the alternatives to that approach and under what circumstances should those alternatives be used? If there is no desire under any circumstances to abolish prison sentences of less than three months, what criteria should be used for imposing short-term prison sentences? I think that the ASPS submission mentions a number of benefits that would result from increasing the pool of available sentencing options. What are those options?

Detective Superintendent Cameron: We would probably agree that short sentencing does not work, but a short sentence can sometimes be the only means of respite for a community. That cannot be ignored. Sometimes there will be respite for a community only when a person is put in prison. That is why we must tailor measures to individuals rather than take a collective view—otherwise, individuals will be missed and will slip through the system and continue to commit crimes. The issue is not the harm that is caused by individual crimes that are committed, but the cumulative harm that people will cause over the period during which they are outside the prison regime. We must concentrate on that.

Jeremy Purvis: I asked specifically about the circumstances under which people should receive prison sentences of less than three months. I want to be clear. Let us consider an individual with four convictions for assault or an individual with five antisocial behaviour orders who is a real nuisance. Would a custodial sentencing option be taken purely so that such people will be out of the community and the community will therefore have relief for five weeks before the person returns to it? The same pattern recurs time and again. What is the alternative to such sentences?

Detective Superintendent Cameron: The alternative is taking different approaches with different individuals. It is not simply a matter of saying, “Another five weeks will do it”; we must specify what is planned for an individual on their release after five weeks. Specialised services can be put in place to deal with the points at which there is most need. We should look beyond sentencing and consider criminals’ individual needs.

Superintendent Manson: We should also consider the difficulties in engaging with certain people. This may sound harsh, but some people who commit crimes live outwith the community. Signposting has been mentioned. How can we engage with such people, point them in the right direction and provide appropriate services? We must ensure that we can provide support for people with drug-related or other needs at the appropriate time. If we cannot get such people to engage in the community, prison-based assistance could be the best way of engaging with them formally over a short time.

The Convener: We will now consider part 3 of the bill, which deals with weapons.

Jackie Baillie: As the witnesses know, the bill does not seek to ban the sale of non-domestic knives; rather, it simply requires retailers to obtain a knife dealer’s licence if they want to sell such items. I direct my question first at the witnesses from Strathclyde police’s violence reduction unit, who have been sitting quietly. How much of our problem with knife crime is down to the irresponsible selling of knives and how much is down to their general availability?

15:30

Detective Chief Superintendent John Carnochan (Strathclyde Police): I do not think
that there are any statistics on the role that is played by irresponsible selling, but I am sure that we can all provide anecdotal or photographic evidence of some outrageously stupid activities.

I know that we are discussing how to implement the bill, but we must remind ourselves that we are trying to reduce the level of access that young men, in particular, have to knives. Statistics show that, in serious assaults or murders in homes, the weapon is likely to be a knife from the kitchen drawer. However, in assaults on the street, the weapon is likely to be a locking knife. After all, such weapons need to be concealed and, for obvious personal safety reasons, you would not put any other sort of knife down your shorts. We simply have to reduce the availability of such knives.

As the colleague from COSLA pointed out, none of us is suggesting that, on its own, the bill will resolve issues that have been around for decades. However, when taken with the other measures that either exist or are about to come into force, it can contribute significantly to addressing these problems. As I have said before, if legislation can save one life, it can be counted as good legislation, and we think that the bill could be good legislation.

Jackie Baillie: One of the committee’s reports has quoted you before to that effect, and no doubt your view will find its way into the report on this bill.

I take your point that the bill is one piece of the jigsaw. However, what specific provisions will limit immediacy of access to knives, which is the outcome that we all want?

Detective Chief Superintendent Carnochan: Some young men carry these knives as a badge of pride, and I imagine that there is competition over the sort of knife that they have, where they got it, how long they have had it, where they hide it and so on. I certainly think that the bill will place more responsibility on the small minority of individuals who tend not to be so responsible when selling knives. We will have to wait for some of the detail to unfold, but any measures should include requesting the purchaser’s name and address and proof of identity before a knife is sold and a ban on displaying or advertising these kinds of knives.

I think that the bill sends out a message to communities in the rest of Scotland that know where the knives are that, although we are not proud of the levels of knife crime in this country, we can perhaps take some pride in the fact that we realise that we have a problem and are trying to do something about it.

Of course, the bill will not solve the problem overnight, because young men who want knives will get them. However, that is no reason not to try and limit access to them in the same way that we limit and license access to alcohol and firearms.

Jackie Baillie: I explored with COSLA the bill’s lack of a definition of domestic and non-domestic knives. Does that concern you, or is a knife simply a knife? Is the key point not the kind of knife it is, but its potential to cause damage?

Detective Chief Superintendent Carnochan: At one level, it can be argued that a knife is a knife and the question whether it is domestic or non-domestic matters not a jot if it is about to be plunged into someone’s chest. However, as far as the bill is concerned, we need to remind ourselves of what we are talking about. The knives that are used on the street are locking knives and, once we can get our heads around what constitutes a non-domestic knife, we will find it easy to reach a definition—although I am sure that, as with all legal definitions, it will be difficult to read.

The Convener: You mentioned proof of identity. Are you suggesting that when someone purchases a non-domestic knife they must give proof of who they are and where they live, which will be recorded by the dealer?

Detective Chief Superintendent Carnochan: I think that that would be a very wise course of action.

Chief Superintendent Murray: It is only reasonable to expect people to provide a good reason for purchasing a non-domestic knife. We feel that public expectation is a factor in that respect. The public expect us to try to control the displays of quite horrific implements that are on general sale in certain shops.

Jeremy Purvis: Given that the provisions do not refer explicitly to non-domestic knives, might the bill result in more incidents involving domestic knives?

Detective Chief Superintendent Carnochan: As I said earlier, there are practical implications. It is more difficult for someone who is out and about to hide a fixed bladed knife or even a machete. From that perspective, such knives would be difficult to carry but might be easier to detect. We have seen some increases in that regard.

Jeremy Purvis: You made the point that even a small cut that is made with a blade less than 3in long could prove to be lethal. The committee heard evidence from officials in the Executive bill team that a licence would not be required for the sale of folding pocket knives with blades of 3in or less. Do you have any comment on that?

Detective Chief Superintendent Carnochan: If you spoke to casualty surgeons or to Rudy Crawford, they would tell you that a 3in blade that is thrust into the upper torso is likely to hit a major
structure. However, the point is that what is proposed is a start. If we look at what is happening right now, a penknife or a Swiss army knife is unlikely to be used. A casually knife will tell you that any knife that gets stuck into your upper torso will do you damage. Whether a victim lives or dies comes down to luck—as well as the availability of excellent health services—more than good judgment.

**Will Linden (Strathclyde Police):** Knife carrying is about status and a penknife is a low-status weapon. A penknife could kill if it were to be stabbed into the right area, but it is unlikely to be carried and there is little evidence of penknives being used in knife assaults. People tend to want to use the more high-status weapons.

**The Convener:** A member held an event in the Parliament about weapons and the gentleman who gave the presentation said that surgeons had told him that they are discovering that one of the most offensive weapons is the Philips screwdriver. Should Philips screwdrivers be part of any legislation and control?

**Detective Chief Superintendent Carnochan:** We do not have any statistics on Philips or other screwdrivers. I remember reading something about that in the press, but we do not have the figures. A surgeon might tell you that he has treated someone with such a wound, and I once investigated a murder in which someone was killed as a result of being stabbed with a Philips screwdriver. There is anecdotal evidence, but it comes from a small minority of incidents. However, if someone was caught on Sauchiehall Street at 2 o'clock in the morning with a Philips screwdriver, there is anecdotal evidence that one of them comes from those avenues?

**Detective Chief Superintendent Carnochan:** We do not have any statistics on Philips or other screwdrivers. I remember reading something about that in the press, but we do not have the figures. A surgeon might tell you that he has treated someone with such a wound, and I once investigated a murder in which someone was killed as a result of being stabbed with a Philips screwdriver. There is anecdotal evidence, but it comes from a small minority of incidents. However, if someone was caught on Sauchiehall Street at 2 o'clock in the morning with a Philips screwdriver in their pocket, reasonable authority and lawful excuse might come into play.

**Chief Superintendent Murray:** Such a person would be dealt with anyway.

I have dealt with a murder in which the weapon was a screwdriver, but not a Philips screwdriver. Where do we draw the line?

**Colin Fox:** I take the point about the bill inhibiting how easy it is for someone to access a knife. Do you have any concerns about the impact that the bill might have on what might be described as illicit trading in knives, whereby people get knives off the internet or by mail order but not from licensed dealers? As your colleague said, young men will go to great lengths to get such a status symbol. Do you worry that there might be an increase in that illicit, unlicensed trade in knives?

**Detective Chief Superintendent Carnochan:** Absolutely. It is like grabbing the soap; if you grab it too tightly, it moves somewhere else.

We have some measures in place. At every airport in Scotland, people who are going on holiday are handed a leaflet showing the offensive weapons that will be taken from them if they bring them back to the country.

We have contacted one of the biggest internet auction sites, which does not want to be involved in the auctioning of knives. It is therefore keen to demonstrate social responsibility, which is great; that would also afford the site some kudos.

You are absolutely right that it will be difficult. People will get knives from their friends or they will have them stashed. We will not catch everyone who buys knives abroad and brings them in through the airport. Some parents even buy them as gifts for their kids. You can see people, when they are abroad, oohing and aahing at these horrible, dreadful things. In the longer term, we have to change the prevailing attitude.

**Colin Fox:** What intelligence do you have on the knives that young men carry these days? What proportion of them comes from those avenues?

**Detective Chief Superintendent Carnochan:** We do not have statistics on the sources of knives. That said, we have a lot of statistics on knives and even on how we record the information. We are beginning to change and improve on all that. For example, we are introducing briefing and debriefing documents in cases of murder or attempted murder. We ask senior detective officers how we could have prevented the crime and whether any other factors apply. We ask what part was played by poor street lighting or alcohol—the latter is usually involved in such crimes. We also ask what type of knife was involved and whether we know where the accused got the knife.

We are looking to undertake research with the Scottish Executive on 42 people, all of whom were under 21 when they were convicted of murder involving a knife. The research will span an 18-month period, during which all those crimes were committed in the Strathclyde area. It is an absolute shock that, over that period, 42 people under the age of 21 were convicted of murder involving a knife. We want to undertake some proper research into the knives that were used in those crimes, one of which involves a woman.

We want the researchers to consider all the factors including how the accused got the knife; what their previous convictions were; and whether they had any involvement with the services. That links into the other legislation to which members have referred; it is about prevention and protective factors, reducing risks and finding out whether we can learn from the convictions. What has happened in the past is a pretty good predictor of the future. That said—as another witness said—it is hard to make accurate predictions. That is the difficulty with risk assessments.
Colin Fox: In relation to the statistics, everyone is shocked at the disparity between the west of Scotland and the rest of the country. Your evidence seems to be that that is largely the result of cultural issues; I do not think that you are saying that access to knives from abroad relates only to Glasgow and not to Dundee or wherever.

Detective Chief Superintendent Carnochan: If you speak to accident and emergency surgeons or police officers, you will find that Glasgow has a volume of such crime. However, I do not see a north-south divide or an east-west divide. There were 137 murders in 2004-05, half of which were committed with a knife and 25 of which were committed outwith the Strathclyde area. The issue is Scotland-wide, albeit that the figures will vary. Glasgow and the west may have the volume, but knife crime happens throughout Scotland.

Chief Superintendent Murray: Again, the common perception is that there is an east-west divide. However, as John Carnochan said, our information suggests that the problem is national. We need to address that.

The Convener: You say that the issue is national and you have spoken of knives being brought into the country from abroad. What about the knives that are brought by land into Scotland from other parts of the United Kingdom?

Detective Chief Superintendent Carnochan: We have as yet found no way of putting up anything at the border. I am not sure whether the committee wants to explore that issue.

The convener is right in saying that the problem is national. We liaise with the Association of Chief Police Officers—indeed, people in England and Wales are showing great interest in what we are doing on knife crime. We are talking not only about corner shops or shops in the Royal Mile; some big, national organisations such as B&Q need to think about and pay attention to the issue. It will be difficult for us to close down that avenue. We need first to win hearts and minds.

Cathie Craigie: The debate has been interesting. Even if the bill makes only a small step forward, I hope that it will be another step in the right direction. The bill will put in place the requirement for knife dealers to be licensed, although the scheme will not apply to private sales. The analogy that has been made involves second-hand dealers such as car dealers. For those who are involved in the merchandising of knives, the bill serves to send out a signal, and that is enough. What is important is the availability of the provision—the demonstration that it is in place. We need to undermine the status of knives and challenge those who carry them in every way on why they carry them. That is the longer-term work.

I accept your point, but there is an issue around dealing at the higher end. There are people who collect swords, and it would be difficult for legislation to distinguish between such collectors and others who might acquire weapons.

15:45

Cathie Craigie: We spoke about people who were buying from a licensed dealer needing to have a form of ID. Would it be reasonable to require private dealers to have some information about a person to whom they have sold a knife?

Detective Chief Superintendent Carnochan: We have been told—I accept that the argument is not particularly robust—that a private collector who wanted to acquire a sword would find the cost prohibitive, and that the cost would bring its own restrictions. If someone was paying several thousand pounds at a private sale for a collector's piece that had some antique or specific other value, we could, if we were to investigate, track the money and find out about the individual in that way. In general, however, I think that it would be difficult to do that.

The Convener: That leads us neatly on to our questions on swords.

Maureen Macmillan: Are you content with the proposal on the restriction on the sale of swords, whereby the seller must take reasonable steps to confirm that a sword is being bought for a legitimate purpose, such as highland dancing, re-enactment or the like?

Detective Chief Superintendent Carnochan: I would like to know that the process will be robust enough to ensure that the individual selling the sword could explain, in the cold light of day, who they sold it to and the circumstances in which it was sold.

Maureen Macmillan: What steps would you like to be taken to achieve the aim of ensuring that the seller is selling the sword to a legitimate person or organisation?

Detective Chief Superintendent Carnochan: It would be the same as having proof of name and address. We could go from one extreme to the other. The seller could say, "You can come in and buy the sword, and we will post it to you." That would confirm the address and ensure that the goods were paid for. If a member of a highland dance or historical re-enactment organisation wanted to buy a sword, perhaps they could be
asked for the name of the organisation and proof of their membership. I do not have enough knowledge of such organisations to be able to say whether that would be possible, but that would be the ideal.

**Chief Superintendent Murray:** Such a system is not without precedent. It is routine for individuals who are buying shotguns and other firearms to have to produce evidence such as written confirmation of membership of a gun club. It would be reasonably practicable to do that with swords, but perhaps not with knives.

**Maureen Macmillan:** Last week the worry was flagged up to us that, although people might not buy swords costing thousands of pounds, they could go and buy a sword that was supposed to be for highland dancing or re-enactment and then go home and sharpen it. If they had to produce a document to show that they have membership in a bona fide club, would that help?

**Detective Chief Superintendent Carnochan:** Asking people to do that would not be particularly onerous. More important, it would not be onerous on genuine members of such clubs who are genuinely pursuing their hobby or interest. For those who are buying swords for other purposes, we should make the process as onerous as possible.

**The Convener:** Thank you for your evidence, gentlemen. If you feel after the meeting that there is further evidence that the committee could use, please send it to the clerks as soon as possible.

**Jackie Baillie:** The gentleman from the violence reduction unit referred to photographs of some extraordinary displays of knives. It would be helpful for us to see those photographs so that we can appreciate just how daft the situation is.

**The Convener:** I welcome our third panel of witnesses, who are from the Prison Officers Association Scotland. We have with us Derek Turner, the assistant secretary, and Kenny Cassels, the vice-chair. I thank them for coming.

The Scottish Executive has stated that the bill may result in a requirement for an additional 700 to 1,100 prison places. Is that a reasonable estimate? Given that the prison population is at an all-time high, how would such an increase impact on prison staff?

**Derek Turner (Prison Officers Association Scotland):** In our experience, such figures are always underestimates. When the legislation was changed to do away with people having to pay money to bail people out of prison, we were told that the prison population would reduce immensely but, within a few months, it was back to the same as before, because people broke the police bail and then could not pay themselves out, so the prison population increased. When remission was changed to 50 per cent, we were told that that would empty the prisons but, within six to nine months, we were back in the same situation as before. Now we have fewer prisons than we had before and an all-time high population.

My colleague Kenny Cassels will be able to give you the figures on the reduction in front-line prison staff as a result of us doing our job to make greater efficiency savings for the Scottish Prison Service, which has had an impact on what prison staff can deliver. It has become increasingly difficult to deliver the services with the current number of staff.

**Kenny Cassels (Prison Officers Association Scotland):** If the bill came into force tomorrow, the Prison Service would implode. We are stretching at the seams at the moment, with record prisoner numbers—the figure now runs consistently at more than 7,000. I never thought that I would see the day when Scotland imprisoned 7,000 people, but we are doing so. Derek Turner is perfectly right to say that, in the past six years, as part of the continued drive for efficiencies in the Prison Service and the wider public sector, the service has reduced staffing numbers by 22 per cent. At the same time, prisoner numbers have increased by 29 per cent. We have fewer prisons and fewer staff, but more to do. As I said, if the bill came into force tomorrow, with no phasing in whatever and without our having in place the staffing, proper infrastructure and capital investment to build new prisons, the Prison Service would not cope.

**The Convener:** Given that there may be two new prisons, where will the prison staff come from? I believe that a shortfall in staff is on the horizon because of people retiring.

**Kenny Cassels:** It was decided to build two new prisons in 2002, when Jim Wallace made an announcement in Parliament on the SPS prison estate review. The contract has been awarded for the first prison, which will be at Addiewell. We hope that the second one will be at Low Moss, although that depends on the outcome of a planning appeal. The Scottish Executive and the Parliament set a challenge to the SPS and the trade unions to compete in an open-market competition with the private sector for the second new prison at the Low Moss site. As trade unions, we would have preferred the first prison to have been in the public sector, but we hope to achieve a positive outcome in the bidding process for the second one at Low Moss.

**The Convener:** My question was about where the staff will come from, should those prisons come on stream. Is it likely that quite a large number of prison officers will retire and, if so, how will they be replaced?
Kenny Cassels: The private sector will recruit its employees for the first prison directly. If the bid for the bridging the gap project is successful, the employees at the second prison will be public sector employees as enshrined in the civil service management code.

We do not foresee that a significant number of prison staff will retire in the very near future. There is a healthy turnover of staff, which results from retirements and people leaving, but we do not think that filling the vacancies of retirees will be a significant problem.

Derek Turner: The SPS assesses the situation regularly and there is about to be a new intake of recruits. In places such as the north-east of Scotland, it can prove difficult to recruit and retain people. The wages that the SPS pays and the presence in the Aberdeen area of the oil industry make it increasingly difficult to retain prison staff in jobs in that part of the country.

In addition, we find that people sometimes want to work in the Prison Service for just a few years so that they can put it on their CV—they might want to be a psychologist, for example. After gaining a few years' practical, hands-on experience in a prison, they move on.

Maureen Macmillan: You mentioned the increase in the number of prisoners, overcrowding and the reduction in staff numbers. Does overcrowding have a significant impact on your work on the rehabilitation of prisoners? Perhaps you could tell us about the rehabilitation work that prison officers do and how overcrowding affects it.

Derek Turner: We have a number of intervention programmes, including drug reduction and anger management programmes, and a range of regimes to address offending behaviour. I think that Colin Fox was at the launch of the annual report of the chief inspector of prisons, who encapsulated the problems of overcrowding in nine points. He highlighted the fact that when the prison population increases, staff have great difficulty just meeting prisoners' bare needs and ensuring that common decency is upheld. If a prison is overcrowded, a strain is put on the logistics of providing people with showers, clean clothing and adequate meals. If the provision of the basics is strained, the provision of rehabilitation programmes becomes strained, too.

Although we have managed to meet our key performance indicators over the past few years, we have told SPS management that we have found it increasingly difficult to maintain rehabilitation programmes at the same time as ensuring that prisoners get the common decency that we are required to deliver under the European convention on human rights.

Kenny Cassels: I will use the term “chronic overcrowding” because we believe that it describes the present situation. As well as affecting the prisoner group, chronic overcrowding can have a dramatic effect on staff. It increases their workload and the amount of stress that they experience in the workplace and has health and safety implications. More staff members are going off sick from work-related stress as a result of having to deal with record numbers of prisoners, to the extent that the organisation is now working with the trade unions to put in place access to stress treatment. Those are some of the impacts that having to deal with overcrowding can have.

Maureen Macmillan: Am I right in thinking that rehabilitation programmes are delivered mainly to long-term prisoners rather than to short-term prisoners?

Kenny Cassels: Yes.

Maureen Macmillan: Does having to deliver such programmes to short-term prisoners add to the stress?

Kenny Cassels: It is difficult to deliver any kind of programme to a very short-term prisoner, by which I mean a prisoner who is on a sentence of less than three months. As Tony Cameron said in his evidence to the joint meeting of the justice committees on 31 October, if someone is sentenced to fewer than three months in prison, we basically patch them up, take care of them and try to get them back on an even keel so that they can go back out on the street. We try to do as much as we can but, as you can imagine, it is difficult to deliver any form of rehabilitation programme in any depth in three months.

Derek Turner: One of the accompanying documents to the bill mentions that it would cost £5.5 million to £6.5 million for the extra 17 or 18 officers per thousand prisoners that would be required. That assumption was based on today’s rates, but it does not seem to take into account the large number of people who will have to be considered by the Parole Board for Scotland for the part of their sentence for which they will not be in custody. My reading of the bill is that it will mean more work for prison officers in the galleries, because they will have to do reports to the Parole Board that they do not have to do now.

Mr MacAskill: The next question has been superseded.

16:00

Colin Fox: I met Derek Turner and Kenny Cassels last week at the launch of the annual report by Her Majesty’s chief inspector of prisons for Scotland. It has been widely reported that Dr McLellan stated that one of the nine consequences of overcrowding that we are dealing with in prisons is the impact on risk assessment and the assessment of the
vulnerability of prisoners. They will be perhaps even more vulnerable if they spend less time in prison. What do you think of the Executive’s estimates of the additional resources that will be necessary to cope with the increased demand? You have said that we already have a prison population of 7,000. A previous witness from the SPS said that the bill could increase that by another 1,100 prisoners.

Kenny Cassels: It is difficult to comment on the figures that have been quoted, simply because a whole load of assumptions have been made. The only figures that we take exception to refer to the cost of financing a new establishment. The figures indicate that it would cost £160 million for a public sector procured build and £100 million for a private sector build. As far as we are concerned, those figures emanate from the prison estate review of 2002; they have been lifted directly from that. We question those figures, given our involvement in the bidding process for the Low Moss site. We think that the public sector can go some way towards bridging the gap between those figures.

Colin Fox: Let us be clear. Do you think that the figures are too high, too low or not robust?

Kenny Cassels: The Executive is quoting £160 million for a new public sector jail, and we do not agree with that.

Colin Fox: You question the disparity between the two figures rather than the cost of a new prison being in that ball park.

Kenny Cassels: Yes.

Derek Turner: The Prison Service has said that phasing in would be important and that the increase in prisoner numbers would have to be taking into consideration. We would hate it if the resources were not made available timeously. We do not want to be in the position of receiving large numbers of prisoners and having to catch up with that by recruiting staff, training them and trying to build additional spaces. The change must take place on a planned, phased basis, and there must be a more cohesive approach—a strategic approach, as my colleague says—to the financing of prisons. We are not saying that we need all the money at once but, if we are going to phase the expansion, we need to have the money when it is required and not have to catch-up to deal with large numbers of prisoners without the resources to do so. Even if the resources have been committed, we need to know that the resources are there and that we are planning for the increase in prisoner numbers.

Colin Fox: One big aspect of the bill is the pressure to reduce reoffending—which has been agreed across all parties. I notice that, in the report by Her Majesty’s chief inspector of prisons for Scotland, the one piece of good news is the fact that 92 per cent of prisoners feel that their relationship with prison staff is either okay or better. The jewel in the crown is the one-to-one working relationship between staff and offenders, which reduces the likelihood of prisoners reoffending. You state in your submission that there has been a reduction of around 700 in the number of prison staff.

Kenny Cassels: It is more than 800.

Colin Fox: We are also talking about a great increase in the prison population. How can we have greater confidence than we have at the moment in the SPS’s ability to have a 1:1 or 1:2 ratio of staff to offenders on programme work?

Derek Turner: That was one of the key points that Andrew McLellan made during his presentation. As overcrowding continues, our current relationship with prisoners could be destroyed. I would hate to see us go back to the situation that existed in the late 1980s, which we both experienced. Back then, overcrowding was rife and there was mass insurrection in the prisons. I would hate to see the relationship between prison officers and prisoners deteriorate because of overcrowding.

Colin Fox: Speak starkly to us. How likely is that, given the pressures of the reduction in staff and the increased number of prisoners?

Kenny Cassels: In any society, prisons operate only with the good will of prisoners and staff; their relationships must be good for a prison to operate well. There is no doubt in our minds that if overcrowding continues to increase, those relationships will begin to suffer, as staff will not be able to find the time to deliver a normal day-to-day regime. They will end up chasing their tails and having to leave their residential area to do other duties to cover the additional workload. In our view, there is no doubt that relationships will suffer, although how dramatically they will suffer is another matter. Like Derek Turner, I would not want to go back to the situation of the late 1980s and early 1990s—I am sure that nobody in Scotland would. We are not saying that that will happen, but overcrowding affects more than just the daily prisoner regime—relationships can be affected as well.

Colin Fox: You have an anxiety that the bill could add to that.

Kenny Cassels: Yes, if the bill is implemented in full from day one without serious consideration being given to the infrastructure that is needed to support it and the additional funds that will be required to fund it. The bill will require an additional 700 to 1,000 spaces. We have no reason to doubt the figures given by the SPS and the Executive in that respect.
Derek Turner: Andrew McLellan told me that he is disappointed that the overcrowding is so bad and that there are so many people with mental health issues. I told him that, when I started my job in 1975, we were talking about horrendous overcrowding and many prisoners having mental health issues. In 2006, we are still talking about the same things.

Jeremy Purvis: You have questioned the figures that have been provided for the case management system and mentioned the burden that will be placed on staff. Will you outline staff involvement in the processes that will be requested of you under the bill? On a practical level, what will be involved for staff?

Kenny Cassels: The move to community justice authorities will bring about a change in how offenders are managed in prisons. The casework that will be undertaken will mean staff getting involved not only with specialists within the prison, but with external agencies in delivering community ethos and putting a prisoner back into the community a better person. Undoubtedly, there will be an increase in workload for staff in meeting the needs of the community justice authorities and managing the transition of offenders from prison back into the community.

We have made the point before—I do not recall whether it was to the Justice 1 Committee or the Justice 2 Committee—that a prison officer can work with a long-term prisoner over four years and, all of a sudden, the minute the prisoner goes out of the gate, that involvement comes to a halt. That will change with the introduction of community justice authorities, so there will be an increase in the workload of individual prison officers who work on casework.

Jeremy Purvis: In your written submission, you refrain from commenting on sentencing policy, which you say is a matter for civil servants. I will ask the question anyway, and you can decide how to answer it. You will have heard previous panels respond to a line of questioning about the effectiveness of short-term sentences. As I read the proposals in the bill, the lion’s share of the effectiveness of short-term sentences. As I read the proposals in the bill, the lion’s share of the burden on prison staff will be in doing work—which, by and large, could be good, progressive work with individuals—with offenders who are on short-term sentences. If I heard you correctly, you said that you will carry out the assessments of what programmes are required to be undertaken will mean staff getting involved in the processes that will be placed on staff. Will you outline staff involvement in the processes that will be requested of you under the bill? On a practical level, what will be involved for staff?

Kenny Cassels: At present, 48 per cent of the prison population serves a sentence of less than three months and about 82 per cent serves less than six months. If I understand correctly, you would like to focus on offenders who serve longer sentences because you think that your involvement will be more effective. Can you say what proportion of the prison population today should not be in prison?

Derek Turner: It is difficult for us to assess that. We have sorted out the situation whereby someone who is picked up for a short sentence for a fine default is lifted on the Friday morning and liberated on Friday afternoon with a discharge grant, which is absolutely ridiculous because we still have to put them through the whole process and that is a waste of resources and public money.

The Convener: Could your association provide the figure that Jeremy Purvis asked for?

Derek Turner: It would be difficult.

Kenny Cassels: It would be up to the Scottish Prison Service to provide that.

Derek Turner: It is many years since I worked as a prison officer, but we found that we could do little for people who serve short sentences. At one time, we talked about learning packages and whether we could offer modules that people would study while they were in prison and continue outside. That modular training was not further education as such, but it was an attempt to give people a qualification. Otherwise, we were doing absolutely nothing for them. At one time, they would be put in a work shed and they would do inane jobs such as sewing mailbags or sorting out bits of cardboard, but we were doing nothing to address their offending behaviour. The same professional experience, will the assessments that you will carry out for short-term prisoners be more effective than assessments done at a community level that do not involve your officers? Should an assessment of what programmes are required be done outwith prison from the start?

Kenny Cassels: I certainly agree with your last point. It is not productive to send someone to prison to serve a very short sentence. I understand my police colleagues’ point about giving communities respite from serious and habitual offenders, but all that the prison environment does for those who serve short sentences is to patch them up, stabilise them if they abuse drugs or alcohol and put them back into the community.

Prison is not suitable for people with short sentences. More can be done for them in the community, but the decision is one for the courts. We just do what the courts ask.

Jeremy Purvis: At present, 48 per cent of the prison population serves a sentence of less than three months and about 82 per cent serves less than six months. If I understand correctly, you would like to focus on offenders who serve longer sentences because you think that your involvement will be more effective. Can you say what proportion of the prison population today should not be in prison?

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person could go back and forth, doing three months or six months repeatedly over a long period of time. If we can do something to address that, we should. It is tragic that some people serve almost a life sentence doing short sentences.

One of the biggest tragedies I saw in the Prison Service when I worked as a prison officer in Barlinnie was the old alcoholic people who spent their lives on the streets and went in and out of prison. Prison kept them alive because they came off the drink for a few weeks and they were given good food, but when they were liberated they went back to their drinking habits and lived rough on the streets. They would go back into prison, dry out and get food and medication, then go back out on the streets again. That seemed to be the pattern of their lives. I worked at Barlinnie for 15 years and I saw the same people coming in and out. Prison was the wrong place for them, but it was the only disposal available. There were no hostels that could take them and do the same job as we were doing.

Jackie Baillie: In your written submission, you express concern that the legislation that prohibits the carrying of knives in public places does not apply to prisons because they are not deemed to be public places. What problems does that cause in prisons?

Kenny Cassels: We had an example recently at HMP Perth. While a prisoner was out and about in the prison carrying out their work, prison staff found a lock-back knife. The incident was reported to the local police and referred to the procurator fiscal, but he referred it back to the prison, saying that he would not take action as prisons were private places.

Our concern is that in the current legislation there is a lack of direction to procurators fiscal on whether it is a criminal offence to have a dangerous weapon in prison. It is a criminal offence and should be acted upon. On the one hand, we say that prison is a private place and, on the other, the smoking ban that was introduced in March decreed that prisons were a public place. Prisons are a public place, and the law should apply in prisons as it does out in the community.

16:15

Derek Turner: We appreciate that that point perhaps does not relate to the terms of the bill, which deals with licensing knives, but it is a point of principle and we thought that we should bring it to the committee’s attention.

Jackie Baillie: You are right to do so. I assumed that if someone was carrying a knife in prison, there would be regulations or procedures that would deal with it internally.
SUPPLEMENTARY SUBMISSION FROM THE CONVENTION OF SCOTTISH LOCAL AUTHORITIES AND THE ASSOCIATION OF DIRECTORS OF SOCIAL WORK

The Convention of Scottish Local Authorities (COSLA) and the Association of Directors of Social Work (ADSW) welcome the opportunity given by the Scottish Parliament Justice 2 Committee to contribute additional information to the scrutiny of the Custodial Sentences and Weapons (Scotland) Bill.

This supplementary submission is in response to the request from the Justice 2 Committee for further information on:

- Statistics that demonstrate the difference between the reconviction rates of those who have served a custodial sentence followed by some community intervention and those who have served a custodial sentence only.
- What alternatives might there be to simply returning to custody for those who breach their license.
- What conditions local authorities would be likely to impose in relation to licensing schemes for knife sales.

Custodial Sentences

ADSW can advise that the Scottish Executive does not publish reconviction figures related to whether or not the individual has been on supervision. The Scottish Executive Analytical Services has been contacted by ADSW to discuss whether this data was available for ad hoc analysis and have been advised it is not.

ADSW has been advised that these figures are on their forthcoming agenda and have requested that the Scottish Executive Analytical Service clarify this. ADSW believe it would be more effective if Justice 2 Committee makes the enquiry direct to the Analytical Services Unit of the Scottish Executive. The bulletin in which the most recent reconviction figures appears is Reconvictions of Offenders Discharged from Custody or Given Non-Custodial Sentences 2002/03.

In answer to the Committees question regarding what alternatives might there be to those returning to custody after breach in their license ADSW has the following comments:

The Courts have a range of options available to them depending on what order is being breached including extensions of hours, additional conditions etc. Also for failure to pay a fine there is Supervised Attendance Orders.

Options at breach might include being able to pay the original fine for breach of SAO; the imposition of a fine for breaches of probation, CS, DTTO etc. - perhaps with the attachment of earnings or benefits; restriction of liberty orders or tagging.

It is of course important that breaches are dealt with quickly - many are outstanding for 6 months or more after the breach report is submitted. It is suggested long delays significantly reduce the impact of the breach process.

Resentence for the original offence - especially for breach of Community Sentence which is meant to be an alternative to custody.

Weapons

In the COSLA and ADSW submission to the Justice 2 committee on 7th November 2006 in the section entitled Knife dealers’ licence conditions it stated that:

COSLA recommends that the Bill should be amended to place a condition on dealers to display a notice stating the offences in the Criminal Justice Act 1988 as amended regarding the sale of knives etc. to persons under 18 years.
Additional conditions that could be placed on knife/sword dealers include:

The license must be displayed at all times stating:
- Specific times and place where knives/swords etc can be sold
- What types of weapons the license covers

The License Holder agrees to:
- Keeping the weapons in a secure place
- Criminal record check
- Staff training
- Annual registration which requires administration and site visits by local authority officers
- Give permission for the local authority responsible for issuing the license to notify the Police of all license holders in their area.

Fee Level

A cost recovery model is the suggested form of financing the licensing scheme. However, it must be recognised that over the years, a number of small-scale, supposedly “cost neutral” schemes have been implemented by local authorities. Being small-scale, they do not individually warrant a dedicated member of staff. However, cumulatively, they represent a growing burden on local authorities. There are a relatively small number of businesses that sell knives and the cost recovery model suggested has potential to move the cost of the scheme on to local authorities through additional administration and regulation in ways which will not be “cost neutral”.

In response to the question asked at the evidence session COSLA undertook an appraisal of local authorities’ current licence schemes. Some examples given are as follows:
- If a retailer wants to sell fireworks all year round the cost of the licence is £500.00
- If a retailer wants to sell fireworks in November only a registration fee is paid of £72.00
- A petrol filling station would pay £110.00 for a licence (depending on tank capacity)

Whilst the new legislation gives local authorities the ability to set their own fees it is anticipated to an extent that fees will be set within a similar range, as appropriate.

Conclusion

As stated in first submission COSLA and ADSW welcome the general direction of the Custodial Sentences and Weapons (Scotland) Bill. However, we propose that the potential it has for impacting on both community safety and reduced offending, will be very much dependent on its comprehensiveness, its integration with the wider community justice and community safety agendas, and the level of resourcing made available to implement it effectively.
Introduction

Victim Support Scotland is the largest agency providing support and information services to victims of crime in Scotland. Established in 1985 the organisation currently employs around 180 staff and 1000 volunteers. In 2005-2006 our community based victim services and court based witness services supported 170 000 people affected by crime. Through our contact with victims and witnesses, we have identified a need to demystify the criminal justice process to the general public and to make sentencing more transparent. These are two of Victim Support Scotland's policy objectives and reflect the views we will be taking regarding the new bill.

Crime in Scotland

Victim Support Scotland is aware that crime in Scotland today is falling. Cathy Jamieson stated last week that violent crime is at its lowest level since devolution and that last year there were 20,000 fewer crimes recorded by the police. However, Scotland still has a problem with re-offending. Figures show that 45 % of offenders discharged from prison or given a non-custodial sentence in 2002-2003 were reconvicted within two years. This must be addressed; Victim Support Scotland therefore welcomes new legislative initiatives and willingly accepts the opportunity to provide a response regarding the Custodial Sentences and Weapons (Scotland) Bill.

The Custodial Sentences and Weapons (Scotland) Bill

The Custodial Sentences and Weapons (Scotland) Bill contains provisions within two broad policy areas: provisions on custodial sentences and provisions relating to knives and swords. We have divided our response according to the two policy areas.

Custodial sentences

Time spent in custody
According to the new bill, sentences of 15 days or more will have a minimum of 50% spent in custody. Courts will have the power to increase the time spent in custody to a maximum of 75% of the sentence by considering the seriousness of the offence, previous convictions and the timing and nature of a guilty plea. The court will however not be able to take into account the risk the person may present to the public when determining the length of the custody part, since this will be assessed during the custody part and, if necessary, will be decided by the Parole Board. Victim Support Scotland does not see the Parole Board's assessment as an obstacle to the court's review and would like the protection of the public, including the views and opinions of the victim, to be taken into account by both the court and the Parole Board. The criminal justice system serves to reflect the wishes and needs of the public, and should fulfil the society's expectations of punishment and deterrence. For the court to take the protection of the public into account when determining the time spent in custody would seem to be in the public's interest. It may also increase people's view that “justice” has been done, which increases the public's faith and trust in the criminal justice system.

Release on licence
Before the expiry of the custody part of the sentence, the bill proclaims that a review should be made if the person would, if released on licence, “be likely to cause serious harm to members of the public”. Victim Support Scotland supports the consideration of public safety, which includes the victim(s) and witnesses. A proper assessment of the offender’s individual circumstances significantly improves today’s practice of automatic and sometimes unconditional release.

If a person is seen to not cause a threat to members of the public, the person must be released on community licence. The licence may include certain conditions. If the prisoner breaches a licence condition, if Scottish Ministers think it is likely that a person will breach the licence or if it is in the public interest, the Scottish Ministers must revoke the licence. Victim Support Scotland supports the use of license conditions. We would however like to stress that for these conditions to be
affective and fully respected, they have to be communicated appropriately to both the accused and the victim(s). Both parties should also be informed of the consequences if the offender breaches any of the conditions in the licence. Regarding revocation of licences, Victim Support Scotland supports the possibility for Scottish Ministers to take account of the public interest, including safety of the public at large. We are also positive to the mandatory wording, that the licence must be revoked, which will hopefully lead to consistency and predictability in the practice.

The community licence is in force until the sentence expires (for custody-only and custody-and-community prisoners) or for the remainder of the prisoner’s life (life prisoners). Victim Support Scotland agrees with this practice, which will hopefully increase the public’s faith in the justice system, as offenders will be seen to serve the entire court imposed sentence and not just the custody part of it.

Victim Notification Scheme
This need for victim(s) to receive information regarding community licence and attached licence conditions is not appropriately reflected in current legislation. Victim Notification Scheme is a statutory scheme, which gives eligible victims the right to receive certain information regarding the offender, for instance date of release. To be eligible to receive this information, the offender has to be sentenced to a period of imprisonment of four years or more. This is a high threshold, which disqualifies many victims from receiving any information regarding the offender. According to Criminal Justice (Scotland) Act 2003, section 16, subsection (4)(a), Scottish Ministers may amend the specified time period. Due to an increased need for information attached to community licences and their conditions, Victim Support Scotland wish the Ministers would take this opportunity to specify a shorter time period, to allow more victims to be eligible to receive information.

Parole Board
If the person is seen to cause a threat, the person will be referred to the Parole board for further review. However, the Parole Board will not be able to prolong the period spent in custody beyond the period imposed by the court. Victim Support Scotland supports the practice of referring prisoners to the Parole Board, since it takes the concerns of the public, including victim(s) and witnesses, into account. The Parole Board is already operating (considering parole for prisoners serving a sentence of four years or more) and we commend the extension of the Parole Board’s functions, which will hopefully make parole releases more tailored to the individual prisoner.

Additional resources
The new provisions appear likely to have implications for the workload of agencies such as Criminal Justice, Social Work, and the Parole Board. It will be important, therefore, that appropriate resources are made available to those agencies charged with the implementation of this legislation.

Weapons
Knives
The bill introduces a mandatory licensing scheme for the commercial sale of swords and non-domestically knives, to be known as a knife dealer’s licence, with local authorities being the licensing authorities. The knife dealer’s licence is required for people who carries out business as a dealer in knives and other specified articles, and is hence not needed for private sales between individuals. Many people that Victim Support Scotland comes in contact with have been victimised by knife violence. Even if the knife is not intended to be used, it may be carried for protection, intimidation etc. If a threatening situation arises, the knife is sometimes brought out, which increases the gravity of the situation and may lead to violence and injuries that had not taken place without the knife. The number of people jailed for carrying a knife has risen 20 per cent in the last five years. Victim Support Scotland therefore strongly supports the proposed regulation, as the need for a knife dealer’s licence will hopefully decrease the number of knifes in the general public’s hands.

Swords
The new bill proposes that the sale of swords will be banned, subject to exceptions for specified religious, cultural or sporting purposes. By decreasing the number of swords in the general public’s hands Victim Support Scotland hope that this regulation, along with the introduction of a knife
Conclusion

The provisions regarding custodial sentences strive to end automatic and unconditional early release of offenders and to achieve greater clarity in sentencing. The new management regime aim to provide a clearer system for managing offenders while in custody and on licence in the community, to take account of public safety by targeting risks and to have victim's interests at heart. The goal is to enhance public protection, reduce re-offending rates and increase public confidence in the justice system by fulfilling society's expectations for punishment and deterrence. The objective of the provisions regarding restricting the sale of non-domestic knives and swords is to tackle knife crimes and violence in general by helping to prevent that these potentially dangerous weapons fall into the wrong hands, which will lead to safer communities. Victim Support Scotland is positive to the proposed regulations, which we hope will fulfil their stated goals. The great number of knife crimes shows there is a great need to reduce the number of knives in the general public's hands. Regarding the custodial sentences, we hope that the new regulations will help the courts take greater consideration of the views and needs of victim(s) and witnesses in their choice of sentence. We would like to stress that regarding the new community licence regulations, both the offender and victim need to get extensive information of the sentence, the reasons behind it and licence conditions for the new regulations to be fully applied and appreciated by all parties.

SUBMISSION FROM THE SCOTTISH CONSORTIUM ON CRIME AND CRIMINAL JUSTICE

Introduction

The Scottish Consortium on Crime and Criminal Justice (SCCCJ) agrees that public protection is paramount and that if offenders are assessed as at high risk of causing harm they should be detained in prison for lengthy periods and be subject to supervision on release.

SCCCJ of course supports, in principle, the Policy Objectives of this Bill to:
1. provide a more understandable system
2. take account of public safety by targeting risk
3. have victims' interests at heart.

We also support, in principle, the intentions to:
- enhance public protection
- reduce re-offending
- increase public confidence in the criminal justice system.

SCCCJ commented in May 2006 on the Sentencing Commission report “Early Release from Prison and Supervision of Prisoners on their Release”. The Consortium at that time, expressed its concern about the Commission's proposals on grounds both of clarity and effect. The Consortium also studied the Scottish Executive's proposals for legislation “Release and Post custody Management of Offenders” and its concerns remained. The concerns increased on reading the Bill.

The Consortium regrets very much that the Scottish Executive is choosing to follow a path that, far from achieving the above goals and intentions, would incur huge costs and have serious negative and we believe unintended, consequences for the criminal justice system and for the safety of Scottish communities. The Bill, if implemented as it stands, would not achieve its objectives, as it would:
1. not be easier to understand than the present system
2. bring into the risk assessment process such a large number of offenders that it would require a large increase in bureaucracy and processing which will use up resources which would be better invested in front-line services that reduce re-offending and in dealing with the most dangerous offenders on whom the risk assessment and supervision resources should be concentrated
3. not address victims' interests adequately.
Nor would the Bill achieve its intentions as it would:

- hamper resettlement work and reduce public protection because the system, as mentioned above, would divert resources from dealing with those who are the greatest risk
- impact little in reducing re-offending
- do little to increase public confidence, as the system would still be difficult to understand.

4. Furthermore, the proposals would increase the prisoner population considerably. The projected increases would lead to Scotland having the highest imprisonment rate in Western Europe, more than double that of Finland, Sweden, Denmark and Norway, and even more than Hungary and Bulgaria!

5. An additional point the Consortium wishes to make is that if the current provisions for prisoners sentenced to life remain “fit for purpose” as stated at Para 31 of the Policy Memorandum, then the existing provisions should simply be re-enacted in full in this Bill. Although this same Para stats this is the case, there are some apparently significant changes. For example, Section 34 (2) says, “Where a prisoner’s life licence is revoked by virtue of section 31(1) or (4), the prisoner must be confined until the prisoner dies.” This is not the case at present. It is unclear whether section 34(3) means the above would not happen if the Parole Board directs the prisoner be released.

Also, at section 15 (7) the wording is unusual for a Bill, saying “it does not matter [our italics] that a punishment part so specified may exceed the remainder of the person’s natural life.” This is ambiguous and strangely worded for a statute.

The following expands on the above.

**The proposed system will not be easier to understand than the present system.**

It is that important public confidence and understanding of sentencing is increased. The Consortium strongly supports the proposal to explain fully, at the point of sentence, what the sentence means in terms of custody and time on licence in the community. The sentencer should emphasise that both the custodial and community part are integral to the sentence and that it is divided in this way to best achieve its purpose – the reduction of re-offending – which should also be stated.

However, such a requirement, if applied to the existing system, would have removed much of the public misunderstanding which led to the criticisms of the present system.

The Consortium does not want sentences to be served in full in prison because to do so would limit the prospects for successful resettlement and increase the chances of further involvement in crime. It strongly supports sentences being served in part in the community as being an effective basis for rehabilitation backed up by statutory supervision.

SCCCJ would like to see sentencers explain that the sentence is divided into a custody part and a community part to achieve the purposes of:

- punishment
- making the person safer on release from prison
- making the person safer by the end of the sentence.

The Consortium, is pleased that automatic early release will remain, at the 75% point, to ensure that some period of the sentence is served in the community. The SCCCJ supports this for good practical reasons.

Counter to the objective of the Executive, the proposed new system appears more complicated to operate, more uncertain in its effect and more difficult to understand and more open to public confusion than the system it would replace. In the proposals there are many more uncertainties and variations in the sentence.

**The proposed system would bring so many prisoners into the risk assessment process that it would require a large increase in bureaucracy and processing which will use up**
resources that would be better invested in much-needed front-line services that reduce re-offending by dealing with the most dangerous and also dealing with the lower level persistent re-offending from which some communities suffer.

Key to making the new system work would be a higher threshold at which risk assessment would have to be conducted on all prisoners. We do not object to the principle of assessing risk but to which categories of prisoner it would be applied. At the lower end of the sentence range the proposed new system would be unworkable as there is such a large number of people involved. A significantly higher threshold would be needed.

To bring into the process all these short sentence prisoners is:

- not practical
- not value for money
- would use up scarce resources better used to work with: those at high risk of causing harm, including keeping them in prison longer and supervising them in the community; and those who are a high risk of re-offending, i.e. the persistent offenders who need to be supported in the process of desisting from offending, through having a key worker who can work with and challenge the offender and assist with accommodation; rebuilding relationships; positive opportunities for learning, employment and to take responsibility and make amends.

- Alternative options for higher thresholds, could be six months, 12 months or 24 months sentences, given that those given these shorter sentences are by definition not at risk of causing serious harm.

If those under 6 months did not have to be risk assessed the numbers going through this process would reduce by approximately 7000 per annum.

Para 144 of the Financial Memorandum of the Explanatory Notes says, “The proxy for high risk of harm is based on those convicted and sentenced to more than one year for a sexual or violent offence...”. This would seem to add weight to the argument for at least a 12-month threshold.

Similarly, if the threshold for any sort of licence was six months and that for supervision 12 months or more, the numbers requiring recall and supervision would also reduce. This would enable both prison and community resources to be effectively targeted on those most likely to present risk of harm, providing better value for money.

Practicality/Risk and the Short Sentences

The Consortium strongly supports better release arrangements and community support for short-term prisoners but not linked to a complicated system of risk assessment and release arrangements.

It is proposed that if a prisoner serving 15 days or over is not released at the half-way point, his case would be referred to the Parole Board. To consider the case properly, papers would need to be prepared and sent to the Parole Board. While there would be more time with longer sentences, over 80% of sentences imposed in any year are for 6 months or less. It is impractical, before the end of short sentences of under 12 months in total i.e. 6 months in custody, for:

- Scottish Ministers to comply with Part 2 Section 7 which spells out the positive requirement for the Scottish Ministers and each local authority to: jointly establish arrangements for the assessment and management of risk during the custody part; and obtain the documentation from the police, court, social work department and prison necessary to jointly conduct the review the risk of letting the person out at the half way stage as opposed to keeping them in prison for a period, to protect the public; and then make the application to the Parole Board
- the Board to carry out its review and arrive at a decision whether to release or not.

The Policy memorandum states at Para 19 that “The level of joint working and the assessment
required will be proportionate to the nature of the crime and the length of sentence.” Firstly, this reverts to length of sentence being an indicator of seriousness, which may be reasonable but is not consistent. Secondly, although it is recognised there may be different levels of intensity of risk assessment, the administrative process would still have to be carried out for all.

It would, of course, be highly artificial to have such a process at the lower end of the sentence range. We would agree, that almost by definition, the risk to the public from someone sentenced to 15 days will be small. The protection of the public from keeping a person in prison for 15 days rather than 8 is negligible. As sentence length approaches 4 years (the current point where automatic release at the half way point of a sentence ends), there is some significance in the extra length of time which might be served in prison under the proposed new arrangements, in terms of public safety.

The proposals state that “offenders will be subject to regular review [Policy Memorandum Para 19] during the custody part”. How real or practicable would this be if the prisoner is in custody for a short time? The proposals say that the licence conditions would enable provision for a variable and flexible package of measures including supervision if required. How meaningful a package could be created while the prisoner is in custody for a short time and under licence for another short period? So it states [Policy Memorandum Paras 24,25] that there would simply be a good behaviour condition for those sentenced to less than six months sentence. More worryingly, the time spent on considering the risks and licence requirements of very short sentence prisoners would deflect attention from those prisoners whose risk is significant by overloading the system with unprofitable bureaucracy.

Resources

This proposed system would require huge additional resources (Financial Memorandum of the Explanatory Notes P32), which would be diverted to prison building and management from elements of the criminal justice system which are crucial to reducing re-offending.

To make the transition from the custody part to the community part effective will require investment in throughcare, on the model of the Pathfinder Community Links Centre and on the supervision of ex-prisoners during the term of the community part. Resources for supervision and support, which could particularly impact on reducing re-offending of those at the lower end, are stretched at present and nowhere near adequate to cope with the proposed increase in workload.

Effects on the Prison Population

A significant increase in the prison population is assumed in the Financial Memorandum of the Explanatory Notes. The increase will lead to serious overcrowding, at least in the short term. Overcrowding will adversely affect positive work in prison to reduce the level of risk of those being released.

Recalibration

The Sentencing Commission saw “the need to avoid an increase in the length of time most offenders serve in custody”. They proposed that sentences should be “recalibrated” to ensure that this did not happen.

The Executive’s proposals make no mention of recalibration or any change to total sentence length to take account of the new release arrangements.

It will not be for the Court but for the Parole Board to add to the custody part to take account of risk assessment. We would, therefore, like to see in statute that sentencers, unlike in the current system, would have to put early release out of their mind, so as make the custody part the minimum required for punishment and deterrence.
Sentences of under 15 days

Under the proposals all those in this category would serve the full sentence in custody. This means a number, albeit relatively small (no exact figure is available from current prison statistics), in the daily prison population would serve double the time currently served and this would double their proportion of the daily prison population.

Fine defaulters

It is proposed that all fine defaulters will serve their whole sentence in custody. The average sentence is 11 days, and their numbers in the daily prison population (54 in 2005/06) will double. The cost of this is will be an average of £1205 per prisoner while the size of the average fine is £278.

If we are seeking to reduce harm, why double the length of sentence of those whose original crime was one the court did not deem worthy of a custodial sentence and who are being imprisoned in lieu of a monetary penalty with no risk factor?

Breaches and recalls

All released after a sentence of over 15 days would be on licence. It is well known from research (Fergus McNeil) and from experience in the Drug Court, that the path to desistance from re-offending is a process not an event. It is inevitable that there would be recalls for breaches of the licence. If there are more prisoners on licence, there will be more on recall. As the numbers on licence would be large, the numbers recalled to prison would also be large.

Although the Parole Board may then instruct that some of those recalled are released, this would take time. So, not only would the numbers of recall be higher than at present but also all recalls would add to the prisoner population even if the Parole Board deemed the recall unnecessary.

Breaches have to be “serious” to merit recall. Who would define “serious”?

The proposals will not address victims’ interests adequately.

The only additional measure mentioned in this regard, is new representation on the Parole Board of someone with knowledge and experience of the way and degree to which offences affect victims.

The proposed inappropriate allocation of resources would be counter productive in reducing re-offending in the community as a whole, and, therefore, not in the interest of victims.

While we welcome the proposals that the Court should be clear about the nature of the custody and community parts of the sentence, the complexity would make it difficult for the Court to spell this out in such a way that victims and others could understand what is going to happen to the offender. [See Annex 1 “Explaining the proposed new sentencing Framework.”]

ANNEX 1 - EXPLAINING THE PROPOSED NEW SENTENCING FRAMEWORK

Imprisonment for Fine Default or Contempt of Court (i.e. not direct sentence)

You will serve x days in custody. You will serve this period in full unless your release date falls on a weekend in which case you will be released on the preceding Friday or if it falls on a public holiday you will be released on the preceding working day.
Sentences of up to 14 Days

You will serve this sentence in full unless your release date falls on a weekend in which case you will be released on the preceding Friday or if it falls on a public holiday you will be released on the preceding working day. You will not be subject to any licence on release.

Determinate Sentences of 15 Days and Over

- You are sentenced to \( x \) days/weeks/months/years in custody (prison /detention)
- Your sentence will have a custody part and a community part
- The custody part will be at least half of \( x \) but not more than three quarters of \( x \)
- However, in your (some cases), because of the serious nature of the offence and your previous record, I am setting the minimum custody part at two thirds (or other period less than three quarters) of the full sentence.
- When you are in custody you will be assessed as to the risk you might pose on release. If it is thought that you would pose serious risk, your case will be referred to The Parole Board which will decide whether or not you need to be detained beyond half of the custody part I have imposed. If they do not think there is such risk, you will be released when you have served half of \( x \). (This should happen before your custody part has expired.) If they think there is such risk, you will be further detained and a review date set by the Parole Board. At the review your release date will be set or a further review date set. You will not be detained in custody longer than three quarters of \( x \).
- (sentences where \( x \) is 3 months or more) Once you have served at least 4 weeks or one quarter of \( x \) you may be assessed as suitable for earlier than normal release provided that is not more than 135 days before your prison part would normally expire. If you are given early release under this curfew condition scheme you would be subject to electronic monitoring for at least 9 hours per day. That is, you would be required not to leave your home or other place or not to go to some place.
- When your prison part has been served, you will be released on licence to serve the community part of your sentence, that is until your full sentence has expired. That is provided that you have no other sentences whose prison part has not been served in full.
- Your licence will contain the following conditions……
- (sentences of 6 months or more) You will be subject to supervision by a social worker in addition to the other conditions I have imposed.
- These licence conditions may be changed if the circumstances warrant it.
- Your licence may be revoked and you recalled to prison if you breach the conditions of your licence and it is thought to be in the public interest to do so. If that happens your case will be referred to the Parole Board which will decide whether and for how long you should be detained – this could be as long as the end of your full sentence.
- (Extended Sentences) Because I consider that you may pose a serious risk to the community on release, you will be subject to the following extended period of licence and supervision on release……
I am grateful for the invitation to submit written and oral evidence on the Bill. I will restrict my submission to Parts 1 and 2 of the Bill (ie sentencing and sentence management arrangements).

Overall Aims of the Bill

Background documentation appears to suggest that the two most important aims:

- To provide for a more transparent sentencing regime which will improve public confidence in the criminal justice system
- To increase public protection by ending automatic, unconditional release from custody

My submission therefore examines these aims and evaluates the extent to which the Bill can be expected to realise these aims.

Setting of the ‘Custody Part’ in the proposed combined structure (section 6)

Section 6 of the Bill provides that the custody part must be a minimum of 50% of the overall sentence, but that this may be increased to 75% if the individual sentencing judge considers it appropriate. What is the rationale for allowing individual sentencers to increase the custody element to 75%? None of the accompanying documentation provides an explanation.

Section 6(4) provides that an individual sentencer may increase the custody element to 75% in view of: the seriousness of the offence/s; previous convictions; the timing and nature of a guilty plea. Yet all three of these criteria currently form (and will continue to form) the basis of determining the overall headline sentence. Why should individual sentencers now be asked to make the same assessment twice? At best this seems to provide for unnecessary duplication and confusion. However it also highlights a key contradiction in the Bill about the purpose of supervision, to which I will now turn.

“Public protection is of paramount importance.” This is why the new combined structure is proposed for all custodial sentences of 15 days or more: to be subject to licence in the community. Community supervision and licence conditions are intended to reduce the risk of re-offending both during the community part of the sentence and after the expiration of the sentence and thereby increase public protection. Yet the proposal in section 6 to allow individual sentencers, in effect, to decrease to 25% the period of community supervision will undermine efforts to increase public protection. It is likely that practices will vary between individual sentencers dealing with substantively similar cases.

The Bill proposes that individual sentencers should be allowed to increase the custody part of a sentence to up to 75% because they wish, in effect, to punish the offender twice: once in terms of the overall sentence and again by limiting the time for structured community supervision and support. Yet ironically, in many of those very cases where the offender and the community will most need community supervision the community element will have been reduced. Unlike indeterminate life sentenced prisoners, determinate sentenced prisoners cannot be held or subject to licence beyond 100% of their sentence. Therefore, by allowing individual sentencers to reduce the community part to just 25% it will in fact make management and supervision of offenders both more difficult and shorter. Thus, enabling individual sentencers, to reduce the community element to 25% will undermine the very reason for ending automatic unconditional release: public protection, which is claimed to be of “paramount importance”.

I would recommend, therefore, that the Bill should not enable individual sentencers to vary the custody percentage for determinate sentenced cases. The purposes of retribution, deterrence,
culpability and seriousness can be (and are) achieved more transparently through the setting of the appropriate headline sentence.

**Can the proposed combined structure of punishment and community licence be sustained in cases of shorter-sentenced persons?**

The Bill has attempted to import the rationale behind indeterminate life sentenced prisoners to all prisoners serving custodial sentences of 15 days or more. However, the crucial difference is that this Bill is dealing with prisoners sentenced to determinate terms, the vast bulk of whom are sentenced by the summary courts to short periods of custody.

However, the tough, ‘tailored’ individual community provisions which are trumpeted by advocates of this proposal are simply unsustainable in the vast bulk of sentenced cases. There will be enormous practical difficulties in carrying out meaningful community work for individuals sentenced to custody of short-terms. In any case, because most convicted persons sentenced to short terms of imprisonment do not represent a serious danger to the public (often having been sent to prison to short terms partly of repeat offending at summary level) close supervision may not always be necessary. Indeed, the accompanying policy documentation appears to recognise that the Executive’s grander rhetoric will not be achievable. For example, we learn that the “concept of ‘supervision’ as it is currently understood, with intensive intervention by qualified social workers, will be reserved for those whose risk requires such intervention.”

Similarly, although risk assessment is trumpeted as a key change, meaningful risk assessment will not be practicable for shorter sentenced prisoners. Therefore, the Bill, as presently constituted, will not achieve the goal of sentences “managed in a tailored way to the risk of harm posed by individual offenders and to the scope of rehabilitating all offenders.” In truth, as officials appear to have quietly recognised, this will not be possible for most short-sentenced prisoners. While this realism is welcome, it gives rise to a serious problem of clarity and transparency.

**Will licence conditions for most short-sentenced convicted persons come to be seen, in most cases, as another example of a lack of transparency in sentencing?**

A central aim of the Bill is a “transparent sentencing regime which will improve public confidence…” This appears to have long been a key driver behind the proposed changes. However, (as explained above) at least in the case of most short-sentenced prisoners, licence conditions will not provide for substantive work with individual offenders. Licences for short-term sentenced persons may well develop a reputation as technical, even meaningless. By setting unrealistic expectations that all 15 day plus-sentenced persons will be ‘on licence’, is the Bill only going to create further cynicism when it becomes apparent that (in most cases) being on licence does not fulfil the promise to address offending behaviour?

**The Consequences on the size of the Prison Population will undermine the overall aim of enhancing long term public safety**

The overall consequences on the prison population of this Bill (and when combined with other proposals to increase maximum sentences which can be passed by the Summary Sheriff Courts) should be expected to be very large. Over-crowding in prisons and especially the high influx of persons sentenced to relatively short sentences are two of the most important factors which undermine rehabilitative work in prisons. Furthermore, even if one could imagine a day when prison over-crowding is eradicated, we should recall that incarceration is supposed to be a last resort for the purposes of protecting the public, not as an (extremely expensive) way of accessing social and educational services. Such services can be provided much more effectively (and less expensively) in the community, and without breaking social and familial ties which is a normal consequence of incarceration.

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3 Scottish Executive (2006) Release and post Custody Management of Offenders (June), p8, paragraph 18
4 Policy Memorandum, p2 paragraph 7.
5 Policy Memorandum, p2, paragraph 8
6 Criminal Proceedings (Scotland) Bill section 33
Given the foreseeable impact of the Bill, is there a need for sentencing practices to be adjusted (‘recalibration’)?

The Sentencing Commission’s Report had proposed that, given the net effect of its proposals on custodial sentencing levels, sentences will need to be “recalibrated”. Section 6 of the Bill will allow individual sentencers to set the same headline/official sentence (for example 18 months) as they would have before the Bill. Currently, it is understood that the sentenced person would be released after 9 months (50%). However, section 6 will allow the individual sentencer to pass the same headline/official sentence (18 months) for the same case, but to increase the effective period in custody to 75% (in this example 12 months). Thus, the effective (or real) custodial sentence will be 3 months longer, although the official/headline sentence remains the same. As well as issues of proportionality, this change in effective custodial terms will undoubtedly lead to a very significant rise in the prison population. The Sentencing Commission recommended that sentencers should be expected to adjust their sentencing practices accordingly, but the Bill omits any such provision. What is the rationale for omitting recalibration?

The 15 Day Rule will lead to Anomalies and Proportionality issues

The new scheme is proposed to apply to persons sentenced to custody for 15 days or more. This will, in effect, lead to inequality of treatment and perverse results. An individual sentencer may pass a sentence of 14 days which will mean that the whole of that time must be served in custody. On the other hand, if a sentence of 15 days is passed it will, in effect, mean only 50%-75% (8-11 days) is to be served in custody. Likewise a person sentenced to 14 days in custody will often serve more time in custody than a person given a supposedly “longer” headline sentence of 21 days. One could imagine that such a person sentenced to 14 days will feel aggrieved and regard this as unequal and disproportionate treatment.
The Convener: Agenda item 3 is our third evidence session on the Custodial Sentences and Weapons (Scotland) Bill.

I welcome our first panel: Neil Paterson, who is director of operations for Victim Support Scotland; and Susan Matheson and Donald Dickie, who are from the Scottish Consortium on Crime and Criminal Justice. We have received an apology from the chief executive of Victim Support Scotland, David McKenna, who is unwell. In his absence, I advise Neil Paterson that, if questions are asked that he feels he cannot answer appropriately, he may provide further written evidence to the committee as quickly as possible after the meeting.

I will start the questions, the first of which is primarily for Victim Support Scotland. One of the bill’s main aims is to increase transparency in the sentencing process and to make sentencing more intelligible to the wider public, offenders and victims. Do the proposed measures represent significant progress from the current position?

Neil Paterson (Victim Support Scotland):
There is a short answer and a long answer to that question. The short answer is that it might. The long answer is that such progress will be contingent on the way in which the bill is put into practice, as the issue is not so much the content, nature and principles of the bill as how it is operated if it becomes law.

Let me make two observations. On measures to increase transparency in sentencing, the bill contains a number of positive developments, not least of which is the combination of custodial sentences with community sentences. That is provided within the context of a set of principles that I think the public will find easier to comprehend than those under which the present system operates. However, if victims are to understand how the system works, the sentencer will have to give in court an appropriate and clear explanation of how the custody and community components of the sentence will work.

My other observation relates to broader areas of Government policy, and is on the way in which sentencing decisions are communicated to victims and whether victims can choose to receive information on the progress of the offender’s sentence throughout their time in custody. The committee might be aware that the victim notification scheme was placed on a statutory footing by previous criminal justice legislation. It
enables victims in cases where the offender is sentenced to more than four years in custody to opt to receive certain pieces of critical information throughout the offender’s sentence. That information includes, for example, how long a period of custody they are expected to serve and whether they are being considered for parole. If they are considered for parole, the victim can make a submission to the Parole Board for Scotland for its consideration.

The victim notification scheme applies where the offender is sentenced to four years or more. Given that the Custodial Sentences and Weapons (Scotland) Bill will fundamentally alter the sentencing regime, it would have been prudent for the Executive to equalise the time periods in the bill and the victim notification scheme. However, the Executive omitted to do that. If the time periods were equalised, victims would have more confidence in the system and the system would have the transparency that is mentioned in the policy memorandum.

The Convener: I ask you to expand on a couple of points. Your last point was clear—victims wish to be involved in the process. However, you mentioned the form of the information that they receive. Will you share your thoughts on that?

Neil Paterson: This morning, I tried to find out how the information is delivered at present, but the details were not available to me, nor was I able to glean from those who work for me or my colleagues any details about how well the information is received. However, people talk all the time about the need for information. They want to receive information about the progress of the case after disposal and particularly in the run-up to the prisoner’s release. The thing about which people complain to us more than anything else is meeting the offender in the community after their release. Often, the victim has not had the opportunity to prepare themselves for that.

The Convener: I take it that your organisation is seeking clarity from the Executive about how the process will operate.

Neil Paterson: Yes. We want the Executive to extend the entry point for the victim notification scheme downwards from four years, so that it is equivalent to the sentencing proposals in the bill. The entry points should be the same.

Susan Matheson (Scottish Consortium on Crime and Criminal Justice): We agree that it is a positive step for sentences to have a custody part and a community part and for the courts to explain that, but we think that the explanation will be too complex. Donald Dickie tried to work out what the court might have to say—the information has been circulated to committee members—and there is so much information that it will be impossible. We are concerned that, when the sentence is delivered, the victim will not know what is going to happen to the offender. The bill aims to make the system clearer, but it will not achieve that.

Jackie Baillie (Dumbarton) (Lab): I ask Neil Paterson to clarify what he said about entry points. What are they, precisely?

14:15

Neil Paterson: At present, when someone is given a custodial sentence of four years or more their victim is entitled to opt into a process whereby they receive key pieces of information about the offender as they progress through their sentence. At present, the bar is set very high. The committee might be interested to know that the equivalent entry point in England and Wales is a sentence of 12 months or more.

The Criminal Justice (Scotland) Act 2003 makes provision for the Scottish ministers to alter the entry point without resort to primary legislation. That provision has been lying fallow on the statute book. This is an appropriate time to bring the entry point down from four years to something like 12 months or more. That is particularly important if the Executive wants to fulfil its objective of putting in place a transparent sentencing system. That would address some of the concerns that Sue Matheson raised about the ability of victims to understand how a disposal is reached in open court. They would get the information at a later point.

Jackie Baillie: You mentioned entry points in the context of the bill and picked a figure of 12 months from the English legislation. Is that an arbitrary figure in the context of the bill, or do you have a particular hook in mind when it comes to the timeframes?

Neil Paterson: If Parliament is minded to pass the bill unamended and introduce a new community-based, custody-based sentencing regime for sentences of 15 days or more, that will be the appropriate point at which to set the entry point for victim notification. The two processes should be aligned.

The Convener: Will the bill enhance victims’ sense that their needs, wishes and views are being taken more seriously in sentencing and managing offenders?

Neil Paterson: One of the bill’s specific proposals is to extend the membership of the Parole Board to include a representative who can bring experience of the extent to which people released on parole might offend and of the impact of reoffending on victims. I have not been party to any of the Parole Board’s decisions, except in a
previous life, when I was a social worker. It seems axiomatic that including such a perspective in the Parole Board's deliberations is positive and will be welcomed by victims and witnesses.

That aside, there are few specific policy commitments in the bill that I can confidently say will increase victims' confidence. There are a number of related policy initiatives. For example, there is the work of community justice authorities, which might, in tandem with the bill, have an impact further down the line in increasing victims' and witnesses' confidence in the system. However, the bill itself is relatively mute in that respect.

The Convener: Will the bill better protect victims and potential victims?

Neil Paterson: Potentially. We welcome the more robust set of mechanisms that are anticipated to be used to undertake risk assessments of prisoners before they are released into the community, which will be reassuring to victims and witnesses. The bill is a step forward in that respect, certainly compared with the previous system, under which many people were released into the community after serving 50 per cent of their sentence without any supervision or conditions attached.

The Convener: Do you have any thoughts about how the victims can be informed without the risk of a vigilante approach developing, as has happened in the past? You feel that there should be a better process, which links to your initial response.

Neil Paterson: That is one component, which relates specifically to victims' cases. The system needs to do more to build confidence among victims and witnesses generally.

I am not prone to bringing evidence from south of the border to Scottish justice committees, but a lot more innovative work has been done to demystify the workings of criminal justice in England and Wales. This week is inside justice week there, during which a whole range of imaginative initiatives are taking place. Communities are being allowed to see how courts work, how the Crown Prosecution Service works and so on. There has not been anything of that nature in Scotland. There is a need for the system as a whole to be more transparent in engaging with communities to build confidence in how the system works. It is not just sentencing information that is required, but a wider process of engagement.

The Convener: Does your organisation believe that that process should take place concurrently with consideration of the bill?

Neil Paterson: Yes, that would be helpful.
victim—for example, children or victims of domestic abuse—whom the bill will assist or frustrate?

Neil Paterson: It is difficult to say, but potentially the answer is yes. It is probably helpful to focus on the risk assessment process and putting in place robust arrangements to support and supervise offenders after they are released back into the community. Most people will welcome the fact that arrangements are in place to capture most people who are released from prison, but in order to make those arrangements work appropriate resources must be made available to the people who undertake assessments. The organisation that I represent will take an interest in that as the legislation unfolds. It seems that, potentially, the risk assessment net will be cast far more widely than has been the case to date. If the processes are to work properly, it is important that the necessary resources are made available.

Those issues apply to children and victims of domestic abuse. It is necessary to ensure that conditions relating to non-harassment and other aspects of behaviour that will reassure victims in such cases are attached to offenders’ supervision requirements.

Colin Fox (Lothians) (SSP): It has been suggested that, if the bill is enacted, it could increase the prison population by up to 1,100 people, at a cost of £40 million to £45 million a year. The overarching policy objective of the bill is to protect the public in communities. Does the evidence suggest that the investment is likely to produce significant improvements for victims and communities?

Susan Matheson: We are concerned about the possible rise in the prison population. It has been suggested that there will be a rise up to eastern European levels at a time when the crime rate is falling. Risk assessments and the larger number of people who will be incarcerated will use up resources that could be used much more effectively and give much better value for money. They could be spent on supervision programmes, throughcare, work in the community and essential work in the criminal justice system to reduce reoffending. The bill will lead to resources being absorbed when they could be spent more effectively elsewhere in the system.

Colin Fox: Do the other panellists concur?

Donald Dickie (Scottish Consortium on Crime and Criminal Justice): Yes, absolutely. We support the principle that risk assessment should be at the heart of the strategy, but things have gone wrong. Risk assessment for people on licence or for people who might be recalled is disproportionate. There could also be an increase in the length of sentences—and sentences have already been getting longer for many years. Taken together, all such factors would increase the prison population, and nobody has ever established a strong correlation, let alone a causal link, between increasing the prison population and reducing crime. There may be some tentative links, but there is nothing firm.

Colin Fox: I have further questions but I wonder whether Mr Paterson would like a bite at the first one.

Neil Paterson: Our position does not differ markedly from Sue Matheson’s or Donald Dickie’s. I am not suggesting that this is happening, but we should be cautious about suggesting that victims will automatically want longer and more severe sentences. Most research tells us that what victims want is for offenders not to reoffend. We should divert resources towards the measures that are most likely to achieve that. However, we also have to acknowledge that, in certain cases, periods of custody are appropriate for the purposes of deterrence and punishment. The balance has to be appropriate.

Colin Fox: Is the figure of 1,100 people about right? I was interested in your answer, Mr Dickie. Do you expect that, if longer custodial sentences are available, they will be handed out? In other words, do you expect that people will indeed spend 75 per cent of their sentence behind bars, or is that court disposal just a possible disposal rather than a likely disposal?

Donald Dickie: That could be another problem with the bill. With any criminal justice legislation, it is difficult to predict what will happen.

The Sentencing Commission for Scotland thinks that, whatever happens, changes to statute law should be introduced in such a way as to avoid an increase in the number of offenders going to prison. The commission has suggested that some form of recalibration should be built into statute or regulations to guide sentencers. In the new system, sentencers will be confined to considerations of punishment and deterrence. In the present system, they can take account of early-release arrangements, but they will be considered by the Parole Board.

It is difficult to know what will happen, but there is certainly a risk that more people will go to prison. As I am sure you know, the Executive’s accompanying documentation anticipates that more people will be recalled and that more people will serve longer sentences. The figure that you gave is not a shot in the dark, but quite how high the figure will be I do not know.

Another possible factor in the risk assessment process is false positives. In other words, when people are asked to assess risk they sometimes
overestimate it through a fear of underestimating it, so not many people are classed as low risk. Some are classed as medium risk, but there is a temptation to classify people as high risk. Given the effort and resources required to carry out the risk assessment of thousands of people serving sentences of 15 days or more, we are not convinced that it can be done in any meaningful way. It will certainly not be the kind of risk assessment of high-risk offenders that we carry out currently.

14:30

Colin Fox: What could we get for £44 million if we took the path of supervision, community orders and non-custodial disposals? What impact will a proposal that could increase prisoner numbers by 1,100 have on prison figures, which are currently at record levels?

Susan Matheson: Having a lot more investment in throughcare and making available to everyone coming out of prison the model of the pathfinder community links centre here in Edinburgh would have a big impact on reducing reoffending rates, because it would be possible to work with people and challenge them and assist them to get accommodation, rebuild relationships, take positive opportunities for learning and employment, and take responsibility and make amends—all the things that we know lead to people eventually stopping reoffending. It would be positive if more resources could be put into that, as well as drug and alcohol treatment programmes.

Colin Fox: What pressure will be put on the prison estate if we add 1,100 prisoners to the current prison population?

Susan Matheson: That is a good question. We saw in the recent annual report of HM chief inspector of prisons for Scotland how damaging overcrowding is. We are overcrowded now, so if the 15-day threshold is introduced there will be substantial overcrowding, which will have serious consequences for prisons’ ability to manage and absorb resources that would provide far better value for money if they were spent elsewhere.

Colin Fox: I take it that the changes will have a deleterious effect on programmes that are aimed at rehabilitating prisoners, given that we will be keeping people in custody and doing little else. Is that a fair comment?

Donald Dickie: Yes. Given that we are a community safety organisation, we believe that a considerable number of prisoners need to remain in prison for lengthy periods and, during their sentence, need to receive focused and targeted interventions that have some chance of reducing the likelihood of their reoffending on release. The more churn or throughput of prisoners there is—with people serving 30 or 60 days then being recalled—the fewer of them will benefit from the sentence and the more resources will be diverted from focusing on those who should get the attention in the interests of the wider community.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): My question is along the same lines. What are your thoughts on the alternative approach that we should phase out sentencing individuals to less than three months, other than on public safety grounds or where there is no alternative?

Susan Matheson: We have said previously that we would like sentences of less than six months to be phased out, but that would have to be written tightly into legislation so that people would not just be given longer sentences. We see little value in short sentences, and there is consensus in the community that they do not represent good use of resources. The Scottish Prison Service itself says not to send it people for less than a year, because it cannot do anything constructive with them in that time. However, that does not mean that it wants people to be given longer sentences.

Jeremy Purvis: I put the same question to Victim Support Scotland. How would victims respond to the proposal, given that it might be considered to be soft on crime?

Neil Paterson: There are some dangers in assuming that they would respond in the same way. Research experience and our practice tell us that people want folk to have prison sentences where appropriate. However, victims’ views are often far less punitive than people in the media assume they are. There is also a consistent theme about people getting help to stop reoffending and creating more victims. It is not that community disposals cannot be sold to people, but that doing so requires someone to engage actively and go out and explain how things work, in a way that does not happen currently. Such communications tend to happen through the media, which inevitably means that there is a degree of distortion. However, I do not think that it is inimical to victims’ interest.

Jeremy Purvis: Convener, I would like to ask about victim notification, although it is not part of the bill.

The Convener: Please keep it very brief.

Jeremy Purvis: It strikes me that victim notification applies only to the victims of those who have received a custodial sentence. Following on from Mr Paterson’s response, would there not also be circumstances in which, although the offender is given a community sentence, the victim should get information about any programme that the offender might be part of? For example, an alcohol
programme could be a compulsory part of a community sentence. Would victims benefit from knowledge not just about the punishment that the offender has received but about any programme that they might attend to reduce their offending behaviour?

Neil Paterson: We tend to find that people’s understanding of how community disposals work in practice is remarkably limited. That is not surprising because no one takes the trouble to explain the system to the world at large. You are right: extending the notification procedure is one component of practice that could be enhanced. People would welcome that, and it would be good for the credibility and legitimacy of the system.

Maureen Macmillan: Do sheriffs think that community disposals are robust enough? In the end, the sheriff does the sentencing, and I am aware that sheriffs seem to be disinclined to use community disposals.

Donald Dickie: There are peaks and troughs, but overall statistics suggest that sheriffs have confidence in community disposals. They might have criticisms about places where an offender’s community service does not start soon enough, but overall the levels of use of community service and probation do not suggest that sheriffs do not have confidence in those disposals. The Social Work Inspection Agency interviews stakeholders in the criminal justice system, and when the agency inspects a local authority social work service, it asks sheriffs what they think of that service. The vast majority of the responses, which one can read in the agency’s reports, are positive, by and large.

Maureen Macmillan: So why are all these people in prison for short sentences when they could have been given a community disposal?

Donald Dickie: That is more to do with the culture of this country and the expectation that it is somehow not a punishment if the offender does not actually go to prison. If we think about it, that is not very rational. Someone who is given probation for six months or a year has a lot of expectations placed on them. They are deprived of some of their free time and they are expected to do things and to turn up for work—they might never have worked before—when they are on community service. A short term of imprisonment might be unpleasant, but only for a short time, as the offender will be out again shortly and nothing will have been achieved. A short sentence is over in a short time, whereas a community disposal lasts longer and is also much less expensive.

Maureen Macmillan: That is interesting. I want to go on to ask about proportionality—

Susan Matheson: Could I add something first?

Maureen Macmillan: Of course.

Susan Matheson: Sheriffs get frustrated with the people who come before them time and again and wonder what they can do other than put those offenders in prison—and that is what they do, time and again. That does not work, but the sheriffs keep doing it. We would like sheriffs to use community sentences repeatedly, because we know from the drugs court and research by people around this table that a process has to be gone through before people desist from reoffending. We need to put in resources for throughcare and key workers, for example, to help people get over the initial period when they come out of prison so that they do not constantly appear before the sheriffs and take them to the point of frustration.

Maureen Macmillan: Presumably resources will be put into programmes for the supervision of prisoners following custodial sentences. Could those same programmes be used as alternatives to custody, or are you talking about something different?

Susan Matheson: Programmes have a place, but it is about more than that. It is about having somebody who can build a strong, professional relationship with the person, stick with them in a way that perhaps has not happened for them before and key them into other agencies that will help to ensure that all the basic issues that may underlie their offending, such as accommodation problems or not having a job, are addressed.

Maureen Macmillan: I want to ask about the difference between supervision and support. Someone who comes out of custody after a month will need different supervision or support from someone who comes out after three years. I presume that it would be inappropriate for someone who has served a short sentence for a fairly minor offence to receive a high level of supervision. Is there a concern about the proportionality of the response to such offenders?

Susan Matheson: The response depends on an offender’s circumstances. Even those who have spent only a very short time in prison may have dislocated all their community connections. If they have lost their accommodation or if their relationship has broken up, they may be very likely to reoffend. Donald Dickie might want to add to that.

Donald Dickie: Sue Matheson is right about support. Supervision is where the proportionality aspect comes in. By and large, people who serve shorter sentences have committed less serious offences and are less likely to pose a serious risk of harm to the community on their release. Supervision is about holding the offender to account in the community and trying to ensure that they keep to the conditions that have been
imposed to attend drug rehabilitation programmes or whatever. Supervision is important, but a lot of offenders need the support that we have talked about to stay out of trouble. For example, they may need to do something about their drug habit.

Support and supervision go hand in hand, but the balance between them depends on the individual. A long-term offender might need a bit of supervision because of their history, but they might not necessarily need a lot of support. Some people seem to reintegrate easier than others, depending on their social skills and the support provided by their family. Each person must be assessed individually.

**Maureen Macmillan**: So it depends on the individual, but we could see support as a continuum, with supervision at the more serious end.

**Donald Dickie**: It would be reasonable to suggest that the more serious the offender and the greater the risk of harm suggested by the circumstances of the offence—which is what the bill is largely about—the more likely it is that intensive supervision will be required.

**Maureen Macmillan**: So you would focus your resources at the more serious end of the scale to protect the public from risk.

**Donald Dickie**: Yes. We are not against the principle of risk assessment—far from it—but we feel that the threshold could screw it all up, to put it bluntly, by putting resources in the wrong places and thereby depriving people who need more resources. For example, a threshold of six months would immediately take away from prison officers and social workers the burden of conducting risk assessments for several thousand offenders. We think that the figure is 7,000 or 8,000, although for statistical reasons we are not certain; the committee’s advisers could probably give a more accurate figure than we can. It does not seem sensible to spend a lot of resources on people who are, almost by definition, not serious offenders and not likely to pose serious risk.

**Maureen Macmillan**: Are the offenders on short-term sentences not the ones who keep going in and out of prison?

**Donald Dickie**: There is a high risk of reoffending but not necessarily a high risk of harm—we distinguish between the two. I am sure that you are well aware that there is certainly no connection between short prison sentences and an immediate reduction in the rate of reoffending. The number of shorter-term offenders who are back in prison within two years is high.

**Maureen Macmillan**: So we should really be looking for community disposals for sentences of six months.

**Donald Dickie**: Or for even longer sentences. The situation depends on the individual, but if community disposals were used rather than custody for sentences of up to six months, there would certainly be an impact.

**Maureen Macmillan**: I am aware that criminal justice social workers currently supervise about 600 released prisoners in Scotland. The financial memorandum to the bill estimates that the number will increase to around 3,700. We have talked about the figures already. Do you think that criminal justice social workers and their voluntary sector partners will cope with that huge increase?

14:45

**Donald Dickie**: It is a huge increase. Even if the money was made available, there would still be the problem of recruiting suitable staff to do that work. There is a shortage of social workers, including criminal justice social workers. Social workers already struggle to fulfil all their statutory responsibilities. The reports of the Social Work Inspection Agency show that the situation is better in some places than in others, but all social workers have to work hard to achieve the national standards for regularity of contact, compliance and the numbers of people who are given the opportunity to go through a programme. Even without increasing the numbers under supervision, we could do better against those standards if there were more resources.

We in the voluntary sector play a supporting role. We are not responsible for supervision but, if there were suddenly a lot more people under supervision who needed the ancillary programmes that we provide, we would need more resources as well.

**Maureen Macmillan**: Does the bill sit well with the Management of Offenders etc (Scotland) Act 2005? Do the two pieces of legislation mesh together quite well?

**Susan Matheson**: I do not think that they do because, as we said earlier, resources will be diverted into assessing risk for almost all prisoners. The increase in prisoner numbers will also absorb huge amounts of resources in a way that will not lead to a reduction in reoffending.

**Jeremy Purvis**: I want to move on to the issue of offenders who are released on licence. If I understand the submission correctly—this question is addressed primarily to Mr Paterson—Victim Support Scotland believes that, when an offender is serving the community part of a sentence, there should be a zero-tolerance approach in relation to the revocation of the licence. What sort of behaviour would an offender have to display for the licence to be revoked and the person returned to custody?
Neil Paterson: That is difficult. I do not claim to have particular competency in that area, but the bill basically sets out that it will be possible to revoke the licence if the offender causes serious harm to members of the public. Clearly, reoffending is one aspect that needs to be taken into account, but there are others.

For us, the issue is how a community or victim is made aware of the conditions attached to the licence. If the person on licence displays threatening behaviour, the community or victim needs to be able to communicate with the authorities so that the potential for the licence to be revoked can be activated. That will not happen unless people are aware of what the licence conditions are. For us, the issue is less about zero tolerance and more about ensuring that people are aware of the conditions that are attached to a person’s release—if, indeed, it is appropriate for them to know that.

Jeremy Purvis: Do other members of the panel have a view about when licences should be revoked and the conditions under which offenders should be released? If the conditions for an offender’s release include compulsory attendance on a programme—for example, the throughcare programme that we discussed previously—should there be some flexibility, such as a warning system, if the person does not fulfil the conditions, or should recall to custody be automatic?

Donald Dickie: I think that making return to custody automatic would create a lot of problems. As I remember, when we had young offender licences a few years ago, automatic recall proved to be impossible to implement because the numbers were too great. Many short-term offenders are repeat offenders who go through the revolving door. To revoke the licence and recall the offender to custody on every occasion would be pretty unproductive. The recall would be purely punitive and would not reduce reoffending. However, I think the bill suggests that the offender should be recalled to custody if there is a breach of licence conditions and it is thought to be in the public interest to recall them.

Jeremy Purvis: I think that the bill provides for recall to custody if there is concern about reoffending or risk of harm to the public.

Donald Dickie: If there is evidence that serious harm to the public will occur, a person should be recalled, but automatic recall should not happen for minor breaches. Let us face it: to be of good behaviour is likely to be a standard condition. Any criminal offence is, by definition, not good behaviour. If someone who committed an assault went on to commit a road traffic offence, it would not be proportionate to recall them on that basis.

Jeremy Purvis: My other question has been answered. I am satisfied with that.

Jackie Baille: My questions are to Susan Matheson and Donald Dickie. The Scottish Executive has said that local authorities may choose to commission from voluntary organisations all or part of the supervision of an offender’s licence. Should local authorities come knocking at your door, does the voluntary sector have the capacity to deal with that? Do you have enough suitably qualified and skilled staff? If that is a problem, can you recruit staff in the short to medium term?

Susan Matheson: It is difficult to answer that. We certainly do not have enough staff. When we recruit, we have a strong pool of candidates from which we can select. We rarely look for people with social work qualifications. Some people have them, but people can come to us with a broad range of experience and qualifications. In that sense, we may have more choice than statutory local authority departments.

The volume is so huge that it is difficult to know whether we could cope with the numbers, although we can cope with the nature of the work. At present, the voluntary sector manages some of the most serious high-risk people in the community. We can do what needs to be done at all levels. However, we are not sure whether we can recruit enough staff. That is one reason why we think that raising the threshold from 15 days to six, 12 or 24 months is key to making the whole bill work. The huge numbers that are intended to be dealt with and the amount of money that will be spent on bricks and mortar will mean that resources are not available to give the voluntary sector the money to recruit people.

Donald Dickie: We must do much of the training of our recruits ourselves. They are not qualified social workers, because they do not undertake statutory functions. We take people who may come from other welfare or health backgrounds or people such as ex-prison officers and ex-police officers. A wide variety of people comes forward, but we always struggle to have enough resources for training, so we would need a lot of help.

Jackie Baille: That is helpful to know.

We talked about the efficacy of the approach to risk assessment, which would be continuous throughout the sentencing process. I will ask a slightly different question. How confident are you that current risk assessment tools and professional skills are sufficiently developed to allow properly informed decision making?

Susan Matheson: I ask Donald Dickie to answer, as he has experience of those tools.
Donald Dickie: Progress is being made all the time. In fairness, a lot of effort and resources have been put in. However, from a practice point of view—perhaps other experts who have more knowledge than I have could comment on this—I think from seeing social workers conduct risk assessments that there is still a long way to go. Some of the tools are static measures—they depend entirely on what has gone before. We are less clever at reliably predicting what individuals will do. I doubt whether we will ever have something that is 100 per cent sure. However, the tools are improving.

Doing risk assessment properly is time consuming. Even a relatively unsophisticated assessment takes up social workers’ time, and social workers need to be trained in it. Risk assessment is resource hungry. That is behind our concern that an attempt will be made to risk assess too many people. Within existing resources, improvement has been made with the Risk Management Authority’s help. A lot of people are putting a lot of effort into that. We may obtain tools that are better at assessing the dynamic features, but doing that will take time and resources. However good the tools become, we will still need people who can use them well.

Maureen Macmillan: Will the provision to regulate knife and sword sales be effective in reducing violent crime, or can you suggest any alternatives that would help to prevent people—mostly young males—from carrying knives and using them for violence?

Susan Matheson: That is a crucial issue, but as the consortium has focused more on part 2 of the bill, we do not have a view on it.

Neil Paterson: We have limited experience on the issue, but we welcome the proposal for a more robust registration system. I will confine our comments to that.

The Convener: I thank the witnesses for coming and for their evidence. As I said, if you have any short comments to add, I ask you to give them directly to the clerks in the next few days.

I welcome our next panel of witnesses: Cyrus Tata, the co-director of the centre for sentencing research at the University of Strathclyde’s law school; Richard Sparks, the professor of criminology at the University of Edinburgh’s school of law; and Bill Whyte, the director of the criminal justice social work development centre. I thank them for coming.

I will begin the questioning on the custodial sentences provisions. My first question is primarily for Mr Tata. One of the bill’s main aims is to enhance transparency in and public understanding of the sentencing process. Will the bill improve public confidence in the criminal justice system, in either the short or the long term?

Cyrus Tata (University of Strathclyde): On balance, no, although one or two aspects will be helpful with regard to transparency. The issue is crucial, because research into public attitudes and knowledge highlights the transparency issue, within which the apparent disjuncture between the sentences that are announced and the time served is one of the key areas and sources of public cynicism. For sure, we have to do something about that. The one plus point in the bill is that the courts will be asked to state, if they can, what practical effect a sentence will have, including information such as the earliest point of release. However, we do not need a bill to do that; that could be done now through a sentence guideline judgment. We certainly do not need the rest of the bill to ensure that statements are given in open court on exactly how sentences will be served and the earliest date of release.

At the broadest point, we must consider the ultimate source of the disjuncture and the driver behind the lack of transparency. Although there are good, principled reasons to do with public safety for having supervision after a period of custody, historically, the main driver for release has been pragmatic—it has been a way in which to try to relieve the pressure on the prison population.

Officials have sought to expand and tinker with back-door arrangements about who is released from custody while regarding what goes into prison through the front door as taboo. To use an analogy, the bath is overflowing. What are we trying to do? We are trying to fiddle around with the size of the overflow system; we are not looking at what goes into the bath in the first place. Does everyone who is there need to be there? Why are we still sending fine defaulters to prison? More than half the daily admissions to prison are fine defaulters. Do they need to be there? Is a public safety issue involved? The same questions could be asked about a range of offenders in the context of our concerns about repeat but low-level offending—not violent or sexual offending, but repeat offending—which you have just heard about. That is the main issue.

15:00

I will turn to some more detailed points, but if you want to do something about clarity and transparency, you must think about sentencing. The bill does not deal with sentencing; it deals with the management of sentences. It regards the structure of sentencing as taboo, for some reason. Of course, Parliaments should not tell individual sentencers what sentences to pass in individual cases—that is quite right. Nevertheless, it is for
the Parliament to think about the structure of sentencing and to think rationally about how we can use the precious resource of custody and whether we are using it wisely.

Overall, the bill will not assist in creating transparency and clarity; in fact, it will do the reverse. We are reinventing the mistakes of the past in that respect. The advocates of the bill claim that everyone who is sentenced to a period of 15 or more days in custody—why we have that cut-off point beats me—will be subject to restriction and licence. The public is being told that we are going to get tough on everyone now, and that when people come out of prison they will be watched and under restriction. However, as you have heard, that simply is not possible in practice—that is a fantasy with regard to the vast bulk of prisoners who are released from prison.

You will have noted that, in the policy memorandum, officials have quietly recognised that and have said that, in practice, it will not be possible to do any kind of meaningful licence work with people who are sentenced to periods of six months or less. I suggest that six months is an underestimate; I think that, in practice, the sentences involved will be longer than that. It will be difficult to do meaningful work in the community with people who are sentenced to short periods. In practice, therefore, they will be paper licences, not meaningful licences. I suggest that we are setting expectations that simply cannot be fulfilled and that the bill is, in fact, exacerbating the issue of dishonesty.

There is a real public confidence issue. The proponents of the bill claim that public confidence is paramount. However, specific, crucial arrangements in the bill—which I would like to talk about, if you would like to ask me about them—will have serious detrimental effects and will work in contradictory ways.

**The Convener:** In essence, you are saying that restricting certain offenders from going to prison would create the capacity to deal with the more serious offenders. You also seem to be saying that there is no capacity to deal with the community sentences aspect of the bill and the control and management of offenders who receive such sentences. Do other panel members agree or disagree with any of that?

**Richard Sparks (University of Edinburgh):** I am slightly more optimistic than Cyrus Tata about the overall shape of the bill, although I share some of the anxieties about its feasibility. Returning to the question that you originally posed, about public confidence and transparency, it seems to me that many of the problems that arise in explaining what is going on to an observant and indignant public come from the fact that the system set up an expectation that has not been realised and that supervision has become merely nominal. Problems also arise from situations in which something has happened that cannot be defended, explained or accounted for adequately. Explaining when and how prisoners are to be released is, clearly, an advance, as that is less likely to produce hostages of the kind that make it difficult to explain practice to people; the bill gives greater scope for adequate explanation of the integrity of the sentence as a whole at the starting point. Nevertheless, failed or nominal supervision is a huge problem for the reputation of the criminal justice system, and setting up an unmanageable expectation that more and more supervision will instantly be provided may create another problem.

**Bill Whyte (Criminal Justice Social Work Development Centre for Scotland):** I am glad that Cyrus Tata set the tone. The risk is that the bill will finish up being neither fish nor fowl, as my granny would have said. It sits somewhere in between and does not resolve the problem.

When I was a manager, I did not meet anybody coming out of custody who did not need supervision and help. Custody is a very disruptive experience. We know that short-term offenders are among the most vulnerable, needy and dangerous offenders, but, as has been said, the risk of harm that they pose will be below the radar of any risk assessment. They are the people whom we describe as serving life sentences by instalment—they are constantly in and out of prison.

To me, what is important about the bill is the fact that it gives a message to the public, which, if it succeeds, will be very helpful: someone who goes to prison must serve a period in the community as part of their sentence. In other words, the two parts of the sentence are not separate. It is rather unfortunate that the bill suggests that, for the purposes of punishment, a judge can extend the custody part but not the community part of a sentence. That gives a message to the public that the community part is the soft part. However, there is value in the bill saying, for the first time, that the community part of a sentence is a real part of their sentence. In other words, the two parts of the sentence are not separate. It is value in the bill saying, for the first time, that the community part of a sentence is a real part of their sentence.

There is little evidence that custody—certainly, short-term custody—protects the community. The Scottish Prison Service is on record as saying, “Don’t send us anybody for less than 12 months. We can’t work with them.” Even in the recent report on Peterhead prison, it is noted that there are serious offenders who are not subject to programmes.

There is some clarity in the bill, so I share some of Richard Sparks’s optimism for its potential. However, the Kincraig committee’s recommendations, which led to the existing provisions, were pragmatically honest and
scrapped supervision for short-term sentences because we could not deliver it. The situation has not changed; indeed, it is worse. Such supervision will not be delivered through existing social work capacity. As has been said, the risk is that the bill will bureaucratisate a form of risk assessment—which is a problematic art at the moment—and will not connect short-term prisoners to real services. The knock-on consequence of that, which has been described, is that the serious offenders will not get the resources that they need.

The bill is well intentioned and has some potential to help to clarify for the public the important elements in a sentence. However, it does not address the question why people serving sentences of less than 12 months—or less than 18 months, I would say—are being taken into custody at a cost of £1,500 a week. We are told that supervision costs £1,800 a year. That is not a cost benefit value; that is cheap supervision. If we want to do things for people in the community, we must spend the money.

**The Convener:** What about the public confidence aspects of what you have just said?

**Bill Whyte:** As has been said by previous witnesses, research suggests that victims want offenders to stop their offending behaviour and change. The bill must convey the right message to the public. If we want to punish people, we lock them up. That is a perfectly valid policy objective and community aspiration. However, custody will not help those people to change—we have no evidence that it will do so. Only through our not putting those people into custody or through our returning them to the community can evidence of change be generated. I think that public confidence will increase if the public seriously believe that what we are doing gives people a fighting chance to change.

The public are not stupid. They know that supervision at the moment is too cheap and that we are not achieving what we want to achieve. They recognise that punishment in prison does something symbolically, but they see offenders coming out and then going round the system again. The bill has a chance to increase confidence if it does what the Executive says that it is trying to do, but I do not think that the bill tackles the fundamental problem.

**Jeremy Purvis:** You said that the criminal justice social work system could not cope if the bill were passed. Have you calculated what additional resources would be needed to make it cope?

**Bill Whyte:** Social work capacity has grown over a number of years, but the committee will know better than me that the concept of throughcare was virtually abandoned in the 1980s and 1990s. In many ways it is a new service, and its capacity remains limited, but the expectations of the multi-agency public protection arrangements and of the violent offender and sex offender register, which covers the serious offenders, are drawing more and more time. We expect workers to do standardised assessments that can make a contribution. Tasks such as that have to be processed.

Somebody asked about the definition of supervision. The heart of supervision is about change—as opposed to the management and administrative elements. It takes time to change people’s attitudes and their understanding of criminality, its consequences and how they might change their lives. It cannot be done quickly or cheaply.

The skills exist, but we are far short on capacity. I do not know the exact figures, but I know that the budget is sitting at about £80 million. I would say that the system would need about half that again, but I am speculating.

**Jeremy Purvis:** I want to ask Professor Sparks about licensing conditions. Will offenders perceive the new sentencing system, with custody and community parts, as legitimate? Do you think that there could be a positive impact on offenders? Not just the public might understand that there are separate requirements; sentencing could be more transparent to offenders too.

**Richard Sparks:** That would be a great benefit if it was the result. Much has been said about the advantages of focusing attention on risk and need, but offenders will lose confidence in the system if they see that supervision is unreal or, at best, a turning-up process. For the community parts of the new sentences to work effectively, the cooperation and compliance of offenders will be fundamental. Given the number of offenders who are being managed, the system cannot simply be imposed on people who do not adhere. Just as people may choose whether to take their medicines, offenders may choose whether to comply with a process of supervision. They need to see both benefits to themselves and that the system is being administered fairly. That could be accomplished, but probably not on an industrial scale.

**Jeremy Purvis:** I want to mention the effectiveness of post-release supervision. There are two problems with throughcare: first, it frequently does not exist; secondly, when it does, there is no compulsion. For example, when someone is released automatically on licence, they are not compelled to attend interviews or programmes. Under the bill, the element of compulsion will be explicit. When throughcare begins in a prison setting, it is more effective because a prison officer is the liaison and compulsion is involved—that was made clear to
me when I visited Edinburgh prison. The bill will extend compulsion into the community setting.

15:15

Richard Sparks: I am not nervous about compulsion. The benefit of establishing, explaining and robustly asserting the dual nature of the sentence is that it allows us to affirm a certain degree of compulsion as a legitimate requirement on people. In principle, I have no problem with that. Nevertheless, even processes that are compulsory, such as going to school, can be more or less successful, depending on how they are administered and on the degree of advantage to the individual concerned and of consistency in their relationship with the practitioner. All the processes that condition whether people are more or less likely to apply will obtain even when there is a higher quotient of compulsion.

Colin Fox: I have two questions. The first is about breaches and recalls to custody. You seem to be suggesting that some of the bill’s provisions will lead to more breaches of licences and therefore more recalls to custody, and that there is a danger that they may raise the public’s expectations of the criminal justice system’s ability to manage offenders effectively. Is that a fair summary of the message that you have given out so far?

Bill Whyte: That is our fear. The evidence suggests that short-term offenders in particular, and young offenders, offend at quite a high rate. As both Richard Sparks and Cyrus Tata said, if we move to a system that turns out to be a hoop-jumping, box-ticking exercise, there will be cynicism from those people, there will not be meaningful help and, inevitably, the current revolving-door syndrome will continue. It may even increase. That is a real risk. As you say, the possible consequence is that the public’s confidence will be reduced.

Richard Sparks: We should not assume that the public has a limitless appetite for seeing people breached, irrespective of the gravity of the offence. That is an empirical question. There is a danger of disproportionality in both directions. It is just as possible to damage perception of the system by taking sledgehammers to nuts and crushing butterflies on wheels as by under-enforcement.

Bill Whyte: That is correct. Practitioners say that if they have discretion in dealing with breaches, they can use the leverage to reconnect. If people are reconnecting not with anything meaningful but only with more hoops, that leverage will become counterproductive. The issue is not breach per se, but whether it is used in the context of a meaningful relationship and whether there is really access to the kind of assistance that will give people a fighting chance to turn their lives around.

Colin Fox: I turn to the consequences for our prisons. When I read Mr Tata’s submission, a number of points jumped out at me. It states:

“...should be expected to be very large.”

Reference is made to overcrowding in our prisons. What effect will keeping more people in prison for longer have on the Scottish Prison Service’s ability to work on rehabilitation of the people in its custody?

Cyrus Tata: I will restrict myself to the first part of your question; my colleagues can respond to the second part. The Executive’s financial memorandum notes some of the bill’s effects on the prison population but seems to ignore some of the other unintended consequences. There will be some perverse incentives. To my mind, section 6 is one of the most problematic provisions in the bill. The policy memorandum states that it will normally be possible for an offender to be released after they have served 50 per cent of their sentence, but the sentencer will be able to increase that to 75 per cent if they wish. Despite asking officials and others associated with the bill about that provision, I have been unable to find a clear explanation of why a sentencer would use it, given that they can simply increase the nominal sentence if they want to keep someone in custody for longer. Section 6 is a major point of contention.

The bill would also result in inflationary pressures on sentences. We have already heard from officials that serious supervision of people with sentences of six months or less—in practice, probably 18 months or less—is not possible. Members will be aware that the Parliament is considering legislation to raise the limit on summary sentences from six months to 12 months. In practice, if a sentencer thinks that a person deserves to spend four months in custody but would like them to have some supervision afterwards, so that they can be reintegrated, they will increase the custodial sentence to ensure that the person gets supervision. That is one of the unintended consequences of the bill that does not seem to have been considered in the financial memorandum. The bill must be considered alongside other changes that the Parliament is considering at the moment.

I will mention briefly the issue of the 15-day cut-off point—I know that the committee is aware of the perverse results it can produce. Someone who is serving a sentence of 21 days will serve less than someone who is sentenced to 14 days in prison. That must result in a breach of public confidence. People will ask how it can happen.
Colin Fox: That point struck us previously. Do you think that in practice sentences of 15 days or less will disappear?

Cyrus Tata: No.

Colin Fox: Do you not think that people will ask for more?

Cyrus Tata: That is one possibility. Other research that has been done suggests that there will be a knock-on effect in terms of delay and judge shopping. Judge shopping is the practice of defence solicitors seeking more favourable sentencers. We all know that inconsistency exists. It is perfectly legitimate—it is probably a professional obligation—for a defence solicitor to try to bring their case before a more favourable sentencer. That involves postponement and delay.

The 15-day cut-off point also raises an issue of comparative justice. A sentencer will realise that, if they give someone 21 days, that person will serve less than someone to whom they have given 14 days, and that they therefore need to increase the sentence. Such inflationary pressures do not seem to have been considered at all in the financial memorandum.

Colin Fox: Would your colleagues like to add anything?

Richard Sparks: A lot has been said about short prison sentences and I do not want to take up too much of the committee’s time by returning to the topic unduly, but I have brought with me some data that members may find interesting. For the benefit of the committee’s researchers, I note that the data come from the Penological Information Bulletin of the Council of Europe, which is a gold mine of comparative material.

All comparative international prison figures are a few years out of date, so they should be taken only as indicative. In the year to which the data relate, an average of 1.9 months of imprisonment were served by prisoners in Scotland, which is much less than the period served by prisoners in a number of European countries in which the prison population is much smaller pro rata. That suggests that in Scotland there is a great preponderance of short sentences, which is anomalous not only in the UK but on a European level. In Finland, for example, the average length of imprisonment is nearly six months, but the prison population there is significantly lower and more stable than that in Scotland.

If the committee is interested primarily in the effects of the bill on the prison population, it will find that the lengthening of sentences that are already long will not have as drastic an impact as the high volume of shorter sentences. If the high volume of shorter sentences is compounded by a ratcheting-up of breach processes, it is more likely to be the motor of growth.

Such sentences are of a nature that makes the prison population less manageable because of all the business that is involved in taking people from the courts, receiving them into prison, allocating them to places and so on. That is a big problem on a throughput, system-management level. At some point, the issue will have to be addressed in some way.

Colin Fox: You mentioned an average sentence of 1.9 months, but I was driving at the effect that sending more people to jail for longer would have on the entire prison population as regards rehabilitation programmes and so on.

Bill Whyte: The turnover is what counts. A much higher proportion of the daily population are long-term prisoners, but the annual turnover of prisoners is the same. It is the churn that clogs up the system. I do not know what the outcome will be; colleagues have said that the system is highly adaptive.

Judges are not represented at today’s meeting, although the committee might interview them. A gamble is being taken. Judges might indeed say, “What is the point of short sentences?” and stop using them, although I know far too many judges who still believe that sending someone to prison for a few days teaches them a lesson. Despite all the research on what prison teaches people, judges still think that that is the thing to do.

Judges will recalibrate sentences. That is what they did after the passing of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Despite the provision on automatic release halfway through a sentence, the time spent in prison went up. Sentences were recalibrated and judges may do that again—they may do so in such a way as to ensure that prisoners spend exactly the same length of time in prison. As Cyrus Tata suggested, there is the risk that the very short sentences will create complications and that we will get more churn. In the long term, I do not know whether serious offenders will get longer sentences, but I agree with Richard Sparks that that will not make much difference one way or t’other.

Cyrus Tata: We should bear in mind that when the Sentencing Commission made its proposals—which were slightly different from those in the bill—its intention was to increase transparency and clarity. It had no intention of drastically expanding the prison population, but that is exactly what the bill would do. The commission strongly recommended that there should be recalibration; indeed, it recommended that the Parliament should lay down in statute that there should be recalibration, but that requirement has been
dropped. There should be recalibration downwards, because the main pressures on sentences will be upwards. As well as the pressures that are mentioned in the financial memorandum, there are a number of unintended ones.

Colin Fox: I look forward to the day when judges appear before us as witnesses. That might happen one day, but in the meantime we must satisfy ourselves and hope that judge hopping becomes an Olympic sport.

Jackie Baillie: I thought “judge shopping” was the phrase that was used.

Cyrus Tata: Judge hopping sounds quite interesting.

Jackie Baillie: Shopping is more my kind of sport.

Cyrus Tata: It was “judge shopping”.

Jackie Baillie: My questions have largely been asked and answered, but I want to be absolutely clear about what you are saying. You appear to be suggesting that it is not simply a case of increasing capacity for risk assessment and the supervision or management of offenders because little will be achieved with prisoners on short-term sentences, that regardless of whether there is an increase in capacity we just do not have these guys for long enough, which means that we need to focus on prisoners on longer sentences.

You all said that 15 days is not an appropriate threshold. A range of appropriate periods have been mentioned. What would be an appropriate threshold—six months, a year or 18 months? I want to tie you down on that point.

Bill Whyte: I would go along with the model that is used in Finland, where there is a cap at two years. As far as I know, there is no evidence that Finland is overrun with offenders. Finland was extremely imaginative in continuing to allow the judiciary to put custodial weight on what the sentence was worth. Prisoners on sentences of less than two years are supervised in the community, with safeguards. An appropriate period would be 12 months or 15 months. People who would otherwise serve custodial sentences could be subject to longer community disposals, which would mean that they could be taken out of the system altogether. There is no rationale for a period of six months or nine months. A substantial period is necessary.

Jackie Baillie: Is that view common?

Cyrus Tata: I will keep my comments brief because I have spoken for long enough about other matters. I agree with Bill Whyte.

Richard Sparks: If a judge issued a short sentence to be served under supervision in the community, would you argue that that supervision will not work unless it is long enough?

Bill Whyte: The issue of resources in the community still needs to be addressed. It seems to me that people have had a vision for many years when they have passed legislation. Section 12 of the Social Work (Scotland) Act 1968 put a duty on local authorities to promote social welfare and communities’ safety. That is still the law, but I do not see leisure and recreation, housing, education and drug services having visions that they have a duty to promote the well-being of communities. A range of service providers has not even engaged in the dialogue. We are talking about criminal justice social work services and associated voluntary agencies, but we need to bring in a range of other players if we are serious about long-term desistance. There is a resource question either way. Why valuable money should be spent on a certain resource is a relative question.

Richard Sparks: A penalty such as community service need not be of great duration to have an impact on public perception or to benefit an offender. Not all penalties have to be very extended to satisfy penologically meaningful criteria.

Jackie Baillie: Okay. So there can be forms of supervision over a shorter timeframe in certain circumstances. I am trying to remove capacity issues from the discussion, which we agreed to do. I am interested in what works if the capacity issues are removed. You seem to be saying that there can be different interventions for people in short periods of time, so perhaps something can be done even when a short-term custodial sentence has been imposed or when a person is being supervised in the community. I see the witnesses agreeing.

The Convener: I want to ask Mr Whyte a question. You referred to Finland. Is there a cultural difference there? Are community
sentences perceived differently by the community there? Do such sentences result in social stigma?

**Bill Whyte:** There is a major cultural difference. What I described was driven by the executive and the judiciary, but I do not see our judiciary driving for such things at all. Furthermore, Finland does not have our media, which hound the judiciary and the Executive. However, I must assume that the cultural differences that you have raised exist and that people in our society accept that people should be subject to meaningful accountability in the system. We seem to have created cynicism. Somebody said, “If you don’t get put in jail, you don’t get dealt with.” That is a strange mindset.

**Maureen Macmillan:** I am trying to dredge up what I know about Finland’s prisons. The Justice 1 Committee looked at the Finnish system ages ago. I had the impression that if someone went to prison there, nothing was done for them—there were no anger management courses, for example.

What evidence exists about reoffending? Does it show differences between the reoffending rates of people who are supervised when they come out of prison and of people who are not supervised at all when they come out of prison? Has any research been done on the efficacy of supervision?

**Bill Whyte:** The Executive recently published data that are averaged over a two-year period. The advisers probably know more about the data than I do, but there are no huge differences in the reoffending rates. Reoffending rates among people who have come out of custody are slightly higher than the rates among those who have not. We are left with an argument. It can be said that probation or community supervision does not improve matters much and that it achieves much the same as prison, but such supervision is much cheaper than prison and I suspect that it is not as effective as it should be. Community supervision is so much less damaging in the short term. If we are getting no worse results at the moment, there is room for optimism in the data.

The data need to be refined. A figure of 60 per cent reoffending or whatever was publicised. The latest data suggest that the average reoffending rate, once quasi-convictions are taken into account, is 36 per cent. I think that that is a good figure. If two out of three offenders are turned around, that is pretty good. There is no cure. We need to build some confidence into the data, and we must have meaningful supervision and help. I would not wish to sell Finland as a model of service as such, although society did not fall apart when the Finns stopped sending people to prison for a certain amount of time.

**Maureen Macmillan:** You mentioned good supervision. What do prisoners need when they are released? What should we be giving them? What would you consider to be good supervision?

**Richard Sparks:** I think that Bill Whyte should answer all those questions. There is reasonably robust information. The key variables that determine whether people are more or less likely to reoffend persistently are not purely internal to the person. The person’s overall situation includes such factors as whether they have access to employment or meaningful training; whether they have reconstructed or can reconstruct their relationship; and whether they will be able to come off their addictions. Those three factors should be considered in the foreground and focused on, although there will be numerous other things that might have a greater or lesser effect in particular cases.

**Bill Whyte:** We expect three elements to be important. First, there is a management dimension. People have to be held to account. If a relationship or working alliance is really purposeful, offenders value that and think that the person is there for them to give them a fighting chance to change. Most offenders want to change at some point. Some will not—there are professional criminals.

The supervisory part has two elements. One involves building people’s individual capacity to understand what they have been part of, to begin to take control and to develop a sense of self-efficacy. A lot of offenders do not have control of their lives before they go into prison. Coming out of prison can be very difficult. The offence-focused work that we have come to know is very helpful, but it tends to deal with thinking, feeling and doing. We suspect that none of that work really comes to fruition unless there are social resources. Offenders need to be wrapped around with people, not police or social workers.

The word “support” has been used. Professionals should indeed be supportive, but I would not want a professional to provide me with support: I want friends, family and colleagues. Those groups are not easy to build. They are built through people’s educational capacity, employment, leisure and associations.

Whether or not we use the jargon of social capital, we have to build something that gives people a stake in the community where they belong. That is not easy by any means, but we can do it for many people. That is where we move beyond a model of simply having a supervisor. Part of their role is to link individuals to a range of people. Some of the work has to be planned strategically by local authorities. I do not want social workers to do it all. There are educationists, leisure and recreation people, employment people, family members, volunteers and mentors, but we do not yet have the comprehensive packages. In
recent years, we have focused on the offence and management dimensions. We have not really taken seriously how to build social capacity in the community through employment.

We have a fair idea of the kind of things many people will need. There are some people who have been hugely victimised in their lives. I do not put that forward as an excuse, but it is a reality. Many of them will carry trauma throughout their lives, and some will need mental health services or trauma services, which I do not think are readily available.

**Maureen Macmillan:** It occurs to me that there is a gap between getting out of prison and getting support. I hope that things might be better under the Management of Offenders etc (Scotland) Act 2005. When I have visited prisons, I have met prisoners who got out of prison a year previously but went straight into the pub, got into a fight, assaulted somebody and came back in again. It probably happened within a day. Where was the supervision and support?

Prisoners need to live somewhere but do not know where they will live—which is a different kind of need—and drug dealers hang about outside prisons waiting for prisoners to come out. How are we going to catch that?

**Bill Whyte:** You have partly answered your question. The literature and practical experience show that whatever benefits prisoners acquire from programmes in prison wash out quickly when they go back to the same world and the same circumstances, because nothing in that world has changed. To some extent, we need to bridge people back into the community, which is the concept of throughcare. That is why I value the bill’s recognition that a period in the community should be part of the sentence. It is really important that that be implemented, because that is what is likely to give us a chance to connect.

The model of throughcare is changing and the prison service is getting better at it. In the model that is opening up, rather than inviting people in to do a bit for a prisoner and then letting the prisoner out, the prison service holds the prisoner and, because the community is responsible for taking the prisoner back, the prison service asks people to come in and start the work long before they are due to return to the community. We must begin to address housing, leisure and recreation, literacy and employment before prisoners get out.

**Maureen Macmillan:** So there should be a seamless transition.

**Bill Whyte:** That is the ideal, but it raises all the practical issues such as numbers. How many people is it realistic to do that with?

**Cyrus Tata:** Can we do it with the vast bulk of prisoners, who are sentenced to three months or less? Prison is enormously corrosive. Some people say that offenders can be sent to prison for detoxification—sometimes sentencers believe that—but, unfortunately, as you may have seen reported in the papers at the weekend, the research does not bear that view out at all. In fact, it shows the reverse: people are more likely to use drugs in prison than they were before. Likewise, it is sometimes said that offenders can develop literacy skills while they are in prison. That is all very well, but we must not send people to prison to assist their education when that could be done in the community if we began to spend a bit more of the money that is devoted to prisons on community services.

**The Convener:** Could you turn to weapons, Maureen?

**Maureen Macmillan:** Yes. I am the person who asks the weapons question.

**Jackie Baillie:** I wonder why.

**Maureen Macmillan:** So do I.

Why are knife crime and other violent crime so commonplace among young men in Scotland? Will the bill help to reduce knife crime?

**Bill Whyte:** If somebody who has a knife in their pocket bumps out of a night club and starts to fight with somebody else, they are more likely to use it, so there must be some value in the bill’s attempt to get knives out of circulation, but it will not solve the problem. We have an endemic culture of violence, but we have not addressed how we socialise our boys. We have put a lot of emphasis on women in recent years—and rightly so—but the problem is, what is it to be a man or a boy? In a recent study in Glasgow, University of Bristol researchers interviewed young men and women. Conceptually, the interviewees were very new people but, when the researchers gave them illustrations of a man giving a woman a hard time, they wanted her man to stand up for her and go and give the other man a doing.

There are all kinds of ambivalences about violence in our society and we have not addressed that fact. We are beginning to consider circle time and restorative practice in schools. We are beginning to consider how we make good our relationships. Thirty years ago, the broken home would have been the predictor of crime but we are not overrun by crime—it might feel like we are, but we are not—even though family disruption is a norm for our young people. They do amazingly well, but they do not get the adult attention that they used to and we live in a much more complex world.
The bill deals with one element but, in a culture of macho violence, if somebody has a knife in their pocket they will use it. If we can get the knives out of circulation, that will help and, we hope, people will only punch one another—but we are not really addressing how we socialise boys. Moreover, with the freedom that young women have, they rightly realise that they are equally entitled to thump somebody, and they are emerging as just as violent.

Maureen Macmillan: Yes, they are emerging as knife carriers.

Colin Fox: That is a hopeful note.

The Convener: Yes: it reminds me of Frankie Vaughan and his work with boys clubs and boxing clubs in the past.

I thank the witnesses for their evidence. We will now move into private session.

15:44

Meeting continued in private until 16:13.
SUPPLEMENTARY SUBMISSION FROM CYRUS TATA, CO-DIRECTOR, CENTRE FOR SENTENCING RESEARCH, LAW DEPARTMENT, STRATHCLYDE UNIVERSITY

The Bill Ignores the Key to Achieving Clarity in Sentencing

The Bill deals with the management of sentences without tackling sentencing itself – once again changing exit points without looking at entry. The Bill has shied away from looking at sentencing policy. While it is accepted that the allocation of punishment in individual cases is a matter for the courts, the overall objectives and shape of sentencing policy is a matter for Parliament. The Bill will not achieve greater transparency because ultimately, in and large part, the ‘disjuncture’ between time announced and time served is a practical consequence of not tackling the question of who goes into prison and for what. By ignoring that question of who we should send to prison (i.e.: especially where persons are not a danger to the public) and for what, governments will continue to find that they have to manipulate release arrangements so as to relieve pressure on prisons caused by the throughput of huge numbers of very short term prisoners.

Issues Arising from the 15 Day Cut Off

ANY period in custody is extremely serious and has damaging effects leaves one in two homeless; breaks social and familial ties etc which are so vital to desistance. There are also serious equal treatment considerations:

1. The perverse effects of the 15-day rule. This means that a person sentenced to custody for 21 days will serve less than a person sentenced to custody for an apparently less period (eg 14 days). This is plainly absurd and undermines the objective of clarity and intelligibility.
2. In addition to the perverse effects of the 15 day cut off, some sentencers may feel it is a matter of justice (comparative proportionality) that someone who would have been sentenced to 21 days imprisonment would serve less than someone who is sentenced to 14 days. It will be tempting (and in some respects understandable) for individual sentencers to inflate their sentence to try to avoid this comparative injustice. Other individual sentencers may feel that they cannot do this.
3. Given that the Scottish Executive acknowledges that between 15 days and 6 months the licence will be nominal, why have the 15 day cut off point at all?

Unintended Inflationary Pressures on Sentencing

Many (though not all) individual sentencers will feel that supervision after release from custody (i.e. combined sentence) is desirable in many cases. The policy memorandum tells us that only those serving 6 months or more will be expected to be in supervision (and it may well be that in time 6 months comes to be seen as too low to provide meaningful supervision). Consequently, many individual sentencers will choose to add the extra time necessary in order that the person before them will definitely get the supervision and support. With the new summary sentencing powers being increased to 12 months\(^1\), this will be very tempting. It would have been more sensible to have kept the 12 month cut off recommended by the Sentencing Commission since this would coincide with maximum summary powers. Alternatively, the maximum summary powers should be kept at 6 months.

Nominal Licence Practice will Damage Public Confidence in Community Sentencing in General

The Policy Memorandum concedes that those sentenced to custody for six months or less (and we suggest probably more than 6 months in practice) will be subject to only a nominal licence. This will set the reputation of community punishment up for failure. Inevitably, it will not be long before one or more persons on a nominal licence commits a serious offence, which attracts considerable public attention. When it is discovered that in such cases s/he was ‘on licence’, the reputation not only of licence but (by association) community punishment more generally will be damaged. While this ‘failure’ would, of course, not be a failing of community punishment or criminal justice social work per se, it will be portrayed as such in the inevitable media furore, which will point the finger at criminal justice social work. Public confidence in punishment in the community will, as a result, be undermined by its association with the nominal licence. In other words, by making licensing so

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\(^1\) Criminal Proceedings (Scotland) Bill s33
wide, universal and nominal, it and all community sentencing is being set up for repeated public relations failures.

Setting of the ‘Custody Part’ in the Proposed Combined Structure (Section 6)

Section 6 of the Bill is one of the most unclear and contradictory parts of the Bill.

Section 6 provides that the custody part must be a minimum of 50% of the overall sentence, but that this may be increased to 75% if the individual sentencing judge considers it appropriate. What is the rationale for allowing individual sentencers to increase the custody element to 75%? None of the accompanying documentation provides an explanation.

S6 creates less clarity in sentencing – not more

Section 6(4) provides that an individual sentencer may increase the custody element to 75% in view of: the seriousness of the offence/s; previous convictions; the timing and nature of a guilty plea. Yet all three of these criteria currently form (and will continue to form) the basis of determining the overall headline sentence. Why should individual sentencers now be asked to make the same assessment twice? At best this seems to provide for unnecessary duplication and confusion.

S6 will create exacerbate disparities in sentencing

The policy memorandum supposes that 50% will be the normal ‘punishment part’ set by the court. This appears to amount to wishful thinking: there is nothing in the Bill which will ensure that this is likely to be the case. Indeed, individual sentencers are likely to deal with very similar cases in dissimilar ways (disparity).

S6 means that the aim of long-term public protection will be undermined

“Public protection is of paramount importance.”

This is why the new combined structure is proposed for all custodial sentences of 15 days or more: to be subject to licence in the community. Community supervision and licence conditions are intended to reduce the risk of re-offending both during the community part of the sentence and after the expiration of the sentence and thereby increase public protection. Yet the proposal in section 6 to allow individual sentencers, in effect, to decrease to 25% the period of community supervision will undermine the very efforts to increase public protection, through a supported and supervised transition back into the community. It is likely that practices will vary between individual sentencers dealing with substantively similar cases. The Bill proposes that individual sentencers should be allowed to increase the custody part of a sentence to up to 75% because they wish, in effect, to punish the offender twice: once in terms of the overall sentence and again by limiting the time for structured community supervision and support. Yet ironically, in many of those very cases where the offender and the community will most need community supervision the community element will have been reduced. Unlike indeterminate life sentenced prisoners, determinate sentenced prisoners cannot be held or subject to licence beyond 100% of their sentence. Therefore, by allowing individual sentencers to reduce the community part to just 25% it will in fact make management and supervision of offenders both more difficult and shorter. Thus, enabling individual sentencers, to reduce the community element to 25% will undermine the very reason for ending automatic unconditional release: public protection, which is claimed to be of “paramount importance”.

Square Peg in a Round Hole. The Bill has attempted to apply the logic of indeterminate sentence arrangements (e.g. for life sentence prisoners) to all 15 day-plus determinate sentence prisoners. The Bill appears to rely on the rationales used for indeterminate sentence prisoners and apply this to all determinate sentence prisoners sentenced to 15 days or more. The key difference is that determinate sentence prisoners must be released from all restrictions after the completion of 100% of their sentence.

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2 Policy Memorandum, p2 paragraph 7.
Artificial distinction between ‘seriousness’ and ‘protection of the public’ leads to more confusion not less.

S6(5) provides that in setting the custody part, the court "must ignore any period of confinement which is necessary for the protection of public". Background documentation indicates that this is supposed to require sentencers only to include the 'punishment part' of sentencing and thereby subtract the 'risk part' from the sentence. In practice I cannot see that this will work. In practice, the categories of 'risk' and 'seriousness' will continue to be very difficult to distinguish in determinate sentence cases. The Bill’s attempt to draw this distinction will be seen to be artificial and un-transparent.

I would recommend, therefore, that the Bill should not enable individual sentencers to vary the custody percentage for determinate sentenced cases. The purposes of retribution, deterrence, culpability and seriousness can be (and are) achieved more transparently through the setting of the appropriate overall headline sentence.

If S6 is retained then there will need to be a requirement for sentence recalibration

In its report, the judicially-led Sentencing Commission explicitly recommended that to take account of increases in real time served in prison, there should be recalibration of sentencing:

“We therefore recommend that, in any new statutory regime, Parliament expressly provides that a sentencer, when having regard to sentences imposed under the previous regime, must also have regard to the right to early release under that previous regime. Accordingly, it will be appropriate for sentencers acting under the new regime...to recalibrate and reduce them by the extent necessary..."[paragraph 5.8, sic]

Currently, it is understood that the sentenced person would be released after 9 months of an 18 month sentence. (50%). However, section 6 will allow the individual sentencer to pass the same headline/official sentence (18 months) for the same case, but to increase the effective period in custody to 75% (in this example 12 months). Thus, the effective (or real) custodial sentence will be 3 months longer, although the official/headline sentence remains the same.

For reasons not explained by the background policy documentation, the recommendation by the Sentencing Commission that “Parliament expressly provides” for recalibration has been completely omitted from the Bill.

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3 The Sentencing Commission for Scotland (December 2005) Early Release from Prison and Supervision of Prisoners on their Release
Supervision in the Community

We consider that it is vital that the value of supervision and support of offenders in the community be recognised as a major contributor to community safety. At the same time it has to be appreciated that there are resource implications in providing supervision and support and that they should therefore be targeted on those offenders who require them.

These functions can be summarised as follows:

Supervision

- Ensure compliance with licence conditions
- Provide opportunities for the supervisee to address issues related to offending
- Monitor and take action in relation to identified risk of re-offending and risk of harm.
- Observe, note and report significant aspects of the resident's attitudes, behaviour, mental and physical health, response to support, family and social relationships.
- Take appropriate action if there are suspicions of illegal activities.
- Provide written progress reports on the above when required.
- Initiate breach of licence process when circumstances warrant it.

Support

- Community safety is enhanced through the provision of support, which is likely to increase the effectiveness of monitoring and supervision activities. It is designed to assist the resettlement of the offender to a stable lifestyle in the community, and in doing this, help to reduce the risk of offending. It is likely to include some or all of the following:
  - Advice, guidance and assistance to obtain benefit entitlements, supported accommodation, access to training and employment opportunities, access to health services
  - Life skills work designed to help with budgeting, healthy eating, basic health information and household skills.
  - Encouragement and assistance to pursue legitimate and constructive leisure interests.
  - Advice and guidance about relationships, e.g. with family, friends.
  - Support to sustain efforts in regard to the above activities.

There is an abundance of evidence that offenders’ prospects of avoiding future offending are greatly increased if they see themselves as having a stake in society through opportunities to succeed. Suitable accommodation, employment and moving away from substance abuse are three of the most crucial factors.

The voluntary sector plays a major part in the provision of a wide range of services that complement the supervision which is the responsibility of the statutory services.

Voluntary Througcare

We take the view that much of the support that ex-prisoners need to adopt a law-abiding lifestyle can be provided on a voluntary basis if offenders are encouraged and motivated to receive it. Our evidence is based on Sacro’s experience of providing a Community Links Centre. A paper describing this service is attached for reference, as is a short case study to illustrate an immediate post release service.

The great majority of prisoners do not require statutory supervision but many will benefit from this kind of support.

We recommend that the Scottish Executive invest more resources to make sure that the best of the current models of service delivery be rolled out across Scotland to make them readily accessible.

We further recommend that statutory supervision be reserved for those serving sentences of 12 months or more.
Fit of this Bill with the Management of Offenders (Scotland) Act

The major aim of the Act is to ensure that all the relevant agencies work jointly to reduce re-offending. The creation of the Community Justice Authorities and the duty on agencies to cooperate will underpin achieving this objective. We welcomed these initiatives.

We are concerned, however, that implementation of concomitant desirable processes such as Integrated Case Management and joint risk assessment would be undermined by placing unrealistic expectations on police, on social workers and on prison officers, not to mention the voluntary sector, the courts and the Parole Board. We refer, of course, to the huge numbers that would have to be unnecessarily risk-assessed and supervised and to the increased number of recalls and longer sentences.

The new demands, would in all likelihood, reduce the quality of the input of all the agencies to those cases and offenders that need it most. This, in turn, would threaten public safety and thus the confidence in the new joint working arrangements and also adversely affect the morale of all the staff concerned.

THE COMMUNITY LINKS CENTRE - Putting The Jigsaw Together

Quote from a service user of the Community Links Centre:
One day at benefits I was told to go to Castle Terrace. When I got there, there was a note on the door telling us to go to High Riggs job centre, and when I got there, they told me I had to get my housing form stamped. This was still in my B&B, so I had to go back to collect it. I returned to High Riggs only to be told I would also need ID. I returned once more to the bed and breakfast and then back to High Riggs only to be told they were very sorry that they had made a mistake and I wouldn’t get payment until the next day. If my Sacro worker hadn’t been there to take me back and forwards I know I would have lost it and probably ended up back inside.

This is an example of how the Community Links Centre helps prevent people going back inside.

Introduction

One of the purposes of this conference is to consider how interagency working and partnerships can help to meet the learning and skills needs of offenders. What I aim to do in the next 15 minutes is to

- highlight some of the challenges, facing prisoners returning to the community from prison, that form barriers to employability
- and tell you about the Community Links Centre initiative in Edinburgh and its potential to overcome obstacles to employability through a co-ordinated, interagency approach to resettlement in the community.

There’s widespread acceptance of the Scottish Executive’s aims to reduce re-offending – to make communities safer. We know that 60% of discharged prisoners are reconvicted within two years and that 43% return to prison within the same time period. The work of the Community Links Centre has an important part to play in reducing those figures, by addressing the barriers to employability.

Barriers to Employability

We also know that “research consistently identifies sustained employment as the biggest single determining factoring affecting ex-prisoner recidivism rates.” (Adams and Smart – see report details below)

However, there can be immense obstacles in the way of prisoners taking up opportunities that may be offered to improve their training and employment prospects. These have been well documented

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1 Presentation at a conference “Role of Education and Skills in Enhancing Life Chances and Preventing Offending”, Edinburgh, 23 February 2006
in a report of a study carried out here in Edinburgh last year. It was commissioned by the Capital City Partnership and I commend it to you because its analysis and conclusions about employability and offenders will also be relevant to other parts of Scotland.

**Employability Support in Edinburgh For People Leaving Prison**

The report points out the range of potential barriers that may have to be overcome:
- Lack of suitable accommodation
- Lack of education and employment
- Drug and alcohol abuse
- Mental and physical health issues
- Poverty, debt and homelessness
- Poor family networks
- Mistrust of mainstream agencies
- Poor life-skills as a result of institutionalisation
- The deterioration of personal circumstances as a direct result of imprisonment.

Other potential barriers pinpointed by the Adams and Smart study include:
- Short sentences making pre-release work difficult
- Kaleidoscopic patchwork of un-co-ordinated community-based services – which is best for the prisoner?
- Some prisoners simply not being appropriate for joining the labour market, either for economic reasons or because they know they are nowhere near ready!

Just how significant these barriers are becomes clear when we look at information about the 2000 people released from prison to Edinburgh in 2003.

- Around 1750 were drug users, almost 90%
- 800 had mental and physical health problems, 40%
- 570 were homeless. Between 25-30% (Capital City Partnership research, 2005).

Research from England and Wales (Social Exclusion Unit Report, 2002) tells us some interesting statistics about offenders and accommodation:

- 1 in 3 NOT in permanent accommodation prior to prison
- 1 in 3 lose housing on coming into prison
- 1 in 2 are homeless on release!

The research also points out how this lack of accommodation can affect resettlement:
- Suitable accommodation can reduce recidivism by 20%
- Ex-prisoners with an address are three times more likely to be in paid employment.

So, the picture is a complex one and, as usual, there is no one panacea or solution. Sacro certainly does not have all the answers but we do think the Community Links Centre model, now in its early days of operation in Edinburgh, can go some way to addressing some of the issues. This is especially because the "throughcare service agreements" between the Sacro service worker and the prisoner/ex-prisoner will take a holistic approach to tackling the kinds of problems that constitute the barriers to utilising employability services.

Sacro is not an employability specialist and has no ambitions to set up a stall in this market. However, employability and employment will undoubtedly be crucial factors for many of our service users. The Adams and Smart report suggests the potential for the Centre to act as a “partnership vehicle” should be explored further by all concerned. In other words, as employability is unlikely to be the only issue for the service user, our role is to support the employability specialists by assisting the service users to put the other elements of the jigsaw in place and to sustain their motivation.

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2 Eddy Adams and David Smart (November 2005) Google the Capital City Partnership website, publications section
Let me now tell you about the Community Links Centre.

In summary:

- A Sacro worker gets to know the prisoner through at least three visits while still inside and together they plan and prepare for release.
- The same worker then supports the prisoner on the outside to get the services he or she needs from other agencies or perhaps by providing some modular interventions themselves; and by motivating them to stick to the plans they’ve made.

**Sources of referrals**. CLC works closely with the Enhanced Casework Addiction Service (ECAS) provided in the prisons by Phoenix House—Throughcare Addiction Service referrals.

The Centre is the City of Edinburgh Council’s way of implementing the Scottish Executive’s Throughcare initiative for voluntary assistance for prisoners sentenced to less than four years. These referrals come from SPS, Community agencies, prisoners/ex-prisoners and their families. The priority target groups are offenders with addictions issues and offenders who pose high risk of harm to the community.

In Sacro, work with the Throughcare Addiction Service priority group is an integral part of the Community Links Centre service and the same model is used, whatever the issue for, as with employment, drugs are rarely the only issue for a service user.

The CLC provides proactive encouragement and access to a range of supports for prisoners discharged to Edinburgh, the majority coming from Polmont, Compton Vale and Saughton. It is intended to mirror the interagency work carried out in the LINKS Centres in the prisons, and provide the continuity of service that will increase the likelihood of successfully keeping the service user engaged in the activities and relationships that will break the cycle of offending.

The Sacro staff work from a city centre base, which will have some space to enable other agencies to provide their services for Centre users.

Outreach work will complement the in-reach work in prisons and the work carried out within the Centre, so Sacro staff will also meet service users in their local communities. It is envisaged that community agencies working in partnership with Sacro will let us use their premises for this work. Home visits will be made when appropriate.

Since the service was introduced late last year, the Centre staff have been in dialogue with a number of key statutory and voluntary agencies in Edinburgh to discuss the best ways to collaborate to meet the service users identified needs, share information and get feedback on outcomes and for tracking (important for evaluation). Protocols between the agencies are being drawn up as necessary.

The services offered to Centre users will include a combination of the following as appropriate to each individual:

- Advice, guidance and practical assistance. This covers a wide range of issues including accommodation/housing, securing full benefit entitlement (particularly difficult in Edinburgh at present as offices are being closed and replaced by call centre lines), access to education, training and employment as well as access to health services/GP.
- Assisting access to drug treatment services (support can be accessed quickly but the wait for a prescribing services can be as long as six months) and helping to sustain ongoing treatment
- Life skills work designed to help the service user with budgeting, healthy eating, basic health information and household management.
- Encouragement and assistance to pursue appropriate, legitimate and constructive leisure interests.
- Advice and guidance about relationships with family and friends and direct contact with family as required both pre- and post release.
- Support and encouragement to service users to attend programmes that are intended to reduce their risk of re-offending
• Brief modular interventions designed to address criminogenic need and thus reduce the risk of re-offending, e.g. anger management, alcohol education and relapse prevention and, where appropriate, addressing the harm offenders cause to their victims.

Service users are assessed for where they are on a line between “in crisis” and “thriving”. At one end people will need to have their basic needs worked on before they can take up any opportunities provided by the employability services. Others further along the road may be able to take up opportunities if they are given a measure of support on their basic needs alongside the employability preparation, training, learning or employment.

**CONCLUSION**

**Key factors for success include:**

The professional relationship developed by the worker meeting and planning with the service user in the prison and the same worker building on that relationship to motivate the offender once he is in the community.

Also crucial to the success of the service are the partnership agencies and excellent interagency working with- The Council, SPS, Phoenix House, and a wide range of community-based agencies in Edinburgh.

A third factor crucial to the success of the service and outwith Sacro’s control, is the capacity of these community-based agencies. Already we are experiencing a shortage of available accommodation and difficulties in accessing drug rehabilitation places.

The systems and supports are in place but joint strategic decisions and the political will to ensure all the pieces of the jigsaw are in place, will be essential for CLC to add its potentially significant contribution to reducing re-offending. We hope this will be achieved through the inter-agency Advisory Group, which has been established for CLC.

**CASE NOTES**

**Date:** 21-10-05  
**Name:** G

G was picked up from the prison at 9.15 am, and we confirmed the “plan of action” for the morning. G informed me that he was nervous about being “free” and stated that he was grateful that Sacro staff were willing to collect him from jail, as he felt that he would not make it past the first off licence.

As agreed, we went to the Benefits office at Wester Hailes, where G completed the necessary forms to begin his claim for benefits. There was confusion about his status as being medically unfit to work, but I informed the benefits officer that we intended to arrange a doctor’s appointment for the following Monday, to confirm his medical status. G felt that it was good that this had been completed, as it was one less worry that he now had to deal with.

Then we went to the Post office to cash his Community Care Grant Cheque. However, as G did not have any ID the cashier refused to cash his cheque. Upon querying how he could verify his ID we were informed that the Benefits office had the capability to do this. We returned to the Benefits office and after discussions with the officer there we managed to get a letter from the benefits office confirming G’s identity. Again G was grateful that I was there as he stated that he would have “lost the plot”, and “walked out, without getting anything sorted”.

Upon returning to the post office G was able to cash his Cheque. I made a passing comment to G about giving the money to his girlfriend to look after, but he stated that he was the one who would look after the money, and he felt that he would not spend it on drugs or alcohol. However, on passing an off licence on the way out from the post office G said “Thank god you are here, or else I would be straight in there”.

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We then went to the doctor’s surgery, where G arranged an appointment for the following Tuesday. Although the surgery was on the way to his girlfriend’s, again he stated that he would not have got round to making the appointment if I had not been there to insist he did it. G realised that it was another issue that he would not have to deal or worry with in the future and again was grateful.

G then directed me to his girlfriend’s house, and he introduced me to her. Whilst G was putting away his belongings and having a quick wash, his girlfriend informed me that she was extremely pleased that I had taken the time to accompany G to and helped him with the various agencies. She acknowledged that she had not expected to see G straight away, as she thought he would end up buying drugs or alcohol as soon as he was released from prison. She stated “At least you are giving him a better chance than he has had before, by helping him like this”.

After having a cup of coffee and informing G’s girlfriend of the times of the appointments that had been arranged, we left to go to the CDPS office on Spittal Street. G then informed me that he had to go back to the house as he had forgotten to take money, as he had given it to his girlfriend. G stated that he had thought about my advice and realised that it was a good idea, otherwise he would have spent it all on alcohol or drugs in a short period of time. On the way to the CDPS office G could not emphasis enough how grateful he was for me taking the time to help him. He stated that this was the longest period of time, after being released from any sentence, that he had remained drug and alcohol free. He said that if I had not been there he would not have made it to his girlfriend’s house nor attended all the appointments that had to be attended that day.

I took G into the CDPS office and when taken in for his appointment, I then returned to the office. We have arranged for another appointment for Wednesday 26th October, as this will allow G time to attend the doctor’s on Tuesday before coming to see me.

G was informed that if he had any worries or concerns before the appointment he should call the office. G agreed to this and once again thanked me for all the help that he had received so far.
SUBMISSION FROM SCOTTISH RETAIL CONSORTIUM

SRC Response to Sections 43 to 46 of the Bill containing provisions relating to restrictions on the sale of non-domestic knives and swords

The Scottish Retail Consortium (SRC) was launched in April 1999 as a retail trade association for the full range of retailers in Scotland, from the major high street retailers and supermarkets to trade associations representing smaller retailers.

The Scottish retail sector employs 261,000 people, 1 in 10 of the national workforce, in 26,500 outlets. In 2004 Scottish retail turnover was £21 billion, accounting for 12% of total Scottish turnover.

The retail sector is key to the revitalisation and renewal of urban and rural communities across Scotland. The SRC’s members provide a vital community service, a focus for physical regeneration, and sustained investment in people and places.

The SRC’s parent association is the British Retail Consortium (BRC) with offices in London and Brussels.

Overview

The SRC appreciates the opportunity to comment on Sections 43 to 46 of the Custodial Sentences and Weapons (Scotland) Bill relating to restrictions on the sale of non-domestic knives and swords.

The SRC supports the objectives of Sections 43 to 46 of the Bill to put in place safeguards which will help prevent potentially dangerous weapons falling into the wrong hands. The SRC are also fully supportive of the role that the Bill will play in the Executive’s reform of knife crime law, and the wider package of measures to tackle knife crime and violence more generally.

Furthermore the SRC is in agreement with the Scottish Executive that additional measures need to be taken to tackle knife crime. Retail staff can be victims of knife crime, and the SRC welcomes any steps that will reduce the chances of retail staff and others from falling victim to knife related crime.

Licensing Sellers of Swords and Non-domestic Knives

The SRC took part in the Scottish Executive consultation ‘Tackling Knife Crime - a Consultation’, published in June 2005, and we are pleased to note that the vast majority of concerns we raised in response to the consultation have been dealt with. However we still believe that a number of key areas require careful consideration during the scrutiny of the Bill:

Definition of a non-domestic knife:
The SRC believe that there is still some ambiguity surrounding the definition of ‘non-domestic knife’. This term needs to be absolutely and clearly defined, and the definition should exclude as many types of knives that are generally used in domestic situations as possible.

Many of our members sell a range of knives, including stanley knives, camping knives, swiss army knives and pen knives, and it would be unfair to target retailers who sell these legitimate and commonly used knives, with a licensing scheme. The SRC would suggest that the definition proposed by the Scottish Executive in the consultation paper could encompass more products than is intended, and would refer back to the SRC’s original suggested definition of a non-domestic knife:

‘a knife that is primarily designed to slash or stab and could not reasonably be described as having a legitimate domestic or business purpose’.
Cost:
It is impossible to estimate the cost of a new licensing system without knowing exactly what type of knives would be covered by the system (hence the importance of a clear definition), and without knowing what the conditions of a licence would be. However, the following represents the potential direct costs of introducing a licensing scheme:

- Installing/upgrading CCTV systems.
- Development and implementation of new systems to record all transactions in relation to the sale of a non-domestic knife.
- Obtaining photographic evidence of the purchaser's identification.
- Regulating the display of knives on the licensed premises e.g. blacked out windows, locked cases etc.

Furthermore, factors such as staff training and staff stress caused by enforcing new regulations in potentially inflammatory circumstances must be taken into account. It is also important to note that the cost of a licensing scheme will be disproportionately higher, and will have a greater impact, on smaller retailers.

Consistency of approach:
The SRC are clear about the need for the Scottish Ministers to set, by statutory instrument, minimum conditions for any knife dealer's licence. However we have concerns regarding local authority powers to impose additional licence conditions.

As we understand it, different conditions could apply to the sale of different products in different areas of Scotland. The SRC are concerned that this may cause confusion, and could potentially be difficult to administer, particularly where a retailer trades in more than one local authority area.

Conclusion
Retailers take their role in the sale of age-restricted products very seriously, and we feel that is important to note that SRC members do not sell the type of knives that are used in violent crime (for example sword sticks, push daggers, death stars, or butterfly knives). SRC members sell products that are used on a daily basis within a domestic and DIY environment.

We are fully supportive of the package of measures being developed to tackle the problems associated with knife crime, and with violent crime more generally. However we would urge the Scottish Executive to:

1. Develop a licensing scheme that:
   i. Minimises any negative impact on legitimate sellers and purchasers of non-domestic knives.
   ii. Is fully transparent.
   iii. Is uniform across all local authority areas.
   iv. Is based on a clear definition of a non-domestic knife.
   v. Is as easy and cost effective for businesses to administer as is practicable within the boundaries of the law.

2. To continue to support a full range of non-legislative initiatives to tackle the problem of knife crime, including continued support for the Violence Reduction Unit and Action on Violence in Scotland, and the consideration of additional knife amnesties.
The members of the Parole Board for Scotland were pleased to be afforded the opportunity to comment on the proposals contained in the above Bill in so far as they relate to the release of offenders on licence and the recall of licensees whose behaviour in the community indicates that they present as a risk of causing harm.

The members of the Board had the following observations to offer.

Section 6, Setting of custody part
The members noted that it is proposed that all offenders who are sentenced to a term of 15 days or more will be made the subject of a custody and community sentence where a minimum of 50% of the term of the sentence must be spent in custody. Given that all prisoners serving such a sentence are to be assessed on a regular basis in order to assess the risk of serious harm that the offender may pose to the public it is difficult to envisage how this will be achieved with offenders who have been sentenced to a combined sentence of less than 12 months. In such cases the actual time spent in custody will be of such short duration that little if any effective work to address offending behaviour could be arranged and undertaken during the custody period. Such offenders are generally described as a “public nuisance” as opposed to a “risk of serious harm” and the Board consider that resources should be focussed on those offenders who present a risk of serious harm to the public.

The members further noted from the proposed provisions contained in section 27 of the Bill that those sentenced to a custody and community sentence of less than 6 months are not to be the subject of supervision in the community. The members consider that this proposal reinforces the position that such individuals should not be the subject of custody and community sentences.

Another difficulty that is likely to arise in connection with the inclusion of such offenders within the provisions of the Bill is the matter of the provision to the Parole Board of information about the offence or offences that resulted in the individual being sentenced to a term of imprisonment. At present the Parole Board relies to a great extent on the detailed information contained in the report that is prepared by the judge who presided at the offender’s trial. It is not clear whether sentencing Sheriffs are to be asked to provide post sentencing reports in a manner similar to those currently prepared by High Court Judges. If sentencing Sheriffs are to be required to prepare a post sentence report in respect of all offenders who receive a sentence of 15 days or more, this will represent a considerable burden. Given the short time frame available the Parole Board is likely to encounter great difficulty in processing such cases. These problems will be particularly acute in circumstances where the Scottish Ministers revoke such an offender’s licence and the likelihood will be that the sentence will have expired before the Parole Board can consider the case.

Section 2, Parole Board rules
The members of the Board look forward to contributing to and commenting upon the draft rules.

The members noted that the Board is to be given the powers to cite witnesses to appear before a hearing of the Board in order to give evidence to it or to produce documents. The members commented that the Parole Board Rules as presently framed provide for the Board to cite witnesses only when it is sitting as a Tribunal dealing with the case of a life prisoner or a recalled extended sentence prisoner. This has proved to be problematic when the Board convenes an oral hearing to consider the case for re-release of a recalled determinate sentence prisoner as, in such cases, the Board does not have the powers to cite witnesses. The members of the Board welcome the proposed extension of the Board’s powers to cite witnesses.

Section 10, Review by Parole Board
The members noted that the Bill as currently drafted provides that:

Before the expiry of the custody part of the prisoner’s sentence, the Parole Board must determine whether section 8(2) applies in respect of a prisoner.
In order to assess the risk of serious harm that the offender may pose to the public the Parole Board requires access to a dossier of reports that contains information about:

- the prisoner’s previous offending record;
- the offence that resulted in the sentence currently being served;
- offence related work undertaken while in custody;
- the prisoner’s behaviour in custody;
- psychological or psychiatric intervention while in custody;
- the prisoner’s proposed home background on release; and
- the community based supports and specialised counselling services that will be made available to the prisoner on release.

The foregoing reports are gathered together by officials of the Scottish Prison Service from a variety of sources. Experience over the years has taught the Board that a number of reports may be submitted late or the Board may require to seek at its own hand additional information. In these circumstances, it will not always be possible for the Board to conclude its consideration of each case and arrive at a determination before the expiry of the custody part of the prisoner’s sentence.

The Board therefore suggests that paragraph 10(2) of the Bill requires to be amended to reflect the foregoing.

Section 11, Release on community licence following review by the Parole Board

Sub-paragraph (4) of this section requires that in the case of a determination under section 10(2) “the direction must be implemented on the expiry of the custody part of the prisoner’s sentence”. For the reasons explained above that will not always be possible.

In addition, over the years it has been the Parole Board’s experience that for a variety of reasons it is advisable to provide for a prisoner’s release with what is described as a “forward date” as opposed to release on the prisoner’s parole qualifying date or, as is now proposed, immediately upon expiry of the custody part of the sentence. Usually release on a forward date arises where the Board wishes to see a prisoner further benefit by way of a gradual re-introduction into the community by way of additional home leaves from the Scottish Prison Service’s open estate or where suitable accommodation arrangements are not in place because the agencies that provide accommodation cannot earmark accommodation for an individual until such time as release from custody has been agreed and a specific release date established.

The members of the Board therefore consider that sub paragraph 11(4) of the Bill requires to be amended in order to accommodate the situations described above.

Section 12, Determination that section 8(2) applicable

The members formed the view that sub paragraph 12(4) (a) and (b) could be re-drafted in the interests of transparency.

Section 17, Life Prisoners – Review by Parole Board

The members noted that sub paragraph (2) provides that before the expiry of a life prisoner’s punishment part, “the Parole Board must determine whether subsection (3) applies in respect of the prisoner.

For reasons similar to those set out at paragraph number 3 of this submission it will not always be possible for the Board to conclude its consideration of a life prisoner’s case before expiry of the punishment part of the life sentence.

In the circumstances, the members of the Board are of the view that paragraph 17(2) of the Bill requires to be redrafted to reflect the fact that the Board may not always be in a position to reach a determination before expiry of the punishment part.

Section 18, Release on life licence following review by Parole Board

The members noted that the provisions contained in this section require that where the Board is satisfied that a life prisoner is not likely to cause serious harm to members of the public it must direct the Scottish Ministers to release the prisoner on life licence. It also provides that the Scottish
Ministers must release the prisoner on life licence and, where the punishment part has not yet expired, the prisoner must be released on the expiry of the punishment part.

The members of the Board are of the view that these provisions are somewhat restrictive. The members of the Board are of the view that provision should be made for the Board to direct a life prisoner’s release with a forward date. Such a provision would enable the Board to direct the release of a prisoner subject to all the necessary community supports, including suitable accommodation, being put in place.

Section 34, Effect of revocation
The members consider that this section would benefit from re-drafting in order that it is clear from the outset that confinement of a custody and community prisoner until the expiry of his or her sentence and the confinement of a life prisoner in custody until he or she dies is wholly dependant upon the Parole Board not directing their re-release on licence.

Schedule 1, Section 2, Membership of the Parole Board
The members of the Board particularly welcomed the proposal to include amongst its membership a person who has knowledge and experience of the way in which, and the degree to which offences perpetrated against members of the public affect those persons. The members commented that this was a welcome development that would enhance the expertise of the Board.

Financial Memorandum, The Custody Part, Risk Assessment and Decisions to Release
The members noted with concern that paragraph 151 of the Financial Memorandum contains a proposal that the Parole Board Rules will be amended in order to ensure that decisions reached by Tribunals of the Board are unanimous. In order to achieve this it is proposed that Tribunals of the Board will comprise of only two Board members, as opposed to three at present. The members of the Board are of the view that one of the strengths of the Board and of Tribunals is the considerable breadth of experience of the members. The members consider that restricting the membership of Tribunals to only two members will ensure that the Board is not in a position to draw on the wide experience of its members. At present the chairman of a Tribunal must be a person who holds or has held judicial office or a solicitor or advocate of not less than 10 years standing. The members understand that it is not proposed to alter the status of the chairman, or convener, of the Tribunal, therefore if a Tribunal is to consist of only two Board members and it is clear that one must be a legally qualified member, the Board will not be in a position fully to utilise the expertise of individual members.

A further concern that the members have in relation to the proposal that all Tribunal decisions require to be unanimous is that such a requirement is incompatible with the right of the individual to a fair trial, as protected by Article 6 of the ECHR. The two members of the Tribunal would know from the outset that they were required to reach a unanimous decision. The need to reach unanimity will have the obvious effect of pressurising the decision makers to come to a common view rather than assessing the matter dispassionately and independently having aired their individual views in discussion. Ultimately there may be no common ground and the Bill makes no provision for such circumstances. It may be that a two member Tribunal agrees not to direct the release of a life prisoner but there is disagreement about the timing of the next review, again the Bill is silent with regard to how such a matter is to be resolved.

The members also noted that paragraph 173 of the Financial Memorandum advises that savings of £50,000 will accrue as a result of the Parole Board not being required to consider cases involving the recall to custody of licensees. That is not correct. The calculation does not reflect the fact that the Board considers such recall cases during the course of each of its 48 casework meetings that are held each year. Such casework meetings will continue to require to be convened in order to consider the cases of offenders who have a statutory right to have their case for release on licence considered under the provisions of the Prisoners and Criminal Proceedings (Scotland) Act 1993, as amended, and to consider the case for re-release of licensees who have been recalled to custody by Scottish Ministers. As yet no indication has been given as to when all those offenders who have rights under the 1993 Act will have completed that part of their sentence (two thirds) that they must serve in custody before they are released, but indications are that it will be some years.
Certainly there will not be fewer cases to be considered at each casework meeting as any reduction resulting from recall cases being considered only by the Scottish Ministers will be more than offset by the costs incurred in dealing with the anticipated increase in the number of recalled offenders who will have their cases referred to the Board for consideration of re-release. However, the Board will continue to look at how it conducts its business with a view to making efficiency savings when any new arrangements are introduced.

I along with other representatives of the Board look forward to giving evidence to the members of the Justice 2 Committee on Tuesday 21 November 2006.

**SUBMISSION FROM RISK MANAGEMENT AUTHORITY**

The Justice 2 Committee has called for views on the stated purposes of the Bill and on the extent to which improvements can be expected and policy objectives met as a result of the Bill’s proposed measures. Views are required on the general thrust of the policy proposals and also for specific areas of concern to be highlighted.

The Bill has two main policy objectives. The first is to end the automatic and unconditional early release of offenders. The second is new controls of the sale of non-domestic knives and swords.

This response from the Risk Management Authority (RMA) is primarily concerned with the provisions for custodial sentences.

**The Merits of Risk Assessment and the Use of Combined Sentences**

The RMA agrees that ending automatic and unconditional early release and replacing this with combined sentences should assist in meeting the policy objective to provide a clearer, more understandable system for managing offenders. This should also assist in improving public knowledge, transparency and public understanding of the criminal justice system.

The RMA welcomes the commitment to take account of public safety by targeting risk, not just the risk of re-offending but also the risk of serious harm.

The RMA also welcomes the policy position that addressing re-offending is assisted by the monitoring and supervision of offenders in the community. It is important to integrate offenders back into the community and to continue the rehabilitative process after a period in custody, on a supervised basis. It will be important to ensure that adequate resources are in place to provide the levels of supervision and support required to carry out this work effectively if public confidence is to be enhanced.

However, it is important that public expectations are appropriately managed. Risk assessment is not and never will be an exact science. When dealing with prediction in any field, the complex interaction of individual behaviour and environmental factors means that a degree of uncertainty is always present which has to be managed.

**The Assessment Process**

The RMA welcomes the proposals to undertake assessments of the risk of serious harm for offenders prior to their supervised release into the community. The RMA has very recently commissioned work to produce a Risk of Harm Practice Manual for practitioners in Scotland. However, the RMA is concerned about the Bill’s proposals for risk assessments for the offenders serving very short sentences. The proposals to conduct risk assessment for every offender serving a sentence of 15 days or more are not in line with best practice in risk assessment, as it will be neither practicable nor necessarily appropriate to conduct formal risk assessment for offenders serving short sentences of under a year. It is the RMA’s view that the Bill’s proposals as they stand could give the false expectation to the public that all offenders serving a period of 15 days or more will be subject to a risk assessment of both re-offending and of serious harm. This is not possible and it is RMA’s view that the Bill needs to differentiate between formal risk assessment and the assessment of needs. For many prisoners serving sentences of under a year, all that can be
reasonably assessed will be acute needs, frequently of a physical nature, such as addictions and
physical or mental illness. Whilst such needs may be related to offending, their assessment
should not be confused with the process of risk assessment.

Risk assessment is a complex process, not a simple test. Risk assessment methods form a
continuum of increasing sophistication to match the severity of harm. Just as in the medical setting,
basic screening will precede referral onto more lengthy and intensive assessment as required.

Further clarification is required of the difference between the risk of re-offending and the risk of
harm. Risk of re-offending can be carried out at a basic screening level. Risk screening is the first
level of risk assessment, it can be undertaken relatively quickly perhaps with the use of a single
actuarial tool and it is useful for the allocation of resources and for flagging up individuals who
might warrant a more in-depth assessment. Unfortunately, validated tools for this purpose are
currently only available for sex offenders, not for violent offenders. The RMA will commission a
research project and the first phase of the development for a risk screening tool for violent
offenders this financial year. Risk screening measures the probability of offending but it is based
on groups, ie the method relies on historical factors and gives the likelihood of re-offending for a
particular group of people, but it does not tell you much about an individual offender. Offenders
subject to custody terms of between 15 days and 6 months who are thought to present a risk of
harm are likely to be screened for risk of re-offending, rather than given a formal risk assessment
which could not easily be undertaken in this relatively short custody period. While the difference
between the two types of risk assessment could at first glance be seen as little more than a play on
words, the difference is actually extremely important and the public should be made aware of this
so as to avoid false expectations building up. Risk screening with actuarial methods does not
measure risk of harm.

Risk of harm requires more intensive assessment. Assessment can be undertaken on individual
offenders to identify factors which may lead to re-offending and to serious harm being inflicted.
This can only be undertaken via formal risk assessment which involves information gathering via
various sources, analysis, use of risk assessment tools and a full process to involve structured
professional judgement. The time commitment for this to be undertaken properly for individual
offenders and the dedicated and appropriately trained staff resources required for each individual
offender mean that it would simply not be possible for the majority of prisoners spending less than
6 months in custody.

A basic principle in research on offender management is the need to target resources
appropriately. In risk assessment this means allocating the most time and expertise to the
assessment of those offenders at risk of serious harm to the public. The proposals in the Bill to
undertake risk assessment in generic terms for all offenders serving a custody period of 15 days or
more could have the unintended and unfortunate outcome of diverting resources from those who
require intensive risk assessment and would give false expectations to the public. The RMA’s
view is that the provisions in the Bill should recognise a continuum of assessment. This would
allow for those offenders who have been risk screened, and the results of which show cause for
concern, to have a more in-depth risk assessment undertaken. This would also allow for a more
transparent and understandable position for the public.

Risk Management

One of the most important factors for the Committee to bear in mind when considering this
proposed legislation, with its intention to improve public protection and to raise public confidence, is
that risk assessment is no good on its own. Effective risk assessment has to translate into good
risk management as a continuing process. Factors can change once offenders are back in the
community which could change the level of risk posed by an offender. Therefore, the police and
social work, who will be primarily responsible for the offenders in the community, must have the
necessary resources in place to ensure that they can handle the resource intensive work
connected with good risk assessment and management. The provisions introduced by the
Management of Offenders Action and the introduction of MAPPA will be crucial here, but make
very heavy demands on resources and skills. The proposals for setting conditions and providing
support and supervision for such numbers may be unrealistic. Many offenders serving sentences of
under 6 months will have significant needs and chaotic lifestyles. They will present a high risk of re-
offending, but typically not a high risk of serious harm to the public. This revolving door population which already clogs up prison resources may be increased by extending crude assessment of risk to those serving very short sentences, as they will have a high potential to breach their licence conditions.

The Role of the Risk Management Authority

The process of proper risk assessment is crucial to the overall risk management of offenders. Practitioners must ensure a consistent approach to risk assessment and risk management and follow best practice. The RMA has published standards and guidelines for risk assessment. These were prepared for assessors undertaking risk assessments for the High Court under a Risk Assessment Order. However, they are promoted as the basis of best practice in risk assessment for wider application. The need for consistency and best practice in risk assessment is publicised in many reports which have been compiled after tragic cases of sexual offending have occurred and more generally in SWIA’s inspections of criminal justice social work practices. The RMA has a statutory responsibility to promote the use of best practice in risk assessment throughout the criminal justice sector. The RMA accepts that best practice can be an ever changing position given the developments and outcomes in research which informs best practice. The RMA has a statutory remit to keep up to date with developments, nationally and internationally in risk assessment and management and to advise Scottish Ministers on the development and review of policy in this area. Further, they will ensure that new and tested developments in the field are adapted into best practice guidance and disseminated throughout the criminal justice sector and that training is available for practitioners in this regard. The RMA will shortly publish the standards and guidelines for risk management. These will be for use with offenders subject to an Order for Lifelong Restriction but will also be for wider application for risk management in general.

The Parole Board

The RMA has some concerns about the demands which will be placed upon the Parole Board by the Bill to assess the risk of serious harm. In their current function the Parole Board receives information gathered over a period of years. Where there is a risk of serious harm these will include formal specialist risk assessments. This level of specialist risk assessment cannot be carried out for those serving very short custodial sentences, so, under the new proposals, will not be available to the Board when considering the risk posed by the majority of the offenders whom they are considering. This raises questions as to what criteria will be used by the proposed tribunals and the levels of experience, skills and knowledge which members may have in understanding the principles and technical issues around risk assessment.

Provisions Relating to Knives and Swords

The RMA has little authority to comment on that part of the Bill that seeks to limit the sale of non-domestic knives and weapons. However, the availability of weapons inevitably contributes to the commission of serious violent offending, and as such the RMA welcomes all effective means of reducing this eventuality. However, we would offer the view that the reduction of weapon related crime requires more than legislation. The Violence Reduction Unit recognises that cultural change promoted by a public health approach is required to reduce the level of violence in Scotland and we would recommend the work of this team to the Committee.

Summary

In summary, whilst the RMA welcomes the objectives of the Bill to assist in public protection and the rehabilitation of offenders it is concerned that the proposed extension of the assessment of risk of harm to those doing sentences as short as 15 days may in fact have the opposite effect. By bringing in many needy and chaotic lifestyle offenders who will typically present a low risk of serious harm, resources may be diverted from those who do present a risk of serious harm. We welcome the focus on risk assessment and management, but in our statutory function to advise on evidence based policy and best practice we would want to be reassured that appropriate structures with sufficient resources will be available.
Is it likely that the proposed licensing scheme will help retailers to prevent non-domestic knives from getting into the hands of the wrong people?

Fiona Moriarty (Scottish Retail Consortium): As you know, convener, I came to the committee about a year ago to talk about licensing of the sale of knives, which was being debated under a different guise. At that point, we were very nervous about how constraining and restraining on retailers the proposed licensing scheme could be. However, many of our concerns have been allayed, specifically in relation to sections 43 to 46 of the bill, and we believe that the provisions will not be relevant to the vast majority of retailers that operate in Scotland.

The Convener: Could the licensing scheme create any problems for responsible retailers that sell not just non-domestic knives but, for example, sporting knives?

Fiona Moriarty: A few issues of definition remain. We have had some productive meetings with Scottish Executive officials in the past few months, and we have cleared up a few queries about the definition, which is a bit tighter. As I said, the provisions will not be relevant to the vast majority of what we would understand to be high street retailers that sell domestic or do-it-yourself knives. However, there may be a few grey areas, which will be seen only with the passage of time.

Bill Butler (Glasgow Anniesland) (Lab): You talk about grey areas. As you know, the need for a licence would not apply to the sale of knives that are designed for domestic use, but the bill does not contain any definition to clarify the differences between domestic and non-domestic knives, nor does it define what constitutes a sword. Are those grey areas likely to cause difficulties for retailers?

Fiona Moriarty: They are more likely to cause difficulties for trading standards officers. To take a couple of examples of Scottish Retail Consortium members, John Lewis and B&Q are not the sort of retailers that sell push daggers, death stars, butterfly knives or swords—those are nowhere
near the products that they sell. They sell Stanley knives, camping knives, food preparation knives, pen knives, craft knives and carpet knives. If the knives on that second list are classed as domestic or for use in the home or in a DIY environment, we will not be too concerned about the definition of a non-domestic knife. Unless trading standards officers are given additional resources and clear prescriptive detail in regulations, they may give you a different answer.

**Bill Butler:** Is more guidance needed and would it be helpful to retailers? You said that trading standards officers may have difficulties. If more guidance is needed, should it be provided in legislation or in non-statutory guidance for retailers?

**Fiona Moriarty:** Probably in non-statutory guidance. As a trade association we could play a part in that, and I have canvassed all our members. Trade associations are odd bodies. The SRC directly represents retailers but, as a large association, we also represent other retail trade associations. We represent the British Hardware Federation, which represents a plethora of other trade associations and includes a cook shop division. I know that those retailers were nervous about the products that they sell, which takes us back to the convener’s point about hunting and fishing.

My advice to my members will be that they should do a thorough cost benefit analysis and decide whether, in a modern retail environment, they should in fact be selling knives that fall into the grey areas.

**Bill Butler:** If they continue to sell those knives, would non-statutory guidance help?

**Fiona Moriarty:** I think so. This takes us back to trading standards. Most retailers have good relationships with their local trading standards officers, and there needs to be a consistent approach to the licensing scheme, which needs to be transparent. We will need plenty of notice so that I can notify my members by running workshops, for example. When I travel round Scotland, I can ensure that if they sell what would be regarded as non-domestic knives, they know what is expected of them and that they should be talking to their trading standards officers. I would give advice and guidance as necessary.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** If there is to be a licensing scheme, which types of licence condition would be appropriate and which would you seek to avoid?

**Fiona Moriarty:** We just want consistency. If the regulations prescribe 10 different conditions, they should apply in every one of the 32 local authority areas in Scotland. My members, especially those who trade in more than one local authority area, tell me that if there are different conditions in different areas things become more expensive and it is far harder for them to manage. Local trading standards services can prescribe additional conditions to the licence as they see fit. I do not want to make too big a deal of that, because it will be virtually insignificant for the vast majority of my members.

**Jeremy Purvis:** What would be the significance of having additional licence conditions? A particular council or ministers might wish to place restrictions on marketing or to introduce requirements for identification over and above what is in the bill. What would be sensible? Where should the limit be set? At what point would things get difficult for the retailers?

**Fiona Moriarty:** The two key areas are costs and training. Anything that adds cost and requires a lot of additional training would concern the small number of our members to whom the provisions would be relevant.

**Colin Fox (Lothians) (SSP):** The witnesses from the Convention of Scottish Local Authorities estimated that local authorities would probably consider charging £50 or so for a licence. What consideration did the Scottish Retail Consortium give to the impact that that cost, along with training costs, would have on retailers? Does that concern you?

**Fiona Moriarty:** Some of my members would probably not thank me for saying this, but the larger retailers could absorb the cost of the licence, although onerous extra conditions would be a different matter. The ballpark figure of £50 for a licence for one store is neither here nor there. Smaller retailers, some of which will be trading on the margin, will have to think seriously about any additional cost.

In response to a question from Bill Butler I said that if retailers are selling non-domestic knives, they will have to do a cost benefit analysis. From the conversations that I have had with my members, I know that they will not be selling many knives, so the additional cost of paying for the licence and meeting the licence conditions will not be worth it and they will stop selling them.

**Colin Fox:** I take it that the cost of complying with the licence conditions will be higher than the £50 cost of the licence.

**Fiona Moriarty:** Yes, it will be considerably higher.

**Colin Fox:** Therefore, retailers will consider what they make annually against that cost to decide whether they will continue to trade in non-domestic knives.

**Fiona Moriarty:** If retailers have to install new or different closed-circuit television cameras; new till
prompts; new auditing systems, whether computer or paper based; new cabinets; and new security measures in store to ensure that the knives cannot be accessed by members of the public—as well as paying for the associated training—my best guess is that quite a few of them that sell only 10 or 15 such items a year will say that it is not worth while for them to continue to do so.

Colin Fox: Do you have an idea how many retailers are in that category?

Fiona Moriarty: I would have to go away and think about that. We have done an initial trawl, which showed that roughly 3,000 retailers in Scotland sell a form of knife, which can be a camping knife, a bread knife or meat cleaver. I provided Scottish Executive officials with that information. Given the minutiae of the definition of a non-domestic knife, such as a camping or fishing knife, only a handful of retailers are affected.

Colin Fox: This is an interesting line of inquiry. We are worried about the preponderance of people getting knives from abroad, or ordering them by e-mail. If the current outlets consider that the cost of complying with the licence will be too high for them to continue to trade in these items, we might find that outlets decide not to supply small stores and that people are more likely to buy knives abroad or order them by e-mail.

14:30

Fiona Moriarty: I am not too concerned about that. Reputable retailers will do a cost benefit analysis and decide whether to get a licence to sell such items. Responsible retailers will sell only to members of the public who can demonstrate, within the conditions of the licence, that they require the knife. There is a balance; a reputable customer will explain what they intend to use the product for.

Colin Fox: I am concerned that, if people are determined to get these knives but they cannot get them from licensed retailers, the trade will be driven underground.

The Convener: Following on from Colin Fox’s concern about alternative suppliers, I know from when I was farming that many hardware stalls at agricultural shows and markets sell sporting knives. Does your organisation cover such suppliers? Some of them are based in England but they carry out transactions in Scotland. How will the bill affect them?

Fiona Moriarty: A number of rural suppliers sell—for legitimate leisure and rural use—non-domestic knives that will fall under sections 43 to 46 of the bill, but they are not members of the Scottish Retail Consortium. Some of them might be members of the hardware and garden retail association and a couple of other associations that I mentioned earlier. I could ask the British Hardware Federation how many stores will be affected. My best guess is that, if they sell a substantial number of products, they will apply for a licence and manage it, as retailers do for many other restricted products.

The Convener: If you could write to the clerks about that at your earliest convenience, that would be helpful.

Maureen Macmillan (Highlands and Islands) (Lab): Swords might be sold at sporting events that include sword fencing competitions. Because such competitions are held throughout the country, dealers turn up at various venues. They will have a problem in complying with the licensing conditions because their sales are not made from a permanent shop. They might not even have a permanent shop. They might make their living by selling products through the post—for example, to school fencing clubs—or by selling products at competitions. If they have to apply for a licence in every local authority area in which there is a fencing competition, they will be out of pocket. Will that be an extensive problem? People have written to us about the matter, but I wonder how extensive the problem will be.

Fiona Moriarty: I am not sure. It will be a problem, given the number of markets, fairs and other activities that are held throughout Scotland in any 12-month period and the number of agricultural shows with stalls that sell swords or other non-domestic knives. I notice that there is no evidence from the Society of Chief Officers of Trading Standards in Scotland, but I would be interested to know its views. I work with trading standards officers a lot and they are the guys who have to manage things day in, day out. I do not want to speak on their behalf, but I think they would say that they are underresourced and that the bill will place extra pressure on them.

Maureen Macmillan: Do you think that dealers will stop having stalls?

Fiona Moriarty: I imagine so.

Maureen Macmillan: If that source dries up, it will pose a difficulty for people who genuinely want to get hold of swords for fencing, highland dancing or whatever.

Fiona Moriarty: I think so. The committee will have some interesting times wrestling with Mr Fox’s valid point that the illegitimate trade might be driven underground and the legitimate trade might be driven overseas or on to the internet.

Maureen Macmillan: Let us hope that somebody who is listening to this discussion will write to us and tell us about that.
**Fiona Moriarty:** I am due to meet SCOTSS on another matter in the next few weeks, so I will raise it with them myself.

**Bill Butler:** I return to swords, Miss Moriarty. The Executive has indicated that people who sell swords commercially will be required to take reasonable steps to confirm that a sword is being bought for a legitimate purpose. What steps can and should sellers take to achieve that aim?

**Fiona Moriarty:** Mr Butler, I will give a bit of a non-answer because, hand on heart, I can tell you that none of my members sells swords, so I have happily left the issue to one side.

**Bill Butler:** I will not indulge in any verbal fencing. Perhaps we will get some information from another source.

**The Convener:** I thank Miss Moriarty for making herself available and for the offer that she made to contact the clerks with further evidence for us.

I welcome the next panel of witnesses to the table. We are aware of the difficulties with the sunlight. We tend to put the ministers where the light shines in their eyes.

**Professor Roisin Hall (Risk Management Authority):** That is a good technique.

**The Convener:** The sun will move round, obviously, but if the witnesses would like to wiggle their chairs to more comfortable positions, they should feel free to do so, as long as they do not end up too far away from the microphones.

I welcome Professor Alexander Cameron, who is the chairman of the Parole Board for Scotland, and Niall Campbell, who is a member of the board. I also welcome Professor Roisin Hall, who is the chief executive of the Risk Management Authority—and the dazzled person at the moment—and Robert Winter, who is the RMA's convener. I thank them for coming along and hope that they will not be inconvenienced too much by the sun.

The bill aims to achieve greater clarity in sentencing along with better protection of the public and to contribute to a reduction in reoffending. Will it achieve those aims?

**Professor Alexander Cameron (Parole Board for Scotland):** The Parole Board knows from experience that good assessment of risk and consideration by a body such as the board are effective and that good supervision of offenders is an important part of protecting communities and helping offenders to avoid re offending.

Broadly speaking, we would say that the bill will be welcomed. However, we have concerns about the enormous range of offenders who are encompassed in the bill, and we have laid out questions in our submission about the effectiveness of the potential of assessment for people on very short sentences. There are serious concerns about whether the bill can be applied to people on such sentences.

**The Convener:** Thank you for your written submission. I have no doubt that my colleagues will cover most aspects of it.

**Professor Hall:** We welcome the aims of the bill, but there are reservations about the way in which it is drafted that may get in the way of clearer sentencing, public protection and reduction in reoffending. The real issue is whether we can sufficiently target the offenders who present a risk of harm to the public. As it stands, that may not be possible.

The most important aspect of the potential of the bill is the concept of having some supported and supervised community provision in a sentence, so that any work that has been done in prison is followed up by a period of enabling the person to readjust to being back at home and, hopefully, to moving towards not reoffending.

**The Convener:** How will the bill improve public protection?

**Professor Cameron:** As offenders return to the community, there will be proper support for them and monitoring of their behaviour. There will be a focus on the things that are likely to return people to offending behaviour. That has been the benefit of people who are on sentences of four years and longer being on licence. Provided that the support is of adequate quantity and quality, extending its range should assist in protecting communities. Our concern is whether that will be feasible in terms of the entire scope of the bill.

**Professor Hall:** Better public protection requires resources. The committee should remember that risk assessment and risk management are opposite sides of a coin—they are inextricably linked. If you are going to consider following the assessment of risk by the management of that risk, you need to target the resources at the people who represent a risk of serious harm. The bill’s current provisions spread the resources too thinly.

**The Convener:** I note in the Parole Board’s written evidence that you feel that the bill has not been drafted correctly. Will you expand on that?

**Professor Cameron:** It concerns matters of technical detail in the bill. The way in which some of the sections are numbered and the sequence of the sections mean that they are slightly at odds with what is intended. Those are drafting matters. We also have concerns about whether the Parole Board can conclude its considerations and make a determination within the timescales. We suggest that the bill’s wording could be reconsidered to
ensure that it does not create a cul-de-sac for the board.

The Convener: That is helpful. The bill proposes to reduce the number of Parole Board members who are involved in a tribunal from three to two. The committee is aware that your organisation has expressed concern about the way in which that might limit breadth of expertise, which is one of the Parole Board’s strengths. You have made it very clear that the chair or convener must have a legal background, which limits the tribunal to one other member. Will you elaborate on that? It seems a particularly important part of your evidence.

Professor Cameron: The board is concerned about an intention in the financial memorandum to make what we consider to be a significant change to the way in which the board operates when it sits as a tribunal. It currently involves three members of the board and is chaired by one of our legal members. In terms of European law, that is important for our judge-like function. It is important that we are fair and impartial when we deliberate over cases and that we give them the fullest consideration.

The board values the range of experience and expertise that its members bring in taking extremely important decisions. Our concern is that narrowing down the tribunals from three members to two seems to be at odds with schedule 1, under which the range of interests that are represented on the board will be extended. On the one hand, the representation on the totality of the board will increase but, in the detail of what will be expected of the board operationally, there will be a reduction in that representation. We urge reconsideration of that point.

14:45

An allied point, which is equally concerning, is the suggestion that tribunal decisions will have to be unanimous. With only two members, it is almost inevitable that there would have to be a unanimous agreement. The issue is that, if the two members did not agree, it would be improper for one member to have a casting vote. A membership of three allows for a majority decision. The board reaches a majority decision relatively rarely—decisions are usually unanimous—but, to provide clarity about the consideration and the range of views that we take into account in reaching decisions, it is nonetheless important that that process is sometimes reflected in a decision that is made by a majority.

Our concerns are twofold—we are concerned about the reduction of expertise that will be available in any single tribunal and about the apparent intended move to unanimity as a requirement in decision making.

The Convener: I presume from what you say that the Parole Board would like tribunals to have more members and for there to be an uneven number of members, to allow tribunals to come to a decision when there is a spread of views.

Professor Cameron: We do not argue for more members on tribunals. One issue for the board will be the increased demand under the bill. To be honest, at present, we have to work hard and are struggling to keep pace with demand. An increase in the required number of members on tribunals would add to that issue. Membership of three is a fairly consistent position for tribunals—indeed, the name suggests that number. We certainly think that it is valuable to have an uneven number of members to allow for a majority decision.

The Convener: Basically, you feel that the number should continue to be three, as is the case at present.

Professor Cameron: Yes.

The Convener: You commented on European legislation. Will you explain clearly your position in relation to fair trials under article 6 of the European convention on human rights?

Professor Cameron: Everything that the board does must comply with European regulations and legislation, so we are bound in our decision making to act in compliance with article 6 of the ECHR. If we do not, we would most certainly be liable to judicial review, in which our position would be difficult to defend. We must ensure that the board’s decision making complies absolutely with the right to a fair trial.

Bill Butler: My questions are for Professor Hall and Bob Winter of the Risk Management Authority. The RMA has expressed concerns about the proposed requirement to conduct a risk assessment of every offender who receives a sentence of 15 days or more. You say that that is not in line with best practice. As you know, the bill would make risk assessment crucial to release decisions on all prisoners who are sentenced to more than 15 days. For the record, will you set out your concerns in a little more detail and clarify the exact difference between the terms “risk assessment” and “risk management”?

Professor Hall: The field of risk assessment is complex, with terms that tend to be used without careful definition on occasion. We need to be clear about whether we are talking about the risk of reoffending, the risk of harm or the risk of serious harm. Those are three fundamental definitions that need to be considered in examining the proposed legislation. We welcome the recognition that risk assessment is incredibly important as a basis for
action plans on how to manage offenders to prevent serious harm. That, however, is at one end of a continuum—it is probably important to see risk assessment as a continuum.

It is true that we can screen offenders at a basic level and decide how we should allocate police resources according to the number on the sex offenders register, for example. The type of assessment that we would do at that stage is qualitatively and quantitatively different from an assessment of someone being considered for an order for lifelong restriction, for which, as members know, a full week of work is needed to work up the case.

My other point about the bill is that if we wish to assess people who serve sentences as short as 15 days, there is no way that we will be able to do anything that I would recognise as a risk assessment. As we said in our written submission, although we might be able to do some blunt needs assessment because people’s needs are associated with offending, we have to be clear that they are not risk factors per se.

Managing an individual’s needs is just as important as managing their risk, but we have to be clear about what we are talking about and trying to achieve. I use the analogy of going to see the doctor—the first time someone goes to see the doctor they describe what is wrong, he yawns and says, “There’s a lot of it about today”, but the patient has to have a lot of tests before they find themselves having a full body scan.

Bill Butler: So you are saying that if sentences are as short as 15 days, or even under six months, you cannot go into the necessary detail that would qualify for the definition of a serious risk assessment and the risk management assessment that flows from that?

Professor Hall: I think that I am saying more than that. We would probably not get much information even about the risk of harm posed by an offender who was serving a sentence of less than a year. If we are talking about risk of serious harm, we need more opportunities for gathering the information on which we make our analysis.

Bill Butler: Does the bill as currently drafted give the public a false sense of security because they might perceive that all prisoners have been risk-assessed and risk-managed and therefore everything is fine?

Professor Hall: It might give the public a sense of security, but it would probably give the rest of us the absolute heebie-jeebies because we know that the water would fall through the bottom. That is important in the light of your earlier point about the aims and objectives of the bill.

Bill Butler: Does the threshold of 15 days or more need to be changed?

Professor Hall: Yes. Like many other agencies that have made submissions to the committee, the Risk Management Authority feels that if you are interested in risk assessment, the cut-off point should be a one-year sentence. The aim of the bill is not just to assess; it is to manage. It takes time to manage actions in the custodial setting as well as in the community setting and to gather the information that flows from each to make everything make sense.

Bill Butler: As you said, it is a continuum, so the timeframe cannot be abbreviated as the bill proposes.

Professor Hall: If you abbreviate it, you make it a nonsense. Our concern is that talking about risk assessment as the bill does might lower the whole credibility of risk assessment. As one of the submissions to the committee said, we would then have another quango talking nonsense.

Bill Butler: I will not comment on that, but I hear what you are saying.

Robert Winter (Risk Management Authority): The profile of the prison population who are in for shorter sentences is significantly different from the profile of the others. There must be a sense of where the priority lies when protecting the public from harm, and it does not lie at the lower end of the offending scale.

It is true that the risk of reoffending is very high at the lower end of the offending scale. Such offenders often lead chaotic lifestyles and have great difficulty just managing their own lives. We are not saying that the range of agencies do not have a job to do to help such people be better in society. We need to minimise the reoffending of many of those vulnerable people in our society. Such offenders do not require a risk assessment process with all that that involves. If we could afford that, I would say from my broader experience that they would benefit from a needs assessment and some support, but that would come at significant cost, which would need to be considered.

Professor Cameron: The Parole Board is charged with determining whether there would be a risk to the public if someone were released. We are significant consumers of risk assessments, which are undertaken not by the board but by a variety of professionals we make use of. Risk assessments are included in the dossier that helps us to reach our conclusion on the matter. We also have a role in risk management, which is exercised through the conditions that we apply to a licence. Those conditions enable and assist supervising officers in the community to manage the risk as effectively as they can. Our concern
with the bill is that if people who have been in prison for a very short time are referred to us to decide whether the period in custody should be extended, we might not have information about how that view about risk was taken that would enable us to take a fair and reasonable decision. We have real questions about the quality of that information.

Another important resourcing issue is that, as a starting point, the board relies heavily on the trial judge’s report, which describes in some detail what happened in court, what the circumstances of the offence were, what the judge’s view is on the matters that the board should take into account and why the decision on the sentence was reached. If we are to deal with short sentences without something similar from sheriffs, we will find it difficult to know, frankly, what we are dealing with and what we are being asked to make a judgment on.

**Bill Butler:** The Parole Board made that point clearly in its written submission, but it is good that Professor Cameron has aired the issue today. There seems to be a difficulty on that issue.

**Niall Campbell (Parole Board for Scotland):** Another problem is getting through the process in the time that is available at the lower end of the sentence level. If we have just over 15 days, we will have very little time to obtain an assessment and, if the judgment is to be done fairly, have it considered properly by the board. By that time, the offender will have gone through the sentence and the matter will cease to have relevance.

**Bill Butler:** The bill will provide not just an added burden but, in a sense, a burden that the board will not be able to deal with because, if the information the board receives is lacking in quality and relevance, the board’s involvement will, frankly, be useless or of little use. Is that what you are saying?

**Professor Cameron:** In most cases, it will be difficult to find a judgment on that very thin information and to be seen to demonstrate that we have reached a reasonable and fair decision.

**Jeremy Purvis:** I want to develop that line of questioning on resources. On the capacity to carry out assessments, the Parole Board’s evidence takes a slightly different angle from that of the other organisations from which we have received evidence. I was quite struck by the Parole Board’s written submission, which states:

“Experience over the years has taught the Board that a number of reports may be submitted late”.

I have been trying to work out what would happen under the bill if the Parole Board was unable to complete its report on time at the end of the custodial part of a sentence. Can you help me out by saying what you would expect to happen in that situation?

**Professor Cameron:** In that situation, I think the sentence would have ended. Our concern is that we will need, in a very short time, reports from a variety of sources, not least of which will be a home background report from social workers in the community so that we know where the person will go and whether it will be suitable.

We frequently have difficulty getting reports in the timescales in which we need them. We occasionally have to defer cases because of that. If there were a larger volume of parole applications, the question whether services in the community, in particular, could keep pace with the demand would have to be asked.

15:00

**Jeremy Purvis:** What proportion of reports are late for one reason or another, often because of circumstances beyond your control?

**Professor Cameron:** I would find it difficult to give you a percentage figure for that. Social workers in the community are working very close to the wire turning reports around in time for our meetings. In the great majority of cases, we have the report to hand when we consider a case, but it is not infrequent that a report will arrive in what we call our second bag, which arrives only a few days before the meeting at which the case is to be considered.

**Niall Campbell:** The other risk is that the situation could be open to challenge if a decision is not reached within the required timescale—in the future, by the end of a custody part of the sentence; at present, by the end of a particular stage in a sentence.

**Jeremy Purvis:** Let us be clear. It is your view that, under the bill, the person would, nevertheless, be released?

**Professor Cameron:** Our view is that if the custody period had ended, they would be released.

**Jeremy Purvis:** So, simply because of the number of people involved and the short timescales involved in sentences of less than six months, a fair number of individuals could be released at the end of the custody part of their sentences without risk assessments of them having been carried out.

**Professor Cameron:** That would be the danger in complying with the provisions in the bill.

**Niall Campbell:** It depends on what the bill says about what happens when someone reaches the end of the custody part of their sentence and something has not happened.
Professor Cameron: As the bill is currently drafted, the Parole Board would have to reach its determination prior to the end of the custodial part of the sentence. If that were changed so that the board had only to commence consideration of the case by then—there would be debate about the appropriateness of that—the situation might be different. If we have to reach our determination before the end of the custodial part of the sentence, the process will have to begin very early so that we can ensure that all the information is available to allow the board to meet and conclude its consideration in time.

Jeremy Purvis: Thankfully, we have advisers who will be able to get the information to help the committee with that practical question.

Let us move on to another area in which you might be able to help me. How does the bill sit with the current procedure, whereby halfway through a sentence the Parole Board will consider whether to issue parole to a prisoner? Would that procedure be replaced, or would someone still be able to approach the board after they have served half the custody part of their sentence?

Niall Campbell: What you describe applies, at the moment, to sentences of over four years. When someone who is serving less than four years reaches the halfway point, they are automatically released. If someone is serving a sentence of over four years, they may be released at the halfway point if the Parole Board decides that that is an acceptable risk. If it decides that it is not, the person will be released at the two-thirds point, but still on licence.

Under the proposals in the bill, the release date would depend on the length of the custodial part of the sentence, which as we understand it would not need to be set at 50 per cent, but could be set at another figure depending on the view at which the judge arrived. As the end of the custodial part of the sentence approached, the board would have to consider whether to release the person, as Professor Cameron has described.

Under the present proposals, whatever happened, the person would be released at the 75 per cent point. That means that they would serve a period in the community on licence and under supervision. We consider that important.

Professor Cameron: There is nothing in the bill that would allow someone who was sentenced to spend more than 50 per cent of the sentence in custody to ask to be considered for release at the halfway point. The custodial part would be set at the point of sentence by the judge.

Jeremy Purvis: I have a final question, on a slightly different point. It concerns the setting of conditions. As I understand it, if the custodial part of a prisoner’s sentence is set at 75 per cent, the Parole Board has a duty to set conditions when the prisoner is released, but there is no comparable duty if the sheriff sets the custodial part at any proportion other than 75 per cent. If someone were released from custody after serving 50 per cent of their sentence, no conditions might be set. How would that operate in practice?

Professor Cameron: I think that my understanding is the same as yours. We are not sure what is intended. It seems that people sentenced to six months or less could be released on a very simple licence—to be of good behaviour and to keep the peace. That is a licence for any honest citizen, but how meaningful will it be when there is no supervision? We have to help the offender to understand what the licence means. Simply issuing a licence without setting any other conditions would, we think, be of dubious value.

When conditions are applied, we regard them as tools for the supervising officer in the management of risk for that offender. As long as they are proportionate, we can apply any conditions to a licence. For instance, we can exclude someone from particular areas if there is a risk to the people there, and we can exclude sex offenders from parks and playgrounds. We can decide what is best. I describe the conditions as levers that supervising officers can pull when they are trying to ensure compliance by an offender. In the bill, it is not sufficiently clear how conditions will be applied.

Professor Hall: The conditions are crucial to good risk management. Risk management is about helping people to get their act together. We do not want to confuse that purpose with that of bringing people back because of nuisance behaviour. I accept that such behaviour is an example of reoffending, but it will not necessarily cause serious harm. That is where definitions come into play.

Jeremy Purvis: The formal definition of a short-term sentence is anything less than four years, if I understand correctly, but we have been talking about sentences that are considerably shorter than that. Whether in this bill or elsewhere, there might be scope to change the terminology so that we all know what we are talking about when we talk about short-term prison sentences. What do the Risk Management Authority and the Parole Board think the definitions should be? Is a short-term sentence 15 days, as the bill says? Is it three months? Is it six months with a supervision element?

Professor Hall: It depends on what you are trying to achieve, but we should all be using the same definitions.

From a consideration of evidence that other people have submitted on the issue of not looking
only at exit points from custody but at entry points, the Risk Management Authority feels that some short-term sentences could usefully be turned into community sentences rather than custodial sentences. That would have an effect on the prison population. If instead of talking about people on long-term or short-term sentences we were talking about people who might or might not cause serious harm or reoffend, we would be talking about different populations. That might be a more useful way of considering things.

However, we have to say that short-term sentences of under a year pose enormous problems for us in assessment and management.

Professor Cameron: I largely concur with that. Bear in mind that someone who, in accordance with the principles of the bill, was sentenced to a year would, in most cases, serve six months in prison. That is about the minimum length of time needed for any meaningful conclusions to be reached. Sentences shorter than that can make forming a view about risk inordinately difficult.

The Convener: Professor Hall, I thought I saw you nodding at that. Could you say, for the record, whether you agree with Professor Cameron’s comment about a six-month period?

Professor Hall: Yes. With a sentence of a year, it is important for the judge to decide how long the person should be in custody.

Maureen Macmillan: What I am picking up from you is that you think that even a year might be too short a time to do a risk assessment and that there might not be the resources to do a needs assessment for everybody. What, then, is our view on combined sentences? Are we saying that we should not be considering such sentences for people who are being sentenced for a year or less and that they should get sentences in the community—or should they just be put in jail with no provision for supervision afterwards?

Professor Hall: No. The principle of risk management is important and is inextricably linked with risk assessment. We feel that the combined sentences are important and that there should be a period in the community. My background is in psychology. If you are trying to change behaviour, you do not do it only in laboratory conditions; you have to let the person generalise it into the outside world. Helping somebody to talk about their alcohol behaviour in prison is one thing; it is quite another when they go back down the road to the pub.

Maureen Macmillan: Even though it may be difficult and we may need a lot of resources to back it up, do you still believe that that is the right way to go?

Professor Hall: It is the most important part of the bill.

Maureen Macmillan: What discussions have you had with the Scottish Prison Service about how the Risk Management Authority could contribute to constructing the risk-of-harm assessments required by the bill, with regard to validation, training and setting guidelines, for instance? Is there any methodology for doing that?

Professor Hall: Yes. We are in close touch. As you know, I came from the Scottish Prison Service and I have retained a lot of contacts there. The arrangements that are already in place in the Scottish Prison Service for risk assessment and management are quite well developed—certainly as far as risk management groups for the risk-of-serious-harm people are concerned. Integrated case management is now used and the sentence management process has been developed into a process whose remit includes a wider range of individuals. We have discussed that in quite some detail with the Scottish Prison Service in relation to the bill, in relation to our own arrangements and in relation to the plans for the implementation of multi-agency public protection arrangements, because we obviously all need to work closely together on those issues.

As I said, risk management is a continuum. The types of tools you might use at different stages are rather different and they have their own strengths and limitations. If you are looking at the sort of needs that are sometimes associated with offending behaviour, you do not necessarily use a risk assessment tool, but you might use one that looks at, for example, substance misuse or medical problems.

If you are looking at screening in terms of resource allocation, your first port of call would be an actuarial instrument that looks at historical information to predict the probability of reoffending. It does not tell you anything of interest about an individual—like the instruments that are used for life insurance, the actuarial scale tells you what group the person belongs to, not what they will actually do—but it is of use because it could throw up something that needs further investigation.

Risk matrix 2000 should not be used to tell you how to manage an individual, but it will tell you if you need to look for more information. It is widely used by the police and by social work for that purpose.

When a little bit more information is required, the Risk Management Authority is working with the Scottish Executive Justice Department and with other agencies to introduce a dynamic supervision tool that looks not only at historical information but
at things that might change. That helps with contingency planning.

15:15

We have sponsored a Scottish version of a Canadian supervision tool called the level of service case management inventory. The level of service inventory revised is in current social work practice and the LSCMI is a revision to include case management principles.

We are working with the Justice Department on how to provide similar screening and supervision tools for the in some ways much more complex area of violent offending. A great deal of work has been done on sex offenders, and a number of tools are available in that area. There is a long way to go on violence, perhaps because it is an even bigger basket of related problems. We have undertaken to do some scoping with researchers who are working in the area, to see whether we can create a tool.

Once we move beyond screening and supervision tools to trying to manage a person who has the potential to be of very serious harm, we need a much more comprehensive holistic assessment that looks not only at the person’s offending behaviour but at characteristics of the way in which they approach their life and at their personality characteristics. The unfortunate term psychopathy that is often bandied about refers to nothing more than a combination of particular characteristics. Those are the issues that must be examined if we are looking at someone’s propensity to cause serious harm. It is an intensive process, on which a great deal of research has been done recently.

The concept of structured professional judgment, which involves not just looking at a clinician’s impressions or historical prediction but taking the person in the whole, is important. From that, we can move to looking not just at what is wrong with a person but at what the protective factors are—the good things that are happening with the person and on which we can build. When we have some understanding or formulation of that, we can start to identify the situations in which the person is likely to cause problems of a serious nature. We can then get into detailed risk management—not just keeping an eye on the person or ensuring that they do not drink, but identifying the type of loitering around a playground that the police need to ensure is known about by everyone involved in the case and the action that needs to be taken. There is an intensification of the process all the way up.

We are trying not only to address our attempts at structured processes to the order for lifelong restriction, which we hope will apply to a fairly small proportion of our offenders, but to ensure that the standards and guidelines that we are publishing for risk assessment and risk management will be applicable across the range of assessment of offenders. Our role in supporting general best practice is as important as anything else.

Maureen Macmillan: Thank you for your helpful answer.

The Convener: You talked clearly about developing stages. One issue that is emerging at this point in the evidence-taking session is the prison population, which you said we need to examine. Did you mean that there should be evaluation of risk management prior to sentencing, when someone is not at risk of causing harm to the public but is likely to be given a prison sentence?

Professor Hall: I do not remember using the phrase to which you refer. A great deal of information is available around pre-sentencing, and it is often of considerable use to people who carry out assessments to assist the courts to decide on sentences. However, that is not an issue for prisons to consider.

Colin Fox: Earlier, you talked about an area that would give us the heebie-jeebies. Both organisations seem keen to stress the point that risk management is not and never will be an exact science. Given the levels of reoffending, I would like to know how accurate risk assessment is at the moment. How realistic is it for us and the general public to expect the Prison Service and criminal justice social work to accurately assess the likelihood that an individual will cause harm to the public?

Professor Hall: In any field—be it weather, cancer survival rates or reoffending—risk assessment is not much better than chance. That is why, when you are seriously concerned about the matter, you have to go beyond a probability estimate to much more detailed consideration of the particular situation. You cannot put numbers on those situations. They involve factors such as the age of a child who is in a certain situation with a person who is drunk. You have to get into real-life areas of risk management.

Colin Fox: When you assess offenders, what follow-up do you do to estimate or record the accuracy of that assessment? Do you keep records of how accurate your assessments were or how appropriate and effective the warning that you gave to the community was?

Professor Hall: In our directory of risk assessment tools and techniques, we say that we will approve only tests that have been done using validated tools that have been shown to have a better-than-chance rate of predicting reoffending.
I am trying to get across the fact that risk is not only a continuum in terms of where you start from; it is a dynamic process itself. You expect risk to change if you carry out effective risk management. Your criteria for what is going to change and—in terms of the guidelines that we are writing for the risk management plans—the monitoring of change and how you assess what is actually changing are important. You are looking at changes in the person’s behaviour, in the way in which they see themselves and in how confident they are that things will work out.

Colin Fox: You are saying, quite rightly, that there is an element of chance, and that the environment that the offender is going back into and their preparedness to address their behaviour are also important. However, does the bill put too much expectation on the likelihood of the person’s behaviour being changed?

Professor Hall: That is an important point. The public would like the issue to be black and white and for us to be able to say that someone is either a risk or is not, in the same way that we would all like to know whether we are healthy or not or whether it is going to be a good or a nasty day. Expectation management is incredibly important. The bill’s intentions are good, but they could lead the public to think that the situation is a lot easier than it is.

Colin Fox: I am interested in your use of the phrase “expectation management”, given that we are talking about managing the risk of offending.

The committee is only too aware of the increase in reoffending levels. We must assume that there is already some assessment of risk before prisoners are released back into the community. However, reoffending levels are rising. To what extent are we entitled to expect that that will be corrected by the bill?

Niall Campbell: Would it be helpful if I gave you the figures from research that the Parole Board did recently?

Colin Fox: You tell me what they are and I will tell you if they are helpful.

Niall Campbell: Okay; that is fair enough.

This research was reported in the Parole Board’s 2002 report. It found that of those who were released on parole—that is, at the halfway point of their sentence, if their sentence was for four years or more—21 per cent failed their licence period. That means that they broke the terms of their licence or they reoffended. However, of that 21 per cent, only 7 per cent failed within the period that they were out on special parole, which is the period between halfway and two thirds of the way through their sentence. The remaining 14 per cent who failed did so during the time that they would have been out anyway—after they had served two thirds of their sentence.

Of those who were released automatically without parole, when they were two thirds of the way through their sentences, 35 per cent failed their licence period. That does not necessarily mean that they did something very dangerous or serious; they might have failed to abide by the conditions of their release or they might have offended in some way. We could look at it the other way around—65 per cent of those who were released on licence did not fail.

That is the most recent research that has been done on parole. The Parole Board takes the situation seriously and investigates what has happened.

Colin Fox: I am interested in the research; it is important. Can I take it that since you have focused on longer sentences—

Niall Campbell: We did so because the Parole Board is currently involved only when sentences are four years or longer.

Colin Fox: I am anxious to stress that we are well aware that reoffending rates are much higher among people who have served shorter sentences than they are among those—

Niall Campbell: Yes, and the offences are almost certainly less serious. As Mr Winter said, we are talking about people who are in for three months, then they get out and end up reoffending, but some of it is not desperately serious.

Colin Fox: I understand that. Not only are there lower levels of reoffending among people who have served longer sentences—if that is the way to put it—but, as you have made clear, reassessment is likely to have a greater effect with longer sentences than shorter sentences. At what intervals is the risk that offenders pose reassessed?

Niall Campbell: Professor Cameron is a former social worker and will be able to tell you that.

Professor Cameron: One issue is that, once someone is out on licence, the supervising officer effectively needs to keep the situation under review. Is the individual complying with the licence? Do they need to go into another programme, because they are finding some things difficult? Do other resources have to be brought to bear?

If the supervising officer is concerned about any of those questions, they can refer the matter back to the Parole Board via the Justice Department. We might then consider whether we need to issue a warning, to add conditions to the licence that would help to clarify what is expected of the offender, or to recall them to custody because...
more work needs to be done and they pose an unacceptable risk.

However, when thinking about the question that you are asking, Mr Fox, I always say to people that we need to hold on to the fact that, by definition, risk means that sometimes something will happen. There would be no risk otherwise and the world would be straightforward. We are in the business of assessing risk and making the best judgment we can. Our skills in that area are improving all the time, and our colleagues in the RMA will have a significant impact on validating the various risk assessment tools that are being used. However, they are only tools. I constantly say to social workers and other colleagues that risk assessment is only a tool that has to be used alongside their knowledge, skill and experience to form a view of what is likely to happen and the resources that need to be brought to bear to reduce risk. The danger is that we all live in a world where the public and the media have expectations that a tool can be applied, the figures added up and the right answer reached, so there is no longer a problem. We know that the situation is much more complex than that.

Offenders frequently make good progress in prison and their representations to the Parole Board almost invariably assure us that they have turned the corner, that their life has changed and that things are going to be different when they get out. From experience, I believe that when people write that, that is what they believe and that is where they are at that point in their lives. However, when they return to the same environment and pressures that they came from, it becomes much more difficult for them to resist the things that led them into offending. The issue is complex. We can apply some tools to the offender, but there is a whole community of other pressures that we, as the Parole Board, cannot do very much about, although others do have responsibilities in that respect.

Colin Fox: Sure.

I have two quick points about efficacy. I am probably thinking of longer-term prisoners. Is more than one risk assessment done during a sentence or is an assessment done only when a prisoner is being prepared for release?

Robert Winter: A thought arose in the context of Mr Fox’s questions. The position that we are in with respect to risk assessment and risk management is that the Risk Management Authority was established essentially as an acknowledgement that we did not have an adequate body of research. Different professions used different tools and courts received inconsistent reports, which were sometimes produced by highly idiosyncratic professionals doing their own thing.

We have made huge steps forward on assessment and have put in place a system for orders for lifelong restriction, which we want to be rolled out in suitable form. We have set out to ensure that a number of consistent, validated assessment tools are available and that professionals can talk a common language and present consistent information across boundaries.

However, the fact that the field of risk management is much less researched means that we are having to do original work. It is not that there is no international research, but there is no cohesive view. The area is much less developed, and we are working on that intensively. For OLR purposes, we will have to put out our first operational working draft next month. Over the coming years, we will do more work on that area to refine and develop our knowledge. In the light of Mr Fox’s questions about the efficacy of risk management methods, I felt that it was worth while mentioning that.

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In the guidelines, we have taken a great deal of care to point out the frequency of assessment and to explain how it might be carried out. The Prison Service already has a considerable amount of experience in that area, as does the state hospital, because many of the interventions have assessment processes built into them to determine whether an intervention has been useful. However, as Andy McLellan says, that is only half the answer. The issue is not whether someone can get 10 out of 10 on a programme; it is whether they can apply what they have learned.

In the prison setting, it is hard to identify whether a measure is generalising. We used to use proxy measures. For example, if an anger management programme had been run, we would assess whether there were fewer assaults on other prisoners or on staff. Before there were quite so many drugs around, we used to use the prevalence of drugs as a measure of the success.
of work on drug misdemeanours. It is when people get back into the real world that such work becomes much more important.

Colin Fox: You spoke of the process as being a continuum. I take it that both now and under the bill there will be opportunities to carry out risk assessments as frequently as is necessary. In other words, assessments will be done at intervals. Even when a prisoner is in custody, it will be possible for another assessment to be done.

Professor Hall: The bill does not lay that out, but under our enabling legislation—the Criminal Justice (Scotland) Act 2003—our responsibility to approve risk management plans is not confined to orders for lifelong restriction. Any other risk management plan can come under the same structured format, when that is thought appropriate. In relation to serious offenders, that is an interesting possibility.

Niall Campbell: Another aspect of risk assessment is the evidence that we get from home leaves and placements, which are important to the Parole Board. Particularly if the offender is on a longer sentence, they may spend time going out daily from prison to a placement for up to five days a week, and they will also have home leaves. Those provide some of the evidence that Roisin Hall talked about, to determine whether the offender is putting into practice what they have learned from programmes in prison.

Colin Fox: I take it that the standard risk assessment includes things like a home background report and reports from the prison and criminal justice social work. Is there a case for using a standard risk assessment for all prisoners or is there a need for a variety of assessments to cover the range of short-term and longer-term prisoners?

Professor Hall: It is necessary to have a portfolio of levels of intensity. For prisoners who have complex patterns of offending behaviour, we must accept that we want not only to have a general discussion but to be able to use specialist techniques that examine their particular deviant fantasies or instances of domestic abuse, for example. A number of specialist techniques should kick in when we consider the risk of serious harm.

We took the decision not to go along with the idea that only one or two tools were necessary, but to consider accrediting an approach to risk assessment, as we had a responsibility to do for the OLR. I am still of the mind that that was a sensible decision. We chose to take the structured professional judgment approach for a number of reasons—I will not bore you with them here, but that approach stands up quite well—and then to approve tools on the basis of the research validation about which I spoke earlier, such as peer review and a tool's ability to do what it says on the tin.

The Convener: We have now got into an area on which the committee would love to conduct an investigation and review, but I ask members to focus on the specifics of the bill.

Jeremy Purvis: I hope that my question will be focused. What would the witnesses’ reaction be if the bill was amended so that there was no requirement for a risk assessment to be carried out on offenders who were sentenced to a custody and community sentence of less than six months? Would that make a substantial difference to the risk of harm to society? I pick up from the witnesses’ written submissions that a risk assessment for such prisoners is an unnecessary diversion of resources. Would the bill be better if it did not have that requirement?

Professor Hall: That would make a fundamental contribution to some of the problems that we are flagging up, although there are other things that might be quite useful.

Professor Cameron: It would certainly take a substantial number of people out of consideration, which would be one way of focusing attention on the areas that most require it.

Jeremy Purvis: The RMA indicates that there would be a high level of breach of licence among offenders who are on shorter sentences without a requirement for supervision—that is, those with a custody and community sentence of less than six months. What type of breach could there be? Would it simply be disorderly or bad behaviour, or would something more specific be involved?

Professor Cameron: We can speculate that the offending of many people who are on short sentences is often of a relatively minor nature, although I do not want to play down the impact that that can have. It is often repeat offending behaviour. People are given custodial sentences because other disposals have been tried. The most likely condition to be breached is the condition that someone is to be of good behaviour.

Professor Hall: I agree. They would be largely nuisance offences—they may be associated with drinking or drug taking. In some cases, such offending is almost incidental, because a person leads a sufficiently chaotic lifestyle. Much of it is not instrumental offending.

Jeremy Purvis: For the large majority of such cases, local authorities and the Prison Service will have risk assessment mechanisms. If it is not determined that a case is to be referred to the Parole Board, no conditions will be set on the licence and the prisoner will be released. Will that
make any impact on the cohort of individuals who already receive very short-term prison sentences?

**Professor Cameron:** As I said, being released with a licence that we understand would say simply that a person should be of good behaviour is no different from the situation that applies to us all, although the licence has the slightly added feature that it is part of a sentence. For many offenders who are—sadly—in and out of prison frequently, comprehending and absorbing what a licence means and using it as a tool that makes them say, “I really mustn’t go back to prison,” will be inordinately difficult, given the pressures that many of them face. As Roisin Hall says, drugs and, in particular, alcohol are often a significant factor in people’s offending behaviour.

**Colin Fox:** I will ask about recall and revoking licences. Will you help us with apparently contradictory sections of the bill? Section 21 talks about recalling people to prison for any breach if they are out on licence, but section 33 requires the Parole Board to rerelease someone unless they pose a risk of serious harm. Will that lead to a revolving door whereby people who are released because they do not pose a risk of harm are then brought in because, strictly speaking, they have breached their licences?

**The Convener:** I say for the record that section 31, not 21, concerns recall to prison.

**Colin Fox:** I beg your pardon.

**Professor Cameron:** Colin Fox is right. A concern is that although the bill applies a single test to all situations of serious harm to the public, the test for recall is that a licence has been breached and that the Scottish ministers consider that revoking the licence would be in the public interest. Those tests are not necessarily at odds with each other, but they are different. The potential exists for people to go to prison on the application of one test, after which the board has no alternative but to release them because the serious harm test is not met. The serious harm test is higher than the tests that we currently apply—other than for people with life sentences—when an offence has been committed and there may be risk.

**Colin Fox:** So you think that the provisions appear to be at odds with each other.

**Professor Cameron:** Yes, they create the risk of people going in and out of prison.

**Colin Fox:** If the provisions are left as they are and you simply have to say, “This person is not a serious risk,” so that the person goes back out of prison, is there a danger that resources could be diverted? Your time and effort would be better used on other cases.

**Professor Cameron:** That is a danger. Such decisions are important, as they are about people’s liberty, so they would require full and proper consideration by the board. That would be another demand on the board’s time. As things stand, we have considerable pressure on our time. We estimate considerable additional demand on the board, as the financial memorandum says. I know that members always hear people say that they need more resources, but if we are to deliver what Parliament determines, the resource implications will certainly need to be examined carefully. Within that, we will need to consider the best use of the resources that we have.

**Bill Butler:** My question is for Professor Cameron and Mr Campbell of the Parole Board. What role do you envisage victims playing in the board’s decisions on whether prisoners who have been referred by the Scottish ministers should be released before three quarters of their sentences have been served and on whether to rerelease prisoners recalled for breach?

15:45

**Professor Cameron:** The board currently receives written victim statements in cases in which people have entered into the victim notification scheme, and we envisage that that will continue. The board always takes those statements seriously but, in reaching our decisions, we must be seen to be fair and impartial. That is a requirement under article 6 of the ECHR. The statements form part of the decision making, but we must weigh up all the factors.

On the basis of representations from victims, we sometimes include in a licence a condition that the offender must not approach the victim or members of the victim’s family. Not infrequently, victims say that they do not want to bump into the person again in the village or small town in which they live, in which case we apply a condition that excludes the person from the area for the duration of their licence. The difficulty is that that condition applies only for the duration of the licence, so there is a danger that we mislead the victim into thinking that the condition will apply for good. In applying conditions, we are always concerned about whether they are proportionate and whether they would stand up to proper tests if they were reviewed.

Those are the kind of measures that we take. We take the victim statements seriously and we take into account the impact on victims.

**Bill Butler:** Mr Campbell, do you want to add to that?

**Niall Campbell:** The only way in which we can take victims’ views into account is in considering
the question of risk, but there is sometimes a misunderstanding about that. Understandably, some victims think that an offender should never get out, but we have to consider whether the risk is acceptable.

Maureen Macmillan: Is it not the case that a victim could seek an interdict of some kind, such as a protection from abuse interdict? For example, if the case was one of domestic violence in which we wanted the offender to keep away from a particular person, it would be open to that person to seek an interdict.

Niall Campbell: Yes—under the appropriate legislation.

Professor Cameron: The person could not seek an interdict that would change the board’s decision, but they could look to other legal remedies to protect themselves.

Maureen Macmillan: Yes—there are other legal remedies.

Professor Cameron: Absolutely. The great majority of victim statements that we receive, many of which are extremely touching, say that we should not let the offender out. We must balance that view with the advantage that there may be in releasing someone before the very end of their sentence, so that their re-entry into the community is supervised. That may be difficult for victims to understand, but for their longer-term protection and that of other people, it could well be the best action to take.

The Convener: Will the Parole Board write to the committee to explain what controls and support systems it thinks should apply in cases in which a victim says that they do not want the person to be released but you decide that it is better to get them back into the community under supervision? It would be helpful to have a statement of what you consider supervision should be.

Professor Cameron: We can write to you on that. The question covers a wide range of circumstances. Every case is different and the experience of every victim is different, other than that they have been a victim.

The Convener: You talked about, and mentioned in your written submission, the need for a definition of supervision. I think that the RMA mentioned the issue, too. I am turning the tables and asking you to give us a few suggestions on that.

Does the Parole Board envisage having to convene a large number of oral hearings in light of the decision in the Smith and West case on the entitlement to an oral hearing in certain circumstances? What would be the associated resource implications? In that case, there was a reference up to the House of Lords.

Professor Cameron: Our legal advice is that a growing number of oral hearings are likely to be required. Eventually, oral hearings could be required in the great majority of cases. We need to determine whether those oral hearings will be heard by three members or in different circumstances and how we will construct the process, but it is likely that there will be significant resource implications for us.

Niall Campbell: We already hold oral hearings for recalled prisoners as a result of the Smith and West decision. Of course, the tribunals that we hold for life prisoners are also oral hearings. That situation remains unchanged.

The Convener: The point of the question is that every bill requires a financial memorandum and the committee is charged with the duty of finding out whether it covers all the costs that a piece of legislation might incur. Perhaps you could send us a short note on the matter.

Jeremy Purvis: I wonder whether the panel can say something about curfew licences, which, as I understand it, will come into operation for any prisoner who is sentenced to three months or more. Might they also give rise to the risks that Colin Fox highlighted? For example, if an offender breaches a licence after their four weeks of custody, the matter will come back to the board, which will have to carry out a risk of harm test. Theoretically, someone sentenced to a year can serve four weeks in custody and then be subject to quite a normal licence, even though other conditions might well be set.

Professor Cameron: Curfew licences are useful in bringing a degree of control and order into people’s lives, and the board will, from time to time, apply curfew and electronic monitoring measures. However, the feeling is that their effect can diminish the longer that they are sustained and the longer that people have to abide by their conditions.

The Convener: I thank Professors Hall and Cameron, Mr Campbell and Mr Winter for their full evidence. If the RMA wants to send us a brief note on any matters of relevance to the bill, the clerks will be happy to receive it.

15:52

Meeting suspended.

15:59

On resuming—

The Convener: I welcome the final panel of the afternoon, who are Dr Andrew McLellan, Her
Majesty’s chief inspector of prisons for Scotland, and John McCaig, Her Majesty’s deputy chief inspector of prisons for Scotland. You will understand the slight delay because of the interest in the evidence that we have received this afternoon. We look forward to receiving your evidence.

In your recent annual report, you state that overcrowding, along with slopping out, is one of the “twin curses of Scotland’s prisons”.

The bill could lead to an increase in the prison population of between 700 and 1,100 prisoners. What is the likely impact of such an increase on the prison estate, prison staff and prisoners themselves?

Dr Andrew McLellan (HM Chief Inspector of Prisons for Scotland): The impact would be enormous. I am grateful that you started on overcrowding—whatever you wanted to ask me about, I was going to talk about it.

Overcrowding is a hidden pain. Because of that, people do not recognise the damage that it does. It is important to recognise that although the bill has significant merits, which I hope to talk about later, it will also incur a significant cost—increased overcrowding. You quoted the Scottish Prison Service’s estimate that there would be between 700 and 1,100 additional prisoners. When we add that increase to the equation with the number of prison places being built and the normal increase of prisoners, that increase to the equation with the number of prisoners that we have seen every year since I took up office—although there is no connection between the two—it represents an immensely damaging impact on Scotland’s prisons.

I have often said that overcrowding in prisons makes things worse for everyone. In “everyone”, I include the Scottish public. Overcrowding significantly diminishes the opportunity that a prison has while people are in its care to make any change in their behaviour. Indeed, as I said in my annual report, it is not just that overcrowding makes prisons less effective; it also makes prisons worse. It makes it easier to get drugs into prison and it means that prisoners find themselves locked up for long hours, day after day and, worst of all, weekend after weekend. It makes it harder for prisoners to access the work that the law says they should do and which I think they should do. Overcrowding also makes it harder for them to access the education that they should have and which prison can provide. Whatever the merits of the bill, the increase in overcrowding that the Scottish Prison Service estimates will be a significant cost. There may also be a cost in public safety.

The Convener: Thank you. I also asked about the impact on prison governors and officers in the front line. Have you any views about how the increases could affect them and their ability to perform their duties?

Dr McLellan: In my annual report, which was published last month, I laid out nine evils of overcrowding. Significant among those are the pressures that it puts on all prison staff, especially when it is combined with what seems to be the inexorable increase in the duties that prison staff at all levels must perform, and with what appears to be a reduction in the number of prison staff. It is clear to me from what prison staff, prison managers and prisoners have told me that overcrowding makes the daily work of prison staff much more difficult. In particular, it makes extremely difficult the personal engagement between staff and prisoners that could be a real strength of the prison system but which is impossible as long as prisoners are locked behind their doors for hour after hour.

For prison governors, the difficulty is not that they do not have individual interaction with prisoners, but that they are spending a huge amount of time dealing with prison staff who are feeling stress and in addressing the almost arithmetical problem of how they are to find, if not enough work for all the prisoners, at least some work for enough prisoners. If they cannot find all the laundry arrangements that they should provide for prisoners, can they find adequate laundry arrangements for the large number of prisoners that they have? If they cannot provide progression through their system such that prisoners get a sense that they are moving to more privileged conditions, what incentives can they provide to help prisoners feel that they can move forward and that their achievements will, in some sense, be rewarded?

The Convener: I presume that your response is based on interviews that you have had with prison governors and prison staff throughout Scotland.

Dr McLellan: Yes.

Jeremy Purvis: I think that you understand the duties that will be placed on the Prison Service and local authorities to risk-assess every prisoner who serves a custodial sentence of more than 15 days.

However, first, I would like to ask about overcrowding. I do not know whether you have seen the submission that the Prison Service has provided to the committee on design capacity versus average prisoner population over the next five financial years. I think that it has been presented to both justice committees. The Prison Service estimates that, if no new build has been completed by the end of the fifth year, there will be a design capacity versus average prisoner population shortfall of 910 places. What impact will
that have not only on the requirements of the bill, but on the ability to provide any assessment of prisoners' needs?

Dr McLellan: If everything else stays the same, there will be a huge impact through the increase in the number of prisoners who share cells. At the moment, the Scottish Prison Service tries, as far as possible, to give prisoners who are serving long sentences cells of their own. However, increasingly, it is not able to do that. The figure that you have just cited would make it impossible for the Prison Service to provide prisoners with cells of their own.

That would have three impacts. First, given the effects on prisoners of sharing cells and the anxieties that prison officers feel about long-term prisoners sharing cells, it would not be foolish to talk about there being increased safety risks in prisons. Secondly, unless the increase in the number of long-term prisoners were accompanied by a significant increase in the number of places that were available in the open estate, it would be much more difficult for long-term prisoners to receive the opportunities to be tested in the community, to which Mr Campbell referred earlier. Community placements and home leave would not be available to them if there were no places for them in the open estate.

Thirdly, as far as short-term prisoners are concerned, in addition to the many other disadvantages that I have mentioned, it seems almost inevitable that they would increasingly be detained in prisons that were further away from their families, social workers and other agencies that might seek to engage with them in prison.

It is not a case of new difficulties arising; it is a case of the nine evils of overcrowding getting worse, which needs to be addressed.

Jeremy Purvis: Is there anything positive in the bill with regard to the situation? You hinted that there may be some positives in the bill; this is your opportunity to say what they are.

Dr McLellan: There is in the bill terrific merit that I welcome unreservedly, although I have reservations about overcrowding. That merit relates to the opportunity that the bill provides for supervision in the community for prisoners on release. I have often reflected that the most important time in a prison sentence is the moment when a prisoner leaves the prison gate. Under the bill, short-term and long-term prisoners—as they are now described—will not be released into nothingness, which is an extremely important gain.

The possibility that there might be some supervision of people being released who have homelessness problems, problems with addiction, problems with their families or problems with health is a very significant gain. In Holland there is no drug treatment programme in detention because of the belief—at which Professor Hall hinted—that such programmes are best undertaken in the community. In our present circumstances that is impossible, but the bill may offer opportunities not only for drug addiction programmes in prison but for continuation of such programmes outside. In my view, that continuity and supervision is the best part of the bill.

Jeremy Purvis: I do not want to put a dampener on your enthusiasm, but I draw your attention to the supervision requirements for which the bill provides. Section 27 states that supervision will be in place only for a prisoner who has received "a custody and community sentence of 6 months or more".

Currently, such sentences are being served by 48 per cent of the prison population. The element of continuity and supervision will be missing for the remaining half.

The previous panel indicated that, if the number of offenders who go to prison to serve short-term sentences of less than six months is ratcheted up, the statutory requirement for risk assessments will not be effective in reducing reoffending and risk. Because there is a statutory duty to carry out risk assessments, the Scottish Prison Service may consider transferring its resources away from providing rehabilitation services for longer-term offenders. Although the intention is progressive, the bill will mean that there is a net negative outcome in both areas. Supervision will not be available to half of those who will be released from prison this week.

Dr McLellan: I accept that and will say a little about risk assessments in a moment. The possibility of supervision for half of prisoners is a great deal better than the present situation. I would be grudging if were to say that, because the bill does not make provision for everyone, it is not to be welcomed. Later there may be discussion of the value of supervision for offenders who have received sentences of less than six months.

I want to say a little about risk assessments for people who are serving very short sentences. I recognise the ineffectiveness to which both the Parole Board for Scotland and the Risk Management Authority drew attention. I also want to draw attention to the frustration that is likely to develop in prisons if there are repeated assessments of people who are serving very short sentences, the net result of which may be only three or four prison days or, often, no difference. If prison officers have to carry out such assessments regularly, although they and prisoners accept that they have no impact, it will lead at least to annoyance and, perhaps to contempt for the system, especially among prisoners.
Colin Fox: I want to look at the connection between rehabilitation in prisons and overcrowding. Over the weekend, I was struck by a news report about staff on duty at Barlinnie prison in Glasgow on Saturday night. I know that weekend evenings in prisons are long, starting at 4 or 5 in the afternoon. The report reminded me of two things: the evidence from the Prison Officers Association and something positive that your annual report flagged up—that 97 per cent of prisoners or offenders rated relationships with staff in their prisons as “ok or better”. It seems to me that a great deal of attention is focused on and a lot of time is taken up by developing professional skills to be brought to bear for the benefit of offenders, which is a part of the Prison Service’s work that works.

Did the Prison Officers Association’s evidence strike a chord with you? It is worried because it has lost 700 staff in the past five years as a result of a standstill budget. It thinks that less prison officers’ time is being taken up with interaction with prisoners during rehabilitative work and that prison officers are becoming more and more simply “turnkeys”, to use its description. Do you recognise that picture? Given that the bill could add another 20 per cent or so to the prison population, should we examine such matters?

Dr McLellan: I am glad that you singled out that astonishing statistic from my annual report. It shows that prisoners acknowledge the good relationships that exist between prison staff and prisoners.

In my rather discursive first answer to the convener, I drew attention to an inevitable consequence of overcrowding: prisoners will spend more time in their cells with the door locked and they will often share cells with strangers. That consequence has been inevitable in the past and I am confident that it will be inevitable in the future. It is difficult to see such experiences as being significantly rehabilitative.

The Prison Officers Association spoke about its concern about prison officers’ inability to do the work for which they have been trained—to which I referred earlier—and the stress that prison officers feel themselves to be under. It is for prison officers to speak about that stress rather than for me, but I will say that since I started in my post, it has been observable that prisoners have been less engaged in rehabilitative activities than they were previously. That is a direct consequence of overcrowding.

Colin Fox: Would it be fair to say that against such a background and taking into account the relevant facts and figures, it would be somewhat utopian to expect a turnaround in reoffending behaviour or better rehabilitative care?

Dr McLellan: That would be the case if there were no intention to provide additional resources to cope with the additional prisoners. I do not know whether there will be additional resources, so I do not know whether it would be utopian to expect such a turnaround.

I hope that I have spoken strongly about the damage that overcrowding causes. However, the introduction of supervision in the community for prisoners is a positive step. For reasons that I mentioned earlier to do with addiction, unemployment and housing problems, such supervision might significantly contribute to reducing reoffending.

Maureen Macmillan: I want to follow up on what Colin Fox said. I am concerned about prisoners with very short sentences who repeatedly go through the revolving door. Earlier, we heard how such prisoners can be released on licence, break their conditions and end up back in prison. The Parole Board can say that such people do not pose much of a risk, so they will be let out of prison again and so on. Prisoners on very short-term sentences of under 15 days are not supervised or supported in the community after prison. In that context, I am concerned that there is a disproportionate impact on women prisoners, who often go to prison for fine defaulting. Perhaps we are failing that section of the prison population with the proposals that have been made.

Dr McLellan: I have always tried to draw attention to the different circumstances of women offenders and to the different provision that the Scottish Prison Service attempts to make for them. Overcrowding is as damaging for women as it is for men. New accommodation has been built at Cornton Vale and nearly all convicted women and most women offenders are now detained in Cornton Vale—although, as members know, there is still a unit in Inverness and another in Aberdeen.

I do not mean to be impertinent, but I am not sure that the proportion of women who are imprisoned as fine defaulters is as high as the proportion of men. Many men are in prison because they have failed to pay fines and one of the most depressing parts of my most recent report on Cornton Vale concerned the significant increase in the number of women who had been convicted of violent offences.

Maureen Macmillan: I fully accept what you say about the change in what many women are being sentenced for.

Is it a problem for women as well as men that, during very short sentences, they will not receive the support that they need, because the 15-day rule excludes them?
Dr McLellan: If people are imprisoned for 15 days or less, they might get—apart from a deprivation of their liberty—a health assessment and a bit of advice on how to improve their health when they leave prison. That will be it. That will not be because of any unwillingness on the part of the Scottish Prison Service; it will be because of the kind of thing that Roisin Hall mentioned earlier. The assessment of needs and the delivery of what might be needed take a great deal longer than 15 days. It would be naive—no, that would be an impertinent word to use—it would be unreasonable to expect prisons to make a significant difference in the life of a convicted person in 15 days. However, I cannot imagine that people are sent to prison for 15 days with that hope in mind.

Maureen Macmillan: I cannot imagine why people are sent to prison for 15 days at all. One would think that other disposals were open to the bench.

Dr McLellan: I think that you are allowed to say things that I am not allowed to say.

Maureen Macmillan: Okay.

Will the bill reduce reoffending rates? We have heard about the revolving door and we have heard that the rates for short-term prisoners might not reduce, but will there be an overall reduction?

Dr McLellan: A little while ago, I agreed with Mr Purvis’s suggestion that the bill is unlikely to make a significant difference for people who are sentenced to six months or less in prison. However, if appropriate resources are in place, it could make a significant difference to the reoffending behaviour of people who have the opportunity to engage in the new continuity between prison support and community support that the supervision provisions in the bill will make possible.

I cannot tell you how often I have come across stories of prisoners—often young prisoners—who have been released into nothing. I am glad to pay tribute to the Scottish Prison Service: in the four years that I have been in post, the service has made significant moves to develop much better links with communities, with social work departments, with housing authorities and with jobcentres. There are encouraging signs about a new engagement with social work under what Professor Hall referred to as the integrated case management system.

With proper resourcing, the supervision that the bill will require could make an important contribution to the reduction of reoffending.

Colin Fox: Maureen Macmillan has rightly asked about reoffending. The levels of reoffending are highest among people who are serving shorter sentences. Realistically, what can the Scottish Prison Service achieve with young men and women who are in the care of the service during short sentences?

Dr McLellan: You will know that the Scottish Prison Service itself believes that it can achieve nothing for people who are sentenced for less than 12 months. I have seen no evidence to contradict that.

To go back to a point that Maureen Macmillan raised, I have seen evidence of people, especially women, who feel safer in prison. That is a terrible thing to say and it cannot be a reason for the existence of prison. I have certainly seen people whose health has been improved by short sentences in prison but, in an ideal society, prison sentences would not be used to improve people’s health.

I also recognise that our system of punishment does not exist solely to provide rehabilitation. People are sent to prison for other reasons as well. It might be possible to justify short sentences for deterrent or punishment purposes, although it is not for me to say that—it is for you. However, it is difficult to justify short sentences on the ground of rehabilitation.

Colin Fox: I know that, because when we visited Low Moss the governor made it perfectly clear to me that we expect an awful lot of our Prison Service when we send young men to prison for three months and then send them straight back to where they came from—I think that he mentioned Milton in Glasgow.

What proportion of people in our jails should not be there and would be dealt with better by alternatives to custody?

Dr McLellan: I can answer the question on different levels. First, my job is to inspect the treatment and conditions of prisoners. It is not for me to assume that I know more than judges. I say straight away that judges know more than I do about the right results of prison sentences. However, health care professionals in prisons, prison governors and my own eyes draw to my attention the increasing number of prisoners who have some kind of mental illness and are seriously ill. I ask a lot of questions, but there is only one answer to the question, “Will prison make their mental illness better?” If their mental illness is the cause of their offending behaviour, their prison sentence is perhaps not justifiable.

Secondly, we talked about fine defaulters. I do not disagree with Maureen Macmillan on the imprisonment of women in general. There is no doubt that, in the case of some women prisoners, the damage that is caused to their family is disproportionate to the nature of the offence.
Thirdly, I will comment on a matter that has not been mentioned today. In the past six years, there has been a great increase in the number of people who are imprisoned on remand and have not yet been convicted. They contribute significantly to our prison numbers. I understand that 50 per cent of them do not subsequently receive a custodial sentence.

Finally, I believe that nobody under 16 should be imprisoned.

**Colin Fox:** So we are talking about people with mental health conditions, fine defaulters, under-16s and the growing remand population. Those people could be dealt with through alternative means.

**Dr McLellan:** It is difficult to answer the question, “Why should they be in prison?” Addiction is at the centre of most offending. If we were concerned only with addressing their addiction, they would not be in prison, but there are other questions. How do we address the harm and damage that they have done? How do we address the needs of victims? How do we prevent other people from committing offences?

**Colin Fox:** Statistics show that the alternatives to custody have a far greater effect on preventing reoffending. Are you aware of those figures?

16:30

**Dr McLellan:** I questioned something that Maureen Macmillan said, so I hope that I am allowed to question something that you said as well. Your comment about the statistics is true of drug testing and treatment orders and projects that specifically address addiction, such as the 218 project in Glasgow, but I am not certain that the statistics on community service orders and other punishments in the community show as clearly as we would hope that such punishments are more effective at reducing reoffending.

**The Convener:** In conclusion, I take you back to the question that I started with, which was about the increases in prison numbers. Given your remit, can you recommend one thing that would help to reduce overcrowding in prisons?

**Dr McLellan:** We need to find the way to break the cycle. The use of work in the community as a punishment is not adequately funded because there is a sense that there is no public confidence in it. That might be driven by the press, which contributes to the absence of public confidence. Judges decide not to use alternative punishments because they are not properly funded but, in turn, that is because the public do not have confidence in them.

**Jeremy Purvis:** I want to correct myself. This might give you an opportunity to have a go at something that I say as well, just for neatness. I was incorrect when I said that half the average daily prison population serves less than six months. I refer to Sacro’s evidence, which states that 48 per cent serve less than three months and 80 per cent serve less than six months. Only a small proportion of offenders will be subject to supervision in the community when they are released. Does your view that 20 per cent is better than nothing still apply?

**Dr McLellan:** It is for that 20 per cent of offenders that supervision is likely to deliver the best results, so it is valuable. It should not be thrown away.

**The Convener:** Thank you for coming to give evidence this afternoon. I apologise for the slightly delayed start, but obviously the committee goes with the flow when it gets a large volume of evidence, as we had in the previous session.

16:32

Meeting continued in private until 16:59.
Thank you for your letter of 23 November in which you reminded me that the Parole Board had agreed to write to the Committee about a couple of issues that had arisen in the course of the giving of evidence on 21 November.

Taking firstly the matter of victims’ issues, the Parole Board is of the view that the Victim Notification Scheme as presently framed goes some way to assisting victims of the extensive list of offences that are covered by the scheme. Where the offender has been sentenced to a period of imprisonment of 4 years or more the victim has the right to be informed about decisions made by the Parole Board and to make representations to the Parole Board about the release of the offender. Where such representations are received the Board has regard to these in arriving at its decision with regard to the prisoner’s suitability for release on licence.

When the Board does direct the release of an offender on licence, or where the offender must be released on licence having served two-thirds of his or her sentence, the Board is required to attach conditions to the offender’s licence. Such conditions require the offender to:

- Report promptly to the supervising social worker;
- Co-operate with the supervising social worker;
- Tell the supervising social worker if he/she changes address, starts a new job or changes his or her job;
- Reside in accommodation approved by the supervising social worker; and
- Not to travel outside Great Britain without the approval of the supervising social worker.

In addition to the fairly standard licence conditions outlined above the Board also attaches conditions that relate to the circumstances giving rise to the specific offence that the offender committed. For example where the offence was alcohol or drug related the Board often requires an offender to:

- Undertake alcohol counselling as directed by his supervising social worker; or
- Undertake drug counselling as directed by his supervising social worker.

In circumstances where the offence was of a sexual nature the Board regularly recommends that the following conditions are attached to the offender’s licence:

- You shall not undertake paid, unpaid or voluntary work without the prior approval of your supervising social worker.

This condition is used where there is concern that the offender will seek to work in an area that will enable him to come into contact with minors who may be potential victims. This condition is not designed to stop the offender from going about his/her normal daily life, it does not preclude the offender from visiting shops or cinemas etc or from travelling by public transport as some have suggested.

- You shall not have contact with any child under the age of 16 without the prior approval of your supervising social worker.

This condition is used where concerns exist regarding the safety of minors whom the offender may seek to contact.

- You shall not enter parks, playgrounds or other places of recreation where children under the age of 16 habitually resort.

This condition is designed to ensure that an offender does not frequent areas that are commonly used by potential victims.

In addition the Board can attach conditions to an offender’s licence requiring that they have no contact with a named individual or individuals who were victims of the offences. The Board may also attach a condition that excludes an individual from entering a particular town, village or street. The Board also has the powers to require the electronic monitoring of an offender. It is, however,
important to keep in mind that the conditions imposed by the Parole Board fly off as soon as the licence period expires. All licence conditions are, of course, designed to assist the offender to re-settle in the community and reduce the risk of re-offending thereby protecting the public and, so far as possible, ensuring that potential victims are protected.

Turning to the matter of Oral Hearings for recalled determinate sentence prisoners that the Board has been required to conduct, where appropriate, since the House of Lords’ judgement of January 2005 in the cases of Smith and West, the Parole Board held 7 Oral Hearings in 2005 and, so far, 14 in 2006. The Board expects the number of such hearings to increase in future years as the Financial Memorandum indicates that the number of recall cases to be referred to the Board will increase by 396, or 108%. More recalled offenders are likely to request an Oral Hearing and refusal of such will be difficult to defend as the balance of the Board’s work will focus more on the consideration of cases by way of an Oral Hearing if the Bill is enacted. That is because there is a presumption that the cases of all prisoners who are referred to the Board for consideration of continued detention under the arrangements outlined in the Custodial Sentences and Weapons (Scotland) Bill will be dealt with by way of an oral hearing. Estimates of the additional workload of the Board detailed in the Financial Memorandum indicate that:

- Smith & West type Oral Hearings 34 cases*
- Assessment of Need for Continued Detention 870 cases

* Probably understated.

Given that the average cost of a Tribunal or an Oral Hearing as detailed in the Board’s Annual Report for 2005 is around £871, the additional costs to the Board are likely to be in excess of £787,000. From the information contained in the Financial Memorandum to the Bill it is clear that additional Board members, additional support staff and financial resources will be required by the Board in the event of the Bill being enacted.

I should like to take this opportunity to raise with the Committee a matter that I did not get the opportunity to address in the course of giving evidence on Tuesday 21 November. Members of the Committee will be aware that Section 1 paragraph (2) of the Bill provides that:-

The Parole Board has the function of advising the Scottish Ministers in relation to any matter referred to it by them in relation to the release of prisoners.

I consider that it is important to point out that in relation to a number of its functions the Parole Board actually directs the Scottish Ministers with regard to the steps that they must take with regard to the release of certain prisoners. In the circumstances it may be appropriate to amend the wording of the Bill to reflect this position.

I trust that the foregoing is of assistance to the Committee.
33rd Meeting 2006 (Session 2) 28 November 2006

SUBMISSION FROM LOTHIAN AND BORDERS COMMUNITY JUSTICE AUTHORITY

Primarily, the purpose of Section 2 of this Bill is to enhance transparency and the public’s confidence and understanding of the sentencing process. Indeed these objectives mirror those of the new Community Justice Authority structure. We therefore concur with the ambition of the Bill but are concerned that, as described, the Bill’s purpose will not be fulfilled and may serve to further undermine rather than promote public confidence and understanding.

Central to Section 2 of the Bill is the assessment and successful management of risk. This too is the preoccupation of all the agencies involved in supervising offenders both in custody and the community. Understanding risk and need and targeting resources to reduce risk is a cornerstone of working effectively with offenders.

Staff working with offenders in prison, local authorities and the independent sector are a skilled and valuable resource. They are however over-stretched with year on year increases in the number of court assessments, supervision orders and custodial sentences. These staff can be most effective when able to work jointly with other agencies, prioritise their workload and target their skills on those offenders who pose greatest risk. An example of this quality of practice can be seen in the management of sex offenders across Scotland.

We are concerned that these proposals will jeopardise the ability of agencies to focus their resources on the high risk and high need offenders and will further dilute the workforce by requiring their time to be spent on tasks that are neither high need nor high risk. The fifteen day threshold for risk is, we would argue, far too low and will likely exceed the capacities of SPS and local authorities. In any case, offending behaviour that attracts such short periods of custody is, by definition, on the lower scale of risk. Additionally, the anticipated increase of 3000 licences with a supervision requirement will be a five fold increase in the demand placed on local authorities and independent providers.

Essential to the new Community Justice Authority role in Reducing Re-offending is the involvement of associated agencies such as employment, health, housing, education and addiction services. The CJA’s are required to construct a framework that can enable these agencies to work together with the Scottish Prison Service and local authorities to meet need and manage risk. The proposals in the current Bill would, if enacted, challenge the current capacity of these agencies and will, I would suggest, have a negative consequence for both the Management of Offenders and Custodial Sentences legislation.

There are two matters which do not appear to have been considered in the evidence given to date. Both relate to assessment and, I feel, may provide assistance in meeting the Bill’s objectives.

Each year approximately 50,000 Social Enquiry Reports are prepared across Scotland. These are pre-sentence reports which the existing legislation requires before a large number of offenders are sentenced to custody. Each report is required to contain an assessment of risk relating to re-offending and harm and also assess the level of need. These reports are routinely made available to the Scottish Prison Service. It is feasible that these reports could act as the initial assessment for many of the offenders who would be covered by the proposed provisions. It would also go some way towards developing a single shared assessment for Integrated Case Management which would follow the offender through their sentence and back into the community. Moreover, the use of these reports would negate the need for a further assessment, at least on those serving relatively short sentences.

The second matter relates to the Parole Board’s decision making process n those offenders assessed as presenting high risk and being in need of community supervision. Currently, any person being considered by the Parole Board is required to have a Home Circumstances Report prepared by the local authority. These reports focus on assessing and managing both risks and needs, Their purpose is to advise the Parole Board of the likely impact the released offender will have upon their family, community and, where appropriate, victims. In addition, the report will advise the Board of the availability of local services and resources that will contribute to the
conditions of supervision. Most commonly these focus upon housing, addiction services and employment. There is, after all, little point in imposing a condition that cannot be practically met within the community.

In recognising both of these previously unmentioned areas of assessment they may, if considered within the Bill, go some way towards answering the criticism that the threshold and proportionality issues have not been adequately addressed. The Bill could therefore be amended to include a requirement for all determinate sentences to be preceded by a Social Enquiry Report, which in addition to its sentencing function, would be used as an early determination of those individuals that would require consideration by the Parole Board. Additionally, the existing arrangements to advise the Parole Board of the home circumstances and availability of community resources could be extended to include those who fall within the scope of the Bill. Although these amendments would carry additional resource burdens, they would allow for a better-targeted use of the available budget and to an extent, would offset some of the anticipated demand for prison-based assessments.

LETTER FROM SCOTTISH EXECUTIVE ON PART 3 OF THE BILL, 27 NOVEMBER 2006

1. A number of submissions requested a definition of a "sword" does the Executive have one? Scottish Fencing for example is concerned that fencing swords are not exempt in the Bill. Will historical fencing be an exemption - their submission refers to the use of blunt swords? Will exceptions be made for members of properly constituted re-enactment clubs and societies?

**Answer:** The Bill will enable exceptions to be made to the proposed general ban on the sale of swords. The Executive intends to make exceptions for legitimate religious, cultural and sporting purposes including fencing and re-enactment (see paras 100 to 102 of the Policy memorandum). Blunt swords are capable of substantial damage even without a sharp edge and can of course be sharpened. The Bill therefore simply refers to 'swords', which includes blunt as well as sharp swords. More generally, whilst it will ultimately be a matter for the Courts, the Executive considers that the term "sword" is one which will be readily understood without the need for elaboration.

2. Has the licensing of individual martial arts swords been considered? As there is no one martial arts representative body how will the exemption operate with regard to martial arts organisations?

**Answer:** ‘Tackling Knife Crime: A Consultation’ set out a number of options for restricting the sale of swords, including individual licences (see paras 83 to 94 of the Policy memorandum). After considering responses to the consultation the Executive have decided to provide for exceptions to the general ban on sale for legitimate religious, cultural and sporting purposes including those martial arts organised on a recognised sporting basis (see para 100 of the Policy memorandum). The exceptions therefore focus on purpose rather than organisations.

3. Concern has been expressed by a martial arts organisation about the procedures for transporting a sword overseas to a training event and then returning to Scotland. What are the implications of the Bill?

**Answer:** The Bill's provisions do not affect the law on carrying weapons in public. It is an offence under section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995 to have any article which has a blade or is sharply pointed in a public place without good reason or lawful authority. Transporting a sword to and from training would appear to be a good reason, though ultimately that would be a matter for the courts to decide in any individual instance.

4. Will there be a single licence option? If a retailer trades in more than one local authority will more than one licence be required? A submission from Allstar Uhlmann UK states that if they had to apply potentially for 32 individual licences, this would impact greatly on their business and the sport of fencing.

**Answer:** Retailers will require a licence for each local authority area in which they have a retail premises, an internet sales operation or a dispatch centre. So any business with premises in
a number of different local authority areas will require to apply to each of them for a licence. This is the same as other existing licensing regimes.

From our discussions with Allstar Uhlmann we understand that they operate permanently from a single sales base but have temporary sales operations elsewhere at fencing competitions. Existing licensing regimes provide for this type of activity (e.g. for antiques fairs) through the provision of temporary licences at well below the price of a full licence. We envisage that a similar arrangement can be developed in respect of knife dealers licences and this is one of the issues which the Executive have been discussing with COSLA and local authorities as part of our preparations for developing the regulations for the proposed licensing scheme. The regulations will be subject to public consultation in due course.

5. Again from the same submission, will the Bill restrict in any way the current availability of many different specifications of swords used in fencing and many different blade types?

**Answer:** See the answer to the first question.

6. Will the lending and giving of swords by clubs, coaches and the Fencing NGB be permitted by the Bill? Will lending or giving by businesses such as Allstar Uhlmann be permitted within the single licence? Will clubs and coaches acting as agents for the sale of equipment, be permitted to operate under the principle’s single licence or would each coach require an individual licence?

**Answer:** The general ban on the sale of swords will also extend to hiring, lending and associated activities to avoid enforcement loopholes (see paras 96 to 98 of the Policy Memorandum) but will be subject to exceptions for legitimate purposes such as fencing. In addition, where such lending is part of a business activity a licence will be required (though a separate lending licence will not be required for a business which sells swords and will therefore require a licence for that purpose). Private individuals who are not carrying on a business will be able to lend etc swords without the need for a licence (but will only be able to do so where the intended use is one of the specified legitimate purposes which will be the exceptions to the general ban on sale (or lending etc.) of swords.

7. What right of appeal will there be against forfeiture?

**Answer:** Forfeiture will be decided on by the courts and will be subject to the normal appeal process (see section 27J, inserted by section 43 of the Bill).

8. Will a licence be required for a dealer / collector only selling at English trade fairs?

**Answer:** All non-domestic knife and sword dealers who are carrying on business in Scotland will require a knife dealer’s licence regardless of where their customers are located. If no aspect of the business takes place in Scotland, then the Scottish licensing scheme will not apply. Private individuals will not need a licence under the Scottish scheme.

9. A suggestion has been made that blade length be used as the criteria for imposing restrictions. Was this considered? Why was it rejected?

**Answer:** It is proposed that a licence will not be required for businesses selling shorter pen knives, sgian dubhs and kirpans (where the blade is no longer than 7.62 cm/3”) - see para 108 of the Policy memorandum.

10. There will be no barriers to internet or mail order purchase of knives etc. Is this a potential loophole?

**Answer:** The Bill requires that Scottish businesses selling non-domestic knives etc. will require a licence, even where such sales are over the internet (see para 112 of the Policy Memorandum). Even businesses which only dispatch non-domestic knives etc. from premises in Scotland (even if orders are taken outwith Scotland) will also require a licence.

11. What monitoring is proposed for the part 3 provisions?
Answer: Monitoring will principally be a matter for local authorities; probably mainly through trading standards officers. This is something which the Executive will be discussing in more detail with COSLA and local authorities as the licensing regulations are developed and implementation plans prepared.

12. The prison officers association stated that there is presently an anomaly whereby a prisoner caught with a knife in prison is not regarded as carrying a knife in public and therefore cannot be dealt with by the police or procurator fiscal. Would you confirm whether this is correct.

Answer: Carrying a knife in a prison is not an offence under Section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995 (Offence of having in a public place article with blade or point) since prisons are not public places. Section 49(7) provides that “public place includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.”.

Possession of a knife in prison is however a breach of prison discipline rules and may also affect eligibility for Home Detention Curfew. Under the Bill’s proposals, breaches of prison discipline rules for such offences will be a factor which can be taken into consideration as part of the risk assessment required by section 7(1) (and may thereby impact on the proportion of the sentence served in prison).

The police and Procurator Fiscal can also take action i.e. criminal proceedings if possession of a knife were accompanied by threats or other similar conduct which may amount to a breach of the peace. They may also take action where the knife is used, or there is an attempt to use it, or, in terms of section 41(1) of the Prisons (Scotland) Act there is evidence that an individual has brought the knife into the prison.
The prison population in Scotland is at an all-time high. How does that affect the day-to-day running of prisons? The Executive has estimated that the proposals in the bill will lead to an increase in the prison population of between 700 and 1,100. Does that give you cause for concern? Would an increase in accommodation be required to prevent overcrowding? Those are fairly broad questions to start with.

**Ian Gunn (Scottish Prison Service):** As the convener said, I am the governor of HMP and YOI Cornton Vale—I have been in that post for eight weeks and two days, so I ask members to bear with me, please. Any comments that I make about Cornton Vale are based only on that period.

Overcrowding causes a problem for Cornton Vale. We are around or above our contracted number of places. The high number of remand cases and the high number of prisoners with mental health or self-harm problems who come to us can have a significant effect on the management of the establishment.

In terms of the future, I have not really had the opportunity to look at the bill, and it would be pure speculation—which I do not think the committee would be particularly interested in—for me to speak about what might happen in the future. Governors work to a performance contract, which is negotiated each year by directorates at Scottish Prison Service headquarters. It is my job to deliver that contract, on behalf of the prisons directorate, for Cornton Vale. I am quite prepared to talk about what happens in the prison now but, as I said, it would be pure speculation for me to talk about anything in the future.

**Bill McKinlay (Scottish Prison Service):** At present, Barlinnie prison is overcrowded. It is above its design capacity by 46 per cent and 23 per cent over capacity in terms of the contracted number. Obviously, overcrowding is not to be condoned, but it is not for me to determine what happens in the courts. We have to deal with
overcrowding, which impinges on every part of the establishment. We try to mitigate it as best we can in how we run the establishment.

I cannot predict the future either, and I have superficial knowledge of the bill. I am confident, however, about the work that has been carried out by the SPS directorates. Their people have experience, knowledge and competence that can inform the bill. I read the explanatory notes, and I cannot add to or subtract from the predictions that are made in them. I think that they have been made by operationally experienced people as well as by people with experience on the administration side. The work that was carried out involved a number of the directorates, so I would have to stand by what they have predicted.

I do not have a view on the future. Whatever happens with regard to numbers, I would be expected to meet the director of prisons and to determine, in relation to the business plan, what would be required to deliver the business for any year. That would include dealing with numbers, additional demands and the required resources and finances.

14:45

**The Convener:** We are not questioning either of you about policy; we are talking about what things are like on the ground as you try to manage the prisons for which you are responsible. How would you deal with the increased prison population that is predicted? I presume that you would both have to deal with a percentage of the increase.

**Bill McKInlay:** That would not necessarily be the case. I do not know about the finances for additional prisoner places in new prisons, but two new prisons are planned. Barlinnie prison has a capacity beyond which my board and I would put up our hands and say that we could not take any more prisoners, because if we did so we would not be able to meet the required standards. I expect that the predicted increase will be taken account of and that consideration will be given to available spaces and what might be done to reduce or cope with demand.

**Ian Gunn:** Cornton Vale prison also has a contracted number of prisoners, and additional places that we make available. We can also increase the contracted number if we have to do so. If I was concerned that the prison population was reaching a number that was not manageable, I would approach the deputy director of prisons, who is my line manager. No doubt the population management group in the prisons directorate would take the matter on and consider how numbers might be distributed.

Given that Cornton Vale is the only establishment that deals exclusively with female prisoners, there would be the opportunity for more accommodation to be provided at the prison—as happened last year. However, such a decision would not be made by me and would be the subject of long discussions.

**Bill Butler:** I hope that the witnesses can give me more expansive answers than they gave the convener. You both hold senior positions and I think that all committee members are keen to hear what you have to say. We are not asking you to expound on policy matters or to speculate wildly—as Mr Gunn suggested—outwith your experience; we are asking you to give us the benefit of your experience and judgment. We want to hear what you think and we hope that you can say what you think, because that is why we invited you to give evidence.

As you know, a policy objective of the bill is to reduce reoffending. What rehabilitative programmes for offenders are currently carried out in prisons? Mr Gunn, will you speculate on, or rather, tell us about that?

**Ian Gunn:** A number of programmes are going on in Cornton Vale, on cognitive skills and anger management. We are developing a violence programme for female offenders, but I do not know much about that programme yet. Many resources are directed into drug education and awareness, to try to get offenders off drugs or at least to keep them stable. We do a lot of work on mental health and much resource goes into trying to reduce self-harm in the prison. In addition, we run a full education programme and recreational regimes, to keep prisoners active during the day.

**Bill McKInlay:** Similar programmes at Barlinnie teach cognitive, coping and anger management skills. The first steps initiative is for drug users and the lifeline programme tries to prevent relapse in drug-free prisoners. A new life-coaching initiative, which involves the Wise Group, prepares people for employment. We have partnership arrangements with Jobcentre Plus, the Benefits Agency and church groups. A significant number of initiatives for prisoners are on the go.

**Ian Gunn:** My newness at Cornton Vale means that I sometimes forget the work that Bill McKInlay described, such as our work with Phoenix House or the routes out of prison project. We also work with Jobcentre Plus and housing departments. There are a host of opportunities for women offenders, for example through Open Secret and Cruse Bereavement Care, to try to reduce reoffending or deal with issues that might have contributed to their offending.

**Bill Butler:** I am grateful to both witnesses for delineating and being expansive on the number of programmes that aid the rehabilitation of offenders. What are the difficulties in providing...
such programmes for offenders when prison numbers are high and many prisoners serve very short sentences?

Bill McKinlay: The committee already knows about our assessment process, which is called community integration planning. Every prisoner who comes through the door is assessed on a needs basis. Their needs can cover anything—housing, drugs or mental health, for example—and we try to facilitate work on those areas.

For prisoners with short sentences of under 31 days, we signpost and push them towards relevant agencies. Prisoners with sentences of 31 days or more come into the community integration plan, and those with sentences of more than four years come into the integrated case management system. First, we assess the needs that are identified by prisoners and ensure that those are actual needs and, secondly, we establish the length of time required for someone to get to the end of a course. At times, we can be fishing in the same pool for the same people.

The committee will be aware of community justice authorities—CJA chief executives will give evidence after us—and the possibility, through the Management of Offenders etc (Scotland) Act 2005, of joining up the work so that the courses and programmes delivered in prison are similar to those in the community. That means that if someone starts a course in prison, they may be able to finish it in the community, which is a step forward. Part of the issue with programmes is throughput and ensuring a consistent approach, which we are moving towards.

Ian Gunn: The population of Cornton Vale runs from prisoners on remand through to prisoners on life sentences, so we have just about every type of offender. We structure the prison on the basis that specific parts of the prison deal with specific types of prisoner. This morning, we had 338 prisoners in custody, 102 of whom were on remand.

The remand population can be volatile and fluctuates greatly, and many of the prisoners on remand are the most vulnerable and require a lot of attention. Particular resources are attached to remand work in two of the blocks in Cornton Vale, and we try to tailor interventions for short-term prisoners according to their sentence length. Basically, we ask how long we have to deal with the individual based on how long they are with us.

Bill McKinlay: I have a breakdown of assessment referrals, which may give an indication of the situation. Of the prisoners assessed on one day, 17 per cent required no action. Of the rest, 7 per cent had needs relating to homelessness; 9 per cent had needs relating to education; 10 per cent had benefits and housing benefits needs; and 17 per cent needed chaplaincy support. Chaplaincy support has what we call a poor box that gives immediate access to funds. It does a good job in that respect; some of the work can be done very quickly—looking after a prisoner’s dog, for example. Those are the main needs. The other figures are smaller and cover issues such as careers advice, alcohol counselling, voluntary throughcare, specialist assessment and pre-release problems.

Bill Butler: So it is not a coherent programme—you would need a lot longer for that.

Bill McKinlay: Yes unless there was a mental health issue or something similar that required almost immediate attention.

Bill Butler: I am grateful for that information.

The Convener: I would be obliged if Mr McKinlay would pass his statistics to the clerks at the end of the meeting.

Colin Fox: In answer to Bill Butler, Mr McKinlay, you spoke about the integrated case management system. Against the background of the rising prison population that Bill Butler and the convener mentioned, the Prison Officers Association Scotland highlighted in evidence to us that there had been a reduction in staff numbers of about 600 or 700 throughout the estate in the past five or 10 years. Given the current pressures on the integrated case management system, how realistic is it that the Prison Service will be able to cope with the increased demand for assessment of prisoners who are in for 15 days or more?

Bill McKinlay: I do not agree that we are under that pressure. The integrated case management system is in its infancy. As well as putting in the system at Barlinnie, we took on another three administrative staff to cope with it. Bearing in mind my colleagues’ predictions, if any new system for assessment or dealing with needs were to be decided on for the future, I would expect there to be commensurate discussion with me about the
resources, financial and otherwise, that I would need to deliver the desired outcome. However, I will not speculate.

Colin Fox: Okay, let us talk about predictions and resources. We have heard evidence that there might be an increase in the number of people who will need assessment from 3,000 to as many as 9,000 under the bill. It has been suggested to us that for every extra 1,000 offenders—we could be talking about 6,000 extra—we will need 18 or 19 staff to implement the ICM system properly. Are those estimates wildly right or wrong?

Bill McKinlay: Convener, I cannot comment on that. The people who look after the integrated case management system are the ones who determine the figures. You would have to tell me whether ICM will continue to be the means by which we carry out everyone’s assessments.

Colin Fox: Let us assume that it will be.

Bill McKinlay: I have no idea at this stage. I cannot give a personal view on the matter because I have to go on the work undertaken by my colleagues, and what you quoted is their estimate. I cannot say yea or nay, or give an estimate that is above or below those figures.

Ian Gunn: I want to reiterate what Bill McKinlay said. When ICM came into being, we were given an assessment of the additional resources that we might require; those resources were put in place, which allowed ICM to function. ICM has been going since June; I have seen it working effectively in Peterhead, which is a long-term establishment, and in Cornton Vale. Whatever process is agreed in future, should the bill become law and should more assessments be required, we would expect, as Bill McKinlay said, to be informed about any additional resources that we were likely to need, and there would be a discussion about that at the time. We do not know whether ICM will still be the tool if a new process is put in place.

Bill McKinlay: Reductions and increases in staff take place in all organisations. For example, after we acknowledged that there was a mental health issue, we increased the number of our mental health nursing staff. We have increased the number of administration staff to allow us to put front-line staff into counselling and other roles. Like any organisation, we reconfigure. I need to think about that.

Colin Fox: Those two angles are interesting. I appreciate your reluctance to make predictions or forecasts, but the prison officers told us that there has been a reduction in overall staff numbers of 700, so we are not talking about an increase in resource. Perhaps you can tell us how long it takes to train a member of staff to implement the integrated case management system. You must know that because ICM is being implemented currently. How long does the process take from start to completion before a member of staff is adequately skilled and equipped to implement the system?

15:00

Bill McKinlay: I need to think about that. Sentence management staff took over the integrated case management system, which is based on an information technology system called prisoner record 2. Training was given on the new applications for the joint approach that would allow everyone to input information into the PR2 system. I cannot specify the date of that training.

The system provides a means by which, through case conferences, the prison-based social worker and others meet to discuss, manage and oversee the management plan. They make referrals to other people—whether programme staff or others—according to each individual’s needs. One individual staff member does not follow the whole system through.

The Convener: Instead of talking round an issue, if you would like to give the committee further information in writing, we would be happy to receive that. Please feel free to do that.

Ian Gunn: As Bill McKinlay said, training depends on a person’s role in the process. I can talk with more authority about Peterhead, where, because all the prisoners have long-term sentences, some staff had a significant training requirement, including prison-based social workers and the person who co-ordinated the system. The personal officers of the prisoners involved required less training.

At a prison such as Cornton Vale, some staff require only awareness of the system, because they are not involved in ICM—they deal only with short-term prisoners.

Colin Fox: Those two angles are interesting. You said that significant training was required for staff at Peterhead and Compton Vale. How long did it take to train them so that you were comfortable with their skills?

Ian Gunn: As Bill McKinlay said, ICM became another factor in our sentence management procedures. We had staff who were trained in and operated a sentence management process, and integrated case management was an add-on to that. For the first time, external social workers and others were involved in case conferences. Awareness already existed and the training was done as part of our normal training plan. Some officers had only a couple of hours’ awareness
training, which they undertook during their normal shift.

**Bill McKinlay:** I am not sure of the time that is required to train and skill up staff in cognitive skills programmes, the STOP programme and the rolling STOP programme. If the committee wants that information, I can send it.

**The Convener:** I ask you to respond in writing as quickly as possible to all the questions that you feel that you have not fully answered today.

**Jeremy Purvis:** Colin Fox asked the question that I planned to ask, so I will ask another, brief question. What is the point of doing a risk assessment of the 80 per cent of prisoners who serve very short sentences when they pose no real risk to the public?

**Bill McKinlay:** We do not undertake risk assessment of short-sentence prisoners unless the risk management group notifies us of a reason to do so. We identify not the risk of reoffending but the risks that are associated with the needs that have been highlighted. An assessment is not made of dangerousness or the risk of serious harm unless a flag shows that an individual poses a significant problem or that a difficulty exists. If that happened, the case would be referred to the risk management group—each prison has one—and that group would forward on the information to deal with the risk.

**Jeremy Purvis:** Does that achieve the right balance and use resources properly?

**Bill McKinlay:** Yes.

**Jeremy Purvis:** The ICM process will be used.

**Bill McKinlay:** We do not know what process will be used.

**Jeremy Purvis:** The ICM process will be used.

**Bill McKinlay:** Yes, but within that, I do not know what process will be used for risk assessment. I have just explained what we do for risk assessment of short-term prisoners.

**Jeremy Purvis:** I am forming a picture of the situation. The requirement in the bill for joint risk assessment by you and the local authority in the area that an offender came from or intends to go to on release is new and will apply to everyone who receives a custody and community sentence—a sentence of more than 15 days. That will be a big change to your process. At the moment, you decide whether to undertake risk assessment case by case.

**Bill McKinlay:** We do a risk needs assessment on everyone who comes into the prison at induction, and we will continue to do that.

**Jeremy Purvis:** Forgive me, but there is a difference between the needs assessment, which you have outlined clearly, and the risk of harm assessment that will be required under the bill.

**Bill McKinlay:** I cannot answer that because I do not know what is involved and how we would assess that risk, or even who would assess it.

**Jeremy Purvis:** At what stage will you find out what is in the bill?

**Bill McKinlay:** The SPS directorates deal with those matters for us, and we deal with operational matters. We have a superficial knowledge of the bill, but the directorates would be able to answer your questions about how we predict the bill will be implemented. I have no crystal ball. I should not make an assumption that the process will be ICM, although that looks like a good process. I cannot make those predictions.

**Jackie Baillie:** I am trying to be proportionate about this. I do not blame the two people sitting in front of us today, but I record my absolute disappointment that they cannot talk about the future and have no or limited knowledge of the bill. To set the context for our discussion, I must say that I find the correspondence that the committee has received from the SPS chief executive, Tony Cameron, to be a most unfortunate letter. I do not believe that these guys are telling us that they do no forward planning, have no two-way dialogue with policy colleagues and are somehow the passive recipients of information that is handed down to them. However, I do not blame either of the witnesses. They have been placed in an impossible position.

Convener, I think that these witnesses, whom I regard as having considerable expertise, have been placed in a straitjacket and I would like us to correspond with Mr Cameron on that point. It has been made incredibly difficult for the committee to do its job and for the gentlemen to provide us with robust evidence.

**The Convener:** In response to that, I repeat what I said at the beginning, on which the deputy convener agreed with me. We are not asking questions of policy. We are asking simply about the service’s capacity to manage the chores that it will be given. We are not trying to tease out any comment about policy. I believe that we will take evidence from Mr Cameron later on.

**Jackie Baillie:** I look forward to that.

**Jeremy Purvis:** Forgive me for asking my question again. However, when the committee scrutinised the Management of Offenders etc (Scotland) Bill, we took evidence from David Croft,
Sue Brookes and Bill Millar, all of whom were in a position to give us evidence. David Croft told us:

“As governors in charge of prisons in the Scottish Prison Service, we very much welcome the Management of Offenders etc (Scotland) Bill.”

Bill Millar said:

“Looking ahead, the requirements in the bill would provide a real opportunity to focus the resources where they can reap the best results.”—[Official Report, Justice 2 Committee, 19 April 2006; c 1531 and 1536.]

In scrutinising the Custodial Sentences and Weapons (Scotland) Bill, we are trying to get a similar understanding of how the proposals will affect the operation of prisons. We were able to get that understanding when we took evidence on the Management of Offenders etc (Scotland) Bill, and that helped us enormously. The Custodial Sentences and Weapons (Scotland) Bill will affect every admission to prison. The bill will potentially make radical changes to the processes in prisons, with new partners being involved from the beginning to the end. We want to understand how that will have an impact on day-to-day operations. If the governors are saying to us that they do not know that at this stage, when will they be able to give us that information, as their colleagues David Croft, Sue Brookes and Bill Millar were able to do last year?

Ian Gunn: We will be able to do that when our colleagues in headquarters and the directorates who deal directly with the issue feel that they have something that they need to tell us. If they need our input into the process, we will be involved, as we were with, for instance, the introduction of ICM. I feel—I am sure that Bill McKinlay will agree—that we have a contract to deliver, we are extremely busy and we have a lot to do. Yes, we take an interest in what is going on around us, but our main focus is on delivering that contract at the moment.

Bill McKinlay: For me, the issue will be decided in my negotiations with the director of prisons. You asked about the effect and impact on the establishment. We will deliver whatever is required to be delivered and we will do that to the best of our ability. We will do so in a way that is consistent with the discussions that take place each year on the key performance indicators that we are set. We are not being difficult, but we are unable to predict the impact of the bill. I will not know that until my colleagues come back to me.

I would be concerned if I had to come back to the committee and say that I was not getting the resources. However, I do not think that it is like that, and I do not want it to be like that. It would be rather irresponsible of anyone to think that the bill could be implemented without some form of resource or financial backing, but that discussion still has to take place at an operational level.

The Convener: On the question of what happens currently, I turn to Bill Butler.

Bill Butler: I hope that I can reassure you, Mr McKinlay and Mr Gunn, that we know that you are not trying to be difficult. I will leave it at that; you know what I am saying.

I would like to ask about something that is currently on the go, and I am certain that you will be able to give us a detailed answer. What is the assessment process for prisoners who are released on home detention curfew? You must have thoughts on that. What can you tell the committee? Mr McKinlay, would you like to answer first?

Bill McKinlay: Let me just get my glasses so that I can look at my paperwork.

Bill Butler: I can understand and sympathise with that.

Bill McKinlay: It is just age.

Bill Butler: Same here.

Bill McKinlay: Let me give you an interesting current statistic. Barlinnie has had 126 home detention curfew releases since the June initiation of the policy and only 12 recalls: three were for offending, two of which were for breach of the peace and one was for domestic violence. There are statutory exclusions from HDCs. Rather than read them out, I can give you the relevant written information.

Bill Butler: If you could relay that information to the convener in the usual way, that would be helpful.

Bill McKinlay: Basically, we use the statutory exclusions and SPS risk assessments to ensure consistency in our approach to HDC releases. The risk assessment will recommend high or medium supervision—in other words, it assesses whether there is a security risk—and will involve consideration of whether a prisoner has a history of sexual offending or domestic abuse or violence. We have a set format and take a consistent approach to HDC when assessing somebody for release.

Bill Butler: Is that perfectly manageable? Would you say that the assessment process for HDC releases is working well?

Bill McKinlay: It is in its infancy.

Bill Butler: So far so good, though?

Bill McKinlay: So far so good. However, as we said, resources were applied to the implementation of the Management of Offenders etc (Scotland) Act 2005, and we were involved in the loop and in deciding how best to apply the resources to achieve what was required.
Bill Butler: I understand that. However, that seems rather contradictory, given my colleague Mr Purvis's comments on what your colleagues were able to say at a much earlier stage in the passage of the 2005 act. Nevertheless, I am grateful for your comments.

Mr Gunn, what is your view?

Ian Gunn: Exactly the same process is followed at Barlinnie and at Cornton Vale. I have come from a long-term establishment where HDC did not apply, so not only is it the case that HDC is in its infancy, but I am also in my infancy in applying it, so I am thankful for Bill McKinlay’s greater knowledge of the process. There is a consistent approach, which seems to be working, in that we are releasing the right type of offender on home detention curfew.

Bill Butler: Could you supply the figures for Cornton Vale in writing? That would be handy.

Ian Gunn: Yes.

Bill McKinlay: Just as a point of information, one of our colleagues, a governor, sat on the Sentencing Commission.

Maureen Macmillan: I would like to ask about licence conditions, which the SPS sets when somebody is released into the community after serving part of their sentence. What are the most common causes that result in a licence being breached and the offender being returned to custody? What sort of things would cause somebody to be recalled?

Bill McKinlay: A minor breach, domestic violence, a report of disturbance, relationship breakdown, entering licensed premises, if that was not permitted—it depends on what is on the licence for each individual.

Maureen Macmillan: I would like to ask Ian Gunn to talk about, if he has not already done so, the needs that women prisoners might have. Do they have any specific needs in the context of the bill that might not have been mentioned?

Ian Gunn: As I have already mentioned, we find that women offenders can have self-harm issues and mental health concerns. They also seem to have more family issues, in that women who come to prison may have a direct responsibility for children, which is not always the case with male offenders. For example, if someone who has taken their children to school in the morning is then put into prison, there might be no one to pick up the children. Such issues have to be dealt with, as well as issues around accommodation.

Maureen Macmillan: What sort of breach of licence conditions would be likely to require the return to prison of a woman who has been released on licence?

Ian Gunn: In my relatively limited experience, I have seen very few breaches. In fact, the only one that I have seen was for alcohol abuse—the offender ended up not turning up for an appointment. I think that I am right in saying that female offenders are less likely to breach their licence conditions than male offenders, but I have still to learn about that.

Maureen Macmillan: So something as minor as not turning up for an appointment could result in someone being brought back to jail.

Ian Gunn: If it was the first time that such a thing happened, it would not result in a return to jail, but if someone turns up clearly the worse for drink or if they have taken drugs, that would be a different matter.

Maureen Macmillan: Yes. We are concerned about the revolving-door principle: people are brought back to jail for something that would not seem to pose a risk to the community and then the Parole Board for Scotland lets them out right away because there is no risk.

Bill McKinlay: The other day, I spoke to 12 short-term prisoners and told them about the bill’s intentions for prisoners who go out on licence. Their view is that no one goes out with the intention of breaching their licence conditions. They had mixed views on the proposals and whether they would benefit from them, but the issue that they brought up was who would police the licence in the short term. Basically, however, they said that they do not leave prison intending to breach their licence conditions.

On an earlier point that was made about breaches of licence conditions, sometimes a person who is in breach is recalled, although if they had appeared in court, they might have received only a fine or some other outcome. Of course, that is for the courts to determine.

The Convener: Thank you both for coming along. I appreciate the position that you are in, although I tried to make it clear that we do not expect you to be accountable for policy. I look forward to receiving the written evidence that you have offered to send to the clerks. The committee will be pleased to have that because it will help us with general background information. The bill is still at an early stage and, as you will appreciate, several issues have arisen since we started on the process. I wish Mr Gunn good fortune in his new position.

The committee will now take a two-minute break.
15:18
Meeting suspended.

15:23
On resuming—

The Convener: I reconvene the meeting. A decision has been made, in agreement with the minister, to defer consideration of the affirmative Scottish statutory instrument until next week's meeting. There will also be a slight change in the running order. I am grateful to the community justice authority witnesses for allowing their evidence to be moved to after the minister's evidence to enable her to attend to a personal matter.

We are grateful that Johann Lamont is here. I welcome her in her new role as the Deputy Minister for Justice. We will have a lot of dealings with you over the next few months, minister, with regard to Executive legislation, to which we look forward. I also welcome Tony Cameron, the chief executive of the Scottish Prison Service; Valerie Macniven, the head of the Scottish Executive's criminal justice group; and Charles Garland, from the Scottish Executive Legal and Parliamentary Services.

Minister, we have heard much expert evidence to the effect that the bill may not deliver on its intended aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims. Please explain the general ways in which you believe that the bill could be said to intend aims.

The Deputy Minister for Justice (Johann Lamont): Thank you for your welcome, convener. I genuinely look forward to working with the committee over the next period. I have a record of recognising the critical role of committees in helping to shape legislation, and I am happy to be as co-operative as possible with the committee. I acknowledge that you have reordered your agenda in order to take evidence from me, and I would be happy to respond in writing to any questions that are raised after my departure this afternoon.

You will be aware that I come relatively fresh to this area of work, so I will be more cautious than normal. I hope that you understand—recognising the significance of what appears in the Official Report—that I will need to refer to officials questions on the technicalities of this important bill. I do not want to mislead anyone through my lack of expertise and experience or even my ignorance. I trust that you will accept my responses in that spirit.

The Convener: That is a generous comment, minister. Thank you.

Johann Lamont: I now turn to the bill. Will it do what it says it is going to do? As with all legislation, it is not that somebody somewhere has decided that it is the solution and therefore the Executive is determined that it is going to work, regardless of what anybody says. We will work closely with all those concerned as the bill progresses and after it is enacted to ensure that it does what it is intended to do. In considering any legislation, we are always mindful of the law of unintended consequences, and we will keep anything that we do under review.

It is important that we give people confidence in the system by enabling them to understand more clearly how sentence management works. The bill recognises the importance of working with offenders during their time in custody and that the custody part of a sentence is important in making people recognise that there are consequences to their actions. However, when offenders leave prison they will be on licence and people will still be working closely with them. That is a strategy for addressing the problem of reoffending.

The bill will create clarity and give people some certainty about sentencing. People will see that a sentence does not end with the custody part, and that there is progression while the person is in jail and after they have been released from jail to help them to address their offending behaviour and to reduce reoffending. People—especially young people—will also recognise that there are consequences to their actions, and they may be deterred from offending behaviour when they see what happens to those who have ended up in the system.

We are seeking certainty. We recognise the role of victims, and a lot of work is going on around that, far beyond the bill itself. We are also seeking to address the issues that offenders face and we are trying, through the custody and community parts of sentences, to address offending behaviour. The fact that we are challenging offenders should give people confidence in the system.

The Convener: On the issue of people's confidence in the system, I have little doubt that, during this session, you will be asked questions by the committee about the clarity of the sentencing process. If you had a simple message to send to the public, to give them confidence in the proposed new sentencing procedures, what would it be?

Johann Lamont: When a sentence is decided in court, an explanation will be given of how that sentence will work, so that people will know what to expect. We recognise the role of victims in the justice system, but we also recognise the challenge for all of us if we do not address and seek to deter offending behaviour. In attempting to
do that, we recognise the pressures and tensions in the judicial system. We propose a planned, secure process. What we say is what we intend to do. At an early stage, when the court decides what the sentence will be, people will understand what that sentence will mean both for the offender and for the community.

**The Convener:** The Sentencing Commission has suggested that the financial viability and procedural fairness of its proposals possibly require a downward recalibration of sentencing to take account of the additional burdens that compulsory post-release supervision places on offenders. Such a recalibration is not proposed in the bill. Will you explain why?

15:30

**Johann Lamont:** There are a lot of technical issues there. I will ask officials to respond to them.

Nothing in the bill requires judges to change their sentencing practice. We are talking about the way in which we manage sentences once they have been decided in court. There may be a broader issue about which offences we regard as sufficiently serious—the committee will be aware that the Sentencing Commission has addressed and reported on consistency in sentencing. The bill, however, deals with the next stage, once sentences have been identified, and how we work with those who have been given those sentences. We are not talking about categories of offence and which sentences should attach to them. That is a much broader issue than the one the bill addresses.

**Valerie Macniven (Scottish Executive Justice Department):** The reference to recalibration takes the committee back to provisions recommended in the Sentencing Commission report that sought to apply parts of the existing sentencing regime under the Prisoners and Criminal Proceedings (Scotland) Act 1993 while at the same time importing the new policy. Those quite complicated provisions would have required the sentencer, in considering the sentence that they were going to impose under the new regime, somehow to have regard to the previous one. In considering how best to move forward, ministers took the view that it would not assist clarity in sentencing if the future legislation tried somehow to merge the two regimes. That important factor was taken into account when ministers decided not to follow the Sentencing Commission’s precise recommendations on recalibration.

**The Convener:** How will the Executive and its advisory groups come up with a clear answer to the Sentencing Commission’s question? Presumably, the commission is talking about the expected capacity of the system to be able to provide what is indicated in the bill. Are you saying to the committee that there will be no need for recalibration in any form, because the capacity to do what is being suggested will exist? If that is the case, when will it exist?

**Valerie Macniven:** The minister may want to come back on some of the more strategic points. The detailed information set out in the financial memorandum takes each element of the policy in the bill, costs it and shows how it will be resourced. When the Sentencing Commission made its recommendations, it was not to know what would be in ministers’ minds on the various elements, how they would be costed and how the costs would be set out in the bill. I cannot get into the mind of the Sentencing Commission, but in its report it tried to provide answers on sentencing, whereas ministers have taken the view that the sentencing regime should be left as it is for the time being. There have been further recommendations on consistency in sentencing, which ministers are still considering.

**Jeremy Purvis:** I welcome the minister to her new position. I have a brief question on terminology in the bill. In deciding the custody part of a sentence, the judge will have to “satisfy the requirements for retribution and deterrence.”

What will judges have to take into account with regard to retribution? What is the Scottish Executive’s definition of retribution?

**Charles Garland (Scottish Executive Legal and Parliamentary Services):** The intention behind the framing of the bill in that regard is dealt with in the three paragraphs in section 6(4). Section 6(4)(a) mentions the seriousness of the offence or of other relevant offences. Section 6(4)(b) refers to previous convictions. Section 6(4)(c) relates to a provision of the Criminal Procedure (Scotland) Act 1995, which is on the timing of a guilty plea. The Executive’s understanding is that those three paragraphs constitute the main elements of retribution and deterrence.

**Jeremy Purvis:** So the seriousness of the offence is part of retribution. Surely that is not correct.

**Charles Garland:** The intention is that those three paragraphs make up the retribution and deterrence package.

**Jeremy Purvis:** Are you saying that deterring criminals is the same as exacting retribution?

**Charles Garland:** I would not say that they are necessarily the same thing.

**Jeremy Purvis:** Where in section 6(4) are they separated?
Charles Garland: I simply aimed to make the point that the factors that are mentioned in section 6(4) constitute the main elements of retribution and deterrence. It is not stated which factors relate to retribution and which relate to deterrence.

Jeremy Purvis: The same appears to be true of the way in which the bill deals with retribution in relation to life sentences, which have different characteristics. When the punishment part of a life sentence is set, will retribution be defined in the same way as it is for non-life sentences?

Charles Garland: The terminology for life sentences is slightly different, in that retribution and deterrence are labelled as the punishment part of the sentence. The punishment part must satisfy the requirements for retribution and deterrence, leaving aside any requirements for the protection of the public. To some extent, for life sentences retribution and deterrence essentially constitute punishment.

Jeremy Purvis: Are you talking about deterring the public or deterring the individual concerned from reoffending?

Charles Garland: Both are covered.

Jeremy Purvis: Where in section 6(4) is that stated?

Charles Garland: There is no explicit mention of that. The court must consider—

Jeremy Purvis: So it is not necessarily the case that both interpretations are covered.

Charles Garland: The courts will interpret the provision as they see fit. On occasion, they will pass a sentence with a view to deterring other people from committing the crime and in some cases—

Jeremy Purvis: That is precisely what the sheriffs said in their evidence to us—they said that they consider matters on a case-by-case basis. They may decide that the purpose of a sentence is to prevent the person from reoffending or that it is to provide a signal to the community. However, although section 6(2) makes it clear that the custody part is “an appropriate period to satisfy the requirements for retribution and deterrence”, there is no definition of whether the aim of deterrence applies to the individual or to the community. In addition, the definition of retribution for life prisoners seems to be different from that for other prisoners. Can you appreciate the confusion that exists?

Charles Garland: We can have a look at that. The punishment part of lifers’ sentences is intended to be comparable to the custody part of
custody and community prisoners’ sentences in that both must
satisfy the requirements for retribution and deterrence.”

I note from some of the evidence that has been presented that the constituent elements may not clearly be read as being those that are set out in section 6(4).

Jeremy Purvis: We will have a look at your review of that section.

Johann Lamont: I would be happy to dig into the matter further. Rather than sit back until stage 2 to find out whether we complete a review, you may wish to have an active dialogue about the concerns. It sounds as if they are technical, but they may not be. I think I know instinctively what retribution, punishment and deterrence are, but I might be entirely wrong about that. We can discuss the matter further.

The Convener: It would be helpful to have clarity on that point at the earliest possible convenience.

The sheriffs stated in their evidence that they do not feel able to tell offenders—or, indeed, victims—what the final sentence served will be, because of the roles of the Government and the Parole Board.

Jackie Baillie: The convener is in danger of straying into my question.

Minister, I press you on your response to the convener’s first question. We all want clarity about sentencing and release, because that will increase public confidence in the system. As the convener said, the only public announcement of the sentence will be made in court, but the actual period to be spent in prison will not be stated at that time, because ministers can reduce or increase it. The conditions that will be applied to the community licence will not be stated, because ministers and the Parole Board will decide them, and neither will what will happen in case of breach be stated, because in those circumstances ministers and the Parole Board will decide what is in the public interest. How will victims and the public know what will actually happen to the offender? The courts will have one opportunity to say in public what the sentence will be, but there are all those caveats.

Johann Lamont: There are two separate issues: there is the stage at which the sentence is announced and there is the process by which it can be shifted. There is a separate discussion about the extent to which the general public should be engaged and involved in the movement of individual sentences and how that is dealt with.

We know with some certainty that the minimum amount of time that the offender can expect to
spend in custody will be stated at the first stage. That is significant, because at present one thing is said but something entirely different happens. My understanding is that, at the next stage, if it is agreed to extend the community licence because of the considerations of the Parole Board, that will not be made public.

There is a distinction between the general public and victims. There is also a discussion about what information victims want and the degree to which they want to be engaged in the detail of somebody’s sentence. However, there will be clarity about the minimum time to be spent in custody and the process by which there will be any changes. People should have confidence that what happens to the offender will not be determined by factors that are extraneous to the offender and the threat that they pose to the community. There is a process—when they go from the custody part into the community part—there will be a risk assessment and licence conditions. People need to know that if there are breaches, there will be consequences—if they do X, Y will follow.

There is a distinction between the statement that will be made in court and the process by which there will be a shift in the sentence, but there will be no shift in the minimum period in custody, which will be stated clearly at the initial stage.

**Jackie Baillie:** I understand the process that you have outlined, which is helpful. I will explore the minimum period of custody later, but what will happen to home detention curfew? Ministers will be able to reduce the custody period, so the minimum period could be reduced by ministers at a later stage.

**Johann Lamont:** I think that all members of the committee understand the positive role that home detention curfew can play—and has played—for low-risk offenders. We want to consider that in the new process, but we are clear that we will not commence home detention curfew in the custody part until we are confident that the system has bedded in, so that will be done at a later stage. The power will be available, but it will not be used until the system has bedded in.

A statement will be made about the custody part, and home detention curfew will not be available to people who are sentenced under the regime in the bill. We might wish to consider making it available in the future—that is logical, given the conversations and evidence about short sentences of less than six months—but ministers do not intend to exercise the option for people who are sentenced under the regime in the bill.

**Jackie Baillie:** Then why do we have the option at all, given the desire for clarity, transparency and confidence in the system?
and when setting the custody part. If matters to do with the seriousness of the offence have to be taken into account under section 6(4), why cannot the headline sentence be longer, instead of the custody part of a shorter headline sentence being longer?

Charles Garland: As has been made clear, the intention of the bill is to alter nothing to do with the setting of the overall, or headline, sentence. That will continue as at present, and there are well-established appeal procedures for sentences that are either too lenient or too stiff. As regards overall sentencing, it is expected that that will carry on. What is being introduced is the requirement to set a custody part for all determinate sentences of more than 15 days. As you point out, all the factors that we identify in section 6(4) as being relevant to the length of the custody part will also contribute to the length of the overall sentence. To put it simply, the intention has been to try to leave the overall sentence as it is at the moment, but to strip out any elements of that sentence that the sentencer may have in mind for the purposes of protecting the public, and then to take whatever is left—provided that it is between 50 and 75 per cent of the overall sentence—as the custody part.

Jeremy Purvis: If the offence has the same characteristics as those set out in section 6(4), with regard to the seriousness of the offence and so on, why have a 75 per cent limit? If the headline sentence and the custody sentence determinants are the same, and both satisfy the requirements for retribution and deterrence, why have that 75 per cent limit?

Charles Garland: The assumption is that some element of every custody and community sentence will be served in the community. The custody limit has been set at 75 per cent. However, it is also recognised that it is likely that some of a sentence will be referable to the need to protect the public. The bill aims to get the sentencer to strip that out in deciding what the appropriate custody part will be.

Jeremy Purvis: If the Scottish ministers decide that the public are at risk, and therefore ask the Parole Board to refuse someone’s release into the community after the custody part, why will that person not serve the whole sentence in prison?

Charles Garland: Shortly before expiry of the custody part, ministers will have the power to refer the matter to the Parole Board, which will be obliged to direct release or to refuse to direct release, provided that three quarters of the sentence have not been served. As I said, after three quarters of the sentence have been served, the intention is that the offender will proceed automatically to serve a period—the minimum is 25 per cent of the sentence—on licence in the community, subject to recall to custody should that be deemed appropriate.

Jeremy Purvis: That would mean recall for the remainder of the sentence.

Charles Garland: Indeed.

Jeremy Purvis: The minister said at the beginning and the policy memorandum clearly states that one policy intention is to reduce reoffending. However, section 6(5) debars sentencers from considering the risk of reoffending in setting the custody part. Does the bill really intend to remove sentencers’ consideration of public protection as a significant factor in determining the period in custody?

Johann Lamont: That factor determines what happens at the end of the custody part.

Valerie Macniven: A major objective of the policy is to have real-time consideration of the risk to the public and not a decision that is based on the ticking of the clock. We have discussed separating the two elements. A minimum custody part will be set. I will not say that the punishment part is an equivalent, but the custody part has that effect and it is not to protect the public, except to the extent that if someone is in prison they are clearly not in direct contact with the public.

The aim is to allow real-time factors to be taken into account in deciding about release. Time in custody provides the opportunity to build a further sense of the risk that a person poses to the public, according to factors such as their behaviour in prison and their acknowledgement of their previous offence—factors that are already relevant to other decision making when the period is not determined, as in lifer cases.

Jeremy Purvis: Why cannot the sheriff make the decision? Why should the Prison Service do it? When the Prison Service does it, it is not on the public record or transparent. That follows from Jackie Baillie’s questions. A sheriff could state clearly that part of the custody part is to protect the public, but the bill debars them from considering protection of the public.

Valerie Macniven: I can say only what I have said already. In ministers’ view, the opportunity to consider the public risk in real time is a significant advance on the current arrangements, under which the ticking of the clock determines when the public reconnect with a prisoner.

Jeremy Purvis: Surely the elements are not mutually exclusive. A sheriff could take into account public protection when determining the custody part. If a person’s behaviour in custody is not appropriate, the Prison Service will be able to refer them to the Parole Board.
The Convener: I will bring in Mr Cameron, who wants to comment.

Tony Cameron: I want to correct something that Jeremy Purvis said about who will refer a prisoner to the Parole Board. It has not been decided that the SPS will do any such thing; the Scottish ministers will do it. The SPS does not currently make such determinations and the bill does not provide for us to do so. The issue has yet to be considered, and no one should jump to the conclusion that the SPS will make the decision.

Jeremy Purvis: Who does the Executive intend to make the decision, if not the SPS? What other options are there?

Johann Lamont: I suspect that I should take advice and come back to the committee on that.

Maureen Macmillan: How will the Scottish ministers determine the conditions of community licences in cases in which the Parole Board has not been involved? The bill does not specify what the standard community licence conditions will be. What conditions do you envisage will be typical and what additional conditions might be added in particular cases? Will there always be a condition that requires the person to be of good behaviour and to keep the peace?

Johann Lamont: We are keen that licence conditions should reflect decisions that are made after the individual who is to serve the community part of their sentence has been assessed. If the sentence is less than six months, we would expect relatively straightforward conditions, such as you described, but in some circumstances further conditions might need to be attached. In other cases, I would expect stricter conditions, which would reflect the assessment of the individual, as I said.

Valerie Macniven: There is likely to be a similarity between the minimum community licence conditions and the current standard conditions of licence that are set out, which apply when people who are serving longer sentences go before the Parole Board for a determination of release—the current processes are quite similar to the process envisaged in the bill. As the minister said, there will be a build-up of conditions from that minimum. That relates to the point about real-time assessment of circumstances.

Maureen Macmillan: Where are the conditions set out? Nothing in the bill tells us what the standard conditions will be.

Valerie Macniven: Community licence conditions are not set out in the bill. I was referring to the current standard conditions in the parole system.

Maureen Macmillan: Will the standard community licence conditions be the same as the current standard conditions?

Valerie Macniven: The area can be developed, but the basic concept is that minimum conditions on good order and good behaviour will be the starting point, after which consideration will be given to the offender’s circumstances and public protection, which is crucial.

Maureen Macmillan: The committee thinks that there has been some vagueness about community licence conditions. We are not terribly sure what the standard conditions will be and how they will be added to, depending on the seriousness of the offence.

What would happen if an offender breached the conditions or was considered likely to do so? I am thinking in particular about offenders at the lower end of the scale. It seems from section 31(1) that an offender could be recalled to prison for quite a minor breach. The prison governors from whom we heard suggested that an offender who did not turn up for an appointment might be recalled to prison, if attendance was a condition of their licence. However, section 33(3) provides that the Parole Board must order re-release unless there is a risk of “serious harm to members of the public.”

A person who was serving a short sentence probably would not present a risk of serious harm to the public. They might get out of prison on licence but do something fairly minor that breached the licence conditions and be recalled to prison. They would then be let out again—and perhaps recalled again. The approach would create an odd situation in which people popped in and out of prison.

16:00

Johann Lamont: I will be happy to consider the matter further. When I first considered the evidence I was struck by the suggestion that, perversely, we might be creating a revolving door. However, I do not think that we have done that.

It must be clear that the licence conditions are there for a purpose and cannot be ignored, but at the same time there must be a sense that the response is proportionate. As you will know from your schooldays, there is a difference between wilful disregard and forgetting a jotter. I do not mean to trivialise the breach of conditions, but there is a difference between an unfortunate breach of a condition in certain circumstances and an emerging pattern of behaviour. We must ensure that people take the conditions seriously. There will be a hierarchy of responses. There might be a warning or further discussion with the
person who has breached the conditions. Scottish ministers will be responsible for recalling an offender, so it is reasonable for them to acknowledge that that is a significant step.

We recognise that a different body must judge whether the person should be re-released. That is a different test. If we want people to have confidence in the community part of the sentence, the conditions that are attached must be seen as part of a contract that people must live up to rather than ignore. However, there is a tension between addressing that concern and having a flexible response to breaches.

We do not want there to be perverse consequences, nor do we want anything to undermine the system, so it is necessary to seek clarity about the consequences of breach of conditions. I recognise the significance of the points that have been raised.

Valerie Macniven: I will draw some parallels with the current arrangements for community-based sentences. Similar points apply when someone is on a probation order and is under the supervision of a community justice social worker. National standards on how community sentences operate are kept under review. The underlying intention is to have a proportionate response. Parts of the regime are relevant to the situation that we envisage, in which we will deal with many more people coming out of custody under supervision than we do now. There is scope for knowledge transfer.

Someone who missed one appointment would be highly unlikely to be immediately recalled. That would not usually satisfy the public interest test, unless there was a pattern of behaviour of complete disregard for the conditions or if there was something exceptionable about the missing of the appointment. We never say never, but it is not the intention that if someone missed one appointment their feet would not touch the ground and they would be off to jail.

Maureen Macmillan: I am content with what you have said. There is a lot of room for further discussion on the criteria for recall and on the Parole Board’s role in relation to the possibility of re-release. We look forward to further discussions.

The Convener: Before we move to the next question, can I press the minister to clarify why the standard conditions do not appear in the bill and to indicate whether they are likely to do so? Making clear in the bill the basic conditions, as opposed to variations or conditions related to the assessment of individual cases, is a matter of public confidence.

Johann Lamont: I do not know whether knowledge about the history of the drafting of the bill might help us.

Valerie Macniven: As I said, there are de facto standard conditions, which include one about good behaviour and another about not quitting the country. Those are important and, in the interests of transparency, the suggestion that the standard conditions be imported into the bill could probably be considered further, subject to anything that might be said about the difficulty of doing so.

The Convener: We would be grateful for a note on that.

Bill Butler: I welcome the minister formally to her new position.

The committee realises that many offenders released on licence will be short-term prisoners. To what extent can meaningful risk assessment and management be carried out with that group both in prison and in the community?

Johann Lamont: That will be a challenge. We all recognise that short-term sentences reflect a different level of offending and presumably, therefore, a different level of risk. The work that is done with such offenders should be proportionate and will not be the same as the work done with people who are in prison for a great deal longer.

If I thought that work with offenders could take place only in prison, I suppose that I might have more anxieties about that. However, because sentences will have a custody part and a community part and because we recognise the significance of licence conditions in trying to get offenders to engage with those who can help them, I believe that there will be space to work with offenders throughout the sentence rather than just within the custody part. The approach in the bill recognises that work can be done with offenders at the level that is required for them throughout the two parts of the sentence.

Bill Butler: I take that on board and I understand that. In practical, day-to-day terms how will the proposals in the bill contribute to the assessment and management of offenders throughout both the custody and community parts of the sentence?

Johann Lamont: We seek to clarify that risk assessment should be done during the custody process rather than when the offender reaches the halfway point, when a decision must be made. An integral part of the work during the custody part will be to prepare the person for the community part. That important work will be at the heart of the sentence. In practical terms, the bill sets out how people should work their way through the system rather than setting out a process that is driven simply by time. I hope that I am making sense.

As I think I mentioned earlier, for very short-term sentences, we need not just a formal determination of how the person should be
supervised but to have in place services such as health and housing that are responsible for reaching out to folk who come out of prison. Those services need to be much more geared up to picking up on people who are in need.

Bill Butler: For very short-term prisoners, I recall that one of our witnesses last week suggested that it is inappropriate to use terms such as “assessment and management”. We were told that only the most basic screening can be carried out of such prisoners. How would the minister respond to that?

Tony Cameron: That is the case for very short-term prisoners. Given that 98 per cent of prisoners arriving at Cornton Vale and about two thirds to three quarters of male prisoners test positive for illegal drugs in their systems—the figures for the men vary according to whether the sentence is short or long term—medical issues are paramount in the first short period of a sentence. If the person is in prison for only 21 days, that gives us no time. As members heard me say when the issue arose during my previous appearance at the joint meeting of the justice committees on 31 October, given current resources and a prison’s knowledge of the prisoner who comes in, the amount that a prison can do with people on short-term sentences is extremely limited. At the moment, we have no system of integrated case management for offenders who have been sentenced to less than four years, because we have concentrated on the most difficult and dangerous, or problematic, prisoners. For the vast majority of prisoners on very short-term sentences, there is a limit to what any prison system can do. It is not a social service.

Bill Butler: I did not have the pleasure of hearing you on 31 October, as I was elsewhere. I apologise for that, Mr Cameron.

Mr Cameron has replied to my question, but I would rather hear the minister’s reply. Is not the use of terminology such as “assessment and management” inappropriate, given that only the most basic screening can be carried out for very short-term prisoners? I know that Mr Cameron alluded to that. Does the minister agree?

Johann Lamont: I could not be certain about the distinction that is being drawn in the language that you have used, so I would not concur with you on that. However, I recognise the obvious fact that, if someone is on a very short-term sentence, the capacity to understand the complexities of that person during the custody part will be less than if the person was due to be in prison for a longer period.

We are considering how we deal with people once the court has determined what the custody part should be and what the community part should be. We have to acknowledge that if somebody is given a shorter sentence, not all their needs can be delivered through the Prison Service. Therefore, we must ensure that they are not abandoned when they serve the community part of their sentence and that the mainstream services are there to meet the specific needs that have been identified in prison. I can be corrected if I am wrong, but perhaps some of the conditions could direct people to co-operate with agencies that might help to address their needs. I am pretty sure that the sentence that is imposed for an offence will be a reasonable reflection of the needs that have been assessed.

Valerie Macniven: I want to add three points to that. First, the advice that was available to ministers when they formulated the policy was that a period of 15 days in the community—which you might think would be the balance in many cases where there was a 50:50 split—was the minimum amount of time in which we could begin to engage practically with a person. Anything less than 15 days would be too short a time to engage, although we would still be able to signpost people in some direction. In 15 days we could begin to help people to reduce the risk of their reoffending through practical measures.

Secondly, you might have picked up the term “integrated case management”, which Mr Cameron said is currently applied to prisoners on longer sentences. The financial memorandum gives a sense of the preparatory work that needs to be done to put in place the new measures. We have been thinking about how the integrated case management approach would apply to a much larger number of prisoners. From the moment a prisoner arrives in custody, we are thinking about the time when they will go back into the community. We are planning how to integrate case management in custody and in the community.

Finally, the context for the bill is implementation of the Management of Offenders etc (Scotland) Act 2005 and the setting up of community justice authorities, which are intended to join up the process of managing offenders in the prison and the community on a grand scale.

Jeremy Purvis: Paragraph 163 of the explanatory notes to the bill, which develops the point about the minimum time needed for supervision to be effective, states:

“Social work practice experience suggests that a minimum supervision period of 3 months in the community is essential.”

However, as far as I understand it, section 27 provides that supervision conditions will apply only to those who have a custody or community sentence of six months or more, which means that 80 per cent of the prison population will not have conditions set on their release on licence into the
community. Do you want to reconsider that, or am I misinterpreting the bill?

Valerie Macniven: A great deal might turn on the term “supervision”, which has a distinct meaning in the section to which you referred. I have been talking about helping people integrate back into the community. A range of measures are available for that, from helping people to access joined-up services to providing supervision by a fully qualified community justice social worker and addressing people’s offending behaviour in a much more intensive way.

The explanatory notes acknowledge that the original sentence has to correspond with the severity of the offence and that the supervision that is applied in real time takes account of the particular circumstances and the risk. It is more of an intensive package.

16:15

Jeremy Purvis: That has not answered my question. Where in the bill does it state that anyone who is sentenced to under six months can have legal conditions set for them other than the basic licence conditions when they serve the community part of the sentence?

The only place in the bill that might allow that to happen is in section 11, I think. If the SPS—or whoever it might be—recommends to the Parole Board that the offender is not to be released after the end of the custody part, the Parole Board can overturn that recommendation, because it has the statutory power to apply conditions to the offender. The section goes on to explain what those conditions can be. However, there is no statutory power to apply conditions to the licence of someone who serves less than six months, which means 80 per cent of the prison population.

Valerie Macniven: I was answering your question in terms of the support for offenders rather than the statutory conditions.

Jeremy Purvis: Yes, but those conditions do not exist for offenders who serve less than six months.

Valerie Macniven: A distinction is made between the two periods.

The Convener: When you review the Official Report of today’s meeting, it would be helpful if you would drop us a note to clarify that point.

Colin Fox: You will appreciate that much of the evidence on the bill that we have heard so far has placed central importance on effective and accurate risk assessment. That is the line of inquiry that we are following today—how to accurately assess the risk to the public and the problem of reoffending and how to address public confidence.

In evidence last week we heard that risk assessment is an inexact science and that it is difficult to predict confidently whether someone will reoffend. Perhaps this question is directed more at Mr Cameron, who is at the service delivery end, so to speak. The bill requires assessment for all offenders who serve more than 15 days. Will you give the committee a flavour of the risk assessment process that takes place in prison and what staff look for to allow them to make an accurate and effective assessment of where an offender should go next? So much depends on that.

Tony Cameron: As the law stands, we do not make such assessments. Halfway through the sentence, the offender is released, not on licence but unconditionally. We do not make assessments of the risk of harm or apply any other test at that point. The law is clear at the moment, but the bill proposes to change it. Therefore, we have no basis on which to be sure about how such assessments will be made. We are in uncharted waters.

The current system involves the Executive only when prisoners serve sentences of more than four years or life sentences. There is a well-tried system for assessing whether such prisoners who have reached the statutory stage—whether that is after the punishment part or otherwise—remain a risk to the public, although I will not go into that in detail. The Parole Board takes a decision about such prisoners and the Scottish ministers are required to implement that decision. Ministers have no discretion whatsoever, although they and not the Scottish Prison Service are party to decisions about what representations to make to the Parole Board, currently through the Scottish Executive Justice Department.

Colin Fox: Guide us, if you will, towards what you believe SPS staff will do following implementation of the bill. What will SPS staff look for in order to assess the relative risk that a prisoner poses when they have to make a judgment about whether to release a prisoner after they have served either 50 per cent or 75 per cent of their custodial sentence?

Tony Cameron: As I pointed out, it has not been decided that SPS staff will make such decisions. Scottish ministers will make them. It has simply not been decided that SPS staff, governors or I will make them.

Colin Fox: Okay. Let us leave aside what uniform people wear and whether they are ministers or—

Tony Cameron: I do not know the answer to your question.
Colin Fox: Given your experience in the Prison Service, surely you have an idea of how you assess the risk that a prisoner presents and the likelihood of their reoffending when they are released.

Tony Cameron: No. Legally, we are not required to make such judgments at the moment.

Colin Fox: At what stage does the SPS suggest the referral of an offender to the Parole Board, in relation to whether they are likely to be considered a greater or lesser risk, for the Parole Board to consider what licence terms or what release would be—

Tony Cameron: We do not have that function. We give an opinion about a person’s behaviour in prison, but we make no judgment about the likelihood of their reoffending.

Colin Fox: What opinion do you give the Parole Board in relation to the offender’s circumstances in prison to allow the board to make its own assessment?

Tony Cameron: Various assessments are done by staff, particularly the psychologists whom we employ, who give a professional opinion on how dangerous the person is. That applies to prisoners who are serving life sentences and to certain other categories of prisoners such as serious sex offenders. However, the number of people in respect of whom those judgments are made is very small.

I cannot tell you what judgment will be made about whether to refer people who are in prison for six months to the Parole Board or recommend their release, because the SPS has not been involved in that. However, we have said that our integrated case management system could be extended to inform those who will make such decisions. The system was built for another purpose, but it could be extended to include information about people’s offending history, behaviour in prison and so on, and that information could be made available to those who will make the decisions. That is part of our involvement in the risk assessment process, which is costed in the financial memorandum.

Colin Fox: I turn to the role that the SPS will play in preparing offenders for the community part of their sentences. At present, offenders who serve long sentences with the SPS are prepared quite intensively for their release and efforts are made to consider their housing and support services. As I understand it, that is done for prisoners who have been with the SPS for a long time, but there is not the same level of intervention in planning for the release of short-term prisoners. Do you expect that to continue? Will planned intervention continue to be directed at those who serve long sentences?

Tony Cameron: It is a matter of degree. It is still our view that we should spend more time and energy on serious and violent offenders. That is expensive, but the work needs to be concentrated on prisoners who serve long sentences. However, as Valerie Macniven said, the Management of Offenders etc (Scotland) Act 2005 introduced community justice authorities—we are not part of those, but we are a partner to them—in an attempt to ensure that all prisoners are more integrated, except those who serve extremely short sentences. It was intended that work on people’s employability, housing, benefits, drug addiction and so on should start before they get to prison.

Very few people come to prison without being known to “the authorities” beforehand. That work should be continued seamlessly during their incarceration and they should be handed on sensibly to those who will supervise them in the community or—where there is no formal statutory supervision—the voluntary, local authority and other bodies that can help them. Resources have been put into that.

Integrated case management is part of the offender’s journey and it is supposed to help. We are engaged in trying to improve what, in some cases, we might call the throughcare of people who become serious offenders—I am not talking about people who have received fines but those who are likely to get or have got custody—so that they do not fall between the steps or slip through the grid at any point but are handed on sensibly. We are putting a lot of effort into that by working with the new chief officers of the eight community justice authorities to improve that service to the public. The committee will hear later from them about the planning for that.

Colin Fox: Indeed we will.

What can the Prison Service do that it is not doing just now to prepare better the majority of offenders who are serving shorter sentences for release to serve the community part of their sentences?

Tony Cameron: Irrespective of the bill, we have for some time been improving our service—we hope to continue to improve it—to all the prisoners who are sent to us in order that we can make them slightly better when they leave than they were when they came to us. That includes improvements in the health care that we give. Prisoners are not eligible for the national health service, so we try to ensure that our health care is as good as, if not better than, what they would get in the community.

Through the throughcare arrangements in our link centres, for example, we hope to enable even short-term prisoners to sign some of the forms that they need to sign before they get out. If someone
is not quite sure what to do, the folk who know how to fill in the forms come into the prison and help them with that before they are released. We hope to develop that.

All that is predicated partly on our ensuring that our estate and buildings are fit. It is also highly dependent on the degree of overcrowding that we have to cope with. The higher the numbers, the more difficult it is. We currently have 7,500 prisoners, if we include those who are on home detention curfew, but we have only 6,400 places. You do not need to be Einstein to see that the first figure does not fit into the second very easily. We cannot do anything about that, but our interventions have, even with short-term prisoners, been making progress in terms of decency for some years. We hope to continue that, but we do not have a new magic wand to wave over very short-term prisoners that will make them good. Many of them come to us in a pretty poor state—we try to patch them up. The longer they stay with us, the more we can do and the more we aim to do, but I would be kidding the committee if I said that we could do much more with very short-term prisoners than we are already doing.

However, we can join up with our community justice partners elsewhere much more effectively than we have done in the past.

Colin Fox: I appreciate that—

The Convener: Before we go on, members should ask brief questions and the witnesses should give brief answers. Our time with the minister is limited and we have to deal with other sections of the bill. Make your last question short, Mr Fox.

Colin Fox: I was simply going to say that the throughcare and work with the community justice authorities is clearly something that the Prison Service is doing now and will do whether or not the bill is passed.

Tony Cameron: It is true; we can do more.

Johann Lamont: I have a point to make about risk management. It is important to understand that risk management is a challenge—we are not in the business of misrepresenting something as an exact science when it is clearly not. The Risk Management Authority is on the custodial sentence planning group that is considering with a range of partners how the bill will be implemented. There are too many bodies for me to rattl out just now, but they include the Convention of Scottish Local Authorities, social work, the Association of Chief Police Officers in Scotland, and the Scottish Prison Service. There is an appreciation of the need to work closely with the people who really know about risk management so that we neither misrepresent it nor allow it to be a block to the things that we are doing. We will want to explore that further.

I also want to flag up release and post-custody management of offenders. Paragraph 58 of the policy memorandum deals with who would be responsible. We would expect the SPS and the Scottish Executive Justice Department to act under delegated authority. We still take the view that “these arrangements are the most practical, effective and efficient way of delivering these aspects of the new policy. There remains scope for fine tuning of how the Scottish Ministers’ functions are split between SPS and the Justice Department, but these do not affect the terms of the Bill and accompanying documents.”

Again, I would be happy to dig further into that.

16:30

Michael Matheson: In evidence to the committee, two specific concerns relating to structure and process have been expressed about the Parole Board. First, the proposal to reduce the Parole Board to two members in a tribunal might result in less breadth of experience on the tribunal. Secondly, the bill requires that a tribunal decision to release a prisoner must be unanimous. It has been suggested that that could be challenged under the European convention on human rights, largely on the basis that the requirement for unanimity is at odds with tribunal members reaching independent and impartial decisions. How do you respond to those two concerns?

Johann Lamont: I will deal first with the second concern. My understanding is that our advice is that the bill is ECHR compliant and that to require a unanimous decision would not conflict with ECHR.

On the size of a tribunal, we are keen that the system be as efficient as possible and that we harness as much expertise as possible. The proposal to reduce the number of tribunal members from three to two is not in the bill—that is a matter for the Parole Board’s rules. When the new rules are drafted, the board will be fully involved in the discussions. That will provide an opportunity to explore further the concern that in seeking to achieve efficiency by reducing the number of tribunal members from three to two, we would get rid of expertise. I am not sure whether that is the case. We are keen to work closely with the Parole Board, which has a crucial role to play. We must ensure that it is able to carry out its functions and use its expertise in a vital part of the process. We would be happy to continue that dialogue with the board.

Valerie Macniven: I have a supplementary point to make. At present, one member of a tribunal must be legally qualified. When the number of
tribunal members is reduced to two, that will remain the case, so there will still be legal expertise on tribunals.

Michael Matheson: Is it fair to say that you would still be open to the possibility of tribunals continuing to have three members, if the Parole Board was keen on that? That said, I am conscious that the bill will have resource implications for the board. If tribunals were to continue to have three members, consideration would have to be given to whether the number of people on the Parole Board overall would have to be increased.

Johann Lamont: I have not been involved in the argument from the beginning and I am always open to persuasion. However, cost is an issue, given the work that the Parole Board will do under the bill. If we want to achieve greater efficiency without losing any of the board's expertise and competencies, we must acknowledge the logic of tribunals having two members rather than three. We must continue to discuss that proposal.

As I said, the size of tribunals will not be set by the bill. I am more than happy to continue a dialogue to establish whether what is being claimed would happen if the number of tribunal members were reduced from three to two would actually happen. We must consider whether a reduction in the number of tribunal members would liberate resources that would enable the Parole Board to do other things that we want it to do. We must strike a balance in the judgment that we make. The board and other experts in the field have crucial roles to play in making cases on which we can come to conclusions.

Jackie Baillie: I want to pursue that slightly further. It is acknowledged that the Parole Board's resources will be stretched, not least because it will have to deal with short-term prisoners and those on recall, as well as long-term prisoners. Have you costed the additional impact and, if so, what is that cost? Can you give us an estimate of the number of oral hearings that the board is likely to have to oversee?

Johann Lamont: I will deal with the generalities—the convener asked me to give short answers, which is always helpful—and I will ask my officials to give you the detailed costings.

It is recognised that there will be an increased workload for the Parole Board. We acknowledge that it will deal with cases such as it has not dealt with before, but we think it important that it will be engaged in that process. We have made a commitment and we recognise that there is a resource implication that we will want to meet. There is no point in giving people new responsibilities while not giving them the means to fulfil them, given the important part that they will play in the overall processes that are identified in the bill. I ask my officials for assistance with the figures.

Valerie Macniven: In view of the time, it might be useful just to signpost to the committee various parts of the financial memorandum. Paragraph 176 includes a table on recalls, and a significant amount of information is given before that. Paragraph 147 contains figures for assumptions of numbers and explains how the costings have been worked up. There are estimates of the number of recalls and suggestions for the number of those that would need oral hearings, as well as a certain amount of matrix showing X times Y equals Z.

Bill Butler: The Parole Board expressed in its written submission concern about provision of information to it about the offence or offences that have resulted in an individual's being sentenced to imprisonment. Can you clarify whether sentencing sheriffs are to be asked to provide post-sentencing reports in respect of all offenders who receive a sentence of 15 days or more?

Johann Lamont: I want to make two points. First, we recognise that the responsibilities of the Parole Board will change, which will have consequences for any information that it may have. Secondly, as I said, a planning group is considering how such information will be delivered. Valerie Macniven will take you through the detail.

Valerie Macniven: If judges had to make a report in every case, that would be a significant change. However, there is a question about how big a report that would be—some streamlining might be possible. I am pleased to say that we have the benefit of a sheriff assisting with the work of the planning group, which is only just starting—obviously, the matter depends on outcomes here in Parliament. It is a case of assembling the right people so that they can help when the time comes. The questions concern what is right for the system and what is proportionate.

Bill Butler: So, that work is going on. From what you have said, however, I assume that it is unlikely that such reports will be required for people who receive very short sentences.

Valerie Macniven: We would not rule anything out. The answer would depend on what was proportionate in each case. The requirement for a report is not always determined by the length of the sentence, but by what is appropriate.

Bill Butler: The Parole Board has stated that, given the short timescale and if the sentencing sheriffs are forced to provide a post-sentencing report for every case, a sentence may expire before they can consider the case. Have you taken that on board?
Valerie Macniven: I might have to turn to my legal colleague. The bill will not allow such loopholes. If there are any issues around that, we will have to consider whether that should be addressed at a later stage.

Bill Butler: I am obliged, but I hope that we can get a bit more clarification—that response was a wee bit general.

Charles Garland: Some of the timings will be found in the new Parole Board rules, which are yet to be drafted. It is expected that they will be drafted in parallel with the bill. As the committee will be aware, the current Parole Board rules lay down time limits for various—

Bill Butler: When will a draft of the new rules be available to the committee?

Charles Garland: I cannot give an undertaking as to when a draft will be available. However, the Parole Board rules will need to be in operation around the time the bill is implemented.

Bill Butler: I understand that, but I would be grateful if you could say approximately when draft rules will be available for us all to look at.

The Convener: Jackie Baillie has a brief question on licensing.

Jackie Baillie: No—it is fine.

Jeremy Purvis: My question follows on from Bill Butler’s questions. Under section 9, if Scottish ministers determine that they want to keep a person in custody for longer than was set by the judge, they must refer the matter to the Parole Board before the end of the custody part of the sentence. However, there is no requirement on the ministers to do that in good time, although it would be unfair on the Parole Board if such matters were to be referred to it a day before the end of custody. The Parole Board is required by section 10 to determine whether section 8(2) applies to the individual before the expiration of the custody part, although it could have only half a day in which to do that.

Charles Garland: That difficulty exists at the moment. Under the current Parole Board rules, various processes need to happen before the Parole Board can determine a matter. For example, the prisoner needs to be sent a copy of the dossier and must be allowed to make representations. There is then a period for consideration by the Parole Board. It is intended that time limits will be put in the new rules, which will make it plain that ministers must initiate the process by making the referral at a suitable point, so that there is enough time for all that to happen.

Johann Lamont: This is an issue about—we always talk about it, but it is genuinely important—working in partnership and not asking other people to do the impossible. The general efficiency of the system depends on people taking responsibility and making decisions at the appropriate time in order for the next stage to kick in. I would like reassurance about that in whatever way the matters are expressed. I presume that the planning group will consider what could reasonably be expected of the various partners at each stage.

Maureen Macmillan: We have heard evidence that the provisions in the bill could increase the prison population by 1,100 or more—some witnesses have suggested that the number could be a lot bigger. You said earlier that the bill deals with sentences as handed down rather than different kinds of sentencing. However, I wonder whether the Executive is considering replacing short custodial sentences with conditional sentences or sentences that are served entirely in the community. Those could perhaps include fast-track recall.

Johann Lamont: I repeat the point that the bill deals with the management of sentences once they have been issued. Good examples of community disposals and so on have already been developed. However, the bill is also about the management of sentences and understanding that there are custody and community parts to them. The notion of community disposals will be given more authority where such disposals are seen to be working effectively. The issue is broader and goes beyond the bill.

We are saying that an understanding of the individual offender is critical to management of sentencing, rather than taking the blanket view that we should do X for certain offences. Sentencing remains a matter for elsewhere, but it is entirely reasonable to approach management of sentencing as we are doing in order to give people confidence. In recognising that there needs to be a balance between punishment and rehabilitation, we are giving more authority to the notion of community disposals elsewhere in the system. Additionally, there are always other things going on around the bill. The bill is just one step along the road—which the committee has been on for longer than I have—towards managing offences, cutting reoffending and deterring people from committing offences in the first place.

Maureen Macmillan: Do you accept that the number of prisoners will increase significantly?

Johann Lamont: The financial memorandum estimates that the number will go up.

Tony Cameron: That information comes from us.

Johann Lamont: Our aim, in the longer term, is not just to manage what is inevitable, but to change behaviour through our action. If we are
effective in providing rehabilitation, in dealing with reoffending and in giving out messages about the consequences of certain offending behaviours, there ought to be a shift in behaviour over time. I am optimistic that there will be such a shift. Nevertheless, the financial memorandum is explicit in saying that we expect there to be extra prisoners as a consequence of the bill.

16:45

**The Convener:** Michael Matheson will ask the last question on sentences.

**Michael Matheson:** The committee is conscious that the impending spending review means that the financial situation for some policies is a little bit fluid. To what extent will negotiations be required to secure the funding that is necessary for the bill?

**Johann Lamont:** Whenever we decide on a policy or a legislative approach, resource consequences accompany it and we must argue for them to be met. As I have said, there is no point in having an aspiration to take a policy approach if we do not have the means to deliver it. I am not saying that that is not challenging—any set of budgets will have competing priorities—but that is part of the process. We have said in the financial memorandum that resource consequences will have to be met.

**Michael Matheson:** So the overall funding that is required for the bill has still to be secured.

**Johann Lamont:** The financial memorandum identifies the expected cost, but that must be kept under review.

**The Convener:** Concern has been expressed in evidence that the bill does not contain a definition that clarifies the difference between domestic and non-domestic knives. Future court cases might provide clarification, but what additional guidance will the Executive provide in advance to assist retailers and trading standards officers in approaching the bill?

**Johann Lamont:** I acknowledge that the bill does not use the term “non-domestic knife”; it says that a licence will be needed to sell “knives (other than those designed for domestic use)”. You are right that part of the definition will come from the court process.

A general anxiety is that putting complex definitions in legislation is more likely to produce loopholes than solutions. We are keen to ensure that guidance is given to local authorities that enables trading standards officers to advise retailers. We are keen to work with local authorities to ensure that any guidance on that and other issues is consistent throughout Scotland.

**The Convener:** I am sure that the minister is aware of evidence that we have received from interest groups other than retailers. Based on that evidence, the committee’s plea is that it would help us to have definitions early of all types of knives and equipment that could be classified in that category. Are we likely to see such definitions early?

**Valerie Macniven:** Several of the details that will clarify some of those points will be included in regulations, which are not yet available to the committee. Below that, local discretion will exist. The arrangements will have two elements. The subordinate legislation that will be produced in due course will leave latitude in some cases to allow local authorities that apply the measures to take into account local circumstances. The regulations have not yet been drafted.

**Bill Butler:** How will the bill discourage people from buying non-domestic knives when they have no legitimate reason for doing so? For example, is there evidence that a significant number of the current problems arise from retailers that market and sell such knives irresponsibly?

**Johann Lamont:** A broader issue than the question that the bill tackles is that we must challenge the culture that makes people feel that they need to carry knives, which will make a difference. Members will be aware of the campaign that the Minister for Justice launched on the consequences of knife crime, which I hope will have an impact.

Any retailer that wishes to sell non-domestic knives or swords to the public will have to apply for, and be granted, a licence and will be bound by that licence’s conditions. That will concentrate minds. Licence conditions will impose restrictions on display in shop windows or any other part of premises that is visible to the public from the street. That will affect how people are encouraged and how some notion of what it means to carry a knife is fed.

As you know, we have made exceptions to the general ban on the sale of swords, but we are nevertheless introducing a general ban, which will be helpful in itself.

**Bill Butler:** Do you not think that the problem stems from a significant proportion of—how can I term them—rogue retailers?

**Johann Lamont:** The licensing scheme, like any licensing scheme, seeks to drive out those retailers who are uncomfortable with any regulation of their business or with trading visibly. Because licensing manages the process, it deals with those who may fall into the category that you have identified.
Colin Fox: We have been considering whether there is a danger that, when we introduce licences, somebody who does not want to buy a knife from a licensed shop would get one on the internet or by mail order and that we would drive the purchase of knives underground. Do you have any concerns in that regard?

Johann Lamont: That could lead to the counsel of despair that we cannot do anything about anything because we cannot do everything about everything. I recognise the problem that you raise—it is obvious in every area of life that we license—but licensing seeks to bring the trade out into the open, challenges legitimate retailers about the way in which they do business, raises the question of why people carry knives and confronts some of the reasons for carrying them. It has been alleged that the trade will be driven underground but, although we offer no absolute guarantees about the way in which knives move around the system, licensing seeks to manage and control a significant part of the trade and therefore adds significantly to our capacity to confront knife crime, even though it does not necessarily deal with it all.

Colin Fox: We are all keen to defeat the knife culture that blights our society, but how would you prevent people from getting knives from abroad, by mail order or from unlicensed traders? Is it even possible to do that? Have you considered whether that is a consequence of introducing a licensing scheme?

Johann Lamont: People will still be held to account for carrying knives without due reason; other parts of the system deal with that. We are trying to deal with both supply and demand—that is, why people want to carry knives in the first place. We will enforce the legislation that says that people ought not to carry knives and that there are grave consequences to carrying and using them. We have already underlined the significance of that offence.

We do not pretend that the bill sorts out knife culture, but part of the problem is that some people seek to make a profit from the unhealthy desire of young men in particular to carry knives and, unfortunately, use them on their peers. The bill is part of the solution, but not all of it.

Valerie Macniven: Colin Fox has mentioned the use of the internet a couple of times. There is clearly a difference between organisations that are based in Scotland and those that are based in other countries, but businesses that sell over the internet will be caught by the bill if they are based in Scotland.

Jackie Baillie: The bill allows the Scottish ministers to set minimum conditions for any knife dealer’s licence, with individual local authorities being able to impose additional licence conditions. Some witnesses have argued that local variations will make it more difficult and costly for retailers to comply. Is there a case for having standard conditions throughout Scotland?

Johann Lamont: Now we are revisiting issues that were discussed in connection with the Planning etc (Scotland) Bill: the tension between the central authority and local flexibility and the question of where it is sensible for decisions to be taken. My instinct is that the Scottish Executive and the local authorities are at one on the need for a licensing scheme. It is possible to clarify reasonable standard conditions that should apply while recognising that it is also reasonable for local authorities to have flexibility because the knife culture is expressed differently in different parts of the country and knives that are used for legitimate purposes in some places are not used in the same way throughout Scotland. It is very much about partnership, not about confusing people—why would we want to confuse those who are seeking a licence? However, we recognise that there are specific issues in different parts of the country and that, as local authorities have said, those differences require specific conditions.

Maureen Macmillan: I would like to ask about swords. The policy memorandum sets out some examples of what the Executive considers to be the legitimate use of swords, but some of the people who have submitted evidence to the committee have expressed concern that the planned secondary legislation will not recognise their particular use of swords as legitimate. For example, it would not allow the collection of modern high-quality reproduction swords. Will there be any further consultation on that area?

Johann Lamont: We have already acknowledged that there is a need for exceptions in certain circumstances and that there are people who have a legitimate use for swords. Of course, that must be tested against the consequences of swords being available in a local community in entirely illegitimate ways, which is the huge challenge that nobody gainsays. We will consult further on secondary legislation. We do not wish the legislation unnecessarily to capture people who have an entirely legitimate purpose in using swords. People should be reassured on that point.

The Convener: I am aware that you have to leave us, minister, but I wonder whether I can prevail upon Mr Cameron to stay for a couple of seconds to answer a specific question.

Tony Cameron: As long as it is just a couple of seconds.

The Convener: We appreciate that you have time difficulties as well.

Thank you, minister, for taking time to come here this afternoon.
Johann Lamont: Thank you very much. As I said at the beginning, I am more than happy to ensure that you have sufficient information in front of you to draw up your report as timeously as possible following today’s meeting.

The Convener: Thank you, minister.

Jackie Baillie has a specific point to raise with Mr Cameron.

Jackie Baillie: It is less a question than a comment, but I would prefer Mr Cameron to be here to hear what I have to say.

I regard the letter that Mr Cameron sent to the convener as particularly unfortunate, as it is clear that the context in which we took evidence today was guided by it. The evidence given was less than forthcoming and it is my view that the very experienced witnesses were placed in a most unfortunate position—almost in a straitjacket. In relation to another bill with fewer implications for the Scottish Prison Service, prison governors could comment on issues that affected operational matters, but today we are expected to believe that the same prison governors are passive recipients of knowledge.

I do not want to take up Mr Cameron’s time or the committee’s, but I suggest that we provide him with a copy of the Official Report, so that he understands the dissatisfaction of the committee members, when we write to him, as we agreed to do earlier. I look forward to his response.

The Convener: Mr Cameron, I am obliged to give you an opportunity to comment at this time, if you wish to do so.

Tony Cameron: If the committee chooses to ask the wrong people on my staff, it gets what it has got. I am unmoved.

The Convener: Thank you.

I now ask our final panel, which was to have been the penultimate panel, to join us. I welcome Mark Hodgkinson, chief officer of the northern community justice authority, and Chris Hawkes, chief officer of the Lothian and Borders community justice authority. I thank them for their forbearance this afternoon. We are extremely grateful to them for being so accommodating in view of the minister’s difficult circumstances. I appreciate that Kirriemuir is a fair way away—although it is nearer to the Parliament than where I live.

Under the Management of Offenders etc (Scotland) Act 2005, you now hold key responsibilities and face significant challenges in relation to the management of offenders. What progress have you made in setting up the structures and systems through which you intend to meet them? What do you think are the key challenges that you will face?

Mark Hodgkinson: The chief officers have been in post for between four months and—in Mr Hawkes’s case—a matter of days. Nevertheless, we have all now presented to the Executive draft plans to reduce reoffending in our local areas and to operationalise some of the broader aspirations in the 2005 act. In doing that, we have had a considerable amount of support. Parts of my plan were written by both the Northern constabulary and Grampian police. Also, we were helped with a significant part of it by the Scottish Prison Service liaison officer who is attached to the northern community justice authority.

Because of the timescales in which the plans were written, they are concerned largely with setting in place the building blocks from which actions can be taken to join services up, manage offenders more efficiently, effectively and co-operatively and reduce reoffending.

It is early days yet, but we have made a good start. There has been a tremendous amount of enthusiasm and commitment from all the partner agencies that have been involved so far.

Chris Hawkes: In my area, the most significant development has been the creation of the community justice authority. It has five political members and a convener and it has a public meeting every two months. Those meetings are attended by a broad range of agencies that are involved in dealing with offenders. Also, in that relatively short period of time, each of the authorities in Scotland has managed to put in place the infrastructure that is required for an authority to be effective. That is no small achievement because, as you will all be aware, the legislation did little to put in place the necessary infrastructure that would be required to run a public body.

The Convener: I think that it is fair to say that the very reason why we wanted you here is that we did not see much in the way of comment in the bill and we felt that you both had a useful view to offer on behalf or your respective organisations and your collective body.

Bill Butler: What lines of communication and joint-working arrangements are in place between, for instance, the SPS and the other key stakeholders? Mr Hodgkinson, you said that you have been liaising well with the police and the SPS, but it would be useful if you could go into that in more detail.

Mark Hodgkinson: I will struggle to give you much in the way of specific detail. That is not because I do not want to but because the project is still in development. We are still developing a...
range of working groups to support the CJA and to devise, for example, the means of reporting on the performance of not only the SPS and the local authorities’ criminal justice social work services but the other key players, such as the statutory partners—the health service, police, courts and so on—and voluntary organisations. We are still at quite an early stage. What will be particularly challenging is ensuring that the links are right with respect to key parts of health services, substance misuse services and forensic services. That will be particularly challenging for community justice authorities such as the northern CJA that cover a very large area with massive problems of transport and geography. Therefore, significant challenges remain. The signs are that people are willing to take part, but we are still working out the best ways of doing that.

Bill Butler: While recognising the incipient nature of CJAs, I ask Mr Hawkes whether he would like to add to his colleague’s words.

Chris Hawkes: I recently ran a Lothian and Borders community justice authority workshop that was attended by 30 representatives from the multitude of agencies that, along with the local authorities and the Scottish Prison Service, are covered by the legislation. Every person who attended that workshop could identify something that they could do to contribute towards the achievement of the reducing reoffending strategy. That shows the broad range of commitment that exists among all the players to make the legislation work.

Bill Butler: So stakeholders have not shown reluctance—quite the opposite.

Chris Hawkes: Absolutely.

Mark Hodgkinson: That is correct. I echo the comments that Mr Hawkes has made. We organised two seminars that were attended by a wide range of people. Because of the nature of the geography of our area, many of them had to catch an aeroplane to attend the seminar.

Michael Matheson: The fact that the bill will require risk assessment and risk management to be provided for all prisoners who serve a sentence of more than 15 days will clearly create a significant level of additional work for, apparently, some people within the SPS and for criminal justice social work services. I am conscious that you have been in post for only a limited time, but can you give us some idea of how prepared those different parts of the workforce are for the increase in their workload that will result from the bill?

Chris Hawkes: As we heard clearly from Mr Cameron when he gave evidence earlier this afternoon, the Scottish Prison Service does not currently undertake risk assessment of offenders who serve less than four years. A significant implication of that aspect of the bill is that the Scottish Prison Service will need to put in place a mechanism for undertaking a risk assessment—we are talking about risk of reoffending and risk of harm—and a needs assessment for a huge number of short-term offenders. Such a mechanism does not currently exist.

I would go a stage further than that. At the moment, we do not have a model of risk assessment that could be used effectively in that environment. Furthermore, having spent a long time working with offenders in Scotland, I think that we recognise that any model of risk assessment must have two components to it. One component is known as the static factors, which are the factors that are concerned with those things that happen in ordinary life that increase risk. Arguably, custody is not the best environment to understand dynamic risk. Dynamic risk is to do with relationships, employment or the lack thereof, addiction, the availability of treatment services and mental health. A variety of dynamic factors that occur in the community are not present when the person is in custody. I would argue that custody is not the best environment in which to undertake an assessment of the risk of harm of future behaviour.

Michael Matheson: Where is the best location for that risk assessment to be undertaken? Is it within the community?

Chris Hawkes: We need to recognise that some significant work is already undertaken at some expense by local authorities. Approximately 50,000 social inquiry reports are undertaken by local authority social workers in preparation for the sentencing process in the sheriff court or High Court. Every one of those reports is required to include an assessment of the person’s risk of reoffending and risk of harm and an assessment of need. As I say, that work is already undertaken, and it is normally available to our colleagues in the Scottish Prison Service. Although some offenders who receive a custodial sentence do not attract a social inquiry report—although I believe that a majority of them do—we could develop a clear, interchangeable model of risk assessment that works in the community, in custody and back out in the community again.

Mark Hodgkinson: I concur with everything that Mr Hawkes has just said. It would be advisable, almost as a prerequisite to the bill, for one single model of risk assessment, both in and outwith prisons, to be agreed to, settled on and issued. Having listened to the contributions at this meeting so far, I note that people use the word “risk” in a variety of ways. It is important that, when people
talk about high risk or low risk, everybody else clearly understands what they are talking about. Until that is made clear, there will be problems with the bill.

That is not strictly answering the question that you have asked. I have not had so much time to study the bill or the attached memorandums in great detail. I have seen part of the financial memorandum, which mentions a sum of £7.45 million. Essentially, that will get spent on lower-risk, short-term offenders. If asked, I could suggest much better ways in which to spend that amount of money.

**The Convener:** You seem to be offering various models. The committee would welcome it if you could send in some of the options and your ideas about definitions. One committee member raised that point earlier this afternoon.

**Michael Matheson:** I come now to the second part of my question, which is about risk management. Responsibility will fall on criminal justice social work services. How prepared are they for the potential increases in workload that they will have to undertake as a result of the bill?

**Mark Hodgkinson:** I started working as a criminal justice manager around 1998, right at the start of a transformation in the relationships between criminal justice social work services, the police and the management of high-risk offenders. I think that local authorities and the police generally work extremely well together now when it comes to jointly managing the risks that are posed by potentially dangerous offenders. Sadly, that is not well understood by the general public.

However, short-term offenders are by definition unlikely to require risk management—that is, management of the risk of serious harm that they might pose to the public. I do not know whether the local authorities or police even need to work together in that respect but, in those cases where they do, they are probably very well equipped under the existing procedures and under the developing procedures for managing high-risk offenders in the community.

**Jeremy Purvis:** I put it to the minister earlier that, as the bill is framed, the assessment that is undertaken for all those who are sentenced to more than 15 days in custody is to do with whether or not the person is likely to cause serious harm to members of the public. That is quite a high threshold. There is nothing in the bill to provide for an assessment that is wider than what the Scottish Prison Service does at the moment, which is to signpost or refer people to services or to schemes such as the link scheme; nor is there any ability to include conditions according to which the individual will be supervised in the community to some degree. That means that 80 per cent of the prison population will not benefit from any of the risk management measures. Those measures will make no difference to them. Could you expand a bit on what you said about spending money better? If the proposals will incur annual revenue costs to the Prison Service of nearly £6 million—plus nearly £1 million to local authorities in addition—can Mr Hodgkinson and Mr Hawkes indicate how the resources could be differently targeted?

17:15 **Chris Hawkes:** Lothian and Borders community justice authority welcomes the intention of the bill, the concentration on the importance of transparency in sentencing and the commitment to reduce reoffending. Our concern is that it is significantly mistargeted, which goes right to the heart of the issue that Jeremy Purvis raised. The majority of short-term prisoners will not have a risk assessment or supervision plan; we would delude the public if we pretended that the bill would assist those offenders. They would be much better placed if they were left in the community, subject to supervision through probation orders, drug treatment and testing orders, supervised attendance orders or community service orders. They would receive a much better service, appropriate to the level of risk that they presented.

We understand how destructive custody is, especially when it is delivered for such short terms. There are no positive outcomes of short periods in custody. In the circumstances that Jeremy Purvis described, we pretend that something will happen through a sentence that has a custody component and a supervision component, but it will not. My real concern is that the sentences will not reduce the numbers of people in custody but increase them, because people will think that there is a punitive component and a supervision component to the sentences. In fact, the majority of people who are sentenced—Jeremy Purvis said that the figure was 80 per cent—will get the punitive element of the sentence and will be in custody for a relatively short period. We know that that is destructive and sends people back into the community who present a 60 to 80 per cent risk of reoffending. We know that if we use community-based alternatives for such offenders, we get much better outcomes in relation to reducing reoffending.

The cost of keeping an offender in prison for six months is £16,000. The cost of keeping someone on a probation order in the community for one week is £30. Is it not surprising that what we know to be most effective gets the least resource, and what we know to be least effective gets the majority of the resource? There is a fundamental problem that needs to be addressed through
resource transfer and the transfer of people away from short-term custody into community-based disposals.

The Convener: Mr Hodgkinson, you came up with a figure.

Mark Hodgkinson: I quoted the figure from the financial memorandum, which is a considerable sum. You asked for a shopping list, but before I suggest how money might be better spent, I have to say that, given Scotland’s limited resources for addressing crime, prioritisation is extremely important. I concur with Mr Hawkes’s remarks, especially in relation to finance. Some local authorities in some community justice authority areas have developed and are funded to provide effective programmes to deal with men who have been sentenced to probation or are on licence, having committed serious offences of domestic abuse. However, the provision of such services is exceptionally patchy, despite considerable evidence of their effectiveness. Rather than pouring resources into increasing the prison population significantly, which the bill will certainly do, better and more effective use of resources than spending money on increasing the prison might be helpful. There is a major link between crime and substance misuse—it is mainly alcohol in the area of the northern community justice authority, but there is also drug misuse. Health and education services in respect of alcohol and drug misuse would have a significant impact on the levels of crime, offending and therefore reoffending.

I can suggest two other areas for which funding might be helpful. There is a major link between crime and substance misuse—it is mainly alcohol in the area of the northern community justice authority, but there is also drug misuse. Health and education services in respect of alcohol and drug misuse would have a significant impact on the levels of crime, offending and therefore reoffending.

I will mention one other long-term rather than short-term measure. I do not know whether the committee has heard evidence on the work of the violence reduction unit, which receives funding from the Scottish Executive, or the research of the WAVE Trust into the root causes of violence and the amount of good that can be done by resourcing a major effort on the root causes of violence. In the long term, such an effort could prevent many people from becoming victims of serious violence in Scotland. That would be a far better and more effective use of resources than spending money on increasing the prison population significantly, which the bill will certainly do.

The Convener: I ask Bill Butler whether that answered all the questions that he was going to ask.

Bill Butler: That answered all the supplementaries that I had in my mind.

Jackie Baillie: My questions are by and large answered, but let me ask some just to round up the session. Part 1 of the bill has three high-level objectives: first, that we should have a clearer and more understandable system for managing offenders while they are in custody and in the community; secondly, that we should take account of public safety; and thirdly, that we should have victims’ interests at heart. How well will the bill achieve those three aims?

Mark Hodgkinson: One measure in the bill that I support is the notion that, when a sentencer passes sentence, there should be some explanation of what it actually means. However, when I listened in the anteroom to the explanation of the Executive official who was with the minister, the provision became less clear to me and I am now not sure that the bill will achieve clarity of sentencing procedures.

Because I am not sure that the bill will achieve any greater clarity, I am not sure that the public’s confidence in the system is likely to be greatly enhanced. I have spoken to somebody senior at the Scottish Executive about ensuring that the public understand better how the criminal justice system works and why. The community justice authorities and the Executive have work to do in producing a joint communication and publicity strategy to try to overcome what seems to be the persistently hardline lock-'em-up-for-longer approach that some of the tabloid newspapers, for example, espouse. Such a strategy might be a better approach.

I have a horrible feeling that the bill will run counter to the aim of reducing reoffending. The bill is likely to mean that sheriffs will lock up more people. At present, sheriffs have a stark choice between a community sentence and a custodial one but, under the bill, there will be a much more softened system in which sheriffs can combine both. Therefore, with somebody who at present might get a straight probation order, the sheriff may view the fact that there will be some licence or supervision following the custody part of the sentence as a way of achieving punishment and rehabilitation in one order. It is clear that the bill will mean that more people will spend longer in prison.

All the efforts to join up services between the community and the Prison Service are likely to be somewhat undermined by the Prison Service’s having to deal with the number of people who are entering and leaving prison.

As part of the preparation for our area plan and our consideration of working jointly with the Prison Service, I recently spent some time at the prison in Aberdeen. The work done by the staff and the governor was fantastic. I cannot imagine how they achieve what they do, given that they are so impeded by the problem of overcrowding. A group of prisoners who need protection are taken out for activity then moved back in and locked in their
cells while another group does the same activity. Everything is done on a rota. It is a matter of making do. Further increasing that problem by increasing the size of the population is a big worry. I have to say that I now feel less confident than I did previously about making a success of the community justice authorities and getting into the meat of the bill.

Chris Hawkes: I do not believe that the bill is wholly negative. What is wrong with the bill is that the thresholds are wrong and the proportionality is wrong. It would be a significant advance if we could get offenders who serve periods of less than four years back into the community and into a community in which there are services that address needs around literacy, alcohol, drugs, employment and mental health services—the list goes on. That range of normative services should be available to everyone in the community.

The offender group is, by and large, currently denied access to those services. The purpose of the community justice authority is to ensure that the transition can be made and that there is that level of integration of services for offenders when they come out of custody. However, as the bill stands it would overwhelm the Scottish Prison Service, local authorities and independent providers. We need a clearer threshold that is arrived at more rationally. I know that previous witnesses before the committee have suggested six months, 12 months, 18 months and 24 months.

We must consider the issue. I believe that Bill Whyte described two years as being the minimum period necessary in which to undertake effective work with offenders. Let us examine effective practice both nationally and internationally and ask what is effective in work with offenders. The bill seems to include some things that are effective and some things that we know are ineffective. Why pass a bill that has ineffectiveness built into it? Let us pass a bill that has a good chance of succeeding because it is based on effective practice.

The Convener: In the absence of further questions, I thank you both for the clarity of your evidence and for the direction in which you have sent the committee, which is an inquiring one. I thank you also for your forbearance in relation to the delay before we asked you to come.

As that was the final evidence session on the bill, I seek the committee’s agreement to consider the options paper and the draft report in private at future meetings.

Members indicated agreement.
SUPPLEMENTARY SUBMISSION FROM HMP CORNTON VALE

Mr Gunn was asked by the Justice Committee yesterday to supply some stats on Home Detention Curfew. Here is the information requested:

Total granted HDC = 64
Total out on HDC at present = 25 (+1 being recalled - still at large)
Total breaches to date = 5 (including 1 still at large)
Total successes to date = 27

I trust this information will be sufficient. If there is anything else required please do not hesitate to contact me.

SUPPLEMENTARY SUBMISSION FROM HMP BARLINNIE

I appeared before the Committee to give evidence on the Custodial Sentences and Weapons (Scotland) Bill on the above date. The Committee requested additional information on some points discussed and these are as follows:

1. **Home Detention Curfew (HDC)** figures for HMP Barlinnie from 1st July 2006
   
   HDC Releases =126
   
   Number of recalls 12 (3 for offending) 2 x breach of the peace 1 x domestic violence.

2. **HDC Criteria** – see attached HDC Form (HDC3)

3. **Barlinnie Assessment Referrals** (see attached pie diagram) dated the 24th of November 2006

4. **Staff Training Programmes:**

   Below are the training periods for staff in order to become competent and accredited to facilitate each of the following programmes, Cognitive Skills, Anger Management, Drug Relapse and Rolling Stop.

   **Cognitive Skills**
   An initial 10-day course with a 5-day follow up. The course is being replaced by Constructs which will be phased in from February 2007.

   **Rolling Stop**
   A fundamental skills course of 5-days followed by the Rolling Stop Course which is a further 5 days.

   **Drug Relapse Prevention Known as Lifeline**
   An initial 5-day course

   **Anger Management Initial**
   An initial 5-day course with 3-day follow up.

   I think this covers the points raised.
**FORM HDC 3**  
[V 2.0 - September 2006]

### Core Details

<table>
<thead>
<tr>
<th>Name</th>
<th>Number</th>
<th>Sentence</th>
<th>Y</th>
<th>M</th>
<th>D</th>
</tr>
</thead>
</table>

- **HDC Qualification Date**:  
- **EDL**:  

### Statutory Exclusions

- Prisoner is required to register as a Sex Offender
- Prisoner has an Extended Sentence
- Prisoner has a Supervised Release Order
- Prisoner has previously been recalled from licence
- Prisoner is subject to a Hospital Direction
- Prisoner is awaiting deportation

### SPS Risk Assessment

- **PSS Review Date**: / /  

- **Prisoner is High or Medium Supervision**:  

- **Evidence exists that Prisoner**:  
  - Has a history of sexual offending
  - Has been convicted of a Schedule 1 offence
  - Has a history of domestic violence/abuse
  - Has not engaged in Core Screen/CIP
  - Has displayed serious adverse behaviour while in prison (e.g. violent/threatening behaviour)

### Details of index & previous offence(s) and evidence taken into account in Risk Assessment (and the source)

(Include references to documentation or input from non-SPS sources (e.g. Social Enquiry Reports))

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155  
367
Describe any other mitigating factors taken into account during the risk assessment
(These will be dynamic factors identified through personal knowledge of the prisoner and his/her background)

Community Assessment Authorised
(The following non-standard licence conditions should be recorded on form HDC 2a)

Management Decision

Release on HDC granted

HDC Release Date:

Release on HDC refused

HDC Review Date: (if applicable)

Release on HDC is subject to the following licence conditions

1. Standard HDC Licence Conditions
2. Curfew (e.g. 19:00 to 07:00): _________ to _________
3. Special Curfew (e.g. curfew times changed due to regular domestic commitments): ________________
3. Non-standard conditions (if applicable):

(Signed)  
(Dated)
BARLINNIE PRISONER ASSESSMENT REFERRALS

As at 24 November 2006
LETTER FROM DEPUTY MINISTER FOR JUSTICE, 6 DECEMBER 2006

I agreed following my appearance at the Committee’s session on 28 November to provide further detail on a number of issues raised during what I hope you found to be a helpful exchange.

I want to stress again that the measures in the Custodial Sentences and Weapons (Scotland) Bill are about sentence management, not sentencing itself. They do not affect the range of disposals available currently to the judiciary nor do they change their sentencing powers. The new regime will only apply to those cases where a judge has decided (in the same way as s/he would now), in light of all the circumstances of the offence and the offender that firstly, a term of imprisonment is the most appropriate disposal and, secondly, what the length of that term will be.

However, we are changing the way that sentences are managed. These proposals build upon the measures provided for in the Management of Offenders etc. (Scotland) Act 2005. In doing so, we are aiming to strike the right balance of punishment, rehabilitation and public safety in a way that contributes meaningfully to our work to reduce re-offending and the number of victims of crime. For the first time, all offenders will be under restriction for the full sentence. For those sentenced to 15 days or more, the combination of a period in custody and a period in the community - where the offender will be subject to licence controls - provides the opportunity to work with offenders to address their offending behaviour both during the period in custody and continuing in the community. This is so much more than is done currently with the vast majority of offenders. Under the regime outlined in the Prisoners and Criminal Proceedings (Scotland) Act 1993, all offenders sentenced to less than 4 years simply walk away at the half-way point of their sentence without any control or support. The new measures in the Bill will also provide additional protections for the community against those who present as a high risk of harm. Such offenders can be kept in custody for up to 75% of the sentence and will then be subject to strict controls that would include intense supervision in the community and, where considered appropriate, electronic monitoring.

I believe that this substantial package of reforms will see the end of the current unflexible system of automatic unconditional early release for all offenders, provide clarity in sentencing by making it clear at the time of sentence the minimum period to be spent in prison, take account of public safety by targeting risk and will help tackle re-offending by giving offenders rehabilitive opportunities.

Clarification of section 6 of the Bill

Nothing in the Bill is intended to alter or affect the overall sentence which the judge or sheriff would otherwise have imposed. Section 6 deals with the setting of the custody part of the custody and community sentence once the judge has decided (as he/she would do now) that, having regard to all the information available at the time of conviction about the circumstances of the offence and the offender, imprisonment is the most appropriate disposal. This information can include details about an offender’s risk as it presents at that time. Nothing in the Bill prevents the judge from continuing to take account of that information when passing the sentence. Section 6 applies once that sentence is passed.

Section 6(2) provides that the custody part is the period required for “retribution and deterrence” combined. This is the “punishment” element of the sentence. We are content that the term “retribution and deterrence” will be recognised by the judiciary and the public and that it is broad enough to take account of the impact of the crime on the victim and on the public generally. The term has the same meaning for all offenders, including life sentence prisoners.

Section 6(3) prescribes that the custody part must be a minimum of half of the total sentence (eg if the sentence is 6 years, the minimum period that the offender can expect to spend in custody will be 3 years). If the judge is satisfied that the minimum period is adequate for the purposes of “punishment” then he/she will say so. However, if the judge decides that taking into account the factors set out in section 6(4), that half is not enough then that proportion can be extended up to three quarters of the total sentence (using the 6 year example – that would be 4.5 years). The factors at section 6(4) are what we consider to be the central constituents of “retribution and deterrence”, or punishment.
Concerns have been raised about the requirement at section 6(5) for the court effectively to “strip out” from the custody part any period that would be necessary for public protection. As we explained when we gave evidence to the Committee, the purpose of the new custody and community structure is to ensure that all sentences of 15 days or more are managed from beginning to end. This approach will enable developments during the entire sentence to be identified and managed – both in custody and the community - in a way that enhances public protection and contributes to reducing re-offending. As noted above, there is nothing in these provisions that will prevent a judge, in so far as this would be the practice at present, from taking into account information available at the time of conviction relevant to an offender’s risk. However, we cannot expect a judge to be able to see into the future and predict risk at the halfway point of what may be a lengthy sentence. That is why there are complementary measures in this package that will enable the ongoing assessment in custody to inform risk as the offender moves through the custody part. If that risk remains high, then the offender will be referred to the Parole Board which can direct that the offender remains in custody for up to 75% of the sentence.

Annex A provides examples of sentences under the current and proposed arrangements which I believe show very well the benefits of the new system.

We appreciate the importance of this section within the package of reforms. We are therefore checking the current provisions carefully against the helpful comments from others who have given or submitted evidence – in particular the Sheriffs’ Association - with a view to deciding whether any clarifying amendments may be required at Stage 2.

Who will refer the cases assessed as risk of serious harm to the Parole Board?

The Committee has sought clarification of who would refer cases to the Parole Board. The Bill and its accompanying documents are clear that the duty to refer cases to the Parole Board remains (as is the case at present) with the Scottish Ministers. This is currently carried out under delegated authority by the Scottish Executive Justice Department. As paragraph 58 of the Policy Memorandum notes, there remains scope for fine tuning of how Scottish Ministers’ functions are split between the Justice Department and SPS. These considerations will be included in the work of the top level planning group to which I referred when I gave evidence. I would stress that, whatever the decision, these are operational issues which flow from the Bill and do not affect the terms of it.

We are conscious, however, of the important role currently played by Scottish Ministers in taking decisions in individual criminal justice cases. It was announced, therefore, when the Bill was published, that there would be an independent review of their role. This review will clarify the precise arrangements which should apply to that decision making process as it is implemented.

The Committee has asked about the information that will inform decisions to refer cases to the Parole Board. Moving away from the current arrangements where cases are referred to the Board based on sentence length as opposed to risk, will allow the Board, under the new arrangements, to better fulfil its core function of assessing whether an offender’s risk is such that he/she should be detained in custody for longer before moving to the community part of the sentence and to set down the conditions under which the offender will serve the community part of the sentence. During the custody part, the risk of serious harm to the public that an offender may pose will be assessed on a regular basis as part of the sentence management process. The Bill makes provision for joint working arrangements between Scottish Ministers (in practice the SPS) and the local authorities to enable appropriate risk assessment and risk management processes to be established. We recognise that the level of this joint working and of the assessments carried out will need to be proportionate to the nature of the offence and to the length of the sentence. This will require the development of new practice. We are already working with the Risk Management Authority, which is also represented on the top level planning group.

It is hoped to build on the Integrated Case Management (ICM) system developed by the SPS which currently applies to offenders subject to post-release supervision, i.e. those sentenced to 4 years or more, sex offenders sentenced to 6 months or more, offenders on extended sentences and offenders serving life sentences (in total about 3000 a year). It provides for the compilation of information relating to offending, risk and needs of each offender, assessment, initial interviews
with each prisoner, social work input and integrated case conferences for each offender. The Bill provides for joined-up arrangements with the appropriate local authority and the SPS working together in assessing an offender’s risk, during the custody and community parts of the sentence. Managing an offender’s risk from the beginning to the end of the sentence will further enhance public protection. This is a matter of process which will be looked at, amongst other issues, by the Planning Group. The remit and membership of the Planning Group are detailed at Annex C.

Different tests for recall following breach of licence and re-release

It may be helpful to the Committee to explain the difference between the tests for revocation of licence (in section 31) and for re-release following revocation (in section 33). The reasons for wanting the proposed test for recall are at least two-fold: first, Scottish Ministers wish to have the flexibility to recall a prisoner where they have reasonable cause to believe (but do not necessarily have hard evidence) that a licence holder poses a threat to the public; and, secondly, licence-holders must realise that if they do not observe the conditions of their licence then they are liable to continue to serve their sentence in custody. The first of these reasons is the backbone of the “public interest” test in section 31(3) and (5). The second is designed to make it plain, as I think it is entirely right to do, that each of the licence conditions must be taken seriously by an offender and must be observed.

Once an offender has been recalled, the policy intention is that the test for continued detention should be the same as the test for continued detention at the expiry of the custody part or, for a lifer, the punishment part. Where recall is on the basis of, for example, serious charges of assault, the serious harm test will almost certainly be met and continued detention will be appropriate. However, in the situation where someone has for instance failed to live at a particular address in breach of a specific licence condition, the Board will only be able to refuse to direct release if, on investigation, it considers that the offender poses a risk of serious harm. This will involve consideration of the reasons why he/she has failed to live at the address, which could be innocuous or could, for example, be an indication of concern that the offender will try to avoid supervision and return to the behaviours or circumstances which led to the original offence being committed.

We consider that applying different tests for recall and continued detention following recall is an entirely sensible and reasonable approach. It aims to protect the public (where there is risk of serious harm) and to encourage prisoners to observe their licence conditions (where there may be no such risk but the prisoner nonetheless is not complying, meaning that the community part of the sentence is not able to be properly managed).

If, for the sake of argument, we were to make the recall test that of serious harm, it would allow prisoners to disregard any or all of the licence conditions provided that they do not pose a risk of serious harm. For example, if they travel abroad on holiday with their family or friends in breach of a condition not permitting them to leave the UK while on licence, then there would be no sanction for breaching the licence condition. It would also not be possible for Scottish Ministers to recall someone to custody on the basis of early concerns that all may not be well, but rather we would have to wait until the risk of serious harm could be substantiated, possibly resulting in a further offence being committed.

If, on the other hand, the Board were to apply the “public interest” test for re-release then those who were recalled for failure to comply with a condition might not be re-released, even if subsequent investigation revealed that the breach was a relatively minor one and did not, in fact, put the public at any risk. As the Bill stands, in such a situation the Board might wish to direct re-release but with tightened licence conditions.

\[16\] The Committee will note that section 31(1) applies to prisoners on licence in the community and section 31(4) to those on licence but who are in jail at the point the licence is revoked (perhaps because they are on remand for another charge). The only difference is that, in the former case, which will be the typical one, the prisoner’s licence is revoked and he/she is recalled to prison, whereas in the latter there is no need to recall to prison (as that is where the prisoner already is). However, the test to be applied by Scottish Ministers in considering whether or not to revoke the licence is the exactly the same in each case.
Finally, I might add that we have not seen any other evidence from commentators of how we might balance the rights of both the public and the offender in a better and more effective way than that proposed in the Bill.

**Standard licence conditions**

The Committee asked if consideration was to be given to including standard licence conditions on the face of the Bill. The current legislation does not set out statutory conditions and we do not intend to prescribe them in this legislation. The reason for this is that conditions will be informed by the individual joint risk assessment which will be carried out for each prisoner. The risk assessment will have regard to a range of factors including the nature of the offence, the offender’s response during the custody period and the anticipated circumstances on release, providing flexibility and discretion. Although there may well, in practice, be certain conditions which are typically applied, both by the Parole Board and by Scottish Ministers (as happens at present), we wish to preserve the flexibility to tailor conditions to each prisoner individually. That would, in some cases, be hampered if there were statutory conditions to be applied to all licences.

All offenders serving a sentence of 6 months or longer will receive statutory supervision. So will other categories of prisoner, as set out in section 27(2) of the Bill. (Examples of typical conditions that might apply to an offender subject to supervision are attached at Annex B.) The intensity of that supervision will vary from offender to offender and will be informed by the joint risk assessment. The licence, however, may contain a number of additional conditions requiring anything from drug and alcohol counselling, restrictions on movement and travel, through to closer supervision by social workers or tagging. It will also be competent to include a supervision condition, or a number of additional conditions, in the licence of a person sentenced to under 6 months, if that were considered to be appropriate.

**No requirement in the Bill for offenders sentenced to less than 6 months to have conditions attached to licence**

The core element of the Bill is that now all offenders sentenced to 15 days or more will be subject to a licensing regime that fits their risks and needs, thus enhancing public protection. Sections 24 to 26 of the Bill allow for licence conditions to be attached to the community part of the sentence for all custody and community sentence prisoners and life sentence prisoners. It is a reasonable assumption that most of those sentenced to under 6 months will be assessed as a low risk of ‘harm’ to public safety and will not require what we currently understand as “supervision”. The needs of this group are more about providing opportunities for rehabilitation through access to the range of services that they need – such as drug treatment or accommodation services – to help stabilise their lifestyles and to move them away from offending. The licence conditions may only require conditions that require the offender to be of good behaviour and keep the peace and that he/she does not travel outwith Great Britain. However, there will be cases where supervision based on the assessed level of risk is considered necessary for this group.

Scottish Ministers have said many times before that we must move from a system that is driven by sentence length to one based on risk. The Bill provides a substantial package of reforms that significantly improves the present system.

**When will the draft Parole Board rules be available?**

As the Committee will be aware, a draft of the rules to be made under section 2 of the Bill will be shared with the Parole Board for Scotland, SPS and ADSW in order to allow them to comment on the proposals. This will be particularly important in relation to the time limits applicable to the various procedures which will need to take place following the reference of a case by Scottish Ministers to the Board. To enable all parties to be fully involved in this process, it is anticipated that a first draft would be ready by February 2007. I would in any event let the Committee see the first draft once we have consulted all relevant parties and will keep you informed of any changes to this timetable.
I appreciate that the time limits applicable to the various procedures that will need to take place following the reference of a case by Scottish Ministers to the Board have been commented on in the Board's written evidence, particularly in relation to those serving short sentences. I can assure the Committee that there will be no question of Scottish Ministers referring a case in insufficient time for the Board to deal with it. Scottish Ministers have said on more than one occasion that they are committed to ensuring that the Board is legally competent and that it is properly resourced, but resourced in the most efficient and adequate way while at the same time securing best value for money.

I hope you find this helpful. We will gladly provide any further information the Committee may require.

ANNEX A

EXAMPLES OF SENTENCE UNDER CURRENT AND NEW ARRANGEMENTS

Example 1 2 year sentence passed by the court taking into account retribution, deterrence and public protection. This happens currently and will not change under the new arrangements.

<table>
<thead>
<tr>
<th>Current arrangements</th>
<th>New arrangements</th>
</tr>
</thead>
<tbody>
<tr>
<td>No indication given at the time of sentence of period to be served in prison</td>
<td>Indication at the time of sentence that a minimum of 1 year will be spent in prison (custody part) but that the offender could serve a maximum of 18 months. Offender could also be recalled to serve remaining term if licence was breached.</td>
</tr>
<tr>
<td>Offender released automatically after 1 year in prison</td>
<td>Offender’s risk assessed and released between 12 and 18 months of the total sentence</td>
</tr>
<tr>
<td>Not subject to restrictions/ statutory supervision in the community</td>
<td>Subject to licence restrictions and supervision in the community</td>
</tr>
<tr>
<td>May only be returned to custody if convicted of an offence committed during the second year of sentence (at discretion of the court)</td>
<td>May be recalled to custody for breach of licence (not necessarily a new offence) and could, subject to review by the Parole Board, remain in prison until the end of sentence</td>
</tr>
</tbody>
</table>
Example 2 12 year sentence passed by the court taking into account retribution, deterrence and public protection. This happens currently and will not change under the new arrangements.

<table>
<thead>
<tr>
<th>Current arrangements</th>
<th>New arrangements</th>
</tr>
</thead>
<tbody>
<tr>
<td>No indication given at the time of sentence of period to be served in prison</td>
<td>Minimum custody part would be 6 years, however, judge considers that the period in custody should be more than the minimum. Judge indicates at time of sentence that given to the serious nature of offence, history of violence and the fact that the offence was committed when on licence from a previous sentence, a minimum of 8 years will be spent in prison (custody part) but the offender could serve a maximum of 9 years. Offender could also be recalled to serve remaining term if licence was breached.</td>
</tr>
<tr>
<td>Parole Board reviews suitability for early release on parole at 6 year stage of sentence</td>
<td>Assessed as presenting a risk of serious harm and referred to the Parole Board at 8 year stage of sentence to decide whether he/she should continue to be defined</td>
</tr>
<tr>
<td>Released between 6 and 8 years on supervision and subject to licence conditions</td>
<td>Released between 8 and 9 years on supervision and subject to licence conditions</td>
</tr>
<tr>
<td>Subject to restrictions/ statutory supervision in the community</td>
<td>Subject to licence restrictions and supervision in the community</td>
</tr>
<tr>
<td>May be recalled to custody for breach of licence (not necessarily a new offence) and could, subject to review by the Parole Board, remain in prison until the end of sentence</td>
<td>May be recalled to custody for breach of licence (not necessarily a new offence) and could, subject to review by the Parole Board, remain in prison until the end of sentence</td>
</tr>
</tbody>
</table>

ANNEX B

EXAMPLE OF LICENCE CONDITIONS WHERE SUPERVISION IS A REQUIREMENT

In accordance with the provisions of section [insert section] of the [insert Act], the Scottish Ministers hereby release you, [insert Prisoner's Full Name] (DoB [insert date of birth]), on licence with effect from [insert date of release].

You are required to comply with the following conditions (which may be added to, varied or cancelled at any time before the expiry of the licence):-

1. You shall report forthwith to the officer in charge of the office at

   [insert full postal address of the supervising Council]

2. You shall be under the supervision of [insert title and full name of supervising officer] or such other officer to be nominated for this purpose from time to time by the Director of Social Work/Chief Probation Officer of [insert name of Council].

3. You shall comply with such requirements as that officer may specify for the purposes of supervision.

4. You shall keep in touch with your supervising officer in accordance with that officer’s instructions.
5. You shall inform your supervising officer if you change your place of residence or gain employment or change or lose your job.

6. You shall be of good behaviour and shall keep the peace.

7. You shall not travel outside Great Britain without the prior permission of your supervising officer.

[insert any additional conditions]

Failure to comply with these conditions may result in the revocation of your licence and your recall to custody.

This licence expires on [insert sentence expiry date] unless previously revoked

ANNEX C

CUSTODIAL SENTENCES PLANNING GROUP

Background

The Custodial Sentences Planning Group (CSPG) was established in September 2006 to oversee the implementation of those provisions in the Custodial Sentences and Weapons (Scotland) Bill that relate to the sentencing and release of offenders from custody. All criminal justice agencies are represented on the Group as the provisions will impact on all of the main service providers. The Group is chaired by the Justice Department’s Head of Criminal Justice Group and supported by a small Secretariat.

Remit

The Group’s remit, as agreed by the members at the first meeting is:

“To implement the changes in law covering the release and post custody management of offenders. Specifically to:

- agree and deliver an action plan covering the key implementation tasks
- agree the implementation pathways, timings and interdependencies and identify how the policy will be delivered in practice
- monitor and review progress on a regular basis
- scan the horizon to anticipate, identify and handle upcoming issues that need to be managed
- report to Ministers.”

Membership

Membership of the CSPG is as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valerie Macniven (Chair)</td>
<td>SEJD Head of Criminal Justice Group</td>
</tr>
<tr>
<td>Jane Richardson</td>
<td>SEJD Parole and Life Sentence Review Division</td>
</tr>
<tr>
<td>Elizabeth Carmichael</td>
<td>SEJD Community Justice Division</td>
</tr>
<tr>
<td>Colin Mackenzie</td>
<td>Association of Directors of Social Work</td>
</tr>
<tr>
<td>Alan Baird</td>
<td>Association of Directors of Social Work</td>
</tr>
<tr>
<td>Sheriff Hugh Matthews</td>
<td>Sheriffs’ Association</td>
</tr>
<tr>
<td>Alison Di Rollo</td>
<td>Crown Office and Procurator Fiscal Service</td>
</tr>
<tr>
<td>Rachel Gwyon</td>
<td>Scottish Prison Service</td>
</tr>
<tr>
<td>Eric Murch</td>
<td>Scottish Prison Service</td>
</tr>
<tr>
<td>David Forrester</td>
<td>Scottish Court Service</td>
</tr>
<tr>
<td>Marlyne Parker</td>
<td>District Court Association</td>
</tr>
<tr>
<td>ACC Iain MacLeod</td>
<td>Association of Chief Police Officers (Scotland)</td>
</tr>
</tbody>
</table>
Justice 2 Committee, 16th Report, 2006 (Session 2) – ANNEX D

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation/Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>DS William Manson</td>
<td>Association of Chief Police Officers (Scotland)</td>
</tr>
<tr>
<td>Anne Connelly</td>
<td>Community Justice Authorities</td>
</tr>
<tr>
<td>Professor Sandy Cameron</td>
<td>Chair, Parole Board for Scotland</td>
</tr>
<tr>
<td>Rosin Hall</td>
<td>Chief Executive, Risk Management Authority</td>
</tr>
<tr>
<td>Lindsay McGregor</td>
<td>Convention Of Scottish Local Authorities</td>
</tr>
<tr>
<td>Neil Paterson</td>
<td>Victim Support Scotland</td>
</tr>
<tr>
<td>Sue Matheson</td>
<td>Safeguarding Communities Reducing Offending</td>
</tr>
<tr>
<td>Angela Morgan</td>
<td>Families Outside</td>
</tr>
<tr>
<td>Ruairaidh Macniven (as observer only)</td>
<td>Lord President’s Office</td>
</tr>
<tr>
<td>Diane Machin</td>
<td>SEJD - Secretariat</td>
</tr>
<tr>
<td>Graeme Waugh</td>
<td>SEJD - Secretariat</td>
</tr>
</tbody>
</table>

LETTER FROM SCOTTISH EXECUTIVE JUSTICE DEPARTMENT, 15 DECEMBER 2006

Your note of 13 December reported that the Committee has asked for some further information on the question that Ms Macmillan asked the Deputy Minister for Justice when she gave evidence on 28 November about what consideration had been given to the “use of conditional imprisonment in preference to short custodial sentences”.

As the Minister explained in her oral and written evidence, the purpose of the custodial sentences element of the Custodial Sentences and Weapons (Scotland) Bill is to end automatic unconditional early release and achieve greater clarity in sentencing. In short, this is about how the sentence is managed once the judge has decided on the appropriate disposal – in this case custody. As the Deputy Minister for Justice confirmed in her letter to the Committee of 6 December, the proposed measures do not affect the range of disposals available currently to the courts nor do they change the courts’ sentencing powers. “Conditional imprisonment” is not presently a sentencing option for the courts and so to introduce such a measure would amount to a new sentencing option. Such a move would be outwith the scope of this Bill.

As the Minister pointed out, the purpose of the measures in the Bill is to ensure that where a judge had decided that custody is the only option in any particular case that the entire sentence is now managed comprehensively in a way that provides support for the offender and protection for the public with the overall aim of reducing re-offending. However, as the Policy Memorandum makes clear, the measures in the Bill are intended to form part of the Executive’s wider programme of reform and will therefore build on the offender management structures introduced by the Management of Offenders etc (Scotland) Act 2005.

As respects existing alternatives to custody, Scottish courts already have at their disposal one of the widest ranges of community disposals in Europe and these are increasingly used. For example, in 2004-05 the number of community disposals imposed by the courts exceed for the first time the number of custodial sentences imposed. This suggests that the courts are already aware of the value of community disposals in the appropriate circumstances.
ANNEX E – Other Written Evidence

SUBMISSION FROM ABERDEEN SWORDSMANSHIP GROUP

I write to you in response to your Custodial Sentences and Weapons (Scotland) Bill currently being passed through Parliament. Having previously responded to the consultation entitled Tackling Knife Crime – a Consultation, you invited me to respond with my views on how the proposed legislation will affect the group I represent.

In brief, I represent the Aberdeen Swordsmanship Group, a not-for-profit organisation which provides training and study into Historical European Swordsmanship (HES). HES, also known as Historical Fencing, is a Western Martial Art dedicated to the practise of medieval and renaissance swordsmanship/swordplay. It involves reconstruction and replication of European fighting skills under realistic conditions, i.e. using historically accurate blunted steel swords. Currently HES is undergoing a revival and resurgence in Scotland and worldwide, and we are proud to be part of the re-discovery and reconstruction of a martial art from our very own culture. Within just three years the Aberdeen Swordsmanship Group has become the largest HES group in Scotland and second largest in the UK.

Whilst the members of ASG welcome measures to reduce crime, we cannot support this Bill in its present form. As we believe it will curtail the liberties of many law-abiding citizens. We insist that Historical Fencing groups and organisations are added to the list of legitimate users and that the sale of swords to such groups be allowed to continue.

This is necessary because Historical Fencing does not fall under any category in the current list of Legitimate uses as listed in the SPICe briefing 19 October 2006 (06/79).

- “Fencing” – Here you have used this term to describe sport fencers. HES does not fall under this category because it is not a recognised sport, and our swords are nothing like “fencing swords” you describe.
- “Martial arts” – while we are a martial art class, we are not recognised as one by any sporting body. Unlike many Eastern Martial Arts, e.g. T’ai Chi and Tai Kwon Do, we are not organised on a sporting basis. Becoming a sporting group would detract from our primary aim.
- “Historical re-enactors” – are living history re-enactors who put on shows and displays for the general public for educational purpose. While our activities are historically based, our classes are nothing like the activities of these organisations.

We feel strongly that Historical Fencing is does not fit into any of the above categories, and for that reason it merits a category of its own.

We are reviving a pastime from our Scottish culture; surely the Executive does not want to be seen as hindering Scottish traditions and a growing hobby? Not acting upon this matter could effectively bring to an end the reconstruction of Historical European Swordsmanship within Scotland.

Finally, I would like to resubmit the questions I posed in previous correspondence, which raise points that I feel the Committee still needs to address:

- Does the new legislation take into account whether or not swords are blunt?
- Will blunt swords as a whole be exempt?
- What is the legislation’s definition of a “sword”?

Thank you for taking the time to read this letter. We dearly hope you can include Historical Fencers as legitimate sword users, as we believe we have a very strong case to be exempt from the ban of sales of swords.

SUBMISSION FROM ALLSTARUHLMANN UK

We are a major UK supplier of equipment used in the Olympic sport of Fencing, with our head office and warehouse based in Scotland. We also have a shop in London.
We have a significantly growing export trade. With a view to the proposed legislation we have various observations and comments we would like the Committee to consider based on the draft bill and explanatory notes made available to date.

First of all we would wish to state that AllstarUhlmann UK is fully behind the objective of the Bill and, as with all such sensible objectives, would like to see where Scotland leads the rest of the UK will eventually follow.

We understand that the proposed Bill recognises the sport and sale of fencing equipment as a legitimate activity and is not intended to unduly restrict the day to day business of supplying equipment to bona fide individuals, clubs, schools, universities and coaches in Scotland or to hinder their activities or the development of the sport itself. However in practice we feel that the inclusion of our sports’ equipment in the Bill at all has the potential to damage the whole public perception of the sport and could have significant impact to its future development and to us as a business in ways the proposed Bill has not foreseen. We believe that the NGB, Scottish Fencing, will be making representations regarding this in more specific terms.

We also work very closely with the NGB, Scottish Fencing, both as their major sponsor and provider of essential equipment to run competitive events throughout Scotland.

With a view to assisting us to continue to offer the high standard of service that our customers have come to expect, support for the NGB and coaches in Scotland whilst complying with the intention of the Bill, our understanding of certain options currently being considered for inclusion may have a detrimental effect both directly on us as a business, as well as the sport in general.

These are;

**CCTV recordings of sales.**
We sell in several ways. On-line via the Internet, mail order by phone, at events/competitions, to visitors at our warehouse and additionally to Coaches who earn there living from the sport.

We feel that with all these possible routes to our customers that CCTV recording of transactions would in some cases be impossible and in others, such as event/competition sales, be extremely impractical.

**We currently record through the normal course of business what we sell and to whom. This applies to all transactions. These records are kept for a minimum of 5 years.**
We would suggest that additional information could be recorded, such as; name of club attended, NGB membership number etc. if the Committee felt that this was helpful in achieving the Bill’s objectives.

Additionally, event/competition sales and sales to coaches benefit from the fact that we know these customers are genuinely involved in the sport.

We would therefore request that the use of CCTV records is not included in the Bill.

**Multiple Licence Applications.**
As sponsor to the NGB, Scottish Fencing, we support events/competitions throughout the country. This takes the form of supplying the playing surface (piste) and the electronic scoring apparatus essential to the running of any event as well as making essential replacement of personal equipment used by fencers available for sale via temporary retail units.

Having to apply for an estimated 32 individual licences, all with potential differing conditions, would impact greatly on both our business and the sport. This also contrasts greatly with Internet only sellers who under the current proposals would only have to apply for one licence to sell to the whole country. This seems anomalous.

It would not be an exaggeration to say that if these events did not take place the sport’s future would be put in serious peril. These events only run due to the crucial working relationship between equipment suppliers/sponsors, the NGB and event organisers that ensures all levels of participants are catered for across the country to enable Scottish Fencing to fulfil an essential part of it’s development plan.
We would therefore request that a **single licence** option for retailers is included in the Bill.

**Display of Foils, Epees and Sabres at events/competitions.**
There are many differing specifications of the ‘swords’ used in the sport most of which are laid down by the world governing body, the FIE.

It is important that a competitor or coach has the opportunity to ‘feel’ the balance, flexibility, handle/grip fit in the hand etc, etc just as a tennis player or golfer would wish to do with a racquet or club. The more accomplished the fencer the more important this is. In practice a competitive fencer will customise their swords by selecting the individual components that suits them. To do this they have to be able to access these components, which includes the blade, easily at events/competitions.

Once their choice has been made we assemble on the spot often for immediate use.

There are over 60 blade types to choose from, this being the most critical single component. It is therefore important that fencers can easily examine them during the buying process and we as a business can provide this essential service to competitors and coaches alike.

We would therefore request that the Bill recognises this important aspect of the sport in such a way that will **not restrict this practice.**

**Lending or Giving of Swords.**
As stated earlier we supply coaches and many types of clubs with equipment. Both coaches and clubs lend equipment to beginners when they attend club sessions to enable them to participate as they learn the sport.
Additionally coaches and clubs lend equipment to novices to allow them to take part in competitions and training sessions outwith their club environment.
As a business we lend the NGB as well as regional event organisers equipment to enable novice fencers to try the different disciplines as they choose their preferred future pathway through the sport.
This facility is a fundamentally crucial aspect to attracting new participants and early stage development within the sport.
In particular, if coaches were required to be licensed to lend swords in such circumstances, bearing in mind coaches often travel to events and therefore different licensing authorities, with their pupils, this would seriously restrict their ability to coach.

We would therefore request that the lending and giving of swords by clubs, coaches and the NGB within the sport of fencing **be permitted** by the Bill.

Note. We would ask for clarification that lending or giving by us as a business would be permitted within the single license provision as requested.

**Coaches and Clubs who act as Agents for sale of equipment.**
There are very few permanent retail outlets (shops) that sell fencing equipment used in the sport of fencing in the UK and, apart from our warehouse, none in Scotland.
As already intimated Internet and event sales make up a fair percentage of our business.
Because of this historical situation many sales are made through coaches and clubs who take orders for their members acting as our ‘agent’. The proposed Bill would appear to require every club and coach acting as an agent to apply for individual licences.
Coaches in particular who may work across local boundaries would have to apply for multiple licences which could impact on their ability to earn commission on sales as a much valued part of their income.
Clubs would probably stop offering this service and this again would damage our business.

We would therefore request that ‘agents’ are **permitted to operate under the principal’s single licence** by being registered agents of the principal.

We ask the Committee to consider the above requests and we would be happy to submit further information if requested to do so either in writing or by oral presentation.
Sentences of less than 15 days will be spent entirely in Jail. Sentences of 15+ days will have minimum of 50% spent in jail. Thus, offender sentenced to 16 days shall spend minimum of 8 days in jail, whereas a lesser sentence of 15 days requires that s/he spends the entire 15 days in prison. The consequence will be perverse effects on how sheriffs determine the extent of shorter sentences, and this will impact differentially according to the time already spend on remand. If offender has spent 10 days on remand, his defence lawyer might plead for a sentence of more than 2 weeks to ensure the client's immediate release on licence.

The costs of judicial decisions re incarceration should be taken into account - additional care/custody costs to SPS are associated with each reception into prison, and discharge from it. There may also be differential costs for the '1st 7 or 14 days' incarceration (due to induction process for prisoners' health & well-being).

Costs (hypothetical) may be as follows: R (per reception day), I per day for 14 days post-reception, extra D for day of discharge, and P per other prison day. Suppose that $R = 4P$, $D = P$, $I = 3P$, then 15 days' served would cost $R + 14I + D = 4P + 42P + P = 47P$ pricing units where $P$ is the average price per routine prison-day, whereas 365 days would cost $R + 14I + D + 350P = 397P$, only 8.4 times more despite being 24.3 times longer in terms of time-served.

More generally, if $R = rP$, $D = dP$, $I = iP$, then 15 days sentence costs $(rP + 14iP + dP = (r+14i+d)P$ and 365-day sentence costs $(r+14i+d+350)P$. what values does SPS put on r, i, d and P?

Does offender have to be brought back to court for his/her jail component to be increased from 50% to p% where p may be up to 75%; OR is p% set at index trial and can take no account of rehabilitative progress made during incarceration?

What monitoring will there be of how the Bill's introduction impacts on sentence length for different types of offence and offender - what are the baseline data from which change will be measured? Sentencers need to specify, and database record, sentence length & initially-set p% to be served in jail; whether jail-percentage has been modified by the offender being brought back to court for that purpose & what change was made (from p% to q%). There also needs to be a mechanism for identifying associated fatalities and other serious further offences (SFO - eg of violent or sexual nature) committed during the period on licence so that SFO-rate per 1,000 offender years on licence can be related to sentencing pattern.

More generally, new provisions would be better tested-out formally than imposed. Court-based randomisation would allow like-with-like comparison of sentencing patterns & SFO-rates under conventional versus new provisions. Major changes are proposed without a robust evidence-base for their actual efficacy, cost, and cost-effectiveness. Judges deserve to be better served, and likewise the public and offenders themselves.

**SUBMISSION FROM THE BRITISH ASSOCIATION FOR SHOOTING AND CONSERVATION**

**Introduction**

Part 3 of this Bill is of direct interest to BASC (Scotland) as it is likely to directly affect the interests of our 109 trade members and 10,000 individual members in Scotland. It may also affect a number of our 676 trade members throughout the UK as well as our total membership of 123,000 individuals, 50% of whom shoot in Scotland at some point in the year. We are therefore in a position to reflect the concerns of both retailers and users of non-domestic knives.

Whilst we would wish to support any initiative aimed at reducing crime, particularly violent crime, we do not believe that this Bill will serve to reduce knife crime in any significant way. Furthermore, the effects of this legislation will not be measurable in any way as any effects could be attributable to other points in the 5 point plan for reducing knife crime.
Part 3

Our main criticism of Part 3 of the Bill relates to the entirely spurious and arbitrary distinction between domestic and non-domestic knives. We accept that this definition is already enshrined in the Police, Public Order and Criminal Justice (Scotland) Act 2006, but do not feel that this alone is reason enough for further propagating this concept. It is beyond our comprehension how, given that there are no published or supporting figures readily available from any Scottish Police Force or, indeed, the Scottish Executive, it can be concluded that non-domestic knives are the chosen type of knives used in crimes. (We note the analysis referred to in Section 61 of the Policy Memorandum but have been unable to access this research or its findings.) This is also particularly confusing when one considers that some 74% of homicides are committed by friends, relatives or other acquaintances of the victim (71% of whom are under the influence of drink or drugs) (Scottish Executive Statistical Bulletin, CrJ/2005/12, Homicide in Scotland, 2004/05), presumably predominantly in a domestic setting. Further credence is given to our argument by considering that recent published research has shown that at least half of all stabbing incidents involve large, pointed, kitchen knives, prompting a call for a ban on their sale from three medical doctors. (W. Hern, W. Glazebrook, and M. Beckett, “Reducing Knife Crime,” British Medical Journal 330 (2005): 1221-1222).

It is also of concern to us that many of the knives used by gamekeepers and deer stalkers, for instance, are clearly domestic knives in that they are designed for use in food preparation. It is simply obfuscation on the part of the Scottish Executive to maintain that they are dual-purpose in order to make such knives fall under the provisions of the Bill. We would further contend that many knives are used for purposes other than that which they were designed for, thus rendering this false, illogical and arbitrary system of classification void.

The issues of statistics and crime recording also need to be considered carefully to ensure that we are in fact discussing knife crime and not similar offences committed with broken bottles, screwdrivers etc. Additionally, researching this evidence has highlighted discrepancies in the recording, classification and ability to access crime reports amongst the 8 Scottish Police Forces. It is worthy of note that the Executive commented to questioning in the following way: “At present, the only regular statistical collection which includes information on the involvement of “sharp instruments” is the homicide statistics collection”. (Personal Communication, Criminal Law Team member, Scottish Executive Justice Department) This is, clearly, an insufficient basis on which to propose restrictions on a huge selection of knives which are used in the pursuance of land and wildlife management, and food preparation, whether on a professional or recreational basis.

Whilst considering the professional status of land and wildlife managers, we would seek clarification on Section 27A (3), which states:

(3) In subsection (1), “dealer” means a person carrying on a business which consists wholly or partly of—

(a) selling;
(b) hiring;
(c) offering for sale or hire;
(d) exposing for sale or hire;
(e) lending; or
(f) giving,

to persons not acting in the course of a business or profession any article mentioned in subsection (2) (whether or not the activities mentioned in paragraphs (a) to (f) are carried out incidentally to a business which would not, apart from this section, require a knife dealer’s licence).

Our interpretation of this subsection of the Bill means that it would not be an offence to deal in knives to a gamekeeper or other professional knife user without a licence. As it is widely accepted in the shooting industry that anyone who occasionally sells game or deer to cover costs is considered “semi-professional”, it is therefore our interpretation that many of these people could be sold non-domestic knives by someone not holding a licence. This would clearly undermine the intention of this part of the Bill and further serves to highlight the fundamental flaws in the way this Bill is drafted.
Section 27A (4) of the Bill states:

(4) In subsection (3), “selling”, in relation to an article mentioned in subsection (2)—
(a) includes—
(i) selling such an article by auction;
(ii) accepting goods or services in payment (whether in part or in full) for such an article; but
(b) does not include selling (by auction or otherwise) such an article by one person on behalf of another;
and “sale” is to be construed accordingly.

We strongly believe that it would, therefore, be a simple matter to circumvent the need for licensing totally if a dealer were simply to display stock from a supplier based outwith Scotland on a sale or return basis. They are therefore simply selling on behalf of another person and, in our opinion, outwith the licensing requirement. This is yet another major flaw in the drafting of this part of the Bill.

The despatch of items from outwith Scotland also raises another important point: that of internet and mail order sales. As the despatch from an English business would take place from outwith Scotland, there will be no licensing requirement. Part 3 of the Bill thus only serves to damage the interests of many rural Scottish businesses whilst furthering the interests of non-Scottish businesses. We would also further contend that is less than desirable to drive knife sales underground (or across the border) in this way, as there is then no face-to-face influence in deciding who to sell knives to, or indeed whether they are old enough to legally purchase such a knife.

With regards to a licensing scheme, one must consider that a single, well-respected knife distributor supplies some 357 retail stores in Scotland. There will therefore be a considerable burden on Local Authorities. Local Authorities will, in turn, have to seek to recoup costs by charging for the licenses. This simply places a financial burden on many rural Scottish businesses and puts retailers outwith Scotland at a business advantage.

The assertion in the accompanying documents to the Bill that: “any costs associated arising from the swords and knives provisions of this Bill for the courts, prison service or police are likely to be balanced by a reduction in costs for dealing with weapon carrying offences” and that “… licences only apply to those selling to the public …. Apply only at the final stage in the chain between manufacturer and consumer. This reduces the impact on business.” are, in our opinion, fundamentally flawed. There is no evidence to suggest that fewer people will carry knives – surely the logical conclusion is that, if people are currently using non-domestic knives in crime (which has still to be reliably demonstrated), they will simply switch to using widely available domestic knives. In this context, it is worthy of note that there is no traceability of knives sold under the proposed scheme – there is nothing to stop an individual, having purchased a non-domestic knife, selling the knife on. Industry figures reveal that some 40% of knives are sold as gifts, so the ultimate recipient would remain unknown to the licensed retailer and the authorities.

We are also deeply concerned over the flexibility and discretion that will be afforded to Local Authorities in relation to the operation of any licensing scheme. There could be conditions applied which constructively prevent the trade in non-domestic knives as they would be prohibitively expensive. Such flexibility also renders compliance more difficult as it is impossible for representative organisations such as ourselves to offer guidance to trade members that would be applicable to the whole of Scotland. There are also specific issues in relation to our industry, particularly with regard to those traders who attend game and country fairs across Scotland. Who would be responsible for licensing them and would they have to apply to the Local Authority where the event is being held, even though they may already hold a licence from another Authority?

There is no correlation between non-domestic knives, even those exempt from licensing, and lethality or danger. Research has shown that a blade of less than 3 inches can inflict a fatal wound, and that the “ideal” weapon is an approximately 7cm long, stiff-bladed knife such as a paring or vegetable knife. (M.A. Green, “Stab Wound Dynamics: A Recording Technique for Use in Medico-
Legal Investigations,” Journal Forensic Science Society 18, nos. 3 and 4 (1978): 161-163). Such "ideal" weapons clearly fall outwith the scope of this legislation and will remain available on any High Street at a cost of just a few pounds.

The fact that licensing proposals do not differentiate between knives and swords (which are clearly designed for different purposes) means that the Bill is not fit for purpose, as such blanket descriptions of items are rarely helpful. Indeed, were it the intention of the Scottish Executive to seriously reduce knife crime in Scotland, it would seem logical to licence the sellers of all knives, thus affecting the availability of any edged weapon for criminal purposes. It would be a grave error of judgement, which would serve to undermine the credibility of the devolved administration in Scotland, if the measures before us were introduced purely for reasons of political expediency.

We believe that this submission demonstrates that the proposals in Part 3 of the Bill will not further the reduction of knife crime and are based on flawed perceptions of the dangers and a lack of understanding of the problem. All that these provisions serve to do is to adversely affect rural businesses in Scotland to the advantage of English or foreign counterparts. Indeed, the effects will be far more wide-ranging, requiring the licensing of every garden centre, DIY store and many multiple retailers in Scotland who would wish to continue to sell any non-domestic knife. Simply adding further restrictions to our already robust legislation in relation to knives will not reduce crime in the way that education and enforcement of existing legislation could.

SUBMISSION FROM BRITISH KENDO ASSOCIATION

The British Kendo Association [BKA] has a great deal of sympathy with the views expressed in this Bill, but some concerns with the way in which it is couched. It is recognised that there is a problem with the current 'knife culture' that seems to be prevalent in certain groups, and there is no doubt that Japanese swords may have featured in some incidents. The BKA deplores such use of the weapons. Unfortunately the words 'Samurai Sword' makes a good headline in the press. If figures were to be examined, it would be seen that simple kitchen knives have been used more often in knife crime for the simple reason that they are easier to carry and conceal than a sword, bayonet or machete. They are also easily obtained!

It would be true to say that comparatively cheap, usually European made, 'Japanese' swords are more likely to be used in crime than the genuine article. A sword used in Iaido by BKA members [the art of drawing, cutting with and sheathing the sword, often compared to sword dressage] is made by traditional Japanese sword making techniques, and would cost between £1500 and £3500, depending on quality and size. Such a sword is known as a 'Shinken'. The BKA has long been concerned that new members turn up with a cheap imitation which can break with disastrous results, and feels that it is the availability of these imitations that needs to be addressed and controlled. We welcome the suggestion of licensing those who have a genuine reason to use Japanese swords, or even the licensing of the swords themselves, as takes place in Japan.

In the BKA we already recommend that members carry Shinken in a locked container, in the car boot when transporting their sword to and from practice. In fact we also recommend that 'Shinai' [bamboo swords] and 'Bokken' [wooden practice swords] are carried in a bag in the boot. It is further suggested that members carry their BKA membership documents with them thereby being able to justify the reason for carrying swords.

There is an existing timetable built into the grading system that could make BKA licensing system easy to operate. A new member will practice for 12 to 18 months before reaching the grade of 1st Kyu. Three months after that 1st Dan [equivalent to black belt in other martial arts] can be taken. There is then a wait of one year before 2nd Dan and a further wait of two years before 3rd Dan. To take 4th Dan after another four years the candidate would have to use a Shinken according to the rules of the International Kendo Federation. Thus there is no need to practice with such a weapon until a year after 3rd Dan. Until that time an laito [a blunt alloy practice sword] could be used. Thus even a member passing the grading examinations at the first attempt would have had a continuous training and membership of the BKA of at least five years before being permitted to use a Shinken.

Currently 591 of the BKA 1438 members practice Iaido. Of these 129 hold the grade of 3rd Dan or higher, so it would be very easy to produce a register or to license those with a need to use a
Shinken. Because of the discipline insisted upon in the use of the sword, and the self discipline gained from practicing the arts within the BKA, not to mention the cost of a Shinken, there is a negligible chance of these swords being used for criminal purpose.

It is worth noting that the BKA is a leader in the art of laido in Europe. We have won 8 of the 12 Team Championships, and been bronze medallists in the other 4. There have been 13 individual European Gold medallists, 11 Silver and 16 Bronze. [There are competitions at each grade up to 6th Dan]. Six of our members hold the grade of 7th Dan [8th Dan is the highest grade awarded by the International Kendo Federation.] There has not yet been a World Championship, though one is planned. We have, needless to say, great hopes at this level. For such events, contestants would have to be able to take their weapons into and out of the country.

As we have said elsewhere, the BKA would welcome a means of ensuring that Japanese swords, and other similar weapons, were subject to a proper control that allowed members to continue to practice this worthwhile martial art whilst ensuring the safety of the public.

I would like to include a letter also sent to our Home Office from the Collectors point of view.

The Token Society of Great Britain

Our chief worries as collectors may be summarised, as follows:

1) That the Home office does not realise or fully understand, that the Japanese sword, which they refer to as "samurai swords", is considered as a work of fine art worldwide and important items of world heritage and culture. In this country, we have important personal and museum collections. There is no other country in the world that has a ban such as that proposed.

2) The banning of importation of these items would have a similar effect as a total ban. I showed you the Christies sale catalogue for their July sale, most of which has been imported from either Japan or USA for sale in London. A ban on importation would kill this business overnight. London's importance as a centre for art sales would suffer accordingly.

3) The swords collected by those in the UK by individuals, many of who have devoted their entire adult lives to the study and appreciation of Japanese swords as art, are totally different from the blades used in violent knife crime. To these collectors, as well as being the focus of great academic research and learning, their collections represent considerable personal investments. In the Christies catalogue previously mentioned, whilst many Lots are quite modestly estimated in the £3000-£7000 range, there are several in the £20-30,000 range and one estimated at £50-70,000! (this actually sold for over £94,000!) These prices reflect the demand in the fine art market and it is inconceivable that they could be used in street crime. (the highest price that I have seen a sword sold for in London, including buyer's premium, Vat etc., was £265,000)

4) As an example of the damage caused by an import ban, I would site one sword in my collection as an example. This blade cost me £10,000, was sent to Japan for restoration, which cost me a further £3,000 approximately. This included receiving a certificate issued by a Japanese government cultural agency (The Japanese Art Sword Preservation Society), stating that this particular piece is "especially worthy of preservation". I loaned this important sword to a museum in Japan where it was exhibited in 2004. Of course, after restoration, exhibition etc. it needed to be returned to me. With an import ban, this would all have been impossible and therefore the survival of such art objects, as well as important cultural exchange, would be in great jeopardy.

5) Our collectors understand that knife or street crime needs to be controlled and reduced. However, there is no evidence of which I am aware, that ties "samurai swords" to these unsocial acts other than anecdotal evidence in the popular media, who regrettably are not expert in this art form. In many cases, genuine Japanese swords seemed to be confused with the cheap replica or fantasy swords, imported from Europe or bought on the internet. These, unlike Japanese art swords, are readily available in gift shops around the country for a few pounds. To effectively ban our collecting because of such shoddy imitation goods, the sale of which could easily be regulated or stopped, is grossly unjust and would not make good law.
6) It has been suggested some kind of licensing might be a solution, such as registering one's collection at the local police station. Such controls may be a way forward and are well worth consideration. In Japan every sword needs a licence (rather than the owner) and a sword without a licence may be immediately confiscated and destroyed. There are, however, no restrictions on trading export or import, except for very rare swords of high cultural and historic interest. I could see such a thing working in the UK but there would be initial problems with existing collections and administration, I think.

7) Eminent policemen such as Superintendent Leach of Operation Blunt stated (14th June, BBC 1) that "swords and bayonets are not used in street crime"; rather it is small knives that are the problem. Ian Johnson, chair of the ACPO said (31st May Radio 4) that the increase in attacks involving knives is based solely on anecdotal evidence rather than hard data. It is the same media reporting than brands anything long and sharp as a "Samurai Sword".

I am sorry that the above is a bit long-winded and I hope that you have read this far! I think the above are our main concerns right now and I know that certain martial art groups are explaining their benefits to society, such as teaching respect for authority, humility etc. and I appreciate this argument. I am restricting myself to the Japanese ART sword case. It also seems rather weird and illogical that only Japanese swords are under consideration, no other type of sword. I hope that when you apply your solicitor's mind to the above, you will see no reason to want to ban these swords and that even if they were banned; it would have no effect on street or knife crime. Your efforts should be directed at the real problem which are the weird fantasy and combat knives as well as replica swords that are actually used in street crime. (Jack Straw, as shadow secretary in 1966 proposed a ban on combat knives but it was not implemented when he came to power. Maybe if something positive had been done then there would be less of a problem now?

Chairman Token Society.

SUBMISSION FROM BUJINKAN BRIAN DOJO (SCOTLAND)

Qualification to present evidence

We would like to state that, as an organisation, our expertise is in the use of swords in martial arts training. As an organisation and as individuals we have been involved in the teaching of traditional Japanese Swordsmanship Schools for over 20 years and are the sole representatives of our organisation (BBD) in Scotland.

Main Concerns

Sporting Organisations

We have recently had confirmed that although sporting organisations have been consulted we as a martial arts organisation have been ignored.

Organisations such as ours have fundamental philosophical reasons why we are not part of a sporting organisation and yet we are the ones who are most able to comment on the legitimate requirements for the use of swords.

This issue has concerned us from the outset of the announcement of the bill but despite a number of attempts to raise this matter we have not once been given an opportunity to discuss our issues with any member of the Justices Ministers Staff.

A letter received on the 6th November (i.e. yesterday) from Cathy Jamieson, Justice Minister via my MSP attempts to answer one of the questions I had put on the bill:

“As Mr Neilson notes, the sporting exception will include martial arts organised on a recognised sporting basis. My officials are discussing this matter further with representatives of Sport Scotland and groups with an interest in martial arts but our understanding is that there are martial arts activities involving the use of swords, such as Kendo which are recognised by both national and international sporting organisations”
We would like to make it clear that there is no international or national organisation that represents martial arts as a whole.

We are the only body representing our art in Scotland and we have not only not been consulted by the Justice Ministers officials but also dissuaded from correspondence when as an organisation we queried the definition of ‘sporting’.

We were sent the following email after having been given standard press releases.

“I am sorry that you found my reply unsatisfactory. I have provided all the information that is in the public domain on this matter. The Bill and accompanying documents will be introduced to Parliament in 1st week of October. At that time the policy intentions of the Bill will be revealed. Until there is nothing that I can add to Minister’s statement of end August.”

There was no offer to discuss or make representation on this matter to any official of the Parliament.

We feel there is a fundamental misunderstanding about the way Martial arts in Scotland are organised and taught.

If this mistaken assumption is perpetuated we could find a situation developing where members of a Judo club with no interest in sword training would be considered fit and proper to own and use swords whereas my fellow instructors and I, with 20 years of training each would not.

Rights and Responsibilities
As a Martial Arts organisation hoping to be recognised as a legitimate authority on who is a valid person to own a sword what legal status, protection and obligations will we have?

Definition of a Sword
There is not yet any legal definition of a sword that we have been made aware of.

Ministerial Power
Our reading of the proposed legislation is that Scottish Ministers will, from the date of enactment of the bill, have the power to vary the legislation – we have concerns that swords will be able to be fully banned on a whim.

The key recommendation of the consultation with regard to swords has been ignored by the Scottish ministers in drafting this bill so what safeguards will there be for the promised rights of continued legitimate use?

Legal Defence
The 1988 act is structured around the concept that something is an offence and one must prove innocence using a valid Defence. This criminalises a previously law abiding section of society.

Travel with Swords
What is to be the procedure for anyone transporting a Sword to a training event overseas and returning to Scotland? This is something that we do regularly. Will that person have to provide proof of purchase and if so what is the status of:

1. Swords purchased prior to the act?
2. Swords legitimately purchased by practicing martial artists overseas?
3. Swords purchased via the Internet or mail order from companies out with Scotland?

Effectiveness
We would like to point out that in our opinion this legislation is unlikely to make any difference to violent crime as indicated by the lack of changes from the original 1988 Act on which this legislation is based.
Final Statement

Given all the above we would like to have the opportunity to give oral evidence as there is insufficient room for us to air our concerns and we have, as one of the most affected group of individuals, had the least say in this legislation despite many attempts to make our voice heard.

We have tried our utmost given our very limited resources as an organisation to participate in the Democratic process and have at various stages been thwarted or ignored.

We are one of the longest practicing, largest and most successful groups practicing our particular art in Europe; this legislation however has the potential to destroy over 20 years of dedicated hard work.

We look to the Justice 2 committee to give us the opportunity to state some of our concerns and ensure the legislation does not criminalise law-abiding people.

SUBMISSION FROM MR RENNIE CAMERON

I set out below my response as “written evidence submittal” in respect of two points in the subject Bill for which a reply was sought.

Reference 2

The sale of swords will be banned subject to exceptions for specified religious, cultural or sporting purposes.

As a practitioner of Japanese and Korean sword arts I uphold the view that the sale of swords should be banned, with exceptions. Such swords should only be sold by those places dealing in similar weaponry and approved by the authorities.

Sport enthusiasts, sword and historical re-entactment groups together with bona fide sword collectors should be permitted to retain the privilege of ownership under some form of licencing ownership scheme.

Reference 3

The introduction of a mandatory licencing scheme for the commercial sale of swords and non domestic knives to be known as a knife dealers licence with local authorities being the licencing authority.
As previously set out in documentation provided under the Consultancy Period, a licensing scheme can easily operate for a nominal fee. This should operate on an annual basis with the sword sighted by the relevant authority office.

Summary
As a keen sword exponent, I would be delighted to make myself available for any discussion which may involve the sale/licensing of swords. I can only admit to using swords as stated above in the Japanese and Korean Martial Arts where we use both “cutting” and “practice” swords. These swords are manufactured to a high standard to meet the heavy duty use and I would be prepared to bring these under safe transit lock and key, should any of the Officials require sight of such instruments.

Should you require any additional information or sight of my Licences which are issued through my organization and previously offered to you, please do not hesitate to email or contact me.

SUBMISSION FROM MR JOHN CAMPBELL

Custodial Sentences

“Sentences of 15 days or more will have a minimum of 50% spent in custody with the remainder of the sentence being spent in on licence in the community.”

While this proposition is a start, I don’t think it goes far enough. The 15 day period will only affect fine defaulters and then only the lower end, £400.00 or less. The length of custody only sentences should increased to at least 1 month /30 days or ideally to 3 months/90 days. The 15-day period is simply not long enough for any form of intervention/rehabilitation or deterrent to take effect.

The 1 month /30 days option includes the majority of fine defaulters and would strengthen the issuing of fines as a form of punishment to be respected. It would also tie into 4-week (minimum) period for the issue of Curfew licences.

The 3 month /90 day option would equal the 50% limit of a 6 month sentence. This would further strengthen the fines system and would allow Drug counsellors, Social Workers and others to help address offending behaviour. However, the issue of Curfew Licences (HDC) could be problematic and may have to be reconsidered.

On the subject of Curfew Licences (HDC), what is the point in having the courts give a custodial sentence when The Scottish Ministers can override the wishes of the courts and release the prisoner on a Curfew Licence? (See Section 36 subsections 2, 4, and 8.) Allowing HDC to override the wishes of the court defies logic and undermines the whole point of this bill. For example, the court gives someone a 12-month sentence and orders him or her to serve 75% (9 months). That person qualifies for a Curfew Licence after about 4.5 months (subsection 4(ii)). So in effect they could be out after 4.5 months of a 12-month sentence.

Section 22: Effect of multiple sentences
I hope there will be clarification on how consecutive and concurrent sentences will be incorporated into the new sentencing arrangements. Ideally, I would like to see concurrent sentencing done away with. Any concurrent sentence is in fact a non-sentence. It serves no purpose and is a waste of taxpayer’s money. This is especially true of prisoners who are already serving a sentence and subsequently receive another sentence that is concurrent to the original one.

The downside of these propositions could be an increase in the Prison population. However, the Prison population is increasing as we speak. At least this way we may be able to do some good and help some prisoners to break the cycle of re-offending. Something this bill will not do in its current form.

Weapons

From the Policy memorandum
“90. Section 27A(2) provides that the section applies to knives, knife blades, swords or other bladed or pointed articles designed or adapted for causing injury (e.g. arrows or crossbow bolts). Knives and knife blades designed for domestic use are excluded. Section 27A(6) allows the list of articles covered by the to be altered by an order made by Scottish Minister.”

I am still furious about this, at no time was there any indication that arrows or crossbow bolts were to be included. The consultation was about knife crime, knives and swords. Not arrows or bolts. Slipping this “through the back door” has denied Archery Organisations and Archers the opportunity to respond. This is unfair and undemocratic. As far as I am aware, there is not any specific law covering bows and arrows, but I do know that crossbows and all associated items are covered by the 1987 Crossbow act. So why is the Executive doubling up on legislation and why is behaving in such an underhanded way?

A point to note, anything can be “adapted for causing injury” not just bladed or pointed articles. Why are domestic items excluded, they are more widespread and easier to get hold of? Won’t this Bill result in domestic knives being used more and more? This Bill blames the item but fails recognise that it is the intent of the person that causes the damage to our society.

Defences for sword ownership.

“102. These additions to the existing defences under section 141, and the other modifications of those powers in respect of swords, will address the issue of the legitimate uses of swords such as:

- Antique Collecting – the preservation of the past by many individual collectors in this country is often to the benefit of our museums and national heritage bodies.
- Fencing – fencing swords are used in organised events across the UK and internationally;
- Film, television and theatre – swords are frequently used as props in period dramas;
- Manufacture – sword-smiths in Scotland manufacture swords, in some cases to extremely high specifications, involving traditional techniques and attracting international interest and renown;
- Martial arts – swords are used in many martial arts organised on a national and international basis;
- Re-enactment – re-enactment societies do much to bring significant aspects of Scotland’s history to life, using quality reproduction weapons;
- Religion – the sword is of particular religious significance to Sikhs; and
- Scottish Highland dancing – the traditional Scottish sword dance, when authentically performed, inevitably involves swords.”

I am pleased that there will be defences for the owning of swords, however I have some concerns mainly revolving around proof of defence. For example, what proof is required to purchase a sword? How will this information be stored? Who will have access to it? Am I required to have proof of defence on me at all times? All these questions are important as one my defences is based on religion.

I am a Pagan and the ownership and use of a sword is very important in the expression of my spirituality. Pagans are not alone with regarding the sword (or other blades, be it an Anthame, Boline or Sickle) as an important part of their religion. As you quite rightly state swords have particular significance to Sikhs as well. According a breakdown of the 2001 Census, Paganism is the 7th largest religion in Scotland and Sikhs are the 4th largest. Together we represent the 3rd largest religious body in Scotland, yet our right to purchase/make, carry and use items of religious significance (i.e. swords or other bladed items) will be subject to state control. We will have to provide proof of faith and carry that proof with us if we are not to be considered a criminal. Something other religions in Scotland will not have to do. Providing proof may be easier for the Sikh community but for Pagans this could be extremely problematic as only a small percentage of the Pagan community are members of the Pagan Federation (Scotland). Finally, we will have to provide ID, have our names, addresses and reasons for purchase recorded. Thus having our religious anonymity removed. This is a disappointing situation to find ones self in, especially a country that prides itself on its democratic credentials and tolerance to minorities.

In conclusion, I fear this bill will not live up to its expectations. It will not make any constructive changes to the current sentencing arrangements; in fact it will most likely complicate things
needlessly for little gain. I predict that the courts and the general public will be bitterly disappointed when they realise that the new sentencing powers will amount to nothing due to HDC. The restrictions placed on the dealers, manufacturers and owners of swords and non-domestic knives will only impact on law-abiding people. It will not deter criminals, who by their nature do not heed the law of the land. Finally, this bill will with most likely make swords and non-domestic knives more attractive to criminally inclined young men for no other reason than they more difficult to get. Banning something will not stop the criminally inclined from using or wanting it.

SUBMISSION FROM ANDREW COYLE, PROFESSOR OF PRISON STUDIES, KING’S COLLEGE LONDON

I am Professor of Prison Studies in King’s College, University of London. Between 1973 and 1991 I was a Governor in the Scottish Prison Service, where I governed Greenock, Peterhead and Shotts Prisons. Between 1991 and 1997 I was Governor of Brixton Prison in London. From 1997 until 2005 I was Director of the International Centre for Prison Studies in the School of Law in King’s College London. I am a member of the National Advisory Body on Offender Management.

I have been asked to provide a short written submission on the custodial sentences aspects of the Custodial Sentences and Weapons (Scotland) Bill Custodial Sentences and Weapons (Scotland) Bill to assist the Justice 2 Committee in its scrutiny of the Bill. Specifically, I have been asked to comment on the extent to which I consider that the provisions in this Bill will achieve their expressed purposes, particularly in connection with reducing re-offending and better protecting the public.

Imprisonment and public safety

Official records show that crime rates in Scotland have been falling consistently for a number of years. These include serious crimes, such as murder, non-sexual violence and house-breaking. The rate of ‘offences’ has shown an increase in recent years. The term ‘offences’ is applied to illegal actions connected with motoring, low-level assaults and breaches of the peace. This increase can be explained mainly by a significant increase (by two thirds in the year 2003) in the number of detected offences of speeding, due to the installation of speed cameras.

In general terms Scotland is a much safer place in 2006 than it has been for many years. The question as to whether the public feels safer is another matter and is beyond the scope of this short paper.

Despite the clear fall in crime rates the number of persons in prison in Scotland has risen inexorably in recent years. It now stands at almost 8,000, 20% higher than it was ten years ago and the highest it has ever been. The Scottish Executive predicts a continuing rise in the number of people in prison and has plans to provide two new prisons, with around 1,400 places within the next few years. As in other countries, there is little research evidence to suggest any link between crime rates and imprisonment rates.

In international terms, Scotland has the third highest rate of imprisonment in Western Europe. If the predicted increases occur, it will have the highest rate. Rates of imprisonment are usually quoted per 100,000 of the total population. It has been suggested that they should instead be quoted per rate of crime and that, if this were done, Scotland would have a relatively low rate of imprisonment. This suggestion does not bear scrutiny. It is notoriously difficult to compare rates of crime across countries because of different legal definitions of crime and different methods of collecting data. The most reliable international data in this field is provided by the International Crime Victims Survey. The latest available figures for this indicate that Scotland is in 8th place out of 17 countries for burglary and attempted burglary and 4th out of 17 for violent crime.

The high rate of imprisonment in Scotland comes at a cost. The annual cost to the tax payer of the Scottish Prison Service (SPS) for year 2005-06 was £280 million. In response to a recent Parliamentary question the Minister for Justice reported that the Chief executive of the SPS estimated that the contract value of the new prison at Addiewell would be “£369 million in Net Present Value terms”. I am advised that in real terms this will mean a cost to the public purse of around £1 billion over 25 years.
None of the above figures take any account of the implications of the likely outcome of the proposals in the Custodial Sentences and Weapons (Scotland) Bill. One estimate is that the provisions in the Bill may lead to an increase in the daily prison population of about 1,000. This will be in addition to any other projected increase.

If it could be shown that an increase of this size might result in Scotland being an even safer country than it is today, then it might be possible to make an argument for such a way forward, whatever its cost in financial and social terms. It is for the Justice 2 Committee to decide whether any evidence to this effect has been provided.

The aim of the Custodial Sentences and Weapons (Scotland) Bill

The Scottish Parliament Information Centre’s briefing for this Bill indicates that it “aims to deliver the Scottish Executive’s commitments to end automatic and unconditional early release of offenders and to achieve greater clarity in sentencing”.

For many years only a minority of prisoners have served the full sentence of imprisonment passed on them by the court. In the UK there are three main grounds for release before the end of sentence. They are automatic release, generally known as remission, discretionary or conditional release, usually known as parole, and home detention curfew, a relatively recent innovation.

The practice of remitting part of a sentence of imprisonment dates from the time of transportation, when convicts who had been of good behaviour were given a ticket of leave from their sentence. Good behaviour was calculated by a system of marks, which entitled a convict to a set number of days of remission according to his behaviour. This system was in due course applied to those convicts who served their sentences in the United Kingdom and by the end of the 19th century it was applied to all sentenced prisoners. Throughout the course of the 20th century there were several increases in the proportion of sentence that was remitted, from one sixth to one quarter, to one third and currently to one half for all sentences of less than four years.

The parole system, conditional or discretionary release under supervision, came into operation in 1968 and applied to all prisoners serving determinate sentences who became eligible for release on licence after serving one third of their sentence or twelve months, whichever was the longer. In practice, this meant that parole applied to prisoners serving over 18 months. In 1991 the threshold for parole was raised to include prisoners serving sentences of four years or more. These prisoners became eligible to apply for conditional release on licence for the period between half and two thirds of their sentence.

For the last fifty or so years there has been a presumption that all prisoners would be given remission unless their bad behaviour in prison warranted that some of it should be removed. The increases in the rate of remission were usually a response to concern about the increasing prison population. Similarly, the introduction of parole was largely a pragmatic response by government to the need to manage the size of the prison population, although it was also related to a belief that the rehabilitation of prisoners could be aided by early release, coupled with support in the period immediately thereafter.

The system which exists today is complex and difficult to understand, even by “experts” in the system, be they judges, prisoners or those who operate the system. Above all, the public, including victims, find it very confusing. The aim of the present Bill “to achieve greater clarity in sentencing” is admirable. However, it is not immediately apparent that the Bill will achieve its aim. Even when approaching it in a positive manner one needs a calculator and a great deal of patience to unravel the arithmetic of what a prison sentence will mean in the future. In the world of criminal justice, experience teaches one to be wary when words are given a new meaning. The current Bill introduces one such innovation with the term “community prisoner” (Section 4). This is not a term which will be easily understood by the public.

Everyone, the public, victims, judges and offenders, will be better served if there is greater clarity in sentencing. Currently, if a sheriff passes a sentence of six months imprisonment, he or she is well aware that this means that the guilty person will spend three months in custody. It is sometimes
suggested that if the sheriff decides that a particular offence merits three months in prison then he or she will pass a sentence of six months. Judges should not do this and all will deny that this ever happens. However, common sense suggests otherwise. None of this is clear to the victim or the person in the public gallery. He or she will expect that a sentence of six months in prison means just that and, therefore, is likely to be surprised to see the guilty person walking the streets after six months. An important consideration when discussing clarity in sentencing is whether, for the offence described above, the clear sentence passed by the judge should be three months or six months. If it is to be three months, there will have to be a process of public education to explain that this does not imply greater leniency on the part of the court (also allowing for the fact that prison sentences in Scotland are generally longer than those for similar offences in comparable European countries). If, on the other hand, it is in future to be six months, this will mean in crude terms a doubling of the already high number of persons in prison in Scotland. The current Bill tries to deal with this dilemma by a process of realignment of the amount of sentence to be spent in prison. History does not suggest that this will be successful. There are sentencing models currently operating in other Northern European countries which would be well worthy of study.

Reducing re-offending and protecting the public

This short paper is not the place to embark on a long discussion about the purposes of imprisonment. Suffice to note that the main consideration for the judge dealing with an offender in the dock, conscious of the victim who may be in the public gallery, should be to ensure that the sentence he or she passes is commensurate with the crime that has been committed and that, if a prison sentence has to be imposed, its length should be proportionate.

The reality is that the likelihood that a guilty person will not re-offend in the future is reduced when he or she is sent to prison. Levels of recidivism of released prisoners around the world demonstrate this fact. That is not to say that the prison authorities and other agencies should not do every possible to minimise the damage done by imprisonment and to increase the possibility that after release from prison formerly incarcerated persons should lead a useful and law abiding life. In order to achieve this, there has to be close collaboration between the Prison Service and the agencies which will have dealings with the offender after release. These latter will include the Social Work Department Criminal Justice workers, as well as those responsible for housing, for employment, for health and other community agencies. The Scottish Executive has recognised this reality by setting up Community Justice Authorities under the Management of Offenders legislation recently enacted by Parliament. This legislation places Scotland at the cutting edge of dealing with the problem of crime as it affects communities. It would be a pity if the work of these new authorities were to be made more difficult by some of the provisions in this Bill. Not least among these, as explained by a number of those who have already provided submissions to the Committee, is the fact that the total number of released prisoners to be dealt with by criminal justice social workers and others will increase significantly.

One of the aims of the Bill is to ensure proper supervision of those offenders who present a serious threat to public safety and security. This is also an objective of the recently established Risk Management Authority. An unforeseen and unfortunate consequence of the Bill may be that by widening the net of supervision to include many low level offenders the supervision given to the relatively small number of released persons who will continue to be a serious threat to public safety will be reduced and the danger that they may re-offend will be increased.

SUBMISSION FROM CROWN OFFICE AND THE PROCURATOR FISCAL SERVICE

COPFS is grateful to the Justice 2 Committee for the opportunity to comment on the Custodial Sentences and Weapons (Scotland) Bill. Our officials have been working closely with colleagues in Justice Department in the preparatory phase and our views are reflected in both the Policy and Financial Memoranda.

Since Justice Department have policy responsibility for this Bill, we do not offer comment on its general principles although we would, of course, be happy to address any specific question the Committee may have for COPFS arising from its deliberations. COPFS will continue to work closely with Justice Department colleagues as the Bill progresses, offering advice on the practical application of the Bill’s provisions as they relate to both custodial sentences and weapons.
COPFS is represented on the Custodial Sentences Planning Group which is responsible for managing progress on policy delivery to secure early and effective implementation of the new sentencing provisions. Since breach of licence during the community part of a sentence is to result in recall to prison rather than prosecution of new, these provisions have a restricted impact on COPFS, but we will contribute to the agreement of implementation pathways, timings and interdependencies and help identify how the policy will be delivered in practice with our criminal justice partners. COPFS has an interest in any rise in sentence appeals that may result from the imposition of a more than minimum custody part of a sentence. We will monitor sentencing practice and its consequences carefully in this regard.

COPFS officials are also working closely with Justice colleagues on the offence provisions associated with the licensing scheme for the commercial sale of swords and non-domestic knives.

SUBMISSION FROM MR ROBERT EDMINSON

Representation on Part 3 of the Custodial Sentences and Weapons (Scotland) Bill.

I collect and deal in antique firearms and militaria including bayonets. I trade at three arms fairs in England and sell about 12 bayonets a year.

The use of ‘composite’ bills is lazy legislation the subjects covered by this bill should have separate bills.

The proposals in Part 3 covering the Licensing of knife dealers are a waste of time and a misdirection of effort, placing unnecessary burdens on Trading Standards staff.

Paragraph 66 of the Briefing Note states “A wide range of powers is now in force and there is a range of penalties available to the court, including fines and imprisonment.” It then lists FIVE Acts of Parliament. It must follow that what is needed is the proper USE of legislation i.e. it’s enforcement NOT more legislation.

Paragraph 80 of the Briefing Notes goes on to trumpet the recent knife amnesty. 12,500 weapons were handed in. If we assume that there are two million households in Scotland each with two knives that gives a 0.003% reduction in the number of knives available. It is obvious that the real percentage is even lower. This just proves how little value there is in gesture politics which is all this licensing proposal is.

Section 27B Applications for knife dealers licences: notice
Giving public notice of every application is a thieves’ charter. This should be dropped.

Section 27C (1) (b) & (c) Knife dealers licences: conditions
To allow licensing authorities to add conditions will lead to over complication and could place dealers in some areas at a competitive disadvantage. Never mind the cost of this licence which in Edinburgh will be over £100.00.

Paragraph 114 of the Briefing notes gives examples of the various steps local authorities could add to costs by specifying CCTV etc. The final point is ridiculous in giving local authorities the power to dictate the packing used in mail order transactions. Surely this is for the Royal Mail to specify and enforce?

Section 27J (3) (b) Forfeiture Orders.
This gives a court unlimited powers of forfeiture, where is the right of appeal?

Section 27N Remote Sale of knives etc.
I store my bayonets in Edinburgh.
I only sell them at a trade fair in England. I trust that I will NOT require a licence?
Should I advertise them on the internet as ‘Only for sale to Customers outside Scotland’ and mail them to destinations OUTSIDE Scotland from a Post Office in Scotland it appears that I need a licence and to incur the costs that will entail.
Should I take them to Berwick upon Tweed and post them from there am I correct in assuming I do not need a licence?

What is to stop anyone ordering knives and swords from suppliers in the rest of the U.K. and having them posted to Scotland? If the answer is nothing then I what is the point of the licensing scheme, except to waste time and money and to make the Justice Minister look as if she is doing something.

Section 27R Orders under sections 27A to 27Q
The conferring of powers by Statutory Instrument is an abuse of democracy and should be limited by elected politicians. This Bill hands far too much power to ministers. The need for such wide ranging powers is an illustration of how badly drafted this Bill is. In that in effect it is saying ‘We know we have not thought this through and will have to come back and change it’. The Committee should reject this sloppy approach and send the Bill back for proper drafting.

Section 45 Sale etc. of Weapons
Again this allows Ministers to use Statutory Instrument to vary offences and exemptions and again Parliament is meant to ‘write a Blank Cheque’ to allow Ministers to do what they like. The Committee should reject this sloppy approach and send the Bill back for proper drafting

Section 46 Sale etc. of swords
This is a British Pattern 1907 Bayonet. The blade is 17 inches long and the overall length is 21 inches. Is it a sword? (For Information this is valued at about £150.00)

Where is the definition of a sword?
I ask as I deal in bayonets and some of the older ones are of a length of a short sword are these to be dealt with as knives or swords?

Until a workable definition of a sword is produced no further progress should be made with this bill.

Paragraph 94 of the Briefing Notes states that ‘The ban on the sale of swords will be implemented by using the powers in existing legislation modified by the Bill.’ It goes on to state that it will be an offence to sell swords (subject to certain defences which will allow swords to be sold for specified approved purposes) This is not a BAN it is a restriction. The Bill should be reworded to make it clear that the sale of swords is RESTRICTED to specific purposes and these should be included in the Bill and NOT subject to promised exemptions by Statutory Instrument.

I cannot help thinking that reason for the convoluted form of wording is so that Ms Jamieson can score a cheap political point by saying she’s BANNED something!

Criminal Justice Act 1988 (c33)
Section 141ZA Application of section 141 to swords: further provision
Throughout this section there is reference to ‘The Scottish Ministers may’ They may add items to the section, they may provide for defences to offences, they may increase penalties, they may create offences, and they may grant or revoke permissions.

Ministers must be told to come clean and say what they are going to include in this section and what exemptions there are to be. Are Antiques swords to be allowed? Are ‘bone fide’ collectors to be allowed to buy and hold swords? If so how are they to be defined? If knife crime or sword crimes do not fall can the Ministers come back in two or three years time and say that Antiques are no longer excepted and collectors will have to hand in all their swords?
In Paragraph 109 of the Explanatory Notes it states that Section 141 (1) of the 1988 Act prohibits the importation of the weapons listed. Is it the intention of Section 141 ZA to prohibit the importation of swords to Scotland? If so is there a proposal to do the same in the rest of the U.K? To have two sets of import rules for different parts of the U.K. would be ridiculous and would lead to all sorts of anomalies.

Paragraph 101 of the Briefing Notes extends the term Antique to the end of the Second World War and if this exemption covered bayonets it shows some common sense. Provided that there really is an exemption for antiques and Parliament does not just blindly accept the Ministers assurance that she or he MAY provide one.

In view of the increase in bureaucracy and costs of the licence, at least £100.00 in my case surely there is a case for exempting small traders, with say a turnover of under £1000.00 from this scheme, or to exempt those who deal in antiques.

Finally may I ask you all to read ‘Knife Crime Ineffective Reactions to a Distracting Problem’ by C Eades.

And remember ‘As long as there is un-sliced bread opportunities for knife crime exist.’ C. Eades.

Reject Part 3 of this Bill.

SUBMISSION FROM FACULTY OF ADVOCATES CRIMINAL BAR ASSOCIATION

I am writing to you in response to your letter of 10th October 2006 to the Dean of Faculty seeking submissions in respect of the above.

As Chair of the Faculty of Advocates Criminal bar Association, your letter has been given to me to provide a response.

Today is the last day for submissions, just short of one month from your request. I regret to advise the Committee that we cannot provide a proper or detailed response to a bill which contains some 50 provisions within that timescale.

I would only add that in very general terms we welcome the regulation of the position and increased transparency in respect of the release of prisoners and the supervision of same remaining with the Parole Board.

SUBMISSION FROM CHARLIE GORDON MSP

I welcome the opportunity to comment on the above draft Bill.

I support the general principles of the Bill.

- I strongly support the key provisions proposed by the Scottish Executive within the ambit of the Bill in relation to controls and sanctions on, among other things, the inappropriate use of knives and swords.
- Sentences of less than 15 days to be spent entirely in custody.
- Sentences of 15 days or more to provide for at least 50% of the sentence to be spent in custody, with the remainder of the sentence to be spent On Licence in the community.
- Courts to have the power to increase the custody part of a sentence up to 75%.
At the end of the period of custody, and after a risk assessment, any offenders still considered to be a risk may be referred to the Parole Board.

A ban on the sale of swords, except for specified religious, cultural or sporting purposes.

The introduction of a mandatory licensing scheme for the commercial sale of swords and non domestic knives, to be known as a Dealer's Knife Licence, with local authorities being the licensing authorities.

I support all the above because there is plenty of evidence of the extent of knife possession and misuse in the official crime figures.

I also support it because there is anecdotal evidence that many young people regard it as alright to carry a knife for “protection”. This attitude demonstrates not only an ignorance of the illegality and dangers of knife possession, but the underlying fear which drives the issue.

It is not only young people who fear knife crime; hundreds of my constituents have signed my petition on the issue.

I urge the Committee to support the above measures as steps forward in our essential response to what is a major challenge to us all.

SUBMISSION FROM THE GUN TRADE ASSOCIATION LTD

General

This submission is, as required, concerned with the general principles of the Bill. This Association has noted many matters of detail in the wording of the Bill upon which it will seek permission to make further submission at subsequent stages of the Committee’s scrutiny.

The Bill seeks to reduce the use of bladed or pointed instruments in crime in Scotland by creating a series of prohibitions and a system of licensing those who sell such items by way of business. In doing so, it will impact on many legitimate users of such items to whom reference is made in publicity connected with the Bill. It has a significant measure of support but both the Bill and the support it has received appear to be based on misconceptions that could and should have been remedied before the bill was presented.

Severance of Part 3 of the Bill

Measures relating to weapons form a small part of a larger Bill concerned with custodial sentences. This system of incorporating contentious measures in a complex Bill has grown at Westminster where it has invariably led to a concentration on the major aspects of a Bill to the neglect of matters that may be vital to a minority of the population. The system also leads to rushing through measures that are unsatisfactory so that the Bill as a whole is not delayed or lost.

It is seen as extremely unfortunate that this system should have been adopted in Edinburgh. A complex topic such as the effectiveness of measures to control a particular form of crime demands a vehicle designed precisely for the particular purpose of bringing all aspects of that branch of the law into consideration, resulting in simpler and more easily understood legislation. If the very different parts of the Bill are severed one from the other they will be able to proceed through Parliament at different times and at a different pace, allowing for proper research and debate on one part without compromising the passage of the other part.

It is submitted that Part 3 of the Bill should be severed from the major parts.

Practicality

The Bill seeks to impose a licensing system on the sale (etc) of certain knives. Questions of interpretation will arise in respect of the definitions that are suggested, but these may not be matters for consideration at Stage One of the Committee’s scrutiny. There is, however, the
question of whether or not the Bill can work, given that it applies only to Scotland and that no similar measures are in place in the remainder of the United Kingdom, within the European Union or elsewhere.

The Bill does not propose to penalise acquisition or possession. A person residing in Scotland will be able to buy a knife of any sort by simply crossing the border, or by mail order. Dealers in other countries will arrange to provide catalogues and to fill the demand by mail order. The net effect will be to penalise Scottish traders whilst improving the business of traders in other countries.

Scotland cannot be considered in isolation in measures such as this.

Lack of Targeting

There has been wide-ranging consultation in this case, but those who were consulting and those who were consulted have been reaching conclusions without the necessary evidence.

The Bill is designed to provide a part of an answer to a problem that no one would claim is less than serious, but the problem itself has not been researched or defined. Not only does this make it impossible to provide the answer, it also makes it impossible to measure the effectiveness of the Bill after its implementation.

Statistics produced in June 2005 show that between 1998 and 2003, “knives” (in fact any bladed or pointed instrument) were used in between 40.9% and 53% (average 48%). of homicides in Scotland.

Scotland is by no means unique in having sharp instruments at the top of the list of methods of killing. Over a long period sharp instruments have been the favoured homicide weapon in England and Wales though accounting for a smaller proportion of the homicides. In 2003/04 sharp instruments accounted for 237 (28%) of the 833 homicides, but firearms accounted for 73 cases against a total of just 2 in Scotland.

A high proportion of homicides in all areas is domestic in nature with a close relationship between victim and offender. A good deal of research has been conducted into the availability of weaponry as a cause of homicide and into the ‘substitute weapon’ theory. If a large proportion of the knife crime in Scotland is domestic crime committed within the home, the presence or absence of non-domestic knives can hardly be a factor since domestic knives, and indeed a wide range of other weapons, will be readily available.

Furthermore, if a domestic situation has developed to the point at which one of the parties wishes to, or is willing to mount a potentially lethal assault on the other, the choice of weapon will depend more on what is within reach than on the design or potential lethality of the weapon that was actually used.

Homicide statistics, as presented in the original documentation accompanying this Bill, do not provide a basis for logical legislation but some of the material may provide a strong indication of the nature of the real problem which is capable of being tackled more directly.

Evidence from Strathclyde shows that the age of offenders peaked at 17 and fell of rapidly from 24 years to become very low with mature offenders. Those aged 17 were 2.5 times more likely to be involved in the use of knives than those at 27 and 5 times more likely than those at 37.

This points to a peculiar problem with young people and to the fact that mature people, who form the basis of legitimate users such as sportsmen and collectors, generate a very low risk.

That evidence suggests (but does not prove) that the major part of the problem was identified by the Justice Minister in her foreword to the consultation process as ‘the booze and blades culture’. Assuming this to be so, the presence or absence of non-domestic knives on the market would be an irrelevance if those involved in that culture believe that they need to carry a knife for protection against others in the culture. If they are denied access to non-domestic knife, it is surely wishful thinking to assume that they will be even inconvenienced by simply walking into the kitchen of any
home and taking a knife that is just as effective as anything that might be called a non-domestic knife. Similarly, a few minutes work will convert something like a Phillips screwdriver into a very lethal weapon or allow the resurgence of a weapon that was common in the past, razor blades stitched into the peak of a cap.

Before any legislation is enacted in this field, there is an urgent need to commission research, which could be relatively small in scale. Homicide might be seen as the tip of the iceberg with the bulk of knife crime being assaults of varying degree. A study of homicides in two disparate police areas of Scotland such as Strathclyde and Northern Constabulary and covering just two years would be sufficient to clearly identify the problem and allow legislation to be very specifically targeted with resources concentrated on an identified problem.

Research would seek to identify (a) the types of knife used; (b) the availability of substitute weapons; (c) the age of the offender; (d) what the offender was doing at the time; (e) the location – whether on domestic premises or in public; (f) whether the knife was carried by design or whether it happened to be to hand; (g) any evidence of habitual knife carrying; (h) any evidence of gang, drug, drink, or crime connections; (i) the source of the knife.

Uncertainty of Law

The Bill grants Ministers extensive Rule-making powers and the real effect of this legislation cannot be determined from the face of the Bill. Documents accompanying the Bill indicate areas in which exemptions may be made, but once the Bill is law, the present Minister will not be bound by those documents and certainly any successor in office cannot be bound by them. There is, for example in Clause 27A (6) (a) a power for Ministers, by way of Rules, to add or amend descriptions of articles or classes of articles; to specify conditions to be imposed on licences, to make exceptions to various provisions of the Bill. In Clause 46 the application of the Criminal Justice Act to swords is subject to a very wide range of rule making powers which will change entirely the effect of the Bill.

Whilst some rule-making power may be seen as necessary, the effect in this instance is to create a situation in which the Parliament will not know what it is banning and what will be allowed. Further the entire body of this law, including the Bill and secondary legislation will be enormous with the volume of Rules far exceeding the primary legislation.

Those to whom the law will apply are entitled to some certainty when the Bill proceeds through Parliament and as many as possible of the exceptions envisaged should be specified on the face of the Bill and not subject to rapid change at the whim of some future Minister.

Rules are subject to annulment by Parliament, but they cannot be amended. The fact is that Rules are virtually never annulled by Parliament, either in Westminster or Edinburgh.

Sword Provisions

Clause 43 adds Section 27A to the provisions of the Civic Government (Scotland) Act 1982, and penalises the selling, hiring, offering for sale or hire, exposing for sale or hire, lending or giving of swords by a person carrying on a business unless that person obtains a knife dealer’s licence. In addition, Clause 46 of the Bill applies the provisions of Section 141 of the Criminal Justice Act 1988 to swords, making it an offence to “manufacture, sell or hire or offer for sale or hire, exposes or has in his possession for the purpose of sale or hire, or lends or gives to any other person, a weapon to which the section applies.”

Perhaps more than elsewhere in the United Kingdom, swords are an important part of the Scottish heritage and are extremely popular with collectors who, it has been noted, fall into an age group not associated with misuse of sharp instruments. This Bill makes the transfer of a sword infinitely more difficult than the transfer of any other bladed weapon.

There is no definition of a sword on the face of the Bill and this raises at once the question of bayonets which are popularly collected along with the associated firearms and which may have the appearance of a sword in most respects.
The policy memorandum published with the Bill makes clear the fact that there is no evidence, other than anecdote or opinion, about the extent of illegal sword use. Certainly swords cannot fall into the ‘blade and booze’ syndrome referred to above since they cannot be concealed. That there have been very rare instances of misuse of swords could not be denied, but it would be impossible to identify any item that might be used to cause harm that has not been used at some time. Items that remain unregulated, such as large kitchen knives, are infinitely more likely to be misused.

There is a stated intention to make a very wide range of exemptions to Section 141, creating a massive bureaucracy and a complexity of law that will be almost impossible to unravel. One such suggested exemption may relate to collectable swords, but not to reproductions of those swords which often fill an important gap in collections.

None of the exemptions appear on the face of the Bill and they will be entirely at the discretion of current Ministers or their successors in office. Undertakings made by current holders of office cannot be binding on their successors. Parliament is being asked to give Ministers a blank cheque in this respect.

When compared with other provisions of the Bill, the extra provisions relating to swords are draconian and based on no sustainable evidence. They should be removed from the Bill.

Summary

The Gun Trade Association invites the Justice 2 Committee of the Scottish Parliament to conclude that:

1. Part 3 of the Bill is of a different character to other provisions and should be severed from the Bill so that it can proceed through Parliament at a different pace if necessary.

2. The Bill is unworkable. If passed in its present form it would penalise Scottish trade, but those requiring knives of any type could acquire them outside the borders of Scotland, either personally or by mail order.

3. The Bill has not been targeted at an identified problem and available research is not helpful. Research should be commissioned into homicides involving sharp weapons to establish more precisely the problem which is addressed.

4. The Rule-making powers are far too wide-ranging and add to the uncertainty about the final shape of the law as created by primary and secondary legislation.

5. The additional provisions relating to swords are unsustainable and should be removed from the Bill.

SUBMISSION FROM ROGER HOUCHEIN, CENTRE FOR THE STUDY OF VIOLENCE, GLASGOW CALEDONIAN UNIVERSITY, 13 DECEMBER 2006

Thank you for the invitation to comment on the legislative proposals. I apologise for the late submission. I received the invitation as I was leaving for a piece of work abroad. This is the first opportunity I have had to put my comments on paper.

I would like to comment on the Part 2 of the Bill only, though, inevitably those comments make an oblique reference to the somewhat changed status of the Parole Board that the Bill anticipates.

The general proposal to introduce a new sentence in two parts, the second of which is in the community, is to be welcomed.

However, the Bill as introduced has some serious deficiencies. I will deal with these under the headings:
Sentencing:
While introducing some structuring of sentencing discretion by judges, the treatment is partial, resulting in duplication and conflicts of functions.

Grounds for extending the custodial part and the limits of validity of risk assessment:
The basis of a decision to detain someone in custody is too limited and could lead to unnecessary risks to public safety. There is an unrealistic expectation of the potential of risk assessment.

Post-release arrangements.
The treatment of how risks in the community will be managed is inadequate.

Sentencing
The Bill proposes some structuring of judges’ decision taking when passing sentence. This is to be welcomed.

The structuring proposed, however, concerns only the new power to order the proportion of the given sentence that has to be served in custody. In doing this, the judge may consider the need for punishment and the need for deterrence. The judge, explicitly, may not take into account the need for public protection. No mention is made – either positively or negatively – of considerations of rehabilitation.

There is no attempt in the Bill to structure judges’ decision taking when considering length of sentence. When doing this, the judge may continue to take into account the need for punishment, the deterrent effect, the need for public protection and the need for rehabilitation.

There are 4 strange consequences of this.

Firstly, when deciding the length of sentence, the judge takes into account the need for punishment and the deterrent effect. The judge then takes these same criteria into account when deciding the proportion of total sentence that will be served. This builds a multiplier effect into the legislation. For a serious offence it would, under the proposals, be expected that the convicted person would not only receive a long sentence but would be sentenced to serve a proportion of it greater than ½. In taking both decisions, the judge would be considering the same criteria.

Secondly, when deciding the length of sentence, the judge may continue to take into account the need for public protection, based on a judicial assessment of the risk the person being sentenced presents. This will also be considered, when Scottish Ministers and the Parole Board decide whether the person should be released at the conclusion of the period set by the judge on punishment grounds. Once more there is a multiplier effect. A person whose circumstances or behaviour suggest that they present a substantial ongoing risk to the community may expect to have this reflected in the length of sentence imposed by the court and in the proportion of that sentence it is ultimately decided they will serve.

I would also have concern that in changing the basis of the role of the Parole Board from a tribunal deciding to release some prisoners to a body deciding to continue the period of some prisoners in custody, the provisions would be vulnerable to challenge on the grounds that the Parole Board is exercising quasi-sentencing powers, which need to be surrounded by all the safeguards of a criminal trial.

The issues raised by the other two consequences to which I would wish to draw attention are rather different.

In considering the proportion of total sentence the convicted person should spend in custody, the judge is required to take into account the deterrent effect of the options available. That is, the judge is required to reach conclusions as to the differential deterrent effect of ordering periods in detention of between ½ and ¾ of total sentence length. That is an evidential question on which reliable empirical evidence is not available. In the absence of evidence, the decision as to the period of deprivation of liberty can only be based on judicial speculation. Speculation as to effect is not a sound basis for law. It would be better for the reference to deterrence to be removed. And
better still would be that judges be explicitly proscribed from basing decisions on deterrence other than where they have considered evidence as to deterrent effect in the circumstances of the case.

No reference is made in the Bill to consideration of the need for rehabilitative intervention when considering either the length of sentence or the proportion of sentence to be spent in custody. It would be better if consideration of need for rehabilitation when deciding both sentence length and proportion in custody were explicitly proscribed in the law. There is a risk, in the present climate of claims for rehabilitative effect of programmes both in prison and in the community and in the comfort afforded by the apparent scientificity of risk and need assessment tools that are now being used by criminal justice agencies, that the proposed two phase sentence will lead judges to hand down sentences with the intention of providing sufficient time for the convicted person to be subject to criminal justice measures that will allow for effective rehabilitative work. Such grounds would be insupportable by reliable empirical evidence and consequently speculative.

The Bill is not grounded in any critical analysis of possible grounds for sentencing. In proposing a very complex process of decisions – the complexity of which is inherently difficult to understand (and is made unnecessarily more complex by the arcane drafting style chosen for the Bill) – without any underpinning clarity as to what it is intended should be achieved at each stage, the result is confusing. Its consequences would be arbitrary.

There is one final, unrelated, point about sentences. This concerns indeterminate sentences.

The Bill does not affect the law in this area. However, the existing situation it summarises highlights the level of complexity that we now have. That suggests that we should consider removing some of that complexity. The present Bill may not be the place in which to do that but it should be considered.

It should firstly be noted that an indeterminate sentence pushes at the limits of the rule of law and the effective legal protection of the rights to liberty. Within the German jurisdiction, for example, there is lively debate as to whether such sentences can be compatible with the Constitution. In the United Kingdom life sentences are handed down much more frequently than in any other European jurisdiction. In a sustained effort to limit the extent of indeterminacy in the UK the European Court of Human Rights has imposed much greater clarity on the legal provisions regulating such sentences.

We should now be considering a further step.

The new Order for Lifelong Restriction (OLR) is an indeterminate sentence handed down after the most careful assessment of ongoing risk. Both mandatory and discretionary life sentences now separate a determinate period in custody based on the need for punishment and the indeterminate period which is decided on an assessment of risk. Neither, however, requires the level of care in considering how any identified risk might be best managed that characterises the OLR.

The procedures for the OLR are the most careful and least arbitrary that could be designed at the time. Their application across the spectrum of indeterminate sentencing should now be considered.

I would suggest that the law would be considerably improved by the adoption of two measures. Firstly, the discretionary life sentence should now be discontinued. Where a court considers that an indeterminate element may be necessary, it should only have available the OLR process. Secondly, a conviction for murder should lead always to an OLR assessment of ongoing risk. Only where that assessment indicates significant ongoing risk should an indeterminate sentence be handed down.

Grounds for extending the custodial part and the limits of risk assessment

The Bill also allows for extension of the custody part of the sentence by Scottish Ministers on the direction of the Parole Board. As described above, such extension would be over and above any
element for public protection that had been applied by the judge in considering the appropriate sentence length.

The process for extension of the custody part of sentence is triggered by the assessment by Scottish Ministers that the person undergoing sentence presents an ongoing risk of serious harm to the community. Such a provision presupposes that Scottish Ministers have – and can have – in place assessment processes robust enough to identify those who might present an ongoing risk.

This is an unrealistic expectation that demonstrates a fundamental misunderstanding of the limits of validity of risk assessment technologies.

The best processes of assessment of ongoing risk of future violence are capable of demonstrating some validity, when used with the greatest care by most skilled assessors, in identifying those who present the greatest risk. The limits of their validity, even in these most restricted circumstances, are the subject of continuing academic investigation. The area is deeply problematic. Probably the strongest claim that can be made for the best methods, applied in extreme cases by the most expert practitioners is that they are the least bad method available.

It clearly misunderstands the limits of what is possible to propose that there are methods available that can be used for the routine screening of all prisoners. Other than at the extremities of probability the outcomes from such screenings would be arbitrary.

It would also have to be anticipated that the methods available would tend to discriminate in the favour of those whose histories and circumstances were the least problematic. That is, those for whom the benefits of supervision in the community are least necessary.

I shall return to this, the most fundamental flaw in the proposals, in the final section of what I would wish to say. Before turning to that, however, I should like to make a brief technical comment on the proposals in this area.

In considering whether to refer a case to the Parole Board, the Bill foresees Scottish Ministers applying precisely the same test as will be used by the Board itself. That is, Scottish Ministers may only refer a case to the Board when the prisoner presents substantial risk of future serious harm to members of the community (Section 8.2 test). The Parole Board is then asked to determine whether the Section 8.2 test applies. In effect, the Board is not being asked to make an assessment, it is being asked to either confirm or overrule the Ministerial assessment. It is essential for judicial independence that such decisions on the liberty of the individual be taken in a politically neutral context. The provisions as they exist subvert that and leave the Parole Board vulnerable to political influence.

Clearly the test that should be used by Ministers in deciding whether to refer the case to the Parole Board should be different from that used by the Parole Board in deciding whether a person should continue to have their liberty denied them beyond the period deemed necessary by the courts for criminal justice purposes.

The test proposed in the Bill that the Parole Board is required to apply is unhelpfully narrow. They may only consider whether “the prisoner would, if not confined, be likely to cause serious harm to members of the public”. Such a test is potentially counter-productive. It does not invite the Parole Board, as would be preferable to weigh the costs and benefits of continuing the sentence in the community against the costs and benefits of the person remaining in custody. If it is that community supervision is required in the interests of public safety – a proposition certainly meriting careful evaluation – then a fortiori it must be the case that those people in prison whose circumstances are the most problematic are those who stand most to benefit from release and careful resettlement and whose effective resettlement would contribute most to public safety.

I would suggest that the Boards decision needs to be based on more than the risk presented by the person being considered and should extend to the adequacy of the plans that have been made for release. It should have 3 elements. Firstly, it should rule whether the interests of public safety are best served by continuing the offender in custody or by releasing the offender to supervision in the community. Secondly, except where there exists an imminent and foreseeable risk of grave public
harm or it is in the long term interests of public safety to retain the person in custody, it should direct that the person be released. Thirdly, where it is in the long term interests of public safety to release the person into supervision but the plans for that persons supervision are inadequate for public protection or the needs of the person being considered, it should order that improved plans be drawn up to allow for the person’s timeous release.

**Post-release responsibilities**

The most profound shortcomings of the Bill, however, concern the very limited consideration it gives to the community part of the sentence.

Essentially the Bill focuses on ensuring that most cautious consideration will be given to release of prisoners into the community. The policy memorandum, on the other hand, argues that compulsory post-release supervision is being introduced in the interests of community safety. That is a laudable intention. How it will be achieved, however, is only cursorily dealt with in Section 7.1 that requires “Scottish Ministers and each local authority (to) each jointly establish arrangements for the assessment and management of the risks posed in the local authority’s area by custody and community prisoners”. There is no requirement for individualised post-release plans.

There are 3 distinct elements to post-release arrangements that might have been addressed by the Bill:

- Licence conditions, as anticipated in Section 11 (2) (b) and Section 14 (3),
- Supervision and control duties placed on the local authority,
- Resettlement and support duties placed on the local authority.

The Bill focuses on punishing and isolating the offender from the public if he presents an ongoing risk. In considering the part of the sentence the person could spend in the community it places all the obligations on the offender in the form of compliance with licence requirements.

We know that punishment in the form of imprisonment is, in Scotland, preponderantly focused on the most disadvantaged and socially excluded members of the community.

But the Bill makes only the scantest of references to any public duties to enable the successful settlement of persons released in prison into contributing and benefiting roles in our communities.

While it is clearly a purpose of the justice system to express the offence felt by the community at criminalised behaviour and to protect the public from imminent danger, the failure of the Bill to attend to any issues related to the duty of the authorities to enable the legitimate participation of persons liberated from prison is both surprising and disappointing. The failure to do so severely limits the potential of the provisions to make a contribution to public safety.

I would suggest that there is a need for the Bill to be fundamentally re-examined and restructured so as to make clear the duties throughout the sentence of the authorities to offer opportunities for personal development, counselling, support, controls and supervision as is appropriate to the needs of each individual.

In terms of the post release period, this would be reflected in statutory duties on local authorities to provide to the person released from prison, firstly, planned levels of supervision and control commensurate with the risk of re-engaging in offensive behaviour that they present and, secondly, planned levels of guidance, support and service in areas of housing, employment, education and training, relationships, cultural and social life, financial management and health care commensurate with the levels of social disadvantage they have sustained.

The levels of punishment we find necessary in Scotland today are an unwelcome indicator of the inadequacy of our social policies to promote an integrated society in which all can participate equitably. To promote law that visits, as unremittingly as this legislative proposal would, the
consequences of that on those who are already disengaged is to ignore the evidence we have and to continue to expose the whole society to the level of damage it faces at present.

As it is proposed the law would provide an new set of very complex provisions offering increased uncertainty and deprivation of personal autonomy to those subject to it and would guarantee none of the services that, once it has punished, a just society would ensure for those who are alienated from its benefits and duties.

SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

Introduction

The Criminal Law Committee of the Law Society of Scotland ("the Committee") welcomes the opportunity to submit written evidence to the Justice 2 Committee of the Scottish Parliament on the Custodial Sentences and Weapons (Scotland) Bill and makes the following comments:-

General Comments

The Committee gave evidence to and prepared a paper for the Sentencing Commission for Scotland entitled, "Early Release from Prison and Supervision of Prisoners on their Release". The paper included a proposed model for release and supervision of prisoners. The model is outlined below. The Committee felt this model might better protect the public than the current system. In particular, the conduct of the prisoner in custody was an important factor in securing release. The proposals in the Bill appear less radical in their nature, and the Committee invites the Justice 2 Committee to consider whether any aspects of the prepared model might assist in amending the Bill. The Committee welcomes the proposal to place all prisoners serving 6 months or more on community licence. Similar arrangements are made for shorter sentences for specific crimes.

The Committee notes the increased involvement for the Parole Board in terms of schedule 1. The Committee notes that Schedule 1 of the Bill in effect replaces Schedule 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 as amended by the Convention Rights (Compliance) (Scotland) Act 2001 and the Committee notes the revised role for the Parole Board for Scotland in terms of Schedule 1.

In particular, the Committee notes that membership must now include, in terms of paragraph 2(d) of Schedule 1, “a person who the Scottish Ministers consider has knowledge and experience of the assessment of the likelihood of offenders causing serious harm to members of the public and, in terms of paragraph 2(e) of Schedule 1, “a person who the Scottish Ministers consider has knowledge and experience of – (i) the way in which and (ii) the degree to which, offences perpetrated against members of the public affect those persons. The Committee would seek clarification as to who it is envisaged should fulfil these roles as Parole Board members.

The Committee further notes that, in terms of paragraphs 20 and 21 of Schedule 1, the Parole Board must, as soon as practicable after the end of the reporting year, send to the Scottish Ministers a report on the performance of the Parole Board’s functions during that year and also, in terms of paragraph 21, must as soon as practicable after the beginning of each planning period, send to the Scottish Ministers a plan in relation to that planning period – (a) providing details as to how the Parole Board intends to carry out its functions and (b) setting out performance objectives and targets in relation to its functions.

In terms of paragraph 23, the Scottish Ministers must lay a copy of the paragraph 20 report and the paragraph 21 plan before the Scottish Parliament. There is, however, no time limit within which the Scottish Ministers must comply with this requirement detailed in paragraph 23.

The Committee welcomes the proposals contained in chapter 2 of the Bill with regard to the release of prisoners by replacing the current automatic early release provisions with new provisions for combined custody and community sentences applicable to those sentenced to a term of imprisonment.
The Committee further welcomes the proposals with regard to the sale of non-domestic knives and swords by amending the terms of the Civic Government (Scotland) Act 1982 to require a dealer in non-domestic knives to obtain a knife-dealers licence from the local authority.

Specific Comments

Confinement Review and Release of Prisoners

Section 6 (setting of custody part)
The Committee notes that, in terms of section 4(2) of the Bill, the Scottish Ministers may by order amend the definitions of ‘custody and community sentence’ and ‘custody only sentence’ by substituting a different term for term mentioned in those definitions but has concerns at the term of 15 days or more.

In particular, such a sentence imposed by the court would clearly be at the lower end of the scale for a custodial sentence. Such a sentence may well provide retribution and deterrence with regard to the custody part of the sentence but cannot be seen to provide rehabilitation with regard to the community part of the sentence given that, in effect, the prisoner could be subject to the community part of the sentence for a period of less than one week.

Section 8 (Review by Scottish Ministers)
While the Committee accepts that, in determining whether a prisoner would, if not confined, be likely to cause serious harm to members of the public and, in terms of section 9, consequences of review, Scottish Ministers must release the prisoner on community licence on the expiry of the custody part of the prisoner's sentence, the Committee is concerned that no other conditions apply, such as the prisoner being of good behaviour during the custody part of the sentence. The Committee’s position is that this, together with progress towards rehabilitation, willingness to accept treatment where appropriate and other relevant issues, should also be taken into account in determining whether a prisoner is suitable for early release, the remainder of the sentence being spent on licence in the community.

Section 27 (release on licence of certain prisoners supervision)
The Committee agrees with the provisions of section 27 of the Bill in that where a prisoner (other than a person liable to removal from the United Kingdom) is either a life prisoner, a custody and community prisoner with a sentence of 6 months or more, or such a prisoner who is detained in custody beyond the court imposed custody part, a prisoner released on compassionate grounds, an extended sentence prisoner, a sex offender or a child, the Scottish Ministers must include a supervision condition on a licence requiring him to be supervised by an officer of the local authority. In particular, the Committee agrees that such an officer should be a social worker.

Section 42 (fine defaulters and persons in contempt of court)
The Committee agrees with the provisions of section 42 of the Bill in that custody-only prisoners with no community part of a sentence should also include those serving a period of imprisonment as an alternative to payment of a fine and those serving a period of imprisonment in respect of a conviction for contempt of court.

The Criminal Law Committee Model

The Committee have considered a number of proposals to replace the existing statutory framework and have devised a model that allows for the courts to provide the accused with an early release date subject always to certain obligations and requirements incumbent upon him. The Model is as follows:

- Every sentence of imprisonment imposed by a court in Scotland should provide for the accused the opportunity of an early release date.

- The entitlement to early release should always be subject to certain obligations and requirements incumbent upon the prisoner, the minimum of which is the requirement that he or she is of good behaviour whilst in custody. Depending on the nature of the offence, or the personal circumstances pertaining to the prisoner, many other additional obligations may be
imposed, for example, the requirement to participate in offending-behaviour or addiction programmes.

- The length of any sentence imposed should always be decided at the outset by the sentencer, taking account of any statutory or judicial guidance provided, but always seeking to impose a just and equitable sentence based upon all of the facts and circumstances of the particular case.

- The sentencer should, when sentencing, publicly identify and announce the following:
  
  (i) The total length of the sentence.
  (ii) The minimum term to be served in custody
  (iii) The conditions which the prisoner must satisfy to be entitled to early release (this may include a condition that he or she co-operates with the relevant agencies regarding any future programmes for release etc.)
  (iv) The term, if any, to be served on licence
  (v) The term, if any, to be served on licence and under supervision.

- Where a prisoner has fully complied with any requirements properly imposed upon him or her, he or she will be automatically entitled to early release at the end of the minimum term imposed by the sentencer, unless the Scottish Ministers consider that the prisoner presents a risk of serious harm to the public. In such a case the Ministers would be entitled to refer the case to the Parole Board for Scotland (“the Parole Board”). The Parole Board would then consider the case and decide whether such a prisoner should continue to be confined. No prisoner could be confined beyond the total length of the sentence originally imposed. A similar course of action could be taken against any prisoner who has not complied with the requirements for early release.

- The prisoner would have a right to a further review by the Parole Board no later than twelve months from the date of the last decision.

- A prisoner entitled to early release as detailed above will be released on licence, subject to the terms of any such licence. A failure by the prisoner to obtemper the terms of his or her licence would result in the prisoner being liable for recall to custody for a period not exceeding the total length of the sentence.

- Recall procedures would be carried out by the Scottish Ministers, and review of the decision to recall would be carried out by the Parole Board.

Such a regime would combine elements of retribution, punishment, protection of the public, with rehabilitation and re-integration. It would also allow the sentencer the flexibility to reflect the gravity of the crime in the sentence and incorporate elements to address individual offending behaviour.

**Weapons**

The Committee, is of the view that effective measures require to be put in place in order to bring about a culture change needed to reduce knife crime in Scotland.

The Committee accepts that it can be shown that most knife attacks are committed using a non-domestic knife which is readily distinguishable from a kitchen knife. The licensing scheme for the sale of non-domestic knives can, in the Committee’s view, only be a positive measure in the overall objective to reduce knife crime in Scotland. The Committee’s view is that it is essential that in addition to the licensing of non-domestic knives, other non-legislative initiatives aimed at tackling knife crime must be adopted. The Committee is concerned that the licensing of non-domestic knives may well, however, result in those involved in violence simply changing their weapon of choice to a domestic knife.

The Committee support the terms of section 46 of the Bill whereby Scottish Ministers can modify existing legislation to set out exceptions for specified legitimate purposes, such as antique collecting, fencing, film, television and theatre etc. when adding swords to lists of weapons which
cannot be sold and further supports the Scottish Ministers power to alter by statutory instrument in terms of section 27A(6) of the Bill to either add, amend or remove articles or classes of article in order to provide that a licence will not be required to sell folding pocket knives, skein dubhs or kirpans where the blade is less than 7.62 cms long.

The Committee notes that this would, of course, reflect the current law on carrying knives in public as set out in section 49 of the Criminal Law Consolidation (Scotland) Act 1995 which provides a specific exception for pen-knives of this size and provides defences in law for knives (such as kirpans and skein dubhs) carried for religious reasons or as part of a national costume.

PETITION FROM MR PAUL MACDONALD

The following petition was referred by the Public Petitions Committee to the Justice 2 Committee. At its meeting on Tuesday 5 December 2006, the Justice 2 Committee agreed to note and conclude consideration of the petition as the issues raised would be considered as part of the Committee’s Stage 1 Report on the Custodial Sentences and Weapons (Scotland) Bill.

Petition by Paul Macdonald, on behalf of the Save Our Swords Campaign, calling for the Scottish Parliament to oppose the introduction of any ban on the sale or possession of swords in Scotland which are used for legitimate historical, cultural, artistic, sporting, economic and religious purposes.
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

**Details of principal petitioner:**

*Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available*

Paul Macdonald  
Macdonald Armouries  
At the Sign of the Cross and Sword,  
Brunswick Street Lane,  
Edinburgh,  
EH7 5JA

macdonaldacademy@aol.com  
0131 557 1510

**Text of petition:**

*The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.*

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

Petition by Paul Macdonald, on behalf of the Save our Swords Campaign, calling for the Scottish Parliament to oppose the introduction of any ban on the sale or possession of swords in Scotland which are used for legitimate historical, cultural, artistic, sporting, economic and religious purposes.

**Additional information:**

*Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.*
Action taken to resolve issues of concern before submitting the petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

Requests were made for individual representations to be made to a wide public audience of the various groups affected by the proposals before the consultation process began and again once this was underway.

Petitioners appearing before the Committee

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee's consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

Please indicate below if you do NOT wish to make a brief statement before the Committee when it comes to consider your petition.

I do NOT wish to make a brief statement before the Committee

Signature of principal petitioner:

When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature

Macdonald.

Date

06/10/05.

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

The Clerk to the Public Petitions Committee,
The Scottish Parliament,
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
Additional Information

The online version of the petition can be seen at the following address - http://www.petitiononline.com/Swords/petition.html

The petition was created in response to the proposals to ban the sale of swords in Scotland, potential measures that would seriously affect the law-abiding and long standing traditional practices of many different areas in Scottish public life such as collectors, martial artists, sports fencers, historical fencers, re-enactors, antique dealers, museums, highland dancers, fight directors, swordmakers, theatrical companies and thousands of Scottish history and clan heritage enthusiasts nationwide.

The main reasoning for the petition was also to highlight the fact that a ban on the sale of swords would effectively do nothing to reduce crime figures in Scotland, what little there are with swords annually (around 1% of all knife-related crimes per year) and that such measures would impact only on thousands of Scottish law-abiding citizens.
Dr. James Johnston,
Clerk to the Public Petitions Committee,
TG.01
Parliamentary Headquarters,
Edinburgh,
EH99 1SP

Scottish Parliament Public Petitions Committee – Scottish Executive and Strathclyde Police Violence Reduction Unit responses to Petition PE893

Dear Dr. Johnston,

I write further to your letter of 30th March 2006, inviting my comments on the responses given by the Scottish Executive and the Violence Reduction Unit of Strathclyde Police to Petition PE893 and the subject of legislation of swords in Scotland.

Firstly, my thanks for inviting and considering my responses to these matters, which hold deep personal and professional concern for myself and many other members of the Scottish public.

With regard to the response from the Scottish Executive, I am first greatly encouraged to hear of the Executives commitment to tackling knife crime in Scotland. There are no doubts as to the seriousness of these matters in Law and public life and I wish only for the Executive to consider and implement the most effective actions towards legislation and on the streets in order to reduce crime in any way.

The Executive then refers to measures aimed towards restricting and/or licensing the sale of non-domestic knives and presumably swords and I would like to here respond to this issue referring separately to each blade type concerned.

1 – Issue of restricting sales/licensing “non-domestic” knives in Scotland

My first serious question towards this issue is, “Need this be an issue?”

The pertinence of this question is due to the fact that “non-domestic” knives have not been proved to present or have caused any greater threat or problem than domestic knives.

If the Scottish Executive were to research records of past injury, assault, attempted murder and murder where knives were used, it may be surprised to find the majority of cases involve the use of common kitchen or domestic knives.

The reason for this is purely practical from the standpoint of the criminal. Kitchen knives are –

- Easily Available
- Extremely Affordable
- Easy to conceal
- Disposable
For these reasons, the common kitchen knife has been perhaps the most popular choice of the criminal on the street to carry. Other popular bladed weapon choices are screwdrivers and chisels, again being a perfectly sensible choice for the criminal who if stopped by police and searched can easily claim that his tool was ‘innocently’ intended for domestic DIY or mechanical repairs, thus deceptively but legally evading an initial criminal charge for carrying a fixed blade out-with 3” in length without good cause.

Kitchen knives, screwdrivers and chisels are the predominant bladed tools used to injure, maim and murder in Scotland today. Have “non-domestic” knives been proved to be any more of an issue or greater public concern than domestic blades? They have not.

For this reason alone, if the Executive proceeds with any licence scheme or legislation targeting “non-domestic” knives, then it does so unjustly and with no good reason but conjecture and supposition. This should never form the basis of reason to create any Laws.

If the Executive believes that “non-domestic” knives are an issue, then it will fail to effectively address the problem of street crime in Scotland today.

2 – Issue of restricting sales/licensing swords in Scotland

With regard to the suggestions of licensing the sale of swords in Scotland, I may ask the same question, “Have swords been proved to be an issue of serious enough public concern that additional legislation be sought”? It would appear not. The only Scottish statistical figures brought to light recently that differentiate between swords and knives used in criminal activity have originated from Strathclyde Police and Lothian and Borders Police. In both cases, swords have accounted for proportionately less than 1% of annual criminal figures compared with knife use. With these figures originating from perhaps the largest and busiest police bodies in Scotland, it is more than likely that collective overall factual statistics for proportionate knife/sword crime in Scotland would realise an even lower percentage of swords being used than the Strathclyde/Lothian figures indicate.

The reasons that swords are rarely ever used by criminals are obvious –

- Not so readily available
- Expensive to buy (particularly for any sword that can hold an edge or is light and balanced enough for practical use)
- Extremely difficult to conceal (i.e. Not carried casually on streets)
- Not so readily disposable
Swords have recently been shown to be most effective as media and political scare-mongering tools, as they easily capture the imagination of both public and politicians alike. That however, should never be the basis for exaggerating reports or ideas of criminal activity or supposed criminal culture with the sword in Scotland.

Cold facts from our Scottish Police forces tell us that there is not an overriding problem with swords in the hands of criminals in Scotland today, and most knife crime details reveal that kitchen and common blade types are typically used, suggesting that there is also no particular problem with “non-domestic” knives. **Is the Scottish Executive really prepared to spend its and taxpayers time and money considering and passing legislation on problems that do not exist?**

Another question that the Executive should seriously consider is “Who would realistically be affected by any additional legislation/licensing scheme to restrict sword sales in Scotland?”

Assuming that any license scheme would incur costs to holders, thousands of legitimate businesses and practices alone shall bear the cost of what would be a futile exercise in control.

The last persons to be affected would be the criminals, who if of a mind to commit any crime with any type of blade, will continue to do so regardless of a blades legal classification and/or penalties incurred if arrested for that crime.

I am heartened to hear that the Executive is aware of and sensitive to potential affects upon recreational, cultural and historical and activities in Scotland where swords may be legitimately sold, collected, displayed or used for educational, sporting, religious, dramatic or martial study and practice purposes.

The Executive states in its response that, “Existing legislation on knives and swords already provides for exclusions or exemptions for antique weapons and weapons with blades for religious, cultural, or historic purposes and the Executive has no plans to remove such exemptions.”

The Executive should also consider that existing legislation on knives and swords already provides for any criminal activity involving such blades as being clearly out-with the Law and as such subject to penalties as laid out within the Law. These controls and penalties already exist as a deterrent to carrying out a crime involving a blade.

A licensing scheme for blade purchase or ownership would be no further deterrent to the criminal mind.
Strathclyde Police have been helpful in providing figures in response to PE893. I would however, disagree with their general claim that “It is accepted that any use of a sword during an act of violence normally results in very serious injury”.

As opposed to any type of knife that any one can `point-and-stick’, for a sword to be used effectively it has to be wielded effectively. This usually involves some amount of martial theory and practice, something that common criminals have no self discipline to follow and do not possess. This is why criminals use swords for showing-off and intimidation more than serious use. The Strathclyde Police statistics show that one murder alone involved the use of a sword. Any murder is one too many, but this hardly highlights the sword itself as being any great threat to the Scottish public.

Recently in Edinburgh, two men were assaulted by two attackers `wielding’ swords and both escaped with non-serious cuts. The only reason for this is that the ‘wielders’ had no idea how to effectively make a sword work (a good thing by far). Another Edinburgh incident saw a female shopkeeper confronted by a criminal armed with a “samurai” sword and demanding money, whereupon she effectively disarmed the man and he ran away.

Such incidents prove that the sword itself is not a “deadly weapon” by any means. A sword is not a simple tool and should not be treated as such.

I cannot agree with the recommendation of Strathclyde Police to treat swords the same as “non-domestic” knives in terms of legislation. Until the sword can be proved to be as great a concern and threat to the Scottish public as any type of cheap, concealable knife, then such recommendations are unjustified and unsubstantiated.

I hope that these views are helpful and that the Scottish Executive might carefully consider all facts presented. I shall be happy to further discuss or respond to any other matters regarding the proposed legislation and petition PE893, where I shall be contactable at the above details.

Yours Most Sincerely,

Paul Macdonald,
Macdonald Armouries,
Macdonald Academy of Arms
8 December 2005

Ref: JC/TH/MJ

Dr James Johnston
Clerk to the Public Petitions Committee
TG.01
Parliamentary Headquarters
EDINBURGH
EH99 1SP

Dear Dr Johnston

Scottish Parliament Public Petitions Committee – Consideration PE893

With regard to your letter dated 3 November 2005, the following information is provided and represents the views of the Strathclyde Police Violence Reduction Unit:

In a pro-active effort to reduce the levels of violence in Strathclyde and in particular numbers of incidents that involve the use of knives, Strathclyde Police force established the Violence Reduction Unit in January 2005.

The first of its kind in the United Kingdom, the unit is developing practical solutions to deal with the whole continuum of violence, differing types of violence and the root causes.

The unit has already undertaken much analytical research. This work confirms that although the use of knives is a very serious issue in the west of Scotland, at this time the same cannot be said about swords. It is accepted that any use of a sword during an act of violence normally results in very serious injury, not to mention widespread media attention, however in the west of Scotland it is not the weapon of choice. During the past year (2004 – 2005) the use of a sword accounted for 0.59% of recorded violent incidents in Strathclyde. This figure includes Murder, Attempt Murder and Serious Assault. As a comparison, in some cases the use of knives can account for up to 50% of particular serious assaults on the person. In real terms, our records indicate that a sword was used in one murder, four attempted murders and 23 serious assaults.

Accident and Emergency Departments in Hospitals across the country are actually treating many more victims of violence than that which is being reported and recorded by the police service (some Health Boards estimate that between 50 – 70% of violence related admissions are not being reported). In the absence of all this data a true reflection of violent incidents involving swords cannot be established, however it is considered that the use of swords in Strathclyde accounts for levels greater than the above figure.
Earlier this year, the unit submitted its response to the Scottish Executive consultation; Tackling Knife Crime. Particularly in relation to swords, the views of the department remain the same.

A sword should be treated in the same terms as a non-domestic knife and although the numbers of incidents are few, it can be used and on occasions is to cause physical harm. It should therefore be subject to the same controls and on this basis the recommendation that shops will require to be licensed is supported.

We need to reduce the likelihood that swords will fall into the wrong hands and be used for illegal purposes. By ensuring that shops only sell swords to approved organisations will provide a second line of scrutiny to the selling process. While it is accepted that the introduction and maintenance of such a system will place an additional responsibility on to those who sell swords, this recommendation is supported.

There is no reason for an outright ban on the sale of swords. There are many circumstances when persons would have possession of swords for legitimate purposes, similar to the use of knives. The controls being suggested for non-domestic knives should also extend to swords.

If, by limiting access to knives and swords, one murder is prevented then we consider this worthwhile.

I hope that this information is of some assistance to you. Should you require any further information please do not hesitate to make contact with Inspector Tom Halbert of my unit. He can be contacted at tom.halbert@strathclyde.pnn.police.uk or by telephoning 0141 532 5873.

Yours sincerely

John Carnochan
Detective Chief Superintendent
SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE: CONSIDERATION PE893

Thank you for your letter of 3 November in which you sought comments on the issues raised in the above petition.

The Executive remains deeply concerned about the continuing high incidence of knife crime and its contribution to violent crime. The homicide figures for Scotland, year on year, show that the use of a sharp instrument or bladed weapon was the most common method of killing. The role of knives and other bladed weapons in homicides and assaults needs urgent and effective action. Accordingly the Executive has been undertaking a review of knife crime law and enforcement, as promised in the Partnership Agreement.

The First Minister in his statement on 22 November 2004 set out a programme of measures to address the unacceptably high level of knife crime in Scotland. This 5 point plan proposed:

- an increase in the age for the purchase of knives from 16 to 18.
- the police to make more use of stop and search powers, and be given the power of arrest on suspicion of carrying a knife or an offensive weapon.
- double the sentence for possession of a knife or offensive weapon from two years to four years.
- a licensing scheme on the sale of domestic knives and similar instruments.
- a ban on swords.

Measures to implement the first three of First Minister’s 5 point plan, which were subject to consultation earlier this year in the consultation paper ‘Supporting Police, Protecting Communities’, http://www.scotland.gov.uk/consultations/justice/sppc.pdf have been included in the Police, Public Order and Criminal Justice (Scotland) Bill that is now before the Scottish Parliament.
The remaining 2 proposals set out in the First Minister’s five-point plan (on restrictions on the sale of non-domestic knives and swords, including by means of a licensing scheme) are the subject of Mr Macdonald’s Petition. These proposals have been the subject of separate consultation in ‘Tackling Knife Crime – A Consultation’, http://www.scotland.gov.uk/Publications/2005/06/27110147/01518. The closing date for comments on this paper was 30 September. Some 176 responses were received, including comments from Mr Macdonald along similar lines to what is set out in PE893. The Committee will wish to be aware that the responses to the consultation also included 3 separate petitions supporting the Executive’s proposals on knife crime, with 2,284 signatures in total.

The Executive is currently collating and analysing these responses and Ministers will consider this carefully before deciding on the way forward with the proposals to introduce a restriction on the general sale of non-domestic knives and a possible licensing scheme for such items. Any legislative measures that emerge from this consultation will not be included in the Police, Public Order and Criminal Justice (Scotland) Bill that is already with the Parliament but will be brought forward in separate legislation to be introduced at a later date.

The Executive acknowledge that a large number of respondents have expressed concern about the possible implications for historic and cultural activities arising from the possible introduction of restrictions on the general sale of non-domestic knives and licensing scheme. Existing legislation on knives and swords already provides for exclusions or exemptions for antique weapons and weapons with blades for religious, cultural or historic purposes and the Executive has no plans to remove such exemptions. The Executive has also made clear that, in bringing forward proposals to strengthen legislation on bladed weapons, it has no wish unnecessarily to restrict or adversely impact on cultural, sporting or dramatic activities.

The Executive therefore values the many traditions and pursuits that contribute towards our country’s heritage and diversity. However, the culture of violence in Scotland, especially knife-related crime, is enduring, widespread and deep-rooted. It is an ugly and contemptible aspect of our society and one which blights too many lives in our communities. There are no simple, one off solutions to violence and its many causes but the Executive is committed to exploring ways of strengthening current laws. Ministers have listened to what the police and others have said about the gaps in current legislation and are working to address those issues through the Police Bill and by exploring further measures.

The format of any proposed legislative measures on the introduction of a licensing scheme and any further restrictions on the general sale of non-domestic knives and swords will take account of the responses we have received to our recent consultation. The views expressed by Mr Macdonald in his Petition, as well as the views of others who responded, will therefore assist us in determining the way forward with these measures.

Yours sincerely

Gery McLaughlin
SUBMISSION FROM THE MUZZLE LOADERS’ ASSOCIATION OF GREAT BRITAIN

Thank you for your letter of 10 October concerning the above; I have been asked to respond on behalf of the MLAGB. The provisions of the Bill that deal with custodial sentences are outwith the scope of this letter and any reference to said Bill thus refers only to ‘Weapons’ (sic), in this case knives and swords and the like.

My Association continues to have very grave reservations about this Bill which, frankly, is not well-founded. By excluding domestic knives and DIY or craft knives, it completely ignores those very items that, on all discernable evidence, are misused the most. This, it seems to me, is a fundamental and profound flaw that weakens beyond redemption the logic and argument for the proposed legislation in its present form.

It is no business of good Government to make criminals of the law-abiding, nor is it just or fair to impose undue restriction and cost upon the many legitimate small dealers and retailers who will be most affected by this Bill. Bans, with or without lets and easements are rarely the answer to perceived problems, and in this case the structure of the logic underpinning these proposals is not sustainable. A far more effective approach must be via legislation that makes it a very serious offence to carry in public, without lawful authority or reasonable excuse, any form of bladed or pointed implement that may fairly be regarded as a weapon by use or misuse. This would catch the thug wielding machete, ‘Samurai sword’ (sic), or, critically, kitchen knife, whilst allowing the law-abiding – chefs and the members of this Association, for example – to go about their business without fear of arrest. It would also render superfluous the clumsy and ineffective licensing system that, frankly, will be difficult to administer, costly to maintain and an ongoing thorn in the flesh of all concerned.

I commend this simple and far more effective approach to you; I should be happy to argue the case for it should committee so desire.

SUBMISSION FROM NATIONAL ASSOCIATION OF RE-ENACTMENT SOCIETIES

In respect of the proposed ban on the sale of swords in Scotland

I am requested by the Executive Committee to write in my position as Public Relations Officer of the National Association of Re-enactment Societies. Founded some sixteen years ago, it is our function to represent the interests of British re-enactors of history to Government departments and other bodies. In particular, we seek to ameliorate legislation as it is being formulated to take account of the activities of those that we represent.

Over 90% of UK re-enactors are now members of an organisation that has NAreS membership and employ the Guidance Notes that we issue on many subjects from black powder storage to the requirements of the Disability Act. Re-enactment is a sane, sensible and worthwhile pastime that adds enormously to the portrayal of our past in castles and historic monuments throughout the land. Every society or club is self-regulating and powerfully aware of the high profile of costumed personnel in public, whether or not pursuing the purposes of their club.

We feel that due exception should be made within the act that is currently before the Assembly to take into account the needs of the ordinary people of the Scottish nation who do so much to ensure that our history is accessible to all. To this end, we would ask the Committee to recommend an exemption for members of properly constituted re-enactment clubs and societies, so that they may continue to purchase and wear swords and knives appropriate to the period they portray.

SUBMISSION FROM MR DAVID NEILSON

I write to you as a sales agent, working and living in Scotland and engaged in the sale of pocket knives, Swiss Army Knives and multi tools. I have been in the business for some thirty years. I supply retailers in sports, hardwear, fishing, shooting, marine, agriculture and garden centres.
I would support any Bill that I felt would help to reduce violent crime in Scotland, however, I feel that this Bill is fundamentally flawed in the methods by which this objective is sought. The reasons for this are as follows:

The information on which this Bill’s consultation process was based was factually incorrect, which has been acknowledged by the Justice Minister’s Knife Consultation Team in an email to my agency principal… “Statistics, as is the case in the Home Office Recorded Crime, held centrally by the Executive do not distinguish the weapon used in crimes such as serious assault. As you know there are specific crimes concerned with offensive weapons such as the offence of ‘having in a public place an article with a blade or point’. However knives are not identified separately from other types of offensive weapon. At present, the only regular statistical collection which includes information on the involvement of “sharp instruments” is the homicide statistics collection”

The Ministerial Forward quoted statistics about “Number of Murders with Knives.” These figures are incorrect as there is no data available that is this specific – a fact which was raised in the consultation process. The figures available in fact show murders with sharply pointed Instruments e.g. screwdrivers, broken glass etc. – not just knives.

I find it disappointing that a change in the law is being considered, due to a perceived problem essentially within the Glasgow area. A change which would affect retailers and consumers alike. e.g. Every farmer who buys a knife from his local hardwear or agricultural retailer for the purpose of general farm use, will find himself unable to purchase locally in many cases, as by no means will the majority of retailers wish to be licensed for what is most likely a small part of their business.

Is it the intention of this Bill to impose licensing on every Scottish Garden Centre, DIY Store, Outdoor Activities Store, Department Store, Gun Shop and Fishing Tackle Store, not to mention multiple retailers such as Marks & Spencers, NEXT and B&Q? All of these stores sell non domestic knives and under the current Bill would have to obtain a license. None of these stores sell swords so it seems ridiculous that they need a license to sell something as commonplace as a small Swiss Army knife, pruning knife or Multi-Tool. This is the reality of the Bill as it currently stands.

I would also question the ability of individual local authorities to cope with the burden of administrating this scheme. There will be literally thousands of retailers who will require licensing.

If it is the objective of the Bill to control the sale of Swords and large knives such as ‘fantasy / movie knives’ and combat type knives which are inherently difficult to define in law, surely the simplest way to deal with these products is to use a blade length criteria i.e. a retailer would need a license to sell a non-domestic knife with a blade length in excess of 6” (15.5cm). The Bill would then be tackling the type of product and retailer that I feel sure is the real problem in Scotland.

The above strategy would also make the overall number of outlets requiring licensing manageable for each local authority. It would take out Garden Centre’s, DIY Stores and Outdoor Shops etc. concentrating only on those shops that focus on what are perceived as anti-social products with no legitimate use.

We must not forget the current statutory instruments that exist to prohibit those who may want to ‘arm’ themselves with a knife – whether domestic or non domestic. Namely; Section 139 of the CJA 1988 which makes it an offence to carry a bladed or sharply pointed instrument in a public place without lawful authority or good reason, except for a folding pocket knife which has a cutting edge not exceeding 3” This primary piece of legislation when implemented correctly along with a stop-and-search policy and strong sentencing should be more than adequate to deal with a geographically specific urban problem.

The above legislation equally applies to domestic and non-domestic knives and expressly gives an exemption to small folding pocket knives which are an everyday item – which begs the question, why should it be necessary for a retailer to apply for a licence to sell a fully legal everyday item that can be carried at any time in a public place without let or hinderance?
On a practical note, the Bill will also be largely ineffective at limiting supply of knives into Scotland or controlling who is allowed to buy them as non Scottish internet retailers will simply fill the gap left in the market.

The interpretation of this Bill by commentators within the rest of the UK and the world may well be such that Scotland receives a reputation as a country that is so violent that it has had to licence the sale of products as commonplace and inoffensive as the humble Swiss Army Knife. What would this mean for Scotland’s vital tourism industry?

In conclusion: the evidence that has been used to promote this Bill is fundamentally flawed, the proposed Bill has a huge hole in it because it fails to address sales of domestic knives, the Bill in its present form will lead to an impossible backlog for local authorities as it will apply to many thousands of shops that I believe have never been considered as selling knives, the Bill will lead to the loss of Scottish jobs (retail staff, salesmen and agents) and creation of jobs outside Scotland (Mail order and Internet), in its present form this Bill will inevitably restrict retail supply of safety related knives for Diving, Mountaineering, Sailing and other Watersports, this may put lives at risk.

Finally and most important of all – this Bill will NOT achieve its aims of reducing violent knife crime because it does not address the root causes of such violence.

I sincerely hope that common sense will prevail and that all of the aforementioned points will be considered.

SUBMISSION FROM NORTHERN TO-KEN SOCIETY

With regard to the 'Weapons' section of the above mentioned Bill this Society would wish to acquaint you with a similar, if not identical, issue recently discussed by ourselves and representatives of the Home Office in Westminster.

As an organisation, originally founded in 1968, representing the interests of collectors of Genuine collectable and antique Japanese Swords in the United Kingdom, we were invited to clarify the status of so-called 'Samurai' swords for the purpose of legislation being considered for the future. Our meeting took place with Ms. Catherine Webster, Head of the Offensive Weapons Section, and Mr. Jonathan Batt at the Home Office on the 31st August and we invite you to consult with them upon their views and opinions of that meeting.

I understand that a 'bullet point' report to our members on this meeting has been forwarded to you by Mr. Alex Bean, and you may see several documents relating to this entire issue on our website at www.northerntokensociety.co.uk, but enclose the following to summarise the topics discussed on that occasion:

1. Being intimately familiar with the subject, we felt able to state that 'Samurai' swords, as defined by ill-informed and uneducated newspaper headlines, are not used in the pursuance of any crime in the United Kingdom - the objects so labelled being visibly and invariably cheap replicas or reproductions made to resemble genuine Japanese swords. All such swords depicted in newspaper articles have so far been of this type and no Home Office statistics exist to show the use of any genuine Japanese sword in crime.

2. The high monetary value and worldwide artistic status of genuine Japanese swords precludes both their easy availability and indeed desirability as simple weapons of choice for criminals. The highest price paid for a Japanese Art sword at auction in this country exceeds £200,000, and the most simple and ordinary examples generally command a price of between £300-£500, at which level we contend that no criminal will choose to purchase a sword when firearms are known to be commonly available at that same price or less.

3. The Home Office representatives stated that at no time had it been their intention to legislate against genuine antique or collectable Japanese swords, (antiques being already the subject of exemptions to existing laws governing the legal possession of swords). They shared our opinion that replicas or reproductions, through their easy availability and extremely cheap cost, were the root cause of such cases as had been the subject of reports of swords used in crime.
4. Whilst intending to focus forthcoming legislation against these replicas the Home Office also intended that exemptions be made for genuine swords and invited our advice on how such exemptions could be framed. We offered a technical definition of genuine Japanese swords of all periods, including present Art works being produced by current accredited Japanese sword smiths, which would further clarify their exempt status and explained our reasoning.

5. A discussion on the subject of licensing resulted in agreement between all parties that licensing of individual collectors was undesirable, and that self-regulation by organisations would be largely unworkable and unenforceable. The Home Office expressed their preference to allow the recognised exemption of genuine swords to define the equally exempt status of their owners.

6. We explained the necessity of maintaining the right of any individual or organisation to freely import, export or trade in genuine Art swords in order to improve the quality of both private and public collections. It was accepted that this is the case in every other field of Art and that by accurately defining the status of genuine swords as exempt from the proposed legislation, the question of import/export controls would cease to be at issue.

Obviously during the course of our talks many other matters were touched upon but these are the main points upon which we discovered we were in agreement.

The essential task in hand here is to address the real problem of armed crime by legislating against cheap and easily available reproduction weapons of no technical or artistic merit whilst avoiding unwanted and unnecessary effects upon the quite different aspect of historic, valuable art objects.

In general the Home Office preferred to accomplish this by providing the above mentioned exemptions to whatever form future legislation may take.

The first drafts of the proposed legislation against replica and reproduction swords are, we believe, now in preparation in the hands of Government Constitutional Lawyers, and we anticipate further consultation with the Home Office prior to its general publication in order to assist in checking the technical accuracy of the document.

We extend the same offer of consultation to the Justice 2 Committee and would welcome the opportunity to address these matters in your consultation process.

SUBMISSION FROM MR JAMES REILLY

Thank you for the chance to offer an opinion in respect to the above legislation. My comments are confined to, two specific provisions, outlined in the Bill; the ban on the sale of swords and the mandatory licensing scheme relating to the commercial sale of swords and non-domestic knives.

I remain unconvinced as to the need and form of the two provisions in the legislation you propose, they are in my view, disproportional, and target the wrong people. I’m also suspicious as to the interpretation of the ‘Tackling Knife Crime’ consultation.

Clearly there are many justifiable reasons to own and/or purchase a sword or knife. I believe most reasoned people would accept this and I note that the Bill allows for it. But I am confused by the use of the word ‘ban’ in the provision. You are not banning the sale of swords because, quite rightly, people will be able to purchase them for; ‘religious, cultural or sporting purposes’. The use of the word ‘ban’ in the provision is in my opinion misleading and should be removed. It would be better to say that the provision ‘attempts to restrict the sale and purchase of swords for specified religious, cultural or sporting purposes’.

You also wish to introduce a mandatory licensing scheme for the sale of ‘swords and non-domestic knives’. My opinion has always been that, knife crime, is cultural and individual specific, the criminal use of offensive weapons is not restricted to non-domestic knives, and even if it was, I cannot see how this licensing scheme will have any effect on this type of crime. I think also that this provision will, undeniably, burden small business and local councils with yet more bureaucracy and expense. In short I do not see the means as justifying the end.
My final comments concern the ‘Tackling Knife Crime’ consultation process and the ‘5 Point Plan’. I think it improbable, that a plan, any plan, put through a fairly conducted consultation process, could remain, intact, as this one appears to have. Before the consultation process the First Minister proposed his ‘5 Point Plan’ and afterwards it apparently emerges unscathed and ready for implementation! Of course, if you accept as I do that the use of the word ‘ban’ is inappropriate or wrong in the sale of swords provision then the First Ministers ‘5 Point Plan’ would now be a ‘4 Point Plan’. I wonder then if the word ‘ban’ is here for political consumption only?

SUBMISSION FROM SHERIFF FIONA REITH QC

I am submitting these observations to the Justice 2 Committee at the request of Professor Sandy Cameron, Chairman of the Parole Board for Scotland.

Although I am a Sheriff at Glasgow, and am therefore able to make observations on the Bill from the perspective of a sentencer, I am also able, as a member of the Parole Board for Scotland, to make observations from that additional perspective. However, my observations are purely personal and are, in particular, not made on behalf of Sheriffs generally.

Clause 6: My comments are as follows.

Setting the level at which these complex provisions come into operation at 15 days seems very low. The Sentencing Commission had recommended, subject to certain exceptions, setting the level at 12 months. I note that clause 27 provides that release is to be subject to a “supervision condition” inter alia if the person is a “custody and community prisoner” serving a custody and community sentence of 6 months or more. This is also mentioned at para 24 of the Policy Memorandum accompanying the Bill. It therefore seems reasonably clear that, in relation to offenders sentenced to under that period (which will be most offenders at summary level), the licence will probably contain only one condition, namely “to be of good behaviour and to keep the peace”. This is effectively confirmed at para 25 of the Policy Memo, which states that such a condition would “…put the onus on them to take control of his or her life and not re-offend.” The first point to make is that, if there is to be no supervision, some might question what the real point is of a “community part”. The second point is that an obvious problem, to which offenders will get wise very quickly, is that the Bill does not appear to provide for any compulsion to signal that a licence either limited to or including such a condition would have any real credibility.

One obvious way to provide credibility to back up such a condition would be if an offender knows that he or she is liable to have the unexpired portion of his or sentence re-imposed if they commit a further offence in the relevant period. However, section 16 is to be repealed, with nothing comparable being substituted.

Another way of providing some sort of credibility might have been to include a provision similar to that provided for in terms of section 27 (1) (b) of the Criminal Procedure (Scotland) Act 1995 so that there could be something similar to a “bail aggravation” (a “licence aggravation”? ) in the event of a new offence being committed during the licence period.

A reading of the provisions for revocation contained in clauses 31 to 34 of the Bill discloses that, even although in terms of clause 31 (1) and (2) of the Bill, Scottish Ministers must revoke a licence inter alia if a prisoner breaches a licence condition or if they consider that the prisoner is likely to breach a licence condition it then transpires from clause 33 (2), (3) and (4) of the Bill that the Parole Board must then release such a prisoner unless it determines that the prisoner “would, if not confined, be likely to cause serious harm to members of the public”. This is a higher test than that currently provided for in terms of Rule 8 of the Parole Board (Scotland) Rules 2001. I refer to my comments below in relation to clauses 8, 10 and 13. The new test is similar to (but arguably more restricted than) that at present applicable only to extended sentence prisoners. I would therefore expect a high proportion of prisoners to be re-released at this stage even if they have committed a further offence in the licence period. It therefore appears that there would be the potential for quite a cumbersome and expensive “revolving door” system, which the offenders would soon know would see them re-released unless the high test was met whenever they were recalled.
Another question arising as a result of setting the lower limit for application for the new provisions at 15 days is how both the courts and the Parole Board are to cope with dealing with (a) the possible provision by sheriffs of reports to the Parole Board to enable the Board to deal with referrals to it and (b) the processing of cases by the Board, which it seems likely will increasingly require oral hearings (certainly once the custody part set by the court has expired). This is because the relevant periods, such as the three-quarter point of a sentence, will obviously be reached quickly in the case of short sentences.

It is not clear how the provisions of clause 6(3) and (4) of the Bill are to interact with, for example, sections 204 and 207 of the Criminal Procedure (Scotland) Act 1995. Those two latter sections provide that imprisonment or detention cannot be imposed without the court first obtaining reports including information about such things as the offender’s circumstances and character. Not infrequently, this includes information about progress, or otherwise, in relation to such things as other existing or former community disposals. This sort of information is highly relevant to a determination of whether there is any alternative to custody. One might have thought that such information would also have been relevant to a determination of the extent of the custody part as well. If someone has a bad track record of compliance, the court might be assisted in coming to a view about the appropriate length of the custody part relative to the community part.

However, in terms of clause 6(3) of the Bill, the court is directed that in fixing the custody part it may only take into account the matters specified in clause 6(4). These matters are very restricted and do not even include the offender’s circumstances and character. If the court has decided upon custody and it does not require to obtain reports in terms of sections 204 or 207 of the 1995 Act, it therefore looks as though it can proceed to fix the custody part with reference simply to the restricted matters set out in clause 6(4). I wonder whether that is really intended? On the other hand, it has to be said that if the court had to obtain reports every time it was proposing to impose custody (even if the offender was over 21 and had previously had custody), this would have enormous implications for social workers having to prepare many more reports. It would also lead to significant delays in the courts pending the preparation of such reports, which might well be thought to be less than desirable, particularly in relation to summary proceedings. In that event, if reports were being called for solely with a view to fixing the length of the custody part, such offenders would probably have to be remanded in custody as well.

Sub-clause (4) (a) does not provide for a situation where there is a roll-up of two or more complaints falling for sentence at the same time. As presently drafted, the offences have to appear on the same indictment or complaint. Roll-ups of separate complaints are common. In addition, in some cases the charges must appear on separate indictments or complaints for technical reasons. The obvious example is when someone is appearing on indictment or complaint for dangerous driving and on another indictment or complaint for driving whilst disqualified. As presently drafted, offences appearing on such separate indictments or complaints would not fall under either sub-para (a) or (b). The provision could therefore usefully be amended to enable the courts to avoid a situation of unreality and thereby injustice.

In para 44 of the Policy Memorandum it is observed that there will be no equivalent of section 16 of the 1993 Act enabling the court to re-impose the unexpired portion of a sentence. However, the para goes on to say “there would be nothing to prevent a court from taking into account the fact that an offence had been committed during the service of the community part of a previous sentence when imposing any sentence for the offence”. Two points arise here. The first is that, at present, schedules of previous convictions record when section 16 has been utilised. The court can therefore see the offender’s track record in that respect. Unless new schedules of previous convictions specify precisely when the community part of a previous sentence commenced, the new sentencing court – or any subsequent sentencing court - would not be able to see this. The second point is that, although such an occurrence might be thought relevant to the selection of the appropriate length of the custody part of a later sentence, the “matters” set out in clause 6 (4) do not include the scenario envisaged in para 44. Consequently, it seems to me that clause 6 itself would, as currently framed, prevent a court from taking this into account in relation to the fixing of the custody part. In the light of what is said in para 44 of the Policy Memo, I wonder whether this is really intended?
This problem could perhaps be addressed by framing clause 6 (3) of the Bill to the effect that the court is to take into account such matters as it considers appropriate, including “without prejudice to the foregoing generality”. the matters set out in clause 6 (4), which itself could usefully be amended to include the situation of roll-ups being dealt with at the same time. On the other hand, the problem about that would be that this could then lead to pressure being put on sheriffs to obtain reports for this purpose even when not otherwise required, with attendant delay and expense involved for both the courts and social workers.

The maximum custody part is to be three-quarters of the overall sentence, irrespective of whether the offender has a track record of ignoring court orders. The obvious example is repeat disqualified drivers. It is not at all unusual to see offenders with numerous previous convictions under section 103 of the Road Traffic Act 1988. With the new provisions, the maximum custodial part, on indictment, will be reduced from 12 months to 9 months. There is then the difficult question of any discounting for an early plea. If one is still supposed to give a one-third discount (whether that should be to the overall sentence or to the custodial part is unclear, although I note that there is in clause 6 (4) of the Bill specific reference to section 196 of the 1995 Act as being one of the “matters” to be taken into account in fixing the custody part), that could result in a 6 month custodial part on indictment for even the worst section 103 repeat offender and in relation to whom the minimum 25% community part may well be a complete waste of time. As I have already mentioned, a consequence of the new provisions is that a breach of a condition of a licence to be of good behaviour will only lead to such an offender potentially serving the unexpired portion of his sentence if the Parole Board is satisfied that he would be “likely to cause serious harm to members of the public”. If that test is not met, unlike the position at present when they know they are facing section 16 of the 1993 Act, there is no effective compulsitor to make any breach of such a licence condition meaningful.

Clauses 8 ,10 and 13: My comments are as follows:

The test is to be similar to the current extended sentence test. It might however be noted that the extended sentence test refers to the protection of “the public from serious harm” whereas the wording throughout this Bill refers to a likelihood of the prisoner causing “serious harm to members of the public”. It will doubtless be for discussion whether “members of the public” means the same as “the public”. This is in any event higher than the test set out in Rule 8 of the Parole Board (Scotland) Rules 2001. The Rule 8 test includes reference to the commission of any offence or causing “harm” to any other person. Some might think that the public may well be concerned about even “moderate” harm. That will now be excluded. It is not clear to me whether someone who is repeatedly causing serious harm to property would fall within the ambit of the new provisions. It is likewise not clear to me that someone such as a repeat section 103 offender, or a repeat shoplifter or vandal, would fall within these provisions.

In relation to clause 10 (2), it is not clear what the Parole Board is to do if an adjournment is sought for good reason and in the interests of justice, even at the instance of the prisoner, which would take to period beyond the expiry of the custody part.

Clause 12: The provisions contained in clause 12 (3) and (4) are less than easy to follow.

Clause 14: My comments are as follows:

I have already referred, in the context of clause 6, to the problems I can see problems arising in relation to the short timescales inevitable associated with short sentences. As a member of the Parole Board, I am aware just how important it is that the Board has a report from the trial judge or sheriff as this is the only source for a reliable account of the offence concerned, and what was the offender’s position was at that time. Indeed, it is sometimes the only account at all of the offence. Not infrequently, the dossier does not even include a copy of the indictment in the case or the actual terms of any conviction or guilty plea. On the other hand, I am also a sentencer. I am therefore equally well aware that there would be significant time and resource implications if sheriffs had to prepare reports in all custody cases of 15 days or more as opposed to the current dividing line of 4 years and extended sentence cases. For example, the loading of the remand court in Glasgow is regularly in excess of 30 cases each day. I therefore foresee very real difficulties if the position was to be that reports were to be sought from sheriffs in all custody cases
of 15 days or more. However, it is not at all clear in just what categories of cases reports would be being sought from sheriffs.

The Bill does not provide the court with any discretion in relation to the community part. There are many cases, section 103 cases being as good an example as any, in which the offender’s track record shows that he simply never complies with any court orders or conditions. Because of the way in which breaches are proposed to be dealt with, there is a risk that some might think that offenders such as these would in effect be benefiting.

Clause 15 (3) and (4): There is the same restricted list of “matters” as in clause 6 (3) and (4).

Clause 17: My comments are as follows.

At para’s 14 and 31 of the Policy Memorandum it is said that the arrangements for life prisoners will not change and that the provisions of the existing law are re-enacted in the Bill. Looking at clause 17 of the Bill (and indeed clause 33 of the Bill which deals the question of re-release after revocation of a life licence), this does not appear to me to be entirely correct. An examination of this provision appears to indicate that there will be changes. This is because the effect of both this clause and clause 33 is to replace the present test (in section 2(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993) applied by the Parole Board when considering release of life sentence prisoners with the test similar, but not identical to, that at present applicable to extended sentence prisoners. The extended sentence test refers to the protection of “the public from serious harm” whereas the wording throughout this Bill refers to a likelihood of the prisoner causing “serious harm to members of the public”.

At present, section 2(5) of the 1993 Act provides that the Parole Board “shall not give a direction (to release a life prisoner on licence) unless the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined”. The Board needs to be satisfied that the prisoner no longer represents an unacceptable risk of physical danger to “the life or limb of the public”: Henry v Parole Board 2004 WL 413091; Stafford v United Kingdom (2002) 35 EHRR 1121. There is an argument that, in case of doubt, the onus is in effect on the prisoner to satisfy the Parole Board that this test is met: R v Lichniak [2003] 1 AC per Lord Bingham of Cornhill at page 913, letters C to D. Comparing clause 17 (3) (and clause 33 (3)) of the Bill with section 2 (5) of the 1993 Act, it is not clear what the position would be in relation to an interpretation of clause 17 (or clause 33) the Bill. That will doubtless fall to be discussed and determined in Tribunals of the Parole Board and, perhaps, ultimately in the higher courts. In para 31 of the Policy Memorandum it is commented that the current provisions and processes in relation to the imprisonment and release of life prisoners “remain fit for purpose”. It was for that reason that it is then said in the same para that it is not proposed to amend the law as respects the treatment of life sentence prisoners. It is therefore not clear why clauses 17 and 33 provide for a different test rather than simply re-enacting the provisions of section 2 (5) of the 1993 Act.

Clause 27: I have already raised a question about the point of these provisions being applicable to sentences of as low as 15 days when supervision does not come into play unless the sentence is 6 months or over.

Clause 28 (2) and clause 29: It would help if there was a compulsitor to back up these provisions.

Clause 31: I have already commented, in relation to clause 6 at the 4th bullet point, about the difference in the test for revocation by Scottish Ministers as compared with the higher test proposed for the Parole Board in clause 33 when it comes to consideration of the question of re-release, and how this sets up the potential for a “revolving door” situation — the likelihood being that a large number of those whose licences have been revoked will then be re-released in short order.

Clause 33: My comments in relation to clauses 8, 10 and 13 above are equally relevant to clause 33 in so far as it relates to determinate sentence prisoners. However, clause 33 also applies to life licence prisoners. I have already commented on the new test proposed in the context of my comments in relation to clause 17 of the Bill.
Clause 34: Sub-clauses (1) and (2) do not square with clause 33 (6) which provides, as one would expect, for the Parole Board to fix a further date for review in the event that the prisoner is not re-released following revocation. As clause 34 stands at present, such a prisoner would have to be confined until the end of his sentence or, in the case of a life licence prisoner, until he dies. It is not clear what the drafter is really seeking to achieve in this section. I can see that such an offender would be "liable" to be confined until the end of his sentence (or death in the case of a life licence) but presumably this would have to be subject to his or her position being reviewed in terms of clause 33 (6).

Schedule 1 and the Explanatory Notes accompanying the Bill at Paragraph 151: Schedule 1 provides for the membership of the Parole Board to be expanded. However, para 151 of the Explanatory Notes makes it clear that it is proposed to amend the Parole Board Rules in order to provide that Tribunals will in future be limited to two members rather than three, and that in future the Tribunal will have to reach a unanimous view in each case. Two points arise here. The first point is that a real strength of the Board is the wide nature of its membership and the knowledge and resources available to it as a result of the differing qualifications and experience of Board members. A reduction in the representation of that wide membership on Tribunals would I think only be detrimental to the decision-making process. The second point is that it is not clear whether unanimity would require to be in favour of detention or in favour of release. If there requires to be unanimity for release or re-release, it is difficult to see how it could really concluded that an offender is "likely to cause serious harm to members of the public" if one of the two members hearing the case is for release on the basis that they are not of this view.

Explanatory Notes accompanying the Bill at Paragraph 172: In the light of R v Parole Board ex parte Smith and West, I cannot see how re-release cases following revocation could be dealt with by other than oral hearings. Indeed, it seems to me that it is likely to follow from that rationale in Smith and West that any case referred to the Board by Scottish Ministers after expiry of the custodial part, on the basis that the offender is said to be likely to cause serious harm to members of the public, is going to require an oral hearing. My impression from this para is that this may not have been fully appreciated. If so, the cost implications for the Board, and indeed for Scottish Ministers if they are to be represented at such hearings, may well have been underestimated.

SUBMISSION FROM SCOTTISH FENCING LTD

We have previously made representations regarding the impact of the potential Bill on the sport of fencing in Scotland. Lord Moncreiff, a director of Scottish Fencing, has represented our views at a number of meetings with those concerned with the creation and drafting of the Bill.

We are aware that the Bill as it is presently drafted (as introduced, posted 3/10/06) would require that swords may only be purchased from vendors authorised through a "Knife-dealer's licence", and we are particularly concerned that swords used in the sport of fencing would be not be exempt. Specifically:

As the governing body charged with the responsibility for the development of the sport in Scotland we are strongly of the opinion that this requirement would be highly detrimental to the image of the sport and the willingness of parents to allow their children to participate in it. Fencing swords are not weapons designed to cause injury and we do not want our sport to be associated with activities which do use such equipment. In particular, this may lead schools to re-consider their involvement in the sport.

To the best of our knowledge Scotland would become the only country in the world to have such a constraint on the open trade of fencing swords. This would damage the reputation and status of Scotland in the international world of sport and in particular, of fencing, and would undoubtedly hinder our chances of being awarded rights to stage major international events.

We are strongly of the opinion that the requirement for licensing of vendors would impose damaging limitations on common practices whereby fencing clubs (including schools and universities) and coaches act as sales intermediaries between vendors and pupils. Clubs and coaches also regularly lend equipment to fencers and as such would be required to comply with the conditions imposed on vendors.
We are further concerned that vendors will find the impositions of the licensing process – which we understand are, as yet, undefined and will be within the discretion of local authorities – to be onerous and may cause them to consider their trading position in Scotland. Whilst we are sure the vendors will express their opinions to you directly we would stress the importance we place on maintaining a close relationship with the vendors of fencing equipment for the benefit of the sport in Scotland.

As a quid pro quo for granting access to vendors to Scottish Fencing competitions we get the use of competition equipment owned by them. If vendors have their freedom to trade in any way constrained they may not feel it is in their interest to continue to attend competitions and supply this equipment.

If fencing swords are included in the general classification of swords in the Bill they are, by inference, an object of the Police, Public Order and Criminal Justice Act 2005 which allows the sale of swords only to those aged 18 or over. Almost half of our membership are under 18 and it is very common that fencers – including those under 18 - purchase swords or (more likely) components of swords during competitions, usually as a matter of urgent necessity (for repairs to damaged or faulty equipment).

We suggest that all these concerns can be dealt with by considering fencing swords as objects exempt from the Bill. "Fencing Swords" can be defined as swords considered by Scottish Fencing (as the national governing body of the sport in Scotland) as complying with the rules of fencing in Scotland. Elaboration of that definition is very straightforward and could be published in a clear and unequivocal way. The definition would include the very detailed rules of the Federation Internationale d’Escrime (the international governing body of fencing) to define sword specifications (materials, geometry and so on) with a small number of additional definitions to take account of the slight differences of non-electric practice swords (not used for international competitions and as such, outwith the scope of the FIE regulations). There is no doubt that a sword manufactured or modified to have a sharp edge or a point could not meet these specifications.

We would be pleased to present this position and to provide further detail on our suggestion to any committee or other body involved in the Bill if you feel that would be useful.

SUBMISSION FROM SCOTTISH POLICE AUTHORITIES CONVENERS FORUM

I refer to the above and the previous correspondence of 3 October 2006 from the Scottish Executive inviting the Conveners Forum to offer comment upon the Bill. We have limited our comment to that part of the Bill that relates to the selling and licensing of non-domestic knives and swords.

The incidence of knife crime in Scotland is totally unacceptable, particularly the exceptionally high levels associated with Glasgow and the West of Scotland. The Conveners Forum supports the provisions of the Bill in respect non-domestic knives and swords, and recognises that while this may place some difficulties for those with legitimate reason to possess such weapons, such is the scale of the problem that it is absolutely essential to make every effort to disrupt the current availability of non-domestic knives and swords to those who would intend to use them for criminal means.

In offering support to the Bill, however, there are some issues to which we would wish to offer specific comment. These are;

Verification of the identity of a purchaser
Paragraph 114 of the Policy Memorandum indicates that local authorities will be able to specify the means by which identity should be established, e.g. by photographic means or utility bills. We would argue that means of identification should be of the higher standard, by such photographic means that guarantees verification of a person’s identity.
Purchase of non-domestic knives or swords over the internet or by mail order
The Bill creates an anomalous situation in respect of purchases made over the internet or by mail order. Where the place of distribution is in Scotland, the seller will require to be licensed by the relevant local authority. This obviously does not apply where the origin of dispatch is in England or outwith the United Kingdom. We recognise the difficulty within this area where individuals are not licensed in respect of possession, but feel that this has the potential to be perceived as a loop-hole that may subsequently be exploited by those seeking to purchase such weapons for criminal means.

Local & Craft Fairs
We have been made aware that within rural areas of Scotland, when there are local or craft fairs, that vendors from England have been present who may offer for sale such items of non-domestic knives, and other implements, that would fall within the future licensing requirements of legislation subsequently enacted by the Bill. In order to prevent such otherwise legitimate vendors falling foul of Scottish licensing requirements, there would need to be sufficient awareness generated within appropriate trade magazines and the media in England to timeously make such vendors aware of the additional conditions that will be placed upon them should they wish to continue their business selling non-domestic knives etc. in Scotland.

I trust that this information will be of assistance to you.

SUBMISSION FROM THE SHERIFFS’ ASSOCIATION

The Council of the Sheriffs’ Association does not consider that the provisions of this Bill will achieve the objective of delivering clarity and transparency in sentencing.

The Council recognises that the policy and policy objectives of the proposed legislation are for the Executive and Parliament and not for the Association. However, the Council has serious concerns about aspects of the proposals for the implementation of the policy and policy objectives.

The Council has no difficulty with the proposal that sentencing judges will have a role in setting the custody part of sentences of imprisonment ("custody and community sentences") and recognises that this role may, to a certain extent, make the process more transparent. However, in relation to transparency, clarity and certainty the Council has concerns about the role of the Executive and the Parole Board in reviewing and altering the custody part, as well as determining the conditions of community licence. The Council also has concerns about the operation of the Bill’s provisions in relation to the judicial decision-making process.

So far as the judicial decision-making process is concerned, we note that in deciding on the appropriate custody part the sentencing judge will not be permitted to take into account a factor that has customarily figured commonly in the judicial sentencing process. Clause 6 (5) requires the sentencing judge in specifying a custody part “to ignore any period of confinement which may be necessary for the protection of the public”. That appears to suggest that risk of re-offending is not be a factor that may be taken into consideration. Indeed the Explanatory Notes (Para.16) state in relation to subsection (5) – “The question of risk (or the protection of the public) will be assessed during the custody part and, if necessary, will be decided by the Parole Board.”

The Policy Memorandum states that “Public protection is of paramount importance” (Para.7). The protection of the public is a factor to which sentencing judges have customarily attributed high importance in determining the appropriate sentence to impose. The question arises of whether it is the intention of this proposed legislation to remove that factor from the judicial sentencing process.

It is not clear how the provision of clause 6(5) would affect the sentencing process so far as concerns the selection of a custodial sentence, rather than an alternative to custody, or as regards the setting of the overall “headline” sentence of “imprisonment”. Nor – in relation to the setting of the "custody part" - is it clear how the provision sits with the requirement in clause 6(2) to set the custody part as the appropriate period to satisfy the requirement of deterrence. Assuming this to be a reference to individual and not general deterrence (although this is not made clear), it might be thought that the sentencing aim of deterrence involves protection of the public (from further offending by the offender) and that the sentencing judge’s assessment of the period of custody
apposite to deter the particular offender from re-offending may require to involve assessment of risk of re-offending as a factor in that calculation.

There may be a further difficulty for sentencing judges in calculating the appropriate sentence, created by clause 6(4)(c). If the intention is that the provisions of section 196(1) (a) and (b) of the 1995 Act, in conjunction with the case law from the case of Du Plooy v HM Advocate, should operate in such a way that any proposed increase in the custody part (in terms of clause 6(3)) is to be reduced in recognition of an early plea of guilty, does this mean that the sentencing judge in such circumstances is to give an offender the benefit of a double discount, with both the overall “headline” sentence and the custody part being reduced?

The point about double application of the same factors would also seem to apply to the other matters relevant to the imposition of a higher custody part in terms of the proposed section 6(3) and (4). The seriousness of the crime and the accused’s record are likely to be taken into account in setting the overall “headline” sentence as well as being matters relevant to specifying a custody part that is greater than half of the overall sentence.

As we have said, the policy of the proposed legislation is a matter for the Executive and not for this Association. In fact we have no difficulty with what is stated in the Policy Memorandum about creating a transparent sentencing regime that will improve public confidence and provide transparency and certainty for victims. However, we do not believe the proposed legislation will achieve that and we think it appropriate to offer comment because we believe this will create difficulties for the judiciary, as well perhaps as for victims and the public. Although the custody part of a sentence of imprisonment will be imposed and announced at the public sentencing hearing, it will not be possible to predict or state at that time what the duration of the period that will actually be spent in prison will turn out to be or what the conditions of licence during the community part of the sentence will be. The only part of the sentencing process that will be in public will be this hearing. This situation would not appear to be conducive to or consistent with a policy of clarity, certainty and transparency, and it will create a difficult situation for the sentencing judge at the time of sentencing.

Although there is no specific provision to this effect in the Bill the Policy Memorandum states that “the court will explain the consequences of the combined structure when imposing sentence.” (Para. 11) Is not clear how that is to be achieved, in the absence of specific statutory provision. However, such an explanation may present a difficult task, so far as clarity and certainty are concerned.

An example of the sort of explanation that may require to be given follows. It supposes a sentence imposed by a sheriff on indictment in respect of a crime of assault to severe injury and permanent disfigurement in a case where a plea of guilty has been tendered at the First Diet.

Sheriff – “The sentence of the court is a sentence of imprisonment - that is a custody and community sentence - of three years. The sentence takes account of your early plea of guilty, in accordance with the requirements of the law. It would otherwise have been a sentence of four years, but a discount of one quarter has been given.

The custody part of your sentence will be one half - that is eighteen months - in accordance with the relevant statutory provision. I consider that to represent an appropriate period to satisfy the requirements for retribution and deterrence. In specifying the custody part I have been required by statute to ignore any period of confinement which may be necessary for the protection of the public, and I have not therefore taken into account the risk of you endangering members of the public by re-offending.

I cannot tell you (or your victim or the public) at this stage whether you will in fact actually spend 18 months in prison. It is open to the government to release you from prison on curfew licence before you have served 18 months. It is also open to the government and the Parole Board to delay your release from prison beyond the expiry of 18 months. The period of imprisonment may be extended up to a maximum of 27 months if the government and the Parole Board consider that you would, if not confined, be likely to cause serious harm to members of the public.
Part of your sentence will be served on community licence. In terms of the sentence I have imposed the period in the community on licence will be for one half of your sentence – namely 18 months. However, you will appreciate from what I have just said that it may turn out to be for more or less than that. I cannot at this stage tell you what the conditions of your licence will be when you are serving the community part of your sentence. These conditions will be set by the government or the Parole Board. If you breach the conditions of licence your licence may be revoked and you may be re-imprisoned, although you will not be further detained if the Parole Board determines that you would not, if not confined, be likely to cause serious harm to members of the public.

This is the only public hearing at which your sentence will be announced. I hope the consequences of the combined structure of your sentence are clear to you.”

As regards early release on Curfew Licence, we note that the Policy Memorandum makes clear (in Para.36) that the Bill re-enacts the arrangements introduced through the Management of Offenders etc (Scotland) Act 2005, known as Home Detention Curfew. These measures are seen as providing “a useful incentive in appropriate cases”, but would be subject to strict controls, prescribed in the Bill, such as the exclusion of high risk offenders and sex offenders. Clarification of clause 36(1)(b) would be helpful, as regards its meaning and the Executive’s intentions.

The Council would also wish to comment on the question of reports by sentencing judges, which has been raised in comments submitted by Sheriff Reith QC, who is a member of the Parole Board. The need for such reports is very limited at present, particularly so far as sheriffs are concerned. Reports are mainly required in cases where a custodial sentence of 4 years or more is imposed. (They are also required where a consecutive sentence is imposed which takes the accused into the category of a long-term prisoner or where a supervised release order or extended sentence takes the overall sentence into the 4 years or over category.) It is unclear what implications the proposed new statutory provisions may have for the provision of reports by sentencing judges. The Council would strongly oppose any suggestion that sentence reports should routinely require to be provided by sentencing sheriffs as a result of this proposed legislation. Any such requirement would add an unacceptable additional burden to the work of sheriffs and would be quite disproportionate to what would be likely to be the actual need for reports. We would expect that the number of cases in which the Executive thinks it appropriate to refer the sentence to the Parole Board would be only a small proportion of the total number of cases in which a custody and community sentence is imposed. In any case, as noted above, the matters to be taken into account by the sentencing judge in deciding whether it is appropriate to set a longer custody part are not to include any period which may be necessary for the protection of the public (clause 6 (5)). The test for consideration of denial of release at the end of a custody part that is less than the maximum will be the protection of the public (from serious harm). There should therefore be no need for any reports from sentencing judges, as the criterion for consideration of refusal of release at the end of the original custody part will be one that the sentencing court will not have considered (or indeed been permitted to consider).

The Council would also associate itself generally with the other comments submitted by Sheriff Reith, so far as relevant to the interests of sheriffs, including those relating to the abolition of the power of the court to decide to require an early-released re-offender to serve the unexpired portion of the sentence.

SUBMISSION FROM SPORTSCOTLAND

Thank you for your letter of 10 October inviting sportscotland’s views on the above Bill. sportscotland are pleased to respond and wish to thank the Committee for the opportunity to do so.

The parts of the Bill, which are relevant to sport are the provisions relating to the ban on the sale of swords, except for certain legitimate purposes and the requirement for those dealing in non-domestic knifes etc to hold a knife dealers licence.
Ban on Sale of Swords

sportscotland are content with the provisions of the Bill relating to the ban on the sale of swords, except for those purposes specifically recognised as a legitimate pursuit. We consider such a ban will not unduly impact on the ability of someone to purchase a sword in order to participate in a legitimate sporting pursuit.

Licensing of Dealers

sportscotland are content with the provisions of the Bill requiring those whose business is that of a dealer in non-domestic knives or swords to hold a knife dealers license. The Bill also contains provision requiring the licensing of any dealer who has a distribution operation only in Scotland and we are also content with this provision.

However, the Bill is not clear whether a retailer, or their agents, will require only one licence or multiple licences for every local authority area in which they trade. sportscotland would have serious concerns about the impact of the latter on sport in general but in particular the sport of fencing.

For background, there are very few dealers in Scotland of fencing equipment and some degree of sales take place via the internet or through telesales. However, a significant amount of trade is done through retailers selling at fencing competitions throughout Scotland, providing competitors with replacement blades and access to other equipment. For fencers, the type, weight and balance of blades is as important to them as, say, tennis racquets are to tennis players.

If multiple licences were required then a retailer will require thirty-two separate licences, all with possibly different conditions attached. Given the small scale of the fencing related market in Scotland we consider that the retailers who do operate currently from a single site in Scotland would be highly unlikely to apply for thirty two separate licences, due to the bureaucratic and financial impact on their business. If this were to happen, there would be very serious implications for the sport of fencing in Scotland.

- There would be a lack of availability of spare blades to competitors in fencing competitions and a restriction on the ability to purchase equipment.
- Scottish Fencing currently attracts income from vendors, who pay the governing body a rent in order to secure a retail site at fencing competitions. Any unreasonable licensing condition or a requirement to hold thirty-two licenses will inevitably lead to limited or no attendance from vendors with a consequential drop in income for what is not a big sport.
- Competitors from overseas rightly expect a degree of access to spare equipment, particularly blades, when attending Scottish competitions. It is unreasonable to expect overseas competitors to carry an endless supply of blades to competitions abroad. A lack of vendors at Scottish competitions will lead to a drop in the status of Scottish fencing and a decrease in the number of overseas competitors.

Sportscotland would welcome clarification on the multiple licence requirements with a view to securing a position that where a vendor held a bona fide licence for one Scottish local authority, then that licence would be sufficient to meet the requirements of all Scottish local authorities.

S 27A (3) (e)&(f) ‘lending’ or ‘giving’

The Bill in its current form indicates that a non-domestic knife or sword dealer includes persons carrying out a business which includes the ‘lending’ or ‘giving’ of swords. sportscotland is very concerned that this provision in its current form would have potentially devastating implications for the sport of fencing, or indeed any sport where a coach of a club who earned income from coaching allowed new entrants to the sport to borrow equipment. It is highly improbable that a new entrant to a sword sport would own or possess a sword when taking up the sport.

In particular, in the sport of fencing the majority of coaches in club and school situations derive income from coaching, usually by teaching at a number of community clubs and schools. Were it to
be the case that these coaches were to require licences or, even worse, multiple licences, this would have the potentially devastating effect of driving away coaches from the sport. At a time when sport is not finding it any easier to attract volunteers and activity leaders, and to develop those persons in to coaches, the effect may well be to kill the sport completely.

We understand that the Scottish Executive did not intend to require the licensing of those who merely allow participants to borrow swords for a club or school session and have them returned at the end of the session. In addition, Active Schools co-ordinators across Scotland use professional coaches as a way of introducing school pupils to the sport, where none of the participants will own equipment and the coach will provide everything. It is very unlikely that coaches would be willing to participate in this kind of activity were they to require a burdensome license. However unintentional the effects may be, they are still potentially devastating to the sport.

Given the above sportscotland would seek clarification on the issue of ‘lending’ and ‘giving’ with a view to reassuring those whose primary activity is coaching that they would not be required to hold a ‘knife dealers’ license.

sportscotland thanks the Committee for consideration of our submission and should the Committee require any further information of clarification sportscotland would be pleased to assist.

SUBMISSION FROM TRADITIONAL MARTIAL ARTS & BUDO KAI INSTITUTE (TMABI)

Reference 1:


Reference 2:

The Sale of Swords will be banned subject to exceptions for specified religious, cultural or sporting purposes

Reference 3:

The introduction of a mandatory licensing scheme for the commercial sale of swords and non-domestic knives, to be known as a knife dealer’s licence with local authorities being the licensing authorities.

The TMABI Organisation “Written Evidence Submission” regarding the above Referenced items 1,2 & 3 are provided as per the enclosed.

Further, I wish to be considered for any Oral Evidence Sessions that may be required.

Reference 2:

The Sale of Swords will be banned subject to exceptions for specified religious, cultural or sporting purposes.

It is the view of the Traditional Martial Arts & Budokai Institute (TMABI) that exemption from the Sale of Swords ban be made for legitimate organisations for specified religious, cultural or sporting purposes.

Those with a legitimate reason, such as collectors and sports enthusiast with organisation affiliation documentation, should be able to legally indulge their sport or hobby.

The TMABI also supports a sword Registration scheme which would be issued to individuals. Proof of membership with legitimate structured organisations would assist the local authorities with properly issuing certificates / licenses. With this license an individual could purchase a sword from an authorised dealer / owner.
With this approach, **ALL** sword using Organisation would be required to be listed and even Licensed with the Local Authority.

Proof of individual membership would further suggest that the buyer has a working knowledge of the laws related to ownership of swords as well as sword care, safety, handling and storage.

**Reference 3:**

*The introduction of a mandatory licensing scheme for the commercial sale of swords and non-domestic knives, to be known as a knife dealer’s licence with local authorities being the licensing authority.*

The TMABI also supports a sword Buy/Sell Possession Registration Certificate which would provide a traceable, trackable and accountable system for the protection of all concerned. Proof of membership in a legitimate structured organisation would assist the local authorities with properly issuing certificates / licenses. Additionally, **ALL** Organisation using swords **MUST** be listed with the Local Authority.

Japan and Denmark have similar system addressing the Buying, Selling and Possession of Sword. A sword’s ID Tag that MUST be attached to the bag or container housing the sword at all times. The Registration is the small white paper is laminated. (pictured) The bigger paper is document of appraisal, stating who made the sword, what time period, etc. Not all swords have appraisal docs, but all swords must be registered.

The Licensing Authority once or twice a month holds a day of registration at city hall, with several sword experts on hand. They inspect the sword to determine its authenticity, and then write down the basic details: signature (if any), length, number of mekugi-ana (pin hole), etc. and give it a number. The document gets laminated and given to the owner. The License Authority keeps records of who currently owns the sword. If it is sold or transferred, it is the new owner’s responsibility to notify the licensing authority. The registration stays with the sword at all times.

**SUBMISSION FROM WHITBY & CO**

We write to you about the above Bill as Whitby & Co are the UK’s leading importer and distributor of multi-tools, Swiss Army Knives, pocket knives and shooting and fishing knives. We supply 357 retail shops in Scotland. These stores include well known names such as Tiso’s Outdoor, Jenners Department Store, Nevisport and Millets Outdoor Leisure.

Historically the Directors of Whitby & Co have assisted the Home Office in the production of the Criminal Justice Act 1988 in relation to Sections 139 and 141 which specifically cover the carrying of knives. Currently, the Directors are again being consulted by the Home Office about the proposed Violent Crime Reduction Bill, again with specific reference to knives.

We would support any Bill that we felt would help to reduce violent crime in Scotland, however, we feel that this Bill is fundamentally flawed in the methods by which this objective is sought. The reasons for this are as follows:

The information on which this Bill’s consultation process was based was factually incorrect, which has been acknowledged by the Justice Minister’s Knife Consultation Team in an email to Whitby’s... *Statistics, as is the case in the Home Office Recorded Crime, held centrally by the Executive do not distinguish the weapon used in crimes such as serious assault. As you know there are specific crimes concerned with offensive weapons such as the offence of ‘having in a public place an article with a blade or point’. However knives are not identified separately from other types of offensive weapon. At present, the only regular statistical collection which includes information on the involvement of “sharp instruments” is the homicide statistics collection*”

The Ministerial Forward quoted statistics about “Number of Murders with Knives.” These figures are incorrect as there is no data available that is this specific – a fact which we raised in the
consultation process. The figures available in fact show murders with sharply pointed Instruments e.g. screwdrivers, broken glass etc. – not just knives.

It appears that the advice of the Violent Crime Reduction Unit of Strathclyde Police is being used to formulate legislation for the whole of Scotland in the absence of proper qualitative statistics about what weapons are being used in homicides, and further, how many domestic or non-domestic knives are being used.

Looking at the statistics that are available, we again submit the following,

Table 5 Homicide Stats, Scotland (2003). It appears that the majority of offences (85%) are committed by friends/relations or other acquaintances of the victim who are often under the influence of drink or drugs (Table 7, 65%). We feel that it is not unreasonable to assume that many of these offences may have taken place in a domestic environment, probably with items close to hand. Anecdotal evidence such as the report from the Daily Record, August 17th ‘OUTRAGE OVER KNIFE KILLER’S SENTENCE’ shows that a large kitchen knife was used in a murder with inadequate sentencing for the perpetrator. Also, ‘Cleaver Maniac Stabs Sis 20 times’ Daily Record August 3rd – again, the primary weapon was a kitchen cleaver which had been brought to the crime scene.

Again it must be pointed out that your official figures show that the violent attacks that are occurring are largely confined to Strathclyde and would appear to be as a result of social ills that will not be addressed by licensing legislation. Demonising knives will not result in a lowering of murders or assaults. IF ‘non domestic’ knives are being used, then people will just carry some other item to defend or attack. We refer to ‘Safer Scotland – Safer Streets’ campaign http://www.strathclyde.police.uk/index.asp?docID=1229, it clearly shows that 798 weapons were found on 419 individuals caught. This averages out at nearly 2 weapons per person, of which 370 were not knives.

We feel that the Bill does not adequately differentiate between the sale of Samurai Swords and pocket knives such as Swiss Army Knives / Multi-Tools. i.e. a dealer will require the same licence to sell either product. This approach is entirely incorrect for two products that are so different.

Is it the intention of this Bill to impose licensing on every Scottish Garden Centre, DIY Store, Outdoor Activities Store, Department Store, Gun Shop and Fishing Tackle Store, not to mention multiple retailers such as Marks & Spencers, NEXT and B&Q? All of these stores sell non domestic knives and under the current Bill would have to obtain a license. None of these stores sell swords so it seems ridiculous that they need a license to sell something as commonplace as a small Swiss Army knife, pruning knife or Multi-Tool. This is the reality of the Bill as it currently stands.

We would also question the ability of individual local authorities to cope with the burden of administrating this scheme. There will be literally thousands of retailers who will require licensing.

We applaud the rationale behind the desire to control the purchase and sale of Swords which are fundamentally designed as weapons. We do not understand why products that have a primary use in DIY and camping or field sports, should be subject to the same degree of control.

If it is the objective of the Bill to control the sale of Swords and large knives such as ‘fantasy / movie knives’ and combat type knives which are inherently difficult to define in law, surely the simplest way to deal with these products is to use a blade length criteria i.e. a retailer would need a license to sell a non-domestic knife with a blade length in excess of 6” (15.5cm). The Bill would then be tackling the type of product and retailer that we feel sure are the real problem in Scotland.

The above strategy would also make the overall number of outlets requiring licensing manageable for each local authority. It would take out Garden Centre’s, DIY Stores and Outdoor Shops etc. concentrating only on those shops that focus on what are perceived as anti-social products with no legitimate use.

We must not forget the current statutory instruments that exist to prohibit those who may want to ‘arm’ themselves with a knife – whether domestic or non domestic. Namely; Section 139 of the CJA 1988 which makes it an offence to carry a bladed or sharply pointed instrument in a public place without lawful authority or good reason, except for a folding pocket knife which has a cutting edge
not exceeding 3". This primary piece of legislation when implemented correctly along with a stop-and-search policy and strong sentencing should be more than adequate to deal with a geographically specific urban problem.

The above legislation equally applies to domestic and non-domestic knives and expressly gives an exemption to small folding pocket knives which are an everyday item – which begs the question, why should it be necessary for a retailer to apply for a licence to sell a fully legal everyday item that can be carried at any time in a public place without let or hinderance?

On a practical note, the Bill will also be largely ineffective at limiting supply of knives into Scotland or controlling who is allowed to buy them as non Scottish internet retailers will simply fill the gap left in the market.

We would also draw your attention to the results of the (flawed) consultation process. Despite the error in attributing all murders with sharply pointed instruments to knives and despite the fact that the majority of responses were from the Police and other public sector bodies (crime reduction partnerships etc) - the final conclusion was that 30% of respondents disagreed that licensing should be needed to sell non domestic knives and 32% agreed (38% gave no response). This does not show overwhelming support for the licensing scheme as regards knives.

The interpretation of this Bill by commentators within the rest of the UK and the world may well be such that Scotland receives a reputation as a country that is so violent that it has had to licence the sale of products as commonplace and inoffensive as the humble Swiss Army Knife. What would this mean for Scotland’s vital tourism industry?

In conclusion: the evidence that has been used to promote this Bill is fundamentally flawed, the proposed Bill has a huge hole in it because it fails to address sales of domestic knives, the Bill in its present form will lead to an impossible backlog for local authorities as it will apply to many thousands of shops that we believe have never been considered as selling knives, the Bill will lead to the loss of Scottish jobs (retail staff, salesmen and agents) and creation of jobs outside Scotland (Mail order and Internet), in its present form this Bill will inevitably restrict retail supply of safety related knives for Diving, Mountaineering, Sailing and other Watersports, this may put lives at risk.

Finally and most important of all – this Bill will NOT achieve its aims of reducing violent knife crime because it does not address the root causes of such violence.

We look forward to the opportunity to discuss our amendments to the Bill with the Justice 2 Committee.
Present:

Ms Wendy Alexander        Mr Andrew Arbuckle
Mark Ballard               Derek Brownlee
Jim Mather                Mr Frank McAveety
Des McNulty (Convener)    Dr Elaine Murray
John Swinney (Deputy Convener)

Custodial Sentences and Weapons (Scotland) Bill: The Committee took evidence on the Financial Memorandum from—

Willie Pretswell, Finance and Business Services Director, Scottish Prison Service; Rachel Gwyon, Director of Corporate Services, SPS; and Eric Murch, Director of Partnerships and Commissioning, SPS.

And then from—

Jane Richardson, Head of Parole and Life Sentence Review Division, Scottish Executive; Brian Cole, Community Justice Services Branch, Scottish Executive; and Gery McLaughlin, Head of Knife Crime Branch, Scottish Executive.

The Committee requested supplementary information from representatives of the Scottish Prison Service on the cost differential between a private sector prison and a public sector prison over a 25 year period. The Committee also requested supplementary information from Executive officials on the year-on-year increases in funding for local authorities for community based disposals from 2005-06 and including the anticipated increase in 2007-08.
The Convener: Item 4 is to take evidence on the financial memorandum on the Custodial Sentences and Weapons (Scotland) Bill. I invite our first group of witnesses to the table. We agreed that the bill should be subject to level 3 scrutiny, which means taking oral evidence from an organisation on which costs fall and then from Executive officials. The committee will take evidence today from the Scottish Prison Service and Executive officials. As our timescale for reporting on the bill is relatively tight, we have had to schedule both evidence-taking sessions today, which is not what we would do normally.

I welcome from the Scottish Prison Service: Willie Pretswell, finance and business services director; Rachel Gwyon, director of corporate services; and Eric Murch, director of partnerships and commissioning. I invite the witnesses to make a brief opening statement and then we will move straight to questions.

Willie Pretswell (Scottish Prison Service): We welcome the opportunity to present evidence to the committee. Although Tony Cameron sends his apologies for not being able to be here today, he has made a submission to the committee, which is included in members’ papers. We have responded to the committee’s questionnaire. The key implications of the bill for the prison service relate to the additional prisoner numbers that the bill generates and the subsequent additional obligations that will be placed on the prison service, mainly to do with the risk assessment and management of prisoners, including transportation through our escort contract. That is the main theme. The major issue in our managing those additional obligations will be the phasing of the increases in the prisoner population and our ability to synchronise delivery of any additional resources that will be required in line with that increased prisoner population.

The Convener: Thank you for that, Willie. The committee agreed that Derek Brownlee and Andrew Arbuckle would be the lead members on the bill so I hand over to Derek Brownlee.

Derek Brownlee: The financial memorandum estimates that there will be between 700 and 1,100 new prisoners on top of the existing projected increase. A whole range of assumptions feed into that figure at paragraph 178 of the financial memorandum. Are you entirely happy with that? Is the range reasonable?
Rachel Gwyon (Scottish Prison Service): Yes, it is. We have considered the figures, which range up to year 5.

Derek Brownlee: A provision that has been the subject of recent comment concerns the release point after three quarters of a sentence has been served. Was there any analysis of what the increase in prisoner numbers would be if there were no automatic release after 75 per cent or a higher percentage of the sentence had been served, or no release until 100 per cent of the sentence had been served?

Rachel Gwyon: As you can imagine, there are a number of ideas floating around as to whether the measures in the bill are the correct ones. A lot of work goes into the modelling, and we did the detailed modelling that you see in the financial memorandum just on the measures in the bill. However, one thing that we considered at an early stage was what would happen if there were no 50 per cent or 75 per cent points and if everyone stayed to the end of their sentence without being risk assessed for a period in the community, and the numbers for that are stark indeed. If everyone stayed to the end of their sentence, over the same timeframe that we were looking at for the 700 to 1,100 extra prisoners, the prisoner population would rise from the current level of just over 7,000 to about 12,000. That is a different scale altogether.

Members will have a number of ideas about which measures in the bill they want to discuss, and the Finance Committee is obviously giving detailed thought to the costs, implications and impact. I just wonder what the arrangements are, either here or in other places, for considering what those changes might be.

Derek Brownlee: I would like some clarity on those numbers. You said that there would be an increase of 5,000 prisoners if there was no provision at all for automatic release in the bill. The financial memorandum calculates an increase in prisoner numbers of between 700 and 1,100 as a result of the bill, but an increase in the prisoner population is projected anyway. If we take the 5,000 figure and subtract the 1,100 additional prisoners estimated as a result of the bill, that leaves 3,900 additional prisoners. Perhaps I should put the question another way. What increase in the prisoner population is expected over the timeframe that we are talking about, excluding the effects of the bill?

Rachel Gwyon: The figure is around 500 over the same period, or about 100 a year.

Derek Brownlee: That is useful. An increase in prisoner numbers has an impact on prison spaces and your submission states that a prison houses about 700 inmates, as a rule of thumb. Is that the optimum? Is it the maximum? Why 700? If, for example, there were 1,100 additional prisoners, that number would fill more than one prison if the typical prison size is 700 inmates. Is there any way of squeezing—that is perhaps the wrong phrase—or of increasing the size or scale of prisons that would lead to a consequent reduction in the cost per prisoner serviced, or is 700 a natural limit?

Willie Pretswell: We have tried to give an indication of the resources that would be required to provide the additional prisoner places that we are projecting—the figure of 700 to 1,100. As you said, there are many assumptions behind that estimate, and many different scenarios could play out in terms of how those prisoner places are provided. At this stage, we have no plans for how we could deliver that provision, so we have tried to express it in financial terms in the financial memorandum, rather than presenting it as a fixed way of delivery. We have presented the financial memorandum so as to cover the estimated costs of providing a mixture of places in different ways.

The committee will be aware that we are currently spending about £1.5 million a week on modernising the prison estate. As part of that programme, we are trying to create more efficient, modernised prisons that are fit for purpose and have extra capacity. On existing sites, we are converting the old accommodation into new and providing more places. For example, at the turn of the year, we will be opening new house blocks at two of our development prisons, Polmont and Glenochil, where there will be about 700 new places. At the same time, we will be closing around 300 or 400 places. As we go along, we are putting in extra capacity, but at the moment we have a shortfall in the design capacity as against the prisoner population, and we have a rolling programme of investment.

Over time, the opportunities to build more accommodation—more efficient prisons—on the existing sites will dry up. If that happens, we will need to look at other ways of delivering that accommodation, assuming that there are no factors to offset the impact of the bill on the overall prisoner population. We will need to consider other options such as new prison sites and the cost of delivering those. Nevertheless, we are content that the overall recurring costs of providing 700 to 1,100 new places are covered in the financial figures that we have. Where capital expenditure is incurred, either for traditional investment in existing sites or for a new prison, the figures are in the right ballpark.

We have not developed a plan for delivering the extra capacity; we need to consider that in conjunction with the other estate management
issues that we have and the timing of the roll-out of the aspects of the bill that would cause the prisoner population to increase. The key issue for us will be the management of any additional demand for our services that arises from the bill in conjunction with the other issues that we have within the prison estate.

12:00

Derek Brownlee: Is it fair to say that, although there is the potential to make economies of scale, the main constraints are the prison estate and the physical space that is available to you to deliver the extra capacity?

Willie Pretswell: We are taking on an ambitious development plan for the prison estate. We have concentrated the investment—I mentioned the expenditure of £1.5 million a week—on four key prisons. Remarkably, we are maintaining fully operational prisons on those sites, as we cannot give up the spaces. We have building sites with 200 to 250 contractors working in a live prison environment because we cannot release the sites for full development. That work is going well at the moment, and we are creating more than 2,000 new, modern places through that route. As I said, once we finish the development on those four sites—which we hope to do round about 2008-09—we will look to the next phase of development. If the bill is passed, our development programme will take account of the demands that arise from it.

Derek Brownlee: So, your current development programme aims to deal simply with the pressure that already exists in the system through the increase in prisoner numbers. If the bill did not come into force and nothing else changed, you would still face a projected increase in prisoner numbers. Would the current projections lead to a surplus of places or would you still be under pressure?

Willie Pretswell: The charts that we have provided, along with our business plans, show that, over the next few years, we will try to build up sufficient capacity. We hope to align capacity with the projected prisoner population in a few years’ time. That is not taking into account any implications of the bill. The projection is that the prisoner population will continue to increase by about 100 to 200 prisoners per annum. So, in a few years’ time, we will have another shortfall of places if the figures fall out as they are projected. That will be addressed in the next phase of the development plan.

You will be aware that we are also under pressure to modernise the prison estate because of the need to raise standards of accommodation and because of some of the issues that we are managing at the moment. The implications of the European convention on human rights for slopping out have been well publicised. That is one of the issues that is associated with the legislation. We are trying to get ahead of the game in making the estate fit for purpose for prisoners and for staff, so that we can carry out the work that the Executive wants us to do on targeting reductions in reoffending and on prisoner behaviour.

Derek Brownlee: Has the Executive given you a commitment to provide you with the resources that you will need to deliver the extra spaces if the bill comes into force?

Willie Pretswell: The Executive has fully funded the current development programme, in terms of both capital investment and the two new prisons that are planned. In June, we awarded a contract for 700 additional places at HMP Addiewell, which is on track to open in late 2008. On the second new prison, we are currently awaiting the outcome of a planning appeal that took place in the summer. We hope to know the outcome of that appeal early in the new year, after which ministers will make a decision that will allow us to proceed with the project. The project has been fully funded.

Assuming that no offsetting measures are taken to reduce the impact of the bill and to address the financial implications that would arise from it, there is an understanding, which is reflected in the bill, that resources would need to be made available to match any net increase in the prisoner population. Regardless of which route is taken to create new places—whether they are additional places on existing sites or new prisons—there will be a lead time for delivering them.

Derek Brownlee: Let me push you a wee bit further on that. You say that there is an understanding that resources would follow. Is that as far as it has gone? Has there been no specific commitment that any costs to the prison service arising from the bill, if it is passed, will definitely be funded?

Willie Pretswell: I would expect that to be factored into the appropriate spending review process. The timing of the bill’s roll-out would determine which spending review process that would be part of. I am not sure about the timescale for passing the bill, and there is a separate question of when the various elements of it would be brought into force. That would be considered and, if nothing else changed, we would factor that in on the basis of the submission that we have made to the committee. However, as Rachel Gwyon mentioned, if the bill changed during its passage through Parliament, we would need to revisit the assumptions underlying the projections for the prisoner population, the delivery of spaces and the financial implications. We see the decision on funding being taken through the spending
review rather than through the Executive giving a firm commitment at this time.

The Convener: It might be useful to point out that, if an amendment was passed at stage 2 that had a significant financial implication for the bill, under the agreed procedure there would be a requirement for the Executive to produce a revised financial memorandum. There is a process in place that would kick in to deal with the eventuality that Rachel Gwyn mentioned.

Willie Pretswell: That is helpful.

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): I have a question on the lead-in time. You say that it takes up to five years to build a new prison. The figures that we have been dealing with take us to year five, with between 700 and 1,100 new spaces required. A further extrapolation increases the figure. I hope that that extrapolation is wrong and that the figure does not continue upwards. There is, surely, a need for you to identify additional requirements eight years down the line. Can you tell us what will be required either through the extension of existing premises or through the building of new premises?

Willie Pretswell: At this stage, we have not defined what that mix is. The easy option would be to say that because the requirement will be additional, we will need new sites and new prisons, but we propose to consider the matter in the context of the other estate management issues that we face and to manage as much as we can within the existing estate.

If we reached our maximum capacity, we would need to look for additional sites, get planning permission and carry those plans through. That would probably have a longer lead time. We indicate a timescale of eight years in our written submission, basically because a lot of assumptions have to be made about how long it would take to identify and purchase sites and get planning permission. Our experience with Low Moss, at Bishopbriggs, shows that such issues are outwith our control. It has taken a number of years even to get to the present position. It is difficult to predict exact timings. If we went forward with such a programme, we would see it as an opportunity to integrate this exercise with the overall estate strategy that is aimed at modernising the entire prison estate.

Mr Arbuckle: I recognise that it is a difficult exercise and that many factors could influence it. If that is the timescale from deciding that we need additional capacity to opening the doors—or closing the doors, I suppose—surely it would be prudent to include that in the capital cost of the bill, which will affect the prison population.

Willie Pretswell: It is included in the capital value. We have identified that if there is a requirement to go outwith the existing sites, we will need to acquire some land. We have allocated a non-recurring cost of around £2 million to that. We have identified that the capital requirement would be between £23 million and £160 million, depending on whether 700 or 1,100 additional prisoner places were needed and on whether the vehicle was traditional capital funding or a public-private partnership solution that was off balance sheet. A few assumptions have been made.

Mr Arbuckle: We will return to those assumptions with the next panel.

I want to change the subject. One of the duties of the SPS is to provide documentation to the Parole Board for Scotland. You have suggested that the cost of that will not be significant, but one of the bill’s aims is to make far more use of parole. Will the additional work not have a financial implication?

Eric Murch (Scottish Prison Service): A group is examining the four components of the process: the custody part, the community part, the court part and the parole part. We are dealing with the custody part and the parole division is leading on the parole part.

In addition, we have introduced integrated case management, through which much of the information that was traditionally provided to the Parole Board in large volumes of paper will be dealt with. We hope that integrated case management will rationalise the amount of paper and documentation that is required for the process.

Mr Arbuckle: What about the financial implications of the extra work?

Eric Murch: We covered the part of the process for which the SPS is responsible under the risk management analysis. We will require additional criminal justice social workers to work alongside additional prison officers and additional administration staff. We factored in the cost of that—I think it came out at £5 million to £6 million.

Mr Swinney: Mr Murch mentioned the four components that are being examined in this area of policy. I take it that that work has fed into the figures that Mr Pretswell gave us on the number of prisoner places that you expect to require in the future. Is that correct?

Rachel Gwyn: We did the modelling work on the number of prisoner places that will be needed first. The implementation work is about how we manage the volume of work that we expect, what information the Parole Board and other people will need from us, and what risk management tools the Risk Management Authority will develop for us to build into the integrated case management process. That work is not expected to change the
modelling; it is about the implementation, in the light of what we expect to happen.

Mr Swinney: If a different attitude to policy were adopted—let us say that a more aggressive approach was taken to alternatives to custody for some minor offenders—it might have a material impact on your modelling of prison numbers.

Rachel Gwyn: A policy change that sought to keep more people on sentences of less than six months in the community would require a change in primary legislation, for which a separate financial memorandum would have to be prepared. The committee would consider such measures and we could discuss the impact on the projections, so there would be visibility.

The Convener: We have no more questions for the SPS witnesses. Thank you very much for coming along.

12:15

I welcome officials from the Scottish Executive. Jane Richardson is the head of parole and life sentence review division, Brian Cole is from the community justice services branch and Gery McLaughlin is head of the knife crime branch—it must be interesting to have that on your business card.

As before, I invite the officials to make a brief opening statement should they wish to do so. We will then proceed to questions.

Jane Richardson (Scottish Executive Justice Department): I am conscious of the time, so we will keep the presentation short.

As you are aware, the bill has two distinct elements: custodial sentences and weapons. Because my division deals with the existing arrangements for parole and review of life sentence prisoners, we are co-ordinating the custodial sentences aspect of the bill. In addition, we have sponsorship responsibility for the Parole Board for Scotland.

As the financial memorandum tries to explain, the new combined structure approach to sentence management that will apply to sentences of 15 days or over will see sentences being managed from now on as part custody and part in the community. My colleague, Brian Cole, who deals with community and justice services, obviously has a significant role. You have heard from our colleagues in the Scottish Prison Service on the custody element. My colleague Gery McLaughlin will do the interesting bit on knives.

Mr Arbuckle: The bill is wide ranging, but we are concentrating on its financial costs. You heard us question the previous witnesses about whether we can be sure that we will have the funding and capacity for the increased number of prisoners that will result from the bill. Can you assure us that there will be prison capacity for the additional prisoners?

Jane Richardson: I believe that my SPS colleagues answered the question about the number of prisoners. The financial memorandum reflects the estimate, on which we worked with our prison colleagues, of an additional 700 to 1,100 prisoner places.

Mr Arbuckle: With regard to new facilities, a wide range of costs is given. Towards the end, the financial memorandum states that the cost will range from £25 million up to £162 million. Can you indicate why there is such a wide range?

Jane Richardson: I will invite my colleague, Mr Cole, to say more about the community services element. As my colleagues from the SPS explained, the variation is because the figures are based on a range of assumptions. The new structure of the sentence will mean that there is a degree of flexibility in the way it is managed. The period of custody imposed by the court can be a minimum of 50 per cent of the sentence, but it can raise that to 75 per cent on the basis of retribution and deterrence—punishment if you will. There is also a variable once the individual is taken into custody, which will depend on the risk they are assessed to present as they work their way through the custody part. The period can range from the minimum imposed by the court up to 75 per cent of the sentence if the case is referred to the Parole Board.

Mr Arbuckle: Yes, but I come back to the range of the estimate of the capital cost of new facilities. Can you give us more information on why there is such a range?

Jane Richardson: In relation to the prison service?

Mr Arbuckle: Yes.

Jane Richardson: I am sorry, but I am not equipped to answer that question more fully than my colleagues from the SPS, who have just answered it. The estimates of capital costs were based on information that we gained from the SPS in discussions held to formulate the overall financial implications.

Mr Arbuckle: Can you assure the committee that ministers have confirmed that funding will be made available to implement the bill, regardless of whether the smaller figure or the larger figure of £162 million is required?

The Convener: Let me just tweak that question slightly. Do you have any information in connection with the spending review that might allow us to take the issue forward? Obviously, the cost issues will need to be dealt with in the future.
**Jane Richardson:** I appreciate that. As my colleagues from the Scottish Prison Service said, all the information will be fed into the spending review, which is about to start off.

The only thing I can say by way of assistance is that commitment is given in the financial memorandum that ministers recognise that the facilities and structures will need to be in place before the new arrangements can be brought on stream.

**The Convener:** Is there a mechanism that allows that to happen? In other words, will the finance be provided and the mechanisms then be put in place to match up to it, or is it possible that we could be legislating to put in place a system that ministers might decide not to fund?

**Jane Richardson:** The two issues go hand in glove. As my SPS colleagues mentioned, an implementation group has already been formed to consider how the structure of the whole system will be put in place. Given that the proposals involve a radical departure from the existing arrangements, the structure will need to be in place before the new arrangements can be implemented. Although the legislative authority will be provided as a result of Parliament eventually considering the bill to be appropriate, we will also need to have in place the structure to support and implement the new arrangements. Obviously, that will include resources.

**Mr Arbuckle:** Why is there such a vast difference between prison costs in the private sector and prison costs in the public sector? Are those differences reflected in the cost of the private prison that is currently being built in West Lothian?

**Jane Richardson:** Sorry, I would need to ask my SPS colleagues to answer that. That is not my field of expertise, so I cannot answer the question.

**The Convener:** Perhaps we can put that question in correspondence to the Scottish Prison Service.

**Mark Ballard:** I want to press you on the recurring costs, for which the table on page 32 of the financial memorandum gives a range of between £37 million and £55 million for the SPS and another range of between £47 million and £65 million. Is the difference between those two sets of figures due to the different recurring costs of private prisons and public prisons?

**Jane Richardson:** The total cost to the Scottish Administration is given as between £47 million and £65 million. The next line in the table gives the recurring costs to the SPS for year 5, which are given as a range of between £37 million and £55 million. As my SPS colleagues explained, those figures are based on a number of assumptions, including the varying impact of additional prisoner places and, as the financial memorandum explains, the differences between the various types of funding for those places.

**Mark Ballard:** Does the variation in the different types of funding refer to the cost differences between private prisons and public prisons?

**Jane Richardson:** I believe that that accounts for part of the difference. If it would be helpful, we could try to set out further details on those figures for the committee.

**Mark Ballard:** I am particularly interested in the statement in the financial memorandum that the asset—the prison—returns to the SPS after 25 years. It would be useful to have the comparative costs of a private prison and a public prison over the 25-year period so that we can see the long-term costs of the two options. That would give us a better understanding of the variability of new prison costs rather than the year 1 costs and recurring costs in year 5 that are given in the financial memorandum.

**The Convener:** It might be better to put that question in correspondence to the SPS rather than to Executive officials today, although I presume that the SPS has to agree the figures with the Executive.

**Mark Ballard:** I suppose that my question is trying to unpick what the variability in the recurring costs is, to find out whether other factors are involved.

**The Convener:** I agree that it would be helpful to get that information. Can we deal with that by correspondence? Are people content with that?

**Members indicated agreement.**

**Mr Arbuckle:** In its submission on the bill, the Parole Board for Scotland says:

"the Financial Memorandum advises that savings of £50,000 will accrue as a result of the Parole Board not being required to consider cases involving the recall to custody of licensees."

It goes on to say that

"That is not correct", as the savings would be offset by additional work in other areas. What is your comment on that?

**Jane Richardson:** We have been in discussion with the Parole Board on a number of fronts, including cost. Perhaps it might be worth saying up front that, in recognition of the pivotal role that the Parole Board will play in the new arrangements, the Scottish ministers have said that they will ensure that the board is properly resourced. Obviously, that commitment was made in the context of the tests of effectiveness,
efficiency and best value as well as the overriding consideration of legal competence.

We have discussed with the board the ways in which efficiency savings can be made. The amount of money under discussion is small. Our view is that if the Scottish ministers—as is proposed in the bill—are made responsible for recalling offenders to custody, the board will, quite rightly, as a court-like body, remain the organisation that looks at the individual’s re-release. At the moment, the board operates a system under which most of its cases are dealt with on paper in casework meetings. On the day of those meetings, the board splits the membership into two groups, one of which looks at recall, while the other looks at re-release. Given that the board will no longer be required to look at both questions, a smaller number of members will be involved. That is how we arrived at the £50,000 saving.

As I said, we are in discussion with the board on a number of areas, including possible reductions in its workload in relation to the number of tribunals that it has to hold. The board will be fully consulted on any changes that we make, including on the Parole Board rules, which we are in the process of drafting. The board will make a full input to that process.

Mr Arbuckle: I have another question on resources. At present, the board relies on the post-sentence reports that are produced by High Court judges. The board is concerned about the proposal to extend that requirement to sheriffs. What recognition is being given to the additional work that will fall to sheriffs in undertaking such report writing?

Jane Richardson: I mentioned earlier the implementation group. I am happy to say that it has representation from all the organisations that will be involved in setting up the structure and framework for the new arrangements. We have representation from the Sheriffs Association. One of the issues that we will look at is the impact on the judiciary of any information that is required. At the moment, in most indictment cases, the sheriff or the judge would be expected to prepare a report.

Mr Arbuckle: My final question relates to the legislation on knives and swords and the role that local authorities will have to play. The bill is supposedly cost neutral for local authorities because they will be given support for their work centrally, but in its submission the Convention of Scottish Local Authorities suggested that although there are precedents for that, the reality is that the costs of the additional work will not be covered. Is the bill really cost neutral for local authorities? Will allowance be made for administrative and background work?

Gery McLaughlin (Scottish Executive Justice Department): Yes. The arrangements will allow local authorities to cover their direct and administration costs. It will be up to them to set a fee that covers all their costs. My understanding of COSLA’s point is that, given what we are asking for is not terribly significant, it may not amount to whole-person costs. I suppose that that provides a management challenge for local authorities. However, it will be open to them to set a fee that reflects the actual cost of doing the work.

12:30

Derek Brownlee: I would like to move on to the supervision element. I do not know whether you have seen COSLA’s submission about the relative costs. The financial memorandum suggests £7.45 million for overseeing offenders, but COSLA says that rather than the cost for a low-risk offender being £2,000, as the financial memorandum indicates, the true cost is about £3,500, and that the cost for a high-risk offender is about £5,000. Do you accept that, or are you operating from a different base from where COSLA is coming from?

Brian Cole (Scottish Executive Justice Department): I should say at the outset that we are in continuing discussion with COSLA and the Association of Directors of Social Work about our respective sets of calculations. It might be useful to provide some information to set the figures in context. The Executive provides local authorities with some £9.3 million of grant for the delivery of throughcare services, both for those who are currently subject to statutory supervision on release and for those who receive voluntary assistance. Slightly more than £2.5 million is in respect of that latter group—those receiving voluntary assistance—and that provision applies to offenders who are released from custody without any statutory supervision. The bill will mean that, henceforth, those offenders will be subject to licence when released, so that £2.5 million or so will be available to be added to the £7.45 million that we have estimated for delivering the services. It is an on-going discussion, but more money is made available for those services than is shown in the financial memorandum.

Derek Brownlee: Later in its evidence, COSLA states:

“Local authority community-based disposals are not currently funded at a level which can realistically achieve the expected reduction in re-offending.”

If it has been an on-going discussion, presumably there have been discussions in the past and presumably, to judge from COSLA’s evidence, nothing substantive has changed. Will it change if the bill is passed?
Brian Cole: The Executive has increased considerably the amount of money it provides for throughcare. As recently as 2002-03, the sum was £2.5 million. This year, it is £9.3 million. The increase shows the Executive’s recognition of the greater priority and focus that is given to this area of work.

Derek Brownlee: It would be useful to see those figures on a per-offender basis, to give us a bit more context.

The Convener: As there are no further questions, I thank the witnesses for coming along today. I should let members know that the report on the bill will be taken on 28 November.

Meeting closed at 12:33.
Thank you for your letter of 22 December enclosing the Committee’s Stage 1 report on the Custodial Sentences and Weapons (Scotland) Bill, published on that day. I welcome the Committee’s support for our proposals on weapons and for its agreement to the general principles of the Bill. I will of course consider all of the issues raised in the report.

The Committee invited the Executive to consider and respond to the substance of its conclusions, recommendations and requests for clarification. In particular, the Committee has requested a full response before Stage 2 begins to a number of questions. I can confirm that a detailed reply covering all the points raised in the report will be provided before the end of January.

In the meantime, you may find it helpful to have an interim response to some of the more straightforward points before the Stage 1 debate.

*Given the concerns of the Subordinate Legislation Committee, the Committee recommends that the Minister looks again at subsection 6(10) of the Bill.*

The Scottish Ministers’ policy is that all community and custody prisoners will spend a period on licence in the community. This seeks to assist offenders in rehabilitating back into the community while subject to a number of relevant and testing licence conditions.

Future data may indicate that alternative custody periods are more appropriate for certain offenders. For example certain types of offender, might be more effectively dealt with, and resources better targeted by a shorter custody element and longer community element.

Section 6(10) gives the Scottish Ministers the power to amend subsection (3) by substituting a different proportion of the sentence for the proportion mentioned (which is one-half). This is the minimum proportion of the sentence which the court must specify as the custody part. The Committee has pointed out that the provisions of subsection (10) may be in tension with subsection (6), which prevents the court from specifying a custody part of more than 75%. The intention here is to provide the Scottish Ministers with the power to vary the custody part to take account of sentencing trends but it will never be more than 75%. That is why the power relates only to subsection (3).
The Minister is asked whether conditional sentences could be considered as a form of early release.

As I understand the Committee’s comments about “conditional sentences”, this device is intended as an alternative to custody. The Executive has no power to impose an alternative sentence once it has been imposed by the courts. As emphasised in earlier correspondence from Scottish Ministers and the Justice Department, nothing in the Bill is intended to alter or affect the overall sentence which the judge or sheriff imposes. The judge will have decided (as he/she would do now), having regard to all the information available at the time of conviction about the circumstances of the offence and the offender, that a period of custody is the most appropriate disposal. Previous exchanges have highlighted the variety of non-custodial disposals available already to the courts where it considers that one of these would be the appropriate disposal in any given case.

Clarity is required about the circumstances in which reference is being made to the risk of re-offending, risk of harm or the risk of serious harm.

The proposals in the Bill allow for a new sentence management system to be put in place. The new arrangements are about enabling effective and efficient targeting of resources tailored to risk and needs. As we have confirmed, while the Bill provides the legislative framework, the detailed implementation work is being taken forward by a top level Planning Group, which includes members from the SPS, RMA, Association of Directors of Social Work, COSLA, Sacro, ACPOS and the voluntary sector. Implementation will build on and complement other offender management arrangements. For example it will build on the Integrated Case Management (ICM) system developed by the SPS which currently applies to offenders subject to post-release supervision, i.e. those sentenced to 4 years or more, sex offenders sentenced to 6 months or more, offenders on extended sentences and offenders serving life sentences (in total about 3000 a year). ICM provides for the compilation of information relating to offending, risk and needs of each offender, assessment, initial interviews with each prisoner, social work input and integrated case conferences for each offender.

The Justice Department is also engaged in a programme of work with the SPS, ADSW and ACPOS around developing standard tools for assessing risk of reoffending and risk of harm. But this is a fast moving area and so we are also working with the Risk Management Authority to ensure the use of appropriate assessment measures to help achieve clarity and proportionality in how offender needs and circumstances are matched to post custodial arrangements. We will provide more information in the detailed reply.

I hope this is helpful to the Committee. I will ensure that you have a full response to the report ahead of Stage 2.

CATHY JAMIESON
Custodial Sentences and Weapons (Scotland) Bill – Stage 1: The Minister for Justice (Cathy Jamieson) moved S2M-5336—That the Parliament agrees to the general principles of the Custodial Sentences and Weapons (Scotland) Bill.

After debate, the motion was agreed to ((DT) by division: For 87, Against 2, Abstentions 28).

Custodial Sentences and Weapons (Scotland) Bill – Financial Resolution: The Deputy Minister for Justice (Johann Lamont) moved S2M-5346—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Custodial Sentences and Weapons (Scotland) Bill, agrees to any increase in expenditure—

(a) charged on the Scottish Consolidated Fund; and

(b) payable out of that Fund foreexisting purposes,

in consequence of the Act.

The motion was agreed to (DT).
Custodial Sentences and Weapons (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S2M-5336, in the name of Cathy Jamieson, that the Parliament agrees to the general principles of the Custodial Sentences and Weapons (Scotland) Bill.

14:58

The Minister for Justice (Cathy Jamieson): Just over two years ago, when I launched the Scottish Executive's criminal justice plan, I said that reducing reoffending must be a priority for every part of the criminal justice system. At that time, we knew that various steps needed to be taken. The Management of Offenders etc (Scotland) Act 2005 was passed and the eight new community justice authorities are due to assume their full responsibilities in April 2007. Reform of summary justice will also make a real difference. Building on that progress, and on our achievements in cutting crime in our communities, we must step up our efforts to target those who persistently reoffend.

The bill that we are considering today is another major step along the way. It will end the automatic, unconditional early-release system that is currently in place and replace it with a regime that balances public protection with longer-term work to address the causes of individuals' offending behaviour.

I am pleased that the Justice 2 Committee has recommended support for the bill. I am grateful to the committee, as I am to those who gave evidence, for their helpful and informed comments. We are considering the committee’s report carefully and will provide by the end of the month a full response to the points it has raised, but I can say now that we have identified some matters, for example the measures on clarity in sentencing, that we accept would benefit from some fine tuning. We look forward to working with the committee on those matters during stage 2.

The new regime will ensure that sentences are managed in a structured way that allows for a proportionate response to the crime and to the risk posed by the offender, and which tries to address the causes of crime by looking at the needs of the offender.

For the first time, all offenders will be under some form of restriction for the entire sentence. For sentences of 15 days or more, there will be a combination of custody and community, and the Parole Board for Scotland will be able to ensure that some offenders are detained for longer if their behaviour in prison continues to cause concern.
For those who commit serious or serial offences, long prison terms will still be the appropriate punishment. Those who commit murder or serious violent or sexual offences will still be dealt with through the mandatory life sentence, the new order for lifelong restriction and the extended sentence. There has perhaps been some confusion about the issue, so I want to make it clear that people in those circumstances will not be affected by the proposal in the bill.

We know that prison is not the complete answer. We must maximise the work that is done in prison, including that which is done with serious offenders, so that their risk is better managed when they move back into the community.

Thankfully, those who commit very serious offences are still in the minority; most of the offenders we deal with are trapped in the revolving door of persistent reoffending. There is currently no requirement on them to address their behaviour in the community.

I agree with those who gave evidence to the committee that it is better to manage the transition back into the community than to open the prison gates and let offenders walk away, as currently happens in the vast majority of cases. That is why the bill will require everyone who is sentenced to 15 days or more to meet some form of licence conditions when they are released after serving the custodial part of the sentence. It is also why we chose 15 days or more as the threshold for the new combined structure. We want the new structure to apply to the maximum possible number of offenders. Fifteen days is the minimum period that will enable a basic assessment to be made and restrictions to be applied.

The terms of the licence conditions will be as tough as they need to be to protect the public and to get the offender to address the issues that cause him or her to continue to reoffend. The approach will also ensure that resources are targeted appropriately.

Some have questioned how much can be done in the community with shorter sentences. Intervention must be proportionate. I believe that public protection will be strengthened by ensuring that offenders get both the appropriate level of restriction and the support that they require for rehabilitation.

Some concerns have been voiced about the impact of our plans on prison numbers and on local authorities. Many of the people who gave evidence to the committee, and committee members, have raised those issues. From the very start, we have been very clear about the costs and impact of the measures. We set them out in a straightforward way in the financial memorandum. They are not inconsiderable, but we accept that tackling reoffending and enhancing public safety cannot be done cheaply.

We have said that capacity will be available to enable the Scottish Prison Service and local authorities to cope with the changes and to provide the proportionate support that is required. It is important to remember that we are doing this in the context of investing a record amount—about £1.5 million a week—in redeveloping the prison estate. There has been new build at six prisons, and a further three new accommodation blocks will be finished this year. Three prisons have been completely redeveloped and there will be two new prisons, at Addiewell and Low Moss.

We are using existing resources effectively and efficiently and we are already planning to put the right structures in place.

When we asked the judicially led Sentencing Commission for Scotland to look at the current system of early release—because we had committed to change it—we knew that there would be hard choices. We know that some people feel that the answer is simply to lock up more offenders for longer, but we believe that the measures that we propose today will deliver much more than that simplistic, one-dimensional solution.

Phil Gallie (South of Scotland) (Con): The minister talks about people wanting to lock up more offenders for longer, but no one wants to do that. We want to lock up fewer offenders. We see the Scottish Prison Service as a deterrent to those who would offend.

Cathy Jamieson: I am glad to hear Mr Gallie’s conversion to the cause of reducing reoffending and ensuring that we do not have to lock up as many people in the future. I look forward to his support for and comments on the bill at stage 2 in committee, and at stage 3. I reassure him that the purpose of the bill is to change the system so that we tackle the problem of reoffending and the causes of offending. We want to make it less likely that people who have been through our prison system and come back into the community return to prison.

Stewart Stevenson (Banff and Buchan) (SNP): The minister will be aware that in certain parts of the country, notably the north-east, less than half of the target number of supervisory meetings between criminal justice social workers and sex offenders are taking place. I broadly support what the minister is trying to do, but can she give us an indication of how we will find not just the extra money that is needed but the people to do the jobs that are required in criminal justice social work?

Cathy Jamieson: I thank Stewart Stevenson for his intervention. We have discussed the issue a
number of times, so I know of his commitment to solving some of the problems in the prison system and in criminal justice social work, especially in the north-east. The community justice authorities offer us the opportunity to begin to get away from thinking that problems of offender management can be tackled simply through prison or social work responses. There are creative ways in which we can begin to supervise people, to hold them to account in the community and to get them into the appropriate services. That is different from the approach that was taken in the past.

Tommy Sheridan (Glasgow) (Sol): Will the minister take a short intervention?

Cathy Jamieson: I would like to move on—the Presiding Officer is looking at me.

Our success will be measured by results. I believe that we will see the real benefits of the new scheme, which will contribute effectively to reducing reoffending.

I will now move on to an issue that will be of interest to Mr Sheridan. The bill is not just about ending automatic early release; it also brings in a general ban on the sale of swords, except for legitimate religious, cultural and sporting purposes, that is underpinned by a licensing system for retailers who sell swords and non-domestic knives. Because those measures are not as controversial as the others in the bill, they have not been debated to the same extent. It is nevertheless important that we recognise that the bill introduces those measures, which will be backed by very strong enforcement, including the extension to police and trading standards officers of powers of entry and seizure when they have reasonable grounds to suspect that an offence has been committed.

As with the first part of the bill, the provisions relating to swords and non-domestic knives do not stand alone. In partnership with the police and the violence reduction unit, we have taken concerted action to stamp out the blades menace that has claimed too many lives and scarred too many people in Scotland.

Tommy Sheridan: Will the minister give way on that point?

Mr Andrew Welsh (Angus) (SNP) rose—

Cathy Jamieson: I will take a short intervention from Mr Sheridan.

The Deputy Presiding Officer: Be very brief, Mr Sheridan.

Tommy Sheridan: I will. Although I support everything the minister has said so far, I am sure that prevention is a much better approach. Does the minister believe that there is room in the Scottish Executive budget for funding of an exercise similar to the show racism the red card campaign, to make the carrying of knives and blades an utterly alien concept—not a culture, but a cancer. The show racism the red card campaign worked in football. Can we develop something similar with regard to knives?

Cathy Jamieson: Of course. I am sure that Mr Sheridan is aware of the work that is already under way, especially the let’s not scar another generation campaign, which we are running in conjunction with the violence reduction unit. I agree with the member that we must continue to educate our young people—in particular, our young men—that carrying knives is not sensible. As we know, people who carry knives are much more likely than others to end up as victims of knife crime.

I remind the chamber that the bill delivers the final parts of the five-point plan on tackling knife crime that the First Minister announced just over two years ago.

In the past year, serious violent crime has fallen to its lowest level since devolution and the incidence of fatal stabbings has fallen dramatically—to half the previous level—but there is still much more to do, and the bill will take us in the right direction.

Taken together, I think that the reforms that are set out in the bill will deliver a package of measures that will build on the progress that has been made on cutting crime, reduce the rate of reoffending and further strengthen public safety for all our communities. I therefore commend the bill to Parliament.

I move,

That the Parliament agrees to the general principles of the Custodial Sentences and Weapons (Scotland) Bill.

15:10

Mr Kenny MacAskill (Lothians) (SNP): I thank the minister for introducing the bill and for the comments she made in her speech. We generally support the direction in which she is travelling, and we have a great deal of sympathy on some of the difficulties she is facing. At stage 1, we are dealing with the bill’s general principles. We in the Scottish National Party are fully in sympathy with the two issues that the Executive is seeking to address through the bill: how to deal with weapons and sentencing policy. I wish to deal with both.

The matter that the minister has accepted is less problematic is how we deal with weapons. The proposals are a follow-on from the strategy to target the scourge of knife crime, which afflicts not just Glasgow or the central belt, but the whole of Scotland. The minister has coined the phrase “booze-and-blade culture”. She is quite correct.
Sadly, it blights Scotland, and we need to take action against it. We fully support endeavours to tackle those who use weapons and to address the supply of weapons.

Many of us—probably all of us—have received correspondence from various individuals protesting that they are buying or using weapons for legitimate means. We should bear it in mind that the current Lord Advocate and the previous Lord Advocate have given undertakings that the matter will be dealt with through commonsense measures. We have to trust the common sense of the Crown Office, procurators fiscal and the police. In passing the bill, nobody will be seeking to penalise those who carry out mock historical sword fights or who take part in highland dancing; we are seeking to address the booze-and-blade culture that cannot be allowed to continue.

It is not simply a matter of legislation and enforcement. As Mr Sheridan and others have said, and as my colleague, Andrew Welsh, has mentioned in debates in the past, it is also about how we educate people on, and address, a certain culture. Legislation there must be, however, and action must be taken. The Executive can be assured of our full support on the weapons aspect of the bill.

The other aspect of the bill, which concerns sentencing, has been driven primarily by the need—which I and the SNP have fully supported—to end the absurdity of automatic early release. Not only do we have some sympathy with the direction in which the Executive is going, we realise that there are difficulties to address.

It is all very well to say that we wish to end early release, but we must recognise, as the minister herself said, that it is not simply a matter of punishment or incarcerating those who have committed serious offences, or even of ensuring that communities and people are protected from those who present a danger; we must also ensure that we do not simply open the door and release people once their sentence has been served. In any democratic society, unless there is some good reason for imposing an order of lifelong restriction, people are entitled to be released at that stage. We must endeavour to ensure that they are not a continuing danger, and we must avoid the cycle of crime that, along with the booze-and-blade culture, blights Scotland. Reoffending is the basic problem that we face in addition to that culture.

It is easier to say that early release should end than to determine how the issue should be addressed. Although we fully support the bill’s general principles on sentencing, we recognise that there are difficulties and that the bill as it stands is not capable of being delivered. It will require substantial amendment. We hope that the minister will take account not only of the Executive’s amendments at stage 2, which will doubtless have come to mind, but of the issues that have been raised by sheriffs and academics such as Roger Houchin.

There are particular matters that we feel have to be addressed. They include some more minor issues, but the concept of the Parole Board for Scotland almost as a sentencing body appears fundamentally wrong to us. The Parole Board’s role is to protect the public and to decide whether somebody is deserving of release. There is an argument, to which I think there is some substance, that it is not appropriate, perhaps even under the terms of the European convention on human rights or the separation of powers, for the Parole Board almost to impinge on sentencing. [Interruption.] That is not what the board was created for. We should not put the Parole Board in a position where it must decide what sentences people must serve, as opposed to when they can be, or are entitled to be, released. [Interruption.]

I do not doubt that the minister is well aware of the points that have been made about the deterrence aspect of sentencing. In imposing a sentence, the judiciary has to consider not only what punishment would fit the crime but a variety of other matters. There is merit in the point that Roger Houchin made in his submission to the Justice 2 Committee. How do we quantify empirically what deterrence is? How do we determine whether it works and what proportion of the sentence should be for deterrence?

Historically, a view was taken that there was a clear social problem with razor gangs and we expected the courts to ratchet up the sentencing of members of such gangs to make it clear that their behaviour was unacceptable. We acknowledged the problem and recalibrated the sentence rather than clarified what factor of any sentence was for deterrence.

We hope that the minister and her deputy will consider how we can square the circle, so that we can keep the judiciary on board. By all means let us ensure that we end the absurdity of early release, but let us also ensure that we do not compound the problems that we have by creating a system that is not fit for purpose—which seems to be the phraseology for many judicial matters—and is not viewed as satisfactory by those at the front line of sentencing policy and those who are involved in dealing with the readmission of offenders to society, whether the Parole Board or experts such as Roger Houchin.

A great deal of trust and faith is being put in criminal justice authorities. We accept that, as well as incarcerating offenders, we have to deal with their rehabilitation and monitor them to ensure that they do not reoffend. We need to ensure that greater emphasis is put on, and more resources
are allocated to, dealing with offenders once they are released. I accept that some of the practicalities of implementation cannot be dealt with in the bill, but we have to get a grip and ensure that there is constant monitoring of offenders. In dealing with reoffending, we have to consider not only the period of punishment that people will serve in prison, but how to ensure that they are properly monitored and assisted to be rehabilitated into our society.

The Deputy Presiding Officer: Before I call the next speaker, I remind members, and members of the public, that their mobile phones should be off.

15:17

Bill Aitken (Glasgow) (Con): The bill comes before the Parliament today as a result of serious concerns about the existing system of early release and the extent of knife crime.

I think that there is a unanimous view throughout the chamber that something needs to be done about the latter. It is a depressing commentary on some aspects of Scottish society that so many young men in particular put a knife in their pocket as they go out for an evening’s entertainment, rather as they would put on deodorant and aftershave. Although we might wish that that were not the case, the Executive and Parliament would be failing in their duty if they did not take all possible measures to reduce the level of knife crime and its accompanying human and emotional tragedies. On that basis, we fully support part 3 of the bill. It will certainly not be a panacea, but it will help.

We have been known to criticise the introduction of more and more regulation, but we feel that the licensing of knife dealers is a positive step, although just how effective it will be remains to be seen. It is certainly worth trying. If the bill is to have any impact, it is essential that the person who sells the knife requires proof of identity from the purchaser and that a record of that is kept.

In respect of part 3, we are content to allow the situation to develop, but we have serious concerns about the sentencing and early-release provisions.

As Kenny MacAskill said, the existing approach to sentencing in Scotland is absurd—and it has been the theme of many a debate in this Parliament. I have to concede that the previous Conservative Government was wrong to increase remission percentages, but it has to be given some credit for trying to do something about it—which Labour blocked when it came to power.

Of course, matters have been made worse by the farcical situation under the European convention on human rights, whereby remission can no longer be interfered with. In effect, remission is early release that does not have to be earned.

Week after week, usually as a result of a horrendous crime being committed by an offender on early release, the Minister for Justice and the First Minister have assured Annabel Goldie, Margaret Mitchell and me that something will be done to deal with the matter. We now know what action is being taken. In effect, instead of early release we have provision for very early release.

All that is required is legislation that states that the sentence that is passed down is the sentence that will be served—in other words, that six months means six months and that four years means four years. Instead, a hotch-potch of measures is proposed that will confuse matters even more. Under the existing provisions, a six-year sentence means four years. Under the new system, it could mean three years.

Cathy Jamieson: Does Mr Aitken accept that it is important that we reform the way in which offenders are managed in order to reduce the likelihood of their reoffending? Does he accept that, under the proposals in the bill, there is an opportunity for people to spend longer in the custodial part than they would under the present system?

Bill Aitken: There is an easy remedy. All that is required is for the sentence to be handed down—for four years or whatever—and for a further order to be made stating that the person should be under supervision for another two years, three years or whatever period the judge decides.

Under the bill, six years could mean three years. It certainly could not mean any more than four and a half years. If the Executive is seeking to end early release, by what convoluted, Kafkaesque logic have they arrived at the proposed system? The Executive claims that it is ending early release, but that is simply not true. I notice that there was a slight change in the wording this afternoon, in that Cathy Jamieson said that the Executive is committed to ending unearned automatic release without supervision. I noted that. That is exactly what the minister said.

The part of the sentence that is served in the community will be monitored by the social work department, but it will not be a custodial sentence. The matter becomes even more ludicrous when one considers that the resources that are needed to cope with the number of people who will be on licence are unlikely to be present.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Will the member take an intervention?

Bill Aitken: I do not have time. Sorry.
It is inevitable that the licence that will be granted to most offenders will contain only one condition—that they be of good behaviour. Paragraph 25 of the policy memorandum makes that clear. What is the point of the community part of the sentence if the bill has no teeth in that respect? Why not simply state on the licence that any reoffending will result in the licence being revoked and the offender's being taken back to jail? Alternatively, why not deal with the matter as the Parole Board suggests and create a separate offence that is similar to that of bail aggravation under the Criminal Procedure (Scotland) Act 1995? Any offence that the person committed while they were on licence would be an aggravation to any subsequent offence that they committed.

The practicalities of the legislation have not been thought through, although I take some comfort from what the minister said today, not least that the bill will be reviewed by the Justice 2 Committee at stage 2. Apart from anything else, it will take about 10 minutes to sentence every accused, who will be left in a state of confusion about what is going on.

We recognise that the law has changed as a result of the Bonomy proposals and the Du Plooy judgment, but I wonder whether those should be revisited as well. Although discounts for pleas are an invaluable part of the process, it is frankly ludicrous to grant an automatic discount to someone who has no defence.

The bill is a dishonest piece of legislation that will not do what the Executive claims it will do. The loss of judicial independence is worrying. The Parole Board will behind closed doors make decisions about people's liberty. That is unacceptable. We will seek radically to amend the bill at stage 2.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): If I am correct, we just heard from the Conservatives a speech that called for the abolition of the Parole Board. It is the Parole Board's role not only to ensure the safety of the public but to decide whether someone represents a risk and whether they should be in the community. That is part of the bill.

The conclusion in the Justice 2 Committee's report is:

“This is a complex Bill and there are a number of questions to be answered and issues to be clarified by the Executive. Notwithstanding this, the Committee, by majority, recommends that the Parliament agrees to the general principles of this Bill.”

It is interesting that the Conservative member of the committee merely abstained rather than voted against the bill. We suspect that Mr Aitken would have behaved differently.

This morning, I read Mr Aitken's comments, in which I am normally interested because of his experience in such matters. He said that the bill is a measure to empty the prisons. He obviously has not read the financial memorandum that accompanies the bill or any piece of evidence that the Justice 2 Committee received—and he plainly has not read the committee's report. If the bill is passed in its current form, an increase of between 700 and 1,100 in the average daily prison population is forecast, which would take the average daily prison population to just under 8,000 in year 5. The number of citizens incarcerated per 1,000 of the population would be the fourth highest in the world. The bill will certainly not empty the jails, and that is in the context of a falling crime rate in Scotland.

I will speak almost exclusively about sentencing. The bill's principles are absolutely correct and follow good work by the Sentencing Commission.

Phil Gallie: The minister talked about trying to reduce the number of people in our prisons, yet Jeremy Purvis suggests that the bill will increase the prison population. Surely Jeremy Purvis, rather than Bill Aitken, has got it wrong.

Jeremy Purvis: The issue is how the reforms will operate. As the financial memorandum says, the consequence of the reforms will be an increased prison population. The principle behind the bill is not wrong; the question is how it will operate.

The debate is about the future. The bill is about more than management and procedures. Any judicial sentence must pass a simple test: whether it will punish in a way that is appropriate to the offence; whether it will rehabilitate, to reduce the chance that a person will commit the same offence again, or another offence; whether the victim will have some satisfaction; whether resources will be pointed in the proper direction to be effective and to reduce reoffending.

The evidence that the committee received was unanimous: very short-term custodial sentences do not work. They satisfy none of the criteria I mentioned. People who trumpet short-term prison sentences actually support a softer option in many cases. Prison sentences often allow people to play the system. A justice of the peace told me of an offender who had worked out precisely how many nights in prison he would serve for his offence—another example of how prison sentences often work in the opposite way to what they are intended to do.

The evidence that the committee received was unanimous: very short-term custodial sentences do not work. They satisfy none of the criteria I mentioned. People who trumpet short-term prison sentences actually support a softer option in many cases. Prison sentences often allow people to play the system. A justice of the peace told me of an offender who had worked out precisely how many nights in prison he would serve for his offence—and he was fine with it. He was told that the sentence would be seven nights. He would be out after half that time. If he was sentenced on a Thursday, he would be taken to prison on Friday morning. As prisons do not release people on Sundays, he would be released on Friday night.
and would say thanks very much. Prison works? No. In many cases, prison is soft on crime and is the soft option.

When the JP in question issued a supervised attendance order for considerably longer than the custodial sentence would have lasted, the offender’s face went white, because it was a much tougher option. That offender was happy with the revolving door of very short-term prison sentences, as are many offenders and—so it seems—Mr Aitken.

Passionate advocates of very short prison sentences are not passionate advocates of safer communities and reducing reoffending.

**Colin Fox (Lothians) (SSP):** The member has been right to raise that matter in committee and is right to do so again today. Short-term sentences in custody do not work. How does he reconcile that with his earlier point that he expects the prison population to rise to 8,000, with many more short sentences as a consequence?

**Jeremy Purvis:** That depends on whether the bill is amended. The Parliament’s job is to scrutinise legislation.

One of my concerns is that the length of the custody part of a sentence is to be determined not by public protection but by the level of retribution that is required. Nowhere else in legislation could I find the concept of retribution. How sheriffs are to define it is unclear. If they are to define a new concept for the decision that they must take on whether to incarcerate someone, that will inevitably change sentencing practice rather than just sentencing management. There was a blank when the committee asked officials about the definition of “retribution”. I hope that the minister will consider that matter further.

The problem is that sheriffs will not be required to consider the new concept of retribution when they set the headline sentence; they will be required to do so when they set the custody part—I am talking about 50 to 75 per cent of the overall headline sentence. Things should be the other way around. The custody part should be set on public safety grounds and the overall headline sentence should be set bearing in mind factors such as punishment and victim satisfaction.

There is also concern that there will be a revolving door if licence conditions are breached. Only those who must serve sentences of longer than six months will have supervision. If those conditions, or conditions that have been set for short-term offences, are breached, the person may be recalled, but they will have to be released unless the Parole Board thinks there is a risk to the public, which is a much higher threshold. Other options to withdraw very short-term sentences would make the bill much stronger and would not result in a prison population that is not effective.

15:31

**Mr David Davidson (North East Scotland) (Con):** I thank the clerks and the Scottish Parliament information centre for their support in helping the Justice 2 Committee to consider the bill, and I thank all those who provided written evidence and who gave oral evidence in committee meetings.

The sentencing part of the bill seeks to end the current unconditional early-release system—witnesses who gave evidence to the committee widely welcome that proposal. The early-release system is to be replaced by new combined custodial and community sentences that will apply to anyone who is sentenced to more than 15 days in custody. We understand that the Executive intends to provide a clearer and more understandable system for managing offenders, which will take account of public safety by targeting risk and will place victims’ interests at the heart of the system. Those aims have been universally welcomed, but the committee heard serious concerns about whether the bill as drafted will achieve those outcomes. I welcome the minister’s assurance that she will come back to us on those concerns and provide clarification because many questions were asked at stage 1.

I turn to resources and thresholds. Major concerns were expressed about the choice of 15 days as the threshold for the new combined sentences. Some witnesses are worried that the threshold is arbitrary and that it could create anomalies. The committee accepts that any threshold will result in anomalies, but we have sought clarification from the minister on why the 15-day threshold was chosen.

Sentencers, such as the Sheriffs Association, voiced detailed concerns about how the new provisions will operate. It is important that the factors that sentencers must take into account be clear. We have asked the minister to reconsider that matter and to examine the burdens that may fall on sentencers if they are routinely required to provide post-sentencing reports to the Parole Board. If individual sentencers set a custody part of more than 50 per cent of the sentence, there will be a serious impact on the costs that will arise as a result of the legislation. That, together with more prisoners returning to custody following breaches of licence, and the requirement for all sentences under 15 days to be served in full, will result in an increased number of people in prison. Prison numbers are already at an all-time high and overcrowding problems were highlighted by many witnesses. The committee noted their concerns and the concern that the Finance Committee
expressed that the planning process to consider the impact of the additional prisoners is at only an early stage.

The bill will result in up to 8,600 offenders per annum serving part of their sentences on licence in the community, rather than being released unconditionally. The Convention of Scottish Local Authorities, the Association of Directors of Social Work, academics and groups that work with offenders expressed serious concerns about the effects of those provisions. A common theme is the fear that the volume of offenders who would come through the system would undermine the bill’s aim of targeting higher-risk offenders. Several groups pointed to the limited effectiveness of short-term sentences and said that more community disposals should be employed. It was also proposed that supervision requirements should apply only to offenders who are sentenced to more than a year in custody.

The committee shares the apprehensions that have been expressed about the thresholds in the bill and whether they will provide the most effective way of targeting resources. We have also asked the Executive to consider existing research, and to consider what needs to be done to encourage confidence in the justice system and the benefits of non-custodial disposals.

Questions were asked about the process for assessing the risk that offenders pose. The Justice 2 Committee remains concerned that key decisions about who will undertake the assessment and who will refer cases to the Parole Board are yet to be made. The Risk Management Authority also questioned whether it is realistic to conduct formal risk assessment for short-term prisoners. The committee is concerned that the bill may create false expectations about risk assessment and management and so has asked for more clarity about the proposed risk assessment processes.

The bill does not specify the conditions for release of an offender on licence, so the committee recommends that such conditions be included in the bill.

Stewart Stevenson: Will Mr Davidson, in his capacity as the Conservative committee member who dissented, point to the principles within the bill with which he has difficulties?

Mr Davidson: The reason for my dissension is simple: I feel that the bill does not do what it says on the tin and is not yet in a form that is worthy of support.

An offender who has served less than six months will be required merely to be of good behaviour, not to reoffend and not to leave the country. Some witnesses are concerned that the conditions are not more meaningful. Prisoners are likely to receive prison social workers and qualified case workers only if they serve more than a year and are considered to pose a risk of serious harm. The committee is concerned about the type, quality and scope of post-release supervision and support, which still seem to be unclear. It is also unclear whether all offenders who breach licence conditions by committing minor offences will be subject to recall by the Scottish ministers, so we have asked for more information on that point.

Although the Parole Board welcomed much of the bill, it is concerned about the proposal to reduce tribunals to two members, rather than the current three, and to require their decisions to be unanimous. The bill also restates provisions that authorise home-detention curfews, although it is not intended that they will be used in the early stage of the bill’s implementation.

Part 3 of the bill introduces a licensing regime on weapons, as the minister said. Ministers will be able to specify conditions on the licences, and local authorities will be able specify additional ones. The committee is content with the definitions and scope of the provisions in part 3, but awaits full clarification from the minister. We look forward to that and will hold her to the promise that she made today that she will clarify by the end of this month all the points that we raised in our report.

The committee agreed by majority to support the general principles of the bill.

15:38

Bill Butler (Glasgow Anniesland) (Lab): I support the motion in the name of the minister. As a member of the Justice 2 Committee, I record my appreciation of the excellent support that the clerking team, SPICe and the committee’s two advisers gave to the committee during its stage 1 interrogation of the bill.

Part 3 of the bill flows from the First Minister’s five-point plan, which was announced in November 2004. The first three elements of the plan—doubling to four years the sentence for the possession of a knife in a public place, the power of arrest on suspicion of carrying a knife and increasing the minimum age for the purchase of knives from 16 to 18—now have legislative force, and a licensing scheme for the sale of non-domestic knives and swords is set out in part 3 of the bill. The committee—rightly, I believe—supports those licensing provisions. In its evidence, Strathclyde police’s violence reduction unit made it clear that most assaults on the street use weapons such as locking knives, which are more portable than other knives and can be easily concealed. The committee concurred with the unit’s view that the licensing proposals
"will assist in reducing access to such weapons and will send out a message to communities within Scotland."

The committee notes and welcomes the comments that the deputy minister made when she gave evidence and acknowledged that the bill’s provisions can provide only a partial solution to the problem of knife crime. However, I believe that the proposals, along with the other legislative action that has already been taken, and allied to educational measures, can allow us to take a major step forward in ending the needless bloodshed that is cutting short too many young lives in Scotland. I am sure that that sentiment will be echoed throughout the chamber.

I want to focus on some aspects of parts 1 and 2 of the bill, which contain provisions relating to custodial sentences and aim to deliver the Executive’s commitment to end automatic unconditional early release of offenders. I am certain that most, if not all, colleagues in the chamber and the citizens of Scotland will welcome this much-needed reform of the present provisions in respect of release of offenders. As I recall, everyone who gave evidence to the committee supported this necessary change and the complementary commitment in the bill to achieve greater clarity in sentencing, which is what people want.

However, work must be done at stage 2 to clarify how certain proposals will work in practice. First, there is the issue of the 15-day threshold for applying the custody and community sentence regime. The bill envisages that the current system of automatic and sometimes unconditional early release will be replaced by a new sentence-management regime for custodial sentences of 15 days or more, comprising a custody part and a community part. Given that the threshold for triggering the combined sentence is 15 days, I would like to concentrate on a number of concerns that were raised during stage 1 pertaining to the efficacy and the effects of short-term sentences.

Many people who gave evidence voiced considerable apprehension about the possible effects of the thresholds in the bill; for example, some witnesses fear that the thresholds will lead to ineffective targeting of finite resources. The Scottish Consortium on Crime and Criminal Justice expressed in a frank fashion considerable doubts about the efficacy of the threshold, and it suggested that an increase for post-release supervision to six months would take 7,000 to 8,000 offenders out of the system. On the other hand, as members can see in paragraph 63 of the report, the Risk Management Authority stated that its preference would be for a cut-off point of sentences of one year.

In effect, concerns about the threshold for post-release supervision emphasise the desire to limit the number of very-short-sentence, low-risk-of-harm prisoners coming into custody, so that resources can be focused on prisoners who pose greater risk. That, with the related issue of prison numbers, needs to be thoroughly examined at stage 2 in order that resources can be targeted effectively. We need to produce a legislative framework that will allow the most appropriate mix of custody and community and which will win the confidence of Scotland’s citizens because it provides not a soft option but a smart option, punishes appropriately and rehabilitates effectively. Effective rehabilitation combined with appropriate condign punishment is the mix that is required by the people of Scotland.

Of course, there are a number of other important areas that will have to be considered during stage 2, including the type, quality and scope of post-release support and supervision. However, I believe that the aims of the bill are correct. On that basis, I support the motion in the minister’s name.

15:43

Michael Matheson (Central Scotland) (SNP): Although I joined the Justice 2 Committee only recently and so was not present to hear a lot of evidence that the committee took, it became clear to me at an early stage that the general principles of the bill are broadly sound. However, the evidence that I heard also made it clear that the bill requires considerable amendment at stage 2 and, possibly, at stage 3 to ensure that its underlying policy objectives can be achieved.

I have long been of the view that there is a need for greater transparency in our sentencing process and I supported the legislation that was scrutinised by the Justice 1 Committee, which brought in the tariff system that gives greater transparency in relation to life sentences. That is particularly beneficial to victims who now know, when they leave the court, exactly how long the prisoner will spend in prison before even being considered for release.

I know, however, that it is much more complex to achieve something similar in respect of shorter-term sentences. The concerns that are raised in the Justice 2 Committee’s report on the bill illustrate the nature of the difficulties that the Executive must address if we are to achieve greater transparency in sentencing while maintaining public confidence throughout the process.

As David Davidson and Bill Butler briefly mentioned, the measures in the bill include a 15-day threshold. Evidence that we received highlighted the potentially perverse logic that is contained within that proposed timescale. As the bill stands, an offender who is sentenced to a
sentence of less than 15 days will be required to spend the whole period in custody, whereas an offender who is sentenced to 20 days will potentially be released within 10 days.

Cathy Jamieson: I will make a point of information in response to the issue that Michael Matheson and other members have raised. Members might find it helpful to understand that offenders who serve less than 15 days make up a very small percentage of the prison population. For example, of the daily prison population in 2005-06, the average number of people who had been sentenced to less than 15 days was just two. That figure excludes fine defaulters, who come by a different route. The bill tries to capture as many people as possible in the combined sentence structure. I hope that members find that helpful.

Michael Matheson: That is helpful, but it also raises a question about the value of locking up people for such short periods, given that there are so few of them.

An interesting point is that, when the committee took evidence from the minister, the explanation that we received for why the 15-day threshold was chosen was that 15 days was considered to be the minimum period in the community that is practical for engaging with an offender. However, if an offender is given a sentence of 20 days and is released after spending 50 per cent of that time in custody, the community part of his sentence will, in effect, be 10 days—it will be shorter than the 15 days that is needed for practical engagement. Practical engagement is the key issue. It is all very well to say that we can engage with offenders during their sentences, but the question is whether such engagement will be meaningful in tackling offending behaviour. I remain concerned about whether the engagement will be practical or meaningful. The committee has made it plain that a clear rationale must be given for the 15-day threshold. I accept that the minister has given some clarification on that today, but I remain to be convinced about the way in which the Executive arrived at that threshold.

A second issue of concern is the risk assessment process, which clearly has an important part to play in ensuring public confidence and protecting the public. Committee members had generally assumed that the risk assessment during the custodial part of an offender’s sentence would be undertaken by Scottish Prison Service staff, but it became clear from Tony Cameron’s evidence that that had not been agreed and—as we all know—what Tony Cameron says, goes. Obviously, it is important that the responsibility for leading on the risk assessments should be clear. We accept that risk assessments should involve joint working between the SPS and community social work services, but one body must be given clear responsibility for the process.

An additional issue is the quality of risk assessment that can be achieved with offenders who are in prison for short periods. The Risk Management Authority, which provides the Executive with expertise on the issue, said that a two-year period is needed to carry out a detailed and dynamic risk assessment that will be meaningful and purposeful. Therefore, we need a little reality in respect of how effectively the risk management process will play out on the ground.

In conclusion, I welcome the general principles of the bill, but it clearly needs to be amended not only for technical reasons but to ensure that its policy objectives can be effectively implemented at the end of the day.

15:49

Maureen Macmillan (Highlands and Islands) (Lab): The present system of automatic and unconditional early release of prisoners is rightly discredited; the system alarms victims and communities because they cannot understand why a person who has been sentenced to four years can be released after only two and can be kept under supervision only in particular circumstances—for example, if the person is a sex offender.

The Custodial Sentences and Weapons (Scotland) Bill should provide more clarity for victims and the public alike. There should be a clear public announcement in court by the sheriff of the minimum time that an offender will spend in jail. That time will be at least half, and up to three quarters, of the sentence. There will be a risk assessment in prison for those who will serve less than three quarters of their sentence in custody. That assessment will decide—in real time—whether a prisoner should be allowed to complete their sentence in the community. Crucially, it will also decide whether the rehabilitation programmes and support services that have been begun in prison will continue in the community where the prisoner will serve the remainder of their sentence under licence conditions.

The principles of the bill have been warmly welcomed. Once enacted, the bill will work alongside the Management of Offenders etc (Scotland) Act 2005, which requires close cooperation between the Scottish Prison Service and the community justice associations, and builds on the integrated case management that has already been developed to deal with certain categories of offenders.

Much of the focus of debate in the Justice 2 Committee was on the custodial part of the sentence—especially on the perceived anomaly of
the 15-day cut-off, whereby a 15-day sentence will be served totally in custody, but anything more will be served half in custody and half in the community. As other members have said, wherever the cut-off is, there will be an anomaly. The minister said that there is a minimum time in which rehabilitation measures are possible, but we need a fuller explanation of the minister’s thinking. The minister might wish to consider whether there will be particular impacts on female offenders, who tend to be at the lower end of the tariff and who might need support.

We must not overlook the fact that the part of the sentence that is served in the community is just as important as the part of the sentence that is served in jail. Bill Whyte of the criminal justice social work development centre said in evidence:

“I value the bill’s recognition that a period in the community should be part of the sentence … because that is what is likely to give us a chance to connect.”—[Official Report, Justice 2 Committee, 14 November 2006; c 2967.]

The question that is therefore raised is this: can we have a seamless transition when we consider the numbers of prisoners that it is predicted will come through the prison system? It would be wonderful to be able to offer all offenders a gold standard of support after they leave prison, but there is concern that practical realities will mean that, if there is no prioritisation of resources to those who are most in need, resources will be spread too thinly, to the detriment of all.

I am sure that the Executive has given thought to that and, although I do not expect to see such practicalities in the bill, it would be useful to hear from the minister how priorities will be judged and who will make the judgments. As has been mentioned by other members, one solution that was mooted in evidence was that we should do away with short-term custodial sentences for minor offenders. Witnesses could not, however, agree on a cut-off point.

The debate has been going on for several years, and I feel that the committee was sidetracked somewhat from the main aspects of the bill. It is now perfectly possible for sheriffs to sentence offenders to community disposals. The number of sheriffs who do so is increasing; such disposals are increasingly seen as being neither soft nor ineffective. However, persuading sheriffs to increase the use of such disposals is outwith the scope of the bill, which deals with how custodial sentences should be managed when they are imposed. I hope that the Executive will do all that it can to promote the use of community disposals instead of prison disposals.

Sheriffs take a while to become comfortable with new sentences; naturally, they take time to examine them. We are told that they are somewhat uncertain about section 6 of the bill, which outlines the criteria that should be used in sentencing. It would be helpful if ministers could clarify that. I was pleased to hear the minister’s commitment that the section would be reviewed.

Concerns have also been expressed that sheriffs may recalibrate sentences to retain the status quo—although ministers have indicated that that should not happen.

Another area of concern is the process of recall to prison if licence is breached. If release on licence is to be meaningful, a breach must be dealt with when it occurs. However, that raises questions of resources—for example, for the Parole Board, which will review the case, and for the Prison Service, which will provide accommodation. It has been suggested that there could be a revolving-door scenario. Questions have also been asked about the number of members of the Parole Board. Many of the questions will be answered when the detailed information work by the planning group is completed. I know that many of the bodies that asked those questions are members of the planning group, so I assume that they will address their own concerns. I look forward to their solutions.

I turn to the proposals in part 3 to restrict the sale of non-domestic knives and swords. I am sure that there is no one in the chamber who will not welcome those restrictions. We have heard over a number of months—not just during our consideration of the bill—from the violence reduction unit and from accident and emergency consultants about the seriousness of the knife-carrying culture that exists principally in west-central Scotland, although it is not exclusive to that area. Some other parts of the country may, in fact, have been complacent. I fear that that has been true of the area that I represent, although the Northern constabulary has recently expressed concerns about an increase in knife carrying and in the use of knives as weapons in assaults and robberies—in one case, a bayonet was used—and has said that any measure that stops casual carrying, mostly by young men, of those lethal weapons is to be commended. Victims and perpetrators are interchangeable and fatalities or serious injury can occur through panic and ignorance of basic anatomy. Let us do all that we can to stop it.

I support the principles of the bill and recommend it to Parliament.

Phil Gallie (South of Scotland) (Con): I have to say that I am disappointed with the contents of a long-promised bill. Outside this Parliament building, out in the community, there is general
disillusionment with the justice system, and what is
required is reassurance for the law-abiding
general public. To my mind, simplicity is needed in
the way in which courts deal with those who are
found guilty of crimes, but the bill gives us
complexity. Bill Butler talked about clarity, and I
believe that he had it right. Maureen Macmillan
also hinted at that; she felt that there needs to be
greater understanding by the public. Quite
honestly, I do not think that the bill will achieve
that.

My party’s aim since the first days of the
Parliament has been to end automatic early
release, but that will not be achieved by the
fulfilment of the aims of the bill. Kenny MacAskill
asked how we could achieve our aim. If he looks
back at Michael Forsyth’s Crime and Punishment
(Scotland) Act 1997, he will see that we certainly
could have achieved the aim of ending automatic
early release in a reasonable manner. That act
provided a practical approach that the public could
understand. Judges and sheriffs made the
decisions, and convicted persons and victims
knew exactly what the determination of the judges
and sheriffs meant.

Jeremy Purvis: Will Mr Gallie give way?

Phil Gallie: I will finish this point first.

The 1997 act recognised the need for
encouragement for those who were sent to prison
by allowing for an element of remission, albeit for
a sixth of the sentence. I advise Jeremy Purvis
that the Parole Board would have had a role in
determining whether that sixth should be allowed
or not.

Jeremy Purvis: I shall be careful not to intrude
on Mr Gallie’s disagreement with his front-bench
spokesman on interference with the integrity and
independence of the judiciary. However, I want to
know what the rationale is behind remission of a
sixth of the sentence. If the Conservatives’ policy
is to have some remission, they must accept that
there is a degree of discretion, and part of that
discretion is to do with the rehabilitation of the
prisoner. Why is it a sixth?

Phil Gallie: A sixth was set in the act as a
limiting factor. The proportion of the sentence
could perhaps be moved a little bit, but it could
certainly not be moved to a half, or even more, as
is suggested in the bill that we are debating. I turn
the argument back to Jeremy Purvis and his
ministers and ask them why we should accept the
levels of remission that they have proposed. The
judge and the sheriffs should determine the length
of the sentence, and thereafter we should leave it
at that, although remission somewhere along the
line would be reasonable.

The 1997 act was supported by Labour Party
members, by the Scottish nationalists and by the
Tories. Why did the Labour Government not
implement it after it was returned? The Liberals
voted against the Crime and Punishment
(Scotland) Bill, so I suppose that they have a right
to object to the point that I am making.

I accept that the Tories can take some criticism,
because our Prisoners and Criminal Proceedings
(Scotland) Act 1993 introduced a flawed approach
to automatic release. Bill Walker and I—two
Tories—were the only people to object to the bill;
everyone else went along with it.

In the early days of the Scottish Parliament, no
less a person than Jim Wallace, who was Minister
for Justice at the time, said that prisoner numbers
would fall dramatically. He was so confident that
that would happen that he accepted cuts in the
Scottish prison budget. His thinking at the time
seems to have been flawed, as was that of the
Government when it took certain steps on prison
management. Jeremy Purvis talked about the
swell in prison numbers and the fact that prison
numbers will continue to rise. If we end the current
system of automatic early release, prison numbers
will undoubtedly pick up, although that will happen
only in the short term.

We are currently recycling criminals, to the
detriment of the courts and prisons through which
former prisoners constantly pass, and to the
detriment of society, because we have created a
situation in which people who have not paid their
dues to society return to society to reoffend.
Today’s edition of The Scotsman reports that a 67-
year-old man has been sentenced to seven years
in prison for possession of cocaine. The man was
sentenced to five years in 1997 for robbery and to
eight years in 2001 for possession of cocaine—
that is his track record.

The Deputy Presiding Officer (Murray Tosh):
You should wind up now, Mr Gallie.

Phil Gallie: The guy has been sentenced to 20
years in total, but under the current arrangements
he will almost certainly be out of prison by 2010.
The case underlines my concerns and the public’s
detriment of the courts and prisons through which
former prisoners constantly pass, and to the
detriment of society, because we have created a
situation in which people who have not paid their
dues to society return to society to reoffend.

The Deputy Presiding Officer: Mr Gallie, you
are over time. I would appreciate it if you could
wind up.

Phil Gallie: I am sorry; I am winding up.

I welcome the suggestion that changes be made
to the licensing of knives and suggest that it would
be commendable of the Government to include in
the bill some of the sentencing provisions in my
Carrying of Knives etc (Scotland) Act 1993.
Jackie Baillie (Dumbarton) (Lab): Like Bill Butler, I thank the Justice 2 Committee clerks, our advisers, ministers and their officials, and everyone who gave evidence to the committee, because I can muster considerably more enthusiasm for the bill than can Phil Gallie. I very much welcome the bill, which delivers on our commitment to end automatic unconditional early release.

There is no doubt that there is considerable public concern about sentencing. Like many members who have spoken in the debate, I am aware of the distress that victims and communities feel when someone who has been convicted of a crime is released early and is back on the streets, with no requirement for the person to report to the authorities or for further action to be taken. People just do not understand that. We must ensure that there is clarity and transparency in sentencing. The bill lays the foundations for such an approach and will improve communities' understanding.

As other members said, the bill contains proposals for an overall sentence that will consist of two elements: a custody part and a community part. A minimum of 50 per cent of the overall sentence must be served in custody, so if a person is sentenced to a combined term of four years, made up of two years in custody and two years on licence in the community, they will serve the whole of the two-year custodial sentence in jail. They will not be released early—and indeed, the custody part of the sentence can be increased to 75 per cent of the overall sentence. I welcome that approach.

I want to highlight two issues on which the committee thinks that further clarification from the minister is necessary. First, I turn to the bill's provision on the home detention curfew. The home detention curfew has been an extremely useful initiative, releasing certain prisoners—when it is appropriate to do so because they are low-risk offenders—to serve the remainder of their sentences in the community. However, although the home detention curfew has been relatively successful, I am genuinely concerned that the clarity that will be brought to sentencing by the main provisions of the bill will, in effect, be undermined. Rather than a guaranteed minimum of 50 per cent of the sentence being served in jail, less time might be a consequence of the home detention curfew. The minister has, helpfully, said that the Executive does not envisage the use of the home detention curfew in the early stages of the bill's implementation. That is welcome. However, there is genuine concern that the clarity and transparency that ministers, rightly, seek to deliver in sentencing may be undermined. On that basis, I hope that the issue can be reviewed.

Secondly, I welcome the proposal for there to be a community part to each sentence as a means of helping the rehabilitation and reintegration of offenders. We know that the seamless continuation of rehabilitation programmes that are started in prison and continued in the community is desirable to address offending behaviour and reduce the risk of reoffending. Unlike the previous system, which was introduced by the Tories, the community sentence will have conditions attached to it, making clear what is expected of the prisoner. There might be a requirement to attend drug or alcohol counselling; a restriction on travel and movement; supervision by the police; or tagging. Serious breaches will be dealt with swiftly, with offenders being recalled to custody.

The concern that was expressed to the committee is that, in the case of short sentences, it would be difficult to do a meaningful amount of work with offenders either in custody or in the community to rehabilitate them. It would, equally, be difficult to put in place meaningful supervision and assessments of need in respect of the shortest sentences. I have some sympathy with the suggestion that it would be better to target resources at the serious offenders who are on longer sentences. Ministers themselves may well have suggested that. I wonder, therefore, whether ministers will consider a system of assessment and supervision that is proportionate and which reflects the reality of what can be achieved, given the length of the sentences.

Part 3 covers restrictions on the sale of weapons. I remember when the First Minister announced a five-point action plan to tackle the problem of knife crime. It was widely welcomed by the police, who tackle knife crime in our communities daily; by health professionals, who deal with the serious damage that knives do to victims; and, importantly, by communities themselves, who suffer the consequences of knife crime. The First Minister said that the Executive would double the length of the sentence for possession of a knife from two years to four years. He also said that we would ensure that the police made more use of stop-and-search powers and had powers to arrest people whom they suspected of carrying knives. He said that we would increase the minimum age for the purchase of knives from 16 to 18; that we would introduce a licensing scheme for the sale of non-domestic knives; and that we would ban the sale of swords. The bill completes the work that was started in the Police, Public Order and Criminal Justice (Scotland) Act 2006 in September, and it is very welcome.

Each year, we see people being injured and, in some cases, dying at the hands of knife-wielding young men. In many cases, the attacks are not premeditated but spring from the mistaken belief that people who carry knives are somehow
protecting themselves. The statistics tell us how foolish that view is. The minister is absolutely right to focus on the booze-and-blade culture in Scotland. If, through these measures and a process of education, we can help to end the needless bloodshed that is cutting short young lives, the bill will have made a considerable difference. I welcome the proposals—more important, my community welcomes the proposals—and I urge support for the general principles of the bill.

16:09

Colin Fox (Lothians) (SSP): The bill’s policy objectives, which have been mentioned by most members who have spoken in the debate so far, are laudable. I want to see a clearer, more understandable system for the management of offenders while they are in custody or on licence in the community—a system that takes account of public safety by managing risk and which has the interests of victims at its heart. The problem, however, is that the bill does not meet those objectives. Any examination of the evidence that was given to the Justice 2 Committee will show that it is a widely held view that the bill fails to fulfil the objectives that are set out in the policy.

The Scottish Consortium on Crime and Criminal Justice told the committee that it regret very much that the Scottish Executive is choosing to follow a path that, far from achieving the … intentions, would incur huge costs and have serious negative … consequences for the criminal justice system and for the safety of Scottish communities.

Likewise, Sacro said that although the bill aims to make the sentencing system clearer, it will not achieve that end but will lead to resources being absorbed when they could be spent more effectively elsewhere in the system.

The community justice authorities added:

We … concur with the ambition of the Bill but are concerned that, as described, the Bill’s purpose will not be fulfilled and may serve to further undermine rather than promote public confidence and understanding.

The Justice 2 Committee report—I am sure that all members in the chamber have read it—said that the Committee supports the policy objectives of the Bill but calls into question whether the measures in the Bill, as currently constituted, can achieve the stated objectives.

In all candour, I must say that I wondered, in listening to Jackie Baillie’s comments, whether she was actually on the Justice 2 Committee. A conclusion in our report flies in the face of most of what she just said.

For me, things started to go badly wrong with the bill when the impact on the prison population became clear. Ministers and officials repeatedly told the committee that nothing in the bill will require judges to change their sentencing practice, but virtually every witness from whom we heard suggested that they will. The Scottish Prison Service’s representative, Rachel Gwyn, told us that the measures in the bill will increase the daily prison population in this country by between 700 and 1,100 people. That is when the alarm bells started ringing. A prison population that is, as Jeremy Purvis pointed out, already at record levels and chronically overcrowded will be increased by 20 per cent. No wonder HM prisons inspectorate highlighted again its growing apprehension about a return to the 1990s disruption and riots in our prisons.

So, despite the view across the board that short-term sentences in custody are wholly ineffective and are a hugely expensive failure as far as reducing reoffending is concerned, here we have a bill that is determined to take us further up that dead end, with more people going to jail and serving longer sentences.

The community justice authorities’ evidence told us that they feared that the bill would overwhelm the SPS, local authorities and independent providers because it “has ineffectiveness built in”.

Jackie Baillie and the other members who said that the bill will lead to greater clarity in sentencing should consider some of the evidence that was put in front of the committee. The bill’s policy memorandum says:

“A transparent sentencing regime will improve public confidence in the criminal justice system.”

That is right, but again it appears that the bill does not provide it. Andrew Coyle, the professor of prison studies at King’s College in London, said:

“The aim of the present Bill ‘to achieve greater clarity in sentencing’ is admirable. However, it is not immediately apparent that the Bill will achieve its aim. Even when approaching it in a positive manner one needs a calculator and a great deal of patience to unravel the arithmetic of what a prison sentence will mean in the future.”

If Andrew Coyle, with his credentials in criminal justice, cannot fathom out the system, what hope is there for the rest of us?

Whatever can Professor Coyle have meant? Perhaps the Sheriffs Association evidence will tell us. It said that it “does not consider that the provisions of this Bill will achieve the objective of delivering clarity and transparency in sentencing… Although the custody part of a sentence … will be imposed and announced at the public sentencing hearing, it will not be possible to predict or state … what the duration of the period that will actually be spent in prison will turn out to be or what the conditions of licence during the community part of the sentence will be.”
The Deputy Presiding Officer: You have one minute, Mr Fox.

Jeremy Purvis: Will the member give way?

Colin Fox: I am sorry, but I do not have time.

The Sheriffs Association goes on, in an unusually humorous vein, to ridicule the bill’s proposals with the example of an offender who is found guilty of assault to severe disfigurement. I do not have time to read the joke, but it is on page 219 of the evidence if members are interested.

As others have said, there are many anomalies in the bill. I welcome the community-based sentences, given the conditions on which they will be made. From experience, we know that such sentences have a far better chance of success. I also welcome the fact that, for the first time on record, more community disposals than custodial disposals were made last year. I am sure that the minister will touch on that in her closing speech. The paradox is that the bill will lead to fewer community disposals and to more people spending more time in jail.

The Deputy Presiding Officer: You must close, Mr Fox.

Colin Fox: Agreed.

None of the Labour or Liberal members touched on the supervision and support that will have to be given. My final point relates to the evidence that we heard from Roger Houchin on support for community sentences. In his evidence, which is interesting and worthy of examination, he said:

“The most profound shortcomings of the Bill, however, concern the very limited consideration it gives to the community part of the sentence ... it places all the obligations on the offender ... But ... makes only the scantest of references to any public duties to enable the offender to have access to “opportunities ... support and service in areas of housing, employment, education and training, relationships, cultural and social life, financial management and health care” to help their full rehabilitation.

It is unusual for a committee to produce a stage 1 report that contains so many criticisms of a bill and so many questions for the Executive to answer. The bill unravelled during the evidence-taking sessions—

The Deputy Presiding Officer: You must close, Mr Fox.

Colin Fox: I am convinced that it will not work. For those reasons, the Scottish Socialist Party will not support the bill at 5 o’clock.

The Deputy Presiding Officer: My regrets to Mr Harvie. I have to go to closing speeches.

Mike Pringle (Edinburgh South) (LD): I welcome the bill and support the motion.

As the minister said, the bill is the Executive’s promise to end automatic, unconditional early release from prison. That said, the entitlement to any early release has to have the prisoner’s cooperation. He or she must conform to any obligations that are set down, the minimum of which is that they were of good behaviour during their prison term. As Jackie Baillie said, if the prisoner is deemed a risk to the public, the term can revert to 75 per cent. Many other obligations can be imposed, but they will depend on the type of offence and the personal circumstances of the prisoner. Examples include the requirement to participate in a range of programmes on offending behaviour or addiction.

It is important that the new provision should work. The courts will have to ensure that the guilty party is fully aware of the sentence that is being passed and the consequences of any breach. The length of the sentence, minimum term in custody, and licence and any other conditions will need to be clearly understood. The obligation will be on defence agents to be more proactive in ensuring that their clients know about the process.

I have a couple of issues to raise—indeed, they are linked; I refer to 15-day sentences and fine defaulters. As the convener of the Justice 2 Committee, David Davidson, said in his speech, those areas were of considerable concern to the committee. The minister referred several times to 15 days. The question is: if a sentence of 15 days is imposed, should it be served in full? As Michael Matheson said, if that is the case, someone who is sentenced to 30 days would serve only 15 days, but someone who is sentenced to 15 days would serve the total sentence. I accept what the minister said: the number of people who receive such a sentence is quite small. However, many who are given such sentences are fine defaulters.

Under the bill, all fine defaulters will serve in full any custodial sentence that is imposed on them. My colleague Jeremy Purvis referred to the present system, under which someone who is sentenced to seven days can go into prison and be out that morning. Indeed, as Bill Aitken said, they can be out in an hour. That is wrong. All sentences of seven days should also be served in full. However, a compromise has to be made in terms of seven-day and 15-day sentences.

Much work has been done to keep fine defaulters out of prison—we have had considerable success in that area. The introduction of fines enforcement officers in the Criminal Proceedings etc (Scotland) Bill—which we will, I am sure, pass next Thursday—will also
address the issue. However, the question remains: should fine defaulters be treated differently from other offenders? My view is that they should not; we should do all that we can to keep them out of prison. That is especially the case with regard to fine defaulters who are sent to Cornton Vale.

I agree with Kenny MacAskill and other members—it was perhaps the only point on which I agreed with Bill Aitken—that carrying a knife has become a culture in Scotland. We must reverse that trend, which has taken place all over Scotland.

Recently, there was a very serious murder, which involved a knife, in my constituency of Edinburgh South. The person was the first to have suffered such a serious and brutal attack in my constituency while I have been an MSP; I accept that members in other parts of the country are more aware of the problem than I am. The murder of any 17-year-old in such circumstances, wherever it happens, is shocking and must be condemned by all.

I was interested to hear that the bill would be discussed yesterday on Radio Scotland at 11.30 with Cathy MacDonald. I was in the Justice 1 Committee at the time, but the wonderful play-it-again resource on the BBC website allowed me to go back and listen to it later—the internet truly is a wonderful thing. The discussion was on the issue of knife crime, which some people in the medical profession now call a public health problem. A professor from the University of Glasgow made the case very well that among certain demographics in Glasgow, knife death is more of a risk than cancer or strokes. It was very good to hear on the programme how the police and doctors are combining to combat the problem.

That shows that tackling knife crime is crucial. I agree with the committee that a licensing scheme for non-domestic knives is a positive way forward, but other measures must be kept under review. I agree with Bill Butler that this is not the end of the issue; it is not the end of the process with regard to knife crime. We must keep it constantly under review.

This is a good bill that contains good measures, but, as I said, it might not be the end of the problem. I support the general principles of the bill.

16:22

Margaret Mitchell (Central Scotland) (Con): Important issues are addressed in this complex bill: custodial sentences, community sentences and the ending of unconditional automatic early release, together with issues that relate to weapons and in particular the sale of knives and the restriction on the sale of swords.

The bill’s proposals derive from the recommendations made by the Sentencing Commission for Scotland and the report published in 2006. Those recommendations come against a background of the Scottish Executive’s objectives to reform the system of automatic unconditional early release and, crucially, to achieve greater clarity in sentencing.

The question is: does the bill do what it says on the tin and provide clarity? The answer is a resounding no. As my colleague Bill Aitken pointed out, it certainly does not end automatic early release. As the Subordinate Legislation Committee states, the provisions—in particular section 6(10)—that give ministers the power to vary the proportion of the custody part of sentences are ambiguous and risk being reinterpreted in the future.

The Justice 2 Committee questions whether the measures in the bill will achieve the stated objectives and seeks a clearer explanation of why the 15-day cut-off has been chosen as the point at which the combined custody and community sentence kicks in. In other words, the clarity that the ministers sought to achieve is non-existent. Instead, more confusion and uncertainty is created.

The Justice 2 Committee highlights the point. It states that

“Clarity is required about the circumstances in which reference is being made to the risk of re-offending, risk of harm or the risk of serious harm.”

It adds that

“more information is required about precisely what kind of risk assessment processes are anticipated, about who will carry them out and about exactly how they are expected to contribute to reducing re-offending.”

On breach and recall, the committee wants clarification and further detail on the notification process

“for the police in terms of those coming out of prison on licence and in terms of notifying Scottish Ministers of those who have committed an offence while on licence.”

Similarly, the committee welcomed the minister’s confirmation that the home detention curfew is not intended to be used in the initial period of the bill’s implementation, but was nonetheless concerned that its continued existence as an option was likely to lead, yet again, to a lack of clarity and transparency.

I turn to the provisions in part 3 of the bill, covering weapons. Part 3 introduces a licensing scheme for non-domestic knives, as part of the overall objective of reducing knife crime in Scotland, and has been widely welcomed as a positive measure. However, the criminal law committee of the Law Society of Scotland remains
"Concerned that the licensing of non-domestic knives may well, however, result in those involved in violence simply changing their weapon of choice to a domestic knife" and is, therefore, strongly of the view that other, non-legislative measures "must be adopted."

In view of the absence of clarity in the bill, coupled with the legitimate concern that the Justice 2 Committee expressed about the totally inadequate timescale within which it was required to issue its call for evidence, consider the evidence that was received, set out and conduct the necessary oral evidence-taking sessions, and draft and consider its report on the bill, it is difficult not to come to the conclusion that the issues that the bill seeks to address, especially regarding clarity, would have been simply and effectively addressed if any one of the amendments to end automatic early release that Bill Aitken lodged in the Parliament on four separate occasions had not been voted down by all the other parties. Those amendments would have ended automatic early release and restored honesty in sentencing. More to the point, they would have established the clarity in sentencing that the bill so spectacularly lacks.

I end by saying that the Scottish Executive's rush to legislate by pushing through the bill reflects badly on the Scottish Parliament. The Conservative party will not vote against the bill today only because of the provisions for the licensing scheme, which are the sole saving grace in this pathetic effort from the Executive.

16:27

Stewart Stevenson (Banff and Buchan) (SNP): It is appropriate that I start by referring to Margaret Mitchell's concluding remarks concerning previous attempts to address the issue of early release. On three separate occasions in the chamber, I asked Annabel Goldie to tell me the price of the change that she proposed, but on each occasion she was unable to do so. It is difficult to support proposals that do not have a price on them, even if one thinks that the policy position that they support should be pursued. I suggest to my Conservative friends—I take the risk of describing them thus—that they should consider the wider implications of proposals and avoid knee-jerk reactions.

SNP members have a number of significant criticisms of the detail of the bill, which we will pursue at stage 2 and, if necessary, beyond. However, we have no doubt that the fundamental question that we should address when considering how to vote at 5 o'clock is, does the bill meet a need? The answer, without question, is yes. I say that, of course, with regard to part 3 of the bill, which deals with knife crime and on which I will comment later. However, I also say it with regard to the provisions on sentencing. The existing system has fallen into disrepute and is in need of reform.

Phil Gallie: I take the member back to the point that he made earlier about costing and to the Crime and Punishment (Scotland) Act 1997, which the SNP supported. A money bill, giving the costs, went through with the 1997 act and answered the questions that the member has asked.

Stewart Stevenson: Phil Gallie makes a fair point. However, the costs today are of course substantially different from the costs that applied at that time, for a whole variety of reasons. When discussing the matter with Annabel Goldie, I even suggested that the costs might come to £100,000 per cell place, in an attempt to draw out of her her view as to what they might be. Answer came there none—and I am sorry about that. Phil Gallie's liberal credentials in the debate have been substantially enhanced—up to the point when he told us that he joined Bill Walker in voting. Even without knowing the vote, I immediately know that liberal credentials could have formed no part of any vote that Bill Walker was involved in.

Will the bill rebuild public confidence? That is the question. When a judge makes a statement of sentence at the end of a trial, they must—after the bill is passed—be able to deliver absolute clarity to those members of the public who are present, be they victims or spectators, and to the press, if they are present, so that someone can note in their diary the fact that the person who committed the offence, of which some member of the public or their relative or friend was a victim, will not be out before such-and-such a date. That is probably the test that the public will apply to that aspect of the bill. There is scope in the bill, perhaps with some work at stage 2, to deliver on that objective. That is sufficient cause to support the principles encompassed in the bill.

We have to consider what happens when the gates of the prison open and the prisoner is released into the wider community. The bill describes very well what we should be trying to do. Section 36, on curfew licences, states:

"the Scottish Ministers must have regard to the need to—
(a) protect the public at large,
(b) prevent re-offending by the prisoner, and
(c) secure the successful re-integration of the prisoner into the community."

I suggest that that describes extremely well the whole purpose of what we should be trying to do under the bill—although those words happen to appear at that particular point in the bill just
because of the draftsman’s construction. Those are good tests to apply to the whole bill.

Let me apply that test to the 15-day sentence threshold. The minister helpfully told us that only two prisoner places, on average, are occupied by people who are sentenced to fewer than 15 days. The threshold is set at 15 days because that is the period during which one can do a basic assessment of the needs of the prisoner and build a programme to assist with their rehabilitation, thus serving the purposes that are set out in the bill, to which I referred. If it takes that long—if people are to go to prison at all—they should go for that 15-day period, so that we can assess their needs. On the other hand, if their crime is not sufficient to justify their going to prison for that period, we should not send them to prison at all. That is a simple point.

I wish to consider one or two aspects of the part of the bill that deals with knives. The bill covers issues to do with knife dealers. Those who wish to use a weapon for nefarious purposes and who consciously seek one to inflict harm may acquire their knives by other means. It appears that auctions can provide a way for knives to be commercially disposed of without a licence. Knives will still be carried. We must somewhat focus on the issue of people carrying them and how we deal with that adequately, as well as the supply of knives, which the bill so helpfully addresses.

I thank the Law Society of Scotland for extending my vocabulary. Given that I am not a lawyer, I had not met the word “obtemper” before, but I shall treasure it from now on. Obtemper is a super word and I shall try to use it on as many occasions as possible. I have said obtemper three times so far. The Scottish National Party supports the bill.

16:35

The Deputy Minister for Justice (Johann Lamont): I still do not know what obtemper means, unless it describes my speaking style when I am under pressure. I will go and look at the dictionary when I leave the chamber.

I thank members, who spoke so clearly in the debate. I acknowledge the interest in the bill and I would have been surprised if members had not spoken on it in such a thoughtful manner. We have had a useful and constructive discussion—with perhaps some honourable exceptions. We acknowledge the seriousness with which many members have approached the debate and the points that they have made. We will certainly reflect on those points and engage with everyone as we progress through the later stages of the bill. We all understand the importance of the issues involved and do not understate the significance of the critical points that have been raised. I am grateful for the general tone of the debate and I know that members will continue to contribute in the same way as we proceed.

We will of course provide a full response to the Justice 2 Committee’s stage 1 report on the bill before the end of the month and will continue to work with not just the Justice 2 Committee, but all others who have an interest in the matter to ensure that the bill is as robust and fit for purpose as it can be.

Like Michael Matheson, I came to the bill slightly late and I record my thanks to all those on the committee, officials and others who have supported me in getting to this stage. I will, of course, use the fact that I came to the bill late as an alibi if I come under pressure from questions.

I remind Parliament that the bill is about not what might have been, but what will be. It is about building on our already substantial package of reforms aimed at tackling reoffending to produce a more effective sentence and management regime that incorporates both custody and community parts.

I listened to what Kenny MacAskill said and was struck by the consensual tone of his serious contribution. I say to him that we want to work with the judiciary. It is critical that we work with those who have a direct interest in the effectiveness of the bill. The bill has been shaped by the judiciary and politicians, but it has also been shaped by the experience that has been articulated by victims of crime. I commend those who, since the Parliament came into existence, have had the courage to speak up. Victims of crime, who have felt further victimised by the justice system, have given practical expression to how that experience felt. I commend constituents of mine—I know that other members have similar experiences—who have said that they are determined that no other family should have to experience what they did. The bill is part of the process of addressing the demand on us from the people of Scotland.

We understand that clarity is important. Taking account of the helpful comments that have been made, we will see where we need to make things clearer and we will continue to consider measures for achieving greater clarity. As the Minister for Justice said, we are already identifying some parts of the provisions that could benefit from fine-tuning and will take steps at stage 2 to do that. Section 6 has been flagged up, so we will consider it carefully.

We are committed to ending the current time-driven system of early release that determines what will happen to an offender based solely on the length of the sentence. We believe that that approach is no longer effective and does not give
confidence. We will replace it with a framework that delivers effective punishment and public safety and gives offenders the chance to stop offending, if they are prepared to take that chance.

We believe that the custodial sentence measures strike the right balance between punishment and rehabilitation. The proposals do not change how the courts go about their business. If a judge thinks that custody is the right option in a particular case, he or she should continue to apply the same considerations, which must include public safety, as they do now in reaching that conclusion.

Somebody asked how judges balance all those issues. We employ judges and sheriffs to apply their experience, expertise and knowledge to the process and to make that judgment. That will not change. The bill will not change how sentencers arrive at decisions on whether custody is appropriate. They will continue to take account of all the information that is available to them, including any concerns about the risk to public safety.

I do not know what kind of calculator Colin Fox requires to calculate the sentence in a case where the judge says, “Your sentence is four years. Two years will be served in prison and two years will be served on licence in the community, unless you are deemed to be a risk, in which case you may spend up to a maximum of three years in custody.” That seems clear to me. Also, I say to Colin Fox that the bill is not about reducing community disposals, because it deals not with sentencing policy but with sentence management. The judge or sheriff will make a judgment about whether custody is appropriate. They might decide that it is not appropriate, in which circumstances they will make a community disposal.

Colin Fox: Will the minister take an intervention?

Johann Lamont: If I may, I will press on.

On the point about confidence and trust in the community part, the bill might have the consequence of giving sentencers more confidence that the community believes that a community disposal is reasonable. That will be a long-term process, but it is a serious prospect. The public, and especially the victim, will know when the sentence is handed down how long the offender should expect to spend in prison for punishment. They will also know that, if the offender’s risk assessment continues to cause concern and the judge has not imposed the maximum punishment period, the offender can be kept in prison for longer.

Colin Fox: The Sheriffs Association’s evidence to the Justice 2 Committee, which is on page 219 of volume 2 of the committee’s report, entirely refutes what the minister just said—that is, that the victim will be clear, on the day of the sentence, about the periods that the offender will serve in custody and outside. I ask the minister to look at page 219 and to clarify the matter.

Johann Lamont: Obviously, we have to continue the dialogue with all those who have an interest, including the Sheriffs Association, but the provisions seem to me to be particularly straightforward. If someone is given a four-year headline sentence, they will spend two years in prison and two years on licence in the community unless it is deemed inappropriate for them to leave prison after 50 per cent, in which case they will stay there for longer. As always, however, I am happy to continue the dialogue.

If it is proposed that the offender should be kept in prison for longer, the case will be referred to the Parole Board, which will review the case and, if necessary, direct that a further period should be spent in custody. Such offenders should find that the conditions that are placed on their licence are tougher as a result.

Jeremy Purvis raised an issue about the definition of retribution, but he will know that, since 2001, the punishment part for a life sentence prisoner must satisfy the requirements for retribution and deterrence. It is therefore reasonable to accept that that concept is familiar to the judiciary.

I was disappointed by the tone of Bill Aitken’s speech. To be honest, the Scottish Socialist Party and the Tories have become a bit of a sideshow in relation to the difficult matter of balancing the two sides of the argument. The debate is partly about an issue of trust. People must have confidence that the custody part is real, that it will be taken seriously, and that the sentence that is handed out will be served. People on one side of the argument want the provisions on the custody part to be strong. However, if there is to be trust in the system, we must also give people confidence that the whole sentence matters and that the community part is a serious part of the sentence and not an easy option or a box to be ticked when the person gets out of prison.

Building that confidence is a long-term job, but we must recognise the need to balance what is coming from the two sides of the argument. That relates also to the debate about whether short-term sentences work. The answer depends on what we want them to do. Of course, sentences must be proportionate to the seriousness of the offence that has been committed. Somebody who is sentenced to 15 days will have committed a different offence from somebody who is sentenced to 15 years. That is obvious.

Sentences might signal society’s view of
particular offences or they might relieve the community of particular problems in the short term, but the custody part will not be the only part of someone’s sentence. I recognise the point about sentences of 15 days, but Michael Matheson should be careful not to create the impression that a sentence that includes a custody part and a community part is less serious than a sentence that is served only in custody. We hope to have further dialogue on that.

There is a huge number of significant issues, but I have run out of time. We will talk further to the committee about licensing conditions and resources.

I reiterate that we have given a reassurance that we will not think about using the home detention curfew power until the new provisions are firmly bedded in and are working effectively. We certainly do not want to cut across clarity.

As for weapons, I said that the bill was part of the solution, not a partial solution. The bill will take measures that will make a huge difference, but they are not all that will be done. It does not help to have the counsel of despair that because we cannot do everything about knife crime immediately, we should do nothing and so undermine the drive towards the seriousness with which the licensing process will operate.

I hope that members will support the bill because of both its elements. It should provide more confidence in the system and, by addressing knife crime, should keep people out of the system. I urge members to support the bill’s general principles.

Custodial Sentences and Weapons (Scotland) Bill: Financial Resolution

16:45

The Deputy Presiding Officer (Murray Tosh): The next item of business is consideration of motion S2M-5346, in the name of Tom McCabe, on a financial resolution in respect of the Custodial Sentences and Weapons (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Custodial Sentences and Weapons (Scotland) Bill, agrees to any increase in expenditure—

(a) charged on the Scottish Consolidated Fund; and

(b) payable out of that Fund for existing purposes,

in consequence of the Act.—[Johann Lamont.]

The Deputy Presiding Officer: The question on the motion will be put at decision time.
The Presiding Officer: The next question is, that motion S2M-5336, in the name of Cathy Jamieson, that the Parliament agrees to the general principles of the Custodial Sentences and Weapons (Scotland) Bill, be agreed to. Are we agreed?

Members: No.
**The Presiding Officer:** There will be a division.

**FOR**

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Cragie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eddie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gibson, Robin (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
MacGregor, Mr Jamie (Highlands and Islands) (SNP)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Wallace, Mr Jim (Orkney) (LD)
Watt, Ms Maureen (North East Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

**AGAINST**

Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)

**ABSTENTIONS**

Aitken, Bill (Glasgow) (Con)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Brookebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Byrne, Ms Rosemary (South of Scotland) (Sol)
Curran, Frances (West of Scotland) (SSP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Harvie, Patrick (Glasgow) (Green)
Johnstone, Alex (North East Scotland) (Con)
Leckie, Carolyn (Central Scotland) (SSP)
MacDonald, Margo (Lothians) (Ind)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Petrie, Dave (Highlands and Islands) (Con)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, John (Ayr) (Con)
Sheridan, Tommy (Glasgow) (Sol)
Tosh, Murray (West of Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Presiding Officer: The result of the division is: For 87, Against 2, Abstentions 28.

**Motion agreed to.**

That the Parliament agrees to the general principles of the Custodial Sentences and Weapons (Scotland) Bill.

The Presiding Officer: The next question is, that motion S2M-5346, in the name of Tom McCabe, on a financial resolution in respect of the Custodial Sentences and Weapons (Scotland) Bill, be agreed to.

**Motion agreed to.**
That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Custodial Sentences and Weapons (Scotland) Bill, agrees to any increase in expenditure—

(a) charged on the Scottish Consolidated Fund; and

(b) payable out of that Fund for existing purposes,

in consequence of the Act.
I am grateful to the Committee for its thorough report and for the valuable contributions that members made at the Stage 1 debate on 11 January. My interim reply of 8 January confirmed that I would provide a more detailed response to the Committee's recommendations. This is now attached.

These measures mark another important contribution to our strategy set out in the Criminal Justice Plan to tackle re-offending and enhance public safety. They build on the reforms already introduced by the Management of Offenders etc (Scotland) Act 2005 to improve the delivery of criminal justice through a more structured, joined up approach.

The measures in this Bill will deliver a better way to manage a sentence of imprisonment once the court, having considered all the alternative options available to it, has concluded that prison is the appropriate disposal in that particular case. There is nothing in this Bill that is intended to alter or affect the overall sentence that the judge would otherwise have imposed. However, we have taken account of the Committee's concerns and the Sheriffs' Association's comments and propose to bring forward changes at Stage 2 to clarify the section dealing with setting the custody part (section 6).

These are detailed in the attached paper.

Questions have been asked about how the combined structure can work in practice for very short sentences. As the attached paper explains in more detail, we believe that we can construct an operational framework that will deliver proportionate and practical support for all sentences of 15 days or more.

There was broad agreement during the Stage 1 debate that tackling reoffending and securing public safety in not just about keeping offenders in prison. We will build on the new offender management structures introduced through the Management of Offenders etc (Scotland) Act 2005 to ensure that the work begun in prison is continued into the community and that those
who are a risk do not simply walk away unrestricted at the end of the custody part. That is why the measures will ensure that all offenders sentenced to 15 days or more will spend at least 25% of their sentence on licence in the community.

Clearly, this is not a one size fits all situation. The length of the sentence will be a factor in the screening and assessment processes and the way that an offender is managed while on licence in the community. Public safety will be at the heart of that approach. The attached paper provides more detail. It is also important to remember that there are already operational processes in place that we plan to build upon to make sure that new measures are delivered properly.

We have also taken account of the concerns raised about the practical effects of the current tests for recall to custody and possible re-release on licence by the Parole Board and will bring forward changes at Stage 2 to regularise the position. The Parole Board has been consulted and supports the planned changes.

More needs to be done to tackle the problem of the type of persistent re-offending that currently attracts very short prison terms. As the attached paper explains, there are already a significant number of alternatives to custody available to the courts and we continue to explore the potential for other options.

If approved by Parliament, these measures will deliver so much more for offenders and for public safety than can be achieved under the existing arrangements. It is important that we get them right. We will continue to work with the Committee and with the major criminal justice interests to deliver that objective.

CATHY JAMIESON
CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) BILL
EXECUTIVE RESPONSE

This paper responds to the recommendations made in the Justice 2 Committee's report on Stage 1 of the Custodial Sentences and Weapons (Scotland) Bill, issued on 22 December 2006.

When considering the response to the points raised about the custodial sentences aspects of the Bill, the Committee may find it helpful to refer also to the attached Annexe's. Annex A offers some examples of how the new measures will apply in practice; Annex B offers the "menu" of typical licence conditions; and Annex C provides a diagram outlining the various screening and assessment processes.

192. The Committee draws the Minister's attention to this evidence on gender issues and recommends that the Minister considers what work might be required to address this gap.

EXECUTIVE RESPONSE

Action is being taken on a number of fronts. The report from the Ministerial Group on Women's Offending1, published in 2002, is a significant piece of work that for the first time looks at the characteristics of women offenders, their needs and how the system could be improved to better deal with them. We have already introduced a range of initiatives such as:

- Arrest Referral schemes (piloted in 6 parts of the country and, following a positive evaluation, extended to a seventh area and funded for a further 2 years);
- Structured Deferred Sentences (currently being piloted in 3 areas and under evaluation);
- Diversion from Prosecution (now funded nationwide with females as one of the target priority groups);
- Bail information and supervision (now funded nationwide); and
- Piloting Mandatory Supervised Attendance Orders (SAOs) in order to reduce the number of women sent to prison for short periods of time as a result of fine default.

Glasgow District Court was deliberately selected as one of the pilot courts for the SAO pilot given the high number of female fine default receptions originating from this court. The evaluation has been positive2 SAOs are now to be rolled out across the country and will have the potential to remove more than 3,000 fine default receptions per annum.

The Report of the Ministerial Working Group on Women's Offending first suggested the idea of a Time Out centre. The acclaimed 218 women's centre in Glasgow has been running for a number of years. The centre provides residential detox and secure accommodation facilities and day programmes for women subject to the criminal justice system. It is designed to help women address the underlying causes of their offending and to lead them away from chaotic lifestyles. An evaluation of the first 2 years of the centre was published last year and found that it had resulted in reductions or cessations in offending and reductions in drug use...
amongst its clients. The ultimate aim of the centre is to reduce the number of women being sent to custody and while there is some anecdotal evidence to suggest this is happening (reported in the evaluation) it is too early yet to evidence this directly. Further work is underway to develop a blueprint for community services for women offenders which draws on the lessons learned from the successful 218 centre.

The Executive has a good record in developing radical alternatives for the courts to use in place of custody for women offenders, (for example Drug Treatment and Testing Orders; Restriction of Liberty Orders); in providing supportive and rehabilitative services within Cornton Vale for women prisoners; and for giving priority to the needs of women prisoners on their release back into the community.

193. Given the range of issues to be discussed and decided upon in the context of the Parole Board Rules, the Committee welcomes the Deputy Minister's undertaking to provide a first draft of the proposed rule changes by February 2007. The Committee expects to be kept involved of the development of the rules as they progress through the consultation process.

EXECUTIVE RESPONSE

The Committee will have a draft of the Parole Board Rules by the end of February. This version will reflect our ongoing consultations with the Parole Board. We will, of course, continue to keep the Committee informed as this work progresses.

The draft Rules will confirm that there is no intention, as was suggested by some during the Stage 1 debate, to give the Parole Board sentencing powers. Sentences are exclusively a matter for the courts. The Parole Board's role will remain as the court-like body that determines an offender's suitability for release on licence based on risk. We recognise the vital part that the Board plays within the new structure and will continue to work with the Board to ensure that it is clear about its statutory functions.

194. Whatever cut-off point is chosen for custody and community sentences to apply, an anomaly will exist for sentences nearest to that point. However decisions on thresholds must be based on a clear rationale. The Committee therefore seeks a clearer explanation of why the 15 day cut-off has been chosen.

201. The Committee shares the apprehensions of a number of those who gave evidence about the likely effects of the thresholds currently set out in the Bill and whether these thresholds provide for the most effective targeting of resources.

EXECUTIVE RESPONSE

These measures will deliver the Executive's commitment to end automatic unconditional early release - a commitment made in direct response to public concerns about the weaknesses in the present system. We want these measures to apply to as many offenders as possible. Our assessment is that a custody part of 7 days is the minimum time needed for initial screening and setting conditions. In 2005/06, the average daily prison population was 6,857. Of that number 2 were serving sentences of under 15 days (excluding fine defaulters). Overall, around 250 prisoners would have been affected, and as they would serve twice as long in custody, it is estimated that the daily prison population for this group would double to
4. The benefits of the custody and community framework will therefore be available to most offenders.

This framework provides opportunities to work with offenders to address the problems which may underpin their offending behaviour. However, the criminal justice system cannot solve the problems experienced by many offenders on its own. Research tells us that providing access to such services offers the most effective way to reduce reoffending, changing the lives not only of the individual offenders but of the communities within which they live and reducing the number of victims of crime.

The key issue is to ensure that the right people are "flagged up" as high risk and requiring additional measures and supervision, but we also need to ensure that the processes for taking that action are proportionate and highlight the right people. We will continue to work with all the relevant agencies, such as the RMA, ADSW, the CJAs and the voluntary sector to ensure that simple and effective screening tools are developed for offenders with short sentences. That will allow resources to be properly invested in supervision and services and in conducting and seeing through the requirements of the more complex risk assessment required for those who present a greater risk of harm.

The measures mean that fine defaulters will spend the full term in custody. However, we are developing further Supervised Attendance Orders which will have a significant impact on the numbers currently received into custody to serve very short sentences for fine default.

It has been suggested that those receiving short sentences should not be sent to prison in the first place. Sentencing is a matter for the courts which already have a range of non-custodial options available to them. However, we continue to look at other ways to tackle re-offending through community sentences. These matters are not for this Bill. Its measures are intended to improve the way sentences are managed once the court has decided that custody is the appropriate disposal having taken account of all the circumstances of the offence and the offender.

195. The Committee understands that the Bill is not intended to alter the setting of headline sentences and notes the Minister's comments in relation to the potentially confusing effect of merging sentencing regimes. However the Bill's provisions are likely to alter sentencing practice by requiring, for the first time in determinate sentences, the setting of the custody part. The Committee is of the view that the implications of this significant change in sentencing practice require further consideration in the light of the evidence received in relation to recalibration. The Minister is therefore invited to consider this and revert to the Committee prior to commencing Stage 2.

196. The Committee notes that if individual sentencers set a custody component of more than 50%, then this has the potential to seriously impact upon the costs contained in the Financial Memorandum.

197. Given the evidence received by the Committee there appears to be confusion about the rationale behind and the effects of section 6 of the Bill and that there is the potential for unintended consequences such as sentencers being required to apply the same factors twice. The Committee welcomes the Minister's undertaking to consider the evidence with a view to deciding whether any clarifying amendments are required at
stage 2. The Committee requests a response to this particular point prior to the commencement of stage 2.

198. **Given the concerns of the Subordinate Legislation Committee the Committee recommends that the Minister looks again at subsection 6(10), its ambiguity and risk of future reinterpretation and reverts to the Committee prior to the commencement of stage 2.**

**EXECUTIVE RESPONSE**

The Sentencing Commission's report on early release included recommendations about sentencing that required the judge when imposing a sentence under the new arrangements (proposed by the Sentencing Commission) to have regard to the period of time the offender would actually have spent in prison under the Criminal Proceedings (Scotland) Act 1993 and to "recalibrate" the sentence accordingly. While the Sentencing Commission’s findings made a significant contribution to formulating our new policy, its recommendations about sentence calculation are not reflected in the Bill. Scottish Ministers have made it clear from the outset that we want to get away from the current time-driven regime. It was not therefore considered appropriate to import consideration of the effects of that regime into any aspect of the new measures.

We do not accept that by requiring the court to state publicly the minimum time an offender should expect to spend in prison impacts in any way on the judge's decision as to the appropriate length of the total sentence. However, we have confirmed that we will bring forward changes at Stage 2 to further clarify the measures dealing with the setting of the custody part. These will:

- clarify what the judge can take into account when considering whether to increase the minimum 50% custody part imposing the custody part and to put beyond doubt that these measures do not affect the matters - including public safety - that judges already take into account when imposing a sentence;
- address the apparent "double counting" effect of discounts for guilty pleas;
- enable re-offending while on licence to be taken into account when considering whether to extend the 50% custody part;
- require the judge to explain the reasons for extending the 50% custody part; and
- ensure that appropriate reports are prepared.

I agree that the extent to which judges increase the custody part beyond 50% could impact on the costs set out in the Financial Memorandum as these are based on the view from judges that they would only rarely use the power to extend the minimum term.

We continue to engage with the Sheriffs' Association about the measures in the Bill. We believe that this package of measures will address relevant concerns.

I accept that there is a perception of inconsistency in sentencing and have been concerned about this. That is why the Sentencing Commission was asked to look into the matter. It published its report on the scope for improving consistency in sentencing on 19 September
2006. The report contains 25 recommendations. The central recommendation is for the introduction of a procedure for giving effect to sentencing guidelines. The report also recommends the creation of a new statutory body that would be responsible for the preparation of draft sentencing guidelines for consideration by the Appeal Court of the High Court of Justiciary. As the Committee will appreciate a change of this magnitude to sentencing procedures requires very careful consideration and, of course, consultation with the judiciary. This work is ongoing.

My interim reply of 8 January dealt with the Committee's point about order making powers in section 6(10) of the Bill.

199. The Committee draws attention to the concerns regarding the additional burdens that could be placed on sentencers and requests that these are considered by the Planning Group.

EXECUTIVE RESPONSE

This matter is already being considered as part of the early work of the Custodial Sentences Planning Group. The Sheriffs' Association, the Scottish Court Service and the District Courts Association are all represented and actively engaged in these considerations. I can assure the Committee that it will continue to be a key feature of the implementation strategy.

200. The Committee notes that in the view of the Executive "conditional imprisonment is not presently a sentencing option for the courts and so to introduce such a measure would amount to a new sentencing option. Such a move would be outwith the scope of this Bill." Notwithstanding this, the Committee asks the Minister whether conditional sentences could be considered as a form of early release. The Committee would be grateful for a response prior to the commencement of stage 2.

203. The Committee draws attention to the research commissioned in 2002 by the Parliament's Justice 1 Committee into Public Attitudes Towards Sentencing and alternatives to imprisonment and particularly its conclusions about the need to restore public confidence by providing better information about constructive alternatives to prison and the need to address public expectations of what sentencing and punishment can achieve. The Committee notes that in 2004-5 the number of community disposals imposed by the courts exceeded, for the first time, the number of custodial sentences imposed. However the Committee would invite the Executive to re-consider this research and what work still requires to be done to create greater public confidence in Scotland's justice system and in the benefits of disposals other than custodial sentences.

EXECUTIVE RESPONSE

The custodial sentences element of the Bill does not introduce an additional "sentencing option". Its purpose is to reform the way sentences are managed so that offenders will be subject to appropriate restrictions from the beginning of their sentence through to the end. The Executive has no power to change a sentence imposed by the courts.

I accept that further work is required to enhance the public's understanding and confidence in the justice system. The work done by the Justice Committee in 2002 showed that public opinion could be changed when given access to more and better information. This is why the
National Strategy on the Management of Offenders includes communication as one of its 5 work streams and expects the Community Justice Authorities to include a local communications strategy as part of its area plan. The Community Justice Authorities have a clear community connection - their members are local councillors and so are well placed to engage with communities on such matters. The Community Justice Authorities are required to prepare local communication strategies and we already know that some have plans to engage with a variety of local forums, for example citizens’ juries. The Executive also intends to undertake further work to explain the range of community sentences in order that local communities and victims of crime can be confident that they are effective.

202. Given the expected operational impact on prisons, the Committee was very disappointed that the prison governors invited to give evidence appeared unable to comment on the areas under their respective operational responsibilities likely to be affected by the Bill.

EXECUTIVE RESPONSE

We agree with the Committee about the importance of the availability of appropriate resources. We have always been fully open on the sizeable implications of these important measures. We need to ensure that the extra accommodation, staffing, regime and supports required are available on the ground at the right rate. The Scottish Prison Service is already working on improving and expanding the prison estate, and investment is currently proceeding at a rate of £1.5m per week. The Bill is expected to increase the daily prison population by around 700-1100 places within 5 years and the implementation work is looking at options for delivering that sort of capacity. Precise decisions on how such investment might be made will need to form part of the Spending Review deliberations later in 2007. Implementation arrangements can then be finalised.

204. The fact that the processes for the required assessments are being looked at is welcomed. However, the Committee must express its concern at being asked to scrutinise legislation in relation to which key decisions such as this and assumptions are still at a formative stage. It makes it difficult for the Committee and indeed for some of those asked to give evidence to the Committee to express views on the provisions contained in the Bill and prevents the Parliament being able to scrutinise effectively the whole proposed package of measures.

205. Clarity is required about the circumstances in which reference is being made to the risk of re-offending, risk of harm or the risk of serious harm. Given the Bill's objectives to achieve both greater transparency and better risk management, more information is required about precisely what kind of risk assessment processes are anticipated, about who will carry them out and about exactly how they are expected to contribute to reducing re-offending. If different risk and need assessment processes are expected for shorter and longer term prisoners, these differences need to be made more explicit so that false expectations are not created.

EXECUTIVE RESPONSE

The past few years have seen major developments in the field of risk assessment and risk management. The establishment of the Risk Management Authority in the Criminal Justice
(Scotland) Act 2003 put Scotland at the forefront of these developments. However, resources are not limitless and we must ensure that they are used where they can have most impact. The Justice Department has therefore been engaged in a programme of work with the SPS, ADSW and ACPOS to develop standard tools for assessing the risk of reoffending and the risk of harm. The main criminal justice agencies in Scotland have agreed to adopt a standard approach to risk assessment and management using internationally recognised tools. This supports the more integrated way of working envisaged in the Management of Offenders etc (Scotland) Act 2005 and also streamlines the processes within each individual agency as they share assessments.

Priority has been given to developing and introducing tools to assess the risk of harm posed by sex offenders and in training staff to use them. Criminal justice social workers, police and prison staff now use Risk Matrix 2000 and training on the use of the second stage tool - Dynamic Supervision Project - is under way. Agencies have agreed to adopt a common risk assessment and case management tool - the Level of Service Case Management Inventory (LSCMI) risk assessment and case management tool - which we are currently procuring for use in Scotland from the Canadian developers. As we do not yet have a tool for assessing the risk of harm for violent offenders, we have asked the RMA to advise the Executive on this issue as a matter of urgency. The RMA is also assisting the Executive in advising what further specialist tools should be used for the small number of offenders not covered by the existing range.

The Integrated Case Management (ICM) process is now a key feature of offender management. It may be helpful to the Committee to have information on the sort of assessments and contributions dealt with under ICM. At the moment the information gathered on those to whom ICM applies includes:

- trial reports produced by external agencies: trial judge report; social enquiry report; home background report; psychiatric trial report; psychologist trial report; summary reports from agencies such as addictions or e.g. Open Secret;
- internal SPS summaries: Community Integration Plan; Case conference reports and minutes; "core screen" on admission; risk assessments; Risk Management Group minutes;
- internal SPS referrals and intervention reports: programme summaries; education and learning plans and certificates; basic skills assessments; lifer admission interviews and updates.

The implementation work will look at how to expand the ICM process to all those sentenced to 15 days or more in a way that is proportionate and draws as far as possible on existing successful processes.

The key point is that this legislation requires assessment of risk of harm, not risk of re-offending. Subsequent supervision and programme work can address re-offending risk, but decisions around whether or not the custody part should be extended relate only to risk of harm.
206. The Committee notes that the Minister is on record as saying there is no intention to prescribe standard licence conditions in this Bill. However, the Committee remains of the view that standard licence conditions should be included on the face of this Bill.

EXECUTIVE RESPONSE

Key to the new regime will be the flexibility to tailor licence conditions to reflect each offender's risk and needs. We therefore need to strike a balance between making the process as clear as possible and having a degree of flexibility to attach additional licence conditions if necessary. We have reviewed our initial response in the light of the Committee's helpful comments and concluded that it is possible to strike that balance. We propose therefore to bring forward changes at Stage 2 that will make it clear that standard conditions requiring an offender to be of good behaviour and not to leave the United Kingdom will be attached to all offenders licences. We will also introduce provision setting out the various supervision conditions for those offenders subject to the Bill's statutory supervision arrangements. These will be:

- Reporting to a supervising officer
- Complying with supervision requirements
- Keeping in contact with the supervising officer
- Advising the supervising officer of a change of address or change (or loss) of employment.

Individual licences may also contain further conditions that reflect the particular offender's risk and/or needs such as a requirement to undertake drug or alcohol counselling, offence related interventions or electronic monitoring. Annex B offers some examples of the conditions that may be attached to an offender's licence.

207. Whilst the Committee accepts the view that the limited resources should be directed at those who pose the most significant risk of serious harm, it is concerned that the evidence suggests that for the vast majority of released prisoners, who may not pose a risk of serious harm but who may well pose a significant risk of re-offending, the type, quality and scope of post-release support and supervision being proposed is very unclear.

208. The Committee would like an explanation of why, in the light of COSLA'S evidence to the Finance Committee, it seems to be assumed in the planning process that high risk of reoffending (but low risk of harm) offenders with complex needs do not require access to qualified social workers undertaking offence-focused as well as resettlement work. This assumption seems anomalous given that those on probation, (generally a lower risk group) will be receiving supervision from qualified social workers.

The Planning Group set up to steer implementation of the Bill's provisions has established a subgroup to take forward work on the support and supervision arrangements for the community part of the combined sentence. Senior representatives of ADSW, CoSLA, Chief Officers of the Community Justice Authorities and the voluntary sector have scoped out the
work and identified 3 stages - agreeing the model; developing the operational arrangements; and putting the resources in place. The work of this sub-group builds on the very strong partnership put in place for the Management of Offenders legislation and has already reached broad agreement on a model based on the assessment of risk, on the most efficient use of staff and on the wider partnership working within the Community Justice Authorities. The model will however be flexible enough to ensure that the needs of and risks posed by individual offenders are addressed.

At this early stage in the work of the Planning Group, it is envisaged that a 3-tiered community model could operate which would seek to make best use of the available staff skills, experience and resources. The level of supervision required should be proportionate and tailored to the risk of both harm and re-offending that each individual offender presents. The tiers will comprise:

- **Tier 1**: covering those individuals who receive sentences of less than 6 months. Contact would involve a brokering and signposting service providing appropriate support and interventions. We envisage involvement from a range of organisations with substantial input from the voluntary sector;
- **Tier 2**: for those individuals who are not considered a risk of serious harm and receive sentences of less than 4 years. It is envisaged that supervision and support of these offenders would not require to be undertaken only by qualified social workers in the first instance but with access to advice and input from fully qualified members of staff where needed. The intensity of the supervision undertaken will be informed by the risk assessment carried out on the individual;
- **Tier 3**: covers those individuals serving less than 4 years and considered a risk of serious harm and those who are subject to the current statutory supervision arrangements i.e. serving sentences of 4 years or more or, in the case of sex offenders, 6 months or more. Supervision would always be provided by a qualified social worker and the intensity of supervision dependent on the circumstances of the specific offender (with certain minimum levels of contact) and the conditions of the licence.

This model is based on evidence that ensuring offenders are in suitable accommodation, employment and are moving away from substance misuse are 3 of the most crucial areas to address. Community Justice Authorities will have a key role to play to ensure that offenders are able to access appropriate mainstream services.

The new approach, which underpins the Management of Offenders etc (Scotland) Act 2005, has moved away from a system where services are based on whether an offender serves his sentence in prison or the community. We are moving towards a system where the risk posed is the determining factor in the services provided. This assessment will decide who is best placed to work with the offender in the community and whether that person should be a qualified social worker or not. Some community sentences - such as Drug Treatment and Testing Orders and probation - involve work with difficult offenders and these will continue to be supervised by qualified social workers. On the other hand community disposals such as Community Service Orders and Supervised Attendance Orders make extensive use of non-qualified or part-qualified staff. We envisage that a similar approach, which is very much in line with the recommendations in Changing Lives on the future of social work, will be applied to those offenders covered by the new combined structure.
209. Will all offenders not regarded as presenting a risk of harm and serving a community part of a sentence of less than a year who breach the licence conditions by committing a minor offence be recalled by Scottish Ministers? How will the police know whether an offender was already on licence. Would reliance be placed on an offender's honesty?

210. The Committee would be grateful for clarification of these points and for details of the information chain. In particular, the Committee would welcome further detail on what the notification process will be both for the police in terms of those coming out of prison on licence and in terms of notifying Scottish Ministers of those who have committed an offence while on licence.

Action will be proportionate to the behaviour giving rise to the report of a breach. It may be that not all those who commit a minor breach will be immediately recalled to custody.

Currently, breach rates for community sentences are between 22% and 33% but only 15% of offenders breach conditions to a degree that results in a return to custody. That is why that rate was selected for modelling the effects of the Bill. The key point will be for all agencies to develop a clear and shared understanding of what constitutes a serious breach now that arrangements are being developed for different categories of offenders and such large numbers of offenders. The Planning Group is examining the recall process for the new arrangements. The Parole Board, the Scottish Prison Service, ADSW and the police are members of this group. This group has already met and identified key issues to be addressed such as volume; speed of reporting/enforcement; accuracy of the SCRO record; adequate IT facilities. In many respects the arrangements that will be needed to support the relevant processes in the Bill will build on the existing effective operational structures. Therefore the current structure whereby SPS notifies the police of all offenders being released from prison on licence and the police and/or local authorities advising Scottish Ministers of potential breaches of licence conditions for a decision on appropriate action will be form the basis for the necessary arrangements.

211. The Committee is not wholly convinced by the different tests for breach of licence and recall to custody, particularly in relation to the management of those who do not comply with licence conditions but who do not present a risk of serious harm.

EXECUTIVE RESPONSE

The Deputy Minister for Justice explained in some detail in her letter of 6 December our thinking supporting the different tests for recall and re-release. However, we note that the Committee (and some other commentators) continue to have reservations about the current proposals. While our aim is to safeguard the public, following discussions with the Parole Board, we will bring forward changes at Stage 2 to regularise the position.

212. The Committee welcomes the Minister's statement that HDC is not intended to be used at least in the initial period of this Bill's implementation. Nevertheless, the Committee is concerned that its continued existence as an option is likely to lead to a lack of clarity and transparency. The Committee would therefore be grateful to know whether the Minister has in mind a timescale within which consideration is likely to be given to the use of HDC in conjunction with the provisions of this Bill.
EXECUTIVE RESPONSE
The Executive's priorities are to secure Parliamentary approval for its plans and to introduce the legislative measures as soon as practicable ensuring that the infrastructure and resources are in place to support the new regime. That is what will enhance public protection and contribute to reducing re-offending. It is therefore impractical at this stage to offer any views on a timeline for the possible introduction of a Home Detention Curfew scheme that will apply to offenders dealt with under the new provisions. The Committee may wish to note however, that the order required to bring these measures into force is subject to affirmative resolution and consequently the scheme could not be commenced without Parliament's approval.

I should add, though, that it is my view that such a scheme could prove valuable in the future. The existing HDC scheme is working well. Since implemented in July 2006 release has been authorised for 850 short-term prisoners (i.e. those sentenced to less than 4 years) - at present around 300 offenders are subject to HDC. The scheme has established itself as a helpful way to re-integrate people into their communities.

213. The Committee notes the Deputy Minister's comments and welcomes the acknowledgment that this Bill can provide only a partial solution to the problem of knife crime. The Committee believes that the Executive should continue to work to ensure that robust statistics on the sources of knives are developed and monitored in order to inform further action on knife crime.

EXECUTIVE RESPONSE
The Bill's provisions on weapons represent the final elements of the First Minister's Five Point Plan on Knife Crime. They will play a vital role in tackling knife crime, alongside the measures we have already implemented in last year's Police Act, the Lord Advocate's revised guidelines on the prosecution of knife crime and the enforcement action being undertaken by the Police and coordinated by the Violence Reduction Unit. The Executive will consider whether robust statistics on the sources of knives might be developed and will continue to work with the Violence Reduction unit and others to build up the evidence base for our work to tackle knife crime.

214. The Committee is content with scope of the provisions as set out in the Bill in relation to weapons.

216. The Committee is content with the definitions in Part 3 of the Bill.

EXECUTIVE RESPONSE
The Executive welcomes the Committee's support for the scope of our legislative proposals on weapons and for our approach to definitions.

215. The Committee believes that possession of a knife in prison should constitute a criminal offence and requests that the Scottish Executive considers this matter further, and responds to the Committee prior to commencement of stage 2 proceedings.
EXECUTIVE RESPONSE

The Executive agrees with the Committee that possession of a knife in prison should constitute a criminal offence. The Executive will bring forward an amendment at Stage 2 to address this issue.

217. The Committee is content that the proposed licence conditions are proportionate.

219. The Committee supports the introduction of a licensing system for the commercial sale of non-domestic knives.

EXECUTIVE RESPONSE

The Executive welcomes the Committee's support for the introduction of a licensing scheme and for the proposed licence conditions.

218. The Committee is content with the provisions of section 47 the Bill. However, the Committee notes the comments it has received in evidence from retailers, and recommends that the Executive reviews the operation of the licence provisions at a later date, to ensure that the system contains no unnecessary bureaucracy.

EXECUTIVE RESPONSE

The Executive welcomes the Committee's support for the provisions of section 47 and shares the Committee's view that unnecessary bureaucracy should be avoided. The Executive will review the operation of the licensing scheme at a later date, as the committee recommends, with that objective in mind.

220. The Committee notes the evidence received on definitions and exceptions and expects that the Executive will undertake detailed consultation with these groups prior to producing the relevant subordinate legislation. The Committee would be grateful for clarification of the Executive's proposed timetable for producing this subordinate legislation prior to the commencement of stage 2.

EXECUTIVE RESPONSE

The Executive intends to consult interested parties before producing subordinate legislation on the exceptions to a ban on the sale of swords. It is envisaged that the consultation will take place over summer and autumn, with the resulting secondary legislation coming before Parliament thereafter.

221. The Committee supports the imposition of a ban on the sale of swords, subject to the specified exceptions which are proposed by Scottish Ministers.

EXECUTIVE RESPONSE

The Executive welcomes the Committee's support for the introduction of a ban on the general sale of swords and for the proposed exceptions.
Footnotes:

2 http://www.scotland.gov.uk/Publications/2006/12/19155955/0
3 http://www.scotland.gov.uk/Publications/2006/04/24161157/0
Annex A

CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) BILL
EXAMPLES OF CUSTODIAL SENTENCES

Example 1: The court sentences an offender to 4 months

- Offender is convicted of an offence and is given a 4 month sentence.
- Judge does not vary the minimum 50% custody part. The offender is told that he should expect to spend at least 2 months in prison (the custody part) for the purposes of punishment. The second part of the sentence will be served in the community and the offender will be told that he will be subject to licence conditions during that part of the sentence.
- Offender told that if assessed as presenting a risk of serious harm, he will be referred to the Parole Board for Scotland and could have the custody part extended to up to 75% of the sentence.
- Offender also told that any breach of licence while serving the community part of the sentence could result in a return to custody to serve out the remainder of the sentence.
- On entering prison the offender undergoes an initial risk and needs assessment as part of the sentence management programme.
- Towards the end of the custody part the offender is assessed as presenting an acceptable level of risk. He moves to the community part on licence with a condition to be of good behaviour and keep the peace and not re-offend.

Example 2: The court sentences an offender to 6 years - no variation in minimum custody part.

- Offender convicted of assault and is given a custody and community sentence of 6 years.
- Judge does not vary minimum 50% custody part. Offender is told that he should expect to spend at least 3 years in prison (the custody part) for the purpose of punishment. The second part of the sentence will be served in the community and the offender will be told that he will be subject to licence conditions during that part of the sentence.
- Offender told that if assessed as presenting a risk of serious harm, he will be referred to the Parole Board for Scotland and could have the custody part extended to up to 75% of the sentence.
- Offender also told that any breach of licence while serving the community part of the sentence could result in a return to custody to serve out the remainder of the sentence.
- On entering prison offender undergoes risk assessment as part of sentence management programme.
- Towards end of custody part, offender is assessed as posing a risk of serious harm. Scottish Ministers refer him to the Parole Board with a recommendation that custody part be extended.
- Parole Board considers the case and comes to the view that offender does pose a risk of serious harm. Board directs that he be detained in custody for a further period and sets a date for a further review in 12 months time.
On hearing offender's case on date set for the second review, Board considers that he no longer presents high risk of harm and directs that he/she moves to custody part of the sentence.

Offender's community licence includes conditions requiring him to be supervised by a fully qualified social worker, to undertake alcohol counselling, to be of good behaviour and to keep the peace and to not re-offend.

Example 3: The court sentences an offender to 6 years - custody part set at 4 years.

- Offender convicted of assault and is given a custody and community sentence of 6 years.
- Judge considers that, because of the level of violence involved in the offence and taking into account offender's previous record, the statutory minimum custody part be extended for the purposes of punishment. The second part of the sentence will be served in the community and the offender will be told that he/she will be subject to licence conditions during that part of the sentence.
- Offender told that if assessed as presenting a risk of serious harm, he/she will be referred to the Parole Board for Scotland and could have the custody part extended to up to 75% of the sentence.
- Offender also told that any breach of licence while serving the community part of the sentence could result in a return to custody to serve out the remainder of the sentence.
- On entering prison offender undergoes risk assessment as part of sentence management programme
- Towards end of custody part, offender is assessed as not posing a risk of serious harm. He moves to the community part of the sentence (the remaining 2 years of the overall sentence) on community licence.
- Offender's community licence includes conditions requiring him to under be supervised by a fully qualified social worker, to be of good behaviour and to keep the peace and to not reoffend.

During the community part offender breaches licence by failing to attend a meeting with his supervising officer. The supervising officer notifies the Scottish Ministers. The breach is assessed as not significantly raising the level of risk posed on this occasion. Offender is sent a letter reminding him of his responsibilities with regard to the licence conditions and is warned that any further incidents could lead to him being recalled to custody for the remainder of his sentence.
Annex B

CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) BILL EXAMPLES OF LICENCE CONDITIONS

The purpose of the conditions is to manage risk in the community. Scottish Ministers will select appropriate conditions based on the assessment of the offender's risk at time of release from the custody part of the sentence. The conditions - examples of which are given below - will enable the community part to be tailored to the offender's risk and needs.

Licence Conditions

All offenders will be subject as the very minimum to a "good behaviour" condition.

Some offenders may require some form of supervision/monitoring. Appropriate conditions in these circumstances may be:

- Complying with the instructions of his or her supervising officer and notifying that officer of any change of address.
- Living only in accommodation approved by the supervising officer.
- Attending at a links centre.

Licence conditions can provide for interventions and training:

- Undertake an assessment for drug or alcohol counselling.
- Work with an employment agency or training provider.

Restrictive conditions will also be available such as:

- Restriction on travel.
- Restriction on movement - not entering parks or playgrounds or being in the vicinity of a school
- Electronic monitoring.
- No or restricted access to computer-internet equipment.
- No contact with children.

If necessary, the conditions can be varied during the community licence period to take account of any change in the circumstances of a particular case. A serious breach of any condition will mean a return to custody.
Annex C

DIAGRAM SHOWING POSSIBLE EFFECTS OF INITIAL SCREENING ON SUBSEQUENT OFFENDER ASSESSMENT
Present:

Jackie Baillie  Bill Butler
Mr David Davidson (Convener)  Colin Fox
Mr Kenny MacAskill (Committee Substitute)  Maureen Macmillan
Jeremy Purvis

Apologies were received from Michael Matheson MSP

Also present: Karen Whitefield MSP

**Custodial Sentences and Weapons (Scotland) Bill:** The Committee considered motion S2M-5408 in the name of David Davidson MSP—

That the Justice 2 Committee considers the Custodial Sentences and Weapons (Scotland) Bill at Stage 2 in the following order: sections 43 to 46, section 1, schedule 1, sections 2 to 42, sections 47 to 49, schedule 2, section 50, schedule 3 and the long title.

The motion was agreed to.
1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 43 to 46
- Schedule 1
- Sections 47 to 49
- Section 50
- Long Title

Section 1

Sections 2 to 42

Schedule 2

Schedule 3

Schedule 4

Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 43

Cathy Jamieson

1 In section 43, page 19, line 17, at end insert—

<(2A) A knife dealer’s licence shall, in addition to specifying the activity which the dealer engages in, specify the premises in or from which the activity is to be carried on.>

Cathy Jamieson

2 In section 43, page 19, line 18, leave out <subsection (1)> insert <subsections (1) and (2A)>

Cathy Jamieson

3 In section 43, page 20, line 7, at end insert—

<(7) The Scottish Ministers may by order—

(a) modify subsection (3) so as to modify the definition of “dealer”;  
(b) specify descriptions of activity which are not to be taken to be businesses for the purposes of that subsection (or that subsection as modified).  
(8) The power in subsection (7)(a) includes in particular power to add descriptions of business.>

Cathy Jamieson

4 In section 43, page 25, line 11, after <taken> insert <(the “sale premises")>

Cathy Jamieson

5 In section 43, page 25, line 12, at end insert <, and

( ) the sale premises are not in Scotland>
Cathy Jamieson

6 In section 43, page 25, line 14, at end insert—

<27NA Sales and dispatches in different local authority areas

(1) Subsection (2) applies where, in connection with the sale of an article mentioned in section 27A(2)—

(a) the relevant premises are situated in the area of a local authority, and
(b) the sale premises are situated in the area of another local authority which, by virtue of section 2(2), is the licensing authority in respect of the taking of the order for the article.

(2) For the purposes of this Act, the sale of the article is to be treated as taking place—

(a) on the relevant premises, and
(b) on the sale premises.

(3) In this section, “relevant premises” and “sale premises” have the same meanings as in section 27N.>

Cathy Jamieson

7 In section 43, page 26, line 2, after <27A(6),> insert <27A(7),>

Section 46

Cathy Jamieson

8 In section 46, page 27, line 19, after <defences> insert <(including in particular defences relating to religious, cultural or sporting purposes)>

After section 46

Cathy Jamieson

9 After section 46, insert—

<Crossbows

Sale etc. of crossbows

(1) In the Crossbows Act 1987 (c.32), in the provisions mentioned in subsection (2), for “seventeen” in each place it occurs, substitute “eighteen”.

(2) The provisions are—

(a) section 1 (sale and letting on hire),
(b) section 2 (purchase and hiring),
(c) section 3 (possession).>

Cathy Jamieson

10 After section 46, insert—
Possession of weapons in prisons etc.

After section 49B of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39), insert—

“49C Offence of having offensive weapon etc. in prison

(1) Any person who has with him in a prison—
(a) an offensive weapon, or
(b) any other article which has a blade or is sharply pointed,
commits an offence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he had good reason or lawful authority for having the weapon or other article with him in the prison.

(3) A defence under subsection (2) includes, in particular, a defence that the person had the weapon or other article with him in prison—
(a) for use at work,
(b) for religious reasons, or
(c) as part of any national costume.

(4) Where a person is convicted of an offence under subsection (1), the court may make an order for the forfeiture of any weapon or other article to which the offence relates.

(5) Any weapon or other article forfeited under subsection (4) is, subject to section 193 of the Criminal Procedure (Scotland) Act 1995 (c.46), to be disposed of as the court may direct.

(6) A person guilty of an offence under subsection (1) is liable—
(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both,
(b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or a fine or both.

(7) In this section—

“offensive weapon” has the meaning given by section 47(4),
“prison” includes—
(a) any prison other than a naval, military or air force prison,
(b) a remand centre (within the meaning of paragraph (a) of subsection (1) of section 19 of the Prisons (Scotland) Act 1989 (c.45) (provision of remand centres and young offenders institutions),
(c) a young offenders institution (within the meaning of paragraph (b) of that subsection), and
(d) secure accommodation within the meaning of section 93(1) of the Children (Scotland) Act 1995 (c.36).”.

3
Section 1

Cathy Jamieson

11 In section 1, page 1, line 9, leave out <Board has the function of advising> and insert <Board’s principal function is to give directions to>

Cathy Jamieson

12 In section 1, page 1, line 10, leave out <by them in relation> and insert <under Part 2 relating>
Custodial Sentences and Weapons (Scotland) Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. In this case the information provided consists solely of the list of groupings (that is, the order in which amendments will be debated). The text of the amendments set out in the order in which they will be debated is not attached on this occasion as the debating order is the same as the order in which the amendments appear in the Marshalled List.

Groupings of amendments

Knife dealer’s licence
1, 2, 3, 4, 5, 6, 7

Sale etc. of swords: defences
8

Sale etc. of crossbows
9

Possession of weapons in prisons etc.
10

Parole Board: functions
11, 12
Present:

Jackie Baillie                  Bill Butler
Mr David Davidson (Convener)   Colin Fox
Mr Kenny MacAskill (Committee Substitute)  Maureen Macmillan
Jeremy Purvis

**Custodial Sentences and Weapons (Scotland) Bill:** The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12.

Sections 44, 45, 2, 3, 4, 5 and schedule 1 were agreed to without amendment.

Sections 43, 46 and 1 were agreed to as amended.
The Convener (Mr David Davidson): Good afternoon, ladies and gentlemen. I welcome you to the third meeting in 2007 of the Justice 2 Committee. We have not received any apologies, as yet. I ask everybody to switch off their mobile phones, pagers or anything else that goes ping and that might interfere with the sound system.

This is day 1 of our stage 2 consideration of the Custodial Sentences and Weapons (Scotland) Bill. Following the committee’s decision, we will consider the bill in the following order today: sections 43 to 46, on weapons; section 1; schedule 1; and sections 2 to 5. Members should have with them the marshalled list and groupings for today’s amendments, as well as the detailed response from the Minister for Justice to the committee’s stage 1 report. I thank the Deputy Minister for Justice for the Scottish Executive’s response, and I welcome her and her officials to the committee.

Section 43—Licensing of knife dealers

The Convener: Amendment 1, in the name of the Minister for Justice, is grouped with amendments 2 to 7.

The Deputy Minister for Justice (Johann Lamont): Section 43 provides for the introduction of a licensing scheme for knife dealers. This group of amendments makes a number of changes to the scheme to ensure that it will be more effective in practice. The bill requires individuals who wish to operate as knife dealers to hold a licence. There is currently no direct link to the premises from which the dealer operates. Amendments 1 and 2 amend the bill to ensure that knife dealers’ premises are identified in licences.

Our discussions with local authorities and others on the operation of a licensing scheme have identified the need for licences to specify the premises in respect of which they are held. Amendment 1 puts in place the same requirement for knife dealers’ licences to specify the premises that applies to scrap metal dealers under section 28(4) of the Civic Government (Scotland) Act 1982. Amendment 2 is a technical amendment and is consequential to amendment 1.

Amendments 1 and 2 are important, first because they will simplify enforcement by both local authorities and police and, secondly, because they will enable local authorities to charge appropriately for licences covering multiple premises in order to recover the additional inspection, enforcement and other costs.

The bill requires a knife dealer’s licence not only for selling but for any businesses that hire, offer or expose for sale or hire, lend or give non-domestic knives or swords. Discussions with stakeholders about how the licensing scheme might operate in practice have identified an unintended consequence of the licensing requirements. As introduced, the bill would require professional fencing coaches who lend swords to pupils for use during a training session to obtain a knife dealer’s licence. We have made it clear that the bill is not intended to place undue burdens on legitimate sword users.

Amendment 3 enables the Executive to modify the licensing requirements, for instance to ensure that professional coaches will not require licences simply for the purposes of lending or giving swords to their pupils. Amendment 7 specifies the required parliamentary procedure for the use of those powers and is consequential to amendment 3. The provisions are intended to provide sufficient flexibility to enable us to deal with any similar problems that might arise in practice. Amendment 3 will also allow ministers to extend the scope of the licensing scheme should new forms of activity arise that might properly justify a requirement for a knife dealer’s licence.

Amendments 4 to 6 aim to clarify the bill’s licensing requirements in cases where separate premises are involved in the sale and dispatch of non-domestic knives, swords and so on. Amendment 4 is a technical amendment, consequential to amendments 5 and 6. Amendment 5 will ensure that a licence is required for any part of a knife dealing operation that is located in Scotland, even if the sale or dispatch occurs elsewhere. Amendment 6 will ensure that separate licences are required where the sale and dispatch happen in different local authority areas in Scotland. Those changes will enable local authorities to recover the inspection and enforcement costs where they arise. Identifying separate premises in that way will also enhance any police enforcement that is required.

This group of amendments will enable the licensing regime for knife dealers to be more effectively operated in practice. I urge the committee to support the amendments.

I move amendment 1.

Amendment 1 agreed to.

Amendments 2 to 7 moved—[Johann Lamont]—and agreed to.
Section 43, as amended, agreed to.
Sections 44 and 45 agreed to.

Section 46—Sale etc of swords

The Convener: Amendment 8, in the name of the minister, is in a group on its own.

Johann Lamont: The bill provides for the introduction of a ban on the sale of swords by enhancing ministers’ existing powers to enable them to make an order prohibiting the sale of swords, subject to specified defences. The ban will build on the model of the existing statutory ban on offensive weapons in section 141 of the Criminal Justice Act 1988. However, we recognise that, unlike the items that are prohibited under section 141 at present, there are legitimate uses of swords, which should continue to be permitted.

The bill therefore allows defences for other purposes to be specified by order. Ministers have made it clear that they will use this power to provide exceptions to the ban on sale for legitimate religious, cultural and sporting purposes, including highland dancing, theatre, film, television, antique collecting, re-enactment and living history, fencing and those martial arts that are organised on a recognised sporting basis. However, although the commitment to providing exceptions for legitimate purposes is set out clearly in the policy memorandum and elsewhere, it does not feature in the bill itself. Amendment 8 therefore sets out in the bill the purposes for which the Executive intends that exceptions will be made. As I said, the additions to the existing defences under section 141, and other modifications of those powers in respect of swords, will address the issue of the legitimate use of swords.

The amendment reinforces the commitment that the Executive made in the policy memorandum to make exceptions for legitimate religious, cultural and sporting purposes. I urge the committee to support the amendment.

I move amendment 8.

The Convener: The minister is using powers that are retained by ministers to create these exemptions. If in the future someone came up with a purpose that could be deemed to be reasonable, could they apply directly to the minister of the day to seek an exemption for that purpose?

Johann Lamont: The advice that I am given is that the bill also provides for people to be able to make an application for exception. We are trying to respond to the anxieties that those who perceive legitimate uses for swords and so on expressed while, at the same time, not making the policy on the sale of weapons vulnerable.

Maureen Macmillan (Highlands and Islands) (Lab): Probably I should know the answer to this question, but are we doing the same for knives? I am thinking in particular about sgian dubhs. Will they be excluded from the scope of the bill?

Johann Lamont: My understanding is that that will be defined as a reasonable defence for possession. The defence would be that the purpose was cultural.

Maureen Macmillan: That is fine.

Amendment 8 agreed to.

Section 46, as amended, agreed to.

After section 46

The Convener: Amendment 9, in the name of the minister, is in a group on its own.

Johann Lamont: Amendment 9 raises the age of sale for crossbows from 17 to 18, which brings it into line with the age limit for the sale of non-domestic knives. Although—thankfully—crossbows are not currently seen as a problem in relation to violent crime in Scotland, there is a risk that the increase in the age limit for the sale of non-domestic knives to 18 would result in crossbows being regarded as more readily available, in which case they might be increasingly used in violent crime.

Amendment 9 replicates for Scotland section 44 of the Violent Crime Reduction Act 2006, which amended the Crossbows Act 1987 for England and Wales by raising the age at which a person may be sold or hired a crossbow from 17 to 18. I urge the committee to support the amendment.

I move amendment 9.

Amendment 9 agreed to.

The Convener: Amendment 10, in the name of the minister, is in a group on its own.

Johann Lamont: At stage 1, the committee considered the issue of weapons in prisons. We agree that possession of a weapon in prison should be a criminal offence. I am therefore happy to meet, through amendment 10, the commitment that the Executive made in its response to the committee’s stage 1 report. At present, a prisoner who is found with a weapon in the confines of prison is not subject to the same provisions that members of the public at large are subject to. Although possession of a weapon is an offence under prison rules, governors have limited powers to punish prisoners for it. The police and procurators fiscal cannot bring criminal charges for possession of a weapon, although they may of course do so if the weapon was used and a minor or serious assault occurred.

The committee may recollect from evidence that the approach in amendment 10 was welcomed by
the Prison Officers Association. In 2005-06, 182 incidents that involved weapons were recorded in the Scottish Prison Service, 38 of which involved lock-back knives. That is clearly unacceptable. Amendment 10 will add a new section to the bill that will amend the Criminal Law (Consolidation) (Scotland) Act 1995 to make it an offence to possess a weapon in prison. I urge the committee to support the amendment.

I move amendment 10.

**The Convener:** I seek clarification on proposed new section 49C(3) of the Criminal Law (Consolidation) (Scotland) Act 1995, which lays out defences. The first defence is that the person had the item “for use at work”, which, one assumes, is to cover situations that might arise in a controlled workshop. The second is that the person had the item “for religious reasons”. Am I right that that would be for a religious ceremony, again in a controlled environment? The third defence is that the item was “part of any national costume”.

Will you detail when somebody in prison is likely to be given permission to wear a full national costume?

**Johann Lamont:** The amendment replicates the defences for possession of a weapon in a public place although, notably, the defence of the item being a penknife is excluded, so the defences are tighter. The legal advice is that those defences should be included to ensure that the offence of possession of a weapon in prison is reasonable. Personally, I cannot imagine a set of circumstances in which a prisoner could wear national costume but, given that the advice is that the defence is necessary, I am working on the assumption that that may be a possibility.

The positive message is that amendment 10 is in the interests of making the prison environment safer for prisoners and prison officers. The amendment is important and, on that basis, I hope that it will be supported.

**The Convener:** Thank you for the clarity. I presume that such matters will be left to the judgment of prison governors, should an application be made within the rules.

**Johann Lamont:** As I said, prison governors at present have limited powers to deal with someone who is caught in possession of a knife, so they already judge whether something is against prison rules. The important point is that we are making possession of a weapon in prison a criminal offence, which therefore means that such matters will be tested in the courts.

Amendment 10 agreed to.

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Section 1—The Parole Board for Scotland

**The Convener:** Amendment 11, in the name of the minister, is grouped with amendment 12.

**Johann Lamont:** Amendments 11 and 12 will make the bill’s description of the Parole Board for Scotland’s functions more accurate. In compliance with the requirements of the European convention on human rights, decisions about whether prisoners are suitable for release must be taken by an independent court-like body. In Scotland, that is the Parole Board for Scotland. In practice, the board’s decision whether an offender should be released on licence is based on an assessment of the risk that the offender poses and the requirements of legislation. If the board concludes that the risk that is posed is acceptable, the Scottish ministers are obliged to release him or her on licence.

At present, section 1(2) of the bill does not describe that function properly. In keeping with the current legislation, which dates from 1993, it says that the board “has the function of advising … Ministers”.

Although that was true in 1993, the legal framework has changed and it is now accurate to say that the board will direct ministers. Of course, most of the directions will be on the release of prisoners whose cases are referred to the board, as that is the principal function of the board, but other situations will arise in which directions are made, such as when licence conditions are varied after a prisoner has been released on licence. Amendments 11 and 12 will make that clear.

I move amendment 11.

Amendment 11 agreed to.

Amendment 12 moved—[Johann Lamont]—and agreed to.

Section 1, as amended, agreed to.

Schedule 1 agreed to.

Sections 2 to 5 agreed to.

**The Convener:** That concludes day 1 of stage 2 consideration of the bill. I thank the minister and her colleagues for coming along this afternoon.

**Johann Lamont:** Thanks. See you next week.

**The Convener:** We look forward to it.
Custodial Sentences and Weapons (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 43 to 46
- Section 1
- Schedule 1
- Sections 47 to 49
- Schedule 2
- Section 50
- Schedule 3
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 5

Colin Fox

After section 5, insert—

<Short sentence prisoners

Short sentence prisoners

(1) In this section—
   a “short sentence prisoner” means a person serving a short sentence,
   a “short sentence” means a sentence of imprisonment for a term of between 15 days and 12 months.

(2) The Scottish Ministers must release a short sentence prisoner on licence subject to a condition to be of good behaviour—
   (a) where subsection (3) applies, on the date mentioned in subsection (4),
   (b) where subsection (3) does not apply, when the prisoner has served one half of the short sentence.

(3) This subsection applies where the prisoner is also serving—
   (a) a custody-only sentence,
   (b) the custody part of a custody and community sentence, or
   (c) the punishment part of a life sentence.

(4) That date is the date when the prisoner—
   (a) has served at least one half of the short sentence, and
   (b) is no longer serving any of—
      (i) a custody-only sentence,
      (ii) the custody part of a custody and community sentence,
      (iii) the punishment part of a life sentence.>
Section 6

Cathy Jamieson

13 In section 6, page 3, line 26, leave out subsection (1) and insert—

<(1) This section applies where the court imposes on a person a custody and community sentence.

(1A) After imposing the sentence, the court must make an order specifying the custody part of the sentence.>

Colin Fox

44 In section 6, page 3, line 26, leave out <15 days or more> and insert <more than 12 months>

Cathy Jamieson

14 In section 6, page 3, line 29, at end insert <(ignoring any period of confinement which may be necessary for the protection of the public)>

Cathy Jamieson

15 In section 6, page 3, line 31, leave out from <unless> to end of line 32 and insert <or

(b) if subsection (3A) applies, such greater proportion of the sentence as the court specifies.

(3A) This subsection applies if, taking into account in particular the matters mentioned in subsection (4), the court considers that it would be appropriate to specify a greater proportion of the sentence as the custody part.>

Cathy Jamieson

16 In section 6, page 3, line 36, at end insert—

<( ) where the offence was committed when the person was serving a sentence of imprisonment for another offence, that fact, and>

Cathy Jamieson

17 In section 6, page 3, line 37, leave out from <and> to end of line 39

Bill Aitken

45 In section 6, page 3, line 39, at end insert <and

( ) any need to protect the public from the person.>

Cathy Jamieson

18 In section 6, page 4, line 1, leave out subsection (5)

Colin Fox

46 In section 6, page 4, line 3, leave out <three-quarters> and insert <two-thirds>
In section 6, page 4, line 4, at end insert—

<( ) An order specifying a custody part must specify the custody part by reference to a fixed period of time.>

In section 6, page 4, line 4, at end insert—

<( ) Where, by virtue of subsection (3)(b), the court specifies a custody part of more than one-half of the sentence, the court must state in open court the reason for doing so.>

In section 6, page 4, line 7, leave out subsections (8) to (10)

Leave out section 6 and insert—

<Custody part

When a sentence of imprisonment for a term of 15 days or more for an offence is imposed on a person, the custody part is to be nine-tenths of the sentence.>

After section 6

Application of section 6 to persons sentenced to extended sentences

(1) Section 6 applies to a person sentenced to an extended sentence as if any reference to a sentence were a reference to the confinement term of the extended sentence.

(2) In subsection (1), “confinement term” and “extended sentence” have the meanings given by section 210A(2) of the 1995 Act.

Power to amend section 6(3)

The Scottish Ministers may by order amend section 6(3)(a) by substituting for the proportion for the time being specified there a different proportion specified in the order.

Judge’s report

(1) This section applies where—

(a) a court imposes a custody and community sentence on a person, and
(b) the court is not required by—
   (i) section 21(4) of the Criminal Justice (Scotland) Act 2003 (asp 7), or
   (ii) section 210H(2) of the Criminal Procedure (Scotland) Act 1995 (c.46),
   to prepare a report.

(2) As soon as is reasonably practicable after imposing the sentence, the court must prepare
   a report in writing—
   (a) as to the circumstances of the case, and
   (b) containing such other information as the court considers appropriate.

(3) The report must be in such form as is prescribed by Act of Adjournal.

(4) The court must submit the report to the Scottish Ministers.

Section 12

Cathy Jamieson

25 In section 12, page 5, line 30, leave out from <and> to end of line 31

Cathy Jamieson

26 In section 12, page 5, line 32, leave out subsections (3) to (8) and insert—

(3) If on the day of the determination less than 4 months of the prisoner’s sentence remain
   to be served before the three-quarter point—
   (a) the prisoner must be confined until the three-quarter point, and
   (b) the Parole Board must specify conditions to be included in the prisoner’s
       community licence.

(4) If on the day of the determination at least 4 months and no more than 2 years of the
   prisoner’s sentence remain to be served before the three-quarter point, the Parole Board
   may fix a date falling within the period mentioned in subsection (5) on which it will
   next consider the prisoner’s case.

(5) That period is the period—
   (a) beginning with the day falling 4 months after the day of the determination, and
   (b) ending with the three-quarter point.

(6) If no date is fixed under subsection (4)—
   (a) the prisoner must be confined until the three-quarter point, and
   (b) the Parole Board must fix a date falling within the period mentioned in subsection
       (5) on which it must specify conditions to be included in the prisoner’s
       community licence.

(7) If on the day of the determination more than 2 years of the prisoner’s sentence remain to
   be served before the three-quarter point, the Parole Board must fix a date falling within
   the period mentioned in subsection (8) on which it will next consider the prisoner’s case.

(8) That period is the period—
   (a) beginning with the day falling 4 months after the day of the determination, and
(b) ending immediately before the second anniversary of the day of the determination.

(8A) In this section, “three-quarter point”, in relation to a prisoner’s custody and community sentence, means, subject to subsection (8B), the day on which the prisoner will have served three-quarters of the prisoner’s sentence.

(8B) If a prisoner is serving two or more custody and community sentences, the “three-quarter point”, in relation to each of those sentences, is deemed to be the later or, as the case may be, latest of the three-quarter points determined under subsection (8A) for each of those sentences.

Bill Aitken
26A* As an amendment to amendment 26, line 3, leave out <three-quarter> and insert <nine-tenths>

Bill Aitken
26B* As an amendment to amendment 26, line 4, leave out <three-quarter> and insert <nine-tenths>

Bill Aitken
26C As an amendment to amendment 26, line 8, leave out <three-quarter> and insert <nine-tenths>

Bill Aitken
26D As an amendment to amendment 26, line 13, leave out <three-quarter> and insert <nine-tenths>

Bill Aitken
26E As an amendment to amendment 26, line 15, leave out <three-quarter> and insert <nine-tenths>

Bill Aitken
26F As an amendment to amendment 26, line 20, leave out <three-quarter> and insert <nine-tenths>

Bill Aitken
26G As an amendment to amendment 26, line 25, leave out <three-quarter> and insert <nine-tenths>

Bill Aitken
26H As an amendment to amendment 26, line 27, leave out <three-quarters> and insert <nine-tenths>

Bill Aitken
26I As an amendment to amendment 26, line 28, leave out <three-quarter> and insert <nine-tenths>

Bill Aitken
26J As an amendment to amendment 26, line 30, leave out <three-quarter> and insert <nine-tenths>
After section 12

Cathy Jamieson

27 After section 12 insert—

<Prisoner's right to request early consideration by Parole Board>

(1) Subsection (2) applies where the Parole Board has fixed a date under section 12(4) or (7) for considering a prisoner’s case.

(2) On the prisoner’s request, the Board may, if it considers it appropriate to do so, substitute for that date an earlier date when it will next consider the prisoner’s case by fixing that earlier date under section 12(4) or, as the case may be, (7).

(3) Subsection (4) applies where the Parole Board does not fix a date under section 12(4).

(4) On the prisoner’s request, the Board may, if it considers it appropriate to do so, fix a date under section 12(4) when it will next consider the prisoner’s case.

(5) This section is subject to section 21.>

Cathy Jamieson

28 After section 12 insert—

<Referral to Parole Board for the purposes of specifying conditions>

(1) This section applies where the Parole Board fixes a date under section 12(6)(b).

(2) The Scottish Ministers must, subject to section 22(4), refer the prisoner’s case to the Parole Board before that date.

(3) On that date, the Parole Board must specify conditions to be included in the prisoner’s community licence.>

Cathy Jamieson

29 In section 13, page 6, line 23, leave out <12(2)(b)> and insert <12(4) or (7)>

After section 13

Cathy Jamieson

30 After section 13 insert—

<Cases where custody part specified as three-quarters of prisoner’s sentence>

(1) This section applies where, by virtue of section 6(3)(b), the court specifies a custody part which is three-quarters of a prisoner’s sentence.

(2) Section 8(1) does not apply.

(3) Before the expiry of the custody part—

  (a) the Scottish Ministers must, subject to section 22(4), refer the prisoner’s case to the Parole Board, and
(b) the Parole Board must specify conditions to be included in the prisoner’s community licence.

Section 14

Cathy Jamieson
31 In section 14, page 6, line 29, leave out subsection (1)

Bill Aitken
48 In section 14, page 6, line 29, leave out <three-quarters> and insert <nine-tenths>

Colin Fox
49 In section 14, page 6, line 32, leave out <three-quarters> and insert <two-thirds>

Bill Aitken
50 In section 14, page 6, line 32, leave out <three-quarters> and insert <nine-tenths>

Cathy Jamieson
32 In section 14, page 6, line 35, leave out subsection (3)

Section 15

Cathy Jamieson
33 In section 15, page 7, line 3, leave out subsection (1) and insert—

<(1) This section applies where the court imposes on a person a life sentence.
(1A) After imposing the sentence, the court must make an order specifying the punishment part of the sentence.>

Cathy Jamieson
34 In section 15, page 7, line 10, at end insert <(ignoring any period of confinement which may be necessary for the protection of the public)>

Bill Aitken
51 In section 15, page 7, line 16, at end insert <and
( ) any need to protect the public from the person.>

Bill Aitken
52 In section 15, page 7, line 22, at end insert <and
( ) any need to protect the public from the person.>
Cathy Jamieson
35 In section 15, page 7, line 23, leave out subsection (5)

Section 19

Cathy Jamieson
36 In section 19, page 8, line 19, leave out from <occur> to end of line 20 and insert <fall within the period—

(a) beginning with the day falling 4 months after the day of the determination, and
(b) ending immediately before the second anniversary of the day of the determination.>

Section 33

Cathy Jamieson
37 In section 33, page 14, line 9, leave out <or subsection (10)> and insert <, (Determination that section 33(3) applicable: consequences for custody and community prisoners)(9) or (Determination that section 33(3) applicable: consequences for life prisoners)(5)>

Cathy Jamieson
38 In section 33, page 14, line 19, leave out subsections (6) to (10)

After section 33

Cathy Jamieson
39 After section 33 insert—

<Determination that section 33(3) applicable: consequences for custody and community prisoners>

(1) This section applies where the Parole Board determines, under subsection (2) of section 33, that subsection (3) of that section applies to a custody and community prisoner.

(2) The Parole Board must give the prisoner reasons in writing for its determination.

(3) If on the day of the determination less than 4 months of the prisoner’s sentence remain to be served, the prisoner must be confined until the expiry of the prisoner’s sentence.

(4) If on the day of the determination at least 4 months and no more than 2 years of the prisoner’s sentence remain to be served, the Parole Board may, subject to section 21, fix a date falling within the period mentioned in subsection (5) on which it will next consider the prisoner’s case.

(5) That period is the period—

(a) beginning with the day falling 4 months after the day of the determination, and
(b) ending on the expiry of the prisoner’s sentence.

(6) If no date is fixed under subsection (4) the prisoner must be confined until the expiry of the prisoner’s sentence.
If on the day of the determination at least 2 years of the prisoner’s sentence remain to be served, the Parole Board must, subject to section 21, fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner’s case.

That period is the period—
(a) beginning with the day falling 4 months after the day of the determination, and
(b) ending immediately before the second anniversary of the day of the determination.

Where a date is fixed under subsection (4) or (7), the Scottish Ministers must refer the case to the Parole Board before that date.

After section 33 insert—

Determinant that section 33(3) applicable: consequences for life prisoners

This section applies where the Parole Board determines, under subsection (2) of section 33, that subsection (3) of that section applies to a life prisoner.

The Parole Board must give the prisoner reasons in writing for its determination.

The Parole Board must, subject to section 21, fix a date falling within the period mentioned in subsection (4) on which it will next consider the prisoner’s case.

That period is the period—
(a) beginning with the day falling 4 months after the day of the determination, and
(b) ending immediately before the second anniversary of the day of the determination.

The Scottish Ministers must refer the case to the Parole Board before the date fixed under subsection (3).

Prisoner’s right to request early reconsideration by Parole board

Subsection (2) applies where the Parole Board fixes a date under—
(a) section (Determinant that section 33(3) applicable: consequences for custody and community prisoners)(4),
(b) section (Determinant that section 33(3) applicable: consequences for custody and community prisoners)(7), or
(c) section (Determinant that section 33(3) applicable: consequences for life prisoners)(3),
for considering a prisoner’s case.

On the prisoner’s request, the Board may, if it considers it appropriate to do so, substitute for that date an earlier date when it will next consider the prisoner’s case by fixing that earlier date under section (Determinant that section 33(3) applicable: consequences for custody and community prisoners)(4), (Determinant that section 33(3) applicable: consequences for custody and community prisoners)(7) or, as the case may be, (Determinant that section 33(3) applicable: consequences for life prisoners)(3).
(3) Subsection (4) applies where the Parole Board does not fix a date under section 
(Determination that section 33(3) applicable: consequences for custody and community 
prisoners)(4).

(4) On the prisoner’s request, the Board may, if it considers it appropriate to do so, fix a 
date under section (Determination that section 33(3) applicable: consequences for 
custody and community prisoners)(4) when it will next consider the prisoner’s case.>

Section 34

Cathy Jamieson

42 Leave out section 34

Section 36

Bill Aitken

53 In section 36, page 15, line 35, leave out from beginning to end of line 3 on page 16, and insert 
<during the period—
  (a) commencing on the day after the prisoner has served three-quarters of the 
prisoner’s sentence, and
  (b) ending on the day falling 14 days before the expiry of the custody part.>
Custodial Sentences and Weapons (Scotland) Bill

2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated.

Groupings of amendments

Sentences of between 15 days and 12 months
43, 44

Notes on amendments in this group
Amendment 13 pre-empts amendment 44

Custody part and punishment part: general
13, 15, 19, 20, 21, 22, 23, 33

Notes on amendments in this group
Amendment 13 pre-empts amendment 44 in the earlier group

Setting of custody or punishment part: relevance of public protection
14, 45, 18, 34, 51, 52, 35

Setting of custody part: relevance of person already serving sentence
16

Setting of custody part: relevance of early guilty plea
17

Length of custody part/judicial discretion to determine length
46, 47, 26A, 26B, 26C, 26D, 26E, 26F, 26G, 26H, 26I, 26J, 48, 49, 50

Notes on amendments in this group
Amendments 49 and 50 are direct alternatives
Amendment 31 pre-empts amendment 48

Judge’s report
24

Finding that prisoner likely to cause serious harm: role of parole board
25, 26, 27, 28, 29, 36, 37, 38, 39, 40, 41, 42
Release when custody set at maximum length
30, 31, 32

Notes on amendments in this group
Amendment 31 pre-empts amendment 48 in an earlier group

Curfew licenses
53
The following amendments were agreed to (without division): 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36.

The following amendments were agreed to by division—

13 (For 5, Against 2, Abstentions 0)
14 (For 6, Against 1, Abstentions 0)
15 (For 6, Against 1, Abstentions 0)
23 (For 6, Against 0, Abstentions 1)

The following amendments were disagreed to by division—

43 (For 1, Against 6, Abstentions 0)
45 (For 1, Against 6, Abstentions 0)
46 (For 1, Against 6, Abstentions 0)
47 (For 1, Against 6, Abstentions 0)
50 (For 1, Against 6, Abstention 0)
51 (For 1, Against 6, Abstention 0)
52 (For 1, Against 6, Abstention 0)

Amendments 44 and 48 were pre-empted.

The following amendments were not moved: 26A, 26B, 26C, 26D, 26E, 26F, 26G, 26H, 26I, 26J and 49.

Sections 6, 12, 13, 14, 15 and 19 were agreed to as amended.

Sections 7, 8, 9, 10, 11, 16, 17, 18 and 20 were agreed to without amendment.
The Committee ended consideration of the Bill for the day, section 20 having been agreed to.
Scottish Parliament

Justice 2 Committee

Tuesday 13 February 2007

[THE CONVENER opened the meeting at 14:00]

Custodial Sentences and Weapons (Scotland) Bill: Stage 2

The Convener (Mr David Davidson): Good afternoon, ladies and gentlemen, and welcome to the fourth meeting in 2007 of the Justice 2 Committee. No apologies have been received so far. I ask everyone in the room kindly to switch off mobile phones and pagers.

Item 1 is day 2 of stage 2 of the Custodial Sentences and Weapons (Scotland) Bill. Following a decision of the committee, we will today consider sections 6 to 20. Last week we dealt with sections 43 to 46 on weapons, section 1, schedule 1 and sections 2 to 5. Members should have the marshalled list and groupings for today's consideration of amendments, and the letter from the Deputy Minister for Justice and the summary description of the Executive amendments.

I welcome once again the deputy minister and her colleagues from the Executive. I also welcome Bill Aitken, who has come along to speak to the amendments that he has lodged.

After section 5

The Convener: Amendment 43, in the name of Colin Fox, is grouped with amendment 44. If amendment 13 in group 2 is agreed to, amendment 44 will be pre-empted.

Colin Fox (Lothians) (SSP): The purpose of amendment 43, on short-term prisoners, is to apply the specific provisions on risk assessment and the licensing supervision requirements of the community part of the sentences where they would do the most good. In other words, the amendment would change the threshold at which the provisions on sentence management would kick in. It focuses on the offenders whom we all know pose the greatest risk to the community. In addition, it offers a much more honest and realistic approach to the use of relatively scarce resources and would give greater reassurance to the public. In my opinion, it has the advantage that it would prevent a most unwanted potential explosion in our prison population.

I turn to the part of the amendment to do with risk assessment. Short-term prisoners represent the overwhelming majority of the average daily prison population in Scotland. On the one hand, such prisoners pose much less of a threat to public safety, but on the other hand, they are a much greater challenge to us all in dealing with repeat offending. One witness put it evocatively when he told us that that group of prisoners are “serving life sentences by instalment.”—[Official Report, Justice 2 Committee, 14 November 2006; c 2956.]

That brings its own challenges.

I hope that members accept that we received a welter of evidence that highlighted the current difficulties and failings in the system in dealing with short-term prisoners. Despite the huge cost of incarceration, the Scottish Prison Service admits to being incapable of doing much during their time in custody to help people in this category to turn around their offending behaviour. That is an area on which the committee could focus its attention.

Under the bill, all short-sentence prisoners serving between 15 days and six months are to be risk assessed. I have seen nothing in evidence that leads me to believe that the resources exist to enable that, or that it would be the best use of the existing resources. The minister and the Executive gave us figures that showed that 4,800 prisoners would fall into the category of requiring a risk assessment. That would be a huge increase on the numbers that we deal with currently.

On amendment 43, I argue that the bill’s provisions on supervision, risk assessment and extending periods in custody should really kick in at 12 months, not 15 days. To my mind, that would ensure better use of relatively scarce resources in the Scottish Prison Service and criminal justice system. It would give the professionals involved the opportunity to engage, to assess risk and to prepare offenders for release.

The Executive’s acceptance that the licence conditions that apply to short-term prisoners, such as a promise of good behaviour and—I noticed at the weekend—an additional promise not to leave the country, are appropriate serves to illustrate the risk that is posed by short-term prisoners, as the Executive sees it. The distinction that amendment 43 tries to draw is between licence requirements on the one hand and the need for statutory supervision of this category of prisoners on the other hand. The bill provides for statutory supervision on release for the community part of the sentence to be applied to all prisoners who are sentenced to six months or more. The Executive suggests that the effect of dealing with that would be to almost triple the workload of criminal justice social workers, who would go from dealing with 1,500 cases to nearly 3,500. I do not think that that is realistically manageable, given that—as we know—that profession already has chronic recruitment difficulties. Furthermore, it would divert existing staff resources away from areas that
involve greater dangers to the public. That is a key issue that must be addressed.

Professionals have told the committee that there is a need to stress greater intervention in the wider life circumstances of short-term prisoners rather than simply issuing more restrictive and punitive measures. I agree with that. I also agree with the criminal justice forum on short-term prison sentences, which said that the bill should better reflect the need to move away from concentrating on prisoners who pose a risk of serious harm towards a focus on the risk of reoffending, which would involve needs-based interventions such as housing, health, employment and relationship counselling.

I move amendment 43.

The Deputy Minister for Justice (Johann Lamont): The Executive has been clear that the fundamental purpose of the bill is to put an end to the current discredited system of automatic unconditional early release, which we believe is a blanket approach. Colin Fox’s amendments, if supported, would cause that blanket approach to be applied to a range of individuals.

Amendments 43 and 44 seek to introduce a new category of prisoners, to be known as “short-term prisoners”, who would be offenders who were serving sentences of between 15 days and 12 months. Right away, that would add an unnecessary tier to a system that is designed to make sentencing easier to understand. Of far more concern than that, however, is the fact that amendment 43 would cause a large number of offenders to be released automatically at the halfway point of their sentence, subject only to a good behaviour condition on their licence.

Colin Fox referred to basic conditions, but our plans are to allow for more conditions to be imposed to suit personal circumstances and to allow conditions to be attached to the individual rather than to use a category-based approach. It will of course be argued that, in practice under the Executive’s proposals, that is what will happen to the vast majority of offenders in that sentence range. However, that is a one-dimensional view because it does not acknowledge what would not be available if amendment 43 were successful. If the amendment is agreed to, the courts will not be able to reflect a serious offence or a string of serious offences when setting the custody part of sentences. The sentence-management process will not be able to take account of a particular case when the indications are that the offender should be referred to the Parole Board for Scotland on ground of risk.

Finally, amendment 43 would remove from Scottish ministers the power to insert additional licence conditions, such as electronic monitoring, where they would be considered appropriate.

The provisions in section 27 will require offenders who are sentenced to six months or more to be subject to supervision while on licence during the community parts of their sentences. Amendment 43 would remove that support for the six-month to 12-month group. That group will include sex offenders and people serving sentences for violence. The measures that we introduced in the Management of Offenders etc (Scotland) Act 2005 requiring supervision for short-term sex offenders took effect on 8 February 2006. Since that date just over a year ago, 33 sex offenders who were sentenced to between six and 12 months have been released on licence and subject to supervision. If amendment 43 were to succeed, such offenders would not be supervised. Removing that element of supervision will not go very far towards protecting the public or reducing reoffending.

I accept that our proposals will place demands on the system and that amendment 43 seeks to address that. However its consequences would be unacceptable. The custodial sentence planning group, which has been set up to work on implementation of the measures, is actively engaged in developing a model that will ensure that there is a proportionate approach to risk assessment and that there is support in the community, including managing risk, by making the most effective and efficient use of the resources to hand. The group involves those who will be most directly affected: the courts, the Scottish Prison Service, criminal justice social workers, the community justice authorities and the voluntary sector.

It is through our measures—which will assess the risk and needs of individual offenders in order to inform a programme of support that begins in custody and is carried through into the community—that we will better protect the public and reduce reoffending. As has already been indicated, amendment 44 is a consequential amendment. I urge the committee not to support amendments 43 and 44.

Bill Aitken (Glasgow) (Con): I have listened carefully to Colin Fox’s arguments and there is some merit in his initial statement that the process would be resource intensive and devoted to short-term prisoners. We would probably all agree that resources might be better directed at longer-term prisoners. The minister is correct to say that what Mr Fox is proposing is prescriptive. The vast majority of cases will not be subject to any particularly onerous conditions, apart from the condition that the individual must behave. If we were to accept amendment 43, there would be no way of applying conditions for the minority of
prisoners for whom it would be necessary. I recommend that the committee reject amendment 43.

Colin Fox: I agree with the minister that the current system is discredited. Amendment 43 would replace it with a better one that would have the faith and the trust of the public. My fear about the bill is that we are offering the public pie in the sky and that, based on the available provisions and resources, there is no chance of providing what the bill contains. It comes down to resources. Rather than be overwhelmed by a burden that they cannot live up to, it would be preferable for the progressive and decent parts of the bill regarding community sentences—with which I think we all agree—to be given an adequate chance to succeed. The resource implications are clear to the committee. That is the fundamental issue behind amendment 43. The amendment is of value and would be a better approach.

The Convener: The question is, that amendment 43 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Fox, Colin (Lothians) (SSP)

Against
Bailie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 43 disagreed to.

Section 6—Setting of custody part

The Convener: Amendment 13, in the name of the minister, is grouped with amendments 15, 19 to 23, and 33. If amendment 13 is agreed to, amendment 44 will be pre-empted.

Johann Lamont: As the committee is aware, the provisions in section 6 are key to the new regime. They set out what the court must do once a custodial sentence has been imposed. What happens at that point will impact on how long the offender will be in custody before being considered for release on licence. It is also the point at which the offender, the public and the victim will know the minimum time the offender should expect to spend in prison. What section 6 does not do is interfere with the court's sentencing discretion. Matters that a judge currently takes into account when deciding on a sentence and, if imprisonment is imposed, on the length of sentence, will still be taken into account under the new measures. Those include the need for public protection.

We have heard the case made that offenders who would currently receive short sentences should not be sent to prison in the first place. That is an interesting proposition which is worthy of debate, but it is not the context of the bill. In considering what the bill seeks to do we must remember that we start from the point at which the court has decided—having had regard to all the options that are available to it, including a menu of non-custodial disposals—that imprisonment is the appropriate option. That said, the Executive recognises that community sentences can also make a valuable contribution to tackling reoffending, so we continue to consider ways of enhancing that option.

The committee will recall that section 6 prompted substantial debate during stage 1. We are grateful for that debate and for the committee's helpful comments in its stage 1 report. We said in response to those comments that we would present changes at stage 2 that we believe will further clarify the purpose of section 6 and put it beyond doubt that the section is about sentence management and not sentencing. The amendments will deliver that commitment.

14:15

Members of the judiciary have expressed concerns about the effect of section 6 on sentencing. We have stressed many times that the measures in the bill are about sentence management, not sentencing. In addition to clarifying that section 6 applies to custody and community prisoners, amendment 13 makes it clear beyond doubt that the requirement to strip out the question of public protection from the court's consideration of the custody part will apply after the court has set the length of sentence. At that stage, the court will consider what proportion of the sentence the custody part should comprise. Amendment 13 will separate the sentencing and sentence management functions by making it clear that the custody part of the sentence will be set after the court has imposed the sentence.

Amendment 15 will clarify the court's power to increase the proportion of the sentence that is to be served in custody. In that context, section 6(4) sets out matters that the court should take into account when it decides whether to increase the custody part of the sentence. Amendment 15 will make it clear that the list is not exhaustive—the court may have regard to other matters that it considers appropriate to the circumstances of a case.

A key aim of the bill is that what a sentence will mean should be clearly set out at the time of
sentencing. Amendment 19 will ensure that when the court sets the custody part of the sentence, it says what that means in actual time—two years and six months, for example.

Amendment 20 will require the court, after it has decided to extend the custody part of a sentence, to give reasons for its decision in open court.

The expansion of section 6 will make for a lengthy section, so amendments 21 to 23 will remove subsections of section 6 and reproduce their provisions in new sections after section 6. We hope that that will improve the bill’s readability.

Amendment 33 will ensure that the amendment that will be made to section 6 by amendment 13, on custody and community prisoners, will where appropriate apply to offenders who are given life sentences. Amendment 33 provides that section 15 will apply when a life sentence is imposed and will require the court to make an order that specifies the punishment part after it has passed sentence.

I hope that my explanation of our package of amendments reassures the committee that we have taken on board comments that were made during stage 1, which will produce a much-improved bill. I stress the importance of the measures that deal with setting the custody part in the combined structure. We want to take the opportunity that is afforded by the parliamentary process to continue to review the provisions in order to ensure that we get them absolutely right. We are still in discussion with the judiciary: if it transpires that further refinement is required, we will lodge necessary clarifying amendments at stage 3. We will ensure that the committee is kept informed on such matters.

I move amendment 13.

Bill Aitken: It will come as no surprise to the minister that the approach that has been taken to the combined sentence structure is one of the aspects of the bill that troubles the Conservative group. It would have been much more sensible to have extended existing legislation to allow the court to impose a custodial sentence and thereafter to extend the sentence for a particular period, subject to conditions that were appropriate to the case. The bill is flawed—it might be argued that it is fatally flawed—by the failure to take that approach.

I have other reservations about the bill, but it might be more appropriate to highlight them later. For what it is worth, I recommend that the committee reject amendments 13 and 15, and that it accept the other amendments in the group for the time being. The minister said that there might be a need to clarify the position at stage 3. I understand that and I look forward with interest to the lodging of more amendments.

Colin Fox: I have a couple of questions for the minister. I presume that she accepts that most of the witnesses who gave evidence to the committee anticipated that the bill would have an inevitable impact on the time that offenders serve. Does the minister accept—notwithstanding her comments in the past and today about there being a genuine attempt to separate sentencing from sentence management—that most expert witnesses think that the bill will have a knock-on effect on sentencing?

Amendment 19 will provide that

“An order specifying a custody part must specify the custody part by reference to a fixed period of time.”

Does the minister envisage that the “fixed period of time” might vary between the minimum period of 50 per cent of the sentence and the maximum period of 75 per cent of the sentence? In other words, there could be a range of possible times. It could be perfectly legitimate for two thirds of the sentence to be accepted. It would depend on what the judge or the sentencer said at the time. I see one of the minister’s advisers nodding.

The Convener: Would you like the minister to answer that question before you ask any more?

Johann Lamont: I will answer when summing up.

Colin Fox: That is fine. My third question relates to amendment 13. I want to ask for the minister’s view of the conundrum—which I would describe as a nonsense—that the committee has previously considered, that someone who is sentenced to 14 days will serve longer in jail than someone who is sentenced to 30 days. For sentences of 14 days or less, is there a case for leaving the provisions as they are?

The Convener: As no other member has questions to ask, I invite the minister to sum up.

Johann Lamont: I will start with Colin Fox’s questions. First of all, it is acknowledged in the financial memorandum that there will be an impact on the prison population. The way in which we deal with offenders—or people who might fall into offending behaviour—will have an impact over time on the credibility of the justice system and sentencing. I hope that people will pay attention to such things. We have a whole range of social measures and we should not consider this bill in isolation.

Colin Fox’s second question was on whether the custody part of a sentence could be set between 50 per cent and 75 per cent of the total sentence. I believe that the answer is that it could.

I will come back to Colin Fox on his third question, because I cannot read my own handwriting. It was obviously a devastating
response; I will try to interpret it in a moment and come back to him.

As a Conservative, Bill Aitken has a great deal of experience of “fatally flawed” legislation, which is what we are trying to deal with in this bill. I do not accept his contention that this bill is fatally flawed. He referred to extended sentences. Such sentences will not be abolished by the bill. In fact, the bill will still permit a court to impose longer periods of supervision on particular offenders.

In the amendments in this group, we were keen to deal with—if not the scaremongering—the anxiety that has been expressed by some people that public protection could not be considered by the courts. In establishing the headline sentence, the courts can take into account whatever factors they consider relevant. Members of the judiciary have stressed to me the importance of their still being able to do so. Our amendments will make an important clarification.

Bill Aitken implied that my indication that we continue to review such issues was a sign of weakness. In my view, it is a sign of strength. I met representatives of the Sheriffs Association yesterday to explore the issues. If at stage 3 it were possible for us to lodge further amendments to make things absolutely clear and to give people confidence and comfort, it would be foolish in the extreme not to do so just because Bill Aitken might consider it a sign of weakness.

We will want to consider some issues further, but what we do will be very much in line with what we have said already; it will be about giving people further comfort on the practicalities of delivering our policies.

I say to Colin Fox that we do not underestimate the challenge that the bill presents. Dealing with offending behaviour in communities is a challenge and we all have a responsibility to rise to it. I said that I would come back to Colin Fox on another question. I think that we have already agreed that, wherever the threshold number of days had fallen, there could have been what has been called a conundrum. However, there is a danger. To imply that a 15-day sentence in custody is a harder sentence than a 30-day sentence with a community part and a custody part is to fall for the view that the community part is not part of the sentence. We have to be careful about that. It is possible for people to be punished within the community. We should not allow ourselves to think—in shorthand, if you like—that a sentence means only the custody part and that any other stuff will not entail any restriction or control and will not have any impact on the offender. That would be to take quite the opposite view from one that I think Colin Fox has articulated in the past.

I hope that committee members will support the amendments.

The Convener: The question is, that amendment 13 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

Against
Davidson, Mr David (North East Scotland) (Con)
Fox, Colin (Lothians) (SSP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 13 agreed to.

The Convener: Amendment 14, in the name of the minister, is grouped with amendments 45, 18, 34, 51, 52 and 35.

Johann Lamont: Amendment 13, from the previous group, will clarify the question of when to take account of public protection, which has been of particular concern to sheriffs. Amendment 14 and the consequential amendment 18 complement that measure. Amendment 14 will clarify and consolidate the measure specifying the purpose of the custody part. As a consequence, amendment 18 will remove section 6(5). Amendments 34 and 35 will make corresponding amendments to section 15 of the bill, which deals with life-sentence prisoners. Amendment 45 seeks to add the consideration of public protection to the factors that are to be taken into account when setting the custody part. As we have said all along—I said it earlier and have now clarified it—public protection should be taken into account when the court is considering the appropriate length of the total sentence. The custody part is for the purposes of retribution and deterrence; for punishment, in other words. It forms at least 50 per cent of the overall sentence. Any extension by the court is because of factors such as the circumstances of the offence or of the offender’s previous convictions. We are seeking to include in that reoffending while on licence.

It is right that those factors should influence punishment, but once a judge has fixed the headline sentence, having taken account of the information that is available, it is not right to expect him or her to look into the future and try to assess what an offender’s risk might be at the end of the custody part. The on-going assessment of risk and needs by Scottish ministers through the Scottish Prison Service and local authorities will form part of the sentence-management process, with measures being taken as appropriate within a custodial setting. That will allow decisions about
risk to take account of all relevant factors, many of
which will have transpired during the custody parts, and of which the court could not possibly
have been aware when passing sentence.

If public protection remains a factor in setting the
overall sentence, it becomes absolutely key in
determining whether an offender should move to
the community part of the sentence. For those
reasons, there is no need for amendment 45, in
the name of Mr Aitken, or consequential
amendments 51 and 52, which would apply the
same test to life-sentence prisoners. I urge the
committee to reject those amendments.

I move amendment 14.

Bill Aitken: The Executive has changed its
attitude. Initially, it was clear to any sensible
observer of the process that there was going to be
a requirement to ignore the potential of the
accused person to cause harm to the public. I am
tempted to say that not since Saul went on his
celebrated excursion to Damascus has there been
such a change in outlook.

Everyone round this table would agree that any
sentence must have a number of components,
such as punishing the offender, deterring others,
marking society’s disapproval and protecting
society, particularly in the case of violent or sexual
offenders. I hear what the minister said and, as I
said, the Executive’s intention is now much
clearer. It had mystified not only me but others
who were looking at the proposals. However, I still
believe that my amendments would mean a much
more satisfactory situation. If amendment 45 were
agreed to, it would be quite clear that sentencers
should take into consideration the potential risk
from the offender. There would be no dubiety
about it. I therefore recommend in the strongest
terms that the committee agree to amendment 45.
Amendments 51 and 52 are, of course,
consequential on amendment 45 and do not
require debate.

14:30

Colin Fox: Given that we are discussing section
6, which deals with setting the custody or
punishment part of a sentence, I hope that the
convener will indulge me in my asking about the
amendment that the Executive has lodged under
which it will be possible for the court to seek to
extend the proportion of a sentence that an order
specifies to be the custody element. Will the
minister spell out for us whether that power is
distinct from the power that we have already
discussed, whereby Scottish ministers will be able
to return to custody a person who reoffends when
out on licence or under supervision? My
impression is that we are talking about an extra
power.

Johann Lamont: I am not sure that that point
relates to one of the amendments in the group that
we are discussing, the intention behind which I
have outlined.

Colin Fox: Perhaps you could remind me of the
intention.

Johann Lamont: I would have to repeat what I
have already said and I am not quite sure what the
point at issue is. If I have missed it, I will ensure
that we clarify it before stage 3. I have outlined our
desire to clarify what has to be taken into account
by the sentencer. That is an issue for the
sentencer; I am clear that we are talking about
sentence management. In all the discussions that I
have had with the judiciary, it has been evident
that public protection is the central consideration.
The custody part of the sentence is about
punishment. Subsequently, when risk factors are
identified, the custody element could be extended.

The Convener: The question is, that
amendment 14 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

Against
Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For
6, Against 1, Abstentions 0.

Amendment 14 agreed to.

Amendment 15 moved—[Johann Lamont].

The Convener: The question is, that
amendment 15 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

Against
Davidson, Mr David (North East Scotland) (Con)

The Convener: The result of the division is: For
6, Against 1, Abstentions 0.

Amendment 15 agreed to.
The Convener: Amendment 16, in the name of the minister, is in a group on its own.

Johann Lamont: One of the key aims of the bill is to contribute to our goal of tackling reoffending. That is why most offenders will be subject to the custody and community regime. We have made it clear that the community part of the sentence will serve a dual purpose: it will enhance public protection and build on work that is begun in prison and which is aimed at helping offenders who are willing to take the opportunity to turn their lives around and stop offending.

Swift action will be taken against offenders who flout their licence conditions, and serious breaches of licence will result in recall to custody. We believe that people who reoffend while they are out on licence should be dealt with severely. Amendment 16 will allow the court, when considering whether to extend the minimum custody part of the sentence, to take account of the fact that an offence was committed while the offender was serving a sentence of imprisonment for another offence. In other words, offences that are committed following release on licence will be covered.

I move amendment 16.

Bill Aitken: Amendment 16 is acceptable. It manages to get round the conundrum that is posed by the European convention on human rights whereby a prison governor, for example, was considered not to be an independent tribunal, with the result that remission under the existing system could not be forfeited in respect of bad behaviour that was committed while the offender was serving a prison sentence. Amendment 16 is worth our while and should be agreed to.

Johann Lamont: Amendment 16 agreed to.

I welcome Mr Aitken’s support and urge the committee to support the amendment.

Amendment 16 agreed to.

The Convener: Amendment 17, in the name of the minister, is in a group on its own.

Amendment 17, in the name of the minister, is in a group on its own.

Johann Lamont: As part of the package of changes to section 6, we promised to clarify the factors that are to be taken into account when the custody part of a sentence is set. Concerns were voiced that section 6 would require early guilty pleas to be taken into consideration twice—when the overall sentence was set and again when extension of the custody part of the sentence beyond the minimum of 50 per cent was considered. We agree that that would have been inappropriate, so amendment 17 will remove the apparent double counting. No account is to be taken of an early guilty plea when the custody part of a sentence is set.

I move amendment 17.

Bill Aitken: Amendment 17 is a worthwhile amendment. Since the implementation of the Bonomy proposals in the High Court and the subsequent Du Plooy judgment, there has been considerable discounting of sentences. As it stands, the bill would result in duplication of discounts. Amendment 17 seeks to remedy that and so should certainly be agreed to.

Amendment 17 agreed to.

Amendment 45 moved—[Bill Aitken].

The Convener: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Davidson, Mr David (North East Scotland) (Con)

AGAINST
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 45 disagreed to.

Amendment 18 moved—[Johann Lamont]—and agreed to.

Amendment 46, in the name of Colin Fox, is grouped with amendments 47, 26A to 26J and 48 to 50. Amendments 49 and 50 are direct alternatives. If the committee agrees to amendment 49 and then to amendment 50, the latter decision will stand. If amendment 31, which is to be debated in a later group, is agreed to, amendment 48 will be pre-empted.

Colin Fox: Amendment 46 seeks to address two issues that came up in stage 1. I did not see the other amendments in the group until after I had lodged amendments 46 and 49. I am struck by the distance between my approach and Mr Aitken’s and I take comfort in the fact that they are diametrically opposed.

Jackie Baillie (Dumbarton) (Lab): You have been voting with him.

Colin Fox: No—he is nearer to you than he is to me.

I highlight the fact that the bill puts greater faith in community sentences. That commitment is welcome and it will put the right emphasis on an area in which we can reasonably expect progress in reducing reoffending. However, if the consequence of increasing the custody part of the sentence is that the likelihood of reducing
reoffending by reducing the time that is spent on turning around the offending behaviour will be lessened, the bill will work in a perverse manner.

On a much more practical point, amendment 46 seeks to reduce the upper limit of the custody part of a sentence while maintaining an increase on the tariff behind bars that we have at the moment. It is intended to allow the system to work by accepting that time is needed to prepare someone for release back into the community whence they came. Such time will be cut if we extend the time an offender spends behind bars; that would, in effect, reduce their post-release supervision and integration back into the community and offer the public less protection.

Amendment 46 has the advantage of offering the community greater protection. It also has the advantage of lessening the likelihood of an unwelcome rise in the prison population as the length of sentences rises and the proportion of time offenders spend in custody increases dramatically. I am sure that the minister will, at this time, when we have record numbers of people in prison, accept that a potential increase by as many as 1,100 prisoners at a cost of as much as £200 million while offering the public less protection is not to be welcomed.

Amendment 49 is consequential on amendment 46.

I move amendment 46.

Bill Aitken: We are having this debate because there is widespread public and parliamentary dissatisfaction with the existing system. The system has descended into farce as a result of the operation of the ECHR, which means, in effect, that a six-year sentence means four years and that a four-year sentence means two years. There was unanimous agreement that that simply could not be allowed to continue.

The Executive, in particular, has come in for severe criticism because of the number of offenders on early release who have committed serious offences during the unexpired period of their sentences. It is often said that hard cases make bad law, but in this instance, it is certainly apparent that something had to be done. To that end, the Executive has made a number of proposals, some of which are acceptable and some of which are not.

I repeat what I said in response to a previous amendment. I understand the value of monitoring some offenders after their release from prison. As I have already said this afternoon, members will be aware that there is, under existing legislation, provision for extended sentences. The minister stated correctly that what she proposes today will not change that position, which adds strength to the argument that the correct way to deal with the matter is simply to make the bill state that there will be an end to early release. Thereafter, the court could, in certain cases, order a subsequent period in which the offender would be monitored within the community. I have been inhibited by the wording of the bill, which does not allow for such an amendment to be lodged, although it would have been a much simpler way of dealing with the problem. However, I must accept the decisions that were made. The end to early release would have been the answer to the existing problem and would have assisted the Executive in its no doubt sincere attempts to end the revolving-door situation.

At present, we all agree that the sentencing system in Scotland is dishonest, but the bill will not alter that. The public perception of a sentence is that it is a period spent in custody. I know that that perception is wrong, but the sentences that are passed by the Scottish courts range from admonition to life imprisonment. The public think that a sentence is time spent behind bars, as Colin Fox put it, but that is not what will happen under the bill. The public do not understand the nuances of the system. When a sheriff or judge says that the sentence is four years, six years or whatever, the victim of the crime wants to know that the offender will spend that time in custody. The complainer or victim may take some comfort from the fact that when released, the offender will be kept under supervision. That would be a much more honest way of doing it and a much more transparent approach.

The committee received evidence from the Sheriffs Association. In its conclusion, we were told what will happen when sentences are passed: it is a long and convoluted process, which ends with the words to the accused, “I hope that the sentence of the court is clear to you.” As things stand, sentencing will not be clear to the accused nor, which is more important, to the public. At the end of the day, there is nothing to suggest that people will spend more time in prison. The more I look at the bill and the financial memorandum, the more I think that it is all smoke and mirrors.

Obviously—or hopefully—Parliament will in the future spend less time legislating and more time reviewing what has been legislated upon. We would then have some interesting answers. If that were to happen and in five years or so we were to look back on the effects of the bill, we would see that there had been no significant increase in the prison population, but there would have been a significant increase in the costs to local authorities and other agencies that are involved in monitoring. We will have failed to take a unified approach to cutting crime. The bill is not the answer.

Jackie Baillie: I was going to sit quietly, but the prospect of following Bill Aitken was just too much
to resist. It is as well that the committee is factual about such matters, because I seem to recall that the system that Bill Aitken described as being “discredited” was set up by the Tories. However, I will let that stick to the wall because I understand that Bill Aitken said previously that he requires clarification on a number of points and that he is easily mystified, and clarity is a commendable thing. However, I must take issue with him when he says that the Executive’s position is “dishonest”—it is far from it. The Executive is trying to introduce the clarity that the member so rightly seeks, so the bill clearly sets a custody and community part of a sentence.

14:45

I think that Bill Aitken would acknowledge that the community part of the sentence is essential if we want to reduce the risk of reoffending, because we want to resettle people appropriately in communities. We need time to do that and resources must be devoted to it. The community part of a sentence is not an added option; it is very much an integral part of the sentence.

Secondly, in contrast to the position under the current system, which the Tories gave us, a minimum sentence will mean a minimum sentence and ministers will be able, through the powers that will be available to them, to increase the custody part to 75 per cent of the sentence. Having studied the detail of the bill, I think that that is a vast improvement on the current situation.

Bill Aitken, if he were honest about the matter, would welcome the amendments from the Executive and the thrust of the bill as a whole.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Bill Aitken is asking us to replace an arbitrary approach with another arbitrary approach. Neither is acceptable.

Bill Aitken accepts that within any sentence there needs to be a period of rehabilitation—in fact, one tenth of a sentence. That is a shift in Conservative party policy—from five sixths a year ago—so they have obviously been doing their maths. They have accepted a point of principle, which is that during a headline sentence there would be a period of rehabilitation for an individual. Therefore, the debate is over what the appropriate period is, what the appropriate conditions are when an offender serves the sentence in the community and what supervision and support are available to them. That is where the 25 per cent comes in. The debate about the discretion in relation to that period during the serving of a sentence is a separate debate from saying that nine tenths of a sentence should be served within custody alone with no community element of rehabilitation.

The irony of the amendments in the name of Bill Aitken is that they would create far more bureaucracy because a 100-day sentence would include a 10-day period in the community, risk of harm to the public having been assessed. If Mr Aitken seeks clarity within the bill, the amendments in his name are certainly not the right way to achieve that.

There is also a point of principle. Bill Aitken’s position is very frustrating. He is saying that offenders’ offending during the community part of their sentence is the definition of a failing system, but that situation would continue if his amendments were agreed to. He should be honest enough to say that. If his amendments were passed, any offender serving a 200-day sentence would serve 20 days in the community. He is a very brave man if he is saying to Parliament that his amendments would guarantee that no offender would commit any offence within the 20-day period. I do not think that he is doing that; so if there is dishonesty and a discredited position, they are Bill Aitken’s.

Bill Aitken: I was careful to clarify the point and to put it on the record that my preferred amendment would have been quite different; it would not have included the 90 per cent provision and it would have written off the period of the sentence within the community, subject—of course—to the availability of the extended sentence, which exists under the current legislation and is continued into this legislation.

Johann Lamont: Bill Aitken cannot have it both ways. He cannot acknowledge honest endeavour by the Executive and at the same time say that it is all smoke and mirrors and dishonesty. He must decide what he is attacking us for: he must attack us either for being honest and useless or for being dishonest. We are neither, but he should perhaps reflect on his position.

He also managed to roll up into his argument the suggestion that we are legislating too much. I do not think that anyone in Parliament or beyond does think that we do not need to deal with unconditional automatic early release; indeed, the Executive has been criticised for not doing so. I do not know whether the Tories’ new position is that we should remain with the current legislation, which is clearly ineffective, rather than pass the bill. It would be curious if that were the case.

Amendment 46, in the name of Colin Fox, seeks to reduce the maximum custody period that the court can set from three quarters to two thirds of the sentence, while amendment 49 would mean that all offenders were released—as they are now—after two thirds of the sentence. The effect of the amendments would be to render the provisions as a whole unworkable without further changes. However, that is not the key point.
The basic principle of our policy is to ensure that sentence management is carried out in a joined-up way so that work that is started during the custody part of a sentence can be taken forward and developed during the community part in order to maximise the effects on public safety and rehabilitation. I accept that there is scope for a debate on what the right threshold should be to achieve that objective fully. In our view, setting the threshold at 75 per cent strikes the right balance. It will allow for exceptional cases in which the court needs to reflect publicly that a crime is particularly heinous or that an offender is so persistent in his or her offending that the minimum custody period is not enough. It will also allow the Parole Board to deal properly with offenders who are assessed as being a high risk so that there is reasonable time for restrictions to be effective and for rehabilitative work to continue in the community.

Amendment 47 and the other consequential amendments, in the name of Bill Aitken, would result in all those who are sentenced to 15 days or more spending nine tenths of their sentences in custody regardless of the risk that they posed. The consequential amendments would make the processes unworkable. The amendments would still require Scottish ministers to undertake risk assessments. In all cases in which an offender was assessed as presenting a risk of causing serious harm, the case would still be required to be referred to the Parole Board before the nine-tenths point of the sentence. The offender would also be required to be released at the same point. Amendments 26A to 26J would require the board to review such cases despite the fact that the offender could not be released before expiry of the custody part and could not be detained beyond that.

The key point, however, is not the accuracy of the amendments but whether they would create a system that, for each case, would allow the right mix of punishment, risk assessment and management, joined-up working and the opportunity to break the cycle of reoffending. In my view, simply locking up offenders for what is effectively their entire sentence would not go anywhere near achieving the sentence-management framework that the bill seeks to bring about. There is a place for custody—of course there is—but for custody to be effective, there needs to be an incentive for offenders to make something of their time in prison rather than just sit it out.

I accept Bill Aitken’s point that people see the custody part as being the sentence, so perhaps we need to be tougher about what happens in the community part of a sentence. It should be more visible so that people have a greater sense that the offender is in some way restricted for the whole sentence. However, at the point when the sentence is announced, there will be clarity about how much time the offender can expect to spend in custody. If Bill Aitken’s argument is that people are concerned because they do not know for how long the offender will be in prison, I point out that the court will be given the responsibility to clarify the minimum length of the custody part. That is fair.

The requirement to serve part of the sentence in the community is not a soft option. As has already been said, it is a smart option. Evidence shows that we have a much better chance of stopping many offenders returning to crime if we tackle the underlying causes of their criminality. That can be done best through a planned and joined-up combination of a custody part that recognises the seriousness of the crime, and a community part. That would simply not be possible if the amendments in the name of Bill Aitken were agreed to.

For the reasons that I have explained, I urge members to support neither the amendments in the name of Mr Fox nor the amendments in the name of Mr Aitken.

Colin Fox: I must confess that, despite the fact that our amendments are at variance with one another, we are all unanimous in saying that the current system is discredited. The question is how we make it credible. The minister has outlined the Executive’s position. That position is not dishonest, but the Executive’s position is not to provide greater clarity than is currently provided in the bill. Jackie Baillie made the pertinent point that it is possible to offer greater support for resettlement in the community. The fact that the bill tries to do that is welcome, but all that it seeks could be achieved without increasing the custody part. Certainly, it could be achieved without increasing the minimum custody part to 75 per cent.

Jeremy Purvis’s criticism of Bill Aitken’s position had a certain salience. Under Bill Aitken’s proposals, there would be insufficient time for people to serve the community part of, for example, a 20-day sentence. That is precisely the second point that I make in my amendments. If the minimum proportion is set at 75 per cent, we will still run the risk that there will be insufficient time available to ensure that the bill’s important provisions on the community part of sentences will be implemented fully. However, I accept that there is a discussion to be had—of course there is—about whether the threshold should remain at the current level of 50 per cent or whether it should be set at 66 per cent or 75 per cent.

In speaking to the amendments in his name, Bill Aitken clarified that he would, if he had been left to his own devices, have sought to ensure that offenders spend 100 per cent of their sentences in
jail. That is a reprehensible position, but it is at least honest. However, such a proposal rules itself out because it includes no remission for good behaviour, which is a standard penal policy that we have had for a long time. Bill Aitken's proposal would lead to a colossal increase in the jail population, so for that reason I do not find it attractive.

With amendment 46, I want to make it clear that making two thirds of the sentence the threshold is a better place to start and offers the greatest opportunity for the community part of the sentence to be successful. As a result, I will press the amendment.

The Convener: The question is, that amendment 46 be agreed to. Are members agreed?

Members: No.

The Convener: There will be a division.

FOR
Fox, Colin (Lothians) (SSP)

AGAINST
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 46 disagreed to.

Amendments 19 to 21 moved—[Johann Lamont]—and agreed to.

Amendment 47 moved—[Bill Aitken].

The Convener: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Davidson, Mr David (North East Scotland) (Con)

AGAINST
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 47 disagreed to.

Section 6, as amended, agreed to.
First, is it intended that the period of reasonable practicability should come in advance of the offender's reception into an institution if they are sentenced? If I understand it correctly, the judge's report will not only assist the agencies that will provide the individual with support and information on their reception but help to balance the criteria for judging whether someone will pose a risk to the public. Will the report come with the offender when he or she arrives at jail?

Secondly, how will the Scottish ministers use the report? Will the information be shared with other agencies? It may well include information that is not open to other agencies. Although the Scottish ministers may use the report and the information about the individual in a positive way, there may be a negative if it is shared with other agencies, such as the police or the voluntary sector.

Finally, how long will the information be kept? Is the report with the individual for the duration of his time in custody, or is it appended to any other records that the offender has in the criminal history database? If the minister could reply to those questions, it would be helpful.

15:00

The Convener: Do you wish to deal with those points before we deal with other members' points?

Johann Lamont: I do not know whether anyone else has any questions—I could roll them up together.

The Convener: Mr Aitken wants to contribute.

Bill Aitken: The minister will be pleased to hear that I support amendment 24. It introduces a statutory requirement that was not in the initial draft of the bill but clearly should have been, and I welcome the fact that an amendment has been lodged. The minister is also correct in saying that we cannot be too prescriptive. I think that further work needs to be done. If she lodges further amendments at stage 3, we will look at them sympathetically.

I am intrigued by Mr Purvis's request for immediacy. Let us picture the scene—someone is locked up at 3 o'clock in the afternoon by a particular judge or sheriff, who then proceeds to another case. Does the guy have to hang around the confines of the court until the judge has finished with the subsequent case so that the report can be prepared? That would not be practical. I can see what Jeremy Purvis is asking, and the judge's report might be relevant to the regime under which the prisoner is kept in custody, but the suggestion that the report should accompany the prisoner's arrival is hopelessly impractical.

Johann Lamont: The issue is important, so we have to get it right. We do not want courts to be swamped by a requirement to write unduly long and convoluted reports about every individual, using information that is in the public domain anyway. Basic information ought to go with a prisoner on reception. If that is not happening now, we can explore the issue.

We cannot make blanket assumptions about risk on the basis of the length of sentence; it might be based on the individual, on any previous convictions or on the nature of the offence and how it impacted on a family, for example. The report has to be appropriate to the individual. We are working closely with the judiciary to ensure that.

The report is effectively a screening and flagging up of issues that the Scottish Prison Service will find useful when it determines how to work with someone who is in custody. It will be a helpful aid to the Prison Service, but we have to balance that against its not being too onerous. There are some questions, such as whether the report basically provides a narrative of the trial. The answer to that is no—we are working on the basis that the trial happens, a decision is made and the report flags up critical issues that may give the Prison Service further information.

We need to examine the information that is available on reception. Further information will inform what the SPS does with someone when they are in custody, but we are anxious that pulling that information out of the judge's report should not be too burdensome on the court.

My instinct is always for people to share information in a positive way if it is in the interests of the system and the individual concerned. There are sufficient safeguards around that to ensure that it could not be abused, and I am sure that there are constraints and rules that would allow positive information sharing without its being detrimental.

I will probably have to seek technical advice on how long the information will be kept, although I am not sure that that is constrained by legislation. As the focus of the report is to try to inform the SPS so that it can meet the needs of the individual prisoner and to flag up risk, I cannot imagine that it would be a particular concern, but I can come back to the committee on the specifics.

It is suggested that we consider the issues at stage 3. I emphasise that the provisions are about ensuring that the prison system has sufficient information about the different aspects of an individual—instead of blanket information—without putting unnecessary and burdensome pressure on our court system. We have to look at that through the planning group and elsewhere, and we will
ensure that the committee is kept fully informed of any amendments ahead of stage 3.

The Convener: Will you notify the clerks and use them as a vehicle to distribute information if you find anything when you refer to technical advisers?

Johann Lamont: I am more than happy to do that. After the meeting, I will reflect on the points that members have made on which it would be helpful to draw up a note that the clerks can distribute to members. Before stage 3, we will ensure that we provide the kind of information that we provided before stage 2—a brief note on the purpose and effect of stage 3 amendments.

Amendment 24 agreed to.

Sections 7 to 11 agreed to.

Section 12—Determination that section 8(2) applicable: consequences

The Convener: Amendment 25, in the name of the minister, is grouped with amendments 26 to 29 and 36 to 42.

Johann Lamont: Amendments 25 to 28 clarify the processes for referring cases to the Parole Board and the subsequent review of those cases by the board. They make the operational process clearer by spelling out the requirements that are placed on the board and the offender's rights with regard to the review.

Section 12 provides for further consideration by the Parole Board following a decision on the ground of risk to detain an offender beyond the court-imposed custody part. The board will set community licence conditions at that time or set a forward date at which it will consider suitability for release before the three-quarter point or set community licence conditions. That depends on the timings that are involved, which I will clarify shortly.

Amendments 25 and 26 deal with the consequences of the Parole Board directing the Scottish ministers to detain an offender on the ground of risk. They replace the provisions from section 12(2)(b) to section 12(8) with more straightforward provisions, which describe more clearly the arrangements that are to be followed when the Parole Board has assessed a custody and community offender as posing a risk of causing serious harm, so they should not be released at the end of the custody part. Under new subsection (3), an offender who has less than four months to serve before reaching the three-quarter point of the sentence will remain in custody until the three-quarter point and the board will set licence conditions.

Under new subsections (4) to (6), when an offender has between four months and two years to serve before the three-quarter point, the Parole Board can set a date in that period for a further review. If no such date is set, the offender will remain in custody up to the three-quarter point and the board will set a date for specifying community licence conditions.

Under new subsections (7) and (8), when the offender has more than two years to serve before reaching the three-quarter point, the board must set a date for a further review, which must take place in the period that begins four months after the date of the previous review and before the second anniversary of that review.

Amendment 26 also makes it clear that when an offender serves more than one sentence, the point at which he or she must be released is the date on which the last of the 75 per cent points of the sentences is reached.

Amendment 27 inserts a new section to replace provisions in section 12 that deal with a prisoner's right to request earlier consideration of his or her case by the Parole Board. The new section will apply to offenders who have been detained in custody following a review by the board. It will allow offenders to request an earlier date for a further review. That might be appropriate when the offender feels that he or she has made faster progress than was envisaged or that circumstances have changed—for example, suitable accommodation might have become available.

Amendment 28 inserts a further new section that sets out the arrangements for the Scottish ministers to refer cases to the Parole Board to enable it to set community licence conditions. It refers to offenders with between four months and two years to serve before reaching the three-quarter point and whom the board had directed should remain in custody to the three-quarter point.

Amendment 29 is consequential on the changes that amendments 25 and 26 will make and will change the reference in section 13 to section 12.

Amendments 36 to 42 make similar amendments to sections 19 and 33. They clarify the processes for referring cases to the Parole Board and the subsequent review of those cases by the board. They make the operational process clearer by spelling out the requirements that are placed on the board and the offender's rights with regard to the review process.

I move amendment 25.

Bill Aitken: I am minded to support the amendments, subject to clarification from the minister about an issue that is encapsulated by amendment 27. As we know, part of the reason why we are here is that the application of the
ECHR meant that all remission might have been earned. As Jackie Baillie says, it is true that the Conservative Government dealt with the matter wrongly in about 1995, but the Labour Government has frustrated our efforts to remedy matters from 1997 onwards.

Jackie Baillie: And we will continue to frustrate you, Mr Aitken.

Bill Aitken: What we require to do now is ensure that, as far as amendment 27 is concerned, there will be no comeback if the Parole Board refuses to bring forward a review date for any particular prisoner. Under the bill, is the Parole Board considered an independent tribunal in terms of the ECHR? If it was held not to be such, we could find ourselves in all sorts of difficulty if the bill is passed with this amendment. I am not being negative; I am simply trying to ensure that we have every possible safeguard.

Johann Lamont: To comply with the ECHR, decisions about whether prisoners are suitable for release must be made by an independent, court-like body. In Scotland, that is the Parole Board for Scotland. It is equally important that, when it directs that a prisoner should be detained beyond a court-imposed custody part, that same independent body fixes the date on which it will next consider the prisoner’s case.

If the timings for further review by the Parole Board were not set out in the bill, the Scottish ministers would have to decide whether the offender’s case should be referred to the board for further review and, if so, when. There is not a change of policy in any way; it is a matter of clarifying the role of the Parole Board as a court-like body.

Bill Aitken: And it is totally ECHR compliant.

Johann Lamont: Yes—well, I am sure that the parliamentary system would not have accepted it if it were not compliant. It simply reflects the current position regarding requests for an earlier date, and it is related to the Prisoners and Criminal Proceedings (Scotland) Act 1993.

The Convener: I selected the amendment on the basis of advice that it is ECHR compliant.

Johann Lamont: I was making a general point about the role of the Parole Board. The bill would have to pass that test before it was laid before Parliament.

Amendment 25 agreed to.

Amendment 26 moved—[Johann Lamont].

Amendments 26A to 26J not moved.

Section 12, as amended, agreed to.

After section 12

Amendments 27 and 28 moved—[Johann Lamont]—and agreed to.

Section 13—Further referral to Parole Board

Amendment 29 moved—[Johann Lamont]—and agreed to.

Section 13, as amended, agreed to.

After section 13

15:15

The Convener: Amendment 30, in the name of the minister, is grouped with amendments 31 and 32. If amendment 31 is agreed to, I cannot call amendment 48, which was previously debated with amendment 46, because of a pre-emption.

Johann Lamont: We continue to consider ways to make the custodial sentence provisions as clear as possible. Amendments 30 to 32 take section 14 and split it into two sections, to be helpful and to make the bill more readable and understandable.

Section 14 deals with offenders who are given the maximum 75 per cent custody part of their sentence by the court at the time of sentencing. As such, there is no requirement on the Scottish ministers to apply the risk of serious harm test under the terms of section 8. Instead, those offenders’ cases will be referred to the Parole Board prior to their reaching the 75 per cent point for the board to specify the community licence conditions. As currently drafted, section 14 does two things. It explains the process that is to be followed in the setting of community licence conditions prior to the offender’s release and it explains the procedure for releasing the offender. We are separating those elements to make the procedure as clear as possible. The new section that amendment 30 inserts deals with the requirement for the Scottish ministers to refer those cases to the Parole Board and for the board to specify the conditions. As such cases must be referred to the Parole Board, ministers do not need to make a risk assessment as set out under section 8(1).

Amendments 31 and 32 remove the relevant subsections from section 14, which, as amended, will set out the arrangements that the Scottish ministers will have to follow in releasing the offender once the 75 per cent custody part of their sentence has been served. However, those release arrangements do not apply in the case of offenders who have been recalled to custody for breach of their licence conditions.

I move amendment 30.
Jeremy Purvis: I seek clarification on a point that concerns prisoners who have had the custody part of their sentence set at three quarters and who are on licence with conditions. As I understand it, if that licence is revoked, the Parole Board has to apply a test of serious harm. The person will not necessarily be confined for the entire length of the headline sentence if that rather high test of serious harm to the public is not met. We are not simply talking about their breaching their licence conditions—even if those conditions had been set by the Parole Board as being below those that would apply in the case of a risk of serious harm to the public. Is that indeed the case? If so, can you understand that there could be a potential difficulty if a prisoner is recalled but there is effectively a higher threshold that must be set for that person to be confined for the remainder of the headline sentence?

Bill Aitken: As the minister says, the amendments in this group have been lodged for the purpose of clarification, and they are largely cosmetic. Some clarification is obviously necessary, and Mr Purvis did not feel constrained in asking his question. He was quite right to do so. On the basis of what the minister has said, however, the amendments are acceptable.

Johann Lamont: Jeremy Purvis’s point is really a separate issue, which is not dealt with by the amendments in this group. We will come to it later in stage 2. The issue has been highlighted by a number of people. Someone could be called in on one test but re-released only on an easier test. Under a harder test, they would be retained in prison.

The very process of somebody being called in might concentrate their mind. As we have indicated, we wish to examine this matter again. We do not want to have another potential revolving door. As I say, we have reflected on the issue, and it will be discussed later in stage 2.

Amendment 30 agreed to.

Section 14—Release on community licence on completion of custody part

Amendment 31 moved—[Johann Lamont]—and agreed to.

Amendment 49 not moved.

Amendments 50 and 32 moved—[Johann Lamont]—and agreed to.

Section 14, as amended, agreed to.

Section 15—Setting of punishment part

Amendment 33 moved—[Johann Lamont].

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

I asked a question of the committee.

Jackie Baillie: Sorry, convener. Could you repeat your question?

The Convener: Thank you for coming back to life, Ms Baillie. The question is, that amendment 33 be agreed to.

Amendment 33 agreed to.

Jackie Baillie: I advise the convener that listening to his colleague perhaps deadens the senses.

The Convener: Order. He was very good. However, we are dealing with a piece of legislation.

Amendment 34 moved—[Johann Lamont]—and agreed to.

Amendment 51 moved—[Bill Aitken].

The Convener: The question is, that amendment 51 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Davidson, Mr David (North East Scotland) (Con)

Against
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 51 disagreed to.

Amendment 52 moved—[Bill Aitken].

The Convener: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Davidson, Mr David (North East Scotland) (Con)

Against
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 52 disagreed to.
Amendment 35 moved—[Johann Lamont]—and agreed to.
Section 15, as amended, agreed to.
Sections 16 to 18 agreed to.

Section 19—Determination that section 17(3) applicable: consequences
Amendment 36 moved—[Johann Lamont]—and agreed to.
Section 19, as amended, agreed to.
Section 20 agreed to.

The Convener: Apparently, I made a slip of the tongue and attributed an amendment to the wrong person. I apologise to the committee. I am referring to the clerks to find out what happened.

Maureen Macmillan (Highlands and Islands) (Lab): That is why we were distracted.

The Convener: Apparently there was a technical hiccup with the brief.

After amendment 49, I called amendment 50 in the name of the minister, but it is in fact in the name of Bill Aitken. The minister kindly moved it but there was no division. I will call the amendment again—correctly, this time.

I call amendment 50, in the name of the minister—

Members: No, no.

The Convener: Just checking. I call amendment 50, in the name of Bill Aitken.
Amendment 50 moved—[Bill Aitken].

The Convener: The question is, that amendment 50 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Davidson, Mr David (North East Scotland) (Con)

Against
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 50 disagreed to.

Jackie Baillie: For the record, convener, that is what I and my colleagues were discussing when we were distracted.

The Convener: I appreciate that.

For clarity, section 14 was agreed to.

Members: Yes.

The Convener: Thank you.

I thank the minister and her colleagues for coming along today. We look forward to seeing you next week.

Johann Lamont: Not nearly as much as I look forward to seeing you.

Bill Aitken: According to my notes, we have not dealt with amendment 53.

The Convener: We are going up to section 20 today; we will deal with amendment 53 next time.

Bill Aitken: That means that I get to come again next week.

The Convener: Amendment 53 is to section 36, which we will deal with the week after next. Thank you for coming along, Mr Aitken.
The Bill will be considered in the following order—

Sections 43 to 46
Schedule 1
Sections 47 to 49
Section 50
Long Title

Sections 1
Sections 2 to 42
Schedule 2
Schedule 3

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 21

Cathy Jamieson

54 In section 21, page 9, line 9, at end insert <, and

( ) if a further new sentence is imposed on the prisoner in relation to which the prisoner would not be eligible for release on that different date, fix in accordance with that subsection a further different date.>

Cathy Jamieson

81 In section 21, page 9, line 19, leave out <the Board must>

Section 23

Cathy Jamieson

55 In section 23, page 10, line 14, leave out <person> and insert <prisoner>

Cathy Jamieson

56 In section 23, page 10, line 15, leave out <person> and insert <prisoner>

After section 23

Cathy Jamieson

57 After section 23, insert—

<The standard conditions

Release on licence: the standard conditions

(1) Where a prisoner is released on licence by virtue of this Part, the prisoner is released subject to the standard conditions.

(2) The standard conditions are—
(a) that the prisoner must be of good behaviour, and
(b) that, subject to subsection (3), the prisoner is prohibited from leaving the United Kingdom.

(3) Paragraph (b) of subsection (2) does not apply if—
(a) the prisoner falls within subsection (4), or
(b) the Scottish Ministers permit, or a person designated by them for the purposes of
    this section permits, the prisoner to leave the United Kingdom.

(4) The prisoner falls within this subsection if—
(a) the prisoner is liable to deportation under section 3(5) of the Immigration Act
    1971 (c.77) and has been notified of a decision to make a deportation order,
(b) the prisoner is liable to deportation under section 3(6) of that Act,
(c) the prisoner has been notified of a decision to refuse the prisoner leave to enter the
    United Kingdom,
(d) the prisoner is an illegal entrant within the meaning of section 33(1) of that Act,
(e) the prisoner is liable to removal under section 10 of the Immigration and Asylum
    Act 1999 (c.33).

Section 24

Cathy Jamieson

58 In section 24, page 10, line 26, leave out subsection (2) and insert—

(2) The Scottish Ministers must include in the prisoner’s community licence—

(a) those conditions,
(b) the standard conditions, and
(c) if section 27(1) applies, the supervision conditions.

(3) On the direction of the Parole Board, the Scottish Ministers may—

(a) vary the conditions mentioned in subsection (2),
(b) cancel conditions (other than the standard conditions and the supervision conditions),
(c) include in the licence further conditions.

Section 25

Cathy Jamieson

59 In section 25, page 10, line 36, leave out subsection (2) and insert—

(2) The Scottish Ministers—

(a) must include in the prisoner’s community licence—

(i) the standard conditions, and
(ii) if section 27(1) applies, the supervision conditions,
(b) may include in the licence such other conditions as they consider appropriate.

(2A) The Scottish Ministers may—
(a) vary the conditions mentioned in subsection (2),
(b) cancel conditions (other than the standard conditions and the supervision conditions,
(c) include in the licence such further conditions as they consider appropriate.

Section 26

Cathy Jamieson

60 In section 26, page 11, line 12, leave out subsection (2) and insert—

<(2) The Scottish Ministers must include in the prisoner’s life licence—
(a) those conditions,
(b) the standard conditions, and
(c) if section 27(1) applies, the supervision conditions.

(3) On the direction of the Parole Board, the Scottish Ministers may—
(a) vary the conditions mentioned in subsection (2),
(b) cancel conditions,
(c) include in the licence further conditions.>

After section 26

Cathy Jamieson

61 After section 26, insert—

<Compassionate release on life licence: conditions
(1) This section applies where by virtue of section 23(1) the Scottish Ministers release a prisoner on life licence.
(2) The Scottish Ministers must include in the licence—
(a) the standard conditions,
(b) the supervision conditions, and
(c) such other conditions as they consider appropriate.
(3) The Scottish Ministers may—
(a) vary or cancel the conditions mentioned in subsection (2),
(b) include further conditions in the licence.>

Section 27

Cathy Jamieson

62 In section 27, page 11, line 21, leave out subsection (1) and insert—
<(1) This section applies where a prisoner falling within subsection (2) is released on licence by virtue of this Part.>

Cathy Jamieson

63* In section 27, page 11, line 24, leave out from <person> to <person> and insert <prisoner falls within this subsection if—
(a) the prisoner is
   (i)>

Cathy Jamieson

64 In section 27, page 11, line 28, after <whom> insert—
<(  ) by virtue of section 6(3), the court specifies a custody part which is three-quarters of the prisoner’s sentence, or>

Cathy Jamieson

65 In section 27, page 11, line 29, leave out <13(3)> and insert <10(2)>

Cathy Jamieson

66 In section 27, page 11, line 36, at end insert <and
   (  ) the prisoner does not fall within section (Release on licence: the standard conditions)(4).>

Cathy Jamieson

67 In section 27, page 11, line 36, at end insert—
<(  ) The prisoner is released subject to the supervision conditions.>

Cathy Jamieson

68 In section 27, page 11, line 37, leave out <condition is a condition requiring the prisoner> and insert <conditions are—
   (a) that the prisoner is>

Cathy Jamieson

69 In section 27, page 12, line 2, after <licence> insert—
<(  ) that the prisoner is to maintain contact with the relevant officer as the officer directs,
   (  ) that the prisoner is to inform the relevant officer of—
      (i) any change of address,
      (ii) any change in employment>
In section 27, page 12, line 3, leave out "to comply with" and insert "that the prisoner is to comply with any other".

In section 27, page 12, line 5, leave out subsection (4).

Move section 27 to after section 23.

In section 29, page 12, line 30, leave out "specified" and insert "included".

In section 31, page 13, line 32, leave out subsection (6).

After section 31, insert—

<Compassionate release: additional ground for revocation of licence>

(1) This section applies if—

(a) a prisoner is released on licence by virtue of section 23(1), and

(b) the Scottish Ministers are satisfied that there are no longer compassionate grounds justifying the prisoner’s release on licence by virtue of that section.

(2) The Scottish Ministers must revoke the licence.

(3) If the prisoner is not detained as mentioned in section 30(1)(b), the Scottish Ministers must recall the prisoner to prison.

After section 31, insert—

<Prisoners unlawfully at large>

Where—

(a) a prisoner’s licence is revoked by virtue of section 31(1) or (Compassionate release: additional ground for revocation of licence)(2), and

(b) the prisoner is at large,
the prisoner is unlawfully at large.>

Cathy Jamieson

77 After section 31, insert—

<Compassionate release: effect of revocation in certain circumstances

(1) Subsection (2) applies where—

(a) a prisoner is released on licence by virtue of section 23(1),

(b) the licence is revoked by virtue of section 31(1) or (4) or (Compassionate release:
    additional ground for revocation of licence)(2), and

(c) the revocation occurs before the expiry of the relevant period.

(2) This Part applies to the prisoner as if the prisoner had not been released on licence by
virtue of section 23(1).

(3) The relevant period is—

(a) in the case of a custody-only prisoner, the prisoner’s sentence,

(b) in the case of a custody and community prisoner, the custody part of the prisoner’s
    sentence,

(c) in the case of a life prisoner, the punishment part of the prisoner’s sentence.>

Section 32

Cathy Jamieson

78 In section 32, page 14, line 3, at end insert <or (Compassionate release: additional ground for
revocation of licence)(2)>.

Cathy Jamieson

79 In section 32, page 14, line 6, leave out <section 22> and insert <sections 22 and (Compassionate
release: effect of revocation in certain circumstances)>. 

Section 33

Cathy Jamieson

37 In section 33, page 14, line 9, leave out <or subsection (10)> and insert <, (Determination that
section 33(3) applicable: consequences for custody and community prisoners)(9) or
(Determination that section 33(3) applicable: consequences for life prisoners)(5)>

Cathy Jamieson

80 In section 33, page 14, line 12, leave out from <the> to end of line 13 and insert <it is in the
public interest that the prisoner be confined.>

Cathy Jamieson

38 In section 33, page 14, line 19, leave out subsections (6) to (10)
After section 33

Cathy Jamieson

39  After section 33 insert—

<Determination that section 33(3) applicable: consequences for custody and community prisoners>

(1) This section applies where the Parole Board determines, under subsection (2) of section 33, that subsection (3) of that section applies to a custody and community prisoner.

(2) The Parole Board must give the prisoner reasons in writing for its determination.

(3) If on the day of the determination less than 4 months of the prisoner’s sentence remain to be served, the prisoner must be confined until the expiry of the prisoner’s sentence.

(4) If on the day of the determination at least 4 months and no more than 2 years of the prisoner’s sentence remain to be served, the Parole Board may, subject to section 21, fix a date falling within the period mentioned in subsection (5) on which it will next consider the prisoner’s case.

(5) That period is the period—

(a) beginning with the day falling 4 months after the day of the determination, and

(b) ending on the expiry of the prisoner’s sentence.

(6) If no date is fixed under subsection (4) the prisoner must be confined until the expiry of the prisoner’s sentence.

(7) If on the day of the determination at least 2 years of the prisoner’s sentence remain to be served, the Parole Board must, subject to section 21, fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner’s case.

(8) That period is the period—

(a) beginning with the day falling 4 months after the day of the determination, and

(b) ending immediately before the second anniversary of the day of the determination.

(9) Where a date is fixed under subsection (4) or (7), the Scottish Ministers must refer the case to the Parole Board before that date.>

Cathy Jamieson

40  After section 33 insert—

<Determination that section 33(3) applicable: consequences for life prisoners>

(1) This section applies where the Parole Board determines, under subsection (2) of section 33, that subsection (3) of that section applies to a life prisoner.

(2) The Parole Board must give the prisoner reasons in writing for its determination.

(3) The Parole Board must, subject to section 21, fix a date falling within the period mentioned in subsection (4) on which it will next consider the prisoner’s case.

(4) That period is the period—

(a) beginning with the day falling 4 months after the day of the determination, and

(b) ending immediately before the second anniversary of the day of the determination.
(5) The Scottish Ministers must refer the case to the Parole Board before the date fixed under subsection (3).

Cathy Jamieson

41 After section 33 insert—

Prisoner’s right to request early reconsideration by Parole board

(1) Subsection (2) applies where the Parole Board fixes a date under—

(a) section (Determination that section 33(3) applicable: consequences for custody and community prisoners)(4),

(b) section (Determination that section 33(3) applicable: consequences for custody and community prisoners)(7), or

(c) section (Determination that section 33(3) applicable: consequences for life prisoners)(3),

for considering a prisoner’s case.

(2) On the prisoner’s request, the Board may, if it considers it appropriate to do so, substitute for that date an earlier date when it will next consider the prisoner’s case by fixing that earlier date under section (Determination that section 33(3) applicable: consequences for custody and community prisoners)(4), (Determination that section 33(3) applicable: consequences for custody and community prisoners)(7) or, as the case may be, (Determination that section 33(3) applicable: consequences for life prisoners)(3).

(3) Subsection (4) applies where the Parole Board does not fix a date under section (Determination that section 33(3) applicable: consequences for custody and community prisoners)(4).

(4) On the prisoner’s request, the Board may, if it considers it appropriate to do so, fix a date under section (Determination that section 33(3) applicable: consequences for custody and community prisoners)(4) when it will next consider the prisoner’s case.

Section 34

Cathy Jamieson

42 Leave out section 34

Section 36

Bill Aitken

53 In section 36, page 15, line 35, leave out from beginning to end of line 3 on page 16, and insert—

(a) commencing on the day after the prisoner has served three-quarters of the prisoner’s sentence, and

(b) ending on the day falling 14 days before the expiry of the custody part.
Section 50

Colin Fox  
83 In section 50, page 29, line 3, at beginning insert <Subject to subsection (2A),>.

Colin Fox  
82 In section 50, page 29, line 4, at end insert—

<(2A) An order in respect of any provision of Part 2 may not be made until the Scottish Ministers have secured publication of a report, to be carried out by a person not otherwise accountable to them, on the cost effectiveness of that Part in terms of its likely effect on—

(a) levels of offending and re-offending, and

(b) the size of the prison population.

(2B) A report under subsection (2A) must be published and laid before the Scottish Parliament within 12 months of the passing of the Bill for this Act.>
3rd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated.

Groupings of amendments

Postponing dates for Parole Board consideration
54, 81

Minor technical amendments
55, 56, 73

 Supervision and other licence conditions
57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72

Revocation of licence in compassionate release cases
74, 75, 76, 77, 78, 79

Criteria for re-release when licence revoked
80

Curfew Licenses
53

Commencement of Part 2
83, 82

Amendments already debated

Finding that prisoner likely to cause serious harm: role of parole board
With 25 - 37, 38, 39, 40, 41, 42
Present:

Jackie Baillie  
Mr David Davidson (Convener)  
Mr Michael Matheson  
Jeremy Purvis  

Bill Butler  
Colin Fox  
Maureen Macmillan

Also present: Bill Aitken, MSP.

**Custodial Sentences and Weapons (Scotland) Bill:** The Committee considered the Bill at Stage 2 (Day 3).

The following amendments were agreed to (without division): 54, 81, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 37, 80, 38, 39, 40, 41 and 42.

Sections 21, 23, 24, 25, 26, 27, 29, 31, 32 and 33 were agreed to as amended.

Sections 22, 28, 30 and 35 were agreed to without amendment.

The Committee ended consideration of the Bill for the day, section 35 having been agreed to.
Custodial Sentences and Weapons (Scotland) Bill: Stage 2

14:24

The Convener: Item 3 is day 3 of stage 2 of the Custodial Sentences and Weapons (Scotland) Bill, during which we will consider sections 21 to 35 of the bill.

Colin Fox (Lothians) (SSP): Will the amendments be taken in the order that is shown on the marshalled list?

The Convener: Yes.

Section 21—Referral to Parole Board: postponement

The Convener: Amendment 54, in the name of the minister, is grouped with amendment 81.

Johann Lamont: Section 21 deals with the circumstances in which an offender’s case has been referred to the Parole Board for Scotland for review and he or she receives what is, in effect, a second sentence that affects his or her release date. As drafted, the section is inconsistent in how it would deal with this matter. Where the Parole Board has yet to fix a date for considering the prisoner’s case, the section, in subsection (2), caters only for the date’s being postponed once—because a further sentence has been imposed. However, in cases in which the board has already fixed a date and a further sentence is imposed before that date, the section—in subsection (4)—also covers the situation in which yet another sentence is subsequently imposed.

Amendment 54 will insert into section 21(2) a paragraph that will allow the effects of a third sentence—or, indeed, the effects of any further sentence—to be treated in the way that is detailed in section 21(4). In effect, a loop is created. In practice, the Parole Board will have to postpone the date for reviewing a prisoner’s case where he or she receives an additional sentence in the period after the case is referred and before the board has fixed a date for considering the referral. The section will apply where the prisoner would not be eligible for release from the subsequent sentence on the date that would otherwise have been fixed for a hearing. The board will then set an appropriate date for a hearing to take place.

Amendment 81 is a drafting amendment that will remove from section 21(4)(b) the redundant words “the Board must”. The Parole Board’s requirement to act is already expressed at the beginning of subsection (4).

I move amendment 54.

Amendment 54 agreed to.
Amendment 81 moved—[Johann Lamont]—and agreed to.

Section 21, as amended, agreed to.
Section 22 agreed to.

Section 23—Compassionate release on licence

The Convener: Amendment 55, in the name of the minister, is grouped with amendments 56 and 73.

Johann Lamont: Amendments 55, 56 and 73 are minor drafting amendments. Throughout the bill, we have used the word “prisoner”. For the sake of consistency, amendments 55 and 56 will remove from section 23(1) two occurrences of the word “person” and replace them with “prisoner”.

A further drafting amendment applies in section 29, where the word “specified” will be changed to “included” to ensure that the section is consistent with the form of words that is used elsewhere in the bill.

I move amendment 55.
Amendment 55 agreed to.

Amendment 56 moved—[Johann Lamont]—and agreed to.
Section 23, as amended, agreed to.

After section 23

The Convener: Amendment 57, in the name of the minister, is grouped with amendments 58 to 72.

Johann Lamont: In its stage 1 report, the committee stated its preference for standard licence conditions to be included in the bill. The Executive’s view remains that there is a need to strike a balance between making the process as clear as possible and having a degree of flexibility to attach additional licence conditions if necessary. However, we accepted that there is still scope to clarify the standard conditions, so we agreed to review the relevant provisions in the bill, which is what will be achieved by amendments 57 to 72.

Amendments 57 to 61 will deliver a package that will prescribe in statute the standard conditions and the offenders to whom those conditions apply—in practice, they will be custody and community prisoners and life sentence prisoners. It will also allow travel restrictions to be suspended with the permission of Scottish ministers, or—in practice—the supervising officer. For example, it might not be unreasonable to allow an offender on life licence, who has been on licence in the community and has stayed trouble-free for a long time, to take a holiday abroad with his or her family. Allowing for travel on compassionate grounds would also be reasonable. Finally, amendment 57 will disapply a travel restriction on people who face deportation.

14:30
Amendments 58, 59 and 60 will amend the provisions for setting licence conditions for custody and community prisoners who are referred to the Parole Board, custody and community prisoners for whom Scottish ministers will fix licence conditions, and life sentence prisoners, in order to provide for standard conditions and, if applicable, supervision conditions to be attached to licences. The amendments will also allow licence conditions on the direction of the Parole Board to be added to, varied or cancelled, where appropriate, with the exception of the standard conditions set by Scottish ministers.

Amendment 61 will insert a new section after section 26, entitled “Compassionate release on life licence: conditions”, which will place a requirement on Scottish ministers, when releasing a life sentence prisoner on compassionate grounds, to include the standard conditions and, where appropriate, the supervision conditions.

Amendment 62 will provide that section 27, which deals with supervision, will apply when certain categories of offenders are released on licence. Those categories are life prisoners, custody and community prisoners who are serving a sentence of six months or more, custody and community prisoners who have been detained beyond the court-imposed custody part, custody and community prisoners whose custody part was set at the maximum 75 per cent by the court at the point of sentencing, prisoners who are released on compassionate grounds, extended-sentence prisoners, sex offenders and children.

Amendment 63 is a drafting amendment that will, for the sake of consistency, replace the two occurrences of the word “person” at the beginning of subsection (2) of section 27 with the word “prisoner”.

Amendment 64 clarifies that prisoners who have been given the maximum 75 per cent custody part by the court at the point of sentencing are to be included in the supervision requirements.
Amendment 65 is a technical amendment that will alter a reference in order to make it clear that any prisoner who is detained beyond the expiry of the custody part always has the supervision conditions included in his or her licence.

Amendment 66 provides that supervision conditions, in addition to applying to those whom I have mentioned, will not apply to prisoners who are liable to be deported.

Amendments 67 to 69 provide that, in addition to the supervision provisions that are already in the bill, the prisoner will be under the supervision of a relevant officer of the local authority specified in the licence, and that the prisoner must comply with the requirements imposed in relation to supervision by the relevant officer. The prisoner must also maintain contact with the relevant officer as the officer directs, and must inform the relevant officer of any change of address and any change in employment.

Amendment 70 will place a further requirement on the prisoner to comply with all conditions relating to supervision that might appear on his or her licence.

Amendment 71 will delete subsection (4) of section 27, as those provisions will appear in the new section that will be inserted by amendment 57.

Amendment 72 will move section 27 to after section 23 in order to place it in its proper context.

That has been a lengthy explanation, but I hope that it demonstrates our willingness to take account of the committee’s helpful suggestions. I also hope that these amendments and others reassure members that the measures for managing offenders in the community and for ensuring that support exists when it is required—while public protection remains paramount—are an integral part of the new sentence-management regime.

I move amendment 57.

**Colin Fox:** I hope that, in the same spirit in which the minister finished her remarks, she will listen to the committee’s helpful comments. As she knows, throughout the bill process my mind has been focused on an anomaly to which we keep returning, which is that people who have been sentenced to 14 days in jail will spend longer in custody than people who have been sentenced to up to 30 days in jail. In looking at amendment 57, I am mindful of the remark that the minister offered to me last week when I asked about the issue. She advised me and the committee that we should not underestimate the fact that somebody serving their community sentence after they have been released from custody is included in the bill.

To the previous standard condition for releasing somebody on community sentence—that they must be of good behaviour—amendment 57 will add the condition that the person is prohibited from leaving the country. I wonder whether the public will accept a person’s spending 14 days in jail while an offender who has been given a longer sentence will be released on a community sentence because that person is asked to be of good behaviour and to not leave the country. Will the public have sufficient understanding of that part of a community sentence? As the minister knows, my reading of the situation is that it is far better to keep the current position, whereby people who are sentenced to 14 days spend half their sentence in custody, rather than the full 100 per cent. Amendment 57 jumps out, given the remarks that she made last week on this very anomaly.

**Bill Aitken:** I am a little concerned about proposed new subsection (4), which amendment 57 would insert. I am clear about the intention, but what would be the position if an appeal process in respect of an illegal entrant to the country had not been exhausted? There might be appeals outstanding under sections of the Immigration Act 1971. There might be a falling between two stools. The prisoner’s custody period could be ended and he could be released on licence. He could disappear into the great blue yonder because he could not be held because an appeal process had not been exhausted. I would appreciate reassurance on that.

The definition of “compassionate” could have been clarified earlier. Circumstances such as acute family illness or bereavement could arise in which any reasonable person would agree that the prisoner should be released on licence. I would have no objection to someone who has concluded the custody part of his or her sentence being allowed to go on holiday abroad, because that could happen under the existing system in any event. There is no problem there. Has “compassionate” ever been defined?

**Johann Lamont:** I suspect that my definition of “compassionate” is pretty rigorous in comparison with some others. I understand that it is a matter for Scottish ministers to determine any particular case. It is not the intention that the provision seems irrational and illogical. I said that if the offender was behaving himself or herself, was not getting into any bother and had been out in the community for a significant period, it would in certain circumstances be reasonable for that person to leave the country. However, it will not be a catch-all provision. The fact that it has been defined in those terms implies that it would be narrowed a bit.
I turn to the point that Colin Fox made. Everyone on the committee accepts that there is an anomaly and that there will continue to be an anomaly wherever the threshold is, if this is the process that we are using. The point that I was trying to make last week was not to underestimate the significance of the community part of the sentence, even if it were limited and even if it were about signposting. Colin Fox will have to say how he would deal with the anomaly even if he shifted the threshold—if he was going to set a limit at all. There is still something to do in sentences of fewer than 15 days that involves community sentencing.

On Bill Aitken’s points, no one wants to see people disappearing “into the great blue yonder”, as he described it. My understanding is that an offender will not, until his appeal is settled, be liable to be removed or deported. Such people will still be subject to the condition not to leave the UK, but might be detained under the Immigration Act 1971. It would not be a question of people simply disappearing—they would be caught one way or the other.

Amendment 57 agreed to.

Section 24—Release on community licence on Parole Board’s direction

Amendment 58 moved—[Johann Lamont]—and agreed to.
Section 24, as amended, agreed to.

Section 25—Community licences in which Scottish Ministers may specify conditions

Amendment 59 moved—[Johann Lamont]—and agreed to.
Section 25, as amended, agreed to.

Section 26—Release on life licence: conditions

Amendment 60 moved—[Johann Lamont]—and agreed to.
Section 26, as amended, agreed to.

After section 26

Amendment 61 moved—[Johann Lamont]—and agreed to.

Section 27—Release on licence of certain prisoners: supervision

Amendments 62 to 71 moved—[Johann Lamont]—and agreed to.
Section 27, as amended, agreed to.

Amendment 72 moved—[Johann Lamont]—and agreed to.
Section 28 agreed to.

Section 29—Prisoner to comply with licence conditions

Amendment 73 moved—[Johann Lamont]—and agreed to.
Section 29, as amended, agreed to.
Section 30 agreed to.

Section 31—Revocation of licence

The Convener: Amendment 74, in the name of the minister, is grouped with amendments 75 to 79.

Johann Lamont: Amendments 74 to 79 deal with the effects of a revocation of licence and a recall to custody on offenders who are released on compassionate grounds. The Scottish ministers already have the power to release any prisoner on licence at any time if they are satisfied that there are compassionate grounds for doing so. In effect, that happens in cases of offenders who have been diagnosed with terminal illnesses. It happens rarely—the annual numbers are in single figures.

Under the bill’s provisions, a compassionate release licence will include the standard licence conditions and the supervisory licence conditions. Amendments 74 to 79 will clarify the procedures for revoking the licences of those who have been granted compassionate release and the circumstances under which they, like any offenders whose licences are revoked, would be considered to be unlawfully at large.

Amendment 74 will delete subsection (6) from section 31. The provisions on prisoners who are unlawfully at large will be replaced, for the purposes of clarity and ease of reference, with a new section to be inserted after section 31, through amendment 76. It will provide that, once “a prisoner’s licence is revoked”, but when they have not yet been detained in custody, they will be considered to be “unlawfully at large.” Any period that is spent unlawfully at large will not count towards discharge of the sentence.

Amendment 75 will also add a new section after section 31. It will be entitled “Compassionate release: additional ground for revocation of licence”. The new section will apply where Scottish ministers are satisfied that the grounds that led to compassionate release being granted are no longer justified. That is likely to result from a reversal of, or significant improvement in, the medical conditions that led to the compassionate release. The instances of that happening are rare, but we consider it advisable to allow for the possibility. The Scottish ministers will be required to revoke the licence and, if the offender is not already detained, to recall him or her to prison.
As I have said, compassionate release is granted in relation to very specific circumstances. If those circumstances change, it is right that prisoners should revert to serving the sentence that the court imposed and to being subject to the terms of the bill. Amendment 77 addresses that: it will insert a new section after section 31, entitled “Compassionate release: effect of revocation in certain circumstances”. If the offender has been recalled to custody and that happens before expiry of the offender’s sentence in the case of a custody-only prisoner, the custody part of a custody and community sentence or the punishment part of a life sentence, the prisoner’s sentence will continue as if he or she had not received compassionate release.

Section 32 provides that, in cases where Scottish ministers have revoked a prisoner’s licence, they “must ... inform the prisoner of the reasons for the revocation, and subject to” the multiple sentences provisions, “refer the prisoner’s case to the Parole Board.”

Amendment 78 will amend section 32 to include a prisoner whose compassionate release licence has been revoked. Amendment 79 will make a further amendment to section 32. It will require Scottish ministers to refer such a prisoner’s case to the Parole Board when and if required to do so by the provisions in the bill. A prisoner whose compassionate release licence is revoked will be treated as though he or she had not been released. In the case of a custody-only prisoner, there is no role for the Parole Board. In the case of a custody and community sentence prisoner, the case would be referred to the board at the end of the custody part if the offender posed a risk of serious harm. In the case of a life sentence prisoner, the case would be referred to the board at the end of the punishment part.

I move amendment 74.

14:45

Bill Aitken: I assume that agreement to the amendments will not mean that a more administrative way of dealing with temporary compassionate release in the event of, for example, family bereavement or serious family illness cannot be introduced at some point. If it does mean that, the amendments will overcomplicate everything.

Secondly, if a licence for release on compassionate grounds is, for whatever reason, revoked, will the sentence be reduced by the period of that release or will that time be excluded?

Johann Lamont: On your first point, if we had found a simpler administrative way of doing this—

Bill Aitken: It would have been your preferred option.

Johann Lamont: Indeed. I think that, after studying the matter, we have accepted that that would be the case.

As for your second question, I have been advised that the time that the person in question is on compassionate release will count as part of the sentence until the point of recall, as opposed to the point at which they come back to prison. In other words, the period will stop when the person is recalled because it will have been decided that the grounds on which compassionate release were granted are no longer justified.

Amendment 74 agreed to.

Section 31, as amended, agreed to.

After section 31

Amendments 75 to 77 moved—[Johann Lamont]—and agreed to.

Section 32—Referral to Parole Board following revocation of licence

Amendments 78 and 79 moved—[Johann Lamont]—and agreed to.

Section 32, as amended, agreed to.

Section 33—Consideration by Parole Board

Amendment 37 moved—[Johann Lamont]—and agreed to.

The Convener: Amendment 80, in the name of the minister, is in a group on its own.

Johann Lamont: Colin Fox will be glad to know that amendment 80 is another example of our willingness to listen and respond to helpful comments from the committee and other interests that will be most directly affected by the measures. We might not respond to every single comment, but we try to please where possible.

The Sentencing Commission’s report on early release, which was published in January 2006, recommended that separate bodies should be responsible for recall and re-release decisions. At the moment, Scottish ministers and the Parole Board can order an offender’s recall. The purpose of the commission’s recommendation was to remove any potential for accusations of bias; the bill seeks to implement that by separating those functions. As a result, the decision to recall, which is made by Scottish ministers alone, will be reviewed by the Parole Board.

At stage 1, the committee and the Parole Board for Scotland expressed concern that applying the public interest test to recall to custody and the serious harm test to re-release would create
difficulties in practice. For example, if an offender had been recalled to custody because it was in the public interest to do so, the Parole Board might have no option but to release the prisoner straight away because he or she did not pose a risk of serious harm. It was argued that such a situation would lead to a revolving door for recall cases, that it would place an unnecessary burden on resources and that it would defeat the key purposes of the arrangements.

Under the custody and community sentence structure, offenders will have the opportunity to use their time on licence in the community to address their offending behaviour and to turn their lives around. However, during the community part of the sentence, the offender can, if necessary, be appropriately restricted and supervised to ease their reintegration into the community and to protect the public. Offenders must be very clear that their liberty is conditional and that they cannot flout the conditions of their licences. That is why the broad public interest test will be applied to consideration of recall to custody.

Having listened to the committee and the Parole Board, we agree that the test for re-release should be the same when such cases are considered. Amendment 80 seeks to replace the serious harm test for re-release with the public interest test to allow the Parole Board to apply the same criteria in reviewing the circumstances of the recall and the case for re-release. The Parole Board has welcomed this change, and I trust that the committee will do the same.

I move amendment 80.

Bill Aitken: The minister is to be congratulated on recognising that the issue was a recipe for considerable difficulty. If the bill had been passed without amendment 80, there would have been all sorts of difficulties in the year ahead because of the dual and, in some respects, inconsistent definitions. If we are going to go down the route that was decided by the committee last week—Parliament has already made a determination on that—the bill will be able to work effectively only with the inclusion of amendment 80. Otherwise, it will be a recipe for chaos.

Johann Lamont: To say that “it will be a recipe for chaos” is to overstate the case slightly. Nevertheless, we recognised that for clarity of understanding for all involved, if someone had been recalled on one ground, the same test should apply. The underlying message is that certain responsibilities go with the community part of a sentence and that there are consequences of breaches. Although there has to be flexibility, there is quite an important contract between the individual and the community in relation to their commitment to participate and to pay heed to the conditions on which they were released.

Amendment 80 agreed to.
Amendment 38 moved—[Johann Lamont]—and agreed to.
Section 33, as amended, agreed to.

After section 33
Amendments 39 to 41 moved—[Johann Lamont]—and agreed to.

Section 34—Effect of revocation
Amendment 42 moved—[Johann Lamont]—and agreed to.
Section 35 agreed to.
The Convener: That ends today’s consideration of the bill.

Colin Fox: For the second week running, Bill Aitken’s amendment has not been considered.

The Convener: I am not sure what the query is.

Bill Aitken: Bearing in mind that only a few amendments remain, I would have no objection to the remaining amendments being considered today, if that is in order.

The Convener: The procedures for today’s meeting have been published. In addition, there may be further amendments lodged. I thank members for attending, and the minister for her co-operation.

14:53
Meeting suspended.
Custodial Sentences and Weapons (Scotland) Bill

4th Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 43 to 46  Section 1
Schedule 1  Sections 2 to 42
Sections 47 to 49  Schedule 2
Section 50  Schedule 3
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 36

Bill Aitken

53 In section 36, page 15, line 35, leave out from beginning to end of line 3 on page 16, and insert
<during the period—
(a) commencing on the day after the prisoner has served three-quarters of the
prisoner’s sentence, and
(b) ending on the day falling 14 days before the expiry of the custody part.>

Section 49

Cathy Jamieson

84 In section 49, page 28, line 37, at end insert—
<(3) Schedule (Transitory amendments of the Prisoners and Criminal Proceedings
(Scotland) Act 1993) (which contains certain transitory amendments of the Prisoners and
Criminal Proceedings (Scotland) Act 1993) has effect.>

Schedule 2

Cathy Jamieson

85 In schedule 2, page 33, line 17, leave out from <, and> to end of line 19

Cathy Jamieson

86 In schedule 2, page 33, line 19, at end insert—
<( ) In subsection (3)—
(a) for “specify” substitute “include”, and
(b) for “specified” substitute “included”>
Section 50

Colin Fox

83 In section 50, page 29, line 3, at beginning insert <Subject to subsection (2A),>.

Colin Fox

82 In section 50, page 29, line 4, at end insert—

<(2A) An order in respect of any provision of Part 2 may not be made until the Scottish Ministers have secured publication of a report, to be carried out by a person not otherwise accountable to them, on the cost effectiveness of that Part in terms of its likely effect on—

(a) levels of offending and re-offending, and
(b) the size of the prison population.

(2B) A report under subsection (2A) must be published and laid before the Scottish Parliament within 12 months of the passing of the Bill for this Act.>.

After schedule 3

Cathy Jamieson

87 After schedule 3 insert—

<SCHEDULE
(introduced by section 49(3))

TRANSITORY AMENDMENTS OF THE PRISONERS AND CRIMINAL PROCEEDINGS (SCOTLAND) ACT 1993

1 Until their repeal by this Act, sections 1 and 9 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) have effect as follows.

2 In section 1 (release of short-term and long-term prisoners), in subsection (3), for paragraphs (a) and (b) substitute “shall,”.

3 In section 9 (persons liable to removal from the United Kingdom), subsection (1) is repealed.>
Custodial Sentences and Weapons (Scotland) Bill

4th Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted.

**Groupings of amendments**

**Curfew Licenses**
53

**Transitory arrangements**
84, 87

**Minor and technical amendments**
85, 86

**Commencement of Part 2**
83, 82
Present:

Jackie Baillie
Mr David Davidson (Convener)
Mr Michael Matheson
Jeremy Purvis

Bill Butler
Colin Fox
Maureen Macmillan

Also present: Bill Aitken, MSP.

Custodial Sentences and Weapons (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 4).

The following amendments were agreed to (without division): 84, 85, 86 and 87.

The following amendments were disagreed to by division—

53 (For 1, Against 6, Abstentions 0)
83 (For 1, Against 6, Abstentions 0)
82 (For 1, Against 6, Abstentions 0)

Sections 49 and schedule 2 were agreed to as amended.

Sections 36, 37, 38, 39, 40, 41, 42, 47, 48 and 50, schedule 3 and the long title were agreed to without amendment.

The Committee ended consideration of the Bill at stage 2.
Custodial Sentences and Weapons (Scotland) Bill: Stage 2

14:09

The Convener: Item 3 is our final day at stage 2 of the Custodial Sentences and Weapons (Scotland) Bill. We will consider sections 36 to 42, sections 47 to 50 and schedules 2 and 3. I gather that the minister wishes to change teams of officials at this point. In the meantime, I remind committee members to check that they have before them the marshalled list, the groupings and the summary description of the Executive amendments.

I welcome the minister’s team for this item.

Section 36—Curfew licences

The Convener: Amendment 53, in the name of Bill Aitken, is in a group on its own.

Bill Aitken (Glasgow) (Con): There sometimes seems to be a view that judges and sheriffs jail people on a whim. They do not: they consider matters fully. The man whose case I mentioned was sentenced to 18 months and should have served 18 months—or nine months, bearing in mind the present regulations. I have real concerns about the message that has been sent out. It could with some merit be argued that the individual in question did not present a physical danger to society. Nevertheless, what sort of message is sent out when a man who commits fraud involving the taking of a substantial amount of money from a women’s charity serves only some 18 weeks in custody? We cannot afford to send out such a message if the Scottish judicial system, in particular the sentencing system, is to retain some credibility.

There sometimes seems to be a view that judges and sheriffs jail people on a whim. They do not: they consider matters fully. The man whose case I mentioned was sentenced to 18 months and should have served 18 months—or nine months, bearing in mind the present regulations. I have real concerns about the message that has been sent out. It could with some merit be argued that the individual in question did not present a physical danger to society. Nevertheless, what sort of message is sent out when a man who commits fraud involving the taking of a substantial amount of money from a women’s charity serves only some 18 weeks in custody? We cannot afford to send out such a message if the Scottish judicial system, in particular the sentencing system, is to retain some credibility.

Amendment 53 will increase the limit for the period from 25 per cent to 75 per cent of the prisoner’s sentence.

I move amendment 53.
Johann Lamont: I will deal first with amendment 53 as it stands, rather than what Bill Aitken claims it to be, which is entirely different. Perhaps we might say something separately about the home detention curfew at the end. For the record, it is appropriate to comment first on the amendment itself, which is—of course—unworkable. I have stated clearly throughout the bill’s progress that no new curfew scheme will be introduced until the new measures are fully implemented and are working effectively—we recognised the issues that the committee raised in this regard. A curfew scheme would be introduced through Parliament by an order that would be subject to the affirmative procedure.

In considering amendment 53, we must imagine that a curfew scheme has been introduced. Section 36(2) will allow ministers to release an eligible prisoner on curfew licence before the expiry of the custody part of the prisoner’s sentence. An eligible prisoner can have the custody part set at no more than 75 per cent of the sentence. Amendment 53 states that ministers may release a prisoner only during the period that starts when “three-quarters of the prisoner’s sentence” has been served, and ending two weeks “before the expiry of the custody part.”

Considering how the bill’s provisions stand, that would mean that the curfew licence period could not start until after the prisoner had been released on licence anyway—if, that is, ministers could decide, taking amendment 53 into account, whether they could apply a curfew condition in the first place.

14:15

Bill Aitken has flagged up the matter before. He identified topical circumstances, but under the new scheme, somebody who is sentenced to 18 months will be in custody for a minimum of nine months and will then be out under supervision for a further nine months. That is different from the circumstances that Bill Aitken described. As home detention curfew is not being introduced at this stage, it would not be possible for the offender to be out in four and a half months.

I emphasise that when we consider whether we wish home detention curfew to apply under the sentence management regime, a series of tests will apply; it will not be done willy-nilly. Equally, offenders will not be released into the community without constraints having been placed on them. By use of the phrase, “home detention curfew”, we know that tagging is involved.

The comparison that Bill Aitken draws is inappropriate. We have made it clear that we might consider home detention curfews in the future for people who are sentenced under the new sentence management regime, but that would be subject to further approval by Parliament. In the short term, we are keen to give back the clarity that Bill Aitken hinted at in relation to the experience of the individual to whom he referred. I urge the committee not to support amendment 53.

Bill Aitken: Although I hear what the minister says, I am not reassured. There is an argument—I am not alone in my view—that sometimes the Executive tries, frequently for the best of reasons, to do too much too quickly. Several initiatives that have been introduced have been claimed as being successful, but we need to look over a much longer period with the benefit of experience to see whether anything in life is a success or a failure.

It would be wrong to condemn the tagging experiment for being a failure after the comparatively short period in which it has been in operation, but it would be equally wrong to claim that it is an unqualified success. It is clear that it is not. I know that the minister will concede that because it is a sensible proposition.

I have sought to be consistent in my arguments throughout the committee’s consideration of the bill. What concerns me now is that we should not release people early unless we are satisfied beyond reasonable doubt that they are not likely to reoffend. We must send out a message that certain offences will inevitably attract custodial sentences. It is the old argument about the definition of “minor offence” and “short sentence”. Minor offences such as breach of the peace, vandalism and theft can have a traumatic effect on the victims. The message that the unamended bill would send out is that such offences are not considered serious, which will not go down terribly well with the population of Scotland. I will press amendment 53.

The Convener: The question is, that amendment 53 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Davidson, Mr David (North East Scotland) (Con)

Against
Bailie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Fox, Colin (Lothians) (SSP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 53 disagreed to.
Section 36 agreed to.
Sections 37 to 42, 47 and 48 agreed to.

Section 49—Minor and consequential amendments and repeals

The Convener: Amendment 84, in the name of the minister, is grouped with amendment 87.

Johann Lamont: Amendments 84 and 87 seek to introduce a transitory provision that will alter the position regarding release decisions for long-term prisoners—those who are sentenced to four years or more—who are dealt with under the Prisoners and Criminal Proceedings (Scotland) Act 1993 and who are liable to removal from the United Kingdom on release.

In the past, amendments to the 1993 act have all but removed Scottish ministers’ involvement in decisions about the release of long-term prisoners. With the exception of those who are granted release on compassionate grounds, the only category of prisoner over whose release Scottish ministers have any direct control—to decide whether to grant parole or not—is long-term prisoners who are subject to removal from the UK. Although it is not a legislative requirement, as a matter of practice, officials in the Justice Department, acting on behalf of Scottish ministers, seek the Parole Board for Scotland’s advice in such cases before ministers decide whether to authorise release once offenders have served half their sentences. Such cases average around 12 per year.

Once they are released under the terms of the 1993 act, those offenders become the responsibility of the immigration and nationality directorate of the Home Office. Immigration policy is, of course, a reserved matter. When the sentence is complete, the offender would be detained under Home Office rules. It is a matter for that authority to deal with the offender as appropriate, but the licence remains extant. The measures in the bill will remove any distinction between that category of prisoner and other long-term prisoners. All prisoners who are assessed as posing a high risk of serious harm will be referred to the Parole Board for it to consider whether they should be detained beyond the court-imposed custody part.

Amendments 84 and 87 also reflect a recent House of Lords ruling in an English case relating to prisoners who are liable to be deported. That ruling found that the equivalent provisions in English legislation are incompatible with the European convention on human rights in that they deprive long-term prisoners who are liable to be deported of the right to have their continued detention considered by an independent body—which would be the Parole Board. Although the ruling applies only to England and Wales, should a similar challenge be brought in Scotland the outcome would be likely to be the same. The Custodial Sentences and Weapons (Scotland) Bill offers the opportunity to regularise the current position, and that is what amendments 84 and 87 seek to do.

I move amendment 84.

Amendment 84 agreed to.

Section 49, as amended, agreed to.

Schedule 2

MINOR AND CONSEQUENTIAL AMENDMENTS

The Convener: Amendment 85, in the name of the minister, is grouped with amendment 86.

Johann Lamont: Amendments 85 and 86 are minor technical amendments. Amendment 85 will remove paragraph 2(2)(b) of schedule 2 to take account of the fact that section 40(1) of the Criminal Justice (Scotland) Act 2003 has been amended with effect from 1 December 2006. Section 40(1) of the 2003 act prevented the Parole Board from imposing electronic monitoring—tagging—as a licence condition for children under the age of 16. That restriction was removed on 1 December 2006 by section 21(13) of the Management of Offenders etc (Scotland) Act 2005, after the bill was introduced; therefore, the amendment that the bill would make is no longer required.

Amendment 86 will amend section 40(3) of the Criminal Justice (Scotland) Act 2003 by substituting for the words “specify” and “specified” the words “include” and “included” in order to ensure clarity and consistency in its language. The amendment reflects the language that is used in the bill.

I move amendment 85.

Amendment 85 agreed to.

Amendment 86 moved—[Johann Lamont]—and agreed to.

Schedule 2, as amended, agreed to.

Schedule 3 agreed to.

Section 50—Short title and commencement

The Convener: Amendment 83, in the name of Colin Fox, is grouped with amendment 82.

Colin Fox (Lothians) (SSP): Amendments 83 and 82 seek to amend section 50 in relation to part 2 of the bill, on the confinement and release of prisoners. The amendments seek to ensure that that part of the bill is implemented only after ministers have presented to Parliament a report compiled by independent experts that examines
the cost effectiveness of the measures that are proposed to reduce reoffending and the impact of the likely increase in the prison population. Amendment 82 specifies that that report must be made available to Parliament within 12 months of the passing of the bill.

Why do we need to amend the bill in that way? The minister knows, from the stage 1 debate and from a great deal of the evidence that the committee took, that many people within and outside the Parliament have serious concerns that the bill will have the effect of requiring more offenders to serve longer sentences in custody. At stage 2, the minister has sought to play down the likely consequences of having offenders serve 75 per cent rather than 50 per cent of their sentences behind bars—as I have described it before. Quoting the Sheriffs Association in particular, she says that the provisions on that will seldom be used. Nevertheless, as the minister knows, the committee has taken evidence from a procession of witnesses who believe that sentencers will use the new powers widely; which will result in many more people going to jail for longer.

For me, any bill that could add 1,100 people to our prisons is asking for trouble. As HM prisons inspectorate for Scotland highlights to the Executive every year, with graver and graver warnings, our prisons are already bursting at the seams. In that regard, I note that, in the past few days, we have heard that Low Moss prison, near Glasgow, is to be taken out of capacity.

The second issue that the committee has addressed in its consideration is the cost effectiveness of the bill. The committee has been told that if there are to be 1,100 extra prisoners, we might need to open two new prisons, costing upwards of £100 million each. On top of that, we would need additional prison officers, which would cost another £6 million a year, and additional criminal justice social workers, which would cost another £7.25 million a year—assuming we can get them; as everyone knows, they are difficult to find and retain. Further, between £11 million and £12.5 million would be needed for extra training in the new risk assessment techniques, methods and programmes. Also, according to Bill Whyte, of the Association of Directors of Social Work, the social work system would need another £40 million to cope with the demands that would be placed on it by the bill. The total cost, therefore, would be around £250 million. I accept that the financial memorandum and other sources do not help us much as the potential costs vary widely, but the figure that I mention is, at least, a potential consequence. We need to know whether that kind of money is involved and whether the goals relating to improving public safety and public confidence in the criminal justice system could be achieved more effectively by other routes, such as

improving crime prevention measures, increasing community policing and introducing far greater support for offenders in the community and alternatives to custody. If such initiatives were properly financed and supported, the Executive would be more likely to succeed in its aims than it would be if it spent a further £250 million on a “lock them up for longer” strategy.

As the minister knows, I believe that there is compelling evidence that, as the experts suggest, we should be taking a more holistic approach to the problem. We need to examine such issues as housing, education, drug and alcohol dependency and violence reduction programmes. That approach is more likely to succeed than a dead-end strategy that locks more people up for longer periods. That gets us nowhere and there is less and less professional backing for it across the criminal justice system.

Amendment 83 presents an approach that, I believe, is sensible, reasonable and responsible. As the sums of money that are involved are significant, the amendment does not hold up the passage of the bill but seeks to ensure that the provisions are fully examined and are compared to other routes to the same end before the decision on which approach to take is made.

I move amendment 83.

The Convener: You say that there are not enough criminal justice social workers in the system, which most people would agree with. Under your model, if offenders were not being put into prison, who would provide them with the support that you would like them to have in the community?

Colin Fox: The part of the bill that talks about community sentences is welcome and progressive. For my money, it is a step in the right direction. It deals with the additional resources that the necessary level of thorough supervision would require. The figures that I quoted from the ADSW flag up the extra resources that would be required in order to achieve a 10 per cent increase in the number of social workers.

14:30

Johann Lamont: I say to Colin Fox that nothing is simple in the process. It is not right to imply that anyone round the committee table or anywhere else simply wants to lock people up. We are wrestling with difficult issues and we are balancing many interests and pressures in the system. It is not fair to imply that we are washing our hands and saying that just locking people up will sort the problem. All the work that has been done on the issue recently has recognised the significance of a lot of work with offenders, communities and victims.
As for the proposed report, we have been here before. It has been suggested that bills should say that a report must be produced at a randomly chosen point before some provisions can be enacted or that a sunset clause should prevent provisions from being enacted. The practical problem that we have shown with that is that we in the Parliament have ended up insisting on having a report at not necessarily the most appropriate moment. The best example of that is from when the Executive was obliged to lay before Parliament a report on the right to buy before we could take into account the new measures to limit the right to buy. The idea of having a report is quite attractive, but it arises naturally from the parliamentary process and need not be written into legislation, as any committee can hold an inquiry at any stage. We must be careful of the suggestion.

The bill deals with sentence management, not sentences. Colin Fox says that the bill will increase the length of sentences. The bill deals with what happens once a court has decided what the sentence should be and indicated how long the period in custody should be. The bill will kick in once the court decides that a custodial sentence is appropriate after taking everything into account. There are now more non-custodial sentences—community disposals—than custodial sentences.

The bill deals with how a custodial sentence is managed once it has been imposed. That is when the lack of transparency that all committee members and Bill Aitken most immediately have highlighted applies—when people have thought that a sentence was one thing but, because of unconditional and automatic early release, the offender has been released halfway through their sentence without support or supervision and, I presume, without any work having been done to prevent reoffending.

As I have said, the bill has two purposes. It will manage the custody part and increase transparency, but it will also recognise the legitimacy of the community part. To suggest that we simply want to lock people up is to misrepresent the bill. The bill acknowledges the legitimate interests of victims and others in knowing, once a court has determined a custodial sentence, what the custody part will be.

As I have said, we will end automatic and unconditional early release and put a structure into sentence management that will provide for punishment and rehabilitation. As I have said, we are not just sticking people in prison but giving offenders the chance to turn their lives round. For some people, prison can be part of that—the committee heard evidence about that. Stopping offending is the best way to protect the public. We intend the criminal justice reforms that are in hand and the measures in the bill to make significant inroads into tackling reoffending.

Amendment 82 would require the Scottish ministers to commission an independent report before commencing the provisions on custodial sentences. That report would consider the custodial sentence measures in isolation and would speculate about their impact on the levels of offending and reoffending and on the size of the prison population. The amendment would require the Scottish ministers to publish the report and lay it before Parliament within 12 months of the bill becoming an act.

However, amendment 82 does not tell us what the Parliament should do with such a report. What would such a narrowly prescribed report tell us? It could not reveal the benefits of the structure that was established through the Management of Offenders etc (Scotland) Act 2005 or the other recent criminal justice system reforms. It could not reflect that the measures in the bill will build on those strong existing structures and, most important, it would have to speculate on the bill’s effect, as the Scottish ministers could not commence part 2 until the report had been produced.

Indeed, the report would probably not even achieve what current monitoring arrangements tell us. The Scottish Prison Service board agrees its business plan with ministers. The plan for 2006 to 2008 included for the first time an indication of the prisoner population that might have to be accommodated, to help planning. Its use in that way shows the importance that ministers and the SPS place on considering the level of population and planning to provide for it.

The increases that have been reported on recently have been mainly in the remand population, in the number of prisoners on short sentences and in the number of young offenders. That is completely in line with what the SPS has been saying.

The SPS keeps a close eye on the prison population. The population level is one half of the story, and the Executive has shared full information with all relevant parliamentary committees about the relationship between population levels and capacity. The capacity levels that the SPS has indicated take account of the current plans for development and redevelopment of the SPS estate, including Low Moss. As the financial memorandum makes clear, Scottish ministers have accepted fully that adequate and proper resources have to be in place before the new system commences. The committee is aware that a high-level group involving all the stakeholders—the very people who will take the
provisions and make them work—is working on the detailed implementation plan.

Throughout the process, we have talked about being proportionate. A proportionate approach to assessment in custody will result in the right response being taken for different types of offenders. A proportionate approach to setting conditions will result in the right assistance being provided to offenders once they begin the community parts of their sentences. A proportionate approach to supervision will result in the right levels of support being provided where it is needed most. We will target resources on that rather than on the production of additional and unnecessary reports.

Once the new provisions are in place, it is only right that we evaluate them. That will be part of the process. In addition to the monitoring plans that I have mentioned already, statistics that are produced by the courts, the Prison Service and the local authority criminal justice social work departments will reflect developments once the new system is up and running.

As we know, amendment 83 is a consequential amendment.

Today is not the first time that I have spoken about the planning group that is working on the detailed implementation strategy. It is only right that the strategy be developed by the people who will need to take it and make it work. We aim to implement the measures as soon as is practicable, but we are talking about big changes. For such root-and-branch reform, it is essential that we take the time to ensure that the preparation is right and that the proper infrastructure is in place. We should not be driven by the artificial time constraint that Colin Fox seeks to apply.

I do not dismiss the arguments about striking the right balance between community and custodial sentences and between punishment, rehabilitation and the rights of victims, but I do not think that the bill contains anything that is contrary to our position, which is about having transparency in sentences and clarity in sentence management and recognising that, as well as tackling reoffending, we must ensure that communities and individuals understand what a sentence means when it has been decided. We have taken big-picture measures to tackle reoffending; we cannot pretend that people are not offending simply because they are not being sent to prison. There is the broader strategy around working in communities on employability, drug rehabilitation and all the issues that we are highly versed in.

I understand the argument behind amendment 82, but I do not agree with the practicalities of it. Some of the concerns that drive Colin Fox’s argument that a report needs to be produced are unfounded. The proposals in the bill address the range of issues that members of the committee and others have raised in the past. I hope that if Colin Fox is not reassured, he at least recognises that our position is legitimate. I urge the committee to reject amendments 82 and 83.

Colin Fox: I am happy to give credit to the Executive for the present state of affairs, whereby for the first time—I think I am right in saying—that are more non-custodial disposals than custodial disposals. The Executive deserves credit for that and I am happy to give it because it is a step in the right direction.

The minister says that nothing is simple and that there are different pressures in the system, but I hope that she would accept that although the number of non-custodial disposals has increased such that they now make up a majority of disposals, it is right to highlight that we are locking up record numbers of prisoners in Scotland. Given that that is a record that we break year after year, it is quite legitimate for those of us who have concerns about the incessant expansion of the prison population to raise them in the context of the bill, which we are gravely concerned will add another 20 per cent to the prison population.

The minister has repeated her point of view—which I entirely respect—that the bill is about sentence management, but she must accept that, over many months, the committee has heard from many experts in the field who have sat where she is sitting and who have told us that in their experience, in similar circumstances, such powers have been used to extend the length of sentences that are handed out to offenders in court.

That background allows us to make a calculation or a guesstimate—call it what you will—that there will be 1,100 extra prisoners. The minister has again not taken the opportunity to dispute that figure. Neither has she taken the opportunity to question the costs or figures that have been put to the committee and which I have again raised today. That is significant, because it seems to me that the minister is conceding those points.

It is legitimate to try to ensure, as amendment 82 tries to do, that a report is made by independent experts. It would contain recommendations and comparisons with ways to reduce reoffending in the prison population other than those that are suggested in the bill. The minister herself said that we would have to examine the implementation of the bill’s proposals once they have been implemented. That is precisely what amendment 82 is driving at. It is a question of when we take the decision to implement the provisions in the bill, which contains big, root-and-branch changes, as she suggested.
The minister also mentioned a detailed consideration of strategy. That, in essence, is what amendment 82 suggests but, rather than the Executive doing it, we would give the opportunity for independent experts to do it based on their experience and the evidence that they have already given to the committee. That is a reasonable and legitimate approach.

The minister and I share the same wish to reduce reoffending rates and the overall prison population. As I listened to the minister’s reply, it struck me that a big part of the bill puts the onus on offenders not to reoffend. That, of course, is legitimate, but there is not enough in the bill that puts the onus on the Scottish Executive to help through the provision of housing, drug rehabilitation and violence reduction programmes. The experts have said that those things work, but they are singularly lacking from the bill. Again and again, the emphasis is put on offenders to turn round their own lives without enough support from the Executive. That is part of what the report that amendment 82 suggests would examine. I will press amendment 83.

The Convener: The question is, that amendment 83 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fox, Colin (Lothians) (SSP)

Against
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 83 disagreed to.

Amendment 82 moved—[Colin Fox].

The Convener: The question is, that amendment 82 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fox, Colin (Lothians) (SSP)

Against
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Matheson, Michael (Central Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 82 disagreed to.

After schedule 3

Amendment 87 moved—[Johann Lamont]—and agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister and the officials who supported her for attending.

We will have a short break before we carry on.

14:43

Meeting suspended.
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Custodial Sentences and Weapons (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to restate and amend the law relating to the confinement and release of prisoners; to make provision relating to the control of weapons; and for connected purposes.

PART 1

THE PAROLE BOARD FOR SCOTLAND

1 The Parole Board for Scotland

(1) There shall continue to be a body to be known as the Parole Board for Scotland (the “Parole Board”).

(2) The Parole Board’s principal function is to give directions to the Scottish Ministers in relation to any matter referred to it under Part 2 relating to the release of prisoners.

(3) The Parole Board has such other functions as are conferred on it by virtue of this Act and any other enactment.

(4) In carrying out any of its functions in relation to a person in respect of whom a risk management plan has been prepared under section 6(1) of the Criminal Justice (Scotland) Act 2003 (asp 7), the Parole Board must have regard to the plan.

(5) Schedule 1 makes further provision about the Parole Board.

2 Parole Board rules

(1) The Scottish Ministers may make rules about the practice and procedure of the Parole Board.

(2) Rules under subsection (1) may, in particular, include provision for or in connection with—

(a) authorising cases referred to the Parole Board by virtue of this Act to be dealt with, in whole or in part, by a specified number of members of the Board in accordance with such procedure as may be specified in the rules,

(b) enabling the Parole Board to require any person, other than a prisoner whose case the Board is dealing with, to—
(i) attend a hearing before the Board,
(ii) give evidence to it, or
(iii) produce documents,
(c) requiring cases referred to the Board, or matters specified in the rules that are preliminary or incidental to the determination of cases, to be determined, or other actions so specified to be taken, within periods so specified,
(d) specifying matters which may be taken into account by the Parole Board in dealing with cases.

(3) Rules under subsection (1) which include provision such as is mentioned in subsection (2)(b) may also include provision applying subsections (4) and (5) of section 210 of the Local Government (Scotland) Act 1973 (c.65) with such modifications as may be set out in the rules but subject to the limitation that any penalty under subsection (5) of that section as so applied must be restricted to a fine not exceeding level 2 on the standard scale.

PART 2

CONFINEMENT AND RELEASE OF PRISONERS

CHAPTER 1

INTRODUCTORY

3 Application of Part 2

This Part does not apply in relation to a sentence (other than a life sentence) imposed on a person for an offence committed before the coming into force of the Part.

4 Basic definitions

(1) In this Part—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c.46),
“custody and community prisoner” means a person serving a custody and community sentence,
“custody and community sentence” means a sentence of imprisonment for a term of 15 days or more,
“custody-only prisoner” means a person serving a custody-only sentence,
“custody-only sentence” means a sentence of imprisonment for a term of less than 15 days; and includes a sentence of detention imposed under section 206(2) of the 1995 Act (detention for up to 4 days in summary case),
“custody part” has the meaning given by section 6(2),
“life prisoner” means a person on whom a life sentence is imposed,
“life sentence” means—
(a) a sentence of life imprisonment for an offence for which that sentence is not the sentence fixed by law (a “discretionary life sentence”),
(b) a sentence of life imprisonment for murder or for any other offence for which that sentence is the sentence fixed by law (a “mandatory life sentence”), or

(c) a sentence of imprisonment for an indeterminate period constituted by an order for lifelong restriction under section 210F of the 1995 Act,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“Parole Board” means the Parole Board for Scotland, and

“punishment part” has the meaning given by section 15(2).

(2) The Scottish Ministers may by order amend the definitions of “custody and community sentence” and “custody-only sentence” in subsection (1) by substituting a different term for the term mentioned in those definitions.

(3) References in this Part to release on community licence are references to the release on licence of a custody and community prisoner.

(4) References in this Part to release on life licence are references to the release on licence of a life prisoner.

CHAPTER 2
CONFINEMENT, REVIEW AND RELEASE OF PRISONERS

Custody-only prisoners

5 Release on completion of sentence
As soon as a custody-only prisoner has served the term of imprisonment specified in the prisoner’s sentence the Scottish Ministers must, subject to section 22, release the prisoner unconditionally.

Custody and community prisoners

6 Setting of custody part

(1) This section applies where the court imposes on a person a custody and community sentence.

(1A) After imposing the sentence, the court must make an order specifying the custody part of the sentence.

(2) The custody part is that part of the sentence which represents an appropriate period to satisfy the requirements for retribution and deterrence (ignoring any period of confinement which may be necessary for the protection of the public).

(3) An order specifying a custody part must specify that the custody part is—

(a) one-half of the sentence or

(b) if subsection (3A) applies, such greater proportion of the sentence as the court specifies.

(3A) This subsection applies if, taking into account in particular the matters mentioned in subsection (4), the court considers that it would be appropriate to specify a greater proportion of the sentence as the custody part.
(4) Those matters are—

(a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment or complaint as that offence,

(aa) where the offence was committed when the person was serving a sentence of imprisonment for another offence, that fact, and

(b) any previous conviction of the person.

(6) The court may not make an order specifying a custody part which is greater than three-quarters of the sentence.

(6A) An order specifying a custody part must specify the custody part by reference to a fixed period of time.

(6B) Where, by virtue of subsection (3)(b), the court specifies a custody part of more than one-half of the sentence, the court must state in open court the reason for doing so.

(7) An order specifying a custody part constitutes part of a person’s sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

6A Application of section 6 to persons sentenced to extended sentences

(1) Section 6 applies to a person sentenced to an extended sentence as if any reference to a sentence were a reference to the confinement term of the extended sentence.

(2) In subsection (1), “confinement term” and “extended sentence” have the meanings given by section 210A(2) of the 1995 Act.

6B Power to amend section 6(3)

The Scottish Ministers may by order amend section 6(3)(a) by substituting for the proportion for the time being specified there a different proportion specified in the order.

6C Judge’s report

(1) This section applies where—

(a) a court imposes a custody and community sentence on a person, and

(b) the court is not required by—

(i) section 21(4) of the Criminal Justice (Scotland) Act 2003 (asp 7), or

(ii) section 210H(2) of the Criminal Procedure (Scotland) Act 1995 (c.46),

to prepare a report.

(2) As soon as is reasonably practicable after imposing the sentence, the court must prepare a report in writing—

(a) as to the circumstances of the case, and

(b) containing such other information as the court considers appropriate.

(3) The report must be in such form as is prescribed by Act of Adjournal.

(4) The court must submit the report to the Scottish Ministers.
Joint arrangements between Scottish Ministers and local authorities

(1) The Scottish Ministers and each local authority must jointly establish arrangements for the assessment and management of the risks posed in the local authority’s area by custody and community prisoners.

(2) For the purposes of assisting the Scottish Ministers in making a determination under section 8(1), the Scottish Ministers and the appropriate local authority must during the custody part of a custody and community prisoner’s sentence assess in accordance with arrangements established under subsection (1) whether subsection (3) applies in respect of the prisoner.

(3) This subsection applies if the prisoner would, were the prisoner released on community licence on the expiry of the custody part, be likely to cause serious harm to members of the public.

(4) In this section, “appropriate local authority”, in relation to a custody and community prisoner, means the local authority for the area in which the prisoner—

(a) resided immediately before the imposition of the custody and community sentence, or

(b) intends to reside on release on community licence.

(5) If, by virtue of subsection (4), two or more local authorities are the appropriate local authority in relation to a custody and community prisoner, those authorities may agree that the functions conferred on them by subsection (2) and section 25(3) may be carried out by only one of them.

Review by Scottish Ministers

(1) Before the expiry of the custody part of a custody and community prisoner’s sentence the Scottish Ministers must, subject to section 22, determine whether subsection (2) applies in respect of the prisoner.

(2) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

Consequences of review

(1) This section applies where the Scottish Ministers make a determination under subsection (1) of section 8 in respect of a prisoner.

(2) If the Scottish Ministers determine that subsection (2) of that section does not apply in respect of the prisoner, they must release the prisoner on community licence on the expiry of the custody part of the prisoner’s sentence.

(3) If the Scottish Ministers determine that subsection (2) of that section applies in respect of the prisoner, they must, before the expiry of the custody part of the prisoner’s sentence, refer the prisoner’s case to the Parole Board.

(4) This section is subject to section 22.

Review by Parole Board

(1) Subsection (2) applies where a custody and community prisoner’s case is referred to the Parole Board under section 9(3).
(2) Before the expiry of the custody part of the prisoner’s sentence, the Parole Board must determine whether section 8(2) applies in respect of the prisoner.

**11 Release on community licence following review by Parole Board**

(1) Subsection (2) applies where the Parole Board determines under section 10(2) or 13(3) that section 8(2) does not apply in respect of a prisoner.

(2) If section 22 does not apply the Parole Board must—
   (a) direct the Scottish Ministers to release the prisoner on community licence, and
   (b) specify conditions to be included in the licence.

(3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on community licence.

(4) In the case of a determination under section 10(2) the direction must be implemented on the expiry of the custody part of the prisoner’s sentence.

**12 Determination that section 8(2) applicable: consequences**

(1) This section applies where the Parole Board determines under section 10(2) or 13(3) that section 8(2) applies in respect of a prisoner.

(2) The Parole Board must give the prisoner reasons in writing for its determination.

(3) If on the day of the determination less than 4 months of the prisoner’s sentence remain to be served before the three-quarter point—
   (a) the prisoner must be confined until the three-quarter point, and
   (b) the Parole Board must specify conditions to be included in the prisoner’s community licence.

(4) If on the day of the determination at least 4 months and no more than 2 years of the prisoner’s sentence remain to be served before the three-quarter point, the Parole Board may fix a date falling within the period mentioned in subsection (5) on which it will next consider the prisoner’s case.

(5) That period is the period—
   (a) beginning with the day falling 4 months after the day of the determination, and
   (b) ending with the three-quarter point.

(6) If no date is fixed under subsection (4)—
   (a) the prisoner must be confined until the three-quarter point, and
   (b) the Parole Board must fix a date falling within the period mentioned in subsection (5) on which it must specify conditions to be included in the prisoner’s community licence.

(7) If on the day of the determination more than 2 years of the prisoner’s sentence remain to be served before the three-quarter point, the Parole Board must fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner’s case.

(8) That period is the period—
   (a) beginning with the day falling 4 months after the day of the determination, and
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(b) ending immediately before the second anniversary of the day of the determination.

(8A) In this section, “three-quarter point”, in relation to a prisoner’s custody and community sentence, means, subject to subsection (8B), the day on which the prisoner will have served three-quarters of the prisoner’s sentence.

(8B) If a prisoner is serving two or more custody and community sentences, the “three-quarter point”, in relation to each of those sentences, is deemed to be the later or, as the case may be, latest of the three-quarter points determined under subsection (8A) for each of those sentences.

(9) This section is subject to section 21.

12A Prisoner’s right to request early reconsideration by Parole Board

(1) Subsection (2) applies where the Parole Board has fixed a date under section 12(4) or (7) for considering a prisoner’s case.

(2) On the prisoner’s request, the Board may, if it considers it appropriate to do so, substitute for that date an earlier date when it will next consider the prisoner’s case by fixing that earlier date under section 12(4) or, as the case may be, (7).

(3) Subsection (4) applies where the Parole Board does not fix a date under section 12(4).

(4) On the prisoner’s request, the Board may, if it considers it appropriate to do so, fix a date under section 12(4) when it will next consider the prisoner’s case.

(5) This section is subject to section 21.

12B Referral to Parole Board for the purposes of specifying conditions

(1) This section applies where the Parole Board fixes a date under section 12(6)(b).

(2) The Scottish Ministers must, subject to section 22(4), refer the prisoner’s case to the Parole Board before that date.

(3) On that date, the Parole Board must specify conditions to be included in the prisoner’s community licence.

13 Further referral to Parole Board

(1) This section applies where the Parole Board fixes a date under section 12(4) or (7) for considering a prisoner’s case.

(2) The Scottish Ministers must, subject to section 22, refer the prisoner’s case to the Parole Board before that date.

(3) The Parole Board must determine whether section 8(2) applies in respect of the prisoner.

13A Cases where custody part specified as three-quarters of prisoner’s sentence

(1) This section applies where, by virtue of section 6(3)(b), the court specifies a custody part which is three-quarters of a prisoner’s sentence.

(2) Section 8(1) does not apply.

(3) Before the expiry of the custody part—
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(a) the Scottish Ministers must, subject to section 22(4), refer the prisoner’s case to
the Parole Board, and
(b) the Parole Board must specify conditions to be included in the prisoner’s
community licence.

14 Release after three-quarters of sentence served

(2) As soon as a custody and community prisoner has served three-quarters of the prisoner’s
custody and community sentence, the Scottish Ministers must, subject to section 22,
release the prisoner on community licence.

(4) Subsection (2) does not apply in relation to a prisoner whose licence has been revoked
by virtue of section 31(1) or (4).

15 Setting of punishment part

(1) This section applies where the court imposes on a person a life sentence.

(1A) After imposing the sentence, the court must make an order specifying the punishment
part of the sentence.

(2) The punishment part is that part of the person’s life sentence which, taking into
account—
(a) in the case of a mandatory life sentence, the matters mentioned in subsection (3),
(b) in the case of a discretionary life sentence or an order for lifelong restriction under
section 210F of the 1995 Act, the matters mentioned in subsection (4),
the court considers appropriate to satisfy the requirements for retribution and deterrence
(ignoring any period of confinement which may be necessary for the protection of the
public).

(3) Those matters are—
(a) the seriousness of the offence, or of the offence combined with other offences of
which the person is convicted on the same indictment as that offence,
(b) any previous conviction of the person, and
(c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section
196(1) of the 1995 Act.

(4) Those matters are—
(a) any period of imprisonment which the court considers would have been
appropriate for the offence had the court not imposed a sentence, or made an
order, such as is mentioned in subsection (2)(b) for it, and
(b) the part of that period of imprisonment which, by virtue of section 6, the court
would have specified as the custody part.

(6) An order specifying a punishment part must specify the punishment part in years and
months.

(7) It does not matter that a punishment part so specified may exceed the remainder of the
person’s natural life.
(8) An order specifying a punishment part constitutes part of a person’s sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

16 Referral to Parole Board

Before the expiry of the punishment part of a life prisoner’s sentence, the Scottish Ministers must, subject to section 22, refer the prisoner’s case to the Parole Board.

17 Review by Parole Board

(1) Subsection (2) applies where a life prisoner’s case is referred to the Parole Board under section 16.

(2) Before the expiry of the punishment part of the life prisoner’s sentence, the Parole Board must determine whether subsection (3) applies in respect of the prisoner.

(3) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

18 Release on life licence following review by Parole Board

(1) Subsection (2) applies where the Parole Board determines under section 17(2) or 20(3) that section 17(3) does not apply in respect of a life prisoner.

(2) The Parole Board must—

(a) direct the Scottish Ministers to release the prisoner on life licence, and

(b) specify conditions to be included in the prisoner’s licence.

(3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on life licence.

(4) In the case of a determination under section 17(2) the direction must be implemented on the expiry of the punishment part of the prisoner’s sentence.

19 Determination that section 17(3) applicable: consequences

(1) This section applies where the Parole Board determines under section 17(2) or 20(3) that section 17(3) applies in respect of a life prisoner.

(2) The Parole Board must—

(a) give the prisoner reasons in writing for its determination, and

(b) fix the date on which it will next consider the prisoner’s case.

(3) Subject to section 21, the date fixed under subsection (2)(b) must fall within the period—

(a) beginning with the day falling 4 months after the day of the determination, and

(b) ending immediately before the second anniversary of the day of the determination.

(4) Subsection (5) applies where the Parole Board has fixed a date under subsection (2)(b).

(5) On the prisoner’s request, the Board may, if it considers it appropriate to do so, replace that date by fixing under that subsection an earlier date when it will next consider the prisoner’s case.
20 Further referral to Parole Board

(1) This section applies where the Parole Board fixes a date under section 19(2)(b) for considering a prisoner’s case.

(2) The Scottish Ministers must, subject to section 22, refer the prisoner’s case to the Parole Board before that date.

(3) The Parole Board must determine whether section 17(3) applies in respect of the prisoner.

Referral to Parole Board: postponement

21 Referral to Parole Board: postponement

(1) Subsection (2) applies where—

(a) a prisoner’s case is referred to the Parole Board under this Part (the “referred case”),

(b) after the referral another sentence of imprisonment is imposed on the prisoner (the “new sentence”),

(c) when that sentence is imposed, the Board has not fixed a date for considering the prisoner’s case, and

(d) the prisoner would not be eligible for release in relation to the new sentence on the date which would (apart from this section) have been fixed for considering the referred case.

(2) The Parole Board must—

(a) fix in accordance with subsection (5) a different date for considering the referred case, and

(b) if a further new sentence is imposed on the prisoner in relation to which the prisoner would not be eligible for release on that different date, fix in accordance with that subsection a further different date.

(3) Subsection (4) applies where—

(a) the Parole Board fixes a date for considering the referred case,

(b) before that date, a new sentence is imposed on the prisoner, and

(c) the prisoner would not be eligible for release in relation to the new sentence on that date.

(4) The Parole Board must—

(a) fix in accordance with subsection (5) a different date for considering the referred case, and

(b) if a further new sentence is imposed on the prisoner in relation to which the prisoner would not be eligible for release on that different date, fix in accordance with that subsection a further different date.

(5) A date is fixed in accordance with this subsection if—

(a) it is a date which would have been fixed in relation to the new sentence if that were the only sentence imposed on the prisoner, and
(b) it replaces any date previously fixed for considering the referred case.

Effect of multiple sentences

22 Effect of multiple sentences

(1) This section applies where a person is serving, or liable to serve, two or more sentences of imprisonment (a “multiple sentence prisoner”).

(2) A multiple sentence prisoner must not be released by virtue of this Part until the prisoner has served—

(a) any custody-only sentence,
(b) the custody part of any custody and community sentence, and
(c) the punishment part of any life sentence,

imposed on the prisoner.

(3) Where a multiple sentence prisoner is released on licence by virtue of this Part, the prisoner is released—

(a) if none of the sentences the prisoner is serving is a life sentence, on a single community licence,
(b) if any of those sentences is a life sentence, on a single life licence.

(4) A multiple sentence prisoner’s case must not be referred to the Parole Board under this Part before the date on which the case would have been so referred in relation to the sentence referred to in subsection (5).

(5) That sentence is whichever of any—

(a) custody and community sentence, or
(b) life sentence,

imposed on the prisoner includes the custody part or, as the case may be, punishment part which expires after the expiry of any other custody part or punishment part so imposed.

Compassionate release on licence

23 Compassionate release on licence

(1) Where the Scottish Ministers are satisfied that there are compassionate grounds justifying the release on licence of a prisoner, the Scottish Ministers may release the prisoner on licence.

(2) Before releasing a custody and community prisoner or a life prisoner under subsection (1) the Scottish Ministers must consult the Parole Board.

(3) The Scottish Ministers need not consult the Parole Board if it is impracticable to do so.
CHAPTER 3

COMMUNITY AND LIFE LICENCES

The standard conditions

23A Release on licence: the standard conditions

(1) Where a prisoner is released on licence by virtue of this Part, the prisoner is released subject to the standard conditions.

(2) The standard conditions are—

(a) that the prisoner must be of good behaviour, and

(b) that, subject to subsection (3), the prisoner is prohibited from leaving the United Kingdom.

(3) Paragraph (b) of subsection (2) does not apply if—

(a) the prisoner falls within subsection (4), or

(b) the Scottish Ministers permit, or a person designated by them for the purposes of this section permits, the prisoner to leave the United Kingdom.

(4) The prisoner falls within this subsection if—

(a) the prisoner is liable to deportation under section 3(5) of the Immigration Act 1971 (c.77) and has been notified of a decision to make a deportation order,

(b) the prisoner is liable to deportation under section 3(6) of that Act,

(c) the prisoner has been notified of a decision to refuse the prisoner leave to enter the United Kingdom,

(d) the prisoner is an illegal entrant within the meaning of section 33(1) of that Act,

(e) the prisoner is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c.33).

The supervision conditions

27 Release on licence of certain prisoners: the supervision conditions

(1) This section applies where a prisoner falling within subsection (2) is released on licence by virtue of this Part.

(2) A prisoner falls within this subsection if—

(a) the prisoner is

(i) a life prisoner,

(ii) a custody and community prisoner serving a custody and community sentence of 6 months or more,

(iii) any other custody and community prisoner in respect of whom—

(A) by virtue of section 6(3), the court specifies a custody part which is three-quarters of the prisoner’s sentence, or

(B) the Parole Board determines under section 10(2), that section 8(2) applies,
(iv) a person released on licence by virtue of section 23(1),

(v) a person subject to an extended sentence (as defined in section 210A of the 1995 Act),

(vi) a person subject to the notification requirements in Part 2 of the Sexual Offences Act 2003 (c.42), or

(vii) a child (as defined in section 307(1) of the 1995 Act) subject to a sentence of detention under section 208 of that Act, and

(b) the prisoner does not fall within section 23A(4).

(2A) The prisoner is released subject to the supervision conditions.

(3) The supervision conditions are—

(a) that the prisoner is to be under the supervision of a relevant officer of the local authority specified in the licence,

(aa) that the prisoner is to maintain contact with the relevant officer as the officer directs,

(ab) that the prisoner is to inform the relevant officer of—

(i) any change of address,

(ii) any change in employment, and

(b) that the prisoner is to comply with any other requirements imposed in relation to the supervision by the relevant officer.

(5) In subsection (3) “relevant officer”, in relation to a local authority, means an officer of the authority employed by it in the discharge of its functions under section 27(1) of the Social Work (Scotland) Act 1968 (c.49).

**Community licences**

**Release on community licence on Parole Board’s direction**

(1) This section applies where by virtue of section 11(2)(b), 12(6), 14(3) or 33(4)(b) the Parole Board specifies conditions which are to be included in a prisoner’s community licence.

(2) The Scottish Ministers must include in the prisoner’s community licence—

(a) those conditions,

(b) the standard conditions, and

(c) if section 27(1) applies, the supervision conditions.

(3) On the direction of the Parole Board, the Scottish Ministers may—

(a) vary the conditions mentioned in subsection (2),

(b) cancel conditions (other than the standard conditions and the supervision conditions),

(c) include in the licence further conditions.
25 Community licences in which Scottish Ministers may specify conditions

(1) This section applies where by virtue of section 9(2) or 23(1) the Scottish Ministers release a prisoner on community licence.

(2) The Scottish Ministers—

(a) must include in the prisoner’s community licence—

(i) the standard conditions, and

(ii) if section 27(1) applies, the supervision conditions,

(b) may include in the licence such other conditions as they consider appropriate.

(2A) The Scottish Ministers may—

(a) vary the conditions mentioned in subsection (2),

(b) cancel conditions (other than the standard conditions and the supervision conditions),

(c) include in the licence such further conditions as they consider appropriate.

(3) Before exercising any of the powers conferred by subsection (2), the Scottish Ministers must, in pursuance of arrangements established under section 7(1), co-operate with the appropriate local authority.

(4) In subsection (3) “appropriate local authority” has the same meaning as in section 7.

26 Release on life licence: conditions

(1) This section applies where by virtue of section 18(2)(b) or 33(4)(b) the Parole Board specifies conditions which are to be included in a prisoner’s life licence.

(2) The Scottish Ministers must include in the prisoner’s life licence—

(a) those conditions,

(b) the standard conditions, and

(c) if section 27(1) applies, the supervision conditions.

(3) On the direction of the Parole Board, the Scottish Ministers may—

(a) vary the conditions mentioned in subsection (2),

(b) cancel conditions,

(c) include in the licence further conditions.

26A Compassionate release on life licence: conditions

(1) This section applies where by virtue of section 23(1) the Scottish Ministers release a prisoner on life licence.

(2) The Scottish Ministers must include in the licence—

(a) the standard conditions,

(b) the supervision conditions, and

(c) such other conditions as they consider appropriate.
(3) The Scottish Ministers may—
   (a) vary or cancel the conditions mentioned in subsection (2),
   (b) include further conditions in the licence.

**Duration of licence**

28 **Period during which licence in force**

(1) Where a custody-only prisoner is released on licence by virtue of section 23(1), the licence remains in force until the expiry of the prisoner’s sentence.

(2) Where a custody and community prisoner is released on community licence by virtue of section 9(2), 11(2)(a), 14(2), 23(1) or, as the case may be 33(4)(a), the licence remains in force until the expiry of the prisoner’s sentence.

(3) Where a life prisoner is released on life licence by virtue of section 18(2)(a), 23(1) or, as the case may be 33(4)(a), the licence remains in force until the prisoner dies.

29 **Prisoner to comply with licence conditions**

Where a prisoner is released on licence by virtue of this Part, the prisoner must, while the licence is in force, comply with the conditions included in the licence.

30 **Suspension of licence conditions while detained**

(1) Subsection (2) applies where—
   (a) the Scottish Ministers release a prisoner on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a), and
   (b) while the licence is in force the prisoner continues to be, or is, detained in prison by virtue of this Part, any other enactment or any rule of law.

(2) Any condition in the licence other than a condition mentioned in subsection (3) is suspended for the relevant period.

(3) Those conditions are any conditions (however expressed) requiring the prisoner—
   (a) to be of good behaviour and to keep the peace,
   (b) to refrain from contacting a person, or class of person, specified in the licence (or to refrain from doing so without the approval of a person specified in the licence).

(4) The relevant period is—
   (a) the period during which the prisoner remains detained in prison, and
   (b) the licence remains in force.

(5) The Scottish Ministers may by order amend subsection (3) by amending conditions or adding or removing conditions.
Revocation of licence

31 (1) If—
   (a) a prisoner is released on licence by virtue of this Part,
   (b) the prisoner is not detained as mentioned in section 30(1)(b), and
   (c) subsections (2) and (3) apply,
the Scottish Ministers must revoke the licence and recall the prisoner to prison.

(2) This subsection applies if—
   (a) the prisoner breaches a licence condition, or
   (b) the Scottish Ministers consider that the prisoner is likely to breach a licence condition.

(3) This subsection applies if the Scottish Ministers consider that it is in the public interest to revoke the licence and recall the prisoner to prison.

(4) If—
   (a) a prisoner is released on licence by virtue of this Part,
   (b) the prisoner is detained as mentioned in section 30(1)(b), and
   (c) subsections (2) and (5) apply,
the Scottish Ministers must revoke the licence.

(5) This subsection applies if the Scottish Ministers consider that it is in the public interest to revoke the licence.

31A Compassionate release: additional ground for revocation of licence

(1) This section applies if—
   (a) a prisoner is released on licence by virtue of section 23(1), and
   (b) the Scottish Ministers are satisfied that there are no longer compassionate grounds justifying the prisoner’s release on licence by virtue of that section.

(2) The Scottish Ministers must revoke the licence.

(3) If the prisoner is not detained as mentioned in section 30(1)(b), the Scottish Ministers must recall the prisoner to prison.

31B Prisoners unlawfully at large

Where—
   (a) a prisoner’s licence is revoked by virtue of section 31(1) or 31A(2), and
   (b) the prisoner is at large,
the prisoner is unlawfully at large.

31C Compassionate release: effect of revocation in certain circumstances

(1) Subsection (2) applies where—
(a) a prisoner is released on licence by virtue of section 23(1),
(b) the licence is revoked by virtue of section 31(1) or (4) or 31A(2), and
(c) the revocation occurs before the expiry of the relevant period.

(2) This Part applies to the prisoner as if the prisoner had not been released on licence by virtue of section 23(1).

(3) The relevant period is—
(a) in the case of a custody-only prisoner, the prisoner’s sentence,
(b) in the case of a custody and community prisoner, the custody part of the prisoner’s sentence,
(c) in the case of a life prisoner, the punishment part of the prisoner’s sentence.

32 Referral to Parole Board following revocation of licence

(1) Subsection (2) applies where the Scottish Ministers revoke a licence by virtue of section 31(1) or (4) or 31A(2).

(2) The Scottish Ministers must—
(a) inform the prisoner of the reasons for the revocation, and
(b) subject to sections 22 and 31C, refer the prisoner’s case to the Parole Board.

33 Consideration by Parole Board

(1) This section applies where a prisoner’s case is referred to the Parole Board by virtue of section 32(2)(b), 33A(9) or 33B(5).

(2) The Parole Board must determine whether subsection (3) applies in respect of the prisoner.

(3) This subsection applies if it is in the public interest that the prisoner be confined.

(4) If the Parole Board determines that subsection (3) does not apply it must—
(a) direct the Scottish Ministers to release the prisoner on licence, and
(b) specify conditions to be included in the licence.

(5) Where a direction is given under subsection (4)(a) the Scottish Ministers must release the prisoner on community licence or, as the case may be, life licence.

33A Determination that section 33(3) applicable: consequences for custody and community prisoners

(1) This section applies where the Parole Board determines, under subsection (2) of section 33, that subsection (3) of that section applies to a custody and community prisoner.

(2) The Parole Board must give the prisoner reasons in writing for its determination.

(3) If on the day of the determination less than 4 months of the prisoner’s sentence remain to be served, the prisoner must be confined until the expiry of the prisoner’s sentence.
If on the day of the determination at least 4 months and no more than 2 years of the prisoner’s sentence remain to be served, the Parole Board may, subject to section 21, fix a date falling within the period mentioned in subsection (5) on which it will next consider the prisoner’s case.

That period is the period—

(a) beginning with the day falling 4 months after the day of the determination, and

(b) ending on the expiry of the prisoner’s sentence.

If no date is fixed under subsection (4) the prisoner must be confined until the expiry of the prisoner’s sentence.

If on the day of the determination at least 2 years of the prisoner’s sentence remain to be served, the Parole Board must, subject to section 21, fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner’s case.

That period is the period—

(a) beginning with the day falling 4 months after the day of the determination, and

(b) ending immediately before the second anniversary of the day of the determination.

Where a date is fixed under subsection (4) or (7), the Scottish Ministers must refer the case to the Parole Board before that date.

This section applies where the Parole Board determines, under subsection (2) of section 33, that section 33(3) applies to a life prisoner.

The Parole Board must give the prisoner reasons in writing for its determination.

The Parole Board must, subject to section 21, fix a date falling within the period mentioned in subsection (4) on which it will next consider the prisoner’s case.

That period is the period—

(a) beginning with the day falling 4 months after the day of the determination, and

(b) ending immediately before the second anniversary of the day of the determination.

The Scottish Ministers must refer the case to the Parole Board before the date fixed under subsection (3).

Subsection (2) applies where the Parole Board fixes a date under—

(a) section 33A(4),

(b) section 33A(7), or

(c) section 33B(3),

for considering a prisoner’s case.

On the prisoner’s request, the Board may, if it considers it appropriate to do so, substitute for that date an earlier date when it will next consider the prisoner’s case by fixing that earlier date under section 33A(4), 33A(7) or, as the case may be, 33B(3).

Subsection (4) applies where the Parole Board does not fix a date under section 33A(4).
(4) On the prisoner’s request, the Board may, if it considers it appropriate to do so, fix a date under section 33A(4) when it will next consider the prisoner’s case.

**Single licence**

**35 Multiple licences to be replaced by single licence**

(1) This section applies where a prisoner—

(a) is released on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a) as respects any sentence of imprisonment (the “original sentence”), and

(b) while the licence remains in force, another sentence of imprisonment is imposed on the prisoner (the “subsequent sentence”).

(2) Where—

(a) the prisoner is to be released on licence by virtue of this Part as respects the subsequent sentence, and

(b) the licence as respects the original sentence remains in force,

the prisoner must be released on a single licence as respects both the original sentence and the subsequent sentence.

(3) The single licence replaces the licence as respects both the original sentence and the subsequent sentence.

(4) The single licence must include the conditions which were in the licence as respects the original sentence immediately before that licence was replaced.

(5) The single licence remains in force (unless revoked) for the longer of the periods for which the licences as respects—

(a) the original sentence, or

(b) the subsequent sentence,

would (apart from this section and if not revoked) have remained in force.

(6) Where—

(a) the prisoner is to be released unconditionally under this Part as respects the subsequent sentence, and

(b) the licence as respects the original sentence remains in force,

the licence as respects the original sentence continues in force (unless revoked).

**CHAPTER 4**

**CURFEW LICENCES**

**36 Curfew licences**

(1) Subsection (2) applies in relation to a custody and community prisoner who—

(a) is serving a sentence of imprisonment for a term of 3 months or more, and

(b) is of a description specified by the Scottish Ministers by order.

(2) The Scottish Ministers may release the prisoner on licence (a “curfew licence”) before the expiry of the custody part of the prisoner’s sentence.
(3) A curfew licence must include a curfew condition.

(4) The Scottish Ministers may release a prisoner on curfew licence only—
   (a) after the later of—
       (i) the day on which the prisoner has served the greater of one-quarter or four
           weeks of the prisoner’s sentence, or
       (ii) the day falling 135 days before the expiry of the custody part of the
           sentence, and
   (b) before the day falling 14 days before the expiry of the custody part.

(5) In determining whether to release a prisoner on curfew licence, the Scottish Ministers
    must have regard to the need to—
    (a) protect the public at large,
    (b) prevent re-offending by the prisoner, and
    (c) secure the successful re-integration of the prisoner into the community.

(6) The Scottish Ministers may include in a curfew licence such other conditions as they
    consider appropriate.

(7) Where a prisoner is released on curfew licence, the prisoner must, while the licence is in
    force, comply with the conditions specified in the licence.

(8) A curfew licence remains in force until the expiry of the custody part of the prisoner’s
    sentence.

(9) An order under subsection (1)(b) may include provision—
    (a) applying provisions of this Part to curfew licences subject to modifications
        specified in the order,
    (b) amending the periods of time mentioned in subsection (4).

37 Curfew conditions

(1) A curfew condition is a condition which requires the person to whom it relates to remain
    at a place specified in the condition for periods so specified.

(2) A curfew condition may—
    (a) require the person not to be in a place, or class of place, so specified at a time or
        during a period so specified,
    (b) specify different places, or different periods, for different days.

(3) A curfew condition may not specify periods which amount to less than nine hours in any
    one day (excluding the first and last days of the period for which the condition is in
    force).

38 Monitoring of curfew conditions

(1) A person’s compliance with a curfew condition is to be monitored remotely.

(2) Section 245C of the 1995 Act (contractual and other arrangements for, and devices
    which may be used for the purposes of, remote monitoring) applies in relation to the
imposition of, and compliance with, a curfew condition as that section applies in relation to the making of, and compliance with, a restriction of liberty order.

(3) The Scottish Ministers must designate in a curfew licence a person who is to be responsible for the remote monitoring.

(4) The Scottish Ministers may replace the person designated under subsection (3) (or last designated under this subsection) with another person designated with the responsibility for the remote monitoring.

(5) As soon as is practicable after designating a person under subsection (3) or (4), the Scottish Ministers must send the person—

(a) a copy of the curfew condition, and

(b) any other information they consider necessary for the fulfilment of the person’s responsibility.

(6) If a designation is made under subsection (4), the Scottish Ministers must, in so far as it is practicable to do so, notify the person replaced.

CHAPTER 5

GENERAL

39 No release on weekends or public holidays

(1) Where (but for this subsection) a prisoner would fall to be released by virtue of this Part on a day which is a Saturday, Sunday or public holiday, the prisoner must instead be released on the last preceding day which is not a Saturday, Sunday or public holiday.

(2) In subsection (1), “public holiday” means any day on which, in the opinion of the Scottish Ministers, public offices or other facilities likely to be of use to the prisoner in the area in which the prisoner is likely to be following release will be closed.

CHAPTER 6

APPLICATION OF PART 2 TO CERTAIN PERSONS

40 Persons detained under mental health provisions

(1) Where a transfer for treatment direction under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) has been made in respect of a person serving a sentence of imprisonment, this Part applies to that person as if—

(a) the person continues to serve the sentence while detained in hospital, and

(b) the person had not been removed to hospital.

(2) Where a person is conveyed to and detained in a hospital pursuant to a hospital direction under section 59A of the 1995 Act, this Part applies to that person as if, while so detained, the person were serving a sentence of imprisonment imposed at the time the direction was made.

41 Application to young offenders and children

(1) This Part applies in relation to the persons mentioned in subsection (2) as it applies in relation to custody-only prisoners.
(2) Those persons are—
   (a) a person on whom detention is imposed under section 207(2) of the 1995 Act for a period of less than 15 days,
   (b) a person sentenced to be detained under section 208 of that Act for such a period.

(3) This Part applies in relation to the persons mentioned in subsection (4) as it applies in relation to custody and community prisoners.

(4) Those persons are—
   (a) a person on whom detention is imposed under section 207(2) of the 1995 Act for a period of 15 days or more, 
   (b) a person sentenced to be detained under section 208 of that Act for such a period.

(5) This Part applies in relation to the persons mentioned in subsection (6) as it applies in relation to life prisoners.

(6) Those persons are—
   (a) a person sentenced under section 205(2) or (3) of the 1995 Act to be detained without limit of time or for life, 
   (b) a person on whom detention without limit of time or for life is imposed under section 207(2) of that Act, 
   (c) a person sentenced to be detained without limit of time under section 208 of that Act.

(7) In this Part as applied by subsections (1), (3) and (5), references to imprisonment are to be read as references to detention; and cognate expressions are to be construed accordingly.

42 Fine defaulters and persons in contempt of court

(1) This Part applies in relation to the persons mentioned in subsection (2) as it applies in relation to custody-only prisoners.

(2) Those persons are—
   (a) a person serving by virtue of section 219(1) of the 1995 Act a period of imprisonment or, as the case may be, a period of detention in a young offenders institution,
   (b) a person serving a period of imprisonment or, as the case may be, a period of detention in a young offenders institution for contempt of court.

(3) Subsection (1) does not apply in relation to—
   (a) a person on whom the court imposes before the coming into force of this Part—
      (i) a period of imprisonment in default of payment of a fine under paragraph (a) of section 219(1) of the 1995 Act, or
      (ii) imprisonment for failure to pay a fine, or any part or instalment of a fine, under paragraph (b) of that section, or
   (b) a person found in contempt of court, where the conduct which is treated as contempt of court occurs (or first occurs) before the coming into force of this Part.


**PART 3**

**WEAPONS**

_Licensing of knives, swords etc._

43 **Licensing of knife dealers**

After section 27 of the Civic Government (Scotland) Act 1982 (c.45) insert—

“Licensing and regulation of knife dealers

27A Knife dealers’ licences

(1) A licence, to be known as a “knife dealer’s licence”, is required for carrying on business as a dealer in any article mentioned in subsection (2).

(2) Those articles are—

(a) knives (other than those designed for domestic use);

(b) knife blades (other than those designed for domestic use);

(c) swords;

(d) any other article—

(i) which has a blade; or

(ii) which is sharply pointed,

and which is made or adapted for use for causing injury to the person.

(2A) A knife dealer’s licence shall, in addition to specifying the activity which the dealer engages in, specify the premises in or from which the activity is to be carried on.

(3) In subsections (1) and (2A), “dealer” means a person carrying on a business which consists wholly or partly of—

(a) selling;

(b) hiring;

(c) offering for sale or hire;

(d) exposing for sale or hire;

(e) lending; or

(f) giving,


to persons not acting in the course of a business or profession any article mentioned in subsection (2) (whether or not the activities mentioned in paragraphs (a) to (f) are carried out incidentally to a business which would not, apart from this section, require a knife dealer’s licence).

(4) In subsection (3), “selling”, in relation to an article mentioned in subsection (2)—

(a) includes—

(i) selling such an article by auction;

(ii) accepting goods or services in payment (whether in part or in full) for such an article; but
(b) does not include selling (by auction or otherwise) such an article by one person on behalf of another;
and “sale” is to be construed accordingly.

(5) For the purposes of subsection (3), an article is not to be treated as being exposed for sale if it is exposed for sale (by auction or otherwise) by a person other than the owner.

(6) The Scottish Ministers may by order modify subsection (2) so as to—
(a) add articles or classes of article;
(b) amend descriptions of articles or classes of article;
(c) remove articles or classes of article.

(7) The Scottish Ministers may by order—
(a) modify subsection (3) so as to modify the definition of “dealer”;
(b) specify descriptions of activity which are not to be taken to be businesses for the purposes of that subsection (or that subsection as modified).

(8) The power in subsection (7)(a) includes in particular power to add descriptions of business.

27B Applications for knife dealers’ licences: notice
(1) A licensing authority must cause public notice to be given of every application made to them for the grant or renewal of a knife dealer’s licence.

(2) Sub-paragraph (8) of paragraph 2 of Schedule 1 applies to the giving of public notice under subsection (1) as it applies to the giving of public notice under sub-paragraph (7) of that paragraph.

27C Knife dealers’ licences: conditions
(1) In granting or renewing a knife dealer’s licence, a licensing authority—
(a) must attach to the licence such conditions as are specified (in particular or in general) by order by the Scottish Ministers;
(b) may, without prejudice to paragraph 5 of Schedule 1, attach to the licence different conditions in relation to different articles or different classes of article;
(c) may, without prejudice to that paragraph, attach to the licence conditions for or in connection with—
(i) the keeping of records by the holder of the licence;
(ii) the storage of articles mentioned in section 27A(2); and
(iii) the display of such articles.

(2) An order under subsection (1)(a) may provide for different conditions to apply to different articles or different classes of article.
27D  Provision of information to holder of knife dealer’s licence

(1) Subsection (2) applies where the holder of a knife dealer’s licence (“the dealer”)—

(a) is required by the licence to obtain information of a type specified in the licence from a person; and

(b) the dealer requests (whether orally, in writing or otherwise) the information from the person.

(2) A person, or any person acting on behalf of the person, who knowingly or recklessly provides false information in response to a request under subsection (1)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

27E  Knife dealers’ licences: warrants to enter, search and seize articles

(1) Subsection (2) applies if a justice of the peace or sheriff is satisfied by evidence on oath that—

(a) subsection (3) applies; and

(b) subsection (4) or (5) applies.

(2) The justice of the peace or sheriff may grant a warrant authorising a constable or an authorised officer—

(a) to enter and search the premises specified in the warrant; and

(b) to seize and remove any relevant article.

(3) This subsection applies if there are reasonable grounds for suspecting that a person (the “suspect”) is carrying on in any premises an activity in respect of which a knife dealer’s licence is required under section 27A.

(4) This subsection applies if no knife dealer’s licence is in force in respect of the activity.

(5) This subsection applies if a knife dealer’s licence is in force in respect of the activity but there are reasonable grounds for suspecting that the suspect has failed, or is failing, to comply with a condition of the licence.

27F  Powers of constables and authorised officers

(1) A constable or an authorised officer may use reasonable force in executing a warrant granted under section 27E(2).

(2) Where a constable who is not in uniform is about to enter, is entering or has entered any premises under the powers conferred under section 27E(2) he must, if required to do so by a person in or upon the premises, produce his identification.

(3) Where an authorised officer is about to enter, is entering or has entered any premises under the powers conferred under section 27E(2) he must, if required to do so by a person in or upon the premises, produce his authorisation.

(4) If a constable has been required to produce his identification under subsection (2) he is not entitled to enter or search the premises or, as the case may be, remain there or continue to search the premises until he has produced it.
(5) If an authorised officer has been required to produce his authority under subsection (3), he is not entitled to enter or search the premises or, as the case may be, remain there or continue to search the premises until he has produced it.

(6) Any person who—
(a) fails without reasonable excuse to permit a constable, or an authorised officer, acting in pursuance of a warrant granted under section 27E(2) to enter and search any premises; or
(b) obstructs the entry to, or search of, any premises by a constable or an authorised officer so acting,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Any relevant article which has been seized and removed under a warrant granted under section 27E(2) may be retained until the conclusion of proceedings against the suspect.

(8) For the purposes of subsection (7), proceedings in relation to a suspect are concluded if—
(a) he is found guilty and sentenced or otherwise dealt with for the offence;
(b) he is acquitted;
(c) proceedings for the offence are discontinued;
(d) it is decided not to prosecute him.

(9) In this section, “suspect” is to be construed in accordance with section 27E(3).

27G Power to inspect documents

(1) Subsection (2) applies where—

(a) a constable or an authorised officer has reasonable grounds for suspecting that an activity in respect of which a knife dealer’s licence is required under section 27A is being carried on; and
(b) no such licence is in force in respect of the activity.

(2) The constable or authorised officer may—

(a) require a relevant person to produce any records or other documents connected with the activity,
(b) inspect any such records or documents, and
(c) take copies of, or extracts from, any such records or documents.

(3) A relevant person who—

(a) is required under subsection (2) to produce records or documents; and
(b) fails without reasonable excuse to do so,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Before exercising the power conferred by subsection (2)—
(a) a constable who is not in uniform must produce his identification to the relevant person;

(b) an authorised officer must produce his authorisation to the relevant person.

(5) For the purposes of this section, a person is “relevant” if the constable or authorised officer has reasonable grounds for believing that the person has access to the records or documents.

27H Sections 27E to 27G: interpretation

(1) In sections 27E and 27F—

“premises” includes a vehicle or vessel;

“relevant article” means an article mentioned in any of paragraphs (a) to (d) of subsection (2) of section 27A.

(2) In sections 27E to 27G, “authorised officer” means an officer of a licensing authority authorised by the authority for the purposes of section 27E, 27F or, as the case may be, 27G.

27J Forfeiture orders

(1) Subsection (2) applies where a person (“the offender”) is convicted of an offence under subsection (A1) or (2) of section 7 in relation to a relevant article—

(a) seized by virtue of a warrant granted under section 27E(2); or

(b) in the offender’s possession or control at the relevant time.

(2) The court by which the offender is convicted may make an order for forfeiture (a “forfeiture order”) in respect of the relevant article.

(3) The court may make a forfeiture order—

(a) whether or not it also deals with the offender in respect of the offence in any other way; and

(b) without regard to any restrictions on forfeiture in any enactment.

(4) In considering whether to make a forfeiture order, the court must have regard to—

(a) the value of the relevant article; and

(b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(5) In this section—

“relevant article” means an article mentioned in any of paragraphs (a) to (d) of subsection (2) of section 27A;

“relevant time” means—

(a) the time of the offender’s arrest for the offence; or

(b) the time of his being cited as an accused in respect of the offence.
27K Effect of forfeiture order

(1) A forfeiture order under section 27J(2) operates to deprive the offender of any rights he has in the property to which it relates.

(2) The property to which a forfeiture order relates must be taken into the possession of the police.

(3) The court by which the offender is convicted may, on the application of a person who—
   
   (a) claims property to which a forfeiture order relates; but
   
   (b) is not the offender from whom it was forfeited,

make an order (a “recovery order”) for delivery of the property to the applicant if it appears to the court that he owns it.

(4) An application under subsection (3) must be made—
   
   (a) in such manner as may be prescribed by Act of Adjournal; and
   
   (b) before the end of the period of 6 months beginning with the date on which the forfeiture order was made.

(5) An application may be granted only if the applicant satisfies the court that—
   
   (a) he had not consented to the offender’s having possession of the property; or
   
   (b) he did not know, and had no reason to suspect, that the offence was likely to be committed.

(6) If a person has a right to recover property which, by virtue of a recovery order, is in the possession of another, that right—
   
   (a) is not affected by the making of the recovery order at any time before the end of the period of 6 months beginning with the day on which the order is made;
   
   (b) is lost at the end of that period.

(7) The Scottish Ministers may by order make provision for or in connection with the disposal of property forfeited under a forfeiture order in cases where—
   
   (a) no application under subsection (3) has been made before the end of the 6 month period beginning with the day on which the forfeiture order was made; or
   
   (b) no such application has succeeded.

(8) An order under subsection (7) may in particular make provision for—
   
   (a) dealing with any proceeds from the disposal;
   
   (b) investing money; and
   
   (c) auditing accounts.

27L Offences by partnerships

Where an offence committed by a partnership under—

(a) section 5 (in so far as the offence relates to a knife dealer’s licence);
(b) section 7 (in so far as the offence so relates);
(c) section 27D;
(d) section 27F; or
(e) section 27G,
is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

27M Appropriate licence required

Where a person carries on a business which—
(a) by virtue of section 24 requires a second-hand dealer’s licence; and
(b) by virtue of section 27A requires a knife dealer’s licence,
the person requires the appropriate licence in respect of each activity.

27N Remote sales of knives etc.

(1) This section applies where, in connection with the sale of an article mentioned in section 27A(2)—
(a) the premises (the “relevant premises”) from which the article is dispatched in pursuance of the sale are not the same as those where the order for the article is taken (the “sale premises”),
(b) the relevant premises are in Scotland, and
(c) the sale premises are not in Scotland.
(2) For the purposes of this Act the sale of the article is to be treated as taking place on the relevant premises.

27NA Sales and dispatches in different local authority areas

(1) Subsection (2) applies where, in connection with the sale of an article mentioned in section 27A(2)—
(a) the relevant premises are situated in the area of a local authority, and
(b) the sale premises are situated in the area of another local authority which, by virtue of section 2(2), is the licensing authority in respect of the taking of the order for the article.
(2) For the purposes of this Act, the sale of the article is to be treated as taking place—
(a) on the relevant premises, and
(b) on the sale premises.
(3) In this section, “relevant premises” and “sale premises” have the same meanings as in section 27N.
27P Duty to avoid conflict between conditions of licences

(1) Subsection (2) applies where an application is made to a licensing authority for the grant or renewal of a second-hand dealer’s licence by the holder of a knife dealer’s licence issued by that authority.

(2) In granting the application, the licensing authority must not impose any condition which conflicts, or is inconsistent, with a condition of the knife dealer’s licence.

(3) Subsection (4) applies where an application is made to a licensing authority for the grant or renewal of a knife dealer’s licence by the holder of a second-hand dealer’s licence issued by that authority.

(4) In granting the application, the licensing authority must, in accordance with paragraph 10 of Schedule 1, vary the terms and conditions of the second-hand dealer’s licence to avoid any conflict or inconsistency with the terms or conditions of the knife-dealer’s licence.

27Q Offences in relation to knife dealers’ licences: exceptions

The Scottish Ministers may by order provide that an offence under—

(a) section 5 (in so far as the offence relates to a knife dealer’s licence);
(b) section 7 (in so far as the offence so relates);
(c) section 27D;
(d) section 27F; or
(e) section 27G,

is subject to such exceptions as may be specified in the order.

27R Orders under sections 27A to 27Q

(1) Any power conferred by section 27A(6), 27A(7), 27C(1)(a), 27K(7) or 27Q to make orders is exercisable by statutory instrument.

(2) A statutory instrument containing an order under any of those sections is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

44 Knife dealers’ licences: further provision

(1) The Civic Government (Scotland) Act 1982 (c.45) is amended in accordance with subsections (2) and (3).

(2) In section 6(1)(a) (powers of entry to and search of unlicensed premises), after “Act” insert “(other than a knife dealer’s licence)”.

(3) In section 7 (offences etc.)—

(a) before subsection (1) insert—

“(A1) Any person who without reasonable excuse does anything for which a licence is required under section 27A without having such a licence is guilty of an offence and liable—

(a) on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
(b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.”,

(b) in subsection (1)—

(i) after “under” insert “any provision of”, and

(ii) after “Act” insert “other than section 27A”,

(c) in subsection (2)—

(i) the word “and” immediately after paragraph (a) is repealed, and

(ii) after that paragraph, insert—

“(aa) in a case where the licence is a knife dealer’s licence, to a fine not exceeding level 5 on the standard scale; and”,

(d) in subsection (4), after “conviction,” insert—

“(a) in a case where the application is for a knife dealer’s licence, to a fine not exceeding level 5 on the standard scale; and

(b) in any other case.”.

Sale etc. of weapons

In section 141 of the Criminal Justice Act 1988 (c.33) (prohibition on sale etc. of certain weapons), after subsection (11) insert—

“(11A) The Scottish Ministers may by order made by statutory instrument—

(a) provide for exceptions and exemptions from an offence under subsection (1) above;

(b) provide for it to be a defence in proceedings for such an offence to show the matters specified or described in the order.

(11B) An order under subsection (11A) may make different provision for different purposes.

(11C) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.”.

Swords

The Criminal Justice Act 1988 (c.33) is amended in accordance with subsections (2) and (3).

After section 141 insert—

“141ZA Application of section 141 to swords: further provision

(1) This section applies where the Scottish Ministers make an order under subsection (2) of section 141 directing that the section shall apply to swords.

(2) The Scottish Ministers may include in the order provision for or in connection with modifying section 141 in its application to swords.
(3) The Scottish Ministers may in particular—

(a) provide for defences (including in particular defences relating to religious, cultural or sporting purposes) to offences under subsection (1) of section 141 (or offences under that subsection as modified),

(b) increase the penalties specified in subsection (1) of section 141 (or that subsection as modified) so as to make a person liable—

(i) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or both,

(ii) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both,

(c) create an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) relating to the provision, without reasonable excuse, of false information by a person acquiring a sword in circumstances specified in the order.

(4) In making provision under subsection (3)(a) the Scottish Ministers may make provision for or in connection with—

(a) the granting, and revocation, by them of authorisations in relation to the acquisition of swords,

(b) enabling them to specify conditions in such authorisations,

(c) requiring persons to whom authorisations are granted to comply with such conditions,

(d) making it an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) to fail to comply with any such conditions.

(5) Defences specified under subsection (3)(a) may relate to swords in general or to a class, or classes, of sword specified in the order.

(6) The penalty is—

(a) imprisonment for a term not exceeding 12 months, or

(b) a fine not exceeding level 5 on the standard scale,

or both.”

(3) In subsection (4) of section 172 (extent), after “124” insert—

“section 141ZA;”.

**Crossbows**

**46A Sale etc. of crossbows**

(1) In the Crossbows Act 1987 (c.32), in the provisions mentioned in subsection (2), for “seventeen” in each place it occurs, substitute “eighteen”.

(2) The provisions are—

(a) section 1 (sale and letting on hire),

(b) section 2 (purchase and hiring),
(c) section 3 (possession).

46B  Possession of weapons in prisons etc.

After section 49B of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39), insert—

"49C  Offence of having offensive weapon etc. in prison"

(1) Any person who has with him in a prison—

(a) an offensive weapon, or
(b) any other article which has a blade or is sharply pointed,

commits an offence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he had good reason or lawful authority for having the weapon or other article with him in the prison.

(3) A defence under subsection (2) includes, in particular, a defence that the person had the weapon or other article with him in prison—

(a) for use at work,
(b) for religious reasons, or
(c) as part of any national costume.

(4) Where a person is convicted of an offence under subsection (1), the court may make an order for the forfeiture of any weapon or other article to which the offence relates.

(5) Any weapon or other article forfeited under subsection (4) is, subject to section 193 of the Criminal Procedure (Scotland) Act 1995 (c.46), to be disposed of as the court may direct.

(6) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both,
(b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or a fine or both.

(7) In this section—

“offensive weapon” has the meaning given by section 47(4),

“prison” includes—

(a) any prison other than a naval, military or air force prison,
(b) a remand centre (within the meaning of paragraph (a) of subsection (1) of section 19 of the Prisons (Scotland) Act 1989 (c.45) (provision of remand centres and young offenders institutions),
(c) a young offenders institution (within the meaning of paragraph (b) of that subsection), and
(d) secure accommodation within the meaning of section 93(1) of the Children (Scotland) Act 1995 (c.36)."."
PART 4
GENERAL

47 Ancillary provision
(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of or for giving full effect to this Act or any provision of it.
(2) An order under subsection (1) may modify any enactment (including this Act), instrument or document.

48 Rules, regulations and orders
(1) The powers conferred by this Act on the Scottish Ministers to make rules, regulations and orders are exercisable by statutory instrument.
(2) Each of those powers includes power to make—
(a) different provision for different purposes,
(b) supplementary, incidental, consequential, transitory, transitional or saving provision.
(3) Subject to subsection (4), a statutory instrument containing rules, regulations or an order under this Act (other than an order under section 50) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
(4) A statutory instrument containing—
(a) an order under section 4(2) or 36(1)(b), or
(b) regulations under paragraph 3(1) or 17 of schedule 1,
may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

49 Minor and consequential amendments and repeals
(1) Schedule 2 (which contains minor amendments and amendments consequential on the provisions of this Act) has effect.
(2) The enactments mentioned in the first column in schedule 3 are repealed to the extent set out in the second column.
(3) Schedule 4 (which contains certain transitory amendments of the Prisoners and Criminal Proceedings (Scotland) Act 1993) has effect.

50 Short title and commencement
(1) This Act may be cited as the Custodial Sentences and Weapons (Scotland) Act 2007.
(2) This Act (other than this section and section 48) shall come into force on such day as the Scottish Ministers may by order appoint.
(3) Different days may be appointed under subsection (2) for different purposes.
SCHEDULE 1
(introduced by section 1(5))

THE PAROLE BOARD FOR SCOTLAND

Membership

1 The Parole Board is to consist of no fewer than 5 members (including a convener) appointed by the Scottish Ministers.

2 The membership of the Parole Board must include—

(a) a Lord Commissioner of Justiciary,
(b) a registered medical practitioner who is a psychiatrist,
(c) a person who the Scottish Ministers consider has knowledge and experience of the supervision or aftercare of released prisoners,
(d) a person who the Scottish Ministers consider has knowledge and experience of the assessment of the likelihood of offenders causing serious harm to members of the public,
(e) a person who the Scottish Ministers consider has knowledge and experience of—
   (i) the way in which, and
   (ii) the degree to which,
   offences perpetrated against members of the public affect those persons.

3 (1) The Scottish Ministers must comply with any provision about the procedure, including requirements as to consultation, to be followed in appointing members of the Parole Board as they may, by regulations, prescribe.

(2) Without prejudice to the generality of section 48(2), such regulations may make different provision for different kinds of member of the Parole Board, including the kinds of member holding an office or, as the case may be, possessing a qualification mentioned in paragraph 2.

Tenure of appointments

4 Subject to paragraphs 5 to 9, a person is appointed as a member of the Parole Board for such period (being a period of at least 6 years and no more than 7 years) as is specified in the person’s instrument of appointment.

5 A person ceases to be a member on the day the person attains the age of 75 years.

6 If a member such as is mentioned in paragraph 2(a) ceases to hold the office of Lord Commissioner of Justiciary, that person ceases to be a member of the Parole Board.

7 If a member such as is mentioned in paragraph 2(b) ceases to be—
   (a) a registered medical practitioner, or
   (b) a psychiatrist,
that person ceases to be a member of the Parole Board.

8 A member may at any time resign by giving notice in writing to that effect to the Scottish Ministers.
9 A person ceases to be a member on the day an order is made under paragraph 14 removing the member from the Parole Board.

10 A person may be reappointed as a member of the Parole Board only if the person—
   (a) has ceased to be a member for a period of not less than 3 years, and
   (b) has not previously been reappointed under this paragraph.

11 A person who has resigned from the Parole Board may be reappointed under paragraph 10.

12 A person who ceases to be a member by virtue of an order under paragraph 14 must not be reappointed under paragraph 10.

13 The convener of the Parole Board is to have regard to the desirability of securing that every member is given the opportunity to participate appropriately in the carrying out of the Parole Board’s functions on not fewer than 20 days in each successive period of 12 months beginning with the day of the member’s appointment.

14 A member may be removed from the Parole Board only by order of the tribunal constituted under paragraph 16.

15 The tribunal may order the removal of a member only if—
   (a) an investigation is carried out at the request of the Scottish Ministers, and
   (b) following the investigation, the tribunal finds that the member is unfit to be a member of the Parole Board by reason of inability, neglect of duty or misbehaviour.

16 The tribunal is to consist of the following persons appointed by the Lord President of the Court of Session—
   (a) either a Senator of the College of Justice or a sheriff principal (who is to preside),
   (b) a person who is, and has been for at least 10 years—
       (i) an advocate, or
       (ii) a solicitor, and
   (c) one other person who is not an advocate or a solicitor.

17 The Scottish Ministers may, by regulations—
   (a) make provision—
       (i) enabling the tribunal, at any time during an investigation, to suspend a member from the Parole Board, and
       (ii) as to the effect and duration of a suspension,
   (b) make further provision about the tribunal as the Scottish Ministers consider necessary or expedient, including provision about the procedure to be followed by and before it.
Remuneration, allowances and other expenses

18 Members of the Parole Board are to be paid such—
   (a) remuneration, and
   (b) expenses,
as the Scottish Ministers may determine.

19 The expenses of the Parole Board under paragraph 18 and any other expenses incurred by the Parole Board in carrying out its functions are to be defrayed by the Scottish Ministers.

Reporting and planning

20 The Parole Board must, as soon as practicable after the end of the reporting year, send to the Scottish Ministers a report on the performance of the Parole Board’s functions during that year.

21 The Parole Board must, as soon as practicable after the beginning of each planning period, send to the Scottish Ministers a plan in relation to that planning period—
   (a) providing details as to how the Parole Board intends to carry out its functions,
   (b) setting out performance objectives and targets in relation to its functions.

22 (1) The reporting year of the Parole Board is—
   (a) the period beginning with the day on which section 1(1) comes into force and ending with 31st March next following that day, and
   (b) each successive period of 12 months ending with 31st March.

23 (2) The planning period of the Parole Board is—
   (a) the period beginning with the day on which section 1(1) comes into force and ending with the third occurrence of 31st March following that day, and
   (b) each successive period of 3 years ending with 31st March in the third year.

24 The Scottish Ministers must lay a copy of—
   (a) a report sent to them under paragraph 20,
   (b) a plan sent to them under paragraph 21,
before the Scottish Parliament.

SCHEDULE 2
(introduced by section 49)

MINOR AND CONSEQUENTIAL AMENDMENTS

Criminal Procedure (Scotland) Act 1995 (c.46)

1 (1) Section 210A of the 1995 Act (extended sentences for sex and violent offenders) is amended as follows.

25 (2) In subsection (1)(b), before “licence” insert “community”.

(3) In subsection (2)—
Schedule 2—Minor and consequential amendments

1. (a) in paragraph (a), for “custodial” substitute “confinement”;
   (b) in paragraph (b), before “licence” insert “community”.

2. (4) In subsection (6), for “custodial” substitute “confinement”.
   (5) In subsection (10), for the words from “licence” to “1993” substitute—

   ”community licence” has the same meaning as in Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00);
“relevant officer”, in relation to a local authority, means an officer of that authority employed by them in the discharge of their functions under section 27(1) of the Social Work (Scotland) Act 1968 (supervision and care of persons put on probation or released from prison etc.).”.

Criminal Justice (Scotland) Act 2003 (asp 7)

2 (1) Section 40 of the Criminal Justice (Scotland) Act 2003 (remote monitoring of released prisoners) is amended as follows.
   (2) In subsection (1), for the words from “licence” to the end of paragraph (b) substitute “community licence or life licence under Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00)”.

   (2A) In subsection (3)—
   (a) for “specify” substitute “include”, and
   (b) for “specified” substitute “included”.

3 (1) In subsection (8), for paragraphs (a) and (b) substitute—

   “(a) section 24 of the Custodial Sentences and Weapons (Scotland) Act 2007 (community licences: Scottish Ministers to include only licence conditions specified by Parole Board), or
   (b) section 26(2) of that Act (life licences: Scottish Ministers to include only licence conditions specified by Parole Board).”.

Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)

3 (1) The Police, Public Order and Criminal Justice (Scotland) Act 2006 is amended as follows.
   (2) In section 91 (assistance by offender: reduction in sentence), in subsection (8)(b), for “section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)” substitute “section 15(2) of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00)”.
   (3) In section 92 (assistance by offender: review of sentence), in subsection (5), for the words from “whether” to the end of the subsection substitute “on licence under Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00) is to be treated as still serving the sentence for so long as the licence remains in force.”
   (4) In section 94 (section 92: further provision), in subsection (3)(b)—

   (a) for “or unconditionally under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)” substitute “under Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00)”, and
(b) the words from “before” to “full” are repealed.

SCHEDULE 3
(introduced by section 49)

REPEALS

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SCHEDULE 4
(introduced by section 49(3))

TRANSITORY AMENDMENTS OF THE PRISONERS AND CRIMINAL PROCEEDINGS (SCOTLAND) ACT 1993

1 Until their repeal by this Act, sections 1 and 9 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) have effect as follows.

2 In section 1 (release of short-term and long-term prisoners), in subsection (3), for paragraphs (a) and (b) substitute “shall,”.

3 In section 9 (persons liable to removal from the United Kingdom), subsection (1) is repealed.
Custodial Sentences and Weapons (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to restate and amend the law relating to the confinement and release of prisoners; to make provision relating to the control of weapons; and for connected purposes.

Introduced by: Cathy Jamieson
On: 2 October 2006
Supported by: Hugh Henry
Bill type: Executive Bill
CUSTODIAL SENTENCES AND WEAPONS
(SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Custodial Sentences and Weapons (Scotland) Bill as amended at Stage 2. They 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.

INTRODUCTION

2. 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 part of a section or schedule, does not seem to require any explanation or comment, none is given.

PART 1 – THE PAROLE BOARD FOR SCOTLAND

Section 1 - The Parole Board for Scotland

3. This section provides for the continuation of the Parole Board for Scotland. It was established by section 18 of the Prisons (Scotland) Act 1989 and continued by section 20 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Subsection (2) sets out its key function as being to direct the Scottish Ministers in relation to the confinement and release of prisoners under Part 2 of the Bill. Provision is also made at subsection (3) for the Board to carry out other functions given to it in other provisions of the Bill or in any other legislation.

4. Subsection (4) requires the Board to have regard to the risk management plan when considering the case of a person for whom one has been prepared under section 6(1) of the Criminal Justice (Scotland) Act 2003. Section 6(1) of the 2003 Act requires that a Risk Management Plan be prepared for an offender who is made subject of an Order for Lifelong Restriction (OLR). OLRs became available to the courts on 19 June 2006. The OLR is a sentence for serious sexual and violent offenders and is broadly equivalent to a life sentence insofar as the offender remains on licence for the remainder of his or her life.
5. Subsection (5) provides that further provisions concerning the Parole Board (constitutional issues, membership, etc) are set out at Schedule 1. These are explained later in this document.

Section 2 - Parole Board rules

6. Subsection (1) provides that the Scottish Ministers may make rules to regulate the Parole Board’s proceedings. Subsection (2) details some of the particular types of provisions which may be included in the rules. There is the power, amongst other things, to:

- authorise cases to be dealt with, in whole or in part, by a specified number of members of the Board;
- enable the Board to require persons, other than the prisoner whose case the Board is dealing with, to
  - attend a Board hearing,
  - give evidence to the Board, or
  - produce documents;
- prescribe time limits for the determination of cases and for the performance of other actions; and
- specify the matters which may be taken into account by the Board when dealing with cases.

7. Subsection (3) allows the Parole Board Rules to apply the terms of subsections (4) and (5) of section 210 of the Local Government (Scotland) Act 1973:

- Subsection 210(4) of that Act provides the power to request a person to attend (as mentioned above) provided that any expenses incurred are paid and provided that the person is entitled to refuse to produce documents or answer questions, on grounds of privilege or confidentiality, if this could have been done were the matter to have been raised in proceedings in a court of law.
- Subsection 210(5) of that Act provides that any person who refuses or wilfully neglects to attend a hearing to give evidence, or who wilfully alters, supresses, conceals, destroys or refuses to produce any book or other document which he is required or is liable to be required to produce shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale (though this may be raised to level 2 in the rules). It also provides for a penalty of imprisonment for a term not exceeding three months but this penalty cannot apply when section 210(5) is applied to hearings before the Parole Board by virtue of the Parole Board Rules.
PART 2 - CONFINEMENT AND RELEASE OF PRISONERS

CHAPTER 1

INTRODUCTORY

Section 3 - Application of Part 2

8. Other than a life prisoner, this Part only applies to a sentence imposed on a person for an offence committed after the coming into force of this Part. Section 42 deals with the application to those imprisoned other than following conviction of an offence.

Section 4 - Basic Definitions

9. This section provides definitions of various terms used in the Bill.

10. Subsection (2) gives Scottish Ministers the power to amend, by order, the definitions of “custody and community sentence” and “custody-only sentence” by substituting a different period for the period mentioned (which is 15 days).

11. Subsections (3) and (4) provide that:
   • release on community licence is a reference to the release on licence of a custody and community prisoner; and
   • release on life licence is a reference to the release on licence of a life prisoner.

CHAPTER 2

CONFINEMENT, REVIEW AND RELEASE OF PRISONERS

Custody-only prisoners

Section 5 - Release on completion of sentence

12. This section provides that a custody-only prisoner (i.e. a prisoner sentenced to a term of less than 15 days) will spend the entire sentence in prison and then be released unconditionally.

Custody and community prisoners

Section 6 - Setting of custody part

13. This section describes the arrangements for setting the custody part of a custody and community sentence. This is a sentence for a term of 15 days or more. Subsection (1A) provides that, for custody and community sentences, the court must make an order specifying the custody part. Subsection (2) defines the custody part as being the part of the sentence which satisfies the requirements for retribution (or punishment) and deterrence ignoring any period of confinement which may be necessary for the protection of the public since that is already a matter for the court to consider when setting the overall sentence. The decision on whether the prisoner should be released at the expiry of the custody part will depend on the assessment of the
risk of serious harm posed and, if necessary, a final decision will be taken by the Parole Board for Scotland.

14. Subsection (3) provides that the custody part will be a minimum of one half of the overall sentence. However, subsection (3A) enables the court to specify a greater proportion of the sentence as the custody part taking into account the matters mentioned in subsection (4), namely:
   - the seriousness of the offence or of the offence combined with other offences of which the person is being convicted on the same indictment or complaint,
   - the fact that the offence was committed while still serving a sentence of imprisonment for a previous offence; and
   - any previous convictions.

15. Subsection (6) prevents the court from setting a custody part in excess of three-quarters of the sentence. Subsection (6A) requires the court to specify the custody part as a period of time eg 2 years and 6 months. Subsection (6B) provides that when setting a custody part in excess of 50%, the court must explain its reasons for doing so in open court. Subsection (7) provides that the custody part forms part of the sentence for appeal purposes.

Section 6A - Application of section 6 to persons sentenced to extended sentences

16. Section 6A applies section 6 to extended sentence prisoners. Those are prisoners which, under section 210A of the Criminal Procedure (Scotland) Act 1995, are subject to an extended period of imprisonment for sexual and violent offences. When a custody part is set in these cases it is set by reference to the confinement term of the extended sentence, that is the part of the sentence which does not include the extra period of supervision on licence that a court may specify in an extended sentence (known as the “extension period”).

Section 6B - Power to amend section 6(3)

17. Section 6B gives the Scottish Ministers the power to amend, by order, the minimum custody part specified in section 6(3)(a).

Section 6C - Judge’s report

18. Section 6C requires a judge to produce a report when imposing a custody and community sentence. In terms of subsection (2), the report must set out the circumstances of the case and contain other appropriate information. Subsection (3) requires the form of the report to be prescribed by Act of Adjournal by the High Court of Justiciary. The report will be submitted to the Scottish Ministers (subsection (4)).

Section 7 - Joint arrangements between Scottish Ministers and local authorities

19. Subsections (1) and (2) require joint working arrangements to be put in place between the Scottish Ministers and local authorities in relation the assessment and management of the risks posed by custody and community prisoners. The Scottish Ministers and each local authority shall jointly assess whether an individual prisoner is likely to cause serious harm to members of
the public if he or she were to be released on community licence on the expiry of the custody part of the sentence.

20. Subsection (4) defines the appropriate local authority as either the one in which the offender resided immediately prior to the offence or the one the offender intends to reside in upon beginning the community part of his or her sentence on licence. Subsection (5) provides that in the event of the two authorities being different they can agree between them which one should carry out the functions conferred on them under this section or section 25(3) (which also confers a function on the Scottish Ministers and local authorities to work together).

Section 8 - Review by Scottish Ministers

21. This section provides that the Scottish Ministers must determine, before the expiry of the custody part of the sentence, whether or not a custody and community prisoner is likely to cause serious harm to members of the public if he or she were released on community licence. This is subject to section 22 which applies to prisoners serving more than one sentence.

Section 9 - Consequences of review

22. This section requires that where the Scottish Ministers have assessed that a prisoner need not be referred to the Parole Board under section 8, then he or she must released on community licence. Where a prisoner has been assessed as likely to cause serious harm to the public, subsection (3) requires the Scottish Ministers to refer his or her case to the Parole Board. This is subject to section 22, which is explained below.

Section 10 - Review by Parole Board

23. This section places a duty on the Parole Board to review the case of a prisoner, referred to it by the Scottish Ministers under section 9(3), before the custody part of the prisoner’s sentence expires.

Section 11 – Release on community licence following review by Parole Board

24. This section provides that where the Parole Board has determined that a prisoner is not likely to cause serious harm to the public if released when the court-imposed custody part of the sentence expires or after a further review by the Board, the Board shall direct that the prisoner be released on community licence and shall specify the conditions to be included in the licence. Subsection 3 provides that where the Parole Board has made such a direction that the Scottish Ministers must release the prisoner on a community licence. In the case of a determination after the first referral by the Scottish Ministers, subsection (4) obliges the Scottish Ministers to give effect to the Parole Board’s direction by releasing the prisoner on the expiry of the custody part.

Section 12 - Determination that section 8(2) applicable: consequences

25. This section applies, subject to section 21, where the Parole Board has determined, as a result of an initial referral or of a further review, that a prisoner is likely to cause serious harm to the public on release. Subsection (2) requires that the Parole Board give its reasons in writing.
26. Subsections (3) provides that if, on the day of determination, less than 4 months of the prisoner’s sentence remains before reaching the three-quarters point of the sentence, the prisoner must be confined until that point and the Parole Board must specify conditions to be included on the prisoner’s community licence.

27. Subsection (4) provides that if, on the day of determination, between 4 months and 2 years remain to be served before reaching the three-quarters point, the Parole Board may fix a date for next considering the prisoner’s case during the period specified in subsection (5). Subsection (5) provides that the period begins with the day that falls 4 months after the date of the determination and ends at the three-quarters point. Subsection (6) provides that if no date is set for a further hearing the prisoner must be confined until the three-quarters point and the Parole Board must set a date falling within the period provided for at subsection (5) in order to specify conditions to be included on the prisoner’s community licence.

28. Subsection (7) provides that if, on the day of determination, more than 2 years remain before the three-quarters point, the Parole Board must fix a date for when it will next consider the prisoner’s case. This must fall within the period provided for at subsection (8), which begins with the day that falls 4 months after the date of the determination and before the second anniversary of the determination.

29. Subsection (8A) provides that the “three-quarters” point, subject to subsection (8B), is the day on which the prisoner will have served three-quarters of his sentence. Subsection (8B) provides that if 2 or more custody and community sentences are being served then the effective three-quarters point is that for the latest sentence.

Section 12A - Prisoner’s right to request early reconsideration by Parole Board

30. Section 12A provides that, subject to section 21, a prisoner may request earlier consideration of his/her case by the Parole Board to that fixed under section 12(4) or (7). Subsection (4) also enables a prisoner to request that a date be fixed for next considering his or her case where the Parole Board has not fixed a date under section 12(4). This section applies to those offenders who have been detained in custody following a review by the Parole Board.

Section 12B - Referral to Parole Board for the purposes of specifying conditions

31. Section 12B requires Scottish Ministers before the date fixed by the Board under section 12(6)(b) to refer cases to the Parole Board to enable it to set community licence conditions. This refers to those offenders with between 4 months and 2 years to serve before reaching the three-quarters point and for whom the Board had directed they remain in custody to the three-quarters point.

Section 13 - Further referral to Parole Board

32. This section applies where the Parole Board has fixed a date under sections 12(4) or (7) to determine whether or not the prisoner would cause the public serious harm if not confined. Subsection (2) provides that the Scottish Ministers must refer the prisoner’s case to the Parole
Board before that date. Subsection (3) requires the Parole Board to determine whether or not the prisoner would be likely to cause serious harm to the public if not confined.

Section 13A - Cases where custody part specified as three-quarters of prisoner’s sentence

33. Subsection (1) provides that this section applies to custody and community prisoners whose custody part has been set at three-quarters of the overall sentence by the court. Subsection (2), by disapplying section 8(1) provides that there is no requirement for Scottish Ministers to determine whether or not the prisoner presents a risk of serious harm to the public prior to the end of the custody part with a view to referring the case to the Parole Board. Subsection (3) provides, however, that Scottish Ministers must, before the expiry of the custody part, refer the prisoner’s case to the Board and that the Board must specify the conditions to be included on the prisoner’s community licence.

Section 14 - Release after three-quarters of sentence served

34. Subsection (1) provides that the Scottish Ministers must release the prisoner on a community licence once three-quarters of the sentence have been served, provided that such release is not prohibited by section 22. Subsection (2) provides that the obligation to release at the three-quarter point does not apply in the case of an offender who has been recalled to custody in consequence of the revocation of a community licence by virtue of section 31(1) or (4) of the Bill.

Life Prisoners

Section 15 - Setting of punishment part

35. This section sets out the provisions for setting the punishment part of a life sentence. The period will be specified in an order made by the court. Subsection (1) provides that this section applies where the court imposes on a person a life sentence. Subsection (1A) requires the court to specify the punishment part in an order after imposing the sentence. Subsection (2) defines the punishment part as being that part of the sentence which, taking into account certain specified matters, the court considers appropriate to satisfy the requirements for retribution and deterrence but ignoring any period of confinement that the court feels may be necessary for protection of the public since that is already a matter for the court to consider when setting the overall sentence. It is only once this period has been served in full that the offender can be released on life licence, but this will only happen following a direction from the Parole Board, as explained below.

36. Subsection (3) details the matters the court must take account of when setting a punishment part for someone with a mandatory life sentence (such as for murder), namely

- the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment;
- any previous convictions;
- where appropriate, the timing of any guilty plea;
Subsection (4) deals with the relevant matters for those with a discretionary life sentence or an order for lifelong restriction. They are:

- the determinate period of imprisonment the court considers would have been appropriate had the court not imposed a discretionary life sentence or an order for lifelong restriction; and
- the part of that period of imprisonment which the court would have specified as the custody part, by reference to the matters set out in section 6(4)

37. Subsections (6), (7) and (8) provide that the punishment part, which must be expressed in years and months, may exceed the person’s life expectancy, and forms part of the person’s sentence for the purposes of any appeal or review.

Section 16 - Referral to Parole Board

38. This section requires the Scottish Ministers to refer a life prisoner’s case to the Parole Board before the expiry of the punishment part. This is subject to section 22, which applies to prisoners with more than one sentence.

Section 17 - Review by Parole Board

39. This section requires the Parole Board, on referral of the case by the Scottish Ministers under section 16, to determine before the expiry of the punishment part of the sentence whether or not the life prisoner, if not confined, would be likely to cause serious harm to the public.

Section 18 - Release on life licence following review by Parole Board

40. Where the Parole Board is satisfied (either at the first review before the punishment of the sentence expires or at a subsequent review) that it is no longer necessary to confine a life prisoner for the protection of the public, it must direct the Scottish Ministers to release him or her on life licence and must specify conditions to be included in the licence. Where the direction is given at the first review before the punishment part expires, the Scottish Ministers are obliged to give effect to that direction on the expiry of the punishment part. Subsection (3) provides that where the Parole Board has directed that a prisoner be released, that the Scottish Ministers must release the prisoner on a life licence.

Section 19 - Determination that section 17(3) applicable: consequences

41. This section provides that where the Parole Board is satisfied that it is necessary to continue to confine a life prisoner for the protection of the public, it must give the prisoner details of its reasons in writing and fix a date for a further review of the case. Subsection (3) provides that this must, subject to section 21 (whose effect is explained below), be within the period beginning 4 months after the day of the determination and ending immediately before the second anniversary of the determination. Subsection (4) provides that where the Parole Board has set a date for further review under subsection (2)(b), subsection (5) gives the Parole Board the option of replacing that date with an earlier one if the prisoner requests this.
Section 20 - Further referral to Parole Board

42. This section provides that where the Parole Board fixes a date under section 19(2)(b) the Scottish Ministers must, subject to section 22 (which is explained below), refer the case before that date in order to allow the Board to consider the case. The Board is to determine whether the prisoner would be likely to cause the public serious harm if not confined.

Reference to Parole Board: postponement

Section 21 - Reference to Parole Board: postponement

43. Subsections (1) and (2) require the Parole Board to postpone the date which it would otherwise have fixed for the review of a prisoner’s case where he or she receives a subsequent sentence of imprisonment after the case has been referred to the Board but before the Board have fixed a date for considering the referral. This applies where the prisoner would not be eligible for release from the subsequent sentence on the date which would otherwise have been fixed. In such circumstances, subsection (2) obliges the Board to fix a different date.

44. Subsections (3) and (4) deal with the situation in which the Board has fixed a date to review a particular case and the prisoner subsequently receives a further sentence from which he or she would not be eligible for release at that date. In this event, the Board must fix a different date for considering the case.

45. Subsection (5) provides that, in either of these scenarios, the date fixed must be the date which would have been set if the prisoner were only subject to the subsequent sentence. It replaces any other dates fixed previously.

Effect of multiple sentences

Section 22 - Effect of multiple sentences

46. Subsection (1) provides that this section applies to a person serving, or liable to serve, two or more sentences of imprisonment. This person is defined as a “multiple sentence prisoner”. Subsection (2) provides that a multiple sentence prisoner must not be released before having served any custody-only sentence, the custody part of any custody and community sentence, and the punishment part of any life sentence. In other words all of the compulsory periods of confinement imposed on the prisoner have to be served before the prisoner can be released.

47. Subsection (3) provides that where a multiple sentence prisoner is released on licence, the licence will be a community one where he or she is not subject to a life sentence, and otherwise he or she will be released on a life licence.

48. Subsections (4) and (5) together provide that a multiple sentence prisoner’s case must not be referred to the Parole Board before the date on which the case would have been referred if the only sentence the prisoner were subject to were the sentence whose custody part or, as appropriate, punishment part, expires after all other custody or punishment parts which he or she is required to serve. This means that a prisoner’s case may only be referred shortly before the
expiry of all custody parts (and, if the person is a life prisoner, all punishment parts) of those sentences to which the prisoner is subject. In practice, the referral will be made before the expiry of the last custody part or punishment part, with enough time to allow the Board to consider whether to direct release on licence on the expiry of the latest-expiring punishment part.

**Compassionate release on licence**

**Section 23 - Compassionate release on licence**

49. Subsection (1) enables the Scottish Ministers to release prisoners on licence at any time if they are satisfied there are compassionate grounds for doing so.

50. Subsections (2) and (3) require the Scottish Ministers, before releasing a prisoner other than a custody-only prisoner under this section, to consult the Parole Board, unless it is impracticable to do so.

**CHAPTER 3**

**COMMUNITY AND LIFE LICENCES**

**The standard conditions**

**Section 23A – Release on licence: the standard conditions**

51. Section 23A provides that where a prisoner is released on licence under the provisions of Part 2 of the Bill (in practice custody and community prisoners, including those serving an extended sentence, and life sentence prisoners) the prisoner will be subject to certain standard conditions. Subsection (2) provides these as being (a) that the prisoner must be of good behaviour; and (b) that the prisoner is prohibited from leaving the United Kingdom without permission. Subsections (3) and (4) provides that the prohibition on leaving the United Kingdom does not apply if the prisoner is to be deported or is liable to removal under the relevant immigration legislation (as specified in subsection (4)) or the Scottish Ministers or a person designated by them permit the prisoner to leave the United Kingdom.

**The supervision conditions**

**Section 27 - Release on licence of certain prisoners: the supervision conditions**

52. This section (see, in particular, subsection (2)) requires the Scottish Ministers to include a supervision condition in the licence where the prisoner to be released (other than one liable to removal from the United Kingdom) falls into the following categories: a life prisoner; a custody and community prisoner with a sentence of 6 months or more or who is detained in custody beyond the court-imposed custody part of the sentence; a custody and community prisoner with a custody part set at the maximum three-quarters by the court at the point of sentencing; a prisoner released on compassionate grounds; an extended sentence prisoner; a sex offender; or a child.

53. Subsection (3) states that a supervision conditions are: that the prisoner is to be supervised by a relevant officer of the local authority specified in the licence, that the prisoner comply with any other requirements imposed by the supervising officer, that the prisoner
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maintains contact with the supervising officer as directed, and that the prisoner informs the supervising officer of any change of address and any change of employment.

54. Subsection (5) provides that the “relevant officer” referred to in subsection (3), in relation to a local authority, is an officer of that local authority employed by it as a social worker.

Community Licences

Section 24 - Release on community licence on Parole Board’s direction

55. Where the Parole Board specifies conditions to be included in a community licence by virtue of sections 11(2)(b), 12(6), 14(3) or 33(4)(b), the Scottish Ministers must include these conditions in the community licence. Subsection (2) provides that the Scottish Ministers must also include the standard conditions specified at section 23A and, if applicable, the supervision conditions. Subsection (3) provides that the Scottish Ministers may only vary or cancel the conditions or include further conditions, if directed by the Parole Board to do so.

Section 25 - Community licences in which Scottish Ministers may specify conditions

56. This section provides that the Scottish Ministers can include such conditions as they consider appropriate in the case of a prisoner being released on community licence either on the expiry of the custody part (in a case where the Scottish Ministers released the prisoner without referring the case to the Parole Board) or as a result of being granted compassionate release. Subsection (2) also provides that the Scottish Ministers must include the standard conditions specified at section 23A and, if applicable, the supervision conditions. Subsection (2A) allows Scottish Ministers to vary or cancel conditions or include such further conditions as they consider appropriate. Subsection (3) provides that in exercising such powers they must co-operate with the appropriate local authority, as defined in section 7.

Life licences

Section 26 - Release on life licence: conditions

57. Where the Parole Board specifies the conditions to be included in a prisoner’s life licence, the Scottish Ministers must include these conditions in the life licence. Subsection (2) also provides that the Scottish Ministers must include the standard conditions specified at section 23A and, if applicable, the supervision conditions. Subsection (3) provides that, if so directed by the Parole Board, the Scottish Ministers may vary or cancel the conditions or include further conditions, but not otherwise.

Section 26A - Compassionate release on life licence: conditions

58. This section applies where Scottish Ministers have granted compassionate release to a life sentence prisoner. Subsection (2) provides that the Scottish Ministers must include the standard conditions specified at section 23A and, if applicable, the supervision conditions and such other conditions as they consider appropriate. Subsection (3) provides that the Scottish Ministers may vary or cancel conditions or include further conditions.
Section 27 moved to after section 23

Duration of licence

Section 28 – Period during which licence in force

59. Subsection (1) provides that where a custody-only prisoner has been granted compassionate release, the licence remains in force until the sentence expires.

60. Subsection (2) provides that, where a custody and community prisoner is released on community licence, the licence remains in force until the sentence expires.

61. Subsection (3) provides that, where a life prisoner has been released on life licence, the licence remains in force for the remainder of the prisoner’s life.

Prisoner to comply with licence conditions

Section 29 - Prisoner to comply with licence conditions

62. This section requires a prisoner to comply with all conditions included in his or her licence.

Suspension

Section 30 - Suspension of licence conditions while detained

63. This section provides that if a custody and community prisoner or a life prisoner is detained in custody, for whatever reason, during a period when their licence is still in force, then the licence conditions - with certain exceptions - are suspended. As provided for at subsections (4)(a) and (b), the suspension remains in place for so long as the prisoner is confined in prison or for so long as the licence remains in force.

64. The exceptions are set out in subsection (3), namely: the condition that the prisoner be of good behaviour and keep the peace, and any condition that the prisoner must not contact a named person or class of persons. These conditions continue in force, and breach of them can lead to the licence being revoked.

65. Subsection (5) allows Scottish Ministers, by order, to add to these conditions and to cancel or vary them.

Revocation

Section 31 - Revocation of licence

66. Subsection (1) enables the Scottish Ministers to revoke a prisoner’s licence and recall him or her to custody. Subsection (4) deals with the situation in which a prisoner is still on licence but is detained in custody for any reason. In such a situation, Ministers must revoke the licence.
67. Subsections (2), (3) and (5) provide that, whether or not the prisoner is in custody at the time, the licence may only be revoked if two conditions are met: first, that the prisoner either has breached a licence condition or is considered to be likely to do so; and secondly that Ministers consider that it is in the public interest to revoke the licence.

Section 31A - Compassionate release: additional ground for revocation of licence

68. Subsection (1) provides that this section applies if a prisoner has been given compassionate release on licence and Scottish Ministers are satisfied that those grounds for granting such release are no longer justified eg a reversal of the medical condition. Subsection (2) requires Scottish Ministers to revoke the licence and subsection (3) requires that if the offender is not already detained, that he or she is recalled to prison.

Section 31B - Prisoners unlawfully at large

69. This section provides that where a prisoner’s licence has been revoked by virtue of section 31(1) or 31A(2) and that prisoner is not in custody, he or she is taken to be unlawfully at large. The effect of this is any period of time spent unlawfully will still have to be served as part of the sentence. This section also applies to those released on compassionate grounds who have been recalled to custody.

Section 31C – Compassionate release: effect of revocation in certain circumstances

70. Subsection (1) provides that subsection (2) applies where a prisoner is released on compassionate grounds is recalled to custody following revocation of his or her licence and the revocation occurs before the expiry of the relevant period described in subsection (3). These are: the prisoner’s sentence if a custody-only prisoner; the custody part of the sentence if a custody and community prisoner; or the punishment part of the sentence if a life sentence prisoner. The effect of subsection (2) is that the prisoner reverts to being treated as if he or she had not been released on compassionate grounds ie the remainder of the sentence will follow the relevant procedures as prescribed by Part 2 of the Bill.

Section 32 - Referral to Parole Board following revocation of licence

71. This section provides that where the Scottish Ministers have revoked a prisoner’s licence (including compassionate release licences) by virtue of section 31(1) or 4 or 31A(2), they must inform the prisoner of the reasons for doing so and, subject to section 22 (governing multiple sentence prisoners) and section 31C (revocation of licence following release on compassionate grounds), refer the case to the Parole Board.

Section 33 - Consideration by Parole Board

72. This section applies where a prisoner whose licence has been revoked has his or her case referred to the Parole Board by virtue of section 32(2)(b), 33A(9) or 33B(5). Subsection (2) provides that the Board must determine under subsection (3) whether or not it is in the public interest that the prisoner be confined. Subsection (4) provides that where the Board considers subsection (3) does not apply, it must direct the Scottish Ministers to release the prisoner on licence and must specify licence conditions for inclusion in the licence. Subsection (5) provides
that where the Parole Board have made such a direction the Scottish Ministers must release the prisoner on a community licence or a life licence as appropriate.

Section 33A - Determination that section 33(3) applicable: consequences for custody and community prisoners

73. Subsection (1) provides that this section applies where the Parole Board considers under section 33(2) that it is not in the public interest to re-release a recalled prisoner. Subsection (2) requires the Board to provide the prisoner with its reasons for making its determination in writing. Subsection (3) provides that if there is less than 4 months of the prisoner’s sentence remaining, the prisoner must remain in custody for the remainder of the sentence. Subsection (4) provides, however, that if there are between 4 months and 2 years of the prisoner’s sentence remaining, the Board must fix a date for when it will next review the prisoner’s case within the period mentioned in subsection (5). Subsection (5) specifies that the period begins 4 months after the date of the determination and ends on the expiry of the prisoner’s sentence. Subsection (6) provides that if no date is set under subsection (4) the prisoner must remain in prison to the end of the sentence. Subsection (7) provides that if at least 2 years remain of the prisoner’s sentence then the Parole Board must, subject to section 21, fix a date for when it will next hear the prisoner’s case within the period mentioned in subsection (8). Subsection (8) provides that the period begins 4 months after the date of the determination and ends immediately before the second anniversary of the determination. Subsection (9) requires Scottish Ministers to refer the case to the Parole Board before any date set by the Parole Board under subsection (4) or (7).

Section 33B - Determination that section 33(3) applicable: consequences for life prisoners

74. Subsection (1) provides that this section applies where the Parole Board under section 33(2) considers it not to be in the public interest to release a life sentence prisoner whose life licence has been revoked. Subsection (2) requires the Board to provide the prisoner with its reasons for not re-releasing the prisoner in writing. Subsection (3) provides that the Board must, subject to section 21, set a date for when it will next hear the prisoner’s case within the period mentioned in subsection (4). Subsection (4) provides that the period begins 4 months after the date of the determination and ends immediately before the second anniversary of the determination. Subsection (5) requires Scottish Ministers to refer the case to the Parole Board before the date set under subsection (3).

Section 33C - Prisoner’s right to request early reconsideration by Parole Board

75. Section 33C provides that prisoners who have had a date set for a further review under sections 33A(4), 33A(7) or section 33B(3) can ask for early consideration of their case by the Parole Board. Subsection (2) provides that the Board may, if it considers it appropriate, to fix an earlier date. In terms of subsection (3) and (4), where the Board does not fix a date under section 33A(4), it may if appropriate, on the prisoner’s request, do so when it next considers the prisoner’s case.
Section 34 - removed.

Single licence

Section 35 - Multiple licences to be replaced by a single licence

76. Subsection (1) provides that this section applies to offenders who have been released on licence under this Part and who have received another sentence of imprisonment while that licence remains in force. Subsection (2) provides that, if the original licence is still in force at the time when the prisoner is to be released on licence from the subsequent sentence, then he or she is to be released on a single licence covering both sentences. Subsection (3) provides that the single licence replaces the original one while subsection (4) requires that the single licence includes all conditions from the previous licence.

77. Subsection (5) provides that the new single licence will remain in force, unless revoked, until all licences which would otherwise have been imposed would have expired. Subsection (6) provides that in the case of a prisoner being released unconditionally from a subsequent sentence the licence from the original sentence will remain in place, unless revoked, in the same way as it would have done had the subsequent sentence not been imposed.

CHAPTER 4

CURFEW LICENCES

Section 36 - Curfew licences

78. Under this section the Scottish Ministers may release, on licence, a custody and community prisoner who is serving a sentence of 3 months or more and is of a description to be specified by order by the Ministers. Such an order is subject to the affirmative resolution procedure. Subsection (3) provides that the licence must include a curfew condition, which is described in section 37.

79. Subsections (2) and (4) specify the period during which a prisoner may be released on a curfew licence. Subsection (2) states that it shall be before the expiry of the custody part of the sentence. Subsection (4) provides that the Scottish Ministers may only release a prisoner after the later of: the day on which the prisoner has served one-quarter or four weeks of the sentence (whichever is the greater), or the day following 135 days before the expiry of the custody part of the sentence. In addition, release must be before the day falling 14 days before the expiry of the custody part.

80. Subsection (5) provides that in determining whether to release a prisoner under this section, the Scottish Ministers must have regard to the need to protect the public, prevent re-offending and secure the successful re-integration of the prisoner into the community. Subsections (6) to (8) provide that the Scottish Ministers may include in a curfew licence any other conditions they consider appropriate; that prisoners released on curfew licence must comply with any conditions on it; and that the curfew licence remains in force until the expiry of the custody part of the sentence.
81. Subsection (9) provides that an order made under subsection (1)(b) may apply, with or without modification, relevant provisions of Part 2 of the Bill to curfew licences. It may also amend the periods of time mentioned in subsection (4).

Section 37 - Curfew conditions

82. Subsection (1) defines a curfew condition as being one that requires a person to remain at the place specified in the condition for the periods which are specified. Subsection (2) provides that it may also require the person not to be in a particular place, or class of place, at a specified time or during a specified period and may also specify different places and periods for different days. However, subsection (3) states that it cannot specify, in respect of the condition to remain at a certain place, periods amounting to less than nine hours in any one day (excluding the first and last days of the period for which the condition is in force).

Section 38 - Monitoring of curfew conditions

83. Subsection (1) provides that an offender’s compliance with a curfew condition will be monitored remotely. Subsection (2) applies section 245C of the 1995 Act in relation to the imposition of, and compliance with, a curfew condition as that section applies to the monitoring of restriction of liberty orders. Section 245C, read with section 38(2) and also with section 118 of the Scotland Act 1998, requires the Scottish Ministers to make regulations specifying the devices which may be used for the remote monitoring of compliance with the curfew condition.

84. Subsection (3) requires the Scottish Ministers to designate in the licence who will be responsible for the remote monitoring, and subsection (4) provides that the Scottish Ministers may replace the responsible person with another person. Subsection (5) requires the Scottish Ministers to send, as soon as practicable after designating any person as the responsible person, a copy of the curfew condition to that person, together with any other relevant information which Ministers consider the person may need for the fulfilment of the remote monitoring responsibility. Subsection (6) provides that, where the Scottish Ministers exercise their power under subsection (4) to designate a new responsible person, they must, where practicable, notify the person who has been replaced.

CHAPTER 5

GENERAL

Section 39 - No release on weekends or public holidays

85. This section provides that where a prisoner is due to be released on a Saturday, Sunday or a public holiday, then he or she will instead be released on the day immediately preceding that day. The reference to “public holiday” is to be read by reference to any holidays in the area in which the prisoner is likely to be upon release.
CHAPTER 6

APPLICATION OF PART 2 TO CERTAIN PERSONS

Section 40 - Persons detained under mental health provisions

86. This section provides that Part 2 of the Bill applies to the following categories of prisoner as if they had continued to serve their sentence in prison rather than in a hospital:
   - those transferred to hospital under a transfer direction made in accordance with section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003; and
   - those conveyed to and detained in a hospital for treatment of a mental disorder in accordance with section 59A of the Criminal Procedure (Scotland) Act 1995.

Section 41 - Application to young offenders and children

87. This section deals with the application of the provisions of Part 2 to young offenders and children. A young offender is a person who is under 21 years old at the point of sentence (and who is not a child). A child a person who is under 16 years old or who is under 18 years old and in respect of whom a supervision requirement is in force.

88. Where the sentence on a young person or child is of less than 15 days, Part 2 applies to them as if they were a custody-only prisoner. Where the sentence is of 15 days or more, it applies as if they were a custody and community prisoner. And where the sentence is indeterminate, it applies as if they were a life prisoner.

89. Subsection (7) provides that references to “imprisonment” in Part 2 are to be read as references to detention and cognate expressions are to be construed accordingly. This is because young offenders and children are sentenced to detention and not to imprisonment.

Section 42 – Fine defaulters and persons in contempt of court

90. This section provides that Part 2 of the Bill will apply as it applies to custody-only prisoners to:
   - those who are in custody as a result of a failure to pay a fine, and
   - to persons who are in custody having been found in contempt of court.

This means that these categories of person will serve their full sentence in custody regardless of the length of the period of custody imposed on such a person.

91. Subsection (3) states that this section will only apply where the relevant act which leads to imprisonment or detention occurs after the coming into force of Part 2.

PART 3 – WEAPONS

92. Part 3 of the Bill contains two sets of provisions relating to the control of swords, non-domestic knives and other weapons. The first set of provisions relates to the licensing of sellers
of knives etc. while the second introduces new provisions relating to restricting the sale etc. of swords and other weapons; increasing the age limit for purchase or possession of crossbows; and making it an offence to possess an offensive weapon in prisons.

Licensing of Knives, swords etc.

Section 43 - Licensing of knife dealers

93. This section inserts new provisions on the licensing of sellers of knives etc. into the Civic Government (Scotland) Act 1982 and amends existing provisions of the 1982 Act to accommodate this new regime. The provisions should be read alongside the 1982 Act.

The 1982 Act

94. The 1982 Act makes provision for a civic government licensing system, operated by local authorities (as the “licensing authority”). Sections 1 to 8 of, and Schedule 1 to, the 1982 Act contain general provisions which apply to the licensing of all activities covered by the 1982 Act. These include:

- procedures for application and renewal, variation and suspension of licences;
- powers of entry and search of both licensed and unlicensed premises; and
- offences in connection with carrying out unlicensed activities, failure to comply with licence conditions, making false statements and failure to notify changes of circumstances.

95. Sections 10 to 43 of the 1982 Act make specific provision in relation to the licensing of e.g. taxis and private hire cars, public entertainment, second hand dealers, metal dealers, street trading and window cleaning. These supplement the general provisions and, with the exception of those for metal dealers, are “optional provisions” (defined in section 9 of the 1982 Act) – they do not apply in an area unless the licensing authority decides that they should. Section 44 of the 1982 Act allows further activities to be designated and brought within the licensing scheme.

96. Section 43 of the Bill inserts new sections 27A to 27R into the 1982 Act. These new provisions are not “optional provisions”, and will apply automatically in every local authority area. Section numbers 27I and 27O are omitted deliberately.

97. Section 27A (Knife dealers’ licences) provides that a “knife dealer’s licence” is required to carry on business as a dealer in knives and other specified articles. A licence is not therefore required for private sales between individuals.

98. Section 27A(2) provides that the section applies to knives, knife blades, swords or other bladed or pointed articles designed or adapted for causing injury (e.g. arrows or crossbow bolts). Knives and knife blades designed for domestic use are excluded. Section 27A(6) allows the list of articles covered by the section to be altered by an order made by Scottish Ministers.

99. Section 27A(2A) provides that a knife dealer’s licence shall specify the premises to which it relates.
100. Section 27A(3) gives a wide definition of a “dealer” and includes those whose business involves not only selling knives etc. but also hiring, lending, giving and offering or exposing for sale or hire such items. The subsection only applies to businesses which sell to private purchasers and therefore sales etc. to persons acting in the course of business or a profession are excluded from these licensing provisions. Sections 27A(7) & (8) allows the definition of dealer to be altered by an order made by Scottish Ministers.

101. Sections 27A(4) and (5) clarify the meaning of “selling”, particularly in relation to sale by auction. These provisions ensure that the requirements for a licence apply to the owner of the goods rather than to any intermediary such as an auction house or online marketplace.

102. Section 27B (Applications for knife dealers’ licences: notice) requires the licensing authority to publicise applications for the grant or renewal of knife dealers’ licences. This replaces the general public notice provisions in paragraphs 2(7) and (9) of Schedule 1 to the 1982 Act, which require notice to be given only for certain classes of licence application. Section 27B(2) applies paragraph 2(8) of the Schedule to the 1982 Act, which requires the notice to be published in a newspaper stating the particulars of the application and the process for making objections and representations.

103. Section 27C (Knife dealers’ licences: conditions) makes provision for the conditions to be attached to knife dealers’ licences. Under paragraph 5 of Schedule 1 to the 1982 Act, the licensing authority has a general power to grant or renew licences subject to such “reasonable conditions” as it thinks fit. Section 27C allows the licensing authority to include conditions in relation to record-keeping and the storage and display of knives etc. It also gives Scottish Ministers the power to specify minimum conditions which must be included in all licences. These conditions may be specified in either particular or general terms, and different conditions may be specified for different classes of article, e.g. different conditions for swords and for knives.

104. Section 27D (Provision of information to holder of knife dealer’s licence) provides for a new offence of providing false information to the holder of a knife dealer’s licence. Section 27D provides that where the dealer requests information from a person (either the customer or a third party) and that person knowingly or recklessly provides false information, then that person is guilty of an offence. The maximum penalty on summary conviction is a fine of up to level 3 on the standard scale (currently £1,000).

105. Sections 27E (Knife dealers’ licences: warrants to enter, search and seize articles) to 27H (Sections 27E to 27G: interpretation) provide powers of entry, inspection, search and seizure in relation to licensed and unlicensed premises.

106. Sections 27E and 27F (Powers of constables and authorised officers) replace section 6 of the 1982 Act, which is disapplied in relation to knife dealers’ licences by section 44(2) of this Bill. They provide that a justice of the peace or sheriff may grant a warrant authorising entry and search of premises and the seizure and removal of relevant articles. The power is broader than that contained in section 6 of the 1982 Act in that it includes power to seize and remove articles and that authority may be given to an authorised officer of the licensing authority (e.g. a trading standards officer) as well as to a police constable. Section 27F(6) provides that it shall be an
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offence to obstruct or fail to permit such a search, with a maximum penalty on summary conviction of a fine of up to of level 3 on the standard scale.

107. Section 27G (Power to inspect documents) provides that where it is suspected that unlicensed activity is taking place, police constables and authorised officers of the licensing authority have the power to inspect and copy records held by persons having access to such documents. It is an offence for such persons to fail to produce records or documents requested without reasonable excuse. That offence is punishable on summary conviction with a fine of up to level 3 on the standard scale. Section 5 of the 1982 Act already provides, among other things, a power of entry and inspection in respect of licensed premises.

108. Sections 27J (Forfeiture orders) and 27K (Effect of forfeiture order) provide for the forfeiture of articles where an offender is convicted of offences of dealing without a licence or failure to comply with licence conditions. Following conviction, the court may make a forfeiture order, forfeiting any items seized under warrant or which the offender had at the time of arrest or when cited in respect of the offence. The order deprives the offender of any rights he has in the property. Rights of third parties are protected by the inclusion of provisions for owners of goods to recover them.

109. Section 27L (Offences by partnerships) contains provisions about offences committed by partnerships which supplement the standard provisions of the 1982 Act.

110. Section 27M (Appropriate licence required) and 27P (Duty to avoid conflict between conditions of licences) deal with the interaction between the new knife dealer licensing provisions and the existing provisions on second-hand dealers’ licences in the 1982 Act. Section 27M makes it clear that where a person carries on business as a dealer in second-hand knives etc., then both a knife dealer’s licence and a second-hand dealer’s licence will be required (assuming that the licensing authority requires second-hand dealers’ licences for these classes of item). Section 27P avoids any conflict between the requirements of these licences, effectively providing that the terms of the knife dealer’s licence take precedence.

111. The licensing provisions in the 1982 Act are generally based on the location of business premises and the responsible local authority will therefore be clear where licensable activity takes place within Scotland. Section 27N (Remote sales of knives, etc.) deals with licensing requirements for remote sales, e.g. by mail order, telephone or internet. Section 27N provides that where orders are taken and articles are despatched from separate premises, and only the place of despatch is in Scotland, then that place is treated as the place where the sale happens and for which a licence is required.

112. Section 27NA (Sales and dispatches in different local authority areas) provides that, where the sale and despatch of an item take place in Scotland but in separate premises in different local authority areas, the sale takes place at both locations. This means that a knife dealer’s licence will be required for both locations.

113. Section 27Q (Offences in relation to knife dealers’ licences: exceptions) provides a power for Ministers, by order, to provide for exceptions to the new offences created in the Bill and to the existing offences in sections 5 and 7 of the 1982 Act as they relate to knife dealers’ licences.
Section 27R (Orders under sections 27A to 27Q) sets out the Parliamentary procedure for the five new order-making powers:

- 27A(6) – power to modify the articles or classes of article for which a knife dealer’s licence is required;
- 27A(7) – power to modify the definition of “dealer” in section 27A(3);
- 27C(1)(a) – power to specify conditions to be attached to a knife dealer’s licence;
- 27K(7) – power to make provision for the disposal of property forfeited under a forfeiture order; and
- 27Q – power to specify exceptions to the offences.

All orders under these powers are to be made by statutory instrument and are subject to negative resolution procedure in the Scottish Parliament.

Section 44 - Knife dealers’ licences: further provision

This section makes a number of amendments to the provisions of the Civic Government (Scotland) Act 1982 to accommodate the new licensing provisions inserted by section 43. Section 44(2) disapplies section 6 (powers of entry to and search of unlicensed premises) of the 1982 Act, as alternative provision has been made in new sections 27E to 27H.

Section 44(3) increases the penalties for offences set out in section 7 of the 1982 Act:

- Paragraph (a) provides that dealing without a knife dealer’s licence is an offence punishable on summary conviction by imprisonment for up to 12 months or a fine up to the statutory maximum or both. The statutory maximum is currently £5,000, though section 48 of the Criminal Proceedings etc. Reform (Scotland) Act 2007 provides for it be increased to £10,000. The maximum penalty, on conviction on indictment, is imprisonment for up to 2 years or an unlimited fine or both. Paragraph (b) disapplies the general section 7(1) offence which is triable only summarily and for which the maximum penalty is a fine of level 4 on the standard scale (currently £2,500).
- Paragraph (c) provides that a licence holder guilty of failure to comply with a condition attached to a knife dealer’s licence is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale (currently £5,000) rather than the usual maximum fine of level 3.
- Paragraph (d) provides that a person who, in making an application for a knife dealer’s licence, knowingly or recklessly makes a false statement is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale rather than the usual maximum of level 4.
Sale etc. of weapons

Section 45 – Sale etc. of weapons

117. Section 45 inserts new subsections (11A) to (11C) into section 141 of the Criminal Justice Act 1988. Subsection (11A) provides that Scottish Ministers may make an order which provides for exceptions, exemptions and defences to an offence under section 141(1) of the 1988 Act (manufacturing, sale etc. of prohibited weapons). Subsection (11B) provides that any such order need not necessarily apply to all section 141(1) offences but may, for example, make different provisions for different items or circumstances. In terms of subsection (11C), all such orders are subject to affirmative resolution procedure in the Scottish Parliament.

Swords

Section 46 – Sale etc. of swords

118. Section 46 contains new provisions relating to restricting the sale etc. of swords. It adds a new section into the Criminal Justice Act 1988 which is to be read alongside section 141 of that Act. Section 141 contains the power to make restrictions on offensive weapons.

119. Section 141(1) of the 1988 Act provides that any person who manufactures, sells or hires, or offers for sale or hire, exposes or has in his or her possession for the purpose of sale or hire, or lends or gives to any other person, a specified offensive weapon is guilty of an offence. Section 141(4) also prohibits the importation of these weapons. The weapons to which the section applies are specified in the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 (SSI 2005/483), and include knuckledusters, swordsticks, handclaws, stealth knives and push daggers. Antique items are excluded.

120. Section 46(2) of the Bill inserts a new section 141ZA (Application of section 141 to swords: further provision) into the 1988 Act. This new section provides that where Ministers make an order under section 141 directing that it shall apply to swords, they may include provision in the order to modify the effect of section 141. Section 141ZA(3) expands on the power to modify provided by section 141ZA(2) by setting out some of the modifications that may be made. The list of potential modifications in subsection (3) is not exhaustive.

121. Section 141ZA(3)(a) provides that the order may provide for defences to the offences under section 141(1), including in particular defences relating to religious, cultural or sporting purposes. Section 141ZA(5) provides that the defences may relate to swords in general or to classes of swords.

122. Section 141ZA(3)(b) provides that the order may increase the penalties specified in section 141(1). Currently this section provides that a person found guilty of an offence is liable on summary conviction for a term not exceeding six months and/or to a fine not exceeding level 5 on the standard scale. Subsection (3)(b) allows the order to provide for penalties of up to 12 months imprisonment and/or a fine not exceeding the statutory maximum on summary conviction, or up to 2 years imprisonment and/or an unlimited fine on conviction on indictment. The statutory maximum is currently £5,000, though section 48 of the Criminal Proceedings etc. Reform (Scotland) Act 2007 provides for it be increased to £10,000.
123. Section 141ZA(3)(c) provides that the order may create an offence where a person acquiring a sword provides false information. This will allow creation of an offence similar to that in section 27D(2) of the 1982 Act (inserted by section 43 of this Bill) where a person gives false information to a knife dealer. However, the offence that may be created by the order is not restricted to the seller being a knife dealer. The maximum penalty which may be provided by the order is specified by section 141ZA(6).

124. Section 141ZA(4) enables Scottish Ministers to make provision in relation to a defence under section 141ZA(3)(a) for authorisation to be granted by Ministers. Such authorisation may be made subject to conditions and breach of those conditions may be made an offence. The maximum penalty which may be provided by the order is specified by section 141ZA(6).

125. Section 141ZA(6) provides that the maximum penalty which may be provided for an offence under the powers granted by sections 141ZA(3)(c) and (4)(c) is 12 months imprisonment and/or a fine of level 5 fine on the standard scale on summary conviction.

126. Section 46(3) amends section 172 (extent) of the 1988 Act to provide that new section 141ZA extends only to Scotland.

Crossbows

Section 46A – Sale etc. of crossbows

127. Section 46A amends sections 1, 2 and 3 of the Crossbows Act 1987 so as to raise from seventeen to eighteen the age at which a person may be sold or hired a crossbow, and at which a person may buy, hire or possess (in the latter case without supervision by a person aged 21 or over) a crossbow. This replicates for Scotland section 44 of the Violent Crime Reduction Act 2006, bringing the age of sale for crossbows into line with the age of sale for non-domestic knives, fireworks etc.

Possession of weapons in prisons etc.

Section 46B – Possession of weapons in prisons etc.

128. Section 46B amends the Criminal Law (Consolidation) (Scotland) Act 1995 by inserting a new section 49C to provide for a new offence of having offensive weapons or articles with a blade or point (including knives) in a prison (as defined in section 49C(7)). Section 49C(2) provides a defence of ‘good reason or lawful authority’, which is exemplified by section 49C(3). Sections 49C(4) and 49C(5) replicate for prisons the provisions in sections 47(2) and 49(6) of the 1995 Act on forfeiture and disposal of weapons. Section 49C(6) provides for a maximum penalty, on summary conviction, of imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both. The statutory maximum is currently £5,000, though section 48 of the Criminal Proceedings etc. Reform (Scotland) Act 2007 provides for it be increased to £10,000. The maximum penalty, on conviction on indictment, is imprisonment for a term not exceeding 4 years or an unlimited fine or both. The provisions of this section are modelled on sections 49 and 49A of the 1995 Act which deal with possession of similar weapons in public and in schools.
SCHEDULE 1

(introduced by section 1(5))

THE PAROLE BOARD FOR SCOTLAND

Membership

129. Paragraph 1 provides that the Parole Board must consist of a minimum of 5 members, one of whom will be the convenor. The members will be appointed by the Scottish Ministers. Paragraph 2 specifies the five categories of person who must be reflected in the Board’s membership.

130. Paragraph 3 allows the Scottish Ministers to make regulations specifying the procedure, including requirements as to consultation, to be followed in appointing members to the Board. The Scottish Ministers must comply with any such regulations. The regulations may make different provisions for different kinds of members.

Tenure of appointments

131. Paragraph 4 and 5 provide that members must be appointed for a period of between 6 and 7 years, though a member will cease to be such as soon as he or she has reached the age of 75.

132. Paragraph 6 provides that if the member who is a Lord Commissioner of Justiciary ceases to hold that office, he or she also ceases to be a member of the Board. Similarly, paragraph 7 provides that if the member appointed as a psychiatrist ceases to be a registered medical practitioner or a psychiatrist, he or she ceases to be a member of the Board.

133. Paragraph 8 provides that a member may resign at any time by giving the Scottish Ministers written notice. Members may also be removed from office under paragraph 14 of this schedule (as explained below), and cease to be a member on the day on which such an order is made.

134. Paragraphs 10 to 12 deal with reappointment. They provide that a member may be reappointed to the Board so long as he or she has not been a member for the previous 3 years and has not previously been reappointed. Members who have previously resigned from the Board can be reappointed, but a person who has been removed from office by virtue of an order under paragraph 14 (as explained below) may not be reappointed.

Carrying out functions

135. Paragraph 13 requires the convenor to have regard to the desirability of ensuring that all members are given the opportunity to participate in the Board’s functions on not fewer than 20 days in each successive period of 12 months. The 12 month period begins on the first day of the member’s appointment.

Removal of members

136. Paragraphs 14 to 17 deal with the removal of members from the Parole Board. Members may only be removed from the Board by order of a tribunal constituted under paragraph 16.
This document relates to the Custodial Sentences and Weapons (Scotland) Bill as amended at Stage 2 (SP Bill 80A)

This is to consist of either a Senator of the College of Justice or a sheriff principal (who will preside over the proceedings), an advocate or a solicitor with at least 10 years’ standing, and one other person who is not an advocate or a solicitor.

137. The tribunal may only act if it has been requested to carry out an investigation by the Scottish Ministers. It may then only order a member’s removal if, following investigation, it finds that member unfit to continue to be a member of the Board by reason of inability, neglect of duty or misbehaviour.

138. The Scottish Ministers may make regulations to enable the tribunal to suspend a member from the Board during the investigation. These regulations may also make provision for the effect and duration of that suspension, and for any other matters pertaining to the tribunal, including the procedure to be followed by and before it, that the Scottish Ministers may deem appropriate.

Remuneration, allowances and other expenses

139. Paragraphs 18 and 19 provide that Board members are to be remunerated for their service and also receive reimbursement of any reasonable expenses incurred in carrying out their duties. Rates of pay and repayment of expenses are determined and paid for by the Scottish Ministers.

Reporting and planning

140. Paragraph 20 provides that the Board must, as soon as practicable after the end of each reporting year (as defined in paragraph 22), submit a report to the Scottish Ministers on the performance of its functions during the year. Paragraph 21 requires that the Board also submit, as soon as practicable at the beginning of each planning period (as defined in paragraph 22), a plan providing details as to how it will carry out its functions and setting performance targets in relation to those functions.

141. Paragraph 22(1) provides that the reporting period is the period beginning when section 1 of Part 1 of this Bill comes into force and ending on the following 31 March, and then each 12 month period ending 31 March.

142. Paragraph 22(2) provides that the planning period is the period beginning when section 1 of Part 1 of this Bill comes into force and ending on the third occurrence thereafter of 31 March, and then each successive 3 year period ending 31 March.

143. Paragraph 23 requires the Scottish Ministers to lay a copy of the annual report and the plan before the Scottish Parliament.
SCHEDULE 4

(introduced by section 49(3))

TRANSITORY AMENDMENTS OF THE PRISONERS AND CRIMINAL PROCEEDINGS (SCOTLAND) ACT 1993

144. Paragraph 1 provides that until they are repealed by the Bill once enacted, section 1 and 9 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 have the effect as provided for at paragraphs 2 and 3. Paragraph 2 replaces subsections 1(3)(a) and (b) with the word shall. Paragraph 3 repeals subsection 9(1). The effect of this is to require Scottish Ministers to refer the cases of all long-term prisoners, including those liable to removal from the United Kingdom under immigration legislation, to the Parole Board for Scotland once they have served one-half of their sentence, so that the Board can consider whether they should be released on licence.
This document relates to the Custodial Sentences and Weapons (Scotland) Bill as amended at Stage 2 (SP Bill 80A)

CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) BILL

SUPPLEMENTARY FINANCIAL MEMORANDUM

PURPOSE

1. This supplementary Memorandum has been prepared by the Scottish Executive in accordance with Rule 9.7.8B of the Standing Orders in consequence of amendments made to the Custodial Sentences and Weapons (Scotland) Bill at Stage 2. This memorandum should be read in conjunction with the original Accompanying Documents.

SUPPLEMENTARY INFORMATION

Court proceedings

2. Section 6 together with new sections, 6A, 6B and 6C (inserted at stage 2) of the Custodial Sentences and Weapons (Scotland) Bill set the provisions for courts to set the custody part of the sentence. In response to points raised by the Justice 2 Committee during Stage 1, Scottish Ministers gave a commitment to revisiting this section with a view to clarifying it as much as possible.

3. One of the clarifying measures accepted at Stage 2 (section 6C) requires judges to submit reports on custody and community sentences. This information is needed to inform assessments of an offender’s risks and needs. The new provision requires the court to provide a written report on the circumstances of the case, and such other information as is considered appropriate. Estimates are based on the number of sentence receptions to prison (i.e. excluding receptions of fines defaulters and those on remand) - 19,027 in 2005/06. It is difficult to produce an exact costing for the provision of this information in advance of finalising content or format. On the assumption that proportionate information will be required, it is estimated that costs will be in the region of £1.48m per annum for judicial salaries, and £0.18m per annum for the Scottish Court Service running costs. This is in addition to the resources already committed to the provision of reports where there is currently a requirement, such as in respect of prisoners serving sentences of 4 or more years.

4. These costs are based on the assumption that it will take one hour of judicial time to produce a report for a sentence of 6 months up to one year, and 2 hours for a report for a sentence of between 1 and 4 years. For the High Court, there were 30 and 330 cases respectively; in the sheriff courts there were 1,500 and 1,390 cases respectively. The effects of this led to 0.75 full time equivalent of a High Court judge (£0.164m) based on a salary of £218,576 and 8.03 full time equivalent of a sheriff (£1.316m) based on a salary of £163,878 (including employer’s contributions for National Insurance and pensions). The overall costs also
include an element to allow for administration costs in respect of explaining the effects of sentences and setting custody parts, and for producing pro formas for sentences of less than 6 months and will include those dealt with by the District Courts.

5. It is proposed that the provisions inserted at Stage 2 will be further modified at Stage 3 to ensure that there is adequate flexibility to allow for information to be provided proportionate to the nature of the case. It is anticipated that these changes (if accepted by Parliament) will reduce judicial costs. Revised costings will be provided.

Parole Board – consideration of continued detention

6. Under the current provisions (contained in the Prisoners and Criminal Proceedings (Scotland) Act 1993) the Parole Board is responsible for taking decisions on parole for long-term offenders (sentenced to 4 years or more) and the release of life sentence prisoners. Once life sentence prisoners have served the “punishment part” of their life sentence that is imposed by the court at time of sentence, they are entitled to have their contained detention reviewed by a “court-like” body – the Parole Board. The Board will decide whether the prisoner has reached the point where her/she is an acceptable risk and if so will direct release on life licence. This is a continuous process. Because the issue is one of consideration of continued imprisonment, the review must be undertaken by the Board sitting as a Tribunal. At present the Tribunal comprises 3 members chaired by a legal member.

7. Under the Bill’s provisions, only those determinate offenders assessed as high risk will be referred to the Board; the position for life sentence prisoners remains unchanged. So the Board’s consideration of cases will always be on the basis of continued imprisonment, Tribunal hearings will be required for all prisoners referred under the new legislation. The original Financial Memorandum suggested that the Tribunals should comprise only 2 Board members.

8. In giving evidence to the Justice 2 Committee at Stage 1, a number of commentators, including the Parole Board, expressed their concern at the proposal to move from a 3-member to a 2-member Tribunal, arguing that this would lead to a loss of experience and expertise. After careful consideration, and discussions with the Parole Board, Scottish Ministers have agreed to retain the 3-member Tribunal. The consideration of continued detention under the new arrangements is therefore £948k rather than the £675k mentioned at paragraph 165 of the Financial Memorandum. The difference between the current and the new arrangements is an additional £550k.

Parole Board – consideration of recalls to custody

9. The decision to retain the status quo of a 3-member Tribunal has a further impact on costs in relation to the Parole Board’s consideration of offenders recalled to custody for breach of licence conditions. The Financial Memorandum estimated that Parole Board consideration in this area would amount to an additional £59k on existing costs. Taking the 3-member Tribunal into account increases this to £81k.

10. Finally, the original Financial Memorandum included a table summarising the costs across the various sectors affected by the Custodial Sentences provisions. This table, updated to take account of the information provided above, is attached.
Table summarising recurring and non-recurring costs against bodies (note: 1. recurring cost increases due to potential increases in prisoner numbers; 2. there are no savings for any of the bodies concerned.)

<table>
<thead>
<tr>
<th>£m Custodial Sentences</th>
<th>Year 1</th>
<th>Year 5</th>
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<tbody>
<tr>
<td></td>
<td>Recurring costs</td>
<td>Non-recurring costs</td>
</tr>
<tr>
<td>Scottish Administration</td>
<td>16.52</td>
<td>i. 25.2-37.2</td>
</tr>
<tr>
<td>Of which: SPS*</td>
<td>9.5</td>
<td>i. 25.2-37.2</td>
</tr>
<tr>
<td>Continued detention and recall to custody</td>
<td>4.0</td>
<td>-</td>
</tr>
<tr>
<td>Risk Assessment</td>
<td>5.0</td>
<td>0.2*</td>
</tr>
<tr>
<td>Escorting</td>
<td>0.5</td>
<td>-</td>
</tr>
<tr>
<td>Land Acquisition</td>
<td>-</td>
<td>2.0</td>
</tr>
<tr>
<td>i. PPP reversionary interest*</td>
<td>-</td>
<td>23-35</td>
</tr>
<tr>
<td>ii. Public Sector Capital</td>
<td>-</td>
<td>100-160</td>
</tr>
<tr>
<td>Criminal Justice Social Work</td>
<td>4.1*</td>
<td>-</td>
</tr>
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<td>Courts</td>
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<td>Reports – SCS running costs</td>
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<tr>
<td>Recalls</td>
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<tr>
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<tr>
<td>Electronic Monitoring</td>
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<tr>
<td>Other bodies</td>
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</tr>
<tr>
<td>Total</td>
<td>16.52</td>
<td>i. 25.2-37.2</td>
</tr>
</tbody>
</table>

* Range represents costs against 700-1100 prisoners
* IT development
* Figures against i. and ii. represent different scenarios: i. the new prison/s cost if private sector and ii. the new prison/s cost if public sector
* Figure based on assumption that it will take 3 months to get things up and running-hence calculation for 9 months costs in the first year.
CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This supplementary Memorandum has been prepared by the Scottish Executive to accompany the Custodial Sentences and Weapons (Scotland) Bill following Stage 2 consideration of that Bill, which concluded on 2 March 2007. It has been produced in accordance with Rule 9.7.10 of the Parliament’s Standing Orders to assist consideration by the Subordinate Legislation Committee in accordance with Rule 9.7.9.

2. It explains changes to the powers to make subordinate legislation under the Custodial Sentences and Weapons (Scotland) Bill made as a consequence of amendments at Stage 2 where these add new powers to make subordinate legislation or substantially alter powers which were already in the Bill. It describes the persons upon whom these powers are conferred, the form in which the powers are to be exercised, the Parliamentary procedure to which the powers are to be subject and, in respect of new powers, why it is considered necessary to delegate the powers. It does not form part of the Bill and has not been endorsed by the Parliament. This supplementary Memorandum should be read in conjunction with the original Memorandum and the Explanatory Notes, as revised after Stage 2.

FURTHER AND AMENDED DELEGATED POWERS

Section 6

Section 6B Power to amend section 6(3)

Power conferred on:  The Scottish Ministers

Power exercisable by:  Order made by statutory instrument

Parliamentary procedure:  Negative resolution of the Scottish Parliament

3. A number of amendments were made to section 6 at Stage 2 in order to provide further clarity to the provisions dealing with the setting of the custody part. One of those was to remove section 6(10) and to place it in section 6B on its own. The provision has not been altered in any way.
Section 6C Judge’s Report

Power conferred on: The High Court of Justiciary
Power exercisable by: Act of Adjournal

Provision

4. A further consequence of the amendments made to section 6 is the requirement for judges to produce reports. Section 6C(1) requires a judge to produce a report as soon as reasonably practicable after imposing a custody and community sentence. Subsection (2) provides that the report must include information about the circumstances of the case and such other information as the court considers appropriate. The report will be submitted to Scottish Ministers. Subsection (3) includes a power for the High Court of Justiciary to prescribe the form of the report by Act of Adjudgment.

Reason for taking power

5. Issues emerging during a trial provide vital information about the nature of the offence and the offender. The reports will provide appropriate and proportionate information in relevant cases where a custodial sentence is imposed and the amendment made intends to provide the flexibility to allow just such a proportionate response. Trial judge reports input to the Scottish Prison Service’s offender screening/assessment and provide information for the Parole Board when assessing the offender’s suitability for release on licence.

Choice of procedure

6. As with other reports, it is considered the format is a matter which can appropriately be prescribed by Act of Adjudgment.

Section 43 (New section 27A of the Civic Government (Scotland) Act 1982)

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

7. Section 43 of the Bill inserts a new section 27A into the Civic Government (Scotland) Act 1982 to provide for the licensing of those who carry on a business as a knife dealer. That section has been amended to add a new power to modify by order the meaning of “knife dealer”. The new power includes power to add descriptions of businesses to those mentioned in section 27A(3). Power is also given to the Scottish Ministers to exclude businesses from the ambit of subsection (3) of section 27A for the purposes of that subsection.

Reason for taking power

8. Section 27A(3) defines the activities which require licensing as a knife dealer as: selling; hiring; offering for sale or hire; exposing for sale or hire; lending; or giving - whether or not these activities are carried out incidentally to a business which would not otherwise require a knife dealer’s licence. The consequence would be that, e.g. a fencing coach who operated on a professional basis would require a knife dealer’s licence to lend a sword to a pupil for use during...
This document relates to the Custodial Sentences and Weapons (Scotland) Bill as amended at Stage 2 (SP Bill 80A)

a lesson. The amendment to the section provides the ability to alter the definition of “knife dealer” to ensure that such unintended consequences do not arise. The amendment also provides Ministers with greater flexibility to add new activities or businesses to those in subsection (3) should a need be identified in future to control activities which would otherwise fall outside the licensing regime.

Choice of procedure

9. Orders made under this section will be subject to annulment in pursuance of a resolution of the Scottish Parliament (section 27R(2) as inserted by section 43). The negative resolution procedure is considered appropriate given the limited nature of the power and the need for flexibility in the use of the new power. The power is likely to be used to refine the provisions in the Bill in certain limited circumstances, but not departing substantially from the definition of “dealer” set out in the Bill.
Subordinate Legislation Committee

19th Report, 2007 (Session 2)

Custodial Sentences and Weapons (Scotland) Bill as amended at Stage 2

Published by the Scottish Parliament on 15 March 2007
Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

   (a) any-

      (i) subordinate legislation laid before the Parliament;

      (ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter,

   and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

   (c) general questions relating to powers to make subordinate legislation; and

   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

   *(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Dr Sylvia Jackson (Convener)
Janis Hughes
Mr Adam Ingram
Mr Kenneth Macintosh (Deputy Convener)
Mr Stewart Maxwell
Euan Robson
Murray Tosh
Committee Clerking Team:

Clerk to the Committee
Ruth Cooper

Senior Assistant Clerk
David McLaren

Assistant Clerk
Jake Thomas

Support Manager
Andrew Proudfoot
The Committee reports to the Parliament as follows—

1. At its meetings on 6 and 13 March 2007, the Committee considered the inserted or substantially amended delegated powers provisions in the Custodial Sentences and Weapons (Scotland) Bill as amended at Stage 2. The Committee reports to the Parliament on such provisions under Rule 9.7.9 of Standing Orders.

2. Under Rule 9.7.10, the Executive provided the Parliament with a supplementary delegated powers memorandum¹.

3. The Committee took evidence from Executive officials at its meeting on 6 March 2007².

4. Further correspondence between the Committee and the Executive is attached in the Annex.

Delegated powers

5. The Committee considered all of the powers as set out in the Supplementary DPM and is content with sections: 6(1) and 43 (which inserts new section 27A(2A) into the Civic Government (Scotland) Act 1982).

Section 4(2) – power to amend definitions of “custody and community sentence” and “custody –only” sentences

6. The Executive previously justified the need for this power on the basis that post-implementation evaluation might show that custody and community sentences are more effective for longer than 15 days; that any exercise of the power would be evidence based; and that it enables the demarcation point to be changed in response to trends. The Executive undertook at Stage 1 to review the power with a view to limiting how far the demarcation point could be shifted. It explained to the Committee at Stage 1 that the power could be narrowed without losing the desired effect of flexibility.

¹ Supplementary Delegated Powers Memorandum
² Official Report, 6 March 2007
7. The Committee was concerned to note that the power was not amended at Stage 2 and asked the Executive to explain what consideration it gave to imposing a limit on the power to alter the demarcation point between “custody and community” and “custody only” sentences; and why it had opted not to impose such a limit.

8. In its oral evidence (col.2358-59), the Executive explained that it had looked at the demarcation point and came to the view that 15 days is the shortest possible period within which the necessary arrangements for risk and needs assessment could be put in place, and the conditions for the community part of the licence could be set for a prisoner on release. It was therefore content with the power as it stands, without any threshold, because it needs to be able to change its policy in line with different future trends.

9. The Committee acknowledged that the Executive’s case was a policy one but with implications for subordinate legislation. It had expressed its own view but accepted that the Executive had taken a different view.

10. The Committee is content with the power and that it is subject to affirmative procedure.

Section 6B – power to alter the proportion of sentence forming the “custody part” (previously section 6(10))

11. This is a new power introduced at Stage 2 which is substantially the same as the power in deleted section 6(10), which the Committee considered at Stage 1.

12. At Stage 1, the Committee was concerned about the wide Henry VIII power in section 6(10) which was subject only to negative procedure, and that there was some ambiguity about the extent of the power as it could be subject to 2 interpretations – namely that the power is implicitly restricted or alternatively, an express restriction could have been added and as this was not done, no restriction was intended. Accordingly, the extremity of the power was unclear.

13. However, the Committee considered the power was at the boundary of what was appropriate by way of delegated legislation, but that the ambiguity related to a significant power.

14. The Committee asked the lead committee to examine the ambiguity. It also recommended that the power should be made subject to affirmative procedure.

15. In its response, the Executive provided an explanation for the power and undertook to make it subject to affirmative procedure. The Executive also repeated in its letter of 8th January to the lead committee that it is not its intention ever to vary the “default” period to greater than 75% of sentence.

16. The Executive lodged an amendment at Stage 3 to make the power subject to affirmative procedure.

17. The Committee is content with the power and with the lodged Executive amendment to make it subject to affirmative procedure. It also considers
that, due to the enhanced level of scrutiny, no substantive risk will arise in practice from the ambiguity due to the enhanced level of scrutiny.

Section 6C – Judge’s power to prescribe form of judge’s report

18. This is a new power which is not subject to Parliamentary procedure. Section 6C imposes a duty on a court which imposes a custody and community sentence to produce a report on the circumstances of the case, and any other information as the court considers appropriate. This power was introduced at Stage 2. Section 6C provided that the report is to be in such form as prescribed by Act of Adjournal.

19. The Committee confirmed with the Executive that the Lord President was consulted on the need for this power. It questioned, however, whether existing powers to make Acts of Adjournal meant that the power was unnecessary.

20. The Executive agreed with the Committee and lodged an amendment to remove the need for a form prescribed by Act of Adjournal and to leave this to the court’s discretion.

21. The Committee is content with the Executive’s amendment to remove the power.

Section 43 – new section 27Q of the 1982 Act – power to provide exceptions to certain offences under the 1982 Act

22. At Stage 1, the Executive justified this power (which was subject to negative procedure) on the basis that it would be used to enable test purchasing of items and that this type of order was precendent. The Committee was content with the power in principle, but it considered that whilst there may be a need for test purchasing, the power is not restricted to persons who may be exempted (for example, persons commissioned by the relevant local authority) or to circumstances (for example, for the purpose of ensuring compliance with the licensing scheme).

23. The Executive indicated that it does not envisage further uses for the power. It also considered the power to be narrow.

24. The Committee considers that whilst the policy intention may be a narrow one, it does not believe that this transfers to the power itself. The power, in its view, could be exercised to exclude other categories of person from offences under the scheme, which may dilute its effectiveness.

25. The Executive, in oral evidence (col. 2363-65), admitted that it did consider limiting the scope of the power, but it had a desire for flexibility in the operation of the licensing scheme and the delegated powers taken in relation to it. (The reasoning given was that practical operation of the scheme might result in unforeseen anomalies). It confirmed that the power is not designed to make wide, sweeping changes.

26. The Committee asked the Executive to consider lodging an amendment to change the procedure to affirmative, and the Executive agreed to do this.
27. The Committee is content with the power and with the lodged Executive amendment to make it subject to affirmative procedure.

Section 47 – Ancillary provision

28. Section 47(1) provides that Ministers may, by order, make supplemental, incidental etc provisions as they consider appropriate.

29. Section 47(2) provides that such an order “may modify any enactment etc”.

30. Under section 48(3) such orders are subject to negative procedure. In response to the Committee’s concerns about the modification of an Act being subject to negative procedure only, the Executive lodged an amendment to make the power subject to affirmative procedure in those circumstances.

31. The Committee is content with the power and with the lodged Executive amendment to make it subject to affirmative procedure.

New amendments introduced by the Executive for debate at Stage 3

32. The Executive also lodged other amendments at Stage 3.

New section (after section 42) – cross-border transfer of prisoners

33. This new power enables provision to be made for the transfer of prisoners in and out of Scotland. The Committee is content with the power which is subject to affirmative procedure.

Section 45 – sale etc. of weapons

34. This Committee was content with this power at stage 1. The Executive has lodged stage 3 amendments which affect this power. (The power at Stage 1 enabled the making of exceptions and exemptions from offences and creation of defences. In consequence of amendments which specify certain exceptions in the Bill itself, the power is proposed to be amended to become a more general power to modify). The Committee is content with the power which is subject to affirmative procedure.

Section 46 – sale etc. of swords

35. The Committee was content with this power at stage 1. The Executive has brought forward amendments with a view to simplify the drafting and to amend section 141ZA to make it clear that the power is without prejudice to the generality of the power in section 141(11A) of the 1988 Act. The Committee is content with the power which is subject to affirmative procedure.

New Schedule – sentences framed to run consecutively

36. The Executive has lodged a stage 3 amendment which confers powers on a court to frame a sentence so as to be consecutive upon an existing one. Paragraph 6 confers an order making power on Scottish Ministers enabling them to make provision for the application of this schedule, with modifications where a
previous sentence is passed in the UK, outwith Scotland. The Committee is content with the power which is subject to affirmative procedure.
Letter from the Executive of 7 March 2007

1. The Subordinate Legislation Committee (SLC) took evidence from Scottish Executive officials on Tuesday 6th March about the Custodial Sentences and Weapons (Scotland) Bill as amended at Stage 2. I am grateful to the SLC for providing this opportunity for officials to provide an update on the amendments, planned for Stage 3, which change the delegated powers provisions.

2. I now write to confirm that a number of amendments which change the delegated powers provisions will be made at Stage 3. They will be lodged with the Parliament by Thursday, 8 March at the latest.

3. The SLC has already been advised that the commitment given in Mrs Richardson’s letter of 16 November 2006 to make the power under section 6(10) (amended at Stage 2 by Amendment 23 to insert it as a new section 6B) subject to affirmative procedure will be lodged as an amendment at Stage 3 of the Bill.

4. It was confirmed to the SLC that the Lord President had been consulted about the Act of Adjournal power in the provisions dealing with information from the courts at section 6C. However, I can confirm that the further amendment being made to these provisions at Stage 3 makes this power unnecessary and the Act of Adjournal power will be removed.

5. The SLC was also advised of the insertion of a new order making power to deal with cross-border transfers of prisoners. This power will be subject to affirmative procedure.

6. I understand that the SLC yesterday asked that the Executive should provide for affirmative resolution procedure to operate in relation to section 27Q (to be inserted into the Civic Government (Scotland) Act 1982 by section 43 of the Bill). We had not considered such a change at Stage 2 since the Committee had previously indicated that is was content with negative procedure and negative procedure is not unprecedented for such powers. However, I have considered the points raised by the SLC and can confirm that the Executive will amend the Bill at Stage 3 in order to provide for affirmative procedure in relation to the order making powers in section 27Q.

7. Officials indicated yesterday that further amendments to the weapons sections of the Bill were being considered. I can confirm that we propose to amend section 45 of the Bill in relation to the power in subsection (I1A) (to be inserted into section 141 of the Criminal Justice Act 1988) to modify the application of that section of the 1988 Act in relation to weapons specified in an order made under that section. As the SLC will recall, the intention of these powers is to enable exceptions to be made to ban on the sale of weapons where there are legitimate reasons for the exception, such as religious, cultural and sporting purposes. This amendment is related to other amendments being made to this section to ensure that any exceptions to manufacture, sale, hire etc. interface effectively with the
import regime. The amendment is designed to ensure that an order made to implement such a ban can comply with that requirement.

8. It was also indicated to the SLC that the Executive would consider an amendment to ensure that, in the case where the order-making power under section 47(1) of the Bill is used to modify any enactment in terms of subsection (2) of that provision, that would be subject to affirmative procedure. I can confirm that an amendment to achieve that will be laid by the Executive.

9. I hope that you and your members will find this confirmation of the Executive’s position on relevant amendments at Stage 3 helpful.

Letter from the Executive of 8 March 2007

1. My letter of 7 March confirmed that a number of amendments which change the delegated powers provisions would be made at Stage 3. These amendments were lodged with the Parliament on Thursday, 8 March.

2. I now write to advise you of a new order making power to apply the provisions in the new schedule dealing with consecutive sentences to cases where a previous sentence is imposed by a court elsewhere in the United Kingdom. This power will be subject to affirmative procedure and will be lodged with the Parliament today.

3. The new schedule makes provision for the application of the Bill in relation to sentences which are framed to run consecutively. Given the technical complexity of those provisions, it is necessary to take a new order-making power to deal with cases where a previous sentence is imposed by a court out with Scotland as there is currently no provision for this in the Bill.

4. I hope that you and your members will find this helpful.
Present:

Janis Hughes  Mr Adam Ingram
Mr Kenneth Macintosh (Deputy Convener)  Mr Stewart Maxwell
Murray Tosh

Apologies were received from Dr Sylvia Jackson (Convener) and Euan Robson.

Delegated powers scrutiny: The Committee considered the delegated powers provisions in the following bill—

Custodial Sentences and Weapons (Scotland) Bill as amended at Stage 2

and took oral evidence from—

Barry McCaffrey, Office of the Solicitor to the Scottish Executive
Gery McLaughlin, Bill Team Leader
Annette Sharp, Custodial Sentences Policy Manager.

The Committee agreed to lodge an amendment in relation to the power at section 43 of the Bill (new section 27Q of the Civic Government (Scotland) Act 1982) unless the Executive lodges an equivalent amendment by its deadline of Thursday 8 March 2007.
Scottish Parliament
Subordinate Legislation Committee
Tuesday 6 March 2007

[THE DEPUTY CONVENER opened the meeting at 10:31]

Delegated Powers Scrutiny

Custodial Sentences and Weapons (Scotland) Bill: as amended at Stage 2

The Deputy Convener (Mr Kenneth Macintosh): I welcome members to the ninth meeting in 2007 of the Subordinate Legislation Committee. We have received apologies from the convener, Sylvia Jackson, who cannot be with us this morning, and from Euan Robson, who is stuck in the Borders.

Agenda item 1 is consideration of the Custodial Sentences and Weapons (Scotland) bill, as amended at stage 2. I thank the Executive officials for joining us this morning at short notice. I welcome Barry McCaffrey, from the office of the solicitor to the Scottish Executive; Gery McLoughlin, the bill team leader; and Annette Sharp, the custodial sentences policy manager. I remind members that we have the option of considering the bill again next week, should we choose to do so. Stage 3 will take place a week on Thursday, so the deadline for us to seek to amend the bill is this Friday. If we wish to suggest amendments, we should do so today, so that they can be lodged by Friday.

The Executive has told us that there is at least one further amendment to be lodged before stage 3. Can the officials indicate whether there are other amendments that have not yet been laid, or of which the Executive has not notified us in advance?

Annette Sharp (Scottish Executive Justice Department): There may be two further amendments relating to subordinate legislation. We are waiting for the minister to clear an amendment in relation to section 6C, on the judge’s report. The amendment would negate the need for the power to make an act of adjournal. We corresponded with and consulted the Lord President on the issue, but there now appears to be no need for that power, because of the amendment that we intend to lodge at stage 3.

Barry McCaffrey (Scottish Executive Legal and Parliamentary Services): There will also be another power to deal with the transfer of prisoners. Once the minister has cleared the amendments, we will write to the committee with more detailed information. We intend to do that at the earliest opportunity—over the next day or two.

The Deputy Convener: We will have the opportunity to discuss those amendments at our meeting next Tuesday.

Gery McLoughlin (Scottish Executive Justice Department): We are also considering lodging amendments on the weapons side that might include a subordinate power. As Barry McCaffrey said, we will write to the committee with an explanation of the amendments.

The Deputy Convener: We will return to the issue of the judge’s report and the act of adjournal.

As members know, at stage 1 the committee had concerns about section 4(2), which confers a power to amend definitions of “custody and community sentence” and “custody-only sentence”. We were slightly concerned about the width of the power that we were giving to the Executive to move the demarcation point or threshold of 15 days. The Executive responded to the committee that it would consider limiting the power, but it has not yet done so. What consideration has the Executive given to the matter? Why has it decided not to lodge any amendments to limit the power for which the bill currently provides?

Annette Sharp: I hope that I will be able to explain that. It may be helpful if, first, I say a little about the underlying policy. The bill delivers on the minister’s commitment to end automatic and unconditional early release. Since receiving the committee’s letter, we have looked at the demarcation point and come to the view that 15 days is the absolute bottom end, below which it cannot be reduced. It is considered the shortest possible period within which the necessary arrangements for risk and needs assessment could be put in place and the conditions for the community part of the licence could be set for a prisoner, on release. After considering the matter further, we have decided that we are content that we need the power as it stands, without any threshold, because we need to be able to change our policy in line with different trends. Members will be aware that over the past few years there have been many changes to non-custodial disposals; who knows what may happen in future. At the top end of the range, one could make the case for having a threshold of a year or two years, but we need the flexibility that the power currently gives us.

The Deputy Convener: Was the issue debated with the policy committee?

Annette Sharp: Yes.
The Deputy Convener: I seek members' views on the issue. Were members present when it was raised at stage 1? Are members concerned that the Executive has decided to retain the flexibility that the power offers, despite the fact that we were looking for it to be limited?

Murray Tosh (West of Scotland) (Con): The case that has been stated is a policy case that impacts on subordinate legislation. The points that we have made and the concerns that we have expressed are on the record. The Executive has seen the matter differently, and there is nothing more that we can do.

The Deputy Convener: Are members content with the power and for it to be subject to affirmative procedure?

Members indicated agreement.

The Deputy Convener: On section 6, “Setting of custody part”, the committee had concerns at stage 1 about the ambiguity of subsection (1), but the Executive has amended the provision. Are members content with the amendment and the section?

Members indicated agreement.

The Deputy Convener: Section 6B provides for a power to alter the proportion of sentence forming the custody part. The power is new, but it is substantially the same as the power that was previously included in section 6(10). There are two issues. First, at stage 1 we were concerned that the power was at the limit of what we regard as acceptable for subordinate legislation; we were certainly concerned by the proposal that it be subject to negative procedure. I believe that the Executive has agreed to lodge an amendment to make it subject to affirmative procedure, but has not yet done so. Is that correct?

Barry McCaffrey: That is right. We have to lodge all amendments by close on Thursday, so that is in the process of being done.

The Deputy Convener: Secondly, we were concerned about an ambiguity here, which I will précis. The bill provides for a default custody part of the sentence, which would be “one-half of the sentence”. However, the bill also sets a maximum period for custody of three quarters of a sentence. If ministers are able to vary the proportion of the sentence that forms the custody part, there is nothing to prevent that from being ramped up to beyond 75 per cent of the sentence. That could easily be addressed by an amendment at stage 3. Is that something that the Executive has looked at and is considering?

Barry McCaffrey: From a legal perspective, the conclusion that we reached—which is reflected in our correspondence with the committee at stage 1—was that, in the context of the bill as a whole, taking the custody part beyond the upper limit of 75 per cent of the sentence would not only be unworkable, but would circumvent the clear intention of Parliament in having the bill specify, as it does, that a court may not order a custody part in excess of three quarters of a sentence. We concluded that that context was sufficient to put the brakes on any attempt to exercise that power in a way that would circumvent the intention that Parliament was trying to ventilate through the bill.

The Deputy Convener: There is another interpretation that our legal advisers have raised with us. Although, in theory, section 6(6) limits the custody part of a sentence to 75 per cent, meaning that the provision in section 6B cannot go beyond that, the fact that we could take the opportunity to clarify whether there is any ambiguity about the new power but are not doing so could leave the matter open to interpretation. It could be interpreted that, by not choosing to clarify the matter, we are not restricting the power in section 6B to the 75 per cent maximum period that is stated in section 6(6).

Barry McCaffrey: That interpretation could be drawn. However, with respect, I think that the better legal view is that, if the power was exercised in a way that circumvented other key provisions in the bill, of which the provision in section 6(6) is one, that would clearly be contrary to the intention of the power in the first place. Ministers would be hard pushed to justify the exercise of the power in such a way.

Even from a practical perspective, given the fact that the upper threshold of three quarters is stated in the bill, if Scottish ministers exercised the power—assuming that they could—in a way that made the custody part more than three quarters of a sentence, that would give rise to severe difficulties in the operation of the legislation.

Annette Sharp: That is right. Once a prisoner has served 75 per cent of his sentence, ministers are obliged to release him. Difficulties would be caused if the custody part could exceed 75 per cent. In effect, ministers would have to release the prisoner before any assessment or suchlike had been made.

It is clear to us that 75 per cent of the sentence is the maximum period for which an offender will remain in custody. We see the sentence as being very much about rehabilitation as well as punishment, and the minimum period that was thought to be required for rehabilitation was 25 per cent of the sentence being served in the community.

The Deputy Convener: That is fine. I think that the policy intention is clear; we are just concerned that there is a slight ambiguity.
Mr Stewart Maxwell (West of Scotland) (SNP): It is less than clear to me what the problems would be. Assuming that ministers could order more than 75 per cent of a sentence to be served in custody—although there is some debate about that—you say that difficulties would arise. Perhaps, for my sake, you could clarify what those difficulties would be. You say that the policy intention is for the custody part of a sentence not to go beyond 75 per cent of the sentence, but what practical difficulties would arise if the power was used to shift the upper limit?

10:45

Annette Sharp: As Mr McCaffrey said, we feel that, from a legal point of view, things are fine. If there were a loophole that meant that the custody part could be fixed at a period longer than 75 per cent of the sentence, but the bill—in section 14, I think—still stated that the Scottish ministers were under a duty to release a prisoner when he had served 75 per cent of his sentence, that would lead to difficulties.

Mr Maxwell: I am sorry. I apologise if I am in error, but section 6B confers a power to alter the proportion of the sentence that forms the custody part. If the proportion of the sentence that formed the custody part was altered, why would any other section cause difficulties?

Barry McCaffrey: Section 6(1A) states that

"the court must make an order specifying the custody part of the sentence."

Section 6(6) then states:

"The court may not make an order specifying a custody part which is greater than three-quarters of the sentence."

The order-making power in section 6B, as it now is, is purely to amend the power in section 6(3)(a) to set the custody part at more than “one-half of the sentence”. There would clearly be a difficulty in ministers being able to exercise that power standing the terms of section 6(6), so I am struggling to see a legal justification for the exercise of the power in a way that would circumvent section 6(6). I read the power in section 6B as enabling ministers to do something in a way that does not cut across section 6(6), which is the ultimate brake on the exercise of the power. Ministers could not exercise the power to set a custody part greater than three quarters of a sentence, as section 6(6) makes it absolutely clear that the custody part of a sentence cannot exceed three quarters of the sentence.

Murray Tosh: Does that mean that, even if an assessment of the prisoner’s conduct and attitude in custody indicated that he would be a danger to the public for the remaining 25 per cent of his sentence, he could not be required to serve 100 per cent of his sentence in custody in any circumstances?

Annette Sharp: That is correct.

The Deputy Convener: We are straying into policy matters, but that is worth noting.

We raised the issue to clarify whether there is ambiguity in relation to section 6B. The Executive officials take the clear view that there is no ambiguity in relation to the provisions in section 6B, section 6(6) and section 14, to which Annette Sharp referred us. Furthermore, we have received assurances that an amendment that will introduce an affirmative procedure will be lodged in the next couple of days; therefore, Parliament will have the reassurance that it has affirmative procedure to fall back on as another backstop. Are members, therefore, content with the power as drafted?

Members indicated agreement.

Murray Tosh: It is clear from the discussion that any difficulties with the legislation are policy and political matters, rather than procedural issues about the operation of subordinate legislation.

The Deputy Convener: I am sure that members are fully capable of exercising their views on those policy matters in other committees.

Section 6C confers a power on judges to prescribe the form of a judge’s report. In answer to an earlier question, Annette Sharp said that the issue is being addressed. We have two questions. First, has the Lord President been consulted on the need for the power? Secondly, do existing powers to make acts of adjournal mean that the new power is unnecessary? I believe that you are saying that you have not made a decision, but that it is likely that you will revisit the section.

Annette Sharp: That is correct. There has been further consultation between officials and the judiciary about what would be required and in what format the information would be made available to the Scottish ministers. For that reason, it is likely that an amendment will be lodged that will remove the need for a form prescribed by act of adjournal. As I said earlier, we consulted the Lord President on the matter and it was thought, at that stage, that a power was necessary; however, that view has now been negated.

The Deputy Convener: So you might lodge an amendment on that.

Annette Sharp: Yes.

The Deputy Convener: Are members content with that? We will have a chance to revisit the matter next week. By then, we will know whether the Executive has lodged an amendment.

Members indicated agreement.
The Deputy Convener: Section 43 inserts into the Civic Government (Scotland) Act 1982 new section 27A(7), which gives the Scottish ministers a power to modify the definition of a “dealer” and to specify “descriptions of activity which are not to be taken to be businesses”.

The power is new, but it is similar to other powers in section 27A that we discussed at stage 1. It is subject to negative procedure even though it is a Henry VIII power. At stage 1, we decided that the Executive had struck the right balance between the flexibility that is required and the parliamentary procedure that is needed to cover the matter.

Are members content with the new power and the fact that it is subject to negative procedure?

Members indicated agreement.

The Deputy Convener: New section 27Q of the 1982 act contains a power to provide exceptions to certain offences under that act. The power has not been amended and is subject to the negative procedure. The policy intention is specific and narrowly defined. It is clear that the power was included to allow test purchasing. It will perhaps avoid some of the difficulties that were experienced recently with the test purchasing of alcohol in Fife.

However, our legal adviser is concerned that, although the policy intention is narrow, the power is wide. It could be used not just to allow test purchasing but to make other exceptions from criminal offences. Have you considered restricting the scope of the power, perhaps by limiting the persons who may be exempted to “persons commissioned by the relevant local authority”, or by limiting the actions that may be exempted to, for example, actions “for the purpose of ensuring compliance with the licensing scheme”?

Gery McLaughlin: We considered limiting the scope of the power, but, as the committee said previously, there is a desire for flexibility in the operation of the licensing scheme, and that applies to all the delegated powers that are taken in relation to it. We want to ensure that the system is effective and does not exceed the purposes for which we intend it. In practice, the operation of the scheme frequently throws up examples of problematic issues or hard cases. We envisage that the power could be used to address such problems. You certainly have the Deputy Minister for Justice’s assurance that the power is not designed to make wide, sweeping exceptions. However, there is a need for flexibility in the operation of the licensing scheme to ensure that it does not interfere in the course of business other than for the intended purposes.

Murray Tosh: I understand what Gery McLaughlin says, but I would have thought that, in those circumstances, it may be preferable to use the affirmative procedure to allow greater scrutiny of any variations that the Executive might introduce in the light of the hard cases that were mentioned. Have you considered that?

Gery McLaughlin: We did not consider that. If I remember correctly, the committee did not raise the matter at stage 1, but I would need to check on that.

Murray Tosh: With respect, it is almost implicit in asking you to restrict the use of the power that, if you were unable to do so, we might wish to insert the affirmative procedure. As the power is in a new section, we would not have been in a position to raise the matter with you before.

Gery McLaughlin: The section is not new at stage 2.

The Deputy Convener: Our position was that we were content with the power but that some definitions should be included. As there are no definitions to limit the power, members might be concerned about the use of the negative procedure. We did not raise the matter, but that was because we addressed the concern in another way.

Gery McLaughlin: I understand that. We will reconsider the point and address it in the letter that we send the committee soon. We will confirm the Executive’s position on the matter before stage 3.

The Deputy Convener: Thank you.

Murray Tosh: I note from our briefing that the power is in a new section of the 1982 act. It is not a new power in the bill. I misread that. However, it might be appropriate for the committee to consider an amendment on the matter that we could lodge before the end of the week if the Executive’s position is different from ours, or withdraw if the Executive lodges its own amendment. That would get around the manuscript amendment problem if, after our discussions, we still think that it would be appropriate for the affirmative procedure to be used. It would safeguard us.

The Deputy Convener: Do other members have views? The Executive has not considered using the affirmative procedure, but it is not hostile to the idea and the officials have agreed to consider it. Because the matter has not been raised before, I suspect that there will be no difficulty. We should never lodge manuscript amendments if we can avoid it, but I think that lodging an amendment this week might be unnecessary.

Do other members feel strongly about the matter?
Mr Maxwell: I disagree with you, convener. The only way to deal with the matter is for us to lodge an amendment this week. That will avoid the need for a manuscript amendment later. If the Executive lodges an amendment, we can withdraw ours. Given that there might be an issue, we should lodge an amendment and decide next week whether we wish to press or withdraw it.

Murray Tosh: We could decide to withdraw it on the basis of the further response from the Executive. We are giving it an opportunity to reflect on the issues and to make a case to us that we can accept. I am not being combative in any sense. I am simply trying to suggest that we do the minimum that is necessary, then next week we can decide what to do with the amendment that we have lodged.

The Deputy Convener: Last time we discussed the matter, we decided that the negative procedure was sufficient but that we wanted further definitions. Those definitions have not materialised. Do other members have strong views one way or the other?

Members: No.

The Deputy Convener: In that case, given that Murray Tosh and Stewart Maxwell feel that it would be sensible to lodge an amendment, we will draft an amendment that proposes the use of the affirmative procedure. We will lodge the amendment by Friday. We will note whether the Executive lodges an amendment or whether its response is that it does not agree that the affirmative procedure should be used in this case. The committee will debate the matter again next week.

Gery McLaughlin: Our objective is to lodge amendments by Thursday, so you will know by then whether we have lodged an amendment on the matter. You have until Friday to lodge amendments.

The Deputy Convener: Right, so the clerks could leave it until Thursday night. [Laughter.] I am not suggesting that they would do that.

Murray Tosh: That would be sensible. If the Executive lodges an amendment on Thursday, there will be no need for us to proceed.

The Deputy Convener: Absolutely.

Are members content for the clerks to decide whether to lodge an amendment, depending on the Executive’s response?

Members indicated agreement.

The Deputy Convener: Section 47 is on ancillary provision. This is familiar territory for the committee. Section 47(1) states:

“The Scottish Ministers may by order make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of … giving full effect to this Act”.

Section 47(2) provides that such an order may modify any enactment, but under section 48(3) the order would be subject to the negative procedure. We would normally expect an order that modified an act to be subject to the affirmative procedure.

Does the Executive have any thoughts on that?

Gery McLaughlin: I think that you are more familiar with such provisions than we are. Having considered the terms of the bill and taken advice on normal practice, we accept the point that the affirmative procedure should be used where acts may be modified. We will lodge an amendment on the matter at stage 3.

The Deputy Convener: Are members content with the provision?

Members indicated agreement.

The Deputy Convener: That ends our consideration of the Custodial Sentences and Weapons (Scotland) Bill. I thank the officials for coming along at short notice and for their willingness to accept several of the points that were made today.
Custodial Sentences and Weapons (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 Schedule 1
Sections 2 to 23A Section 27
Sections 24 to 49 Schedules 2 and 3
Section 50 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 4

Cathy Jamieson

1 In section 4, page 2, line 24, at end insert—

<“curfew condition” has the meaning given by section 37,>

Cathy Jamieson

2 In section 4, page 2, line 27, after <imprisonment> insert <for an offence>

Colin Fox

16 In section 4, page 2, line 27, leave out <for a term of 15 days or more,> and insert <that is not a life sentence; and includes a sentence of detention imposed under section 206(2) of the 1995 Act (detention for up to 4 days in summary case),>

Colin Fox

17 In section 4, page 2, leave out lines 30 to 32

Cathy Jamieson

3 In section 4, page 3, line 9, at end insert—

<“standard conditions” means the conditions mentioned in section 23A(2),

“supervision conditions” means the conditions mentioned in section 27(3)>}

Colin Fox

18 In section 4, page 3, line 10, leave out subsection (2)

Cathy Jamieson

45 In section 4, page 3, line 12, after <term> insert <for the time being>
Section 5

Cathy Jamieson
46 In section 5, page 3, line 22, leave out <, subject to section 22,>

Colin Fox
19 Leave out section 5

Section 6

Bill Aitken
20 In section 6, page 3, line 31, leave out from <(ignoring) to end of line 32

Bill Aitken
21 In section 6, page 3, line 33, at beginning insert <Subject to section (Custody part: repeat offenders),>

Bill Aitken
22 In section 6, page 4, line 7, at end insert <and
( ) any need to protect the public from the person.>

Cathy Jamieson
4 In section 6, page 4, line 11, at end insert—
<( ) Where (but for this subsection) a custody part would fall to be specified as a period including a fraction of a day, the custody part must be specified in whole days (any such fraction being rounded up to a whole day).>

Bill Aitken
23 Leave out section 6 and insert—
<Custody part
When a custody and community sentence is imposed on a person, the custody part is to be 85% of the sentence.>

After section 6

Bill Aitken
24 After section 6 insert—
<Custody part: repeat offenders
(1) This section applies where—
(a) a person is found guilty of an offence,
(b) the court considers it appropriate to impose a sentence of imprisonment on the person, and
(c) the person has within ten years of being found guilty served two or more separate sentences of imprisonment.

(2) The custody part of the sentence is to be the whole of the sentence.

Section 6A

Cathy Jamieson

Leave out section 6A

Section 6B

Bill Aitken

Leave out section 6B

Section 6C

Cathy Jamieson

In section 6C, page 4, line 29, leave out <Criminal Procedure (Scotland) Act 1995 (c.46)> and insert <1995 Act>

Cathy Jamieson

In section 6C, page 4, line 31, leave out from <prepare> to end of line 36 and insert <provide the Scottish Ministers with such information about—

(a) the person, and
(b) the circumstances of the case,
as the court considers appropriate.

( ) Information provided by virtue of subsection (2) is to be provided in such form as the court considers appropriate.>

Section 8

Cathy Jamieson

In section 8, page 5, line 24, leave out <, subject to section 22,>

Section 9

Cathy Jamieson

In section 9, page 5, line 37, leave out subsection (4)
Section 11

**Cathy Jamieson**

51 In section 11, page 6, line 6, leave out <If section 22 does not apply>

Section 12

**Bill Aitken**

52 In section 12, page 6, line 18, leave out <three-quarter point> and insert <whole sentence is served>

**Bill Aitken**

*53* In section 12, page 6, line 19, leave out from <three-quarter> to end of line 21 and insert <whole sentence is served.>

**Cathy Jamieson**

54 In section 12, page 6, line 22, leave out <and> and insert <but>

**Bill Aitken**

55 In section 12, page 6, line 23, leave out <before the three-quarter point>

**Bill Aitken**

56 In section 12, page 6, line 28, leave out <three-quarter point> and insert <date on which the whole sentence will have been served>

**Bill Aitken**

57 In section 12, page 6, line 30, leave out from <three-quarter> to end of line 33 and insert <whole sentence is served.>

**Bill Aitken**

58 In section 12, page 6, line 35, leave out <before the three-quarter point>

**Bill Aitken**

59 In section 12, page 7, line 2, leave out subsection (8A)

**Cathy Jamieson**

60 In section 12, page 7, line 3, leave out <, subject to subsection (8B),>

**Cathy Jamieson**

61 In section 12, page 7, line 5, leave out subsection (8B)
Bill Aitken

62 In section 12, page 7, line 5, leave out subsection (8B) and insert—

<( ) If a prisoner is serving two or more custody and community sentences, the whole sentences is served, when the later or, as the case may be, the latest of the sentences has been served>

Section 12B

Cathy Jamieson

63 In section 12B, page 7, line 22, leave out <, subject to section 22(4),>

Section 13

Cathy Jamieson

64 In section 13, page 7, line 29, leave out <, subject to section 22,>

After section 13

Bill Aitken

*26 After section 13 insert—

<Application of section 8 to repeat offenders

(1) This section applies to a prisoner to whom section (Custody part: repeat offenders) (2) applies.

(2) Section 8(1) does not apply.>

Section 13A

Cathy Jamieson

65 In section 13A, page 7, line 34, after <prisoner’s> insert <custody and community>

Cathy Jamieson

66 In section 13A, page 8, line 1, leave out <, subject to section 22(4),>

Bill Aitken

27 Leave out section 13A

Section 14

Bill Aitken

28 In section 14, page 8, line 6, leave out <three-quarters> and insert <85%>
Cathy Jamieson

67 In section 14, page 8, line 7, leave out <, subject to section 22,>

Bill Aitken

29 In section 14, page 8, line 7, after <to> insert <section (Custody part: repeat offenders) and>

Bill Aitken

30 In section 14, page 8, line 7, after <to> insert <section 12 and>

Section 15

Bill Aitken

31 In section 15, page 8, line 22, leave out from <(ignoring) to end of line 23

Bill Aitken

32 In section 15, page 8, line 29, at end insert <and any need to protect the public from the person.>

Cathy Jamieson

68 In section 15, page 8, line 33, leave out <it> and insert <the offence>

Section 16

Cathy Jamieson

69 In section 16, page 9, line 4, leave out <life prisoner’s> and insert <prisoner’s life>

Cathy Jamieson

70 In section 16, page 9, line 5, leave out <, subject to section 22,>

Section 17

Cathy Jamieson

71 In section 17, page 9, line 9, leave out <life prisoner’s> and insert <prisoner’s life>

Section 20

Cathy Jamieson

72 In section 20, page 10, line 4, leave out <, subject to section 22,>
Section 22

Colin Fox

33 In section 22, page 11, leave out line 8

Cathy Jamieson

73 Leave out section 22

Section 27

Bill Aitken

34 In section 27, page 12, leave out lines 34 and 35

Cathy Jamieson

74 In section 27, page 12, line 34, leave out <6(3)> and insert <6(3)(b)>

Section 24

Cathy Jamieson

6 In section 24, page 13, line 25, leave out <12(6), 14(3)> and insert <12(3)(b), 12B(3), 13A(3)(b)>

Section 25

Cathy Jamieson

7 In section 25, page 14, line 14, after <(2)> insert <or (2A)>

Section 29

Cathy Jamieson

8 In section 29, page 15, line 15, leave out <this Part> and insert <section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a)>

Section 31

Cathy Jamieson

9 In section 31, page 16, line 4, leave out <this Part> and insert <section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a)>

Cathy Jamieson

10 In section 31, page 16, line 15, leave out <this Part> and insert <section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a)>
Section 32

Cathy Jamieson

75  In section 32, page 17, line 16, leave out <sections 22 and> and insert <section>

Section 33A

Cathy Jamieson

76  In section 33A, page 18, line 1, leave out <and> and insert <but>

Section 36

Bill Aitken

35  In section 36, page 20, line 3, leave out from <later> to <expiry> in line 8 and insert <day on which the prisoner has served 80%>

Cathy Jamieson

11  In section 36, page 20, line 17, leave out <specified> and insert <included>

After section 39

Cathy Jamieson

77  After section 39, insert—

<CHAPTER 5A
EXTENDED AND MULTIPLE SENTENCES

Prisoners serving extended sentences: application of Part 2

(1) Where a prisoner is serving, or liable to serve, an extended sentence, this Part applies subject to the modifications in subsections (2) to (5).

(2) In section 6(3), (3A), (6) and (6B), references to a custody and community sentence are to be read as references to the confinement term of an extended sentence.

(3) In section 12(8A), the second reference to the prisoner’s custody and community sentence is to be read as a reference to the confinement term of the prisoner’s extended sentence.

(4) In sections 13A(1) and 14(2), references to the prisoner’s custody and community sentence are to be read as references to the confinement term of the prisoner’s extended sentence.

(5) In section 36(4)(a)(i), the reference to the prisoner’s sentence is to be read as a reference to the confinement term of the prisoner’s extended sentence.

(6) In this section, the expressions “extended sentence” and “the confinement term” are to be construed in accordance with section 210A(2) of the 1995 Act.>
Cathy Jamieson

78 After section 39, insert—

<Prisoners serving more than one sentence: application of Part 2

Schedule (Prisoners serving more than one sentence: application of Part 2) (which makes provision for the application of this Part to prisoners serving, or liable to serve, more than one sentence of imprisonment) has effect.>

Cathy Jamieson

79 After section 39, insert—

<Sentences framed to run consecutively

Schedule (Sentences framed to run consecutively) (which makes provision for and in connection with the imposition of sentences of imprisonment framed to take effect on the expiry of another sentence) has effect.>

After section 42

Cathy Jamieson

12 After section 42, insert—

<Chapter 7

Cross-border transfer of prisoners

(1) The Scottish Ministers may by order make provision for or in connection with—

(a) the transfer of a person serving a sentence of imprisonment in Scotland from Scotland to a place outwith Scotland,

(b) the transfer to, and confinement in, Scotland of a person serving a sentence of imprisonment imposed outwith Scotland.

(2) An order under subsection (1) may—

(a) include provision modifying the application of Part 2 in relation to persons specified in the order,

(b) modify any other enactment.>

Section 43

Cathy Jamieson

36 In section 43, page 30, line 26, at beginning insert <Subject to subsection (3),>

Cathy Jamieson

37 In section 43, page 30, line 27, at end insert—

<(3) A statutory instrument containing an order under section 27Q may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.>

9
Section 45

Cathy Jamieson

38 In section 45, page 31, line 18, after <weapons)> insert—

<(  ) in each of subsections (5), (8) and (9), for “prove” substitute “show”, and>

Cathy Jamieson

39 In section 45, page 31, line 18, at end insert—

<(11ZA)Subject to subsection (11ZC), where a person is charged with an offence under subsection (1) above in respect of conduct of his relating to a weapon to which this section applies, it shall be a defence to show that his conduct was for the purpose only of making the weapon in question available for one or more of the purposes specified in subsection (11ZB).

(11ZB)Those purposes are—

(a) the purposes of theatrical performances and of rehearsals for such performances;

(b) the production of films (as defined in section 5B of the Copyright, Designs and Patents Act 1988 (c.48));

(c) the production of television programmes (as defined in section 405(1) of the Communications Act 2003 (c.21)).

(11ZC)Where—

(a) a person is charged with an offence under subsection (1) above in respect of conduct of his relating to a weapon to which this section applies (a “relevant weapon”), and

(b) the relevant weapon is one the importation of which is prohibited, subsection (11ZA) does not apply unless the condition in subsection (11ZD) is satisfied.

(11ZD)The condition is that there is in force as respects Scotland provision to the effect that it is a defence for a person (“A”) charged with a relevant offence in respect of A’s conduct relating to a relevant weapon to show that A’s conduct was for the purpose only of making the weapon in question available for one or more of the purposes specified in subsection (11ZB).

(11ZE)In subsection (11ZD), “relevant offence” means an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979 (c.2) (penalty for improper importation of goods).

(11ZF)For the purposes of this section, a person shall be taken to have shown a matter specified in subsection (5), (8), (9) or (11ZA) above if—

(a) sufficient evidence of the matter is adduced to raise an issue with respect to it; and

(b) the contrary is not proved beyond a reasonable doubt.>
Cathy Jamieson
40 In section 45, page 31, leave out lines 20 to 23 and insert <modify the application of this section in relation to any description of weapon specified in the order.>

Cathy Jamieson
41 In section 45, page 31, line 28, at end insert—
<( ) The defence in section 141(11ZA) of the Criminal Justice Act 1988 (c.33) is not available in relation to so much of any charge as relates to conduct taking place before the commencement of this section.>

Section 46

Cathy Jamieson
42 In section 46, page 32, line 3, leave out from <under> to end of line 4

Cathy Jamieson
43 In section 46, page 32, line 31, at end insert—
<(7) The power conferred by subsection (2) is without prejudice to the generality of the power conferred by section 141(11A).”>

Section 48

Cathy Jamieson
13 In section 48, page 34, line 21, after <4(2)> insert <, 6B>

Cathy Jamieson
*14 In section 48, page 34, line 21, after <36(1)(b)> insert <or (Cross-border transfer of prisoners)(1)>

Cathy Jamieson
80 In section 48, page 34, line 21, after <36(1)(b)> insert <or paragraph 6 of schedule (Sentences framed to run consecutively)>

Cathy Jamieson
15 In section 48, page 34, line 21, after <36(1)(b)> insert—
<( ) an order under section 47(1) which contains provision modifying an Act,>

Section 50

Colin Fox
44 In section 50, page 34, line 35, at end insert—
But an order in respect of any provision of Part 2 may not be made until the Scottish Ministers have secured the publication of a report, to be carried out by a person not otherwise accountable to them, on the costs and benefits of that Part in terms of its likely effect on—

(a) levels of offending and re-offending, and  
(b) the size of the prison population.

A report under subsection (2A) must be published and laid before the Scottish Parliament within 12 months of the passing of the Bill for this Act.

After schedule 1

Cathy Jamieson

81 After schedule 1, insert—

<SCHEDULE
(introduced by section (Prisoners serving more than one sentence: application of Part 2))

PRISONERS SERVING MORE THAN ONE SENTENCE: APPLICATION OF PART 2

Multiple custody-only sentences

1 (1) This paragraph applies where a prisoner—

(a) is serving, or liable to serve, two or more custody-only sentences, and  
(b) is not serving, or liable to serve, any other sentence of imprisonment.

(2) Part 2 applies subject to the following modifications.

(3) In sections 5 and 28(1), references to the prisoner’s sentence are to be read as references to the custody-only sentence which expires after the expiry of the other custody-only sentence (or sentences) imposed on the prisoner.

Multiple custody and community sentences

2 (1) This paragraph applies where a prisoner—

(a) is serving, or liable to serve, two or more custody and community sentences, and  
(b) is not serving, or liable to serve, any other sentence of imprisonment.

(2) Part 2 applies subject to the following modifications.

(3) In sections 8 to 11, 13A and 36, references to the custody part of the prisoner’s custody and community sentence are to be read as references to the custody part which expires after the expiry of the other custody part (or parts) specified in relation to the prisoner.

(4) In section 12—

(a) subsection (8A) does not apply, and  
(b) “three-quarter point”, in relation to each of the sentences imposed on the prisoner, means the day on which the prisoner will have served at least three-quarters of each of those sentences.

(5) In section 14(2), the reference to the prisoner’s having served three-quarters of the prisoner’s sentence is to be read as a reference to the prisoner’s having served at least three-quarters of each sentence imposed on the prisoner.
In sections 28(2) and 33A, references to the expiry of the prisoner’s sentence are to be read as references to the expiry of the sentence which expires after the expiry of the other custody and community sentence (or sentences) imposed on the prisoner.

In section 36(4)(a)(i), the reference to the prisoner’s sentence is to be read as a reference to the longer (or longest) of the sentences imposed on the prisoner.

This paragraph is subject to paragraph 7.

Combinations of custody-only and custody and community sentences

3 (1) This paragraph applies where a prisoner—

(a) is serving, or liable to serve, at least one custody-only sentence and at least one custody and community sentence, and

(b) is not serving, or liable to serve, any other sentence of imprisonment.

(2) Part 2 applies subject to the following modifications.

(3) Sections 5 and 28(1) do not apply.

(4) In sections 8 to 11, 13A and 36, references to the custody part are to be read as references to the custody-only sentence or, as the case may be, the custody part of the custody and community sentence which expires after the expiry of—

(a) any other custody-only sentence (or sentences) imposed on the prisoner, and

(b) the custody part of any other custody and community sentence (or sentences) so imposed.

(5) In section 12—

(a) subsection (8A) does not apply, and

(b) “three-quarter point”, in relation to each of the sentences imposed on the prisoner, means the day on which the prisoner will have served—

(i) at least three-quarters of the custody and community sentence (or sentences), and

(ii) the custody-only sentence (or sentences).

(6) In section 14(2), the reference to the prisoner’s having served three-quarters of the prisoner’s sentence is to be read as a reference to the prisoner’s having served—

(a) at least three-quarters of the custody and community sentence (or sentences) imposed on the prisoner, and

(b) the custody-only sentence (or sentences) so imposed.

(7) In sections 28(2) and 33A, references to the expiry of the prisoner’s sentence are to be read as references to the expiry of the sentence which expires after the expiry of the other sentence (or sentences) imposed on the prisoner.

(8) In section 36(4)(a)(i), the reference to the prisoner’s sentence is to be read as a reference—

(a) where one custody and community sentence is imposed on the prisoner, to that sentence,

(b) where two or more such sentences are so imposed, to the longer (or longest) of them.
(9) This paragraph is subject to paragraph 7.

Multiple life sentences

4 (1) This paragraph applies where a prisoner—

(a) is serving, or liable to serve, two or more life sentences, and
(b) is not serving, or liable to serve, any other sentence of imprisonment.

(2) Part 2 applies subject to the following modifications.

(3) In sections 15 to 18, references to the punishment part are to be read as references to the punishment part which expires after the expiry of the other punishment part (or parts) imposed on the prisoner.

Combinations of life sentences and other sentences

5 (1) This paragraph applies where a prisoner is serving, or liable to serve, at least one life sentence and any of the following—

(a) a custody-only sentence,
(b) two or more custody-only sentences,
(c) a custody and community sentence,
(d) two or more custody and community sentences.

(2) Part 2 applies subject to the following modifications.

(3) Sections 5, 7 to 14, 24, 25, 28(1) and (2), 33A and 36 to 38 do not apply.

(4) In sections 15 to 18, references to the punishment part are to be read as references to the custody-only sentence, the custody part of the custody and community sentence or, as the case may be, the punishment part of the life sentence which expires after the expiry of—

(a) any other custody-only sentence (or sentences) imposed on the prisoner,
(b) the custody part of any other custody and community sentence (or sentences) so imposed, and
(c) the punishment part of any other life sentence (or sentences) so imposed.

Single licence for released prisoner serving multiple sentences

6 (1) This paragraph applies where—

(a) paragraph 2, 3, 4 or 5 applies to a prisoner, and
(b) the prisoner is released on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a).

(2) The prisoner must be released on a single licence as respects both (or all) sentences of imprisonment imposed on the prisoner.

(3) References in Part 2 to the prisoner’s licence are to be read as references to that single licence.

Special case: extended sentences
7 (1) Where a custody and community sentence imposed on a prisoner is an extended sentence, the modifications in paragraphs 2(4), (5) and (7) and 3(5), (6)(a) and (8) are to be read subject to sub-paragraph (2).

(2) In the case of the extended sentence, references in those paragraphs to the prisoner’s sentence are references to the confinement term of the prisoner’s sentence.

(3) In this paragraph the expressions “extended sentence” and “the confinement term” are to be construed in accordance with section 210A(2) of the 1995 Act.

Cathy Jamieson

82 After schedule 1, insert—

<SCHEDULE
(introduced by section (Sentences framed to run consecutively))

SENTENCES FRAMED TO RUN CONSECUTIVELY

Power to impose sentence to take effect on expiry of other sentence

1 (1) This paragraph applies where—

(a) a prisoner is serving, or liable to serve, at least one sentence of imprisonment (the “previous sentence”), and
(b) the court imposes a further sentence of imprisonment for an offence (the “further sentence”).

(2) The court may, when imposing the further sentence on a prisoner serving, or liable to serve, one previous sentence, frame the further sentence to take effect immediately on the expiry of the relevant period of the previous sentence.

(3) The court may, when imposing the further sentence on a prisoner serving, or liable to serve, two or more previous sentences, frame the further sentence to take effect immediately on the expiry of the relevant period of whichever previous sentence the court considers appropriate.

(4) The relevant period, in relation to a sentence of imprisonment, is—

(a) in the case of a custody-only sentence, that sentence,
(b) in the case of a custody and community sentence, the custody part of that sentence,
(c) in the case of a life sentence, the punishment part of that sentence.

Postponement of sentencing where previous punishment part or custody part not specified

2 (1) This paragraph applies where—

(a) it falls to the court to sentence a person who is subject to a previous sentence, and
(b) a punishment part or, as the case may be, custody part requires to be specified in respect of the previous sentence but has not been so specified.

(2) The court must not sentence the person until such time as the punishment part or, as the case may be, custody part—

(a) is specified, or
(b) no longer requires to be specified,
in respect of the previous sentence.

**Effect of sentences framed to take effect consecutively**

3 (1) This paragraph applies where—
(a) the court imposes a custody-only sentence as a further sentence,
(b) the court frames the sentence to take effect in accordance with paragraph 1(2) or (3), and
(c) the prisoner’s previous sentence (or one of the prisoner’s previous sentences) is a custody and community sentence.

(2) In determining the date on which the previous sentence expires, no account is to be taken of the period of confinement served under the further sentence.

4 (1) This paragraph applies where—
(a) the court imposes a custody and community sentence as a further sentence,
(b) the court frames the sentence to take effect in accordance with paragraph 1(2) or (3), and
(c) the prisoner’s previous sentence (or one of the prisoner’s previous sentences) is a custody and community sentence.

(2) In determining the date on which the previous sentence expires, no account is to be taken of the period of confinement served under the custody part of the further sentence.

(3) In determining the date on which the further sentence expires, no account is to be taken of the balance of the previous sentence.

(4) The balance of the previous sentence is the term of the sentence less the custody part of the sentence.

**Effect of sentences framed to take effect consecutively on extension periods**

5 (1) In paragraph 3, if the previous sentence is an extended sentence, the reference in sub-paragraph (2) of that paragraph to the date when the previous sentence is due to expire is to be read as a reference to the date when the confinement term of that sentence is due to expire.

(2) In paragraph 4, if the previous sentence is an extended sentence—
(a) the reference in sub-paragraph (2) of that paragraph to the date when the previous sentence is due to expire is to be read as a reference to the date when the confinement term of that sentence is due to expire,
(b) the extension period of the previous sentence is to commence immediately after the date on which the further sentence expires in accordance with sub-paragraph (3) of that paragraph.

(3) In paragraph 4, if the further sentence is an extended sentence, the reference in sub-paragraph (3) of that paragraph to the date when the further sentence expires is to be read as a reference to the date when the confinement term of that sentence expires.
(4) Subject to section 210A(3) of the 1995 Act and to any direction by the court which imposes the further sentence, where both the further sentence and the previous sentence are extended sentences—
   (a) the references in paragraph 4(2) and (3) to the dates when those sentences expire are to be read as references to the dates when the confinement terms of those sentences expire,
   (b) the extension periods of the sentences must be aggregated, and
   (c) that aggregated extension period is to commence immediately after the date on which the further sentence expires in accordance with paragraph 4(3).

(5) In this paragraph the expressions “extended sentence”, “the confinement term” and “the extension period” are to be construed in accordance with section 210A(2) of the 1995 Act.

Application of schedule where previous sentence imposed by court outwith Scotland

6 The Scottish Ministers may by order make provision for or in connection with the application of this schedule (subject to modifications specified in the order) where a previous sentence is passed by a court in any part of the United Kingdom outwith Scotland.

Schedule 2

Cathy Jamieson

83 In schedule 2, page 37, line 32, at end insert—

<(1) Section 167 of the 1995 Act (forms of finding and sentence in summary proceedings) is amended as follows.>

(2) In subsection (7)—
   (a) paragraph (a) and the word “or” immediately following it are repealed,
   (b) for the words “previous sentence for a term or order” substitute “period mentioned in subsection (7D) below”, and
   (c) for the words “later conviction or order” substitute “order mentioned in paragraph (b) of this subsection”.

(3) After subsection (7C), insert—
   “(7D) The periods are—
   (a) any previous custody-only sentence,
   (b) the custody part of any previous custody and community sentence,
   (c) any previous sentence for a term passed by a court in any part of the United Kingdom outwith Scotland,
      following on conviction or any previous order for committal in default of payment of any sum of money or for contempt of court.
   (7E) In subsection (7D) above, “custody and community sentence”, “custody-only sentence” and “custody part” have the meanings given by section 4(1) of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00).”.
In section 204A of the 1995 Act (restriction on consecutive sentences for released prisoners), for the words from “at” to the end of the section substitute “on licence by virtue of Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00).”.

Schedule 3

Cathy Jamieson

84 In schedule 3, page 39, line 9, at end insert—

<Criminal Procedure (Scotland) Act 1995 In section 167, subsections (7A) to (7C). (c.46)

Section 204B.>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted.

Groupings of amendments

**Group 1: Minor and technical amendments**
1, 2, 3, 45, 4, 48, 54, 65, 68, 69, 71, 74, 6, 7, 8, 9, 10, 76, 11, 15

*Notes on amendments in this group*
Amendment 45 is pre-empted by amendment 18 in group 2
Amendment 74 is pre-empted by amendment 34 in group 6

**Group 2: Abolition of custody-only sentences**
16, 17, 18, 19, 33

*Notes on amendments in this group*
Amendment 18 pre-empts amendment 45 in group 1

**Group 3: Prisoners serving more than sentence**
46, 49, 50, 51, 60, 61, 63, 64, 66, 67, 70, 72, 73, 75, 78, 79, 80, 81, 82, 83, 84

*Notes on amendments in this group*
Amendment 60 is pre-empted by amendment 59 in group 6
Amendment 67 pre-empts amendment 29 in group 5
Amendment 67 pre-empts amendment 30 in group 6

**Group 4: Custody and punishment parts: consideration of protection of the public**
20, 22, 31, 32
**Group 5: Repeat offenders**
21, 24, 26, 29

*Notes on amendments in this group*
Amendment 29 is pre-empted by amendment 67 in group 3

**Group 6: Sentence to be served in custody or before release on curfew licence**
23, 25, 52, 53, 55, 56, 57, 58, 59, 62, 27, 28, 30, 34, 35, 13

*Notes on amendments in this group*
Amendment 59 pre-empts amendment 60 in group 3
Amendment 30 is pre-empted by amendment 67 in group 3
Amendment 34 pre-empts amendment 74 in group 1

**Group 7: Treatment of extended sentences**
47, 77

**Group 8: Judge’s report**
5

**Group 9: Cross-border transfer of prisoners**
12, 14

**Group 10: Offences in relation to knife dealers’ licences**
36, 37

**Group 11: Amendment of Criminal Justice Act 1988**
38, 39, 40, 41, 42, 43

**Group 12: Commencement of Part 2**
44
Thursday 15 March 2007

Note: (DT) signifies a decision taken at Decision Time.

**Business Motion:** Ms Margaret Curran, on behalf of the Parliamentary Bureau, moved S2M-5749—That the Parliament agrees that, during Stage 3 of the Custodial Sentences and Weapons (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress:

Groups 1 to 4: 55 minutes  
Groups 5 to 6: 1 hour 35 minutes  
Groups 7 to 12: 2 hours 20 minutes.

The motion was agreed to.

**Custodial Sentences and Weapons (Scotland) Bill - Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to without division: 1, 2, 3, 45, 46, 4, 47, 48, 5, 49, 50, 51, 54, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 6, 7, 8, 9, 10, 75, 76, 11, 77, 78, 79, 12, 36, 37, 38, 39, 40, 41, 42, 43, 13, 14, 80, 15, 81, 82, 83 and 84.

The following amendments were disagreed to (by division)—

16 (For 6, Against 94, Abstentions 0)  
17 (For 6, Against 94, Abstentions 0)  
18 (For 6, Against 95, Abstentions 0)  
19 (For 6, Against 83, Abstentions 0)  
20 (For 14, Against 84, Abstentions 0)  
21 (For 14, Against 85, Abstentions 0)  
22 (For 14, Against 84, Abstentions 0)  
23 (For 14, Against 89, Abstentions 0)  
24 (For 14, Against 86, Abstentions 0)  
25 (For 13, Against 74, Abstentions 0)  
52 (For 13, Against 86, Abstentions 0)  
44 (For 27, Against 74, Abstentions 0).

The following amendments were not moved: 53, 55, 56, 57, 58, 59, 62, 26, 27, 28, 31, 32, 33, 34 and 35.
Amendments 29 and 30 were pre-empted.

**Custodial Sentences and Weapons (Scotland) Bill – Stage 3**: The Minister for Justice (Cathy Jamieson) moved S2M-5632—That the Parliament agrees that the Custodial Sentences and Weapons (Scotland) Bill be passed.

After debate, the motion was agreed to ((DT) by division: For 89, Against 23, Abstentions 3).
Scottish Parliament
Thursday 15 March 2007

Parliamentary Bureau Motion

The Presiding Officer (Mr George Reid): Good morning. The first item of business is consideration of business motion S2M-5749, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Custodial Sentences and Weapons (Scotland) Bill.

Motion moved,
That the Parliament agrees that, during Stage 3 of the Custodial Sentences and Weapons (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress:
Groups 1 to 4: 55 minutes
Groups 5 to 6: 1 hour 35 minutes
Groups 7 to 12: 2 hours 20 minutes.—[Ms Margaret Curran.]

Motion agreed to.

Custodial Sentences and Weapons (Scotland) Bill: Stage 3

09:15

The Presiding Officer (Mr George Reid): The next item of business is stage 3 proceedings on the Custodial Sentences and Weapons (Scotland) Bill. Members should have with them copies of the bill as amended at stage 2; the marshalled list, which contains the amendments that have been selected by me for debate; and the groupings that I have agreed. The division bell will sound and proceedings will be suspended for five minutes for the first division this morning. The period of voting for the first division will be 30 seconds; thereafter, I will allow a voting period of one minute for the first division after a debate. The voting period for all other divisions will be 30 seconds.

Section 4—Basic definitions

The Presiding Officer: Group 1 is minor and technical amendments. Amendment 1, in the name of the minister, is grouped with amendments 2, 3, 4, 45, 4, 48, 54, 65, 68, 69, 71, 74, 6 to 10, 76, 11 and 15. I draw members’ attention to the pre-emption information that is shown on the groupings paper.

The Deputy Minister for Justice (Johann Lamont): This large group of amendments deals with a number of technical and drafting issues that have resulted from a final proofreading of the bill’s provisions. The amendments will make the bill more consistent and readable. I am happy to go into the details of specific amendments if members wish, but at this point I will speak about two amendments in particular.

Amendment 4 provides further clarity to section 6. It addresses an area that has caused practical difficulty, in the past, in cases in which the custody part of a sentence results in a period that includes a fraction of a day. The amendment will require the court, in specifying the custody part of a custody and community sentence, to round up the custody part to the nearest whole day.

Amendment 15 amends section 48 to provide that the order-making power in section 47(1)—to make supplementary, consequential, and so on, provisions in a case in which the order amends primary legislation—is subject to the affirmative procedure. The proposed change reflects the advice of the Subordinate Legislation Committee at an earlier stage, and we are grateful to the committee for its continued interest in the bill.

I move amendment 1.

Amendment 1 agreed to.
Amendment 2 moved—[Johann Lamont]—and agreed to.

The Presiding Officer: Group 2 is on the abolition of custody-only sentences. Amendment 16, in the name of Colin Fox, is grouped with amendments 17 to 19 and 33. Again, I draw members’ attention to the pre-emption information that is shown on the groupings paper.

Colin Fox (Lothians) (SSP): The purpose of the amendments is to address what has been widely accepted as an anomaly in the bill—the fact that offenders who receive 14-day sentences serve longer in custody than those who are sentenced to periods of 28 days. The bill insists that those who receive sentences of 14 days or fewer must spend the entire time in custody—not the 50 per cent of the sentence that they currently serve, nor the 75 per cent that will apply to all other prisoners under the bill, but 100 per cent of the time behind bars, so to speak. Clearly, it is nonsense that getting a shorter sentence means serving longer in custody. That patently undermines the bill’s objective, which is to make the justice system clearer and more understandable to the general public.

At various stages of the bill, the minister has argued that hardly any sentences of 14 days or fewer are handed down by sentencers. It could be argued that that gives us all the more reason to leave the current 50 per cent custodial part of the sentence alone. However, as the minister knows well, hundreds of fine defaulters end up serving such a sentence although a non-custodial disposal was suggested to be far more appropriate in the first place. Fine defaulters—persons for whom the court did not consider prison to be the appropriate disposal—now spend longer in custody than more serious offenders.

The plethora of evidence that the committee received included a submission from Sacro, which said that it considered the imprisonment of the least serious offenders to be misconceived. However, we are about to ensure that those offenders spend even longer in custody than more serious offenders. Frankly, many people would think that that was nonsense.

During the earlier stages of the bill’s passage, the minister argued that we ought not to underestimate the fact that longer sentences also attract a community part under licence. However, under that licence, the offender simply promises to be on good behaviour; otherwise, they get to spend the rest of their time in their own bed and in their own community. Lesser offences attract more severe punishments. My amendments seek to rid us of that silly consequence by keeping the current sentence provision at 50 per cent of time being served. As I said, that is in keeping with the rest of the bill, which, after all, declares that the minimum period in custody should be 50 per cent, rising to 75 per cent if the sentencers so decree.

I am sure that the minister will agree that I listened intently to what she said at stages 1 and 2. Amendment 16 is reasonable, balanced, fair and proportionate, and will avoid the public ridicule that will inevitably greet a bill with such complicated and counter-intuitive provisions and under which people who are on longer sentences will serve proportionately less time in prison than those who are on shorter sentences. I ask Parliament to support this very sensible amendment.

I move amendment 16.

Mr Kenny MacAskill (Lothians) (SNP): On the face of it, Mr Fox’s comments and the points that were made by Susan Matheson in Sacro’s submission have some merit. However, we need to look at these matters in a different light.

Sentences of 14 days and fewer have been handed down primarily for fine defaults and, frankly, that particular system has been brought into disrepute. People all over Scotland were aghast when they found that if people who were given a sentence of seven or 14 days because they had chosen, for whatever reason, not to pay a fine surrendered themselves at 6 am, they were free by 4 in the afternoon. We had to address the frankly unacceptable situation—one might describe it as a manifest injustice or illogicality—in which people who were given a two-year sentence had to do two years in prison while those who were given seven days were released after eight hours or whatever.

I do not think that the solution lies in treating sentences of fewer than 14 days as a parallel matter. Instead, we must ensure that, when a fine is imposed, it is paid and that, if it is not paid, the money is secured by some other method or manner. By doing so, we will not have the nonsense of people not serving the appropriate time and, indeed, we will ensure that the taxpayer does not have to bear the great cost of putting such people in prison. Thankfully, that matter has been partly addressed in other legislation. For that reason, I simply do not think that the amendments would address the problem of fine defaulters.

Should we be giving people sentences of fewer than 14 days anyway? In most cases, the answer is absolutely not. However, in some cases, a sheriff might think that such a punishment—similar, one might say, to a short period of disqualification for a driving offence—would be suitable. In dealing with driving offences, the sheriff might say, “Mr X, take two weeks’ holiday and you won’t have to lose your job as a result of the disqualification”. Such cases will be few and far between—and there are certainly better ways
of punishing people—but I do not want to restrict
the sheriff’s discretion to say, “Mr X, you can use
the two weeks that you would have spent sunning
yourself in Spain to learn the error of your ways.”

Although there appears to be an illogicality in
the bill, I think that we should leave matters as they
are.

Bill Aitken (Glasgow) (Con): Colin Fox is
technically correct to say that the bill appears to
contain an anomaly. However, in my experience,
sentences of 14 days or fewer are unheard of. The
minister might have more up-to-date information,
but I doubt whether any such sentences were
imposed in Scotland last year. Indeed, I would be
surprised if there were any.

The provision must be included in the bill
because, for various reasons that are usually fairly
vague and illogical, some people either refuse to
pay fines or do not ask for any time in which to pay
a fine when it is imposed. In such cases, the
justice or sheriff has no option but to impose a
custodial alternative. If amendment 16, in the
name of Colin Fox, were agreed to, the sheriff or
magistrate would not have such a facility. As I
have said before, I have no great confidence in the
fine collection measures in previous legislation,
but, if the custodial option is not included in this
bill, the number of people not asking for time to
pay in order to get out of their particular problem
will continue to rise.

Jeremy Purvis (Tweeddale, Ettrick and
Lauderdale) (LD): At what stage can proper
rehabilitation services and support start? At stage
1 and stage 2, Colin Fox made good points about
the time it would take the prison service and
others to identify an offender’s particular problems
before signposting to other services. Such points
have been acknowledged in the policy
memorandum that accompanies the bill, and
acknowledged by the minister time and time again,
but Colin Fox’s amendments would make some
very short sentences even shorter. He talked
about licence. I am not sure whether he was
listening at committee meetings, but the Executive
offered clarification of the conditions that could be
applied with regard to licence. It is not just a bond
of good behaviour; it can be more than that.

I disagree with Bill Aitken. When I visited
Edinburgh prison, I spoke to a prison officer who
had indeed heard of a prison sentence of fewer
than 14 days. He told me that, for a prisoner who
was sentenced on a Thursday to seven days,
reception was on the Friday morning and release
was sentenced on a Thursday to seven days,
was sentenced on a Thursday to seven days,
and because people are not released on weekends. Kenny
MacAskill made a similar point. Mr Fox’s
amendments would return that absurd
characteristic of the present system—which we
want to move away from with the bill—into statute.
That would be a retrograde step. Amendments 16
to 19 and 33 cannot be supported.

Johann Lamont: Amendments 16 to 19 and 33
seek to address Mr Fox’s concern that custody-
only prisoners could spend longer in prison than
those custody and community sentence prisoners
who receive very short sentences. Mr Fox wants
to remove the anomaly by eliminating the category
of custody-only sentences; all offenders who are
given a custodial sentence, with the exception of
those who are given life sentences, would be
subject to a custody and community sentence.

I do not think that anyone disputes that there is
an anomaly—that point was acknowledged at
stage 1 and stage 2. However, we had to consider
the practicalities of ensuring that the custody and
community sentence was as effective as possible.

We agree that as many offenders as possible
should be subject to the new custody and
community regime. That is why we have set the
threshold at the lowest practical point—15 days. I
emphasise that we have to consider the
practicalities. We have said many times that 15
days is the minimum time in which arrangements
can be put in place for initial assessments to be
made and conditions to be set. We are committed
to tackling reoffending, but there is a particular
problem with the group of offenders who are
committing the types of offences that lead to short
custodial sentences. For that group, it will be
crucial to break the cycle and provide alternatives
to a life of petty crime.

There is a limit to what we can do with those
people, given the short sentences, and I know that
some commentators do not want custody and
community measures to apply to very short
sentences—although they do not say what should
be done with those offenders instead. I do not
think that we should be doing nothing.

For people who are given very short sentences,
the approach that is taken will be more about
getting them in contact with the range of services
that they will need—such as drug treatment,
accommodation services, and advice on housing
and benefits—to stabilise their lifestyles and move
them away from offending. The service will be
more akin to signposting people on and brokering
access to services, rather than to formal
supervision by social work. We have therefore
stretched the application of the custody and
community regime as far as practical. Custodial
sentences have to be meaningful, and that is what
the 15-day threshold seeks to achieve.

Those who are sentenced to fewer than 15 days
make up a very small percentage of the prison
population. Most of those cases are for fine
default. If a person defaults on a fine, they are
flouting a disposal already made. In the financial year 2005-06, the average daily prison population of prisoners who had been sentenced to fewer than 15 days was just two. That average excludes fine defaulters.

We are seeking to address fine defaulting in other ways. With fine defaulters, supervised attendance orders provide courts with an alternative to custody. We have announced that, from September this year, supervised attendance orders will be the mandatory penalty for fine default of up to £500. That will mean that the vast majority of fine defaulters will no longer be sent to prison. We estimate that that will remove approximately 3,000 annual receptions to custody for fine default.

Points have been well made about the inadvisability of amendments 16 to 19 and 33 in the name of Colin Fox. I urge Parliament to reject them all.

Colin Fox: Those members who argue that the current system is in disrepute are absolutely correct. That is what the bill seeks to address. However, the passage of the part of the bill that seeks to make people who are serving 14-day sentences serve even longer than they do now would bring the system into even more disrepute.

To Kenny MacAskill, I say, with all due respect, that it is he who misses the point entirely. I am not suggesting that people should escape punishment. However, as he well knows and as the evidence that was presented to the committee during the passage of this and other bills demonstrated, imprisoning people for short periods of time is a waste of money and time. There are far better disposals available for people in that category. The minister hinted at a few of them—drug treatment and testing orders, supervised attendance orders, community disposals and so on. No one is suggesting that people should walk away without punishment.

Kenny MacAskill and Jeremy Purvis suggested that we should leave matters as they are. Those who want to leave matters as they are should support my amendment, because the bill does not propose to leave matters as they are; it proposes to make people who are sentenced to 14 days in custody spend twice as long in custody as they would under the present system. Both those members have missed the logic entirely. They seem to suggest that leaving matters as they are means that we would not do anything with the current disposal, but that is not the case, as the bill seeks to change the situation entirely.

The emphasis of a large part of the bill, which I welcome, is on the community part of sentences. Jeremy Purvis implied that people need to spend longer in custody so that they can have better rehabilitation services around them, but that flies in the face of all the evidence that he sat through in the committee, as all the experts told us that rehabilitation of offenders serving less than six months is impossible. If that is the case, it begging belief that it can be done in 14 days. We have to make the sentences shorter by keeping the arrangement as it currently is. That is the point that Kenny MacAskill and Jeremy Purvis missed.

The minister is right to point out that we are dealing with an anomaly. Everybody in the chamber accepts that. However, my amendments are the only way in which that anomaly can be removed from the bill.

I press amendment 16 and ask the Parliament to support it.

The Presiding Officer: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. Since this is the first division in these proceedings, there will be a five-minute suspension.

Meeting suspended.

On resuming—

The Presiding Officer: We will proceed with the division on amendment 16.

FOR

Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Fox, Colin (Lothians) (SSP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Amendment 17 moved—[Colin Fox].

The Presiding Officer: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Fox, Colin (Lothians) (SSP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brand, Rhona (Midlothian) (Lab)
Brocketbank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kirkintilloch) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Cullinan, Ms Margaret (Alloa and Elderslie) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Edie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fraser, Murdo (Mid Scotland and Fife) (Con)

Abstentions: 0.
Amendment 17 disagreed to.

Amendment 3 moved—[Johann Lamont]—and agreed to.

The Presiding Officer: I remind members that if amendment 18 is agreed to, amendment 45 is pre-empted.

Amendment 18 moved—[Colin Fox].

The Presiding Officer: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Baird, Shiona (North East Scotland) (Green)

Bailance, Chris (South of Scotland) (Green)

Fox, Colin (Lothians) (SNP)

Harper, Robin (Lothians) (Green)

Harvie, Patrick (Glasgow) (Green)

Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Adam, Brian (Aberdeen North) (SNP)

Altken, Bill (Glasgow) (Con)

Ardock, Mr Andrew (Mid Scotland and Fife) (LD)

Bailie, Jackie (Dumfriesshire) (Lab)

Baker, Richard (North East Scotland) (Lab)

Barrie, Scott (Dunfermline West) (Lab)

Boyack, Sarah (Edinburgh Central) (Lab)

Branchin, Rhona (Midlothian) (Lab)

Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)

Brown, Robert (Glasgow) (LD)

Brownlee, Derek (South of Scotland) (Con)

Butler, Bill (Glasgow Anniesland) (Lab)

Canavan, Dennis (Falkirk West) (Ind)

Chisholm, Malcolm (Edinburgh North and Leith) (Lab)

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)

Cunningham, Roseanna (Perth) (SNP)

Curran, Ms Margaret (Glasgow Bellshill) (Lab)

Davidson, Mr David (North East Scotland) (Con)

Douglas-Hamilton, Lord James (Lothians) (Con)

Edie, Helen (Dunfermline East) (Lab)

Ewing, Fergus (InvernessEast, Nairn and Lochaber) (SNP)

Fabian, Linda (Central Scotland) (SNP)

Ferguson, Patricia (Glasgow Maryhill) (Lab)

Finnie, Ross (West of Scotland) (LD)

Fraser, Murdo (Mid Scotland and Fife) (Con)

Gallie, Phil (South of Scotland) (Con)

Glen, Marilyn (North East Scotland) (Lab)

Godman, Trish (West Renfrewshire) (Lab)

Goldie, Miss Annabel (West of Scotland) (Con)

Gordon, Mr Charlie (Glasgow Cathcart) (Lab)

Gorrie, Donald (Central Scotland) (LD)

Henry, Hugh (Paisley South) (Lab)

Home Robertson, John (East Lothian) (Lab)

Hughes, Janis (Glasgow Rutherglen) (Lab)

Hyslop, Fiona (Lothians) (SNP)

Ingram, Mr Adam (South of Scotland) (SNP)

Jackson, Dr Sylvia (Stirling) (Lab)

Jackson, Gordon (Glasgow Govan) (Lab)

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)

Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)

Johnstone, Alex (North East Scotland) (Con)

Kerr, Mr Andy (East Kilbride) (Lab)

Lamont, Johann (Glasgow Pollok) (Lab)

Livingstone, Marilyn (Kirkcaldy) (Lab)

Lochhead, Richard (Moray) (SNP)

Lyon, George (Argyll and Bute) (LD)

MacAskill, Mr Kenny (Lothians) (SNP)

Macdonald, Lewis (Aberdeen Central) (Lab)

Macintosh, Mr Kenneth (Eastwood) (Lab)

Macmillan, Maureen (Highlands and Islands) (Lab)

Martin, Paul (Glasgow Springburn) (Lab)

Mathers, Mr Jamie (Highlands and Islands) (Con)

McAteer, Michael (Hamilton North and Bellshill) (Lab)

McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)

McNeill, Pauline (Glasgow Kelvin) (Lab)

Muir, Brian (Glasgow) (SNP)

Muncord, Mr Andrew (Mid Scotland and Fife) (Con)

Murray, Dr Elaine (Belmoor) (LD)

Murray, Mr John (North Tayside) (SNP)

Murray, Mr Kevin (Dumbarton) (SNP)

McKee, Mr John (East Lothian) (SNP)

McKerr, Mr Mark (Midlothian) (SNP)

McLellan, Mr Alex (Ayr) (Con)

McKerr, Mr Mark (Midlothian) (SNP)

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McKerr, Mr Mark (Midlothian) (SNP)

McKerr, Mr Mark (Midlothian) (SNP)
The amendments in the group, while complex and lengthy, are essentially technical in nature. They are intended to enhance the regime's operation, and they will prevent subsequent sentences that are imposed during a period of imprisonment from being entirely absorbed in the first sentence, which would not have been the court's intention.

Amendments 78, 79, 81 and 82 introduce new schedules to the bill that detail the processes to be applied when an offender is serving more than one sentence of imprisonment. We have a complex array of provisions in the new schedule that deals with the various permutations. However, it may help the chamber if I offer an example. When a court imposes a consecutive sentence, it will now be served in parts. That, after all, is the court's intention. For example, a prisoner who receives a custody and community sentence to be served consecutively to a sentence that is already being served will serve the custody parts of both sentences before serving the aggregate of both community parts on licence in the community.

In addition, for those on whom the courts impose an extended sentence, the extension periods will also be aggregated. Paragraph 6 of the new schedule that is introduced by amendment 82 also creates a new order-making power to apply the provisions of the new schedule to cases in which a previous sentence is imposed by a court elsewhere in the United Kingdom. That will enable the court, as it does now, to impose a sentence consecutively to a sentence that is imposed by a court outwith Scotland. Amendment 80 adds that the court's intention.

Amendment 18 disagreed to.

Amendment 45 moved—[Johann Lamont]—and agreed to.

Section 5—Release on completion of sentence

The Presiding Officer: Group 3 is on prisoners serving more than one sentence. Amendment 46, in the name of the minister, is grouped with amendments 49 to 51, 60, 61, 63, 64, 66, 67, 70, 72, 73, 75 and 78 to 84. I draw members' attention to the pre-emption information that is shown on the groupings paper.

Johann Lamont: I am sure that there will be agreement throughout the chamber that, for too long, lack of clarity in what sentences mean has undermined the credibility of the criminal justice system. We have said that one of the key aims of the bill is to improve public confidence by providing greater clarity about sentences, their length and their meaning. This group of amendments is the final step needed to ensure that that is achieved. As recommended by the judicially led Sentencing Commission, we are abolishing the practice of single terming sentences. Single terming means that a second sentence that is imposed during a period of imprisonment for an earlier offence can be entirely absorbed in the first sentence.

Mr MacAskill: The Scottish National Party has a great deal of sympathy with what the Executive is attempting to achieve with the amendments. It appears that what the public want, and what we support, is that the sentence that is given should be the sentence that is served—the minister has commented on that—and that judicial policy and sentencing policy should be understandable, not simply to a highly qualified lawyer of many years'
standing, but to the victim, to the accused and to the ordinary man or woman in the court at the time or elsewhere.

What causes frustration about the system is misunderstanding. It is all very well for sheriffs to claim that everybody knows that an offender who is given 12 months will be released after six months, but the man or the woman on the street does not understand that or have experience of that. Therefore, we welcome the progress on ensuring that people are provided with a greater understanding of what a given sentence will be. We certainly believe that the sheriff’s official statement to the court on the custodial part of the sentence will be of benefit.

09:45

However, the problem with the provisions is that a great deal of difficulty will arise because of the complexity to which the minister referred. The new system will be deeply complex even for sheriffs of many years’ standing and will need to be discussed, if not walked through, with sheriffs. Therefore, we have great worries about the complexity of the system that is being created.

That said, as members from all parties have commented, the current system is unsatisfactory and is not—to use the buzzwords that are applied to many legislative provisions—fit for purpose. Therefore, we need to move forward. Only time will tell whether the proposals will work out but, given that we have the opportunity to decide only whether or not to support them, we will support the amendments despite the great worries that exist about the complexity of the system that is being imposed.

**Bill Aitken:** As Kenny MacAskill said, the matter is complex, but the amendments in the group are indeed welcome. Apart from anything else, the amendments will close a loophole that exists under the 1995 act that affects individuals who are already serving a custodial sentence and who are supposed to be sentenced by another court to a further period of custody after their current sentence. If the sheriff simply imposes a sentence of, say, 12 months’ imprisonment, the new sentence will start on the date on which the sentence is passed. In effect, that enables the prisoner to have a roll-up of perhaps three sentences and thereby defeat the purpose of the court, which was that he should be punished for the three offences that he committed.

Of course, the simple way round the loophole is to say that the sentence is 12 months’ imprisonment to be served consecutive to the offender’s current sentence and any other sentence that may be imposed by a court. Unfortunately, the word on that did not seem to get round terribly well and, in a number of cases, offenders were in effect able to walk free after perhaps as little as a quarter of the sentence that had been intended.

The amendments in the group are welcome. I accept that they are complicated and do not clarify matters terribly much but, bearing in mind the complexity of the issue, I recognise that it is quite difficult to put something in black and white that is tremendously clear.

**Johann Lamont:** This issue may be complex, but we should not overstate the complexity of the bill as a whole. The bill’s effect on sentence management will be quite straightforward. Sentences will have a custody part, a community part and an assessment of risk during the period in custody. That is not complex.

The amendments deal specifically with single terming. They will get rid of what might be called odd consequences—the term “anomalies” was used earlier—some of which were perhaps hinted at by Bill Aitken. I would not want to say that our judiciary is not capable of dealing with complexity—I enjoy a positive relationship with them and do not want to insult them—but we recognise that we need to work with the judiciary on the range of issues that the bill addresses. We are doing that through the planning implementation group on the bill, so that people understand the importance of explaining what they are doing.

The amendments do not even, I think, deal specifically with whether a court should impose a consecutive or a concurrent sentence. Courts are able to do that at the moment. The amendments deal with single terming, which can complicate matters and mean that people can end up in the position that has been highlighted.

The general thrust of the bill is quite straightforward, but the amendments address a specific complexity that has been recognised as requiring to be addressed. Although the amendments are not straightforward, they will provide the benefits of increased transparency and clarity.

**Amendment 46 agreed to.**

**Amendment 19 agreed to.**

**The Presiding Officer:** The question is, that amendment 19 be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

**FOR**

Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Fox, Colin (Lothians) (SSP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
The danger the offender presents is the trial judge. What cannot be denied is the fact that the person who is best able—although not exclusively so—to assess the evidence heard by the court or an agreed narrative presented by the prosecutor. What remains to be seen is to what extent the judge's report in cases of a violent or sexual nature reflect the danger the offender poses to the wider public. As the bill stands, judges will be precluded from taking that into consideration.

Section 6—Setting of custody part

The Presiding Officer: Group 4 is on custody and punishment parts: consideration of protection of the public. Amendment 20, in the name of Bill Aitken, is grouped with amendments 22, 31 and 32.

Bill Aitken: I think that there is genuine agreement that anybody who suggests that sentencing is other than complex and difficult is being naive. Sentencers require to consider many issues. Retribution and punishment of the offender is one, the need to deter the offender or others who might be of like disposition to offend is another, and rehabilitation certainly has a part to play, but surely one of the most important aspects of the selection of a sentence must be the danger the offender poses to the wider public. As the bill stands, judges will be precluded from taking that into consideration.

The issue was debated at stage 2, but I was unconvinced by the Executive's argument that the bill protects the public satisfactorily. I do not accept its argument that the Parole Board for Scotland's deliberations will cover the matter. It remains to be seen to what extent the judge's report in cases of a violent or sexual nature reflect the evidence heard by the court or an agreed narrative presented by the prosecutor. What cannot be denied is the fact that the person who is best able—although not exclusively so—to assess the danger the offender presents is the trial judge.

It is ludicrous that the input of the trial judge is largely ignored in the sentencing process. Prevention is an important aspect of the sentencing consideration. It is ridiculous to remove judges' power to consider the risk that the offender presents. Amendment 20 and the consequential amendments 22, 31 and 32 seek to reinstate the right of judges to take that into consideration.

Scotland has a legal practice of which we can all be proud. Unfortunately, its effectiveness is being
diluted by legislation being passed by the Executive that interferes with judicial discretion and replaces judges’ rights with the right of the Parole Board for Scotland to make decisions behind closed doors.

The existing system is much more transparent.

Jeremy Purvis: The member highlights the parts of the essence of the Scottish system that he alleges are being undermined. Would the system be undermined further if we got rid of one of its key elements, which is the double jeopardy principle?

Bill Aitken: That is a separate argument. My view on the matter is well known. The double jeopardy principle requires to be revisited in the light of technological advances and in the interest of fairness to victims and their relatives, who should see justice being done.

Stewart Stevenson (Banff and Buchan) (SNP): Does the member consider that amendment 22 is consequential to amendment 20, or should the matter be dealt with in its own right?

Bill Aitken: It could be dealt with separately, but the basic principle stands.

For the first time, a Parliament is seeking to reduce the powers and independence of the judiciary. That is alarming. The existing system is at least transparent. Under the Executive’s proposals, decisions will be taken by the Parole Board based on the information that is provided, which in many respects will not be open to challenge. That is unfortunate in the extreme.

I move amendment 20.

Mr MacAskill: We are genuinely open-minded on the matter and will listen to what the minister says.

Mr Aitken’s point is valid. We must take cognisance of the protection of the public, and we would be failing if we did not expect the judiciary to do that too. That said, we come back to the fundamental ethos of custodial sentences. Why do we impose them? Sadly, it is sometimes the case that prisons are receptacles for those who have social inadequacies or suffer from drink, drugs or deprivation. However, the fundamental ethos of prison is that it exists to punish dangerous people from whom we need to protect the public and/or to deal with people who have committed offences that are so serious that the disapprobation of the community can be shown only by a custodial sentence.

It can be argued that the element of protection of the public can be contained within the punishment that the sheriff or judge hands down. If that is the case, doubtless we will be satisfied. We will be interested to hear what the minister says on whether the protection of the public can be dealt with in the punishment aspect—in the sentence that the judge will impose—and on whether that will be taken as read. If not, we will have some sympathy with Mr Aitken.

It is clear that we need an element of protection of the public. The question is whether it needs to be specifically stated or whether it is already dealt with and clearly understood by the judiciary.

Johann Lamont: I had a sense of déjà vu when I listened to Bill Aitken, because his amendments are remarkably similar to amendments that he lodged at stage 2, which the Justice 2 Committee rejected for the reasons that I will outline to the chamber. However, he managed to be even more mischievous than he normally is, and he perhaps bordered on being something more serious than mischievous in his allegations about what the Executive seeks to do in the bill. We have a responsibility to ensure that we do not, in what we say, undermine people’s confidence in the system.

Amendment 20 seeks to remove the requirement for the court to ignore public protection when the custody part of a sentence is set under section 6. Amendment 22 would add the consideration of public protection to the factors that the court must take into account when it sets a custody part of more than 50 per cent of the sentence. Amendments 31 and 32 would make similar provision in relation to life sentences and the setting of the punishment part under section 15.

We have said all along—and we clarified it at stage 2—that the right time for public protection to be taken into account is when the court considers the appropriate length of the total sentence. As we have said before, the bill is about sentence management, not about sentencing itself. It is for the judge to consider all the factors that they consider relevant and to decide the total length of the sentence. At that stage, we are not able to fetter the consideration of the judge in what factors they take into account. The bill is about sentence management, or what happens when the headline sentence has been established.

The custody part of a custody and community sentence—or, as its name suggests, the punishment part of a life sentence—is for the sole purpose of retribution and deterrence. In other words, its purpose is punishment. It forms a minimum of 50 per cent of the overall sentence. Any extension by the court will be based on factors such as the circumstances of the offence and the offender’s previous convictions or reoffending while on licence—we added that factor at stage 2. It is right for such factors to influence punishment, but it is not right to expect a judge who has fixed the headline sentence, after taking into account whatever factors he or she thinks are
relevant, to look into the future and assess the risk that an offender may pose at the end of the custody part.

10:00

The continuing assessment of risk and need by the Scottish ministers—in effect, the Scottish Prison Service—and by local authorities will form part of the sentence management process. Measures will be taken as appropriate during the custodial part of a sentence. That will allow decisions about risk to take account of all relevant factors, many of which transpire during the custody part and of which the court cannot be aware when it is passing sentence. Public protection remains a critical factor in setting the overall sentence and is key to determining whether an offender should move to the community part of a sentence.

Amendments 31 and 32 would overturn the existing provisions for setting the punishment part of a life sentence. They have worked well since they were introduced in the Convention Rights (Compliance) (Scotland) Act 2001. Substantial jurisprudence now supports the arrangement whereby the court sets the punishment part, whereas risk—public protection—is considered at the appropriate time by an independent and impartial tribunal, which is the Parole Board for Scotland.

Phil Gallie (South of Scotland) (Con): When the Parole Board determines at the end of the custody part whether an individual can be released, what effect could the European convention on human rights—I am not joking on this occasion—have on decisions that the Parole Board makes?

Johann Lamont: We know that the Parole Board’s actions must be ECHR compliant and that Phil Gallie does not regard that as a good thing, but that is where we are.

The provisions on setting the custody part of a custody and community sentence are modelled on the life sentence arrangements. That underscores the fact that we have not developed the new regime on a whim.

For the reasons that I have given, the amendments are not needed. As Bill Aitken knows, similar amendments were not supported at stage 2. I suggest that the amendments should not be supported now. Most critically, we ought not to allow the Tories to represent the bill as an attack on public protection. Public protection is properly addressed in setting the sentence. While an offender is in custody, their risk can be further assessed. I urge members to reject the amendments.

Bill Aitken: I listened to the minister with interest. I am interested in how she equates what she said with the wording in the bill. At line 30 on page 3, section 6 says:

“The custody part is that part of the sentence which represents an appropriate period to satisfy the requirements for retribution and deterrence (ignoring any period of confinement which may be necessary for the protection of the public).”

I say with all due respect that the bill says clearly that the judge must not consider any aspect of public protection. That is manifestly wrong. Surely one of the most important principles of sentencing is protection of the public.

Johann Lamont: Does the member accept what I have said, which is that judges can—and no doubt will—take public protection into account when establishing a sentence? The notion that the bill will erase public protection from sentencing is self-evidently nonsense. The headline sentence will be established. We are addressing sentence management and assessment while an offender is in custody.

Bill Aitken: That is not what it says on the tin. What the bill says is clear. If the minister and I agree about the matter, she has a clear remedy: to accept my amendments, which would impose on the bill the questions that the minister has posed. I think that most members think that public protection is apposite to the amount of time someone should spend in prison and must be a principal consideration of any sentencing approach.

Mr MacAskill: My one worry about Mr Aitken’s approach relates to how a judge can quantify the danger a person presents. I understand why a judge should be able to say that a vicious assault merits a seven-year sentence or that such a sentence is merited because of the nature of the victim, who could be an old-age pensioner, but on what basis can a judge possibly decide that somebody is a danger? How would a judge know that somebody will be a danger for seven years, but that they will no longer be a danger after seven years and a day?

How can a judge quantify an intangible? A judge can certainly say that an act is reprehensible and goes against the mores, morals and values of our society and that a person should get X years for committing that act, but a judge cannot possibly be qualified to say that a person will be a danger for X number of years. A person might be a danger for ever and therefore must be dealt with, but they could stop being a danger. How can a judge measure whether somebody is a danger?

Bill Aitken: I accept that when a judge imposes a sentence of, say, six years, it is impossible for them to say that three years of that sentence will
be for punishment, two years will be because they are a danger and one year will be for some other factor, but on the basis of the evidence that the judge has heard or a narrative that has been presented, they can make an assessment that is based on the circumstances of the crime or offence and that is indicative of the extent to which the individual poses a clear and present danger to members of the public. My proposals must be considered on that basis. As it stands, the bill does not cover the matter.

The Deputy Presiding Officer (Murray Tosh):
The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Petrie, Dave (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

Against
Adam, Brian (Aberdeen North) (SNP)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Bailie, Jackie (Dumbarton) (Con)
Baird, Shona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Fal Kirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eddie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Glen, Martyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Matheson, Mr John (North Lanarkshire) (SNP)
Mathesons, Michael (Central Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Mr Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunningham South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatlie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Wallace, Mr Jim (Orkney) (LD)
Watt, Ms Maureen (North East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunningham North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 14, Against 84, Abstentions 0.

Amendment 20 disagreed to.

The Deputy Presiding Officer: Group 5 is on repeat offenders. Amendment 21, in the name of Bill Aitken, is grouped with amendments 24, 26 and 29. Again, I draw members’ attention to the pre-emption information on the groupings list.

Bill Aitken: I think that there is consensus in the chamber that recidivism is a serious problem in Scotland. Prisoners who are released early from jail frequently reoffend. It is sometimes argued that
the problem demonstrates that prison does not work, but that argument is facile. If one compares the records of other countries, one finds that where a high proportion of offenders are sent to prison, there is a corresponding reduction in crime levels. Furthermore, those who are offered community service reoffend to a great extent. The bottom line is that once offenders have reached the stage of prison or community service as a direct alternative, they are usually hardened. As such, they are prone to repeat their offending behaviour.

Amendment 21 would ensure that when an individual has been sent to prison on two or more occasions within a 10-year period, he will spend the entire period of his sentence in custody. He would not spend 50 per cent or 75 per cent of his sentence in custody—he would spend 100 per cent of it in custody.

The bill’s wording inhibited the amendments I could lodge in many respects. My party’s manifesto policy will, of course, go further than what I have proposed, in that it will propose that repeat offenders serve increased sentences based on the aggregate of previous periods in custody. I could not lodge an amendment to achieve what we want at stage 3, as it would not have been competent and in accordance with the wording of the bill. The amendments seek to deal with the matter in another way, in so far as it is possible to do so.

Those who persistently offend have obviously not learned their lesson, so sentences imposed against a background of two or more custodial sentences within a 10-year period will mean exactly the sentence that is pronounced by the sheriff or judge. That will act as an appropriate deterrent. It will increase public safety and make it quite clear that reoffending has a consequence over and above any sentence that may be imposed by the court at the time of the further offence.

I move amendment 21.

**Jeremy Purvis:** Bill Aitken tells us that evidence from around the world suggests that the countries that lock up most of their citizens have the lowest crime rates. Well, if that trend carries on in Scotland, we will be fourth in the world behind the United States of America, Russia and England. I am not sure what evidence Bill Aitken could present to show that the USA and Russia are crime-free zones.

We are also presented with amendments that, as the Conservatives would put it, mean three strikes and the offender will be in jail for the whole headline sentence. So the Tory policy is to say to victims of an offender’s second crime that the offender will be punished harder if they do it again to someone else. What kind of message is that to give to crime victims? Any justice policy that says to victims of an offence that the offender will be treated differently because they have done it only once before is extraordinary.

The message to the offender is also odd: it is that if they commit a third crime, they will get a longer custody sentence—but that is not necessarily so. Under the Conservatives’ approach, an offender could serve less time in custody for a third offence than they did for a first or second offence, because the third offence is different. The Tories do not want to spin that.

Bill Aitken said that the amendments would deter repeat offending, but there would be no deterrent for an offender who committed a crime after being in prison; it would happen only if they committed a crime again and again. That is extraordinary.

The message that we should be sending out is that if someone has committed an offence, we will do what we can to ensure that they do not commit a further crime—by making prison work in the first instance. That is why the essence of the bill is to put rehabilitation on the statute book as part of the sentence. Bill Aitken’s amendments would undermine that. They would give the wrong signal to offenders and they would let down the victims of crime.

**Johann Lamont:** Bill Aitken gave us déjà vu with his group 4 amendments, but the amendments in group 5 are not about anything that came before the committee for its consideration, so the proposed measures have not undergone any parliamentary scrutiny at all. Bill Aitken’s suggestion that the amendments are about his party’s election manifesto is probably closer to the truth. It is disappointing that we are being treated in this way.

Amendments 21, 24, 26 and 29 seek to insert a new structure into the bill that would mean full-term custody for offenders who have served two or more custodial sentences in the 10 years prior to their latest conviction. No one is arguing that prison does not work. We say that it is not the whole picture and that it cannot do everything. To say that prison does not work is a counsel of despair. It is like saying that we can do nothing and that we just have to live with it.

There are positive examples of people working with offenders in the prison system to address their literacy issues and other problems, to afford them the opportunity to move on when they go back into the community. Prison is part of the picture, but not the whole picture.

One of the problems with Bill Aitken’s plan is that it is arbitrary and it will create anomalies depending on when the first sentence was
imposed. For example, if a prisoner’s second sentence was imposed nine years and 11 months previously, the measures would apply, but if the second sentence was imposed 10 years and one month previously, they would not apply. Why should there be a difference for the sake of a couple of months?

Bill Aitken is in the luxurious position of being able to advocate something without having to work out how he would deal with the consequences of such a policy. Given the number of uncertainties, the consequences would be difficult to predict, but we can deduce that, given the proportion of prisoners involved and the increase in the prison population, if all prisoners served their full custody period in detention, there could be a sizeable impact on the prison population within a few years.

10:15

Miss Annabel Goldie (West of Scotland) (Con): Is the minister’s position that, if the interests of justice in Scotland, the interests of victims and the protection of wider society require more prison capacity, she would rather dodge the issue and find complicated legislative compromises in order to avoid that solution?

Johann Lamont: I hesitate to tell Annabel Goldie not to be ridiculous, but her intervention was entirely ridiculous. We have said that the bill as it stands has consequences for prisoner numbers and that we recognise that that has implications for resources. We say that addressing offending behaviour is partly about custody in prison and partly about what we can do in the community, through work on rehabilitation. Both approaches have an important role to play. Members cannot pluck figures out of the air and claim to have a policy when they have not worked through the consequences and benefits of that policy.

We can deduce from the proportion of prisoners involved and the increase in the prison population that the amendments would have an impact on numbers. In reality, there is no need for the amendments. I disagree slightly with the line that Jeremy Purvis took. The court already has at its disposal a mechanism for punishing persistent offenders—it is called sentencing. The overall sentence that the court hands out will take into account all the matters that the court thinks are relevant, such as the nature of the offence, the offender’s history and previous convictions. In addition, section 6(4) provides details of the matters that the court may take into account when considering whether to extend the custody part of the sentence beyond the 50 per cent minimum. They include the offender’s previous convictions.

The custody and community structure has received widespread support, in recognition of the fact that there needs to be a community element to the sentence during which offenders can build on work that was begun in custody. That is designed to reduce reoffending by easing the transition from custody back into the community and ensuring that a number of conditions are placed on the community licence. Where restrictions are assessed as necessary, they will be imposed, but at the same time support will be offered, where required. Only through a combination of punishment in custody and rehabilitation in the community can we hope to address offending behaviour and to reduce reoffending.

This is not a simple matter, but it is one to which people must give commitment and energy, rather than glib solutions that do not address the real problem. We are not claiming that reoffending will cease overnight—that would be naive. We are saying that by providing the right mix of punishment and rehabilitation, we have a better chance of getting offenders to turn around their lives. Success will come through maximising the amount of work that is done during the custody part of the sentence, so that more progress can be made when they go out into the community on licence.

For many offenders, the issue will be to direct them away from their old ways by providing supports and some basic help. For others, more stringent interventions will be needed. Our plans allow for both eventualities and all scenarios in between. Surely that is a much more innovative and sophisticated approach than prison, prison and simply prison, and not addressing the core issues that the bill addresses. I urge the Parliament to reject the amendments.

Bill Aitken: Once again, there has been some illogicality in the arguments that our opponents have made. I will deal first with the issues that Jeremy Purvis raised. He is correct to say that the amendments would result in more people spending more time in prison. I thought that in some respects he might applaud that—he has often spoken in the chamber about the fact that the rehabilitation process in prisons seems to be limited; the amendments would give prison authorities the opportunity to work longer with offenders and, we hope, achieve some beneficial results. I do not accept the argument that the member makes. He will be aware that the Criminal Procedure (Scotland) Act 1995 provides for extended sentences, which would meet in many instances the requirement that rehabilitation be provided in prison.

The main difference between Conservative members and Labour and Liberal Democrat members is that we speak for victims.

Johann Lamont: If Bill Aitken spoke for victims, he would have taken a more positive approach to
the measures that we introduced to address, at an early stage, antisocial behaviour, which can become offending behaviour. There is no lack of commitment to victims from Labour and Liberal Democrat members. It is an insult for the member to suggest otherwise.

Bill Aitken: The minister seeks to rewrite history. Despite what she and many of her colleagues repeat time and again, we supported the Antisocial Behaviour etc (Scotland) Bill—we opposed only two parts of it. The minister is entering into the realm of believing that the more often a lie is told, the more readily it will be believed. She is trying to mislead the chamber in that respect.

The minister is correct: there would eventually be a cut-off point. She referred to what would happen to somebody who reoffended after nine years and 11 months and what would happen to somebody who reoffended after just over 10 years. Such a problem will always exist. In road traffic cases, for example, we have it if somebody has 12 points on their licence as a result of a speeding offence just within a three-year period. The problem is inevitable, so the minister’s argument does not hold any water.

Of course there are consequences of what we propose, including consequences for the prison estate. We recognise that, and we are prepared to invest money in the prison estate to ensure that there are adequate prison facilities.

The fact is that, as I said, we speak for the victims. I simply do not know for whom other parts of the chamber speak.

The Deputy Presiding Officer: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Petrie, Dave (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

Against
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Bain, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Lothians) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow Green) (SNP)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Abderdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahan, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatling, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskel, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
The Deputy Presiding Officer: The result of the division is: For 14, Against 84, Abstentions 0.

Amendment 4 moved—[Johann Lamont]—and agreed to.

The Deputy Presiding Officer: Group 6 is on sentence to be served in custody or before release on curfew licence. Amendment 23, in the name of Bill Aitken, is grouped with amendments 25, 52, 53, 55 to 59, 62, 27, 28, 30, 34, 35 and 13. I draw
members’ attention to the three pre-emptions that are itemised in the groupings list.

Bill Aitken: In many respects, this group of amendments encapsulates the principal arguments relating to the entire bill.

It is perhaps important and certainly appropriate that we review why we are debating the matter today. For some time, there has been considerable unease about the sentencing process in Scots law. It has been criticised, rightly, for being unclear, confusing to the victims and public, and, indeed, dishonest. Matters have been further complicated by the intervention of the European Convention on Human Rights, which has resulted in the early release that is available under European law being granted automatically, regardless of whether the offender has behaved himself in jail or shown any contrition.

Before anyone else says it, let me make it quite clear that the Government certainly contributed to the development of the present situation by increasing the proportion of sentences by which a prisoner could be released early. However, a number of important points should be made. First, 12 years ago, remission had to be earned—it would be granted only if the prisoner had behaved himself, shown some contrition, co-operated and demonstrated that he was intent on leading a reasonable life once he was released. However, the fact that prison governors do not qualify as independent tribunals under article 6 of the ECHR meant that it became no longer possible for them to dock or to curtail prisoners’ remission, regardless of how the prisoners behaved while they were in custody. Frankly, that made the whole situation ludicrous.

I have criticised the Conservative Government, but I must stress that it had realised the error that it had made and was making efforts to correct it when it lost office in the 1997 general election. It ill behoves members of the Executive parties to criticise that Government for making a mistake when, some 10 years on, they have still failed to take the remedial action to which the Conservatives were committed. There is a degree of hypocrisy in the accusation that the Conservatives are responsible for the present situation.

Over the past few years, there has been a succession of serious cases involving crimes committed by offenders on early release. As a result of constant pressure from Annabel Goldie, Margaret Mitchell and me, the Executive was reconciled to the fact that at last something had to be done. It is truly depressing that the bill that we are considering today is the result of the Executive’s deliberations, because it utterly fails to deal with early release.

The Executive claims that, for the first time, every offender will serve their sentence in its entirety, but when we read the small print, we find that that is not the case. The public perception of a sentence is a period spent in custody. The public demand that a sentence that is pronounced from the bench should be the period that is spent in prison—no ifs, no buts, no maybes. However, that will simply not be the case and it is quite wrong for the Executive to claim that it will be.

At present, for example, someone who receives a six-year sentence will serve four years. That is bad enough but, under the proposals before us today, in many instances such a sentence will mean that the offender serves three years. Frankly, I am not confident that many prisoners will serve 75 per cent of their sentences, given that the bill states quite clearly that there must be a presumption in favour of 50 per cent.

All that the Executive had to do to restore public confidence was to introduce a bill under which the sentence imposed was the sentence served. That would have removed the impediment of the application of the ECHR and would have let the public and the victims of crime know exactly what had happened. Instead of adopting such a straightforward and simple approach, the Executive has put forward a hotch-potch of complex and convoluted proposals that will simply cause more confusion. It cannot claim with any credibility that the bill will end early release.

It is perhaps even more ludicrous that it will now be possible for an offender not only to get early release or, indeed, very early release, but to get super-early release, whereby they will serve only a quarter of their sentence in jail. Recently, there was the appalling case of a man who deliberately and systematically defrauded a breast cancer charity of a substantial sum of money. He received a sentence of 18 months—some people might have thought that to be on the lenient side—but, under the Management of Offenders etc (Scotland) Act 2005, he was released after four and a half months. How on earth can that be seen as deterring criminality?

Jeremy Purvis: Will the member say whether it remains Conservative policy—there have been three policies in the past few months—that an offender should serve one sixth of their sentence on licence in the community, which would mean that a person who received a sentence of two years would be out on early release for about four months?

10:30

Bill Aitken: I repeat what I said to the minister: the bill’s wording inhibited how I could lodge amendments. I accept that our approach might
appear inconsistent to Mr Purvis, but I could not lodge amendments in any other way. We retain the position that we support earned remission of one sixth of the sentence.

How on earth will super-duper early release deter a person from committing financial crime? The Executive will argue—and I accept—that it is unlikely that prisoners who are guilty of violence or serious sexual assaults will be released, but there will be no deterrent to financial crime if offenders are to serve only a quarter of their sentence. That is a serious issue.

The proposals that are before the Parliament are little short of a disgrace and represent an attempt to hoodwink the electorate into thinking that the Executive has taken action on early release. They provide an incentive to unscrupulous people who would seek to commit financial crime.

I am concerned that inadequate resources are being provided to local authorities for the supervision of offenders during the community part of their sentence. Does any member seriously think that there will be supervision? The vast majority of offenders will be released subject to one condition only: that they behave themselves. It is sad, but experience shows that people often do not behave themselves.

If any member seriously thinks that the bill will improve matters in the short, medium or long term, they must also believe in Santa Claus. The bill verges on the mendacious. The approach will be hopeless at coping with serious criminals. The bill is dishonest, because early release is not ending.

I move amendment 23.

Johann Lamont: I will speak briefly to Executive amendment 13, but first I address the amendments in Bill Aitken's name, as I will not have another opportunity to do so.

Bill Aitken might have a charming and easy manner, but what he said was remarkably offensive. He implied that the people who are committed to addressing crime and disorder in our communities want to lie to and be dishonest with the public. He should reflect on his comments.

When we said that we would end automatic unconditional early release, we also committed to replacing the discredited system with measures that would create a more flexible approach to sentence management. We wanted measures that would allow for the right mix of punishment, deterrent and rehabilitation, allow the courts to impose a longer period in prison to punish a particularly serious crime or take account of persistent reoffending, and allow offenders to be managed on the basis of the risk they pose and not the length of sentence imposed by the court. That is the Executive's approach and it is dishonest of Bill Aitken to suggest otherwise. He seems to prefer a system in which, after someone has done their time, they go out into the community without conditions.

In the current system, a person who is sentenced to four years gets out after two, with no conditions. In the proposed new system, the person will serve two years in prison, during which time the risk they pose will be assessed. If they are assessed as being able to be released, they will spend two years in the community, with licence conditions that will allow them to be recalled. Bill Aitken will remember that at stage 2 we set out a more rigorous approach to recall.

Amendment 23 and the other amendments in Bill Aitken's name in group 6 reflect a lack of thought. Everyone understands that automatic early release was introduced as a response to prisoner numbers. There were no easy answers then and there are no easy answers now.

Bill Aitken's position at stage 2 was that the custody part of the sentence should be 90 per cent, but now he says that it should be 85 per cent, which suggests that, rather than addressing a serious problem, he is thinking of a number, and then another number, as if the matter were a child's game. The issue requires far more thought than that.

We could make the facetious point that Bill Aitken is now softer on crime than he was at stage 2, but the issues are more serious than that. I would argue that what we are suggesting is a far more serious approach to a difficult problem. We want a flexible regime that takes account of modern sentence management principles and that ensures that the work that has been started in custody can continue and be developed during the community part of the sentence to maximise its effects on public safety and rehabilitation.

Bill Aitken talks about the offender being rewarded for good behaviour. However, we know about circumstances in which people behaved in prison but caused problems in the community after they were released. We are now talking about risk assessment and management of offenders in the community after they have served the custody part. I would argue that that will enhance community safety.

Bill Aitken: Will the minister give way?

Johann Lamont: When I have finished these points, I will take an intervention.

Bill Aitken talked about home detention curfew. Home detention curfew has been established as being effective in a very small number of cases. However, we have clearly said that, because there will be a big change in the process, we will not reintroduce home detention curfew until the
system has bedded in. We have also accepted that it would be important for the Parliament to return to the issue if we were to reintroduce home detention curfew and that, therefore, that would require to be done by an affirmative order.

**Bill Aitken:** Would the minister care to comment on the existing provision for extended sentences? At present, someone could be given a determinate sentence—albeit subject to early release—but, thereafter, be subject to an extended sentence so that, in effect, what would happen would be exactly what she proposes in the bill. The power to do that already exists.

**Johann Lamont:** Of course, the provision for extended sentences will remain, but Bill Aitken will recognise that it will be used particularly for serious offenders, such as sexual offenders, who pose a greater risk. What we are saying is that such an approach could be used for far more offenders than would be the case under his proposal.

Members may ask why the maximum duration of the custody part has been set at 75 per cent of the sentence. We believe that that is necessary in order to strike the right balance. As I said earlier, it allows the court, in exceptional circumstances, to reflect publicly the fact that a crime is particularly heinous or that an offender is so persistent in his or her offending that the minimum custody period is not enough in their case. It also allows the Parole Board to deal properly with offenders who are assessed as still posing a high risk at the end of the custody part, and it leaves a reasonable amount of time for restrictions to be effective and for rehabilitative work to continue in the community.

The key question regarding these amendments is whether they would create a system that allowed in each case the right mix of punishment, risk assessment and management, joined-up working, and the opportunity for the prisoner to break the cycle of reoffending.

**Phil Gallie:** The minister is very much on the defensive on this issue. She recognises that the system of early release has been discredited. That was recognised by the Tory Government in 1997. Why has the Labour Government or the Scottish Lib-Lab pact not addressed the issue before now?

**Johann Lamont:** Through the bill, we are addressing a problem that has been identified in our communities. The quality of the debate from the Tories is not a measure of the importance of the debate to our local communities. The simplistic and trivial way in which Bill Aitken has plucked a number out of the air indicates how seriously the Tories take the matter.

The requirement to serve part of the sentence in the community is not a soft option; it is a smart option. Evidence shows that we have a much better chance of preventing many offenders from returning to crime if we tackle the underlying causes of their criminality. It is significant that the bill is being attacked both by those who want nobody to go to jail and by those, on the Tories’ side, who want to sound tough on crime. To be tough on crime is to address the real issues. It is to punish, but it is also to consider ways of turning offenders round. That is what the bill seeks to do.

We want the custody and community parts of sentences to be planned and joined up. We want the community part and the licence conditions to be taken seriously, and we want prisoners who have been released from custody to understand that the community part is an important part of the proposal. Therefore, resources must be identified for both the custody part and the community part.

Amendment 13 seeks to amend section 48(4) in relation to the order-making power in section 6B to alter the minimum proportion of the custody part of the sentence. Of course, it does not affect the 75 per cent maximum custody period, which is set in statute. The proposed changes reflect the advice that we received at stage 2 from the Subordinate Legislation Committee, which we are always delighted to please. Acting on that advice, we propose to make an order that is made under the powers subject to the Scottish Parliament’s affirmative procedure.

As far as these issues are concerned, I have no reason to be defensive about the bill. The bill genuinely seeks to address all the issues that must be confronted in communities where serious offending is taking place. We know that we need to tackle such offending early, but we also realise that by sending offenders to prison we can both mark the seriousness of their offences and, if they have chaotic lives, give them help before they go back to the community.

The Tories have clearly given this matter very little thought and we must not allow them to present this serious measure in any other way. I urge the Parliament to reject all the amendments in the name of Bill Aitken and to support amendment 13.

**Jeremy Purvis:** Bill Aitken said that the bill is confusing. However, the only aspect that has confused me over the past three months is the fact that the Conservatives have taken three policy stances on this issue. First, they advocated a system in which prisoners could get out one month in every six; next, they proposed that the custody part of a sentence should be increased to 90 per cent; and, now, they are suggesting that the custody part should be 85 per cent. From a sedentary position, Phil Gallie said that they had been thinking about the matter for 10 years. If they go on in this fashion, in 10 years’ time, they will be
suggesting that people should serve 5 per cent of their sentence in jail.

All this masks the Conservative policy of releasing people from jail early. Of course, the Tories want to give the impression that, under their proposals, there will be no early release for anyone but, in response to my intervention, Mr Aitken confirmed that, under their policy, people in prison could be out on early release one month in every six. As a result, someone on a two-year sentence could be out for about four months. However, the Tories cannot guarantee that that person will not commit a crime in that time.

The only element of mendacity is the Conservatives’ repeated claim that someone serving part of their sentence in the community would never commit an offence. However, they could not guarantee that at stage 2; they cannot guarantee it today; and, in fact, they will never be able to guarantee it. Notwithstanding that, the Tories seek to claim that if someone on licence commits an offence, it is the fault of the Government or the system. That is simply not the case—it is the offender’s fault. However, they acknowledge that a sentence should contain some element of rehabilitation, which is why they propose to allow prisoners out of jail one month in every six.

**Bill Aitken:** That has to be earned.

**Jeremy Purvis:** In response to Mr Aitken’s comment from a sedentary position, I say that prisoners would simply have to demonstrate the lowest level of good behaviour to allow them to be released early. However, if they committed another offence during their period in the community, would that be the fault of the system of early release. It is as simple as that. The answer is the system of early release. It is as simple as that.

**The Deputy Presiding Officer:** Before I ask Bill Aitken to wind up on this group of amendments, I wonder whether the minister wishes to say anything further. Are you content, minister?

**Johann Lamont:** Do not encourage me, Presiding Officer.

**The Deputy Presiding Officer:** I sense your reluctance to respond.

**Bill Aitken:** Those two contributions were very interesting. With respect to Jeremy Purvis, he is a member of an Executive party and has therefore not had any of the Opposition’s experience of the parliamentary system. As I made it clear earlier, the amendments in my name have to be tailored to the bill before us if they are to be competent under the standing orders of the Parliament. That is the only way in which I can bring these very important matters to the chamber’s attention.

**Johann Lamont:** Given Mr Aitken’s great expertise in the parliamentary process, will he explain why these amendments did not surface at stage 2? If he had lodged them then, we could have had a considered discussion of repeat offending and early release.

**Bill Aitken:** I did not lodge these amendments then for the same reason why, time and again, the Executive lodges last-minute—and sometimes manuscript—amendments to every aspect of legislation. The simple fact is that the more one looks at legislation, the more one sees ways of improving it. That is why I have now lodged these amendments. It is not good enough for the minister to keep on harking back to the fact that there is an inconsistency in the amendments. I have explained why they are inconsistent.

10:45

**Jeremy Purvis:** Will the member take an intervention?

**Bill Aitken:** I really have to make a little bit of progress. We will see how we get on later.

Mr Purvis asks whose fault it is when someone commits a crime and he answers that, of course, it is the fault of the offender. He is quite right, but there is also a problem with the existing sentencing and penal policy. It may be the offender’s fault that he committed the offence, but in many instances we have to ask what gave him the opportunity to commit the offence. The answer is the system of early release. It is as simple as that.

**Jeremy Purvis:** One does not need parliamentary experience to be consistent in one’s views. Mr Aitken’s policy is for prisoners to be out of jail for one month out of every six. He should be consistent in that and should not posture.

**Bill Aitken:** I have clearly rattled Mr Purvis’s cage. I say to him that we have to acknowledge the parliamentary procedures, according to which we cannot lodge amendments that go against the bill. I can assure him that, in the weeks ahead, there will be every opportunity to discuss and debate Conservative party policy. I am confident that that policy will be accepted overwhelmingly by the electorate. We look forward to hearing Mr Purvis’s contribution when he hears our full policy.

**Mr Jim Wallace (Orkney) (LD):** I am grateful to Mr Aitken for explaining the dilemma that he is in with procedures. However, before we vote on the amendments in his name, will he tell us whether he actually believes in them?
Bill Aitken: Yes, I believe in the amendments, which would mitigate the damage caused by the bill. As I have explained consistently all morning, the amendments that we have lodged do not reflect our preferred policy options, but we are inhibited and constrained. I say to Mr Purvis that it was not me who worded the bill but his Executive.

The Executive’s principal arguments remain the same. What is being presented to the chamber is not the end of early release but simply an attempt to pretend to the electorate that it is the end of early release. That is little short of disgraceful.

The Deputy Presiding Officer: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Petrie, Dave (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Aruckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (LD)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craige, Cathie (Cumbernauld and Kilsyth) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eadies, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (Wigtownshire) (LD)
Fox, Colin (Lothians) (SSP)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Ayr) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Mr Andy (East Kilbride) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyon, George (Argyll and BUTE) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Mclay, Kate (Dundee West) (Lab)
Mcleay, Kate (Dundee West) (Lab)
Murray, Mr Andy (East Kilbride) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Neill, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatly, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Cromarty) (Ind)
Rumbles, Mike (Bute) (SNP)
Russell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge) (LD)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Perth) (Lab)
Smith, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness) (LD)
Sturgeon, Alex (Central Scotland) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Watt, Ms Maureen (North East Scotland) (SNP)
White, Mrs Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 14, Against 89, Abstentions 0.

Amendment 23 disagreed to.

After section 6

Amendment 24 moved—[Bill Aitken].

The Deputy Presiding Officer: The question is, that amendment 24 be agreed to. Are we agreed?
Members: No.

The Deputy Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Petrie, Dave (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Bailie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Bailiwick) (Lab)
Edie, Helen (Dumfriesshire East) (Lab)
Ewing,ergus (Inverness East, Nairn and Lochaber) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Murro, John Farquhar (Ross, Skye and Inverness West) (LD)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatlie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Ayrshire and the Isles) (LD)
Russell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryaston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Swinburne, John (Central Scotland) (SSCP)
Swinnen, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Watt, Ms Maureen (North East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 14, Against 86, Abstentions 0.

Amendment 24 disagreed to.

Section 6A—Application of section 6 to persons sentenced to extended sentences

The Deputy Presiding Officer: Group 7 is on the treatment of extended sentences. Amendment 47, in the name of the minister, is grouped with amendment 77.

Johann Lamont: Amendments 47 and 77 are further testament to our wish to make the provisions in the bill as clear as possible. We are retaining extended sentences as they are a valuable sentencing option for the court when dealing with offenders who might pose a greater risk to public safety. Amendment 47 deletes section 6A, which will be replaced by a new section to be inserted by amendment 77, which clarifies the application of part 2 of the bill in relation to custody and community prisoners who are also subject to an extended sentence. Thus, for example, in terms of section 6, the custody part must be set by reference to the confinement term of the extended sentence, that is, the term of imprisonment that the court imposes for the
offence before setting the additional extension period.

In relation to section 12, in the case of a custody and community prisoner who has been confined until the three-quarters point of their sentence on the ground of serious risk to the public, the Parole Board must review the case before that point. At the three-quarters point, the prisoner must be released on community licence. Again, amendment 47 applies that provision to extended-sentence prisoners by reference to the three-quarters point of the confinement term of their sentence. In effect, it makes it clear that the confinement period of an extended sentence is comparable to the full term of a normal custody and community sentence. In other words, the extended period is an additional period, during which the offender will be on community licence and will be subject to recall to custody for breach of the same.

I move amendment 47.

Amendment 47 agreed to.

Section 6B—Power to amend section 6(3)

Amendment 25 moved—[Bill Aitken].

The Deputy Presiding Officer: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Petrie, Dave (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

Against
Adam, Brian (Aberdeen North) (SNP)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Glen, Marlyn (North East Scotland) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Keny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Pervis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Mr Mark (Mid Scotland and Fife) (Green)
Smith, Elaine (Caithbridge and Chyston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Watt, Ms Maureen (North East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 13, Against 74, Abstentions 0.

Amendment 25 disagreed to.

Section 6C—Judge’s report

Amendment 48 moved—[Johann Lamont]—and agreed to.
The Deputy Presiding Officer: Amendment 5 is the only amendment in group 8.

Johann Lamont: Again, I make no apology for stressing the importance of the process for setting the custody part of the custody and community sentence, because it is a key measure in the new provisions. The process has, quite rightly, attracted much interest and comment during the bill’s parliamentary progress. We are grateful for those comments, which helped us to develop a package of change, as accepted at stage 2, that was designed to clarify and improve the process. Those changes clarified what the judge may take into account when considering whether to increase the custody part beyond the 50 per cent minimum. We put beyond doubt the fact that these measures are about sentence management, not sentencing, and that they do not affect the matters, including public protection, that the judge quite properly takes into account when deciding what the appropriate overall sentence should be in every case. The changes mean that judges will be required to give reasons when they decide to extend the custody part of any sentence. We also made provision requiring the court to prepare reports for every case involving a custody and community sentence of 15 days or more.

The provisions in section 6 are key to the new regime. They set out what the court must do once a custodial sentence has been imposed. What happens at that point impacts on how long the offender will be in custody before being considered for release on community licence and that is also the point at which the offender, the public and the victim will know the minimum time that the offender should expect to spend in prison.

Section 6 prompted substantial debate during stage 1. We are grateful for that and for the Justice 2 Committee’s helpful comments in its stage 1 report. In response to those comments, we said that we would present changes at stage 2 and put it beyond doubt that it is about sentence management and not sentencing. We did that and the committee accepted our amendments. One of those amendments inserted section 6C, which puts a requirement on the courts to provide the Scottish ministers with reports that the SPS and, potentially, the Parole Board for Scotland will require to carry out their business.

Although the committee agreed to our amendments, representatives of the judiciary continued to have concerns about the best way in which the information can be provided. Following further discussion, particularly with the Sheriffs Association, we are persuaded that the present requirement in section 6C to produce reports does not quite provide the degree of flexibility that is needed to enable the courts to deal appropriately with the different types of cases. Section 6C may not enable the courts to provide in the reports—which will often be produced at very short notice—the level of information that is proportionate to the offence and the length of sentence that has been imposed. As well as placing an unintended burden on court resources, the practical effect could be to delay the transfer of information to the SPS, thus depriving it of information that would be valuable at the early screening stage. We are grateful to the Sheriffs Association for highlighting the inadvertent effects of the current provisions.

Amendment 5 will replace the current requirement in section 6C(2) with provisions that will require the court to provide relevant information to the SPS in a way that allows the court to respond appropriately and proportionately in each case. That enabling provision will allow an operational framework to be put in place that will support the transfer of information. Development work is already in hand through the custodial sentences planning group. The provision of more flexibility will not, of course, prevent the preparation of detailed reports by judges in cases in which such reports are required. However, it will mean that the process can be tailored to respond effectively and quickly to the varying demands that will arise from the different types of sentences. The prompt transfer of the right kind of information is vital, particularly in cases in which offenders are given very short sentences. The more flexible approach will allow for that.

I move amendment 5.

Bill Aitken: I simply comment that amendment 5 is acceptable and that the Executive, in this instance, genuinely has listened—it is just a pity that it did not listen earlier and more comprehensively.

The Deputy Presiding Officer: I doubt that you need to respond to that, minister, but I am always willing to put temptation in your way.

Johann Lamont: With Bill Aitken, we are damned if we do, damned if we don’t. He makes a rather grudging comment about the fact that the Executive took seriously the committee’s views and addressed issues that were raised by those who will have to implement the legislation. I would have thought that, rather than make such a grudging comment, Bill Aitken would have welcomed the amendment.

Amendment 5 agreed to.

Section 8—Review by Scottish Ministers

Amendment 49 moved—[Johann Lamont]—and agreed to.
Section 9—Consequences of review

Amendment 50 moved—[Johann Lamont]—and agreed to.

Section 11—Release on community licence following review by Parole Board

Amendment 51 moved—[Johann Lamont]—and agreed to.

Section 12—Determination that section 8(2) applicable: consequences

Amendment 52 moved—[Bill Aitken].

The Deputy Presiding Officer: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Gallie, Phil (South of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Petrie, Dave (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Rutherglen) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Pettie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskin, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Watt, Ms Maureen (North East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Adam, Brian (Aberdeen North) (SNP)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Branink, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Duran (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)

The Deputy Presiding Officer: The result of the division is: For 13, Against 86, Abstentions 0.

Amendment 52 disagreed to.

Amendment 53 not moved.

Amendment 54 moved—[Johann Lamont]—and agreed to.

Amendments 55 to 59 not moved.

Amendments 60 and 61 moved—[Johann Lamont]—and agreed to.

Amendment 62 not moved.
Section 12B—Referral to Parole Board for the purposes of specifying conditions

11:00
Amendment 63 moved—[Johann Lamont]—and agreed to.

Section 13—Further referral to Parole Board
Amendment 64 moved—[Johann Lamont]—and agreed to.

After section 13
Amendment 26 not moved.

Section 13A—Cases where custody part specified as three-quarters of prisoner’s sentence
Amendments 65 and 66 moved—[Johann Lamont]—and agreed to.
Amendment 27 not moved.

Section 14—Release after three-quarters of sentence served
Amendment 28 not moved.

The Deputy Presiding Officer: If amendment 67 is agreed to, amendments 29 and 30 are pre-empted.
Amendment 67 moved—[Johann Lamont]—and agreed to.

Section 15—Setting of punishment part
Amendments 31 and 32 not moved.
Amendment 68 moved—[Johann Lamont]—and agreed to.

Section 16—Referral to Parole Board
Amendments 69 and 70 moved—[Johann Lamont]—and agreed to.

Section 17—Review by Parole Board
Amendment 71 moved—[Johann Lamont]—and agreed to.

Section 20—Further referral to Parole Board
Amendment 72 moved—[Johann Lamont]—and agreed to.

Section 22—Effect of multiple sentences
Amendment 33 not moved.
Amendment 73 moved—[Johann Lamont]—and agreed to.

Section 27—Release on licence of certain prisoners: supervision
Amendment 34 not moved.
Amendment 74 moved—[Johann Lamont]—and agreed to.

Section 24—Release on community licence on Parole Board’s direction
Amendment 6 moved—[Johann Lamont]—and agreed to.

Section 25—Community licences in which Scottish Ministers may specify conditions
Amendment 7 moved—[Johann Lamont]—and agreed to.

Section 29—Prisoner to comply with licence conditions
Amendment 8 moved—[Johann Lamont]—and agreed to.

Section 31—Revocation of licence
Amendments 9 and 10 moved—[Johann Lamont]—and agreed to.

Section 32—Referral to Parole Board following revocation of licence
Amendment 75 moved—[Johann Lamont]—and agreed to.

Section 33A—Determination that section 33(3) applicable: consequence for custody and community prisoners
Amendment 76 moved—[Johann Lamont]—and agreed to.

Section 36—Curfew licences
Amendment 35 not moved.
Amendment 11 moved—[Johann Lamont]—and agreed to.

After section 39
Amendments 77 to 79 moved—[Johann Lamont]—and agreed to.

After section 42

The Deputy Presiding Officer: Group 9 is on the cross-border transfer of prisoners. Amendment 12, in the name of the minister, is grouped with amendment 14.

Johann Lamont: Amendment 12 inserts into part 2 a new section that provides Scottish ministers with an order-making power, subject to affirmative procedure, to deal both with the
Amendment 14 adds a new cross-border transfers order-making power to section 48(4) to ensure that any order made is subject to the Scottish Parliament’s affirmative procedure. There are arrangements in place at the moment that deal with the cross-border transfer of prisoners in and out of Scotland. Under the terms of schedule 1 to the Crime (Sentences) Act 1997, prisoners in England and Wales, Scotland, Northern Ireland, the Isle of Man and the Channel Islands may request a transfer to another United Kingdom jurisdiction or one of the islands. Under the provisions, prisoners may be transferred to another jurisdiction on either a restricted or an unrestricted basis. Transfer on a restricted basis means that the prisoner remains subject to the law regarding release from prison as it applies in the sending jurisdiction. If a prisoner is transferred on an unrestricted basis, he or she falls under the provisions of the regime in force in the receiving jurisdiction. We anticipate that the vast majority of prisoners will continue, as at present, to be transferred on a restricted basis.

Sections 10 and 10A of the Prisoners and Criminal Proceedings (Scotland) Act 1993 make provision for the transfer of live prisoners and transfer of supervision for live prisoners respectively. There are also provisions dealing with the repatriation of prisoners to and from the UK to jurisdictions with which the UK has a repatriation agreement. Those are as contained in the Repatriation of Prisoners Act 1984 and schedule 2 to the Crime (Sentences) Act 1997.

Stewart Stevenson: For information, can the minister indicate the number of such transfers that take place?

Johann Lamont: I do not have the exact numbers, but I will ensure that the member is provided with that information. I would imagine that not terribly many transfers take place.

The new order-making power that will be inserted by amendment 12 will enable the Scottish ministers to continue to make suitable provision to facilitate the transfer of prisoners to and from Scotland. Subsection (1) of the new section allows the provisions in part 2 of the bill to be modified in relation to transferred prisoners. That might be necessary, for example, to impose certain licence conditions on an offender who is transferred on a restricted basis and who is subject to supervision conditions that were imposed by the transferring jurisdiction. New subsection (2)(b) will allow the Scottish ministers to amend other enactments if necessary; for example, to ensure that provisions for cross-border transfers remain operational.

I move amendment 12.

Amendment 12 agreed to.

Section 43—Licensing of knife dealers

The Deputy Presiding Officer (Trish Godman): Group 10 is on offences in relation to knife dealers’ licences. Amendment 36, in the name of the minister, is grouped with amendment 37.

Johann Lamont: Amendments 36 and 37 will amend new section 27Q that will be inserted into the Civic Government (Scotland) Act 1982 by section 43 of the bill. Section 27Q will allow ministers to make exceptions to offences under the knife dealers licensing scheme. The amendments, which will ensure that any orders providing for such exceptions will be subject to affirmative procedure, respond to a concern that was raised by the Subordinate Legislation Committee during its consideration of the bill as amended at stage 2. The Executive agrees with the committee that the affirmative procedure would be more appropriate for any order that makes exceptions to offences under the knife dealers licensing scheme. I am happy to have lodged the appropriate amendments to the bill to make the change desired by the committee and I trust that the amendments will have the support of Parliament.

I move amendment 36.

Mr MacAskill: We welcome amendments 36 and 37 and, indeed, the bill’s ethos on knives. It is uniformly accepted by all parties in the chamber that Scotland has a problem with knife crime that is not simply restricted to Friday and Saturday nights nor, sadly, to one geographical area. Although knife crime was once perceived as a west of Scotland problem, it is now uniform across Scotland and requires to be tackled. In that respect, we will give the Executive our full support on amendments 36 and 37.

Obviously, legislation is not the only solution. The minister has correctly tried amnesties, which have only sometimes been successful. However, these issues need to be worked through to effect the cultural change that is required. We fully support the minister’s attempts and efforts to address the issue, such as by supporting the establishment of a violence reduction unit. Action needs to be taken.

Access to weapons is obviously a problematic matter that needs to be addressed. Although not all weapons that are used by those who are out for malevolent purposes are displayed in army and navy stores—a bread knife can be used with equally calamitous consequences—action needs to be taken to restrict the availability of such weapons. Obviously, as all members will know...
from the communications that they have received, some people use such weapons for perfectly legitimate and innocent purposes. We need to strike the correct balance with sensible policing and sensible interpretation. Undertakings to that effect were given by both the current Lord Advocate and the previous Lord Advocate, so we can trust that good judgment will be used.

Action has to be taken. We welcome the Executive’s proposals. They have our full support.

Johann Lamont: We should recognise the significance of part 3 of the bill. Sadly, it has been almost entirely disregarded due to the debate on the other issues. However, part 3 should also be placed in the context of our broader approach. Part 3 will ban swords, license the sale of non-domestic knives, double the sentence for carrying a knife in public, remove the restriction on the police’s power of arrest and raise the minimum age for purchasing knives from 16 to 18. All those provisions should be seen in the context of our general approach to antisocial behaviour that recognises that when gatherings of young people become involved in low-level disorder they can quickly move towards becoming part of a gang culture in which, sadly, carrying a knife is regarded far too much as a prize.

I recognise the support that exists for part 3 of the bill. It is important that we send out a strong message on weapons generally.

Amendment 36 agreed to.

Amendment 37 moved—[Johann Lamont]—and agreed to.

Section 45—Sale etc of weapons

The Deputy Presiding Officer: Group 11 is on amendment of the Criminal Justice Act 1988. Amendment 38, in the name of the minister, is grouped with amendments 39 to 43.

Johann Lamont: Amendments 38 to 43 amend sections 44 and 45 of the bill, which both amend section 141 of the Criminal Justice Act 1988. I will go on to explain the effect of the amendments, but it is useful to start by saying something about section 141 of the 1988 act.

Under section 141, it is an offence to manufacture, sell, hire, offer for sale or hire, or lend or give to another person an offensive weapon specified in an order made under that section.

Section 141 also provides for defences for the purposes of functions carried out on behalf of the Crown or a visiting force, for making the weapon available to a museum or gallery; or, where the weapon is lent or hired by the museum or gallery, that it is intended for cultural, artistic or educational purposes.

Amendments 38 and 39, which will insert into section 141 of the 1988 act new subsection (11ZF), will alter the burden of proof that applies where an accused seeks to make use of the defences provided to offences under that section.

The amendments mean that it will be incumbent on the prosecution to prove that a weapon was not sold for use by a museum or gallery, rather than requiring the accused to prove that it was. Amendment 39 will also amend section 141 of the 1988 act by inserting into it new subsections (11ZA) to (11ZE). Subsections (11ZA) and (11ZB) provide further statutory defences to an offence under section 141(1). The amendments to insert new subsections (11ZC) to (11ZE) are technical amendments, which will ensure that the new defences interface effectively with the import regime.

The new defences make provision for the use of otherwise banned weapons for theatrical, film and television purposes. That makes similar provision for Scotland to that introduced for England and Wales by the Violent Crime Reduction Act 2006.

Amendment 41 will specify that the defences will apply only to conduct taking place after the defences have come into effect.

Amendment 40 provides a broader and more flexible version of the power to amend the application of section 141 of the 1988 act than that provided in the bill as introduced. That will enable additional defences to be introduced in the light of experience of operation of the provision. It will also ensure that the application of section 141 in Scotland can interface effectively with the UK import regime.

Amendment 42 will widen the effect of section 141ZA(3)(a), which establishes that the Scottish ministers, when making an order banning the sale of swords, may provide for defences for religious, cultural and sporting purposes. The amendment will ensure that defences can be put in place in respect of offences relating to manufacture and sale and offences relating to importation.

Amendment 43 is consequential to amendments 40 and 42. It will ensure that the powers to modify the application of section 141 of the 1988 act provided by the amendments work together properly.

I move amendment 38.

Amendment 38 agreed to.

Amendments 39 to 41 moved—[Johann Lamont]—and agreed to.

Section 46—Sale etc of swords

Amendments 42 and 43 moved—[Johann Lamont]—and agreed to.
Section 48—Rules, regulations and orders

Amendments 13, 14, 80 and 15 moved—[Johann Lamont]—and agreed to.

Section 50—Short title and commencement

The Deputy Presiding Officer: Group 12 is on the commencement of part 2. Amendment 44, in the name of Colin Fox, is the only amendment in the group. I invite Colin Fox to move and speak to amendment 14.

Colin Fox: It is amendment 44, Presiding Officer.

In the course of the evidence taking, it became clear to the Justice 2 Committee that there could be serious consequences for the criminal justice system from the implementation of the bill, such as: the possible addition of 1,100 prisoners, which would increase our record prison population by another 20 per cent; the need for 100 additional prison officers to cope with risk assessment programmes, on top of those needed to staff two new prisons; and a 10 per cent increase in social workers to supervise and support the community part of all sentences at a time when the committee and Parliament recognise that we cannot fill the current vacancies for criminal justice social workers—in any event, it takes four to five years to train them. According to the evidence that the committee took, the costs of that and of implementing the other measures in the bill could be around £250 million.

The evidence of many of our expert and informative witnesses from the Convention of Scottish Local Authorities, the Scottish Consortium on Crime and Criminal Justice, academics, the criminal justice authorities and many more suggested that if there was a willingness to spend that kind of money, there were far more effective ways of reducing reoffending and better serving the public.

Sacro, which I notice has contacted MSPs recently, fears that the bill will lead to an unworkable risk assessment programme, put an entirely unrealistic burden of expectation on the Scottish Prison Service and criminal justice system, reduce the community supervision of some of the most serious offenders, lead to an unmanageable increase in the prison population and worsen the already intolerable overcrowding in our prisons.

With that in mind, I lodged amendment 44, which seeks to put on hold the implementation of part 2 of the bill, on the confinement and release of prisoners, until a full and thorough independent report is drawn up and presented to the Parliament. The report would analyse the costs and benefits of the bill’s provisions against levels of reoffending and the impact on the prison population, and it would compare the bill’s approach with other approaches.

At stage 2, the minister did not dispute the figures that I mentioned or the bill’s cost implications. Rather, she sought to suggest that the provisions would hardly be used by sentencers. I am bound to say that the weight of the evidence that the committee received is against her.

My amendment 44 provides a sensible approach to the bill’s objectives. It seriously addresses the issue of reducing reoffending and it would increase rather than reduce public confidence in the criminal justice system.

I move amendment 44.

Stewart Stevenson: Examining how we deal with locking people up gives us an opportunity to reform the way in which we deal with low-level offenders. There is widespread support—for ensuring that there is proportionate and proper locking up of the most serious offenders. Earlier this morning, we discussed public safety, which is at the heart of locking people up and locking them away from society. However, too many of the flotsam and jetsam—victims of social deprivation, drink and drugs—end up in prison. They come out with their problems unresolved and, frankly, communities are little safer.

If amendment 44 is agreed to, we might, at best, save the public purse £150 million in capital spending. The additional prison places that will be required as a consequence of the bill will take the number of prisoners in Scotland to 8,100 or thereabouts. That raises a financial issue in favour of Mr Fox’s amendment, but there is a more important issue.

Members of various parties want work to be undertaken to redirect low-level offenders away from incarceration and towards rehabilitation and the serving of sentences in the community. Amendment 44 raises the prospect of synchronising such work with the increase in the number of serious offenders in prison that will occur. We are therefore minded to support the amendment, unless someone can persuade us otherwise.

Bill Aitken: Colin Fox raises an interesting point. The Minister for Parliamentary Business has heard me waxing eloquent, long and often on the fact that the Parliament legislates far too much. Indeed, other members have also heard me speak on that theme.

To be serious, one of the failings in the parliamentary system is that, because of the
volume of legislation that is passed, committees and others do not get the opportunity to consider its effectiveness further down the road. The Parliament should set up its own audit system for considering the effectiveness of legislation. However, I have some doubts about whether the approach in amendment 44 is the right way to do that. It proposes that a report be laid before the Parliament within 12 months. No matter how good a piece of legislation is, I do not think that anybody could determine its effectiveness or otherwise in such a short period, so the approach in proposed section 50(2B) is unacceptable.

However, there is a lesson to be learned from amendment 44. We are told that, under the bill, there will be a greatly increased supervision element and there will need to be a corresponding increase in the amount of social work input. Whether provision for that is in place is a separate argument that we might explore this afternoon. It is important for the effect of legislation to be examined once it has operated for some time, but to do that after 12 months is far too early.

Johann Lamont: If I have learned one lesson as an elected member of the Parliament, it is that I do not require an audit committee to tell me whether problems exist with the law; my community and my constituents will tell me about the problems and demand change. If we track the significant legislation that the Parliament has passed, we can identify problems that constituents raised and on which they brought pressure to bear on the process. That is how democracy works and it is all the better for it.

To be frank, Colin Fox outlines through his approach his opposition to the bill, or at least to one part of it. A member who opposes the bill should vote against it. A member who supports the balance of the bill’s approach should vote for it. There is no way of saying that we will maybe have provisions and that we will think about it—that would be a maybes aye approach to legislation. Members must decide whether they support the bill, act accordingly and ensure that the legislation is monitored.

We are aware of the concerns of the voluntary sector and of the Scottish Consortium on Crime and Criminal Justice, members of which I have met. I disagree with their conclusions, but I acknowledge their concerns. We must also acknowledge the concerns of people in our communities, who feel that the current system is inadequate and that we must address the lack of supervision when people leave prison and the fact that we have a sentencing regime that people do not understand.

Colin Fox recognised that we have acknowledged that prisoner numbers will increase—we put that in the financial memorandum. We have also said that support must be provided for offenders and that resources need to follow that. We are serious about both parts of custody and community sentences. Colin Fox’s proposal gained no support at stage 2, and I hope that members will not support it now.

The custodial sentence measures in the bill deliver the Executive’s commitment to end automatic and unconditional early release, and do so in a way that injects into sentence management a structure that provides for punishment and rehabilitation. The proposals are not just about sending people to prison, but about getting offenders to turn their lives around. As we have said, stopping offending is the best way to protect the public. We intend the criminal justice reforms that are in hand and the measures in the bill to make significant inroads into tackling reoffending.

Amendment 44 would require the Scottish ministers to commission an independent report before they made any commencement order for provisions in part 2. I am intrigued by the notion of outsourcing our thinking on such matters. The Scottish Executive—whoever forms the Administration—and the Parliament are in as good a position as others to consider the effectiveness of legislation, particularly if they are open to elected members’ representations. The independent report would be expected to consider the custodial sentence measures in isolation and to comment on their impact on offending and reoffending and on the prison population’s size. The effectiveness of short-term sentences is recognised as an issue. Considering and addressing that problem are matters for a future Administration.

Stewart Stevenson: Does the minister concede that some benefit would be obtained for the public purse and more generally from synchronising the addressing of short-term sentences with the increase in the population with longer-term sentences that will derive from the bill, which we support?

Johann Lamont: I do not concede whatever the member really says or what I understand him to say. I do not concede that the report that amendment 44 proposes should be made. I am saying that an issue with short-term sentences has been highlighted and any Parliament worth its salt will address it.

Amendment 44 would require the Scottish ministers to publish the report and lay it before Parliament within 12 months of the passing of the bill. That is an arbitrary date. We have experience that having arbitrary dates for such reports has hampered them.

What could such a narrowly prescribed report tell us? It could not reveal the benefits of the
structure that was established through the Management of Offenders etc (Scotland) Act 2005 or the other recent criminal justice system reforms. It could not reflect the fact that the measures in the bill will build on the strong existing structures. It could merely speculate on the likely impact of the bill’s measures.

I repeat what I said at stage 2: effective monitoring arrangements are already in place. The SPS board agrees its business plan with ministers. The plan for 2006 to 2008 included, for the first time, an indication of the prison population that might have to be accommodated. The figure is not a target figure, but its use shows the importance that ministers and the SPS attach to considering the level of the prison population and to planning the business to provide for that population. The increases that have recently been reported have been mainly in the remand population, prisoners on short sentences and young offenders, and are completely in line with what the SPS has said publicly for some time.

The SPS keeps a close eye on the prison population, and ministers included full consideration of that population in the financial memorandum’s consideration of the bill’s impact. The population level is half the story, and the Executive has shared with all relevant parliamentary committees full information about the relationship between population levels and capacity. The capacity levels as indicated by the SPS take account of the current plans for development and redevelopment of the prison estate.

The financial memorandum makes it clear that the Scottish ministers fully accept that adequate and proper resources must be in place before the system commences. The Justice 2 Committee is aware that a high-level group involving all the stakeholders—the very people who will make the bill’s provisions work—is working on the detailed implementation plan.

Of course, once the new provisions are in place, it is only right that we evaluate them. Evaluation will be part of the process. In addition to the monitoring plans that I have mentioned, statistics that are produced by the courts, the SPS and local authority criminal justice social work departments will reflect developments once the new system is up and running.

In the meantime, the custodial sentences planning group continues to work on the detailed implementation strategy. It is right that that strategy should be developed by the people who will need to make it work. We aim to implement the measures as soon as is practicable. We are talking about big changes—root-and-branch reform—and it is essential that we take the appropriate time to ensure that the preparation is right and that the proper infrastructure is in place.

Mr David Davidson (North East Scotland) (Con): The minister is talking about implementing the legislation. When will implementing the measures in the community be practicable, given the shortage of people with the right training and experience to implement them? Does the minister have a date in mind for when the system will go fully live?

Johann Lamont: We have said that the custodial sentences planning group is charged with implementing the provisions and giving timescales and clarity to the process. We are clearly committed to such an approach, and we want it to be developed as soon as possible.

Amendment 44 would not add to the scrutiny and monitoring that will be done; rather, it seeks to second-guess significant parts of the legislation. If members support the bill’s approach, they should vote for it; if they do not support that approach, they should not vote for it. I urge members to reject amendment 44.

Colin Fox: I am struck by the fact that the minister has not disputed any of the possible consequences or costs that I outlined in my initial remarks. She rightly talks about listening to the many people in our constituencies who suffer daily as a result of the current system. I advise her to listen to the many experts who appeared in front of the Justice 2 Committee, many of whom work with her constituents in Glasgow Pollok and with constituents throughout the country every day.

Before I deal with the substance of the minister’s objections to amendment 44, I should say that I always feel slightly unnerved when receiving Stewart Stevenson’s support. That said, I am absolutely unnerved by receiving Bill Aitken’s support. I was glad that he dived for cover on the 12-month rule and got the hell out of it, and that he does not support my amendment.

Bill Aitken: I trust that Mr Fox recognises that my support for his amendment was highly qualified. Indeed, I said that we could not possibly support it because of the time constraints that would be involved.

Colin Fox: I am struck by the fact that the minister has not disputed any of the possible consequences or costs that I outlined in my initial remarks. She rightly talks about listening to the many people in our constituencies who suffer daily as a result of the current system. I advise her to listen to the many experts who appeared in front of the Justice 2 Committee, many of whom work with her constituents in Glasgow Pollok and with constituents throughout the country every day.

The minister’s fundamental objection to an independent report was the same as Bill Aitken’s caveat, which is interesting. I was struck by the minister’s sanguine attitude to the potential expenditure of £250 million on questionable costs for questionable value. Is she saying that she has something to fear from an independent report, from independent scrutiny by experts and from the evidence being put in front of the Parliament by the Executive? She has not answered that question. Spending £250 million on highly disputed areas is a relatively new phenomenon for the Executive.
The minister was caught out by David Davidson’s question. She is unable to tell the Parliament when the bill will be implemented. That is understandable if it is going to take five years to train criminal justice social workers and eight years to build two new prisons.

Amendment 44 is an entirely reasonable and fair amendment for the Parliament to consider. An independent report would consider the cost benefit analysis of the bill and compare it with other strategies that many experts feel are far more likely to work because they will give the public greater confidence and reduce the appalling levels of reoffending in Scotland.

I am not satisfied—I hope that no one in the chamber is satisfied—with the fact that in every year of the Parliament’s existence, Scotland’s prison population has broken records. The bill suggests that, willy-nilly, we should add another 1,100 people to that population, which is unacceptable. I press amendment 44.

**The Deputy Presiding Officer:** The question is, that amendment 44 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division

**For**

Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Ewing,ergus (Inverness East, Nairn and Lochaber) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Fox, Colin (Lothians) (SSP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Glasgow) (SSP)
Lochhead, Richard (Moray) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Watt, Ms Maureen (North East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)

**Against**

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (Ayr) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mim, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Petrie, DAVE (Highlands and Islands) (Con)
Pringle, Mike (Edinburgh South) (LD)
Rankson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeeness and Kincardine) (LD)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Robert (Glasgow) (Lab)
Stepper, Nick (Aberdeen South) (Lab)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Tosh, Murray (West of Scotland) (Con)
Turner, Mr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
The Deputy Presiding Officer: The result of the division is: For 27, Against 74, Abstentions 0. Amendment 44 disagreed to.

After schedule 1
Amendments 81 and 82 moved—[Johann Lamont]—and agreed to.

Schedule 2
MINOR AND CONSEQUENTIAL AMENDMENTS
Amendment 83 moved—[Johann Lamont]—and agreed to.

Schedule 3
REPEALS
Amendment 84 moved—[Johann Lamont]—and agreed to.

The Deputy Presiding Officer: That concludes consideration of amendments.

11:33
Meeting suspended.
Custodial Sentences and Weapons (Scotland) Bill

The Deputy Presiding Officer (Murray Tosh): The next item of business is a debate on motion S2M-5632, in the name of Cathy Jamieson, that the Parliament agrees that the Custodial Sentences and Weapons (Scotland) Bill be passed.

14:59

The Minister for Justice (Cathy Jamieson): It is often said that a week is a long time in politics, but the past four years seem to have flown by as we have worked on comprehensively reforming our criminal justice system. That has not been change for the sake of it, but change that has been needed to reflect the times in which we live.

The public rightly expect their elected politicians to tackle crime and create safer communities. To do that, we need a criminal justice system that is fit for the 21st century. That is what we are delivering, and the bill that we have considered today will add to the reforms that are already in place.

Our reforms have had one clear and overriding objective: to reduce the number of victims of crime. The best way to do that is to tackle reoffending. Too many offenders are caught up in a cycle of reoffending, and the current system of automatic unconditional release, under which the vast majority of offenders are released at the halfway point of their sentence without any restrictions or support, does nothing to tackle the problem. It does not serve the public well, which is why we committed ourselves to putting an end to the present discredited system.

Under our proposals, all offenders sentenced to 15 days or more will be managed for their entire sentence, through a combination of custody and community. The new regime takes account of their crime, the risks that they pose and, crucially, their needs, in a way that also takes proper account of public protection. We believe that the regime will achieve the right balance between punishment and deterrence, public protection and rehabilitation.

The custody part—the punishment element—will be a minimum of 50 per cent of the sentence. However, if the court feels that a longer punishment is right, it will be able to increase the custody part to 75 per cent of the sentence. Critically, the remainder of the sentence will be spent on licence in the community. Licence conditions will both test and support offenders, giving them the chance to change their lives if they are prepared to take it, but equally making it clear that any breach of the conditions will be dealt with and taken seriously.

The new system is not a soft option or an option to empty our prisons, as some people have tried to characterise it. It is a smart option to tackle the underlying causes of criminality. As the First Minister said earlier today, it is prison plus: prison plus restrictions, prison plus supervision and, if the offender does not co-operate while on licence, prison plus more prison.

Phil Gallie (South of Scotland) (Con): Will the minister give way?

Cathy Jamieson: Indeed.

Phil Gallie: I thank the minister for giving way with her usual courtesy, but how on earth can she guarantee that the licence conditions will be met in full? Bail conditions, for example, are already breached across the country with no apparent penalties applied.

Cathy Jamieson: Mr Gallie always raises questions about bail and people’s responsibility to comply with conditions. The onus is absolutely on the offender: if conditions are put on the licence, the offender has a responsibility to comply with them. Offenders will get support that is proportionate to the nature of the risk that they pose, and if they need assistance in dealing with housing or access to employment, for example, that might be factored into the licence conditions. However, let us be clear: it will be made plain to the offender that they are expected to comply with the licence conditions. They will get help and support, but the responsibility is ultimately on them to comply. If they do not comply, they could find themselves back in prison, which does not happen in all circumstances at the moment.

We have not pressed ahead with these changes without having regard to the key interests who will be responsible for putting the measures into practice—it is important to recognise that in response to what Mr Gallie said. The support and the conditions will be proportionate.

The changes that we made at stage 2 clearly demonstrate our willingness to listen, make changes where necessary and work with our partners to improve bills. We have done that all the way through our extensive programme of justice reforms. We have listened and as a result we have made changes.

I know that people have raised concerns about resources, the viability of custody and community structures and the impact on the Scottish Prison Service and on community supports. Some people have suggested that we have been too adventurous in trying to do more for all offenders who receive sentences of 15 days or more. Let us be clear: the bill will have an impact on prisoner...
numbers and more resources will be needed, but we have been open about that and the costs are reflected in the financial memorandum.

We face an enormous challenge to build an operational structure that will deliver the new measures effectively, efficiently and proportionately. The fact that what we seek to do is difficult is not a reason for not making changes. The public expect us to make changes and it is our responsibility to proceed with them.

We must break away from the artificial restrictions of the established processes and respond imaginatively to the challenge of dealing with those offenders who, for the first time, will get real help to address—and, ultimately, to change—their offending behaviour. We are right to continue to consider ways of better protecting the public from high-risk offenders and we are right to put in place programmes to deal with the causes of offending and to focus on reoffending.

The vast majority of offenders will be less likely to reoffend when they have a home and a job or training to go to and when their addiction problems are addressed. One of the greatest strengths of the new system is that it will cater for the full spectrum of risk and needs. That is why I have set up a high-level planning group to steer the implementation work, as the deputy minister mentioned this morning. We want there to be less reoffending and fewer victims; we want offenders to make something of their lives; and, ultimately, we want safer communities.

The bill also puts in place the final elements of the First Minister’s five-point plan on knife crime. I know that the reasons for those changes are well understood, as we heard this morning. I welcome the support of members of all parties for our proposals, which will add to the tough measures that we have already taken by placing further restrictions on the sale of dangerous weapons.

I move,

That the Parliament agrees that the Custodial Sentences and Weapons (Scotland) Bill be passed.

15:07

Mr Kenny MacAskill (Lothians) (SNP): Although there are aspects of the bill that we fully support, there are parts of it that still cause us significant concern. We are grateful to the minister for the many changes that have been made to ameliorate some of the problems that were flagged up at stage 2 and for the meetings that the Executive offered to hold to identify whether an accommodation could be reached. However, some difficulties remain, and we should bear in mind the maxim, “legislate in haste, repent at leisure.”

I turn first to the aspect of the bill that deals with weapons, which the minister mentioned at the end of her speech. In her comments this morning, Ms Lamont made the valid point that although that aspect of the bill has been ignored, it is of fundamental importance, in that it addresses the supply and availability of weapons such as swords, which are of great significance to our communities and to society as a whole. The sale of swords is a social problem, but we must ensure that the response is proportionate and that people who have a legitimate need to access them—because, for example, they are involved in thespian activities, highland dancing or historical societies—are covered. I believe that the bill addresses such issues and, to that extent, we fully support it, just as we fully support all the measures that the Executive and the Parliament have taken to address the knife culture that exists in Scotland. The problem cannot be tackled solely through legislation, but legislation is necessary and the Executive has our full backing for the provisions.

However, the sentencing aspect of the bill gives us greater cause for concern. We are aware that the present system is in disrepute, but the Conservatives’ constant mantra about ending early release is unhelpful. The problem is that the public want a sentencing policy that they can understand. I remember being addressed by learned sheriffs who said, “What is the problem? We all know that a two-year sentence means one year.” Any judicial system and any law must be understandable to ordinary men and women in the street. Aspects of law such as information technology law and media law require expert input, but if an offender is given a sentence, that sentence should be understandable to the victim and to the broader community; it should not be understandable only to those who are familiar with the lexicon and the jargon.

We believe that what the Executive seeks to do will be beneficial—a clear statement should be made in open court of what the custody period will be. As far as we are concerned, the bill makes it quite clear that the sentence that is given is the sentence that will be served. The Tories can argue about that, but ultimately the length of the sentence will be made clear to victims and communities.

There must be a community part to sentences if we are to address the fundamental problem of reoffending rates. We cannot lock people up for many years, or even just for a few months or a few years, and then simply open the door and kick them out. We must tackle reoffending not just by punishing people but by providing care, whether that is wraparound care, monitoring and assistance or supervision.
However, problems with the bill remain. The minister appears to be rather too lazed back about the substantial increase in prison numbers that the bill will generate. It is manifestly wrong that prison numbers should increase by the figures that have been bandied about, when there will have been no increase in criminality to justify that. Prisoner numbers will increase by approximately a seventh without there being an increase in offending, at a huge cost to the taxpayer. That will not necessarily tackle the root problems.

We need fundamentally to consider what our prisons are for. The Scottish National Party thinks that prisons are for ensuring that dangerous people are taken away for the protection of communities and for formally punishing people who have committed serious offences, the opprobrium of society for which can be demonstrated only by a custodial sentence.

We must ensure that people who are flotsam and jetsam and have problems to do with drink, drugs or deprivation—whether or not their inadequacies are of their own doing—are taken out of the judicial system. If we do not ensure that people at the lower end of the scale are taken out of the system before the new arrangements kick in, we will simply increase the number of prisoners, with no benefit. We must also ensure that the consequential requirements for the provision of social work services, care and other services are met. The Parliament has produced too much legislation that has introduced requirements for local authorities, social work departments, police services or prisons without putting in place the necessary resources. We must ensure that the resources are in place before the bill is implemented.

15:12

Bill Aitken (Glasgow) (Con): I apologise for being slightly late for the minister's speech. I was debating the matter on television with Bill Butler.

During this morning's stage 3 proceedings, the Deputy Minister for Justice seemed extremely upset—-with some justification—that people have completely lost sight of part 3 of the bill, which addresses knife crime. As I said, there is no difference between our parties in that regard. We have to do something about knife crime. I do not seek to downgrade the proposals in the bill when I say that they will certainly do no harm. It is worth implementing them, but we will have to wait and see how much good they do. We support that aspect of the bill.

A general point about resources emerged from this morning's proceedings. During my brief lunch break, I looked again at the letter from Sacro that expresses that respected body's serious concerns about the availability of resources. Those concerns are shared by local authorities. Despite what both ministers have said, I am not satisfied that the Executive has given sufficient credence to the potential difficulties.

Cathy Jamieson: Will Mr Aitken enlighten members on the cost of the proposals in the amendments that he moved this morning, which were unsuccessful? What impact would those proposals have had on the issue that Sacro and others raised?

Bill Aitken: The minister will appreciate that if the amendments in my name had been agreed to they would have had an impact on the prison estate and another prison would have been required. She will shortly find out the precise costings of the policy, when we publish our election manifesto.

I return to the need for clarity in sentencing. Let us consider the matter from the victim's point of view. In the current system, when the court imposes a sentence of four years for assault, the victim is less than delighted to be confronted some two years later by the person who assaulted them. Under the hotch-potch of proposals in the bill, a sentence of four years will involve two years spent in custody. That is misleading and is not the way in which the matter should have been dealt with.

Let us look again at the existing position, when people are released on licence with part of the sentence unserved. There is a facility, under the existing legislation, for a person who reoffends to be brought back before the court, dealt with for the new offence and then returned to the original sentencing court so that consideration can be given to the unexpired period of the original sentence.

Cathy Jamieson: I hope that Bill Aitken agrees that it is important to make a distinction between prisoners who are released on licence and shorter-term prisoners who are currently released unconditionally, with no licence. The courts are not able to bring back those shorter-term prisoners as he has described. We are putting in place a fundamental change to the present system and improving it significantly.

Bill Aitken: I accept the minister's point in part, but if someone reoffends during the unexpired period of their sentence, they can be brought back to the court to be dealt with. In that respect, the bill is redundant.

Much mention has been made—Mr MacAskill mentioned the matter again today—of people at the lower end of the scale. The example that is
usually given is that of shoplifters. Shoplifting is hardly a capital offence by anybody’s standards, but what should we do with a person who consistently and persistently offends without the offences being dealt with? If someone is arrested five days out of seven on shoplifting charges, they will eventually have to be locked up for the protection of the shopkeepers. In one instance of which I am aware, a shopkeeper threatened, and would have carried out, physical violence against the person who was robbing his shop every day.

Mr MacAskill: Will the member take an intervention?

Bill Aitken: I am sorry, but I am in my last minute.

Offences at the lower end of the scale are not a serious matter, but when there is an accumulation of offences, something must be done, and I do not think that such situations will be dealt with under the bill.

It is a pity that the knives element of the bill has been lost sight of, as it is fine. Basically, as I said this morning, the bill will not do what the Executive claims—it will not end early release. On that basis, I am sorry, but we cannot support it.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): We will support the bill today, as we did at stage 1, although we share many of the concerns that were outlined by Kenny MacAskill.

The bill is only one part of an effective approach to cutting crime. The other part will be—as the deputy minister said this morning—the responsibility of the Parliament in the new session, after May. The bill focuses almost exclusively on sentence management rather than sentencing practice and policy. I say “almost exclusively” because there are welcome measures for restricting the sale of knives and banning swords—except for wholly justified circumstances. Those aspects of the bill, inevitably, have not been given the consideration that other parts of the bill have been given, as there has been considerable consensus on them. I think that those provisions will make a difference.

In Scotland, two thirds of offenders who are convicted of breach of the peace and just under half of those who are convicted of shoplifting go to prison for less than three months. For those offenders, we ask whether prison works. More than two thirds of them reoffend within a year of their release from prison. Prison sentences do not appear to work, either for those offenders or for our communities.

Between 50 and 80 per cent of prisoners have writing, numeracy and reading skills below the level that is expected of an 11-year-old child, and prisoners are 13 times more likely than the general population to be unemployed. In addition, between 60 and 80 per cent of prisoners were using drugs before their imprisonment. Three quarters of young people in custody in Scotland have a history of regular school truancy, less than half of them had attended school regularly, and only a third of them have any qualifications. Of course, short-term prison sentences do not work for those young people.

For adults who enter our prisons, the indicators are clear: drug or alcohol misuse; a lack of stable employment; and literacy and numeracy skills below the level expected of an 11-year-old child. For youth offenders, the indicators are just as clear: a history of contact with social work services—and, frequently, with the police and the reporter for their local authority—and no qualifications.

According to the Conservatives and others, putting adults and young people with very short sentences in jail with offenders of the same social make-up will reduce reoffending. Such a claim shows complete ignorance of the evidence, which was certainly clear when it was presented to the committee.

I do not doubt the integrity or sincerity of the Minister for Justice or her deputy. Indeed, I have considerable respect for them; it is a pleasure to work with them, because they listen to suggestions and respond positively. They know that short-term prison sentences are useful only for giving communities or individuals respite from violent or dangerous people. Moreover, they welcome the fact that more community than custody disposals are being handed down, which is a major step forward.

However, there is no commitment to address the problem of very short-term sentences. By not tackling the issue head-on, we are telling communities throughout Scotland that we are happy to tolerate, for example, the fact that more than 60 per cent of offenders commit another crime on their release from jail. The Conservatives seem to be happy that their approach will make no difference to the underlying problems facing individual offenders and that, therefore, further crimes will be committed.

I felt frustrated at stage 2, because I wanted to lodge amendments that would have introduced conditional sentences for offenders who were given less than six months or which would have given a judge or justice of the peace the discretion to vary the custody part of a sentence from 0 to 100 per cent. However, those amendments were judged not to be within the scope of the bill, and
the convener did not permit them to be lodged. Of course, such decisions are at his discretion. Nevertheless, if I had been allowed to lodge my amendments, we could have had a better debate on the bill.

I have not been an MSP for as long as some other members but, in my four years in the Parliament, I have not heard such sheer hypocrisy as I have heard from the Conservatives, both this morning and at lunch time, with regard to the bill. Under their policy, a person who is sentenced to two years would serve four months out of jail; indeed, Bill Aitken confirmed that someone on a four-year sentence would serve eight months in the community. The Conservatives keep telling us that people should serve their full sentence in prison, but that is not even their policy.

The Conservatives also say that they are on the side of victims. However, saying that victims want more and more punitive responses to offenders shows a complete misunderstanding of the situation. For example, victims of crime have told me that they simply want a system that ensures that the offender does not reoffend.

We are halfway towards meeting that aim with this progressive legislation; the Parliament in the next session will have to complete the other half of that work.

Jackie Baillie (Dumbarton) (Lab): I thank the Justice 2 Committee clerks, our advisers, the ministers and their officials and everyone who gave evidence and helped to shape the bill.

I very much welcome the bill for two reasons. First, despite Bill Aitken’s deluded attempts to rewrite history, it delivers Labour’s commitment to end automatic unconditional early release, which, as we have been reminded several times today, was introduced by the Tories. Secondly—

Bill Aitken: Will the member give way?

Jackie Baillie: Of course.

Bill Aitken: Where has the member been for the past 10 years? After all, the Labour Party has had that long to change the current flawed system.

Jackie Baillie: The difference is that we are changing the system now. The record will show that the Tories did not do so and that, in fact, they wasted opportunities to make changes that would have benefited communities.

This bill is also important because it completes a very robust package of measures to tackle knife crime.

I want to start with sentencing, because considerable public concern has been expressed not only about the issue of early release but about the appropriateness of the sentences that are being given. The bill lays the foundations for the clear and transparent system of sentencing that we all want.

As the First Minister said earlier, with the introduction of custody and community sentences, when a judge says to an offender, “You will spend X years in jail,” that is exactly what will happen. The offender will spend the whole of the custody part of the sentence in jail, with no prospect of early release. It is also worth remembering that the custody part can be increased to 75 per cent of the overall sentence.

The Executive has struck the right balance between custody and rehabilitation, because it is not enough simply to lock people up in the knowledge that, when they are released, they are likely to find themselves in a revolving-door scenario of reoffending and then being sent back to prison.

We have to ensure that the community part of the sentence works and that there are better opportunities to reintegrate people in their communities. When there is a seamless continuation of rehabilitation programmes—when programmes start in prison and then continue in the community—we know that the programmes can be successful in addressing offending behaviour and reducing the risk of reoffending.

Unlike the previous system, the community sentence will have conditions that make clear what is expected of the prisoner. For example, there might be a requirement to attend drug or alcohol counselling, a restriction on travel or movement, supervision by the police, or even tagging. I am pleased that the minister has made clear that serious breaches will be dealt with swiftly, with offenders being recalled to custody.

I want to turn quickly to part 3 of the bill, which covers the restrictions on the sale of weapons. I have had hundreds of postcards from constituents who—because of their real experiences in the constituency—asked that the Executive restrict the sale of knives and swords. That is exactly what this bill will do, so I am glad that my constituents’ voices have been heard. The bill adds to the Executive’s earlier actions to double the length of sentences for possession of a knife, to increase the powers available to the police and to increase the minimum age for the purchase of a knife. Today we are going further, introducing the licensing scheme for the sale of non-domestic knives and banning the sale of swords. The bill completes the work that was started with the Police, Public Order and Criminal Justice (Scotland) Act 2006.
Each year, people are injured—and some people die—at the hands of knife-wielding young men. In many cases, the attacks are not premeditated but spring from the mistaken belief that people who carry knives are somehow protecting themselves. The statistics tell us that that is an incredibly foolish view. If, through the measures in the bill and a process of education, we can help to end the needless bloodshed that is cutting short young lives, the bill will have made a considerable difference. My community welcomes the proposals and I urge members to support the bill.

15:26

Patrick Harvie (Glasgow) (Green): This morning, Johann Lamont said that there had been attacks on the bill from both sides—from some who appear to want nobody to be sent to prison and from others whose attitude is more, “Lock ‘em up and throw away the key.” Any rational person would take a position somewhere between those two extremes.

The bill takes as its starting point rational principles: that prison is only one way to manage offenders, and not necessarily the best way; that people who are released from prison should be required to co-operate with some form of community supervision and should expect to receive some form of support in the community to help them to avoid reoffending; that the regime should be clear and comprehensible; and that we should focus on high-risk offenders in the interests of protecting the public. Sadly, however, I cannot agree that the bill as it stands will achieve those aims or put those principles into practice.

Prison can and must be used to protect the public from some dangerous offenders, but it can do so only if the time spent inside is used properly, by challenging behaviour, supporting recovery from addiction, teaching basic skills and encouraging better attitudes. If we do those things, we will release people who are less likely to reoffend.

We do not, however, do those things. We pack more offenders, including those who are not a threat to the public, into ever more overstretched and overburdened prisons, thus reducing the scope for meaningful work with offenders during their time in custody. We often release them even more damaged than when they went in. As a result, reoffending rates continue to be unacceptable. If we do not reduce prisoners’ chances of reoffending, we protect nobody.

Bill Aitken gave a particular example, but I do not believe that sending even a petty repeat shoplifter to prison protects the shopkeeper unless the time the offender spends in prison reduces the likelihood of their reoffending when they come out. If that does not happen, a short prison sentence is worth little in the way of deterrence, little in the way of rehabilitation and little in the way of public protection. If a sentence is not worth those things, what is it for?

It is possible to express differences of opinion on this subject without accusing one another either of not caring about victims or of being on the side of criminals. In this morning’s session, and again during First Minister’s question time, there was a little too much of that uncomfortable “tough on crime” rhetoric, which helps nobody. Whoever feels that they are winning the “tough on crime” trophy always ends up accusing those who disagree of being on the side of the criminals. We can do a little better than that.

In reality, the interests of victims and criminals are not opposites. By giving offenders the best chance of changing their lives and offering them the greatest support to overcome addiction and other problems, we can prevent the creation of more victims in the future.

Despite the good principles behind much of the bill and despite my support for some of its aspects, such as those relating to the sale of weapons, I find myself struggling to justify support for it. The bill could have damaging consequences not only for the overstretched prison system but for criminal justice social work services. The Executive tells us not to worry, as it can build more prisons. That is exactly the kind of predict-and-provide mentality that still holds sway in its transport policy—“Too much congestion? We’ll build more roads.” I fear that custodial sentences will eventually result in filling up whatever space we make available and that we will be back in this chamber at some point asking why rehabilitation is not having the desired effect.

If we had passed amendment 44, in the name of Colin Fox, I would have found the bill more palatable. As it is, I am unable to support it. Although I do not agree with the statement of one expert that this is the worst bill that has come before us—that goes too far; I am sure that I could find even worse Executive bills—I find myself struggling to justify it as it stands.

15:31

Gordon Jackson (Glasgow Govan) (Lab): The minister is right to say that the bill represents a fundamental—and good—change in the way in which we do things.

There was no lack of clarity before. When a sentence was passed, most people knew that the offender would not serve all of it. Indeed, in some ways, the new system has less clarity. In the past, a prisoner had a date on their door and knew what
was happening, whereas that will not be the case from now on. However, the bill will establish a much better way of doing things.

The previous arrangement, whereby people served half or two thirds of their sentence before simply walking out the door, did not make sense. Bill Aitken made the valid point—the only one that he made—that that arrangement made sense only in the day when governors could take away remission. I am not sure how often they did that in practice, but at least if people misbehaved remission could be removed. However, once that power passed into history, there was no point in having that system.

My friends on the Tory benches have the sheer effrontery to condemn what we are doing and say simply, “There should be no early release. Whatever the sentence is, people should simply serve it all.” One has to ask what that would mean in practice. At the moment, a judge can give someone three or four years or whatever. Do the Tories believe that, if the person had to serve all of their sentence, judges would keep giving the same length of sentence? The resource implications of that are unthinkable. It is much more likely that judges—who are not stupid—would simply halve the sentence. When a judge sentences someone to three years under the present system, they are saying that that person should be in custody for 18 months. If the offender had to serve all of their sentence, the judge would simply give them an 18-month sentence. The result would be the same: people at the end of their custody period would simply walk out the door and there would be no control, no supervision, no licence—no nothing.

However, we are bringing in a big change. It is important that people have their sentence managed throughout and that, once they are in the community, there is monitoring of how they behave. The big change, which the Tories simply have not tackled, is that we are abandoning the idea that we should lock people up, leave them alone and, at the end of their sentences, let them walk out the door to do whatever they want.

Phil Gallie asks whether we can guarantee that people will behave during that period, but no one can guarantee that someone will not reoffend once they are released from prison. However, the bill represents an attempt to make a difference.

To some degree, however, I understand what Patrick Harvie is saying, although I think that he is in danger of throwing the baby out with the bath water. He is saying that he cannot support a bill that has a lot of good in it simply because he has some concerns about it. I think that he is being a little overpessimistic, but I also have some concerns about the bill. There are huge resource implications in terms of social work involvement and justice involvement, which have to be worked out.

I agree with Kenny MacAskill that, if we are to produce such measures, we must consider the whole package and think about how we can drop people off the bottom, because we still send to jail people who should not be in custody at all. We should consider the argument that short sentences are not good—there is a real debate to be had on that. I am with Kenny MacAskill in saying that we must consider resources and ensure that the bill does not simply increase our prison population. However, Patrick Harvie is a little overpessimistic, because the bill is worth a try. To use a justice expression, the jury is out as to how the bill will work in practice, but it is innovative and bright and will be a fundamental change for the better, so it is worthy of support from the Parliament.

15:35

Colin Fox (Lothians) (SSP): At First Minister’s question time today, the First Minister said that the bill will end the Tories’ provisions on the automatic early release of prisoners. Of course, it will do no such thing, because it will replace those provisions with Labour’s provisions on the automatic early release of prisoners. Offenders will continue to be released early, before they have served the full period that the sentencers hand down.

The bill promises to address the public’s confusion and irritation about the present situation, in which six months means three months, a year equals six months and people commit crimes while they are out on licence. However, the truth is that that situation will continue under the bill: the first 50 per cent of people’s sentences will be served in custody and, unfortunately, it is likely that prisoners will commit crimes while out on licence, because the supervision will be based on no more than a promise of good behaviour. The bill will fail to deliver on the promises. Who says so? For one, the Justice 2 Committee, which stated in its stage 1 report that it “supports the … objectives of the Bill”—members can read those for themselves—but “calls into question whether the measures in the Bill, as currently constituted, can achieve the stated objectives.”

The members of the Justice 2 Committee are not the only ones who have criticisms and believe that the bill will fail. The Scottish Consortium on Crime and Criminal Justice “regrets very much that the Scottish Executive is choosing to follow a path that, far from achieving the above goals and intentions, would incur huge costs and have serious negative … consequences for the criminal justice system and for the safety of Scottish communities.”

Time does not permit me to read out the evidence from Sacro, the community justice authorities, Professor Andrew Coyle and the Sheriffs Association, all of whom criticised the bill and
suggested that it will not achieve the transparency that is sought.

It is a pity that the bill is flawed, because it has some sensible aspects, such as the restriction on knife ownership and the emphasis on community sentences. As the minister knows full well, I have commended on the record the Scottish Executive and the justice system in Scotland for the fact that, for the first time, we now dispose of most cases through non-custodial options. I welcome that. However, we are sending more people to jail for longer, which is especially curious when, by all accounts, we have a falling crime rate. I want more sentences to be served in the community, with properly supported and supervised offenders and appropriate risk management in tandem with thorough protection for the wider community. However, the bill will not provide that.

Like other members, I am staggered by the complacency of the Executive, which is prepared to see prisoner numbers—which are already at record levels—continue to rise, especially given the appalling reports of overcrowding that we receive every year. The Executive has a dead-end strategy. The minister says that nothing in the bill will require judges to change their sentencing practice, yet virtually every witness from whom the Justice 2 Committee heard suggested that judges will change their practice. The Scottish Prison Service expects the daily prisoner population to rise by 1,100. That is the reality with which we are grappling.

The bill gives the public unrealistic expectations and will result in the inappropriate use of scarce resources. In reality, much of the evidence that the committee received was that the bill will put us in danger of reducing public confidence by putting resources in all the wrong places, which will not serve the best interests of the victims of crime. The bill represents exceptionally poor value for money. About £200 million will be spent on two new prisons for 1,100 extra prisoners, more prison staff will be required and 10 per cent more criminal justice social workers will be needed—I could go on and on. The bill will result in more people going to jail for longer—precisely the opposite of the advice on what works that the committee was given repeatedly in evidence.

Any bill that could add 20 per cent to our dangerously high prison population is wrong-headed. The bill will put badly needed resources for tackling crime in the wrong place. I voiced my criticisms in the committee at stage 1 and stage 2 and I cannot support the bill at decision time.

The Deputy Presiding Officer: We come to closing speeches. We are behind the clock, so I am obliged to Jeremy Purvis for waiving his second speaking slot.

15:40

Phil Gallie (South of Scotland) (Con): It is with disappointment that I rise today. I had great hopes for the bill. Like Bill Aitken and others, including Colin Fox and Patrick Harvie, I feel that there are a number of good elements in the bill that I would have liked to go along with. The knives element has been referred to. I cast my mind back to my Carrying of Knives etc (Scotland) Act 1993, which was a first step towards protecting the public from knives. The bill builds on that, which I welcome.

A number of issues are worth picking up on. During the discussion of Bill Aitken’s amendments to section 6 this morning, the minister tried to say that protection of the public is included in the custodial part of sentencing. However, section 6 includes the words

“ignoring any period of confinement which may be necessary for the protection of the public”.

Why did the minister argue against amendment 20, which sought to remove those words?

The Deputy Minister for Justice (Johann Lamont): The member obviously did not listen to my earlier explanation. When sentencing, judges take into account whatever they choose to take into account, including public protection. The custodial part is then established as part of sentence management. Any extension to that is determined on the basis of identified risk and is established during the period of the custodial sentence. It is simply not true to say that in establishing the sentence—the punishment for a crime—public protection cannot be taken into account.

Phil Gallie: If it is simply not true, minister, why on earth leave those words in the bill? They could have been removed. Given what the minister has said, it would not have done any harm. It is a piece of nonsense.

On automatic early release, Colin Fox commented that instead of Tory early release—which we were criticised for introducing—we have Labour’s early release. Kenny MacAskill said that if we legislate in haste, we will repent at leisure. The Tories legislated in 1995, and by 1997 we had repented. We built the repeal of automatic early release into the Crime (Sentences) Act 1997, but the Labour Government did not implement that element. We have had eight years of a Labour and Liberal Administration, and the Executive has failed to address that problem. When Jack McConnell stands up in the chamber, he is always pointing to the Tories and saying, “It was your fault.” It was the Labour and Liberal Administration that turned its back on the problem and failed to address it.

Jeremy Purvis: Will the member give way?
Phil Gallie: I am sorry, but I am in my last minute.

Patrick Harvie’s points on education and addressing addiction were worth while. There is a need for longer terms in prison to allow the authorities to address those issues. To some degree, our prisons should turn into educational establishments. If we can do that, offenders will be better citizens when they are released. However, prison also exists to protect society. I disagree with what Patrick Harvie and Jeramy Purvis said about short sentences. In some cases, short sentences alleviate the effect on those in the community who are worst affected by criminal activity.

Sadly, I cannot support the bill. I welcome the fact that the Executive has gone along the right lines in part. After the May elections, when we have a stronger Tory group, I advise the Executive to listen to what the group says. The Labour group could depend upon us to give it backing for real change.

15:44

Stewart Stevenson (Banff and Buchan) (SNP): I say to Phil Gallie that, if this is legislating in haste, I would hate to see us taking our time. After 10 years, it is probably time that we got around to dealing with the issues.

Let me make a simple but important semantic point. It is a bit unhelpful to use language that talks about offenders serving at least 50 per cent of their sentence in prison. That could suggest that we are continuing early release even though, in mechanical terms, we are doing something quite different. Under the bill, offenders will be given a custodial sentence and a period of supervision afterwards. For that reason, despite our reservations about some of the details, we will support the bill at decision time. I hope that the language that sheriffs use when they impose a sentence be served in society so that offenders can re-engage and reconnect with society when they are released.

A previous speaker said that the bill will not empty our prisons. On the face of it, that is true, which is a matter of concern. There is not, I think, a huge divide between the Executive and the SNP on the objectives for our prisons, but we still lack certainty about whether the Executive will engage in effective action to ensure that the increase in one part of the prison population will result from the increase in the amount of time that people spend in prison is balanced by a reduction in the number of offenders for whom—to use the unique Tory phrase that I agree with—it might be said that prison is a place where the bad are sent to be made worse. That phrase certainly applies to too many short-term prisoners. Of course, it is difficult to re-engage prisoners with society by locking them up away from society, therefore any measure that requires that part of the court-imposed sentence be served in society so that offenders can re-engage and reconnect with society is helpful.

One of the archetypal offenders to which reference has been made is the shoplifter. I say to Bill Aitken that banging up shoplifters for longer periods of time simply will not work. What kind of person is the typical shoplifter? By and large, she is a female heroin addict. For the female heroin addict, the fundamental problem with which she is afflicted ain’t gonna be dealt with in an effective way in prison.

Jackie Baillie: What is the statistical basis for the member’s assertion?

Stewart Stevenson: The statistical basis is that the recovery rate with heroin addiction treatment is 10 per cent worse in prison than in the community.

The Deputy Presiding Officer (Trish Godman): One minute.

Jackie Baillie: The member has not answered my question.

Stewart Stevenson: I am in my last minute. Jackie Baillie asked a question and I answered it.

We need to ask whether the bill will address some fundamental questions. Will it make the system work better? Yes, to an extent. Will it help to rebuild public confidence in the criminal justice system? Yes, to a certain extent.

As ever, I listened with interest to Gordon Jackson, because he brings real-life experience to these matters. However, he missed an important point when he claimed that everyone knows that when a sheriff sends someone to jail for four years, they will be out in two. It might be true that professionals know that, but it is certainly not true for the public. Gordon Jackson needs to consider that.

Prison represents one key thing, which is failure: failure for the prisoner, failure for the victim who has suffered at the hands of the prisoner and failure for the system that we hold responsible. Success is when we reduce the number of people going to prison. We will never reduce it to nil, but I
hope that we have started to build a new system that will send fewer people to prison and deliver increased public safety.

15:50

The Deputy Minister for Justice (Johann Lamont): I thank the members of and clerks to the Justice 2 Committee for all the work that they have done to take the bill through stages 1 and 2; the Finance Committee and the Subordinate Legislation Committee; and the bill team and officials and Cathy Jamieson, the Minister for Justice, for their support and tolerance of me, given that I came to the bill at a much later stage than everyone else.

The First Minister made a commitment to end automatic unconditional early release and provide more clarity in sentencing. The bill will deliver exactly that.

Throughout the parliamentary process, we have listened and responded where appropriate by amending the bill. One of the key sections, which deals with the custody part of sentences, has benefited greatly from that scrutiny and I believe that the provisions are now much clearer as a result, given that they build on the core principle of transparency, which was identified at the beginning.

We listened to what people said about the different tests for recall to custody and re-release. It was argued that a revolving-door situation would be created. We amended the provisions at stage 2 to ensure that the same test—that of public interest—would be used for both levels of consideration.

The bill now makes it clear what basic conditions will be put on the community licence. Victims and communities have the right to expect that wrongdoers will be dealt with appropriately. These measures are about what happens when the court decides that prison is the right sanction.

We realise—and the financial memorandum shows—that there will be demands and new resources. It is not just about more money; we need to ensure that we are making the most effective and efficient use of the existing resources and that, from the start of the process through to the end—from the courts to the community—the process is measured and proportionate.

Today, it has been something of a challenge to address those real concerns while having to deal with some of the more grotesque elements of Tory misrepresentation of the bill. While we have been making and developing policy, the Tories have been content to make mischief. They say that it has taken eight years to get to the stage of ending automatic unconditional early release, but they would prefer to vote against the bill—which addresses that matter—and leave the situation as it is. They are content to put the scathing comments from the back of an envelope on to the marshalled list, as represented by the poor-quality, inconsistent and illogical amendments from Bill Aitken, rather than do the hard work to establish a policy that can gather support. I might be wrong, but, as far as I am aware, there was no member’s bill from the Tories that identified another approach to early release at any stage in the past eight years.

We have taken on the challenge of developing policy that considers the evident tensions and conflicts around the agenda of tackling offending, keeping communities safe and addressing the issues that create offenders in the first place.

We acknowledge the point that Kenny MacAskill made about victims. I contend that not just the bill but a range of approaches that the Executive has taken have given real priority to, and understood the needs of, victims precisely because we have spoken to them. The system is giving victims unprecedented support—the court system itself has been forced to change its habits.

We acknowledge that there is an issue with short sentences, but there is an also an issue with previous convictions. We often hear about the shoplifter who refuses to change, but some people are involved in what might seem like small individual offences; such offences can have a huge impact on communities and should not be dismissed as being not worthy of challenge.

I was stunned at the suggestion this morning that I was soft on crime. Kenny MacAskill also suggested that I was laid back and complacent. Those two characteristics have never been ascribed to me before and I assure him that they do not represent my position on the bill—far from it. The Convention of Scottish Local Authorities said that it is important to take a measured approach to the implementation of the bill, to work closely with the professionals who have to deliver it and to ensure that there is pace around that, so that confidence can be built.

Kenny MacAskill, quite rightly, highlighted the importance of making progress on this matter. That is rather ironic, given that he is a member of a party that would spend huge amounts of time and resources on dealing with the constitutional separation of our country, rather than on focusing resources where there is need.

We were also told that the bill is about sentencing. There has been a shift towards more community disposals rather than custodial sentences, and people are beginning to have confidence in that, but the bill is about what happens when the judgment has been made that there should be a custodial sentence.
As Kenny MacAskill said, there is an issue about having to spend more money while there are not more offenders, but the current system masks the level of offending. It does not address offending behaviour or deal properly with those who leave prison and continue to offend. Under the bill, if someone is serving the supervision part in the community and there is a breach of licence, action will be taken against them. We will not reduce the numbers in prison simply by saying to people, “You’re not getting to go to prison.” We will reduce the numbers when we give people the opportunity to confront their offending behaviour and opportunities to participate in work and in the life of their community so that they realise that offending behaviour is inappropriate.

It is the role of the justice system to support people in addressing their underlying problems. Work to support people to do that is not separate from the justice system. We would do nobody any favours by artificially reducing the level of offending or by not being prepared to confront people who have those problems.

We recognise that there is an issue about financial resources and we have made commitments in relation to that.

I have to say to Patrick Harvie that life is tough and that we have to make hard choices. Finding it hard to justify something is not good enough for a legislature. Members have to decide to support the legislation, to oppose it, or to propose alternatives. As far as I am aware, the Green party has not engaged in the process at all.

Colin Fox said that the increase in the number of prisoners will come from changes in sentencing practice, but that is not the case. The important point is that we are willing to confront the issue of recall for those who breach their licence conditions. That is where the increase will come from. It may be that being mischievous keeps Colin Fox going. There are people who have concerns about the bill, but there is not blanket opposition to it, as he suggested. People realise that the bill represents a step forward from the existing approach.

As I have said before, there are issues about short sentences, which merit further consideration.

I will finish by commenting briefly on weapons.

**The Deputy Presiding Officer:** Minister, you really need to sum up.

**Johann Lamont:** Jackie Baillie made the point that communities want the provisions on weapons and recognise that they are part of a package. The important measures in the bill will address behaviour that too often ends up with young people losing their lives.
Decision Time

16:15

The Presiding Officer (Mr George Reid):

There are only two questions to be put as a result of today’s business. The first question is, that motion S2M-5632, in the name of Cathy Jamieson, that the Parliament agrees that the Custodial Sentences and Weapons (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baille, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Gloucester) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm,colm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Edie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gillan, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Garmock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springfield) (Lab)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McCourt, Mr Jack (Motherwell and Wishaw) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Unilghow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Watt, Ms Maureen (North East Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

Against

Aitken, Bill (Glasgow) (Con)
Baird, Shiona (North East Scotland) (Green)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Curran, Frances (West of Scotland) (SSP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Johnstone, Alex (North East Scotland) (Con)
Kane, Rosie (Glasgow) (SSP)
Martin, Campbell (West of Scotland) (Ind)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Petrie, Dave (Highlands and Islands) (Con)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, John (Ayr) (Con)
Tosh, Murray (West of Scotland) (Con)

Abstentions

Byrne, Ms Rosemary (South of Scotland) (Sol)
MacDonald, Margo (Lothians) (Ind)
Sheridan, Tommy (Glasgow) (Sol)

The Presiding Officer: The result of the division is: For 89, Against 23, Abstentions 3.

Motion agreed to.
That the Parliament agrees that the Custodial Sentences and Weapons (Scotland) Bill be passed.

The second and final question is that motion S2M-5626, in the name of Donald Gorrie, on behalf of the Procedures Committee, on the Scottish Commission for Public Audit, be agreed to.

That the Parliament notes the Procedures Committee's 10th Report, 2006 (Session 2), Scottish Commission for Public Audit and agrees that the changes to Standing Orders set out in Annexe A to the report be made with effect from the day after the Parliament is dissolved at the end of the current session.

The final item of business today is a members' business debate on motion S2M-5492, in the name of Jamie McGrigor, on Rum's red deer. The debate will be concluded without any question being put.

That the Parliament notes that the red deer is an iconic part of the image of Scotland; further notes that, because of its isolation, the red deer herd on Rum has arguably the purest bloodline in the country and has been the subject of scientific research, and considers that Scottish Natural Heritage's plan to cull Rum's red deer solely to protect the trees that it has decided to plant on the island without any protective fencing is to be condemned.

Mr Jamie McGrigor (Highlands and Islands) (Con):

Let us make no mistake. The subjects of this debate—the island of Rum and the herds of red deer living there—are national treasures and an important part of Scotland's natural heritage. I am not alone in saying that. I represent a large number of people who have written letters and e-mails because they have been horrified by the suggestion that Scottish Natural Heritage might cull the red deer herd on Rum from its present level of 1,200 to 1,300 animals down to a population of 300 to 400.

I am grateful to the BBC's "Landward" programme for alerting the public to the subject of this debate. The programme is a great champion and watchdog of rural stewardship and a great credit to the BBC. I am also grateful to the many people who have sent letters and e-mails, and to the academics Professor Tim Clutton-Brock from Cambridge, Jo Pemberton from Edinburgh and Steve Alban from Aberdeen for their invaluable information on the deer project and the natural environment on the isle of Rum.

The reason that SNH gives for the proposed cull is to regenerate trees in Rum without using appropriate fencing. It is using the basis of four deer per square kilometre, which would be a tiny stocking density compared with the current figure. That would be a calamity. Remembering that Rum is publicly owned, I maintain, along with many others, that that flawed policy will result in a very low regeneration of trees at the expense of the destruction of the most important red deer herd in Scotland, which is a vitally important asset.

The herd has been the subject of a 35-year research project, sometimes referred to as the Kilmory project. The findings will increase in importance because they will be of huge value in monitoring the effects of climate change and global warming on a group of mammals on which...
Custodial Sentences and Weapons (Scotland) Bill
[AS PASSED]

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Custodial Sentences and Weapons (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to restate and amend the law relating to the confinement and release of prisoners; to make provision relating to the control of weapons; and for connected purposes.

PART 1

THE PAROLE BOARD FOR SCOTLAND

1 The Parole Board for Scotland

(1) There shall continue to be a body to be known as the Parole Board for Scotland (the “Parole Board”).

(2) The Parole Board’s principal function is to give directions to the Scottish Ministers in relation to any matter referred to it under Part 2 relating to the release of prisoners.

(3) The Parole Board has such other functions as are conferred on it by virtue of this Act and any other enactment.

(4) In carrying out any of its functions in relation to a person in respect of whom a risk management plan has been prepared under section 6(1) of the Criminal Justice (Scotland) Act 2003 (asp 7), the Parole Board must have regard to the plan.

(5) Schedule 1 makes further provision about the Parole Board.

2 Parole Board rules

(1) The Scottish Ministers may make rules about the practice and procedure of the Parole Board.

(2) Rules under subsection (1) may, in particular, include provision for or in connection with—

(a) authorising cases referred to the Parole Board by virtue of this Act to be dealt with, in whole or in part, by a specified number of members of the Board in accordance with such procedure as may be specified in the rules,

(b) enabling the Parole Board to require any person, other than a prisoner whose case the Board is dealing with, to—
(i) attend a hearing before the Board,
(ii) give evidence to it, or
(iii) produce documents,

(c) requiring cases referred to the Board, or matters specified in the rules that are preliminary or incidental to the determination of cases, to be determined, or other actions so specified to be taken, within periods so specified,

(d) specifying matters which may be taken into account by the Parole Board in dealing with cases.

(3) Rules under subsection (1) which include provision such as is mentioned in subsection (2)(b) may also include provision applying subsections (4) and (5) of section 210 of the Local Government (Scotland) Act 1973 (c.65) with such modifications as may be set out in the rules but subject to the limitation that any penalty under subsection (5) of that section as so applied must be restricted to a fine not exceeding level 2 on the standard scale.

PART 2

CONFINEMENT AND RELEASE OF PRISONERS

CHAPTER 1

INTRODUCTORY

3 Application of Part 2

This Part does not apply in relation to a sentence (other than a life sentence) imposed on a person for an offence committed before the coming into force of the Part.

4 Basic definitions

(1) In this Part—

"the 1995 Act" means the Criminal Procedure (Scotland) Act 1995 (c.46),
"curfew condition" has the meaning given by section 37,
"custody and community prisoner" means a person serving a custody and community sentence,
"custody and community sentence" means a sentence of imprisonment for an offence for a term of 15 days or more,
"custody-only prisoner" means a person serving a custody-only sentence,
"custody-only sentence" means a sentence of imprisonment for a term of less than 15 days; and includes a sentence of detention imposed under section 206(2) of the 1995 Act (detention for up to 4 days in summary case),
"custody part" has the meaning given by section 6(2),
"life prisoner" means a person on whom a life sentence is imposed,
"life sentence" means—
Part 2—Confinement and release of prisoners
Chapter 2—Confinement, review and release of prisoners

(a) a sentence of life imprisonment for an offence for which that sentence is not the sentence fixed by law (a “discretionary life sentence”),

(b) a sentence of life imprisonment for murder or for any other offence for which that sentence is the sentence fixed by law (a “mandatory life sentence”), or

(c) a sentence of imprisonment for an indeterminate period constituted by an order for lifelong restriction under section 210F of the 1995 Act,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“Parole Board” means the Parole Board for Scotland,

“punishment part” has the meaning given by section 15(2),

“standard conditions” means the conditions mentioned in section 23A(2), and

“supervision conditions” means the conditions mentioned in section 27(3).

(2) The Scottish Ministers may by order amend the definitions of “custody and community sentence” and “custody-only sentence” in subsection (1) by substituting a different term for the term for the time being mentioned in those definitions.

(3) References in this Part to release on community licence are references to the release on licence of a custody and community prisoner.

(4) References in this Part to release on life licence are references to the release on licence of a life prisoner.

CHAPTER 2
CONFINEMENT, REVIEW AND RELEASE OF PRISONERS

Custody-only prisoners

5 Release on completion of sentence

As soon as a custody-only prisoner has served the term of imprisonment specified in the prisoner’s sentence the Scottish Ministers must release the prisoner unconditionally.

Custody and community prisoners

6 Setting of custody part

(1) This section applies where the court imposes on a person a custody and community sentence.

(1A) After imposing the sentence, the court must make an order specifying the custody part of the sentence.

(2) The custody part is that part of the sentence which represents an appropriate period to satisfy the requirements for retribution and deterrence (ignoring any period of confinement which may be necessary for the protection of the public).

(3) An order specifying a custody part must specify that the custody part is—

(a) one-half of the sentence or
(b) if subsection (3A) applies, such greater proportion of the sentence as the court specifies.

(3A) This subsection applies if, taking into account in particular the matters mentioned in subsection (4), the court considers that it would be appropriate to specify a greater proportion of the sentence as the custody part.

(4) Those matters are—

(a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment or complaint as that offence,

(aa) where the offence was committed when the person was serving a sentence of imprisonment for another offence, that fact, and

(b) any previous conviction of the person.

(6) The court may not make an order specifying a custody part which is greater than three-quarters of the sentence.

(6A) An order specifying a custody part must specify the custody part by reference to a fixed period of time.

(6AA) Where (but for this subsection) a custody part would fall to be specified as a period including a fraction of a day, the custody part must be specified in whole days (any such fraction being rounded up to a whole day).

(6B) Where, by virtue of subsection (3)(b), the court specifies a custody part of more than one-half of the sentence, the court must state in open court the reason for doing so.

(7) An order specifying a custody part constitutes part of a person’s sentence within the meaning of the 1995 Act for the purposes of any appeal or review.

6B Power to amend section 6(3)

The Scottish Ministers may by order amend section 6(3)(a) by substituting for the proportion for the time being specified there a different proportion specified in the order.

6C Provision of information by court

(1) This section applies where—

(a) a court imposes a custody and community sentence on a person, and

(b) the court is not required by—

(i) section 21(4) of the Criminal Justice (Scotland) Act 2003 (asp 7), or

(ii) section 210H(2) of the 1995 Act,

to prepare a report.

(2) As soon as is reasonably practicable after imposing the sentence, the court must provide the Scottish Ministers with such information about—

(a) the person, and

(b) the circumstances of the case,

as the court considers appropriate.
(2A) Information provided by virtue of subsection (2) is to be provided in such form as the court considers appropriate.

7 Joint arrangements between Scottish Ministers and local authorities

(1) The Scottish Ministers and each local authority must jointly establish arrangements for the assessment and management of the risks posed in the local authority’s area by custody and community prisoners.

(2) For the purposes of assisting the Scottish Ministers in making a determination under section 8(1), the Scottish Ministers and the appropriate local authority must during the custody part of a custody and community prisoner’s sentence assess in accordance with arrangements established under subsection (1) whether subsection (3) applies in respect of the prisoner.

(3) This subsection applies if the prisoner would, were the prisoner released on community licence on the expiry of the custody part, be likely to cause serious harm to members of the public.

(4) In this section, “appropriate local authority”, in relation to a custody and community prisoner, means the local authority for the area in which the prisoner—

   (a) resided immediately before the imposition of the custody and community sentence, or
   
   (b) intends to reside on release on community licence.

(5) If, by virtue of subsection (4), two or more local authorities are the appropriate local authority in relation to a custody and community prisoner, those authorities may agree that the functions conferred on them by subsection (2) and section 25(3) may be carried out by only one of them.

8 Review by Scottish Ministers

(1) Before the expiry of the custody part of a custody and community prisoner’s sentence the Scottish Ministers must determine whether subsection (2) applies in respect of the prisoner.

(2) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

9 Consequences of review

(1) This section applies where the Scottish Ministers make a determination under subsection (1) of section 8 in respect of a prisoner.

(2) If the Scottish Ministers determine that subsection (2) of that section does not apply in respect of the prisoner, they must release the prisoner on community licence on the expiry of the custody part of the prisoner’s sentence.

(3) If the Scottish Ministers determine that subsection (2) of that section applies in respect of the prisoner, they must, before the expiry of the custody part of the prisoner’s sentence, refer the prisoner’s case to the Parole Board.
Review by Parole Board

(1) Subsection (2) applies where a custody and community prisoner’s case is referred to the Parole Board under section 9(3).

(2) Before the expiry of the custody part of the prisoner’s sentence, the Parole Board must determine whether section 8(2) applies in respect of the prisoner.

Release on community licence following review by Parole Board

(1) Subsection (2) applies where the Parole Board determines under section 10(2) or 13(3) that section 8(2) does not apply in respect of a prisoner.

(2) The Parole Board must—

(a) direct the Scottish Ministers to release the prisoner on community licence, and

(b) specify conditions to be included in the licence.

(3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on community licence.

(4) In the case of a determination under section 10(2) the direction must be implemented on the expiry of the custody part of the prisoner’s sentence.

Determination that section 8(2) applicable: consequences

(1) This section applies where the Parole Board determines under section 10(2) or 13(3) that section 8(2) applies in respect of a prisoner.

(2) The Parole Board must give the prisoner reasons in writing for its determination.

(3) If on the day of the determination less than 4 months of the prisoner’s sentence remain to be served before the three-quarter point—

(a) the prisoner must be confined until the three-quarter point, and

(b) the Parole Board must specify conditions to be included in the prisoner’s community licence.

(4) If on the day of the determination at least 4 months but no more than 2 years of the prisoner’s sentence remain to be served before the three-quarter point, the Parole Board may fix a date falling within the period mentioned in subsection (5) on which it will next consider the prisoner’s case.

(5) That period is the period—

(a) beginning with the day falling 4 months after the day of the determination, and

(b) ending with the three-quarter point.

(6) If no date is fixed under subsection (4)—

(a) the prisoner must be confined until the three-quarter point, and

(b) the Parole Board must fix a date falling within the period mentioned in subsection (5) on which it must specify conditions to be included in the prisoner’s community licence.

(7) If on the day of the determination more than 2 years of the prisoner’s sentence remain to be served before the three-quarter point, the Parole Board must fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner’s case.
(8) That period is the period—
   (a) beginning with the day falling 4 months after the day of the determination, and
   (b) ending immediately before the second anniversary of the day of the determination.

(8A) In this section, “three-quarter point”, in relation to a prisoner’s custody and community sentence, means the day on which the prisoner will have served three-quarters of the prisoner’s sentence.

(9) This section is subject to section 21.

12A Prisoner’s right to request early reconsideration by Parole Board

(1) Subsection (2) applies where the Parole Board has fixed a date under section 12(4) or (7) for considering a prisoner’s case.

(2) On the prisoner’s request, the Board may, if it considers it appropriate to do so, substitute for that date an earlier date when it will next consider the prisoner’s case by fixing that earlier date under section 12(4) or, as the case may be, (7).

(3) Subsection (4) applies where the Parole Board does not fix a date under section 12(4).

(4) On the prisoner’s request, the Board may, if it considers it appropriate to do so, fix a date under section 12(4) when it will next consider the prisoner’s case.

(5) This section is subject to section 21.

12B Referral to Parole Board for the purposes of specifying conditions

(1) This section applies where the Parole Board fixes a date under section 12(6)(b).

(2) The Scottish Ministers must refer the prisoner’s case to the Parole Board before that date.

(3) On that date, the Parole Board must specify conditions to be included in the prisoner’s community licence.

13 Further referral to Parole Board

(1) This section applies where the Parole Board fixes a date under section 12(4) or (7) for considering a prisoner’s case.

(2) The Scottish Ministers must refer the prisoner’s case to the Parole Board before that date.

(3) The Parole Board must determine whether section 8(2) applies in respect of the prisoner.

13A Cases where custody part specified as three-quarters of prisoner’s sentence

(1) This section applies where, by virtue of section 6(3)(b), the court specifies a custody part which is three-quarters of a prisoner’s custody and community sentence.

(2) Section 8(1) does not apply.

(3) Before the expiry of the custody part—
   (a) the Scottish Ministers must refer the prisoner’s case to the Parole Board, and
(b) the Parole Board must specify conditions to be included in the prisoner’s community licence.

14 Release after three-quarters of sentence served

(2) As soon as a custody and community prisoner has served three-quarters of the prisoner’s custody and community sentence, the Scottish Ministers must release the prisoner on community licence.

(4) Subsection (2) does not apply in relation to a prisoner whose licence has been revoked by virtue of section 31(1) or (4).

Life prisoners

15 Setting of punishment part

(1) This section applies where the court imposes on a person a life sentence.

(1A) After imposing the sentence, the court must make an order specifying the punishment part of the sentence.

(2) The punishment part is that part of the person’s life sentence which, taking into account—

(a) in the case of a mandatory life sentence, the matters mentioned in subsection (3),

(b) in the case of a discretionary life sentence or an order for lifelong restriction under section 210F of the 1995 Act, the matters mentioned in subsection (4),

the court considers appropriate to satisfy the requirements for retribution and deterrence (ignoring any period of confinement which may be necessary for the protection of the public).

(3) Those matters are—

(a) the seriousness of the offence, or of the offence combined with other offences of which the person is convicted on the same indictment as that offence,

(b) any previous conviction of the person, and

(c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.

(4) Those matters are—

(a) any period of imprisonment which the court considers would have been appropriate for the offence had the court not imposed a sentence, or made an order, such as is mentioned in subsection (2)(b) for the offence, and

(b) the part of that period of imprisonment which, by virtue of section 6, the court would have specified as the custody part.

(6) An order specifying a punishment part must specify the punishment part in years and months.

(7) It does not matter that a punishment part so specified may exceed the remainder of the person’s natural life.

(8) An order specifying a punishment part constitutes part of a person’s sentence within the meaning of the 1995 Act for the purposes of any appeal or review.
16 **Referral to Parole Board**

Before the expiry of the punishment part of a prisoner’s life sentence, the Scottish Ministers must refer the prisoner’s case to the Parole Board.

17 **Review by Parole Board**

(1) Subsection (2) applies where a life prisoner’s case is referred to the Parole Board under section 16.

(2) Before the expiry of the punishment part of the prisoner’s life sentence, the Parole Board must determine whether subsection (3) applies in respect of the prisoner.

(3) This subsection applies if the prisoner would, if not confined, be likely to cause serious harm to members of the public.

18 **Release on life licence following review by Parole Board**

(1) Subsection (2) applies where the Parole Board determines under section 17(2) or 20(3) that section 17(3) does not apply in respect of a life prisoner.

(2) The Parole Board must—

(a) direct the Scottish Ministers to release the prisoner on life licence, and

(b) specify conditions to be included in the prisoner’s licence.

(3) Where a direction is given under subsection (2)(a) the Scottish Ministers must release the prisoner on life licence.

(4) In the case of a determination under section 17(2) the direction must be implemented on the expiry of the punishment part of the prisoner’s sentence.

19 **Determination that section 17(3) applicable: consequences**

(1) This section applies where the Parole Board determines under section 17(2) or 20(3) that section 17(3) applies in respect of a life prisoner.

(2) The Parole Board must—

(a) give the prisoner reasons in writing for its determination, and

(b) fix the date on which it will next consider the prisoner’s case.

(3) Subject to section 21, the date fixed under subsection (2)(b) must fall within the period—

(a) beginning with the day falling 4 months after the day of the determination, and

(b) ending immediately before the second anniversary of the day of the determination.

(4) Subsection (5) applies where the Parole Board has fixed a date under subsection (2)(b).

(5) On the prisoner’s request, the Board may, if it considers it appropriate to do so, replace that date by fixing under that subsection an earlier date when it will next consider the prisoner’s case.
20 Further referral to Parole Board

(1) This section applies where the Parole Board fixes a date under section 19(2)(b) for considering a prisoner’s case.

(2) The Scottish Ministers must refer the prisoner’s case to the Parole Board before that date.

(3) The Parole Board must determine whether section 17(3) applies in respect of the prisoner.

21 Referral to Parole Board: postponement

10 (1) Subsection (2) applies where—

(a) a prisoner’s case is referred to the Parole Board under this Part (the “referred case”),

(b) after the referral another sentence of imprisonment is imposed on the prisoner (the “new sentence”),

(c) when that sentence is imposed, the Board has not fixed a date for considering the prisoner’s case, and

(d) the prisoner would not be eligible for release in relation to the new sentence on the date which would (apart from this section) have been fixed for considering the referred case.

(2) The Parole Board must—

(a) fix in accordance with subsection (5) a different date for considering the referred case, and

(b) if a further new sentence is imposed on the prisoner in relation to which the prisoner would not be eligible for release on that different date, fix in accordance with that subsection a further different date.

(3) Subsection (4) applies where—

(a) the Parole Board fixes a date for considering the referred case,

(b) before that date, a new sentence is imposed on the prisoner, and

(c) the prisoner would not be eligible for release in relation to the new sentence on that date.

(4) The Parole Board must—

(a) fix in accordance with subsection (5) a different date for considering the referred case, and

(b) if a further new sentence is imposed on the prisoner in relation to which the prisoner would not be eligible for release on that different date, fix in accordance with that subsection a further different date.

(5) A date is fixed in accordance with this subsection if—

(a) it is a date which would have been fixed in relation to the new sentence if that were the only sentence imposed on the prisoner, and
Compassionate release on licence

23  Compassionate release on licence

(1) Where the Scottish Ministers are satisfied that there are compassionate grounds justifying the release on licence of a prisoner, the Scottish Ministers may release the prisoner on licence.

(2) Before releasing a custody and community prisoner or a life prisoner under subsection (1) the Scottish Ministers must consult the Parole Board.

(3) The Scottish Ministers need not consult the Parole Board if it is impracticable to do so.

Chapter 3—Community and life licences

The standard conditions

23A Release on licence: the standard conditions

(1) Where a prisoner is released on licence by virtue of this Part, the prisoner is released subject to the standard conditions.

(2) The standard conditions are—

(a) that the prisoner must be of good behaviour, and

(b) that, subject to subsection (3), the prisoner is prohibited from leaving the United Kingdom.

(3) Paragraph (b) of subsection (2) does not apply if—

(a) the prisoner falls within subsection (4), or

(b) the Scottish Ministers permit, or a person designated by them for the purposes of this section permits, the prisoner to leave the United Kingdom.

(4) The prisoner falls within this subsection if—

(a) the prisoner is liable to deportation under section 3(5) of the Immigration Act 1971 (c.77) and has been notified of a decision to make a deportation order,

(b) the prisoner is liable to deportation under section 3(6) of that Act,

(c) the prisoner has been notified of a decision to refuse the prisoner leave to enter the United Kingdom,

(d) the prisoner is an illegal entrant within the meaning of section 33(1) of that Act,

(e) the prisoner is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c.33).

The supervision conditions

27  Release on licence of certain prisoners: the supervision conditions

(1) This section applies where a prisoner falling within subsection (2) is released on licence by virtue of this Part.
(2) A prisoner falls within this subsection if—

(a) the prisoner is

(i) a life prisoner,

(ii) a custody and community prisoner serving a custody and community sentence of 6 months or more,

(iii) any other custody and community prisoner in respect of whom—

(A) by virtue of section 6(3)(b), the court specifies a custody part which is three-quarters of the prisoner’s sentence, or

(B) the Parole Board determines under section 10(2), that section 8(2) applies,

(iv) a person released on licence by virtue of section 23(1),

(v) a person subject to an extended sentence (as defined in section 210A of the 1995 Act),

(vi) a person subject to the notification requirements in Part 2 of the Sexual Offences Act 2003 (c.42), or

(vii) a child (as defined in section 307(1) of the 1995 Act) subject to a sentence of detention under section 208 of that Act, and

(b) the prisoner does not fall within section 23A(4).

(2A) The prisoner is released subject to the supervision conditions.

(3) The supervision conditions are—

(a) that the prisoner is to be under the supervision of a relevant officer of the local authority specified in the licence,

(aa) that the prisoner is to maintain contact with the relevant officer as the officer directs,

(ab) that the prisoner is to inform the relevant officer of—

(i) any change of address,

(ii) any change in employment, and

(b) that the prisoner is to comply with any other requirements imposed in relation to the supervision by the relevant officer.

(5) In subsection (3) “relevant officer”, in relation to a local authority, means an officer of the authority employed by it in the discharge of its functions under section 27(1) of the Social Work (Scotland) Act 1968 (c.49).

Community licences

24 Release on community licence on Parole Board’s direction

(1) This section applies where by virtue of section 11(2)(b), 12(3)(b), 12B(3), 13A(3)(b) or 33(4)(b) the Parole Board specifies conditions which are to be included in a prisoner’s community licence.

(2) The Scottish Ministers must include in the prisoner’s community licence—
(a) those conditions,
(b) the standard conditions, and
(c) if section 27(1) applies, the supervision conditions.

(3) On the direction of the Parole Board, the Scottish Ministers may—

(a) vary the conditions mentioned in subsection (2),
(b) cancel conditions (other than the standard conditions and the supervision conditions),
(c) include in the licence further conditions.

25 **Community licences in which Scottish Ministers may specify conditions**

(1) This section applies where by virtue of section 9(2) or 23(1) the Scottish Ministers release a prisoner on community licence.

(2) The Scottish Ministers—

(a) must include in the prisoner’s community licence—

(i) the standard conditions, and
(ii) if section 27(1) applies, the supervision conditions,

(b) may include in the licence such other conditions as they consider appropriate.

(2A) The Scottish Ministers may—

(a) vary the conditions mentioned in subsection (2),

(b) cancel conditions (other than the standard conditions and the supervision conditions),

(c) include in the licence such further conditions as they consider appropriate.

(3) Before exercising any of the powers conferred by subsection (2) or (2A), the Scottish Ministers must, in pursuance of arrangements established under section 7(1), co-operate with the appropriate local authority.

(4) In subsection (3) “appropriate local authority” has the same meaning as in section 7.

**Life licences**

26 **Release on life licence: conditions**

(1) This section applies where by virtue of section 18(2)(b) or 33(4)(b) the Parole Board specifies conditions which are to be included in a prisoner’s life licence.

(2) The Scottish Ministers must include in the prisoner’s life licence—

(a) those conditions,

(b) the standard conditions, and

(c) if section 27(1) applies, the supervision conditions.

(3) On the direction of the Parole Board, the Scottish Ministers may—

(a) vary the conditions mentioned in subsection (2),

(b) cancel conditions,
(c) include in the licence further conditions.

26A Compassionate release on life licence: conditions

(1) This section applies where by virtue of section 23(1) the Scottish Ministers release a prisoner on life licence.

(2) The Scottish Ministers must include in the licence—
   (a) the standard conditions,
   (b) the supervision conditions, and
   (c) such other conditions as they consider appropriate.

(3) The Scottish Ministers may—
   (a) vary or cancel the conditions mentioned in subsection (2),
   (b) include further conditions in the licence.

Duration of licence

28 Period during which licence in force

(1) Where a custody-only prisoner is released on licence by virtue of section 23(1), the licence remains in force until the expiry of the prisoner’s sentence.

(2) Where a custody and community prisoner is released on community licence by virtue of section 9(2), 11(2)(a), 14(2), 23(1) or, as the case may be 33(4)(a), the licence remains in force until the expiry of the prisoner’s sentence.

(3) Where a life prisoner is released on life licence by virtue of section 18(2)(a), 23(1) or, as the case may be 33(4)(a), the licence remains in force until the prisoner dies.

Prisoner to comply with licence conditions

29 Prisoner to comply with licence conditions

Where a prisoner is released on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a), the prisoner must, while the licence is in force, comply with the conditions included in the licence.

Suspension

30 Suspension of licence conditions while detained

(1) Subsection (2) applies where—
   (a) the Scottish Ministers release a prisoner on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a), and
   (b) while the licence is in force the prisoner continues to be, or is, detained in prison by virtue of this Part, any other enactment or any rule of law.

(2) Any condition in the licence other than a condition mentioned in subsection (3) is suspended for the relevant period.

(3) Those conditions are any conditions (however expressed) requiring the prisoner—
(a) to be of good behaviour and to keep the peace,
(b) to refrain from contacting a person, or class of person, specified in the licence (or to refrain from doing so without the approval of a person specified in the licence).

(4) The relevant period is—

(a) the period during which the prisoner remains detained in prison, and
(b) the licence remains in force.

(5) The Scottish Ministers may by order amend subsection (3) by amending conditions or adding or removing conditions.

Revocation

31 Revocation of licence

(1) If—

(a) a prisoner is released on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a),
(b) the prisoner is not detained as mentioned in section 30(1)(b), and
(c) subsections (2) and (3) apply,

the Scottish Ministers must revoke the licence and recall the prisoner to prison.

(2) This subsection applies if—

(a) the prisoner breaches a licence condition, or
(b) the Scottish Ministers consider that the prisoner is likely to breach a licence condition.

(3) This subsection applies if the Scottish Ministers consider that it is in the public interest to revoke the licence and recall the prisoner to prison.

(4) If—

(a) a prisoner is released on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a),
(b) the prisoner is detained as mentioned in section 30(1)(b), and
(c) subsections (2) and (5) apply,

the Scottish Ministers must revoke the licence.

(5) This subsection applies if the Scottish Ministers consider that it is in the public interest to revoke the licence.

31A Compassionate release: additional ground for revocation of licence

(1) This section applies if—

(a) a prisoner is released on licence by virtue of section 23(1), and
(b) the Scottish Ministers are satisfied that there are no longer compassionate grounds justifying the prisoner’s release on licence by virtue of that section.

(2) The Scottish Ministers must revoke the licence.
(3) If the prisoner is not detained as mentioned in section 30(1)(b), the Scottish Ministers must recall the prisoner to prison.

31B Prisoners unlawfully at large

Where—

(a) a prisoner’s licence is revoked by virtue of section 31(1) or 31A(2), and

(b) the prisoner is at large,

the prisoner is unlawfully at large.

31C Compassionate release: effect of revocation in certain circumstances

(1) Subsection (2) applies where—

(a) a prisoner is released on licence by virtue of section 23(1),

(b) the licence is revoked by virtue of section 31(1) or (4) or 31A(2), and

(c) the revocation occurs before the expiry of the relevant period.

(2) This Part applies to the prisoner as if the prisoner had not been released on licence by virtue of section 23(1).

(3) The relevant period is—

(a) in the case of a custody-only prisoner, the prisoner’s sentence,

(b) in the case of a custody and community prisoner, the custody part of the prisoner’s sentence,

(c) in the case of a life prisoner, the punishment part of the prisoner’s sentence.

32 Referral to Parole Board following revocation of licence

(1) Subsection (2) applies where the Scottish Ministers revoke a licence by virtue of section 31(1) or (4) or 31A(2).

(2) The Scottish Ministers must—

(a) inform the prisoner of the reasons for the revocation, and

(b) subject to section 31C, refer the prisoner’s case to the Parole Board.

33 Consideration by Parole Board

(1) This section applies where a prisoner’s case is referred to the Parole Board by virtue of section 32(2)(b), 33A(9) or 33B(5).

(2) The Parole Board must determine whether subsection (3) applies in respect of the prisoner.

(3) This subsection applies if it is in the public interest that the prisoner be confined.

(4) If the Parole Board determines that subsection (3) does not apply it must—

(a) direct the Scottish Ministers to release the prisoner on licence, and

(b) specify conditions to be included in the licence.
(5) Where a direction is given under subsection (4)(a) the Scottish Ministers must release the prisoner on community licence or, as the case may be, life licence.

33A Determination that section 33(3) applicable: consequences for custody and community prisoners

(1) This section applies where the Parole Board determines, under subsection (2) of section 33, that subsection (3) of that section applies to a custody and community prisoner.

(2) The Parole Board must give the prisoner reasons in writing for its determination.

(3) If on the day of the determination less than 4 months of the prisoner’s sentence remain to be served, the prisoner must be confined until the expiry of the prisoner’s sentence.

(4) If on the day of the determination at least 4 months but no more than 2 years of the prisoner’s sentence remain to be served, the Parole Board may, subject to section 21, fix a date falling within the period mentioned in subsection (5) on which it will next consider the prisoner’s case.

(5) That period is the period—

(a) beginning with the day falling 4 months after the day of the determination, and

(b) ending on the expiry of the prisoner’s sentence.

(6) If no date is fixed under subsection (4) the prisoner must be confined until the expiry of the prisoner’s sentence.

(7) If on the day of the determination at least 2 years of the prisoner’s sentence remain to be served, the Parole Board must, subject to section 21, fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner’s case.

(8) That period is the period—

(a) beginning with the day falling 4 months after the day of the determination, and

(b) ending immediately before the second anniversary of the day of the determination.

(9) Where a date is fixed under subsection (4) or (7), the Scottish Ministers must refer the case to the Parole Board before that date.

33B Determination that section 33(3) applicable: consequences for life prisoners

(1) This section applies where the Parole Board determines, under subsection (2) of section 33, that subsection (3) of that section applies to a life prisoner.

(2) The Parole Board must give the prisoner reasons in writing for its determination.

(3) The Parole Board must, subject to section 21, fix a date falling within the period mentioned in subsection (4) on which it will next consider the prisoner’s case.

(4) That period is the period—

(a) beginning with the day falling 4 months after the day of the determination, and

(b) ending immediately before the second anniversary of the day of the determination.

(5) The Scottish Ministers must refer the case to the Parole Board before the date fixed under subsection (3).
**33C  Prisoner’s right to request early reconsideration by Parole Board**

1. Subsection (2) applies where the Parole Board fixes a date under—
   (a) section 33A(4),
   (b) section 33A(7), or
   (c) section 33B(3),
   for considering a prisoner’s case.

2. On the prisoner’s request, the Board may, if it considers it appropriate to do so, substitute for that date an earlier date when it will next consider the prisoner’s case by fixing that earlier date under section 33A(4), 33A(7) or, as the case may be, 33B(3).

3. Subsection (4) applies where the Parole Board does not fix a date under section 33A(4).

4. On the prisoner’s request, the Board may, if it considers it appropriate to do so, fix a date under section 33A(4) when it will next consider the prisoner’s case.

**Single licence**

**35  Multiple licences to be replaced by single licence**

1. This section applies where a prisoner—
   (a) is released on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a) as respects any sentence of imprisonment (the “original sentence”), and
   (b) while the licence remains in force, another sentence of imprisonment is imposed on the prisoner (the “subsequent sentence”).

2. Where—
   (a) the prisoner is to be released on licence by virtue of this Part as respects the subsequent sentence, and
   (b) the licence as respects the original sentence remains in force,
   the prisoner must be released on a single licence as respects both the original sentence and the subsequent sentence.

3. The single licence replaces the licence as respects both the original sentence and the subsequent sentence.

4. The single licence must include the conditions which were in the licence as respects the original sentence immediately before that licence was replaced.

5. The single licence remains in force (unless revoked) for the longer of the periods for which the licences as respects—
   (a) the original sentence, or
   (b) the subsequent sentence,
   would (apart from this section and if not revoked) have remained in force.

6. Where—
   (a) the prisoner is to be released unconditionally under this Part as respects the subsequent sentence, and
   (b) the licence as respects the original sentence remains in force,
the licence as respects the original sentence continues in force (unless revoked).

**CHAPTER 4**

**CURFEW LICENCES**

36  **Curfew licences**

(1) Subsection (2) applies in relation to a custody and community prisoner who—

(a) is serving a sentence of imprisonment for a term of 3 months or more, and

(b) is of a description specified by the Scottish Ministers by order.

(2) The Scottish Ministers may release the prisoner on licence (a “curfew licence”) before the expiry of the custody part of the prisoner’s sentence.

(3) A curfew licence must include a curfew condition.

(4) The Scottish Ministers may release a prisoner on curfew licence only—

(a) after the later of—

(i) the day on which the prisoner has served the greater of one-quarter or four weeks of the prisoner’s sentence, or

(ii) the day falling 135 days before the expiry of the custody part of the sentence, and

(b) before the day falling 14 days before the expiry of the custody part.

(5) In determining whether to release a prisoner on curfew licence, the Scottish Ministers must have regard to the need to—

(a) protect the public at large,

(b) prevent re-offending by the prisoner, and

(c) secure the successful re-integration of the prisoner into the community.

(6) The Scottish Ministers may include in a curfew licence such other conditions as they consider appropriate.

(7) Where a prisoner is released on curfew licence, the prisoner must, while the licence is in force, comply with the conditions included in the licence.

(8) A curfew licence remains in force until the expiry of the custody part of the prisoner’s sentence.

(9) An order under subsection (1)(b) may include provision—

(a) applying provisions of this Part to curfew licences subject to modifications specified in the order,

(b) amending the periods of time mentioned in subsection (4).

37  **Curfew conditions**

(1) A curfew condition is a condition which requires the person to whom it relates to remain at a place specified in the condition for periods so specified.

(2) A curfew condition may—
(a) require the person not to be in a place, or class of place, so specified at a time or during a period so specified,
(b) specify different places, or different periods, for different days.

(3) A curfew condition may not specify periods which amount to less than nine hours in any one day (excluding the first and last days of the period for which the condition is in force).

### 38 Monitoring of curfew conditions

(1) A person’s compliance with a curfew condition is to be monitored remotely.

(2) Section 245C of the 1995 Act (contractual and other arrangements for, and devices which may be used for the purposes of, remote monitoring) applies in relation to the imposition of, and compliance with, a curfew condition as that section applies in relation to the making of, and compliance with, a restriction of liberty order.

(3) The Scottish Ministers must designate in a curfew licence a person who is to be responsible for the remote monitoring.

(4) The Scottish Ministers may replace the person designated under subsection (3) (or last designated under this subsection) with another person designated with the responsibility for the remote monitoring.

(5) As soon as is practicable after designating a person under subsection (3) or (4), the Scottish Ministers must send the person—
(a) a copy of the curfew condition, and
(b) any other information they consider necessary for the fulfilment of the person’s responsibility.

(6) If a designation is made under subsection (4), the Scottish Ministers must, in so far as it is practicable to do so, notify the person replaced.

### CHAPTER 5
### GENERAL

### 39 No release on weekends or public holidays

(1) Where (but for this subsection) a prisoner would fall to be released by virtue of this Part on a day which is a Saturday, Sunday or public holiday, the prisoner must instead be released on the last preceding day which is not a Saturday, Sunday or public holiday.

(2) In subsection (1), “public holiday” means any day on which, in the opinion of the Scottish Ministers, public offices or other facilities likely to be of use to the prisoner in the area in which the prisoner is likely to be following release will be closed.

### CHAPTER 5A
### EXTENDED AND MULTIPLE SENTENCES

### 39A Prisoners serving extended sentences: application of Part 2

(1) Where a prisoner is serving, or liable to serve, an extended sentence, this Part applies subject to the modifications in subsections (2) to (5).
21

PART 2—CONFINEMENT AND RELEASE OF PRISONERS

CHAPTER 6—APPLICATION OF PART 2 TO CERTAIN PERSONS

(2) In section 6(3), (3A), (6) and (6B), references to a custody and community sentence are to be read as references to the confinement term of an extended sentence.

(3) In section 12(8A), the second reference to the prisoner’s custody and community sentence is to be read as a reference to the confinement term of the prisoner’s extended sentence.

(4) In sections 13A(1) and 14(2), references to the prisoner’s custody and community sentence are to be read as references to the confinement term of the prisoner’s extended sentence.

(5) In section 36(4)(a)(i), the reference to the prisoner’s sentence is to be read as a reference to the confinement term of the prisoner’s extended sentence.

(6) In this section, the expressions “extended sentence” and “the confinement term” are to be construed in accordance with section 210A(2) of the 1995 Act.

39B PRISONERS SERVING MORE THAN ONE SENTENCE: APPLICATION OF PART 2

Schedule 1A (which makes provision for the application of this Part to prisoners serving, or liable to serve, more than one sentence of imprisonment) has effect.

39C SENTENCES FRAMED TO RUN CONSECUTIVELY

Schedule 1B (which makes provision for and in connection with the imposition of sentences of imprisonment framed to take effect on the expiry of another sentence) has effect.

CHAPTER 6

APPLICATION OF PART 2 TO CERTAIN PERSONS

40 PERSONS DETAINED UNDER MENTAL HEALTH PROVISIONS

(1) Where a transfer for treatment direction under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) has been made in respect of a person serving a sentence of imprisonment, this Part applies to that person as if—

(a) the person continues to serve the sentence while detained in hospital, and

(b) the person had not been removed to hospital.

(2) Where a person is conveyed to and detained in a hospital pursuant to a hospital direction under section 59A of the 1995 Act, this Part applies to that person as if, while so detained, the person were serving a sentence of imprisonment imposed at the time the direction was made.

41 APPLICATION TO YOUNG OFFENDERS AND CHILDREN

(1) This Part applies in relation to the persons mentioned in subsection (2) as it applies in relation to custody-only prisoners.

(2) Those persons are—

(a) a person on whom detention is imposed under section 207(2) of the 1995 Act for a period of less than 15 days,

(b) a person sentenced to be detained under section 208 of that Act for such a period.
(3) This Part applies in relation to the persons mentioned in subsection (4) as it applies in relation to custody and community prisoners.

(4) Those persons are—
   (a) a person on whom detention is imposed under section 207(2) of the 1995 Act for a period of 15 days or more,
   (b) a person sentenced to be detained under section 208 of that Act for such a period.

(5) This Part applies in relation to the persons mentioned in subsection (6) as it applies in relation to life prisoners.

(6) Those persons are—
   (a) a person sentenced under section 205(2) or (3) of the 1995 Act to be detained without limit of time or for life,
   (b) a person on whom detention without limit of time or for life is imposed under section 207(2) of that Act,
   (c) a person sentenced to be detained without limit of time under section 208 of that Act.

(7) In this Part as applied by subsections (1), (3) and (5), references to imprisonment are to be read as references to detention; and cognate expressions are to be construed accordingly.

42 Fine defaulters and persons in contempt of court

(1) This Part applies in relation to the persons mentioned in subsection (2) as it applies in relation to custody-only prisoners.

(2) Those persons are—
   (a) a person serving by virtue of section 219(1) of the 1995 Act a period of imprisonment or, as the case may be, a period of detention in a young offenders institution,
   (b) a person serving a period of imprisonment or, as the case may be, a period of detention in a young offenders institution for contempt of court.

(3) Subsection (1) does not apply in relation to—
   (a) a person on whom the court imposes before the coming into force of this Part—
      (i) a period of imprisonment in default of payment of a fine under paragraph (a) of section 219(1) of the 1995 Act, or
      (ii) imprisonment for failure to a pay a fine, or any part or instalment of a fine, under paragraph (b) of that section, or
   (b) a person found in contempt of court, where the conduct which is treated as contempt of court occurs (or first occurs) before the coming into force of this Part.

CHAPTER 7
CROSS-BORDER TRANSFER OF PRISONERS

42A Cross-border transfer of prisoners

(1) The Scottish Ministers may by order make provision for or in connection with—
(a) the transfer of a person serving a sentence of imprisonment in Scotland from 
Scotland to a place outwith Scotland,
(b) the transfer to, and confinement in, Scotland of a person serving a sentence of 
imprisonment imposed outwith Scotland.

(2) An order under subsection (1) may—
(a) include provision modifying the application of Part 2 in relation to persons 
specified in the order,
(b) modify any other enactment.

PART 3

WEAPONS

43 Licensing of knives, swords etc.
After section 27 of the Civic Government (Scotland) Act 1982 (c.45) insert—

“Licensing and regulation of knife dealers

27A Knife dealers’ licences
(1) A licence, to be known as a “knife dealer’s licence”, is required for carrying on 
business as a dealer in any article mentioned in subsection (2).
(2) Those articles are—
(a) knives (other than those designed for domestic use);
(b) knife blades (other than those designed for domestic use);
(c) swords;
(d) any other article—
   (i) which has a blade; or
   (ii) which is sharply pointed,
   and which is made or adapted for use for causing injury to the person.
(2A) A knife dealer’s licence shall, in addition to specifying the activity which the 
dealer engages in, specify the premises in or from which the activity is to be 
carried on.
(3) In subsections (1) and (2A), “dealer” means a person carrying on a business 
which consists wholly or partly of—
(a) selling;
(b) hiring;
(c) offering for sale or hire;
(d) exposing for sale or hire;
(e) lending; or
(f) giving,
to persons not acting in the course of a business or profession any article mentioned in subsection (2) (whether or not the activities mentioned in paragraphs (a) to (f) are carried out incidentally to a business which would not, apart from this section, require a knife dealer’s licence).

(4) In subsection (3), “selling”, in relation to an article mentioned in subsection (2)—

(a) includes—

(i) selling such an article by auction;

(ii) accepting goods or services in payment (whether in part or in full) for such an article; but

(b) does not include selling (by auction or otherwise) such an article by one person on behalf of another;

and “sale” is to be construed accordingly.

(5) For the purposes of subsection (3), an article is not to be treated as being exposed for sale if it is exposed for sale (by auction or otherwise) by a person other than the owner.

(6) The Scottish Ministers may by order modify subsection (2) so as to—

(a) add articles or classes of article;

(b) amend descriptions of articles or classes of article;

(c) remove articles or classes of article.

(7) The Scottish Ministers may by order—

(a) modify subsection (3) so as to modify the definition of “dealer”;

(b) specify descriptions of activity which are not to be taken to be businesses for the purposes of that subsection (or that subsection as modified).

(8) The power in subsection (7)(a) includes in particular power to add descriptions of business.

27B Applications for knife dealers’ licences: notice

(1) A licensing authority must cause public notice to be given of every application made to them for the grant or renewal of a knife dealer’s licence.

(2) Sub-paragraph (8) of paragraph 2 of Schedule 1 applies to the giving of public notice under subsection (1) as it applies to the giving of public notice under sub-paragraph (7) of that paragraph.

27C Knife dealers’ licences: conditions

(1) In granting or renewing a knife dealer’s licence, a licensing authority—

(a) must attach to the licence such conditions as are specified (in particular or in general) by order by the Scottish Ministers;

(b) may, without prejudice to paragraph 5 of Schedule 1, attach to the licence different conditions in relation to different articles or different classes of article;
(e) may, without prejudice to that paragraph, attach to the licence conditions for or in connection with—

(i) the keeping of records by the holder of the licence;
(ii) the storage of articles mentioned in section 27A(2); and
(iii) the display of such articles.

(2) An order under subsection (1)(a) may provide for different conditions to apply to different articles or different classes of article.

27D | Provision of information to holder of knife dealer’s licence

(1) Subsection (2) applies where the holder of a knife dealer’s licence (“the dealer”)—

(a) is required by the licence to obtain information of a type specified in the licence from a person; and
(b) the dealer requests (whether orally, in writing or otherwise) the information from the person.

(2) A person, or any person acting on behalf of the person, who knowingly or recklessly provides false information in response to a request under subsection (1)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

27E | Knife dealers’ licences: warrants to enter, search and seize articles

(1) Subsection (2) applies if a justice of the peace or sheriff is satisfied by evidence on oath that—

(a) subsection (3) applies; and
(b) subsection (4) or (5) applies.

(2) The justice of the peace or sheriff may grant a warrant authorising a constable or an authorised officer—

(a) to enter and search the premises specified in the warrant; and
(b) to seize and remove any relevant article.

(3) This subsection applies if there are reasonable grounds for suspecting that a person (the “suspect”) is carrying on in any premises an activity in respect of which a knife dealer’s licence is required under section 27A.

(4) This subsection applies if no knife dealer’s licence is in force in respect of the activity.

(5) This subsection applies if a knife dealer’s licence is in force in respect of the activity but there are reasonable grounds for suspecting that the suspect has failed, or is failing, to comply with a condition of the licence.

27F | Powers of constables and authorised officers

(1) A constable or an authorised officer may use reasonable force in executing a warrant granted under section 27E(2).
(2) Where a constable who is not in uniform is about to enter, is entering or has entered any premises under the powers conferred under section 27E(2) he must, if required to do so by a person in or upon the premises, produce his identification.

(3) Where an authorised officer is about to enter, is entering or has entered any premises under the powers conferred under section 27E(2) he must, if required to do so by a person in or upon the premises, produce his authorisation.

(4) If a constable has been required to produce his identification under subsection (2) he is not entitled to enter or search the premises or, as the case may be, remain there or continue to search the premises until he has produced it.

(5) If an authorised officer has been required to produce his authority under subsection (3), he is not entitled to enter or search the premises or, as the case may be, remain there or continue to search the premises until he has produced it.

(6) Any person who—

(a) fails without reasonable excuse to permit a constable, or an authorised officer, acting in pursuance of a warrant granted under section 27E(2) to enter and search any premises; or

(b) obstructs the entry to, or search of, any premises by a constable or an authorised officer so acting,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Any relevant article which has been seized and removed under a warrant granted under section 27E(2) may be retained until the conclusion of proceedings against the suspect.

(8) For the purposes of subsection (7), proceedings in relation to a suspect are concluded if—

(a) he is found guilty and sentenced or otherwise dealt with for the offence;

(b) he is acquitted;

(c) proceedings for the offence are discontinued;

(d) it is decided not to prosecute him.

(9) In this section, “suspect” is to be construed in accordance with section 27E(3).

27G Power to inspect documents

(1) Subsection (2) applies where—

(a) a constable or an authorised officer has reasonable grounds for suspecting that an activity in respect of which a knife dealer’s licence is required under section 27A is being carried on; and

(b) no such licence is in force in respect of the activity.

(2) The constable or authorised officer may—

(a) require a relevant person to produce any records or other documents connected with the activity,
(b) inspect any such records or documents, and
(c) take copies of, or extracts from, any such records or documents.

(3) A relevant person who—
(a) is required under subsection (2) to produce records or documents; and
(b) fails without reasonable excuse to do so,
is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Before exercising the power conferred by subsection (2)—
(a) a constable who is not in uniform must produce his identification to the relevant person;
(b) an authorised officer must produce his authorisation to the relevant person.

(5) For the purposes of this section, a person is “relevant” if the constable or authorised officer has reasonable grounds for believing that the person has access to the records or documents.

27H  Sections 27E to 27G: interpretation

(1) In sections 27E and 27F—
“premises” includes a vehicle or vessel;
“relevant article” means an article mentioned in any of paragraphs (a) to (d) of subsection (2) of section 27A.

(2) In sections 27E to 27G, “authorised officer” means an officer of a licensing authority authorised by the authority for the purposes of section 27E, 27F or, as the case may be, 27G.

27J  Forfeiture orders

(1) Subsection (2) applies where a person (“the offender”) is convicted of an offence under subsection (A1) or (2) of section 7 in relation to a relevant article—
(a) seized by virtue of a warrant granted under section 27E(2); or
(b) in the offender’s possession or control at the relevant time.

(2) The court by which the offender is convicted may make an order for forfeiture (a “forfeiture order”) in respect of the relevant article.

(3) The court may make a forfeiture order—
(a) whether or not it also deals with the offender in respect of the offence in any other way; and
(b) without regard to any restrictions on forfeiture in any enactment.

(4) In considering whether to make a forfeiture order, the court must have regard to—
(a) the value of the relevant article; and
(b) the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(5) In this section—

“relevant article” means an article mentioned in any of paragraphs (a) to (d) of subsection (2) of section 27A;

“relevant time” means—

(a) the time of the offender’s arrest for the offence; or

(b) the time of his being cited as an accused in respect of the offence.

27K Effect of forfeiture order

(1) A forfeiture order under section 27J(2) operates to deprive the offender of any rights he has in the property to which it relates.

(2) The property to which a forfeiture order relates must be taken into the possession of the police.

(3) The court by which the offender is convicted may, on the application of a person who—

(a) claims property to which a forfeiture order relates; but

(b) is not the offender from whom it was forfeited,

make an order (a “recovery order”) for delivery of the property to the applicant if it appears to the court that he owns it.

(4) An application under subsection (3) must be made—

(a) in such manner as may be prescribed by Act of Adjournal; and

(b) before the end of the period of 6 months beginning with the date on which the forfeiture order was made.

(5) An application may be granted only if the applicant satisfies the court that—

(a) he had not consented to the offender’s having possession of the property; or

(b) he did not know, and had no reason to suspect, that the offence was likely to be committed.

(6) If a person has a right to recover property which, by virtue of a recovery order, is in the possession of another, that right—

(a) is not affected by the making of the recovery order at any time before the end of the period of 6 months beginning with the day on which the order is made;

(b) is lost at the end of that period.

(7) The Scottish Ministers may by order make provision for or in connection with the disposal of property forfeited under a forfeiture order in cases where—

(a) no application under subsection (3) has been made before the end of the 6 month period beginning with the day on which the forfeiture order was made; or
(b) no such application has succeeded.

(8) An order under subsection (7) may in particular make provision for—
(a) dealing with any proceeds from the disposal;
(b) investing money; and
(c) auditing accounts.

27L Offences by partnerships

Where an offence committed by a partnership under—
(a) section 5 (in so far as the offence relates to a knife dealer’s licence);
(b) section 7 (in so far as the offence so relates);
(c) section 27D;
(d) section 27F; or
(e) section 27G,
is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

27M Appropriate licence required

Where a person carries on a business which—
(a) by virtue of section 24 requires a second-hand dealer’s licence; and
(b) by virtue of section 27A requires a knife dealer’s licence,
the person requires the appropriate licence in respect of each activity.

27N Remote sales of knives etc.

(1) This section applies where, in connection with the sale of an article mentioned in section 27A(2)—
(a) the premises (the “relevant premises”) from which the article is dispatched in pursuance of the sale are not the same as those where the order for the article is taken (the “sale premises”),
(b) the relevant premises are in Scotland, and
(c) the sale premises are not in Scotland.

(2) For the purposes of this Act the sale of the article is to be treated as taking place on the relevant premises.

27NA Sales and dispatches in different local authority areas

(1) Subsection (2) applies where, in connection with the sale of an article mentioned in section 27A(2)—
(a) the relevant premises are situated in the area of a local authority, and
(b) the sale premises are situated in the area of another local authority which, by virtue of section 2(2), is the licensing authority in respect of the taking of the order for the article.

(2) For the purposes of this Act, the sale of the article is to be treated as taking place—

(a) on the relevant premises, and  

(b) on the sale premises.

(3) In this section, “relevant premises” and “sale premises” have the same meanings as in section 27N.

27P Duty to avoid conflict between conditions of licences

(1) Subsection (2) applies where an application is made to a licensing authority for the grant or renewal of a second-hand dealer’s licence by the holder of a knife dealer’s licence issued by that authority.

(2) In granting the application, the licensing authority must not impose any condition which conflicts, or is inconsistent, with a condition of the knife dealer’s licence.

(3) Subsection (4) applies where an application is made to a licensing authority for the grant or renewal of a knife dealer’s licence by the holder of a second-hand dealer’s licence issued by that authority.

(4) In granting the application, the licensing authority must, in accordance with paragraph 10 of Schedule 1, vary the terms and conditions of the second-hand dealer’s licence to avoid any conflict or inconsistency with the terms or conditions of the knife-dealer’s licence.

27Q Offences in relation to knife dealers’ licences: exceptions

The Scottish Ministers may by order provide that an offence under—

(a) section 5 (in so far as the offence relates to a knife dealer’s licence);  

(b) section 7 (in so far as the offence so relates);  

(c) section 27D;  

(d) section 27F; or  

(e) section 27G,

is subject to such exceptions as may be specified in the order.

27R Orders under sections 27A to 27Q

(1) Any power conferred by section 27A(6), 27A(7), 27C(1)(a), 27K(7) or 27Q to make orders is exercisable by statutory instrument.

(2) Subject to subsection (3), a statutory instrument containing an order under any of those sections is subject to annulment in pursuance of a resolution of the Scottish Parliament.
(3) A statutory instrument containing an order under section 27Q may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

44 Knife dealers’ licences: further provision

(1) The Civic Government (Scotland) Act 1982 (c.45) is amended in accordance with subsections (2) and (3).

(2) In section 6(1)(a) (powers of entry to and search of unlicensed premises), after “Act” insert “(other than a knife dealer’s licence)”.

(3) In section 7 (offences etc.)—

(a) before subsection (1) insert—

“(A1) Any person who without reasonable excuse does anything for which a licence is required under section 27A without having such a licence is guilty of an offence and liable—

(a) on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.”;

(b) in subsection (1)—

(i) after “under” insert “any provision of”, and

(ii) after “Act” insert “other than section 27A”,

(c) in subsection (2)—

(i) the word “and” immediately after paragraph (a) is repealed, and

(ii) after that paragraph, insert—

“(aa) in a case where the licence is a knife dealer’s licence, to a fine not exceeding level 5 on the standard scale; and”;

(d) in subsection (4), after “conviction,” insert—

“(a) in a case where the application is for a knife dealer’s licence, to a fine not exceeding level 5 on the standard scale; and

(b) in any other case.”.

Sale etc. of weapons

45 Sale etc. of weapons

(1) In section 141 of the Criminal Justice Act 1988 (c.33) (prohibition on sale etc. of certain weapons)—

(a) in each of subsections (5), (8) and (9), for “prove” substitute “show”, and

(b) after subsection (11) insert—

“(11ZA)Subject to subsection (11ZC), where a person is charged with an offence under subsection (1) above in respect of conduct of his relating to a weapon to which this section applies, it shall be a defence to show that his conduct was
for the purpose only of making the weapon in question available for one or more of the purposes specified in subsection (11ZB).

(11ZB) Those purposes are—

(a) the purposes of theatrical performances and of rehearsals for such performances;

(b) the production of films (as defined in section 5B of the Copyright, Designs and Patents Act 1988 (c.48));

(c) the production of television programmes (as defined in section 405(1) of the Communications Act 2003 (c.21)).

(11ZC) Where—

(a) a person is charged with an offence under subsection (1) above in respect of conduct of his relating to a weapon to which this section applies (a “relevant weapon”), and

(b) the relevant weapon is one the importation of which is prohibited,

subsection (11ZA) does not apply unless the condition in subsection (11ZD) is satisfied.

(11ZD) The condition is that there is in force as respects Scotland provision to the effect that it is a defence for a person (“A”) charged with a relevant offence in respect of A’s conduct relating to a relevant weapon to show that A’s conduct was for the purpose only of making the weapon in question available for one or more of the purposes specified in subsection (11ZB).

(11ZE) In subsection (11ZD), “relevant offence” means an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979 (c.2) (penalty for improper importation of goods).

(11ZF) For the purposes of this section, a person shall be taken to have shown a matter specified in subsection (5), (8), (9) or (11ZA) above if—

(a) sufficient evidence of the matter is adduced to raise an issue with respect to it; and

(b) the contrary is not proved beyond a reasonable doubt.

(11A) The Scottish Ministers may by order made by statutory instrument modify the application of this section in relation to any description of weapon specified in the order.

(11B) An order under subsection (11A) may make different provision for different purposes.

(11C) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.”.

(2) The defence in section 141(11ZA) of the Criminal Justice Act 1988 (c.33) is not available in relation to so much of any charge as relates to conduct taking place before the commencement of this section.
Swords

46 Sale etc. of swords

(1) The Criminal Justice Act 1988 (c.33) is amended in accordance with subsections (2) and (3).

(2) After section 141 insert—

“141ZA Application of section 141 to swords: further provision

(1) This section applies where the Scottish Ministers make an order under subsection (2) of section 141 directing that the section shall apply to swords.

(2) The Scottish Ministers may include in the order provision for or in connection with modifying section 141 in its application to swords.

(3) The Scottish Ministers may in particular—

(a) provide for defences (including in particular defences relating to religious, cultural or sporting purposes) to offences,

(b) increase the penalties specified in subsection (1) of section 141 (or that subsection as modified) so as to make a person liable—

(i) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or both,

(ii) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or both,

(c) create an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) relating to the provision, without reasonable excuse, of false information by a person acquiring a sword in circumstances specified in the order.

(4) In making provision under subsection (3)(a) the Scottish Ministers may make provision for or in connection with—

(a) the granting, and revocation, by them of authorisations in relation to the acquisition of swords,

(b) enabling them to specify conditions in such authorisations,

(c) requiring persons to whom authorisations are granted to comply with such conditions,

(c) making it an offence (punishable on summary conviction only and subject to a penalty which is no greater than that mentioned in subsection (6)) to fail to comply with any such conditions.

(5) Defences specified under subsection (3)(a) may relate to swords in general or to a class, or classes, of sword specified in the order.

(6) The penalty is—

(a) imprisonment for a term not exceeding 12 months, or

(b) a fine not exceeding level 5 on the standard scale,

or both.
(7) The power conferred by subsection (2) is without prejudice to the generality of
the power conferred by section 141(11A).”

(3) In subsection (4) of section 172 (extent), after “124” insert—
“section 141ZA;”.

5

Crossbows

46A Sale etc. of crossbows

(1) In the Crossbows Act 1987 (c.32), in the provisions mentioned in subsection (2), for
“seventeen” in each place it occurs, substitute “eighteen”.

(2) The provisions are—
   (a) section 1 (sale and letting on hire),
   (b) section 2 (purchase and hiring),
   (c) section 3 (possession).

Possession of weapons in prisons etc.

46B Possession of weapons in prisons etc.

After section 49B of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39),
insert—

“49C Offence of having offensive weapon etc. in prison

(1) Any person who has with him in a prison—
   (a) an offensive weapon, or
   (b) any other article which has a blade or is sharply pointed,
commits an offence.

(2) It is a defence for a person charged with an offence under subsection (1) to
prove that he had good reason or lawful authority for having the weapon or
other article with him in the prison.

(3) A defence under subsection (2) includes, in particular, a defence that the
person had the weapon or other article with him in prison—
   (a) for use at work,
   (b) for religious reasons, or
   (c) as part of any national costume.

(4) Where a person is convicted of an offence under subsection (1), the court may
make an order for the forfeiture of any weapon or other article to which the
offence relates.

(5) Any weapon or other article forfeited under subsection (4) is, subject to section
193 of the Criminal Procedure (Scotland) Act 1995 (c.46), to be disposed of as
the court may direct.

(6) A person guilty of an offence under subsection (1) is liable—
   (a) on summary conviction, to imprisonment for a term not exceeding 12
months or a fine not exceeding the statutory maximum or both,
(b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or a fine or both.

(7) In this section—

“offensive weapon” has the meaning given by section 47(4),

“prison” includes—

(a) any prison other than a naval, military or air force prison,

(b) a remand centre (within the meaning of paragraph (a) of subsection (1) of section 19 of the Prisons (Scotland) Act 1989 (c.45) (provision of remand centres and young offenders institutions),

(c) a young offenders institution (within the meaning of paragraph (b) of that subsection), and

(d) secure accommodation within the meaning of section 93(1) of the Children (Scotland) Act 1995 (c.36).”.

**PART 4**

**GENERAL**

**47 Ancillary provision**

(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of or for giving full effect to this Act or any provision of it.

(2) An order under subsection (1) may modify any enactment (including this Act), instrument or document.

**48 Rules, regulations and orders**

(1) The powers conferred by this Act on the Scottish Ministers to make rules, regulations and orders are exercisable by statutory instrument.

(2) Each of those powers includes power to make—

(a) different provision for different purposes,

(b) supplementary, incidental, consequential, transitory, transitional or saving provision.

(3) Subject to subsection (4), a statutory instrument containing rules, regulations or an order under this Act (other than an order under section 50) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) A statutory instrument containing—

(a) an order under section 4(2), 6B, 36(1)(b) or 42A(1) or paragraph 6 of schedule 1B,

(aa) an order under section 47(1) which contains provision modifying an Act, or

(b) regulations under paragraph 3(1) or 17 of schedule 1,
may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

49 Minor and consequential amendments and repeals

(1) Schedule 2 (which contains minor amendments and amendments consequential on the provisions of this Act) has effect.

(2) The enactments mentioned in the first column in schedule 3 are repealed to the extent set out in the second column.

(3) Schedule 4 (which contains certain transitory amendments of the Prisoners and Criminal Proceedings (Scotland) Act 1993) has effect.

50 Short title and commencement

(1) This Act may be cited as the Custodial Sentences and Weapons (Scotland) Act 2007.

(2) This Act (other than this section and section 48) shall come into force on such day as the Scottish Ministers may by order appoint.

(3) Different days may be appointed under subsection (2) for different purposes.
SCHEDULE 1
(introduced by section 1(5))

THE PAROLE BOARD FOR SCOTLAND

Membership

1 The Parole Board is to consist of no fewer than 5 members (including a convener) appointed by the Scottish Ministers.

2 The membership of the Parole Board must include—
   (a) a Lord Commissioner of Justiciary,
   (b) a registered medical practitioner who is a psychiatrist,
   (c) a person who the Scottish Ministers consider has knowledge and experience of the supervision or aftercare of released prisoners,
   (d) a person who the Scottish Ministers consider has knowledge and experience of the assessment of the likelihood of offenders causing serious harm to members of the public,
   (e) a person who the Scottish Ministers consider has knowledge and experience of—
      (i) the way in which, and
      (ii) the degree to which,
      offences perpetrated against members of the public affect those persons.

3 (1) The Scottish Ministers must comply with any provision about the procedure, including requirements as to consultation, to be followed in appointing members of the Parole Board as they may, by regulations, prescribe.

   (2) Without prejudice to the generality of section 48(2), such regulations may make different provision for different kinds of member of the Parole Board, including the kinds of member holding an office or, as the case may be, possessing a qualification mentioned in paragraph 2.

Tenure of appointments

4 Subject to paragraphs 5 to 9, a person is appointed as a member of the Parole Board for such period (being a period of at least 6 years and no more than 7 years) as is specified in the person’s instrument of appointment.

5 A person ceases to be a member on the day the person attains the age of 75 years.

6 If a member such as is mentioned in paragraph 2(a) ceases to hold the office of Lord Commissioner of Justiciary, that person ceases to be a member of the Parole Board.

7 If a member such as is mentioned in paragraph 2(b) ceases to be—
   (a) a registered medical practitioner, or
   (b) a psychiatrist,
that person ceases to be a member of the Parole Board.

8 A member may at any time resign by giving notice in writing to that effect to the Scottish Ministers.
A person ceases to be a member on the day an order is made under paragraph 14 removing the member from the Parole Board.

A person may be reappointed as a member of the Parole Board only if the person—
(a) has ceased to be a member for a period of not less than 3 years, and
(b) has not previously been reappointed under this paragraph.

A person who has resigned from the Parole Board may be reappointed under paragraph 10.

A person who ceases to be a member by virtue of an order under paragraph 14 must not be reappointed under paragraph 10.

Carrying out of functions

The convener of the Parole Board is to have regard to the desirability of securing that every member is given the opportunity to participate appropriately in the carrying out of the Parole Board’s functions on not fewer than 20 days in each successive period of 12 months beginning with the day of the member’s appointment.

Removal of members

A member may be removed from the Parole Board only by order of the tribunal constituted under paragraph 16.

The tribunal may order the removal of a member only if—
(a) an investigation is carried out at the request of the Scottish Ministers, and
(b) following the investigation, the tribunal finds that the member is unfit to be a member of the Parole Board by reason of inability, neglect of duty or misbehaviour.

The tribunal is to consist of the following persons appointed by the Lord President of the Court of Session—
(a) either a Senator of the College of Justice or a sheriff principal (who is to preside),
(b) a person who is, and has been for at least 10 years—
   (i) an advocate, or
   (ii) a solicitor, and
(c) one other person who is not an advocate or a solicitor.

The Scottish Ministers may, by regulations—
(a) make provision—
   (i) enabling the tribunal, at any time during an investigation, to suspend a member from the Parole Board, and
   (ii) as to the effect and duration of a suspension,
(b) make further provision about the tribunal as the Scottish Ministers consider necessary or expedient, including provision about the procedure to be followed by and before it.
Schedule 1A—Prisoners serving more than one sentence: application of Part 2

Remuneration, allowances and other expenses

18 Members of the Parole Board are to be paid such—
   (a) remuneration, and
   (b) expenses,
   as the Scottish Ministers may determine.

19 The expenses of the Parole Board under paragraph 18 and any other expenses incurred by the Parole Board in carrying out its functions are to be defrayed by the Scottish Ministers.

Reporting and planning

20 The Parole Board must, as soon as practicable after the end of the reporting year, send to the Scottish Ministers a report on the performance of the Parole Board’s functions during that year.

21 The Parole Board must, as soon as practicable after the beginning of each planning period, send to the Scottish Ministers a plan in relation to that planning period—
   (a) providing details as to how the Parole Board intends to carry out its functions,
   (b) setting out performance objectives and targets in relation to its functions.

22 (1) The reporting year of the Parole Board is—
   (a) the period beginning with the day on which section 1(1) comes into force and ending with 31st March next following that day, and
   (b) each successive period of 12 months ending with 31st March.

   (2) The planning period of the Parole Board is—
      (a) the period beginning with the day on which section 1(1) comes into force and ending with the third occurrence of 31st March following that day, and
      (b) each successive period of 3 years ending with 31st March in the third year.

23 The Scottish Ministers must lay a copy of—
   (a) a report sent to them under paragraph 20,
   (b) a plan sent to them under paragraph 21,
   before the Scottish Parliament.

SCHEDULE 1A
(introduced by section 39B)

PRISONERS SERVING MORE THAN ONE SENTENCE: APPLICATION OF PART 2

Multiple custody-only sentences

1 (1) This paragraph applies where a prisoner—
   (a) is serving, or liable to serve, two or more custody-only sentences, and
   (b) is not serving, or liable to serve, any other sentence of imprisonment.

   (2) Part 2 applies subject to the following modifications.
(3) In sections 5 and 28(1), references to the prisoner’s sentence are to be read as references to the custody-only sentence which expires after the expiry of the other custody-only sentence (or sentences) imposed on the prisoner.

Multiple custody and community sentences

2 (1) This paragraph applies where a prisoner—
   (a) is serving, or liable to serve, two or more custody and community sentences, and
   (b) is not serving, or liable to serve, any other sentence of imprisonment.

(2) Part 2 applies subject to the following modifications.

(3) In sections 8 to 11, 13A and 36, references to the custody part of the prisoner’s custody and community sentence are to be read as references to the custody part which expires after the expiry of the other custody part (or parts) specified in relation to the prisoner.

(4) In section 12—
   (a) subsection (8A) does not apply, and
   (b) “three-quarter point”, in relation to each of the sentences imposed on the prisoner, means the day on which the prisoner will have served at least three-quarters of each of those sentences.

(5) In section 14(2), the reference to the prisoner’s having served three-quarters of the prisoner’s sentence is to be read as a reference to the prisoner’s having served at least three-quarters of each sentence imposed on the prisoner.

(6) In sections 28(2) and 33A, references to the expiry of the prisoner’s sentence are to be read as references to the expiry of the sentence which expires after the expiry of the other custody and community sentence (or sentences) imposed on the prisoner.

(7) In section 36(4)(a)(i), the reference to the prisoner’s sentence is to be read as a reference to the longer (or longest) of the sentences imposed on the prisoner.

(8) This paragraph is subject to paragraph 7.

Combinations of custody-only and custody and community sentences

3 (1) This paragraph applies where a prisoner—
   (a) is serving, or liable to serve, at least one custody-only sentence and at least one custody and community sentence, and
   (b) is not serving, or liable to serve, any other sentence of imprisonment.

(2) Part 2 applies subject to the following modifications.

(3) Sections 5 and 28(1) do not apply.

(4) In sections 8 to 11, 13A and 36, references to the custody part are to be read as references to the custody-only sentence or, as the case may be, the custody part of the custody and community sentence which expires after the expiry of—
   (a) any other custody-only sentence (or sentences) imposed on the prisoner, and
   (b) the custody part of any other custody and community sentence (or sentences) so imposed.

(5) In section 12—
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Schedule 1A—Prisoners serving more than one sentence: application of Part 2

(a) subsection (8A) does not apply, and
(b) “three-quarter point”, in relation to each of the sentences imposed on the prisoner, means the day on which the prisoner will have served—

(i) at least three-quarters of the custody and community sentence (or sentences), and

(ii) the custody-only sentence (or sentences).

6. In section 14(2), the reference to the prisoner’s having served three-quarters of the prisoner’s sentence is to be read as a reference to the prisoner’s having served—

(a) at least three-quarters of the custody and community sentence (or sentences) imposed on the prisoner, and

(b) the custody-only sentence (or sentences) so imposed.

7. In sections 28(2) and 33A, references to the expiry of the prisoner’s sentence are to be read as references to the expiry of the sentence which expires after the expiry of the other sentence (or sentences) imposed on the prisoner.

8. In section 36(4)(a)(i), the reference to the prisoner’s sentence is to be read as a reference—

(a) where one custody and community sentence is imposed on the prisoner, to that sentence,

(b) where two or more such sentences are so imposed, to the longer (or longest) of them.

9. This paragraph is subject to paragraph 7.

Multiple life sentences

4. (1) This paragraph applies where a prisoner—

(a) is serving, or liable to serve, two or more life sentences, and

(b) is not serving, or liable to serve, any other sentence of imprisonment.

2. Part 2 applies subject to the following modifications.

3. In sections 15 to 18, references to the punishment part are to be read as references to the punishment part which expires after the expiry of the other punishment part (or parts) imposed on the prisoner.

Combinations of life sentences and other sentences

5. (1) This paragraph applies where a prisoner is serving, or liable to serve, at least one life sentence and any of the following—

(a) a custody-only sentence,

(b) two or more custody-only sentences,

(c) a custody and community sentence,

(d) two or more custody and community sentences.

2. Part 2 applies subject to the following modifications.

3. Sections 5, 7 to 14, 24, 25, 28(1) and (2), 33A and 36 to 38 do not apply.
(4) In sections 15 to 18, references to the punishment part are to be read as references to the custody-only sentence, the custody part of the custody and community sentence or, as the case may be, the punishment part of the life sentence which expires after the expiry of—

(a) any other custody-only sentence (or sentences) imposed on the prisoner,
(b) the custody part of any other custody and community sentence (or sentences) so imposed, and
(c) the punishment part of any other life sentence (or sentences) so imposed.

(5) Single licence for released prisoner serving multiple sentences

(1) This paragraph applies where—

(a) paragraph 2, 3, 4 or 5 applies to a prisoner, and
(b) the prisoner is released on licence by virtue of section 9(2), 11(2)(a), 14(2), 18(2)(a), 23(1) or 33(4)(a).

(2) The prisoner must be released on a single licence as respects both (or all) sentences of imprisonment imposed on the prisoner.

(3) References in Part 2 to the prisoner’s licence are to be read as references to that single licence.

(6) Special case: extended sentences

(1) Where a custody and community sentence imposed on a prisoner is an extended sentence, the modifications in paragraphs 2(4), (5) and (7) and 3(5), (6)(a) and (8) are to be read subject to sub-paragraph (2).

(2) In the case of the extended sentence, references in those paragraphs to the prisoner’s sentence are references to the confinement term of the prisoner’s sentence.

(3) In this paragraph the expressions “extended sentence” and “the confinement term” are to be construed in accordance with section 210A(2) of the 1995 Act.

SCHEDULE 1B
(introduced by section 39C)

SENTENCES FRAMED TO RUN CONSECUTIVELY

Power to impose sentence to take effect on expiry of other sentence

(1) This paragraph applies where—

(a) a prisoner is serving, or liable to serve, at least one sentence of imprisonment (the “previous sentence”), and
(b) the court imposes a further sentence of imprisonment for an offence (the “further sentence”).

(2) The court may, when imposing the further sentence on a prisoner serving, or liable to serve, one previous sentence, frame the further sentence to take effect immediately on the expiry of the relevant period of the previous sentence.
(3) The court may, when imposing the further sentence on a prisoner serving, or liable to serve, two or more previous sentences, frame the further sentence to take effect immediately on the expiry of the relevant period of whichever previous sentence the court considers appropriate.

(4) The relevant period, in relation to a sentence of imprisonment, is—
   (a) in the case of a custody-only sentence, that sentence,
   (b) in the case of a custody and community sentence, the custody part of that sentence,
   (c) in the case of a life sentence, the punishment part of that sentence.

Postponement of sentencing where previous punishment part or custody part not specified

2 (1) This paragraph applies where—
   (a) it falls to the court to sentence a person who is subject to a previous sentence, and
   (b) a punishment part or, as the case may be, custody part requires to be specified in respect of the previous sentence but has not been so specified.

(2) The court must not sentence the person until such time as the punishment part or, as the case may be, custody part—
   (a) is specified, or
   (b) no longer requires to be specified,
   in respect of the previous sentence.

Effect of sentences framed to take effect consecutively

3 (1) This paragraph applies where—
   (a) the court imposes a custody-only sentence as a further sentence,
   (b) the court frames the sentence to take effect in accordance with paragraph 1(2) or (3), and
   (c) the prisoner’s previous sentence (or one of the prisoner’s previous sentences) is a custody and community sentence.

(2) In determining the date on which the previous sentence expires, no account is to be taken of the period of confinement served under the further sentence.

4 (1) This paragraph applies where—
   (a) the court imposes a custody and community sentence as a further sentence,
   (b) the court frames the sentence to take effect in accordance with paragraph 1(2) or (3), and
   (c) the prisoner’s previous sentence (or one of the prisoner’s previous sentences) is a custody and community sentence.

(2) In determining the date on which the previous sentence expires, no account is to be taken of the period of confinement served under the custody part of the further sentence.

(3) In determining the date on which the further sentence expires, no account is to be taken of the balance of the previous sentence.
(4) The balance of the previous sentence is the term of the sentence less the custody part of the sentence.

Effect of sentences framed to take effect consecutively on extension periods

5 (1) In paragraph 3, if the previous sentence is an extended sentence, the reference in sub-paragraph (2) of that paragraph to the date when the previous sentence is due to expire is to be read as a reference to the date when the confinement term of that sentence is due to expire.

(2) In paragraph 4, if the previous sentence is an extended sentence—

(a) the reference in sub-paragraph (2) of that paragraph to the date when the previous sentence is due to expire is to be read as a reference to the date when the confinement term of that sentence is due to expire,

(b) the extension period of the previous sentence is to commence immediately after the date on which the further sentence expires in accordance with sub-paragraph (3) of that paragraph.

(3) In paragraph 4, if the further sentence is an extended sentence, the reference in sub-paragraph (3) of that paragraph to the date when the further sentence expires is to be read as a reference to the date when the confinement term of that sentence expires.

(4) Subject to section 210A(3) of the 1995 Act and to any direction by the court which imposes the further sentence, where both the further sentence and the previous sentence are extended sentences—

(a) the references in paragraph 4(2) and (3) to the dates when those sentences expire are to be read as references to the dates when the confinement terms of those sentences expire,

(b) the extension periods of the sentences must be aggregated, and

(c) that aggregated extension period is to commence immediately after the date on which the further sentence expires in accordance with paragraph 4(3).

(5) In this paragraph the expressions “extended sentence”, “the confinement term” and “the extension period” are to be construed in accordance with section 210A(2) of the 1995 Act.

Application of schedule where previous sentence imposed by court outwith Scotland

6 The Scottish Ministers may by order make provision for or in connection with the application of this schedule (subject to modifications specified in the order) where a previous sentence is passed by a court in any part of the United Kingdom outwith Scotland.
SCHEDULE 2
(introduced by section 49)

MINOR AND CONSEQUENTIAL AMENDMENTS

Criminal Procedure (Scotland) Act 1995 (c.46)

A1(1) Section 167 of the 1995 Act (forms of finding and sentence in summary proceedings) is amended as follows.

(2) In subsection (7)—
   (a) paragraph (a) and the word “or” immediately following it are repealed,
   (b) for the words “previous sentence for a term or order” substitute “period mentioned in subsection (7D) below”, and
   (c) for the words “later conviction or order” substitute “order mentioned in paragraph (b) of this subsection”.

(3) After subsection (7C), insert—
   “(7D) The periods are—
   (a) any previous custody-only sentence,
   (b) the custody part of any previous custody and community sentence,
   (c) any previous sentence for a term passed by a court in any part of the United Kingdom outwith Scotland,
   following on conviction or any previous order for committal in default of payment of any sum of money or for contempt of court.

   (7E) In subsection (7D) above, “custody and community sentence”, “custody-only sentence” and “custody part” have the meanings given by section 4(1) of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00).”.

B1 In section 204A of the 1995 Act (restriction on consecutive sentences for released prisoners), for the words from “at” to the end of the section substitute “on licence by virtue of Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00).”.

C1 Section 210A of the 1995 Act (extended sentences for sex and violent offenders) is amended as follows.

(2) In subsection (1)(b), before “licence” insert “community”.

(3) In subsection (2)—
   (a) in paragraph (a), for “custodial” substitute “confinement”,
   (b) in paragraph (b), before “licence” insert “community”.

(4) In subsection (6), for “custodial” substitute “confinement”.

(5) In subsection (10), for the words from “licence” to “1993” substitute—
   “‘community licence’ has the same meaning as in Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00);
   “relevant officer”, in relation to a local authority, means an officer of that authority employed by them in the discharge of their functions under section 27(1) of the Social Work (Scotland) Act 1968 (supervision and care of persons put on probation or released from prison etc.).”. 

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Criminal Justice (Scotland) Act 2003 (asp 7)

2 (1) Section 40 of the Criminal Justice (Scotland) Act 2003 (remote monitoring of released prisoners) is amended as follows.

(2) In subsection (1), for the words from “licence” to the end of paragraph (b) substitute “community licence or life licence under Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00)”.

(2A) In subsection (3)—

(a) for “specify” substitute “include”, and

(b) for “specified” substitute “included”.

(3) In subsection (8), for paragraphs (a) and (b) substitute—

“(a) section 24 of the Custodial Sentences and Weapons (Scotland) Act 2007 (community licences: Scottish Ministers to include only licence conditions specified by Parole Board), or

(b) section 26(2) of that Act (life licences: Scottish Ministers to include only licence conditions specified by Parole Board).”.

Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)

3 (1) The Police, Public Order and Criminal Justice (Scotland) Act 2006 is amended as follows.

(2) In section 91 (assistance by offender: reduction in sentence), in subsection (8)(b), for “section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)” substitute “section 15(2) of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00)”.

(3) In section 92 (assistance by offender: review of sentence), in subsection (5), for the words from “(whether” to the end of the subsection substitute “on licence under Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00) is to be treated as still serving the sentence for so long as the licence remains in force.”

(4) In section 94 (section 92: further provision), in subsection (3)(b)—

(a) for “or unconditionally under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)” substitute “under Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 00)”, and

(b) the words from “before” to “full” are repealed.
### SCHEDULE 3  
*(introduced by section 49)*

**Repeals**

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### SCHEDULE 4  
*(introduced by section 49(3))*

**Transitory amendments of the Prisoners and Criminal Proceedings (Scotland) Act 1993**

1. Until their repeal by this Act, sections 1 and 9 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9) have effect as follows.

2. In section 1 (release of short-term and long-term prisoners), in subsection (3), for paragraphs (a) and (b) substitute “shall,“.

3. In section 9 (persons liable to removal from the United Kingdom), subsection (1) is repealed.
Custodial Sentences and Weapons (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to restate and amend the law relating to the confinement and release of prisoners; to make provision relating to the control of weapons; and for connected purposes.

Introduced by: Cathy Jamieson
On: 2 October 2006
Supported by: Hugh Henry
Bill type: Executive Bill