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,
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- 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
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
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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
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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.
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.
These documents relate to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

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
These documents relate to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

premises, and 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.

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 on summary conviction 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 I(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.

The Custody Part, Risk Assessment and Decision to Release

143. The cost estimates incorporate the best available assumptions about:

(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.
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>Cost per:</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
These documents relate to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

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
These documents relate to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

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
These documents relate to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

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 (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.

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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 interest2 for off-balance-sheet provision, capital for on-balance-sheet provision and

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.
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</th>
<th>Custodial Sentences</th>
<th>Year 1</th>
<th>Year 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recurring costs</td>
<td>Non-recurring costs</td>
<td>Recurring costs</td>
<td></td>
</tr>
<tr>
<td>Scottish Administration</td>
<td>14.84</td>
<td>i. 25.2-37.2</td>
<td>ii. 102.2-162.2</td>
</tr>
<tr>
<td>Of which: SPS*</td>
<td>9.5</td>
<td>i. 25.2-37.2</td>
<td>ii. 102.2-162.2</td>
</tr>
<tr>
<td>Continued detention and recall to custody (178)</td>
<td>4.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Risk Assessment (157-159)</td>
<td>5.0</td>
<td>0.2†</td>
<td></td>
</tr>
<tr>
<td>Escorting (178)</td>
<td>0.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land Acquisition (179)</td>
<td></td>
<td>2.0</td>
<td></td>
</tr>
<tr>
<td>i. PPP reversionary interest* (179)</td>
<td></td>
<td>23-35</td>
<td></td>
</tr>
<tr>
<td>ii. Public Sector Capital (179)</td>
<td></td>
<td>100-160</td>
<td></td>
</tr>
<tr>
<td>Criminal Justice Social Work (160-167)</td>
<td>4.1*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Courts (141-142)</td>
<td>0.04</td>
<td></td>
<td></td>
</tr>
<tr>
<td>COPFS (142)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police (168-169)</td>
<td>0.03</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Executive</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parole Board</td>
<td>0.06</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Detaining in custody (146-156)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recalls (170-177)</td>
<td>0.06</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Legal Aid Board (156)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electronic Monitoring (166)</td>
<td>1.11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other bodies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>14.84</td>
<td>i. 25.2-37.2</td>
<td>ii. 102.2-162.2</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 Councils.

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/region/licensing/fees/
http://www.moray.gov.uk/moray_standard/page_39926.html#Civic_Government_Licences
http://www.northlan.gov.uk/business+and+employment/licensing/licensing+fees/miscellaneous+licensing+fees.html
http://www.renfrewshire.gov.uk/wps/portal/?p=pt/s7_0/A7_0/376/cmd/adx.ar/sa/fireAprixPortletAction/c/6_0_2 E6;ce/7_0/4VE/p/5_0/4FQ/d/57PC/7_0/4VE_aprixPortletAction=UpdateAprixPortletContext&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.
Annex A

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?

N O

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

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?

N O

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

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?

N O

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

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?

N O

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


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