These documents relate to the Management of Offenders etc. (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 4 March 2005

MANAGEMENT OF OFFENDERS ETC. (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 Management of Offenders etc. (Scotland) Bill introduced in the Scottish Parliament on 4 March 2005:
   - 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 39–PM.
EXPLANATORY NOTES

INTRODUCTION

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

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

THE BILL

Integrated management of offenders

4. Sections 1 to 8 introduce a number of provisions which have the effect of reforming the planning and co-ordination of offender management services in Scotland. The provisions establish new functions and duties on the principal agencies associated with offender management, namely local authorities and Scottish Ministers (in practice the Scottish Prison Service). As the Scottish Prison Service is an agency of the Scottish Executive, any functions that will in practice be undertaken by it have to be conferred on Scottish ministers.

5. The Bill provides for the establishment of community justice authorities by the Scottish Ministers. The number and boundaries of each community justice authority will be established by order following consultation with local authorities. It is however anticipated that most of the community justice authorities will cover the geographical area of more than one local authority. Community justice authorities will be responsible for the planning, co-ordination and monitoring of the delivery of community offender services, that is, those offender services delivered by local authorities. Delivery of services remains the responsibility of each local authority. However, the Bill is drafted to allow community justice authorities scope to take on other functions from local authorities if local authorities so choose to transfer these to the authority or if Ministers so decide.

6. The more integrated planning of offender services should be achieved through the preparation of an area plan that will be presented to Ministers. The document itself will represent a joint plan, showing how the community justice authority, the relevant local authorities and the Scottish Ministers (in practice the Scottish Prison Service) will work within the boundaries of the community justice authority area to ensure offender services are delivered in a consistent and coherent way. Community justice authorities will be placed under an additional duty consulting with local bodies to ensure that other organisations involved with offender management services are able to contribute to plan development.

7. In submitting the area plan to Ministers for approval, the community justice authority will be able to refer to guidance and performance targets provided by Ministers. Ministers will be assisted in the production of guidance and targets by a non-statutory national advisory body which the Executive will establish in 2005 and which will allow key criminal justice bodies a
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high level input into the development of strategic shared objectives for the management of offenders. As the national body is advisory in nature, no reference to it is made in the Bill.

8. Ministers recognise that many other agencies have a role in offender management and that it is important that these bodies both cooperate and contribute to the improved framework for offender management. Relevant agencies are not identified in the Bill but will be through an order to allow consultation on this matter and also to prevent the need to amend primary legislation should any body change its name or cease to exist or a new relevant body comes into existence.

9. The co-ordination and monitoring duties of the community justice authority will be supported by a chief officer. Staff transfer from local authorities to a community justice authority is not required under the provisions within the Bill although the authorities will have the power to employ staff. However, community justice authorities are obliged to employ a chief officer to be accountable both to the community justice authority and to Ministers for the delivery of community justice authority duties. The chief officer will be expected to report on the compliance of local authorities, the Scottish Prison Service and other agencies with duties prescribed under the terms of the Bill. These functions are provided for in the Bill.

10. Ministers will also require new powers to develop guidance for plans and performance targets, to approve or reject submitted plans and to take appropriate steps should parties fail to meet their obligations. Ministerial powers of intervention are not specifically required with regard to the Scottish Prison Service given its status as an Executive Agency and further powers are not required in the Bill. For community justice authorities, powers do require to be specified. The model of intervention powers taken in the Bill mirror those recently accepted by the Parliament in the School Education (Ministerial Powers and Independent Schools)(Scotland) Act 2004. This allows for a staged and proportionate approach to intervention, allowing the opportunity for community justice authorities to respond to any claim of failure on their part. The Bill contains similar powers for addressing performance of individual constituent local authorities through the relevant community justice authority.

Section 1 – Duty to co-operate

11. Section 1 expresses an obligation on Ministers, community justice authorities and local authorities to co-operate with one another in the carrying out of their respective functions. This general duty extends to local authorities co-operating with each other in the delivery of services.

Section 2 – Community justice authorities

12. This section sets out the nature, functions and duties of community justice authorities.

13. Subsection (1) provides an order-making power to Ministers to establish the areas covered by each community justice authority. In so doing the Executive intends to consult with local government and others in determining the number and boundaries of community justice authorities. While community justice authorities will typically comprise a number of local authority areas, the Bill does not preclude a community justice authority covering the area of one local authority.
14. Subsection (2) clarifies the constitutional basis of community justice authorities. They are not Crown bodies and consequently employees of community justice authorities are not civil servants.

15. The intention of subsection (3) is to allow the order made under subsection (1) to set out membership of the community justice authority, the number of members for each constituent local authority, the method and weighting of voting within the community justice authority and other detailed issues relating to the constitution of community justice authorities. It also enables the order to specify that local authorities are obliged to make available services and facilities to the community justice authority to support its work.

16. Provisions made by virtue of subsection (3) are subject to conditions described in subsection (4). This subsection specifies that membership of community justice authorities is restricted to local government elected members who have been nominated by their own local authority where that local authority forms all or part of the community justice authority.

17. Subsection (5) sets out specific functions of the community justice authorities.

18. Subsection (5)(a) introduces a duty on community justice authorities to prepare and submit a plan for the management of offenders in the community justice authority area. In so doing, the community justice authority is obliged to consult with Ministers (in the exercise of their prisons functions), local authorities (lying within the community justice authority area), partner bodies (defined in subsection (16)) and others may be specified prior to submission to Ministers. The wording “at such intervals as the Scottish Ministers may determine” introduces flexibility on timing of preparation and submission of plans. References to “plan” in the Bill mean the draft plan, whilst references to “area plan” means the plan as approved by Ministers. Currently Community Justice Social Work groupings work to a 3 year planning cycle and thus the Bill allows this cycle to continue, or for a different cycle to be established should that be deemed more appropriate. Ministers would intend only to determine these cycles following consultation with community justice authorities.

19. Subsection (5)(b) establishes a duty on community justice authorities to monitor the performance of constituent local authorities and Scottish Ministers (in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45)), in delivering services detailed in the area plan. The mechanism for achieving this monitoring is set out later in section 3.

20. Subsection (5)(c)(i) provides community justice authorities with a power of intervention should it consider that the performance of a local authority does not meet requirements described within the area plan. Specifically the subsection enables the community justice authority to issue directions to the failing authority. Subsection (5)(c)(ii) enables the community justice authority to make recommendations to Scottish Ministers where it considers that the exercise of Scottish Ministers powers under the Prisons (Scotland) Act 1989 (c.45) in compliance with the area plan is unsatisfactory.

21. Subsection (5)(d) places a duty on the community justice authority to share and promote best practice in offender management in reducing reoffending across the community justice
authority area. The effect of this provision will be to support the sharing of local good practice and thus of quality enhancement in service delivery across its area.

22. Subsection (5)(e) provides the community justice authority with the power to distribute monies for community justice social work services (as listed under section 27A of the Social Work (Scotland) Act 1968 (c.49) (grants in respect of community service facilities). The intention is that decisions on the distribution of funds should take account of the services and programmes described in the area plans, so as to support the delivery of the plan.

23. Subsection (5)(f) sets out a new duty on community justice authorities to establish an information sharing process so that all relevant data about offenders can be shared between local authorities and other organisations party to arrangements for offender management. The Bill does not detail how this should be done as local authorities are best placed to develop these mechanisms with local partners.

24. Subsection (7) introduces a power of direction to Ministers to amend subsection (5), to add, alter or remove functions of the community justice authority. This general power allows Ministers to alter the remit of community justice authorities without requiring an amendment of primary legislation where a change in remit is deemed appropriate. Any alterations would be made by order. It is intended that this power would be used in consultation with community justice authorities and that where functions are added by this means, they would be compatible with the nature of the role of community justice authorities set out in this subsection.

25. Subsection (8) enables any order made under subsection (7) to describe different provisions for different community justice authorities. Thus the power of direction is precise and allows Ministers to specifically direct the activities of individual community justice authorities where this is deemed necessary.

26. Subsection (9) provides that Ministers should inspect and assess the arrangements for the management of offenders by the community justice authorities, and the delivery of those services by local authorities. The intention here is to ensure that Ministers establish an objective means of assessing performance in order to be assured that performance is satisfactory and in line with the agreed area plan.

27. Subsection (10) provides Ministers with a power to direct how the community justice authorities exercise the functions described in section 2 and to issue guidance on the preparation and contents of plans. Ministers intend to draw up this guidance in discussion with the national advisory body described in the opening section of these notes. Powers of direction that could be used, for example, to ensure that all community justice authorities’ annual reports contain certain common features.

28. Subsection (11) places a duty on local authorities to carry out their criminal justice social work duties, described under section 27 of the Social Work (Scotland) Act 1968, in compliance as far as is possible with the area plan. This duty is necessary to ensure that the area plan is delivered consistently across the community justice authority area and that local authorities are bound to the contents of the area plan.
29. The effect of subsection (12) when read with subsection (17) is to place a similar duty on Scottish Ministers in respect of their functions under the Prisons (Scotland) Act 1989 (c.45).

30. Subsection (13)(a) binds local authorities to carry out any directions issued by the community justice authority under subsection (5)(c). This duty is required to provide the community justice authority with recourse should a local authority fail to meet its obligations under the terms of the area plan.

31. Subsection (13)(b) places a similar obligation on community justice authorities where directions have been issued under subsection (10)(a).

32. Subsection (14) enables Ministers to approve submitted plans, or to direct the submitting community justice authority to revise the plan before submission. Ministers will expect plans to follow guidance issued under subsection (10) and to meet the consultation requirements within subsection (5)(a)(i). Ministers may seek views from the national advisory body in assessing submitted plans.

33. Subsection (15) indicates that a resubmitted plan is also subject to the provisions under subsection (14). This clause is necessary to clarify that a resubmitted plan will not be automatically approved by Ministers.

34. Subsection (16) defines the term “appropriate local authority” for the purposes of section 2 as a local authority the area of which is comprised within the area of a community justice authority. This definition precludes any single local authority from being subdivided by a community justice authority boundary. It would be impractical for a single local authority to be subject to more than one area plan operating in different parts of the local authority area. It also ensures that only elected members from local authorities within a community justice authority can be a member of the community justice authority under subsection (4).

35. Subsection (16) also defines the term “partner bodies” as bodies designated by Ministers as such by order. Partner bodies could include police, Crown Office, local health services and voluntary groups working with offenders. It is expected that this will be a dynamic group which may change over time and thus definition in primary legislation is undesirable. Establishing the identity of partner organisations by order also allows for a period of consultation with stakeholders on this issue.

36. Subsection (17) clarifies those references to Scottish Ministers within section 2 of the Bill which refer to Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45) and which therefore will in practice attach to the Scottish Prison Service.

37. Subsection (18) describes the Parliamentary procedure to which orders under this section are subject. Thus orders made under subsection (1) and (7) must be approved by a resolution of the Parliament while an order made under subsection (16) will be subject to annulment in pursuance of a resolution of the Parliament.
Section 3 – Further provisions as respects community justice authorities

38. This section provides community justice authorities with the necessary means required to carry out the functions described in section 2.

39. Subsection (1) provides a general power for the community justice authority to take action for the purpose of meeting its functions. Specifically this subsection also provides the power for community justice authorities to enter contracts. This power is necessary, for example, to allow the community justice authority to deliver services on behalf of its member authorities should they so wish. It also allows the authority to employ staff. Subsection (1) is subject to Ministerial directions issued under subsection 2(10)(a).

40. Subsection (2) places a duty on a community justice authority to employ a chief officer. It may employ such other staff as it deems necessary to enable the authority to carry out its functions. The staff will be employed by the community justice authority and not by any of the constituent local authorities to provide a degree of independence to facilitate objectivity in the monitoring and reporting functions of the chief officer.

41. Subsection (3) enables the community justice authority to set conditions of employment for its staff. As the functions of the office are related to the management and co-ordination of services, no statutory requirement to hold a social work qualification is placed on the post of chief officer.

42. Subsection (4) provides further powers to the community justice authorities to make or arrange payments in respect of its employees or former employees for the purpose of payments to pension funds, payment of allowances and gratuities as it deems appropriate. Subsection (5) allows these payments to be made by way of compensation for loss of employment or reduction in remuneration. These are standard provisions relating to the terms and conditions of employment.

43. Subsection (6) determines that the Scottish Ministers will meet the expenditure of the community justice authority. Subsection (6) recognise that community justice authority expenditure may also be met from other sources, for example, European Union funding or local authority funding transferred with functions to the community justice authority under section 7 of the Bill.

Section 4 – Special duties of chief officer of community justice authorities

44. This section establishes duties on the chief officer to report to Ministers where the chief officer believes there to have been failures by a community justice authority, an appropriate local authority or Scottish Ministers in exercising their functions under the Prisons (Scotland) Act 1989.

45. Subsection (2) gives the chief officer responsibility for reporting to Ministers when required to do so by Ministers on the activities and performance of community justice authorities, local authorities, partner bodies and Ministers (that is, by the Scottish Prison Service) as to the effect their cooperation in facilitating compliance by those authorities with the area
plan. The phrase “without prejudice to section 2(5)(g)(ii)” has the effect of enabling the chief officer to report to Ministers outwith the annual reporting cycle if he or she deems this necessary.

46. Subsection (4) clarifies that the reference to the chief officer reporting on activities of Scottish Ministers in this section is a reference to Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45).

Section 5 – Power of Scottish Ministers to require action by community justice authority: failure by that authority

47. This section details the powers of Ministers to intervene should a community justice authority fail to adequately exercise its functions and duties. The model followed is similar to that recently accepted by the Parliament in the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 and allows for a staged and proportional approach to intervention.

48. Subsection (1) provides the trigger mechanism for Ministers to exercise their powers. Powers are triggered where a failure of the community justice authority is reported to Ministers by a person mentioned in subsection (2).

49. Subsection (1)(b) applies the procedure laid down in section 5 only to cases where Ministers would in due course issue an enforcement direction. The procedure would not therefore be used in trivial cases.

50. Subsection (2) identifies those bodies who may report to Ministers on the failure of the community justice authority.

51. Subsection (3) explains that a preliminary notice is one which informs the authority of the apparent failures and requires a written response to the notice within a given time period. Subsection (4) establishes that the written response can state that the authority is not so failing (or has not so failed) in carrying out its functions, giving reasons supporting that statement. Alternatively the written response may acknowledge the failure and provide reasons why an enforcement notice should not be issued to them. Subsection (5) obliges a community justice authority to explain in the written response to a preliminary notice what remedial measures it has taken or will take to address failures, or the reasons why no remedial action is necessary. Thus a community justice authority has by statute an opportunity to refute or remedy failures before an enforcement direction is issued.

52. Where the period for submission of a written response in subsection (3)(b) has elapsed and it still appears to Ministers that the community justice authority is failing or has failed to exercise its duties and that the issue of an enforcement direction is justified, Ministers may so do under subsection (6). This wording enables Ministers to intervene when either a written response has not been submitted in the required time, or the written response does not adequately address the identified failures.

53. Subsections (9) and (10) respectively allow Minister to revoke or alter an enforcement direction and issue recommendations to the community justice authority as well as or instead of
an enforcement direction. The flexibility of these provisions allows Ministers to adjust the nature of their direction to take into account changes in circumstances which might make previous directions no longer relevant.

54. Subsection (11) requires Scottish Ministers to prepare and lay a report before the Parliament when Ministers make use of the power to issue, vary or revoke an enforcement direction. This provision thus builds in Parliamentary scrutiny of decisions by Ministers to issue enforcement directions.

**Section 6 – Power of Scottish Ministers to require action by community justice authority: failure by local authority**

55. This section supplements section 5 (power of Scottish Ministers to require action following failure by a community justice authority) and section 2(5)(c) which requires community justice authorities to issue directions to constituent local authorities. This section enables Ministers to compel action through a community justice authority should individual local authorities fail to satisfactorily exercise their functions.

56. Subsection (1) mirrors the trigger mechanism described in section 5(1) as regards failure of a community justice authority. Subsection (1)(a) clarifies that a failure by a local authority under section 27 of the Social Work (Scotland) Act 1968 may be in relation to relevant persons or a single relevant person, provided that the person making a report considers that such a failure to be symptomatic of some general failure. This proviso means that an individual complaint will not cause these powers to be exercised unless the reporter considers that the complainant has identified an underlying, systematic fault in the exercise of local authority functions. The Ministers are given the power to issue a preliminary notice to the relevant community justice authority.

57. Subsection (2) states that sections 5(3) through to 5(11) are also applied where a failure is deemed to occur at a local authority level. Thus sections 5 and 6 provide Ministers with trigger mechanisms and stages of intervention should failure occur at either local authority or community justice authority level.

58. Subsections (3) and (4) clarify for the purposes of this section the use of the term “authority” as a reference to either a community justice authority or a local authority.

**Section 7 – Transfer of functions to community justice authority**

59. This section recognises that community justice authorities may evolve in time from a planning, coordinating and monitoring body, to a body which also delivers criminal justice social work services (under section 27(1) of the Social Work (Scotland) Act 1968 (c.49). Subsection (2) provides Ministers with an order making power to transfer such functions to the community justice authority.

60. Subsection (3) also provides for the community justice authority and all local authorities within a community justice area to agree that a function may be exercised by a community justice authority.
Section 8 – Transfer of property to community justice authority

61. Subsection (1) makes provision for the transfer of property from local authorities or Scottish Ministers to a community justice authority to facilitate discharge of that authority’s function. The expectation is that this provision will allow the future expansion of community justice authority functions under section 7.

62. Subsection (2) provides that such transfers of property will not trigger any rights of pre-emption or other similar rights.

Section 9 and 10 – Assessing and managing risks posed by certain sexual offenders

63. Sections 9 and 10 set out provisions which allow the police, local authorities and the Scottish Ministers (in practice Scottish Prison Service) to establish joint arrangements for the assessment and management of risk posed by certain categories of offender. These bodies are collectively referred to in the Bill as “the responsible authorities” (subsection (6) defines that expression).

Section 9 – Arrangements for assessing and managing risks posed by certain offenders

64. Subsection (1) requires responsible authorities in the area of a local authority to establish joint arrangements for the assessment and management of risks posed by the presence of specified categories of offenders.

65. Subsection (2) clarifies that the locus in which the offences described under subsection (1) are committed is immaterial. Any offender, who has committed an offence outside the area of the responsible authority, or indeed outside Scotland, can be subject to the arrangements made by the responsible authorities.

Section 10 – Review of arrangements

66. Section 10 requires the responsible authorities to keep the effectiveness of the arrangements under review and to amend those arrangements where necessary. Provision is also made for the joint preparation and publication of annual reports on the operation of the arrangements. The reports will include details of the arrangements established by the responsible authorities as well as information that Scottish Ministers wish to be included in those reports.

Section 11 – Amendment of Prisoners and Criminal Proceedings (Scotland) Act 1993

67. This section introduces a new discretionary power to release prisoners on what is commonly known as Home Detention Curfew. This will allow the Scottish Prison Service, on behalf of the Scottish Ministers, to release prisoners on licence a short time before they would be eligible for automatic release or, in the case of long-term prisoners, (i.e. those serving a sentence of 4 or more years), for release on licence on the direction of the Parole Board. The length of the Home Detention Curfew period varies according to the sentence length, but cannot be less than 14 days nor more than 135 days. The prisoner must be serving a sentence of at least 3 months, and must spend at least 4 weeks in custody. Certain classes of prisoner are excluded entirely. Release on Home Detention Curfew will be subject to a curfew condition and other standard
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conditions, and further conditions may also be added on a case-by-case basis. The curfew condition will require the offender to remain at a specified place for at least 9 hours each day, and compliance with this is to be monitored remotely using electronic tagging technology. Decisions on whether to release a prisoner on Home Detention Curfew, and on the conditions to be imposed in the licence, are to have regard to considerations of:

- protecting the public at large;
- preventing reoffending by the prisoner; and
- securing the successful reintegration of the prisoner into the community.

68. Failure to comply with any of the conditions, including the curfew condition, may result in the revocation of the licence and the recall of the prisoner to custody. The Bill provides a right for the prisoner to appeal to the Parole Board, which may direct the Scottish Ministers to cancel the revocation.

69. The provisions are inserted into the Prisoners and Criminal Proceedings (Scotland) Act 1993, which contains most existing provisions on the release of prisoners on licence. A number of minor amendments are made to the 1993 Act to ensure that its provisions apply appropriately to release on Home Detention Curfew. A number of related amendments are contained in section 14 (further amendments and repeal).

70. Section 11 amends Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to:

- provide a new power to release prisoners on licence (Home Detention Curfew), and prescribe the limits on this power, including the period during which a prisoner is eligible for release on Home Detention Curfew licence and the categories of prisoner that are excluded from consideration;
- set out the conditions which must or may be included in the licence, including a curfew condition;
- provide for the revocation of the licence and recall to custody where the prisoner fails to comply with the conditions of the Home Detention Curfew licence, and for an appeal to the Parole Board; and
- provide for the application or otherwise of various sections of the 1993 Act to the new type of licence.

These amendments are made in various places in Part 1, to fit with the existing provisions for release of prisoners on licence, imposition of conditions and recall.

71. Subsection (3) inserts a new section 3AA into the 1993 Act, subsection (1) of which provides a new discretionary power for the Scottish Ministers to release prisoners on licence. This power will apply to two groups of prisoners:
These documents relate to the Management of Offenders etc. (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 4 March 2005

- short-term prisoners serving a sentence of at least 3 months and under 4 years. Such prisoners are eligible to be released automatically and unconditionally once they have served one half of their sentence (section 1(1) of the 1993 Act); and
- long-term prisoners. Such prisoners are eligible to be released on licence once they have served two-thirds of their sentence, and the Parole Board may direct their release on licence at any point after they have served one-half of their sentences. The new power will apply for long-term prisoners only where the Parole Board has made a recommendation that the prisoner is to be released at half-sentence. Other long-term prisoners will be eligible for consideration for parole, and section 40 of the Criminal Justice (Scotland) Act 2003 allows the Parole Board to include a remote monitoring condition in the licence to ensure compliance with other licence conditions.

72. The new section 3AA does not specify how the discretion is to be used. It is intended that the decision on whether to release a particular prisoner on Home Detention Curfew would be taken by the Prison Governor on behalf of the Scottish Ministers and would be informed by an assessment by prison and local authority criminal justice social work staff. Section 3AA(4) provides that the power is to be exercised having regard to considerations of:
- protecting the public at large;
- preventing reoffending by the prisoner; and
- securing the successful reintegration of the prisoner into the community.

73. Subsections 3AA(2) and (3) limit the period during which the new power can be exercised. It can only be exercised once the prisoner has served one quarter of his sentence, or four weeks of his sentence (whichever is longer) and within 135 days of the point when he would have served half of the sentence. This 135 day period is expressed in subsection (3) as 121 days because the power cannot be used within 14 days before the prisoner would have been released. This is necessary to prevent the very short licence periods that could otherwise arise where a sentence is backdated following a period on remand, or where the prisoner has been returned to custody and again becomes eligible for Home Detention Curfew. The net effect of these provisions is that the maximum length of the period on Home Detention Curfew for short-term prisoners is as set out in the table below:

<table>
<thead>
<tr>
<th>Sentence length</th>
<th>Period to be served</th>
<th>Length of Home Detention Curfew</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 months or more but less than 4 months</td>
<td>4 weeks</td>
<td>Between 15 and 30 days (depending on the length of sentence)</td>
</tr>
<tr>
<td>4 months but less than 18 months</td>
<td>One quarter of sentence</td>
<td>Up to one quarter of sentence</td>
</tr>
<tr>
<td>More than 18 months</td>
<td>Half sentence less 135 days (approx 4.5 months)</td>
<td>Up to 135 days (approx 4.5 months)</td>
</tr>
</tbody>
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74. Section 3AA(5) provides for a number of exclusions from the new power. These cover situations where the prisoner may be considered as a high risk, where special post-release arrangements are already in place or where the prisoner has failed to comply with a previous licence. The specific exclusions listed are for:

- Prisoners subject to extended sentence under section 210A of the Criminal Procedure (Scotland) Act 1995. Extended sentences may be imposed by the courts for serious violent or sexual offences, where they consider that the period for which the offender would otherwise be subject to a licence would not be adequate for the purpose of protecting the public from serious harm from the offender.

- Prisoners subject to a supervised release order under section 209 of the 1995 Act. Such orders are imposed where the court considers that it is necessary to do so to protect the public from serious harm from the offender on his release.

- Prisoners subject to a hospital direction imposed under section 59A of the 1995 Act, or a transfer for treatment direction under the Mental Health (Care and Treatment) (Scotland) Act 2003. Hospital directions can be made where the offender is suffering from mental disorder or it is necessary for the health or safety of that person or for the protection of other persons that he should receive such treatment and the criteria in the 1995 Act are met.

- Prisoners subject to the notification requirements of Part 2 of the Sexual Offences Act 2003. This includes prisoners who have committed one of a wide range of sexual offences, and those subject to Sexual Offences Protection Orders and Risk of Sexual Harm Orders. This exclusion applies irrespective of the current offence for which the prisoner is in custody – for example a person in custody for a non-sexual offence but who is on the register because of previous offences would be excluded.

- Prisoners liable to removal from the United Kingdom. For example, under section 3(6) of the Immigration Act 1971, a person who is not a British citizen shall also be liable to deportation from the United Kingdom if, after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by virtue of the 1971 Act. Such persons would normally be deported immediately on completion of the custodial sentence.

- Prisoners who have previously been released on licence but who have been recalled to prison or have received a further sentence of imprisonment. An exception is made for those recalled from Home Detention Curfew licence because they can no longer be monitored at the place specified in the licence.

- Prisoners who have been released during the currency of their sentence but who have been returned to custody under section 16(2) or (4) of the 1993 Act. That section allows courts, when dealing with a subsequent offence punishable by imprisonment, to reinvokve any unexpired portion of the original sentence.

75. Section 3AA(6) provides an order-making power to adjust the parameters of the release power by altering the minimum sentence length, the minimum period that must be served in custody, and the period during which the power can be exercised. It also allows the list of exceptions to be added to or amended. The power is subject to the affirmative resolution.
procedure. Section 27(2) of the 1993 Act already provides a power which would allow the minimum proportion of the sentence specified in section 3AA(2)(a) to be adjusted.

76. As the power to release prisoners on Home Detention Curfew licence is being inserted into the Prisoners and Criminal Proceedings (Scotland) Act 1993, it is necessary to ensure that the other provisions of that Act apply appropriately to this new form of licence. In general, the 1993 Act will apply to Home Detention Curfew licence as it applies to other forms of licence such as parole, but subsections (2), (4), (9) and (10) of section 11 disapply sections 1A, 5, 12B and 17 of the 1993 Act. Those sections deal with the combination of licences where a person is serving more than one sentence, imprisonment of fine defaulters and revocation of licences.

77. Subsection (5) amends section 9(3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, which defines persons liable to removal from the United Kingdom. The amendments update the section to take account of powers contained in the Immigration and Asylum Act 1999 and to correct a reference in the existing section 9(3)(d). As noted above, persons who are liable to removal from the United Kingdom are not to be eligible for Home Detention Curfew.

78. Subsection (6) disapplies section 11 of the 1993 Act in relation to release on Home Detention Curfew and provides instead that a Home Detention Curfew licence remains in force until the prisoner would otherwise fall to be released under section 1, i.e. once he has served one half of his sentence. This provision ensures that the Home Detention Curfew licence does not survive beyond the half-way point of the sentence as this would conflict with the parole licence in the case of long term prisoners, and would mean that a short term prisoner was subject to restrictions at a time when they would normally be released unconditionally.

79. Subsections (7) and (8) deal with the conditions which are to be included in a Home Detention Curfew licence. They do this by modifying the existing section 12 (conditions in licence) and adding new sections 12AA and 12AB into the 1993 Act.

80. Section 12AA provides for the conditions to be included in a Home Detention Curfew licence. The licence must include a curfew condition (as set out in section 12AB) and a set of “standard conditions”. The standard conditions are to be prescribed by the Scottish Ministers by order. Subsection (5) provides that different standard conditions can be prescribed for different classes of prisoner. For short-term prisoners, it is proposed that the standard conditions should initially be to:

- be of good behaviour and keep the peace; and
- not commit any offence and not take any action which would jeopardise the objectives of the release on licence (i.e. protect the public, prevent reoffending and secure successful reintegration into the community).

81. For long-term prisoners, the standard conditions would correspond to the usual conditions imposed as part of parole licences. These are to:

- report forthwith to officer in charge of the office at [name of office];
- be under the supervision of such officer to be nominated for this purpose from time to time by the Chief Social Work Officer of [named local authority];
These documents relate to the Management of Offenders etc. (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 4 March 2005

- comply with such requirements as that officer may specify for the purposes of supervision;
- keep in touch with supervising officer in accordance with that officer’s instructions;
- inform supervising officer if changes place of residence, gains or loses employment;
- be of good behaviour and keep the peace; and
- not travel outside Great Britain without prior permission of the supervising officer.

82. These standard conditions will be prescribed by the Scottish Ministers by order; subject to negative resolution procedure (section 45 of the 1993 Act is amended to provide for this).

83. Section 12 of the 1993 Act allows the Scottish Ministers to specify conditions to be included in a licence, and will apply to Home Detention Curfew licences. Subsection (7) modifies its effect, so that a condition requiring the offender to be subject to local authority supervision is optional rather than mandatory, and disapplies a requirement to follow the recommendations of the Parole Board in setting or changing conditions. In practice, any additional conditions will be determined as part of the assessment process. Section 12 will therefore allow Ministers to specify additional conditions on a case-by-case basis and to vary these conditions. In doing so, and in specifying the standard conditions, the Scottish Ministers will be required to have regard to the following considerations, as they are in determining whether to release a prisoner on Home Detention Curfew:

- protection of the public;
- prevention of reoffending; and
- securing the successful re-integration of the offender into the community.

84. For long-term prisoners, the new section 12(4A) also ensures that the conditions of the Home Detention Curfew licence are aligned with those of the subsequent parole licence, by requiring the Scottish Ministers to have regard to the recommendations of the Parole Board.

85. Section 12AB (inserted by subsection (8) of section 11), sets out the arrangements for the curfew condition, which must be included in the Home Detention Curfew licence. The curfew condition requires the released person to remain at a specified place for specified periods. Subsection (2) provides that the curfew may specify different places or different periods for different days, and requires that the total period should be not less than 9 hours each day. Subsection (2) allows flexibility for the curfew to fit round e.g. employment or training or family commitments. The flexibility also allows the curfew condition to be used to support other conditions, e.g. attendance at training or rehabilitation projects. Special provision is made for the first and last days as they will normally only contain part of a curfew period. The flexibility also allows the curfew condition to be used to support other conditions, e.g. attendance at training or rehabilitation projects. Section 12AB also allows the curfew condition to include a requirement for the released person to stay away from a particular place, again for a specified time or period. This is based on similar provision made for Restriction of Liberty Orders, where the courts occasionally include a condition requiring an offender to keep away from a particular address.
86. The curfew condition will be remotely monitored using tagging devices, as is currently done for Restriction of Liberty Orders and similar movement restriction conditions in other forms of court order or release on licence. Subsections (3) to (7) of the new section 12AB provide for the management of the remote monitoring, and make similar provision to that made for Restriction of Liberty Orders in sections 245B and 245C of the Criminal Procedure (Scotland) Act 1995. Subsection (3) applies section 245C of the 1995 Act. That section permits Ministers to make arrangements, including contractual arrangements, for remote monitoring; requires offenders to wear or carry devices to enable the remote monitoring; and provides for regulations to specify the devices which may be used.

87. Subsection (11) inserts a new section 17A into the 1993 Act. This section provides for the recall of prisoners who have been released under new section 3AA where they have failed to comply with any of the conditions in the Home Detention Curfew licence or can no longer be remotely monitored at the specified place. In such cases, the Scottish Ministers may revoke the Home Detention Curfew licence and recall the person to prison. The prisoner is then liable to be detained in pursuance of his sentence, but will be eligible for automatic release (if a short term prisoner) or consideration for parole (if a long term prisoner) under section 1 of the 1993 Act once he has served one-half of his sentence. In practice, long term prisoners released and recalled from Home Detention Curfew will be referred back to the Parole Board so they can consider whether their earlier recommendation for release at the half way stage is still appropriate, or whether the recall from Home Detention Curfew represents an adverse development which would justify cancelling that recommendation. Once the person is returned to prison, following recall from Home Detention Curfew, he must be informed of the reasons for the revocation of the licence and of his right to make representations to the Parole Board. The Parole Board may then direct that the revocation be upheld or cancelled. Section 20 of the 1993 Act will permit the Parole Board Rules to be adapted to provide for the appeal process.

88. Section 17A(5) provides that where a person’s licence has been revoked and he is at large, he shall be deemed to be unlawfully at large. Section 40 of the Prisons (Scotland) Act 1989 provides that a person who is unlawfully at large may be detained by a constable without a warrant, and also provides that unless otherwise directed by Scottish Ministers, no account shall be taken for the purposes of sentence calculation, of the period during which the prisoner was unlawfully at large.

89. A further consequence of revocation and recall under this section resulting from failure to comply with the licence conditions is that the prisoner is no longer eligible for release on Home Detention Curfew – see section 3AA(5)(f). Where the prisoner can no longer be monitored at the specified address, and the licence is revoked because of this rather than a breach of the licence conditions, the prisoner remains eligible for Home Detention Curfew if a suitable address can be found.

90. Subsection (12) amends section 45 of the 1993 Act, which governs the making of rules and orders. The result is that any order made under section 12AA(3) (specification of standard conditions) will be subject to annulment in pursuance of a resolution of the Scottish Parliament, and any order under section 3AA(6) (adjusting time limits, proportions of sentence, exclusions etc.) will have to be laid in draft and approved by the Scottish Parliament before being made (i.e. draft affirmative procedure).
Section 12 – Offender’s failure to comply with notification requirements: jurisdiction of Scottish courts

91. Section 12 substitutes a new version of section 91(4) of the Sexual Offences Act 2003 to enable proceedings for an offence under section 91 to be commenced in a wider range of situations.

92. Section 91 contains a number of offences relating to failure to comply with sex offender notification requirements. Under new section 91(4)(a), proceedings can be commenced in any court having jurisdiction in any place where the person charged with the offence resides, is found, or was last known to reside. Under new subsection (4)(b), proceedings can be commenced in the court which convicted the person of the offence to which the notification requirement relates. At present, section 91(4) only allows for proceedings to be commenced in any court having jurisdiction in any place where the person charged with the offence resided or was found.

Section 13 – Recovery of criminal injuries compensation from offenders

93. This section has the effect of extending section 57(2) of the Domestic Violence, Crimes and Victims Act 2004 to Scotland. That section permits the provision of a general power for recovery by the Criminal Injuries Compensation Authority of sums paid to victims of crime from the perpetrator of those crimes. Section 57(2) does this by inserting new sections 7A to 7D into the Criminal Injuries Compensation Act 1995.

94. The power of recovery is to be contained in Regulations, made under those inserted sections. Section 7A permits the recovery of compensation; section 7B provides for procedural provision for putting the perpetrator on notice that the Criminal Injuries Compensation Authority is minded to take recovery proceedings; section 7C makes provision for review of decisions to recover sums paid out; and section 7D provides for the means by which sums sought to be repaid are recovered by the Criminal Injuries Compensation Authority.

95. This section of the Bill extends section 57(2) (and thereby inserted sections 7A to 7D of the Criminal Injuries Compensation Act 1995) to Scotland and makes necessary amendments to the operation of the inserted sections, in their application to Scotland.

96. These amendments are the conferring of the powers to make subordinate legislation on the Scottish Ministers rather than the Secretary of State and the insertion of a provision relating to Scottish Parliamentary procedure. There is also a necessary amendment to the law of prescription and limitation in Scotland, to mirror an amendment made to an equivalent statute applying only to England and Wales.

Section 14 – Further amendments and repeal

97. This section makes a number of amendments connected with the provisions in section 1 to 13 of this Bill. Amendments in relation to Home Detention Curfew provisions relate to enactments concerned with cross-border transfer of prisoners, repatriation of prisoners, the International Criminal Court, and remote monitoring of prisoners released on licence.
98. Subsection (1)(a)(i) amends section 27(1) of the Social Work (Scotland) Act to allow for transfer of functions from local authorities to a community justice authority under section 7 of this Bill.

99. Subsection (1)(a)(ii) and (b) amends section 27(1) of the Social Work (Scotland) Act 1968. That section sets out the duties of local authorities in respect of criminal justice social work services. The amendments ensure that it is a duty to provide any background reports requested by Ministers in relation to the release of prisoners under Part 1 of the 1993 Act, including release on Home Detention Curfew. The amendments also ensure that references to “enactment” include Acts of the Scottish Parliament to ensure that the section covers persons under supervision as a result of an Act of the Scottish Parliament. Section 27A of the 1968 Act then allows the Scottish Ministers to make grants to local authorities in respect of their expenditure in providing a service for the purposes set out in section 27(1).

100. Subsection (1)(b) also amends the Social Work (Scotland) Act 1968 in such a way as to allow the Scottish Ministers to amend by order local authority functions specified in section 27(1) of that Act. This enables alterations to be made to the list of functions local authorities may undertake without primary legislation being required.

101. Subsection (2) introduces amendments to section 27A of the Social Work (Scotland) Act 1968 to enable Ministers to provide funds to the community justice authority while retaining the power to provide funds directly to local authorities for the purposes of providing services under section 27 of that Act for complying with area plans or for other similar purposes that Ministers may prescribe.

102. Subsection (4) amends the Schedule to the Repatriation of Prisoners Act 1984. Prisoners repatriated to Scotland are eligible for early release, and the Schedule make provision about the calculation of appropriate parts of the sentence. The amendments ensure that these provisions apply appropriately to consideration for release on Home Detention Curfew.

103. Subsection (5) amends Schedule 1 to the Crime (Sentences) Act 1997. That Schedule deals with the transfer of prisoners and those subject to supervision between England and Wales, Scotland and Northern Ireland. Many of these transfers are “restricted” transfers, that is the prisoner remains subject to the law on early release as it applies in the sending jurisdiction. The amendments made here are to the provisions dealing with restricted transfers from Scotland to England and Wales and to Northern Ireland, and ensure that when necessary arrangements are in place with the corresponding jurisdictions, such prisoners will be eligible to be considered for release on Home Detention Curfew by the Scottish Ministers to an address in that jurisdiction to which they have been transferred, (it is noted that Northern Ireland currently has no system in place to carry out the remote monitoring of offenders released from custody). A minor error in paragraph 11(2) of the schedule is also corrected.

104. Subsections (6), (8), and (9) bring in minor amendments to ensure that references to “community justice authority” are compatible with local government references in existing legislation.
105. Section 24 of the International Criminal Court (Scotland) Act 2001 disapplies various provisions about release of prisoners in relation to persons detained in Scottish prisons serving a sentence imposed by the International Criminal Court. Subsection (7) adds section 3AA to the list, so that ICC prisoners are not eligible for Home Detention Curfew.

106. Section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 makes special provision about the early release of children sentenced to detention following conviction on indictment. Although similar to the arrangements for release of adult prisoners, the Parole Board may recommend/direct the release of the child at any time, and all such releases are on licence. Given the existence of this early release provision, Home Detention Curfew is not available for section 7 cases. Section 40(1) of the Criminal Justice (Scotland) Act 2003 provides for the inclusion of remote monitoring conditions in licences under Part I of the 1993 Act (parole, non-parole, compassionate). However subsection (1) currently provides that such conditions can only be included if the person has reached the age of 16 at the point of release. It therefore prevents remote monitoring from being used for children released under section 7 of the 1993 Act. Subsection (10) amends subsection (1) of the 2003 Act to remove this age limit. Similar age limits in respect of Restriction of Liberty Orders were removed by section 121 of the Antisocial Behaviour etc. (Scotland) Act 2004.

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FINANCIAL MEMORANDUM

107. This memorandum sets out the financial implications of the Management of Offenders etc. (Scotland) Bill.

INTRODUCTION

108. The Scottish Executive is committed to improving the security and safety of Scotland’s communities by reducing reoffending. The Bill seeks to improve the management and delivery of offender services through a number of proposals:

- by establishing a new framework for an integrated management of offenders with a greater emphasis on tackling reoffending through the set up of a national advisory body (as this body is advisory in form, no reference in the Bill is required) and the integration of management services into new community justice authorities;
- by establishing a duty on police, local authorities and the Scottish Prison Service to establish joint arrangements for assessing and managing the risk posed by sexual and violent offenders;
- by strengthening the sex offender monitoring process by broadening the range of courts which will have jurisdiction to consider proceedings in respect of sex offenders who have failed to comply with registration requirements;
- by establishing a Home Detention Curfew scheme which will allow earlier controlled reintroduction of suitable prisoners back into communities and relieve pressure on prison based interventions; and
by establishing further measures for the Criminal Injuries Compensation Authority to allow for the retrieval of money from offenders whose actions have led to the payment of compensation to victims, where offenders have the means so to do.

INTEGRATED MANAGEMENT OF OFFENDERS

Costs on the Scottish Executive

109. The Executive currently provides 100% funding to local authorities for delivery of community justice services. To set a context to the additional estimated costs described below, the budget for the current and forthcoming years for expenditure on offender services is:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004-05</td>
<td>£79.842m</td>
</tr>
<tr>
<td>2005-06</td>
<td>£86.392m</td>
</tr>
<tr>
<td>2006-07</td>
<td>£94.392m</td>
</tr>
<tr>
<td>2007-08</td>
<td>£96.392m</td>
</tr>
</tbody>
</table>

110. The Executive’s spending plans for the Scottish Prison Service for the current and forthcoming years are:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004-05</td>
<td>£298.481m</td>
</tr>
<tr>
<td>2005-06</td>
<td>£321.701m</td>
</tr>
<tr>
<td>2006-07</td>
<td>£396.701m</td>
</tr>
<tr>
<td>2007-08</td>
<td>£427.701m</td>
</tr>
</tbody>
</table>

111. The Bill will establish new local government bodies called community justice authorities to plan, co-ordinate and manage offender services in the community. The Executive expects that the number of community justice authorities will represent a reduction from the current 14 Criminal Justice Social Work Groupings/Unitary Authorities. The estimated annual cost of a single community justice authority is around £200,000. This cost is entirely additional and is made up of the salary of the chief officer, accommodation, administrative support, running costs, and the costs of committee structure. The total cost will depend on the number of authorities which will be subject to more detailed discussions with local authorities and consultation, and the costs of a single community justice authority are also likely to depend on their boundaries. Funding for this purpose was secured in the 2004 Spending Review.

112. In addition an estimated £50,000 will be allocated for the administrative running costs of the national advisory body, to meet certain costs such as costs associated with publications.

113. The Bill also places new statutory functions on Scottish Ministers, in the form of the Scottish Prison Service, for example for cooperation in the production and implementation of action plans to reduce reoffending. The Scottish Prison Service will be expected to undertake these functions within its budget.
These documents relate to the Management of Offenders etc. (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 4 March 2005

Costs on local authorities

114. This service will continue to be funded 100% directly from the Scottish Executive and therefore local authorities would not be expected to incur additional costs from their own budgets. As noted above, significant resources are already available to local authorities to deliver criminal justice social work services, including preparation of assessments for and supervision of prisoners on licence. These services are 100% funded by the Executive through section 27A of the Social Work (Scotland) Act 1968. This will continue although funding will in future be directed to community justice authorities. Community justice authorities will distribute funds to constituent local authorities according to the area partnership plan. Additional funds will be paid to community justice authorities to establish chief officers and support staff for each community justice authority.

115. Local authorities will need to undertake new functions in area plan productions. These costs will depend on certain factors, such as the size and number of community justice authorities, on which we have plans for detailed discussions with local government. The expectation is that this will not introduce a significant burden over and above the current planning process.

116. It is expected that these costs begin to be incurred in late 2005-06 after the Bill has received Royal Assent.

Costs on other bodies, individuals and businesses

117. A number of organisations are also involved in delivery of offender services, such as voluntary organisations contracted by local authorities to undertake particular programmes with offenders. The legislation will not preclude the use of contracts in the delivery of the service, thus these organisations will continue to win contracts where the services they offer are in line with the objectives set out in local plans.

118. There may be minor additional costs for these organisations in order that they engage in a planning process with community justice authorities, for example, to send a representative to an area partnership planning meeting. However, the wider geographical coverage of community justice authorities and greater consistency in delivery across community justice authority areas is likely to result in fewer separate meetings and thus the impact of these measures is likely to be cost neutral.

Savings

119. The policy intention of these proposals is not to create savings in expenditure. However, the closer integration of services and the improved consistency in delivery across areas may lead to savings related to scale and the more efficient use of resources. These cannot presently be quantified as the detailed provisions are subject to consultation. Savings are not likely to be released as money saved will be returned to improving services for offenders.
JOINT ARRANGEMENTS FOR ASSESSING AND MANAGING SERIOUS AND SEXUAL OFFENDERS (COSGROVE 49 PROVISIONS)

120. As part of the work to improve joint working between agencies with the responsibility to manage sex offenders, the Information Sharing Steering Group was set up. This is chaired by the Solicitor General and takes forward the implementation of recommendations in the report of the Expert Panel on Sex Offending which concern information management.

121. The Group has employed a consultant at a cost of £13,000 funded by the Executive, who has worked with the agencies represented on the Group to develop a framework. This consists of overarching protocols, guidance and national standards which will support and encourage information sharing between the agencies responsible for the management of sex offenders. The consultant has also mapped the flow of information to be exchanged. This work will reduce the burden on each of the 3 responsible authorities (the police, Criminal Justice Social Work groupings and the Scottish Prison Service) in drawing up the local protocols to underpin the implementation of the provisions. It is estimated that each of the 3 responsible agencies will have to devote staff time to produce these local protocols. It is estimated that this will amount to one person’s work for a period of one week. At £600 per week for 11 mainland criminal justice social work groupings, 8 police boards and 16 prison establishments, the cost will be approximately £21,000 during the first year of operation. This will be met from existing budgets.

Costs on the Scottish Executive

122. Preparing the guidance on establishing joint arrangements forms part of the job description allocated to staff in the Community Justice Services Division of the Justice Department and their costs are already covered by the Scottish Executive’s Administration budget. In addition, professional support will be provided from a consultant at the cost of £250 per day. It is estimated that the cost of this extra support will amount £1,250. This sum has been earmarked for the purpose in the existing budget.

123. In addition, the Executive is also providing £375,000 to the Scottish Police Service to introduce a standardised database which provides UK wide, searchable intelligence to the police for the registration and management of violent and sex offenders (ViSOR) which will support the new arrangements. The Executive is also funding a part time secondment from local authority criminal justice social work to the ViSOR team for a period of 1 year at a cost of £15,000 to ensure joint working is embedded into the new arrangements.

Costs on local authorities and the police

124. The provisions will allow the three principal agencies to build on and formalise existing working practices. Much of the work on the preparation of model protocols and guidance has been undertaken by the agencies within the context of the Information Sharing Steering Group. There will be some administrative costs in developing the protocols at a local level but offset by savings and benefits on the agencies in terms of improved working arrangements and practices.

125. It is important, however, to build up the framework to support the new provisions. Therefore the Executive is working with local authorities, the police and the Scottish Prison
These documents relate to the Management of Offenders etc. (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 4 March 2005

Service to develop joint tools for use in the risk assessment of sex offenders. Funding of £150,000 has been earmarked for the necessary enhanced training for 400 frontline police and social workers in assessing the risk which individual sex offenders pose to communities. The tool is already used by the Scottish Prison Service.

**Costs on other bodies, individuals and businesses**

126. No additional costs are expected.

**Savings**

127. The new powers in the Bill to establish joint arrangements between the police, local authorities and the Scottish Prison Service for assessing and managing sex offenders will be supported by a National Concordat and local information sharing protocols. These will set out clear agreements between the key agencies on joint working and the sharing of information to simplify current arrangements. The introduction of new processes, for example in relation to the use of common assessment tools, will also be streamlined. This means that procedural arrangements within the 3 main agencies will link up better. In terms of the savings, they will be fed back into the system to further improve quality.

**REGISTRATION OF SEX OFFENDERS**

128. Failing to comply with the notification requirements of the Sexual Offences Act 2003 is a criminal offence with a maximum penalty of 5 years imprisonment. This tough sanction means that the compliance rate is very high – around 97%. Accordingly only a small number of offenders fail to comply with the notification requirements. We therefore consider that the changes to the notification requirements of the Sexual Offences Act will only have a small impact on court and police resources. Thus there will be no cost to the Scottish Executive or for local authorities and in terms of other bodies, individuals and businesses there will be minimal impact on court and police resources.

**HOME DETENTION CURFEW**

**Assumptions/Estimates**

129. Financial estimates are based on the likely numbers of prisoners that will be assessed and released on Home Detention Curfew. The numbers assessed will be greater than the numbers subsequently released on Home Detention Curfew. Figures are based on recent Scottish prison receptions, and experience of the way the scheme has operated in England and Wales.

**Assessment and eligibility**

130. In 2003, 7,432 prisoners serving 3 months to 4 years were released from custody. Certain categories of prisoner will be excluded from consideration for Home Detention Curfew. This will reduce the number of eligible prisoners by around 350. Therefore, it is estimated that there are likely to be around 7,000 – 7,500 short-term prisoners assessed annually for Home Detention Curfew.
131. The Bill also provides for the use of Home Detention Curfew for certain long-term prisoners, whom the Parole Board have recommended for release on parole at half sentence. In 2003, 326 long-term prisoners were released at this stage. Taking account of exclusions, we estimate that around 300 long term prisoners may be eligible for Home Detention Curfew each year.

132. Experience of the Home Detention Curfew scheme in England and Wales indicates that about 30% of eligible prisoners are released on Home Detention Curfew. Assuming a similar release rate of 30%, we estimate around 2,100 – 2,250 short-term prisoners are likely to be released on Home Detention Curfew each year. Based on the sentence length profile of short-term prisoners, and the constraints on the length of the Home Detention Curfew period, the average time spent on Home Detention Curfew would be around 55 days. There are likely to be in the region of 300 short-term prisoners on Home Detention Curfew at any one time.

133. For long-term prisoners, the period of Home Detention Curfew will be restricted to the period between the Parole Board deciding on parole and the parole qualifying date, which is usually 12-16 weeks. They are likely to be on Home Detention Curfew for between 1 to 2 months. If all of these eligible prisoners were released on Home Detention Curfew (on the basis of the risk assessment by the Parole Board) around 40 long-term prisoners would be on Home Detention Curfew at any one time. However, taking account of the more extensive pre-release preparation for long-term prisoners, it is considered that the release rate for this group would be lower. For present purposes we therefore assume that 10 long-term prisoners would be released on Home Detention Curfew at any one time.

134. A proportion of prisoners released on Home Detention Curfew will fail to comply with the conditions. Experience in England and Wales suggests a breach rate of 15%. Based on this breach rate and assuming these breach rates are spread evenly across the Home Detention Curfew period, the effect would be a 7.5% reduction in the numbers on Home Detention Curfew at any one time. This would amount to about 25 people.

Costs to the Scottish Executive

135. The main administrative costs for the Executive will be those incurred by the remote monitoring of prisoners subject to Home Detention Curfew. A similar service is currently provided by a private sector contractor for other uses of remote monitoring, principally Restriction of Liberty Orders. This contract is available on the Scottish Executive website. It is intended that this contract will be re-tendered in 2005, covering the existing services and new services such as Home Detention Curfew. This new contract would come into effect in April 2006. The estimates below are based on the structure and prices of the current contract.

136. The current contract costs of a Restriction of Liberty Order are approximately £13,000 per annum. The contract includes a series of volume-based discounts. Were Home Detention Curfew to be added to the contract, the annual cost of a Restriction of Liberty Order or a Home Detention Curfew would fall to around £8,400, based on the current pricing structure.

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137. Based on the estimate of 310 prisoners on Home Detention Curfew (approximately 300 short-term prisoners plus 10 long-term), the total cost of the remote monitoring would be £2.6m. As noted below, there will be efficiencies to be gained from purchasing all electronic monitoring services jointly with predicted savings of £1.5m on the costs of Restriction of Liberty Orders based on the present contract pricing structure.

Scottish Prison Service

138. The Scottish Prison Service will be involved in determining the suitability of prisoners for release on Home Detention Curfew and in issuing and enforcing the licences, including recalls and appeals. Work with the Scottish Prison Service and local authorities to design the assessment process will seek to build on existing processes as far as possible, and it is expected that the Scottish Prison Service systems will already contain most of the information required for an assessment. The Scottish Prison Service will deal with any appeals against refusal to grant Home Detention Curfew. It is proposed that this should be done through the existing requests and complaints system.

139. The Scottish Prison Service estimate that the staffing costs that will arise in the administration of Home Detention Curfew will be around £135,000, on a year on year basis. In addition, it is estimated that there will be a one-off cost from adapting the Scottish Prison Service Prison Records System and increasing access to computer stations at around £20,000. This will bring the total cost in the first year 2006-07 to £155,000, and £135,000 per year thereafter.

140. The Scottish Prison Service has also estimated savings that may arise from Home Detention Curfew. Although there will not be any financial savings from staffing costs, where Home Detention Curfew reduces overcrowding this will allow staff to continue with their existing duties. The area where savings are most amenable to measurement are the running costs associated with each prisoner. These have been calculated as savings of approximately £600,000 per year. These figures are sensitive to projections of a rising prison population (estimated below), where new admissions would negate the proposed savings from Home Detention Curfew.

Costs to local authorities

141. Local authorities will be involved in preparing the assessments for Home Detention Curfew, and will provide supervision where appropriate conditions are included in the licence. The role of local authorities in Home Detention Curfew is therefore twofold; that of assessment and supervision.

Assessment

142. We estimate that the average cost of a Home Detention Curfew assessment will be up to £100. Some of the information required for the assessment may already be available to local authorities, for example from any social enquiry report (SER) that may have been prepared prior to the imposition of the custodial sentence. We realise however, that such reports may not provide sufficient information about some of the prisoners, and that others will not have an SER at all. Assessment in such cases will therefore be more labour intensive and costly. However, work with the Scottish Prison Service and local authorities to design the assessment process will
seek to build on existing processes as far as possible. For 7,500 assessments, the costs to local authorities will therefore be in the region of £750,000 per annum.

Supervision

143. Social work supervision will not be required for every prisoner released on Home Detention Curfew licence. Instead the Bill provides for such supervision conditions to be included on a case-by-case basis. All prisoners on Home Detention Curfew will be eligible for voluntary aftercare services. It is likely that only a proportion of prisoners will take up this assistance.

144. The cost of supervision would depend on the precise conditions imposed on each case. Based on the cost of supervision on a probation order at around £1,000 annually per order, and allowing for initiation costs and more intense supervision, we would estimate that supervision for an individual on Home Detention Curfew for an average of 55 days would be around £250. If 25% of those released on Home Detention Curfew are made subject to supervision conditions, the total annual cost would be around £125,000. These figures however, represent very rough predictors of likely costs.

145. Any additional costs to local authorities arising from assessment or supervision would be covered by the Executive through the 100% funding arrangements in section 27A of the Social Work (Scotland) Act 1968.

Costs to other bodies, individuals and businesses

Costs to the police

146. Based on a breach rate of 15%, around 300 offenders would be apprehended and returned to custody each year. This will result in some additional cost to Scottish police forces, but these should be absorbable. In some cases, the circumstances of the breach will be such that the offender is already in police custody. No precise estimate of this cost has been possible. The Executive has been advised that this is because there are no set of standard figures for calculating the apprehension of a person deemed unlawfully at large. Each case can vary enormously, especially in terms of time taken to apprehend the individual. Whilst the police may have an address for the individual, he or she may have absconded to another part of the country.

Costs to the Parole Board

147. The Parole Board will be involved in dealing with appeals against recall. Experience in England and Wales suggests that around a fifth of those recalled, appeal, with a tenth of those appeals being successful. This would indicate around 60 appeals in Scotland, although the use of an external body such as the Parole Board may result in a higher rate of appeal than in the administrative system used in England and Wales.

148. The Parole Board’s Annual Report for 2003 suggests an overall cost per case of around £1000. However, most of these will involve consideration of extensive parole dossiers, in comparison with which Home Detention Curfew recall cases will be relatively straightforward and less time consuming. The maximum cost to the Parole Board would be around £60,000 per year.
Best estimates of timescales over which these costs arise.

149. Subject to passage of the Bill, it is envisaged that Home Detention Curfew will be introduced to the whole of Scotland from April 2006. As noted below, the remote monitoring service will be re-tendered in 2005 and will incorporate services for Home Detention Curfew. This new contract will come into effect in April 2006. As the scheme will apply to serving prisoners, the numbers released on Home Detention Curfew will very quickly rise to the level set out above. Costs and savings from the scheme will therefore arise from April 2006.

Risk and uncertainty in such estimates

150. The estimates set out are particularly sensitive to the release rate. These estimates are based on experience in the broadly similar scheme operating in England and Wales. However a higher or lower release rate would result in proportionately higher or lower costs and savings on remote monitoring, supervision, appeals and recall, and prisoner numbers. Costs of assessment would remain unchanged.

151. In the longer term, there will be changes in the number of sentenced receptions. Current projections indicate that receptions for the short term prison population will rise from 12,108 to 13,257 by 2014. Long term prisoner projections over the same decade indicate a rise from 804 to 1,006. Costs and savings would therefore change proportionately.

152. Costs of remote monitoring will depend on the re-tendering of the contract.

Savings

153. It is anticipated that Home Detention Curfew will mitigate the costs associated with the current rising prison population. For comparison, the average cost of a prison place is approximately £33,000 per annum\(^2\). Recognising that this is an average cost rather than a marginal cost, a crude estimate of the saving resulting from a reduction of 300 in the prisoner population would be £9.9m. In practice, the saving is likely to be more modest and mitigates increase in future provision rather than generating a cash saving.

154. Although there will not be any financial savings from staffing costs, where Home Detention Curfew reduces overcrowding, this will allow staff to continue with their existing duties. The area where savings are most amenable to measurement are the running costs associated with each prisoner. These have been calculated as savings of approximately £600,000 per year. These figures are sensitive to projections of a rising prison population, where new admissions would negate the proposed savings from Home Detention Curfew.

155. As noted above, the volume-based discounts in the current remote monitoring contract result in savings on the cost of Restriction of Liberty Orders once Home Detention Curfew is added. It is estimated that this will provide a saving of over £1.5m for current prices. This is based on the current contract, and any future saving would depend on the structure and prices of the new contract.

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156. An analysis of the savings that the scheme has achieved in England and Wales is included in a Home Office report on Home Detention Curfew\(^3\).

**CRIMINAL INJURIES COMPENSATION AUTHORITY**

157. The Criminal Injuries Compensation Authority is a cross-border public authority and the Scottish Executive pays a percentage of the total GB expenditure on criminal injuries compensation. That percentage is based on a rolling three year average of the costs of Scottish cases against the total GB costs and the figure at present is around 11 per cent.

**Costs to the Scottish Executive**

158. No additional administrative costs are expected to flow from the new power in the Bill.

**Costs to local authorities**

159. No additional costs are expected.

**Costs on other bodies, individuals and businesses (including the Criminal Injuries Compensation Authority)**

160. There is clearly a degree of administrative cost for the Criminal Injuries Compensation Authority in making decisions as to whether or not to seek recovery and outlays involved in taking court proceedings; to that end, cases will not be taken on unless the Criminal Injuries Compensation Authority considers it financially worthwhile to do so. This must be a matter first and foremost for the Criminal Injuries Compensation Authority to establish in due course, but our anticipation is that the power to seek recovery will be used sparingly. It is not possible to indicate with any accuracy in advance the extent of which recoveries of sums might be successful. It is not anticipated that recovery would exceed around £100,000 per annum and is likely in practice to be somewhat lower than that.

161. Over and above those costs, there will be the issue of court costs and outlays associated with the necessary court proceedings. Expenses are normally recoverable by the successful party, but would not be recoverable in the event that any one particular set of proceedings raised by the Authority were unsuccessful. In that case, the Authority would require in most unsuccessful cases to meet the legal expenses of the successful defender.

**Savings**

162. It is estimated that the new power of recovery may lead to a maximum recoverable sum of £100,000 based on the Scottish share of an estimated GB recoverable amount of £1m.

These documents relate to the Management of Offenders etc. (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 4 March 2005

SUMMARY OF ESTIMATED NEW COSTS ASSOCIATED WITH THE BILL

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<thead>
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<th>Description</th>
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<td>- Costs to SE</td>
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<td>- Costs to others (CICA)</td>
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<td>(Recoveries from offenders)</td>
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*Cost falls on LA social work, police boards and prisons.
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

163. On 3 March 2005, the Minister for Justice (Cathy Jamieson) made the following statement:

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

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

164. On 3 March 2005, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Management of Offenders etc. (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Management of Offenders etc. (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 4 March 2005

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) BILL

EXPLANATORY NOTES

AND OTHER ACCOMPANYING DOCUMENTS


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