INTRODUCTION

1. This document relates to the Management of Offenders etc. (Scotland) Bill introduced in the Scottish Parliament on 4 March 2005. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 39–EN.

POLICY OBJECTIVES – GENERAL

2. The primary objective of this Bill is to improve the management of offenders through greater integration of the activities of criminal justice agencies with the ultimate aim of reducing levels of reoffending in Scotland. The Executive are seeking to achieve this through tackling barriers in the current offender management process to promote a system which allows for the seamless management of offenders.

Integrated management of offenders

3. The Scottish Executive’s national consultation on reoffending, Reduce, Rehabilitate, Reform¹, in 2004, revealed a consensus amongst those with experience of the criminal justice system. That consensus identified a number of serious weaknesses in the way that offenders are managed which are likely to contribute to high rates of reoffending in Scotland:

   - a lack of objectives and strategic direction to tackle reoffending;
   - a lack of communication and integration between criminal justice service deliverers;
   - inconsistency in provision of offender services across Scotland; and
   - a lack of accountability.

4. The Executive published its response on 6 December 2004, in its Criminal Justice Plan, Supporting Safer, Stronger Communities². In that document the Executive described proposals to bring forward legislation to address these weaknesses, as follows.

¹ www.scotland.gov.uk/consultations/justice/rrrc-00.asp.
² www.scotland.gov.uk/library5/justice/scjp-00.asp.
The establishment of a national advisory body to assist Ministers in developing common objectives and strategies for tackling reoffending. As the body is to be advisory in form, no reference in the Bill is required. However, the body will have an important role in the delivery of a better offender management system and is discussed further below.

Statutory duties on the key criminal justice agencies (local authorities and the Scottish Prison Service), to work together to produce plans to tackle reoffending.

A statutory basis for local authorities to work together to improve consistency and quality of service across their authority areas while improving both local and national accountability for service delivery.

Measures to reduce the reliance on short term prison sentences, such sentences being considered to have little beneficial impact on offenders’ future behaviour.

Measures to improve assessment, management and information sharing regarding serious and sexual offenders.

5. Each of these proposals represents a means of improving and integrating how offenders in Scotland are managed. Ultimately it is intended that the benefits of these measures will be felt as a reduction in reoffending and greater safety in our communities.

6. The Management of Offenders etc. (Scotland) Bill seeks to:

- establish new functions and duties for organisations involved in managing offenders in Scotland, primarily the Scottish Ministers through their functions under the Prisons (Scotland) Act 1989 (i.e. the Scottish Prison Service) and local authorities, to work together in local partnerships to develop and implement an area partnership plan to manage offenders and reduce reoffending in the community justice authority area;

- introduce new information sharing duties to ensure good communication links between criminal justice agencies. These duties will be placed on the Scottish Ministers (to be exercised through the Scottish Prison Service), community justice authorities and other agencies;

- establish new local government bodies, community justice authorities, which will facilitate the co-ordinated delivery of community justice services by local authorities across the authority area and also perform a wider monitoring and reporting function in relation to the effectiveness of joint working between agencies;

- give new powers to Ministers - to ensure compliance with new duties, plus powers of intervention where performance is unsatisfactory;

- give the police, local authorities and the Scottish Ministers (through the Scottish Prison Service) a statutory function to establish joint arrangements for assessing and managing the risk posed by serious and sex offenders, including the sharing of information. This responds to recommendation 49 of the Report of the Expert Panel on Sex Offending (the Cosgrove Report);

- strengthen the sex offender monitoring process by implementing recommendation 47 of the Cosgrove Report as explained in paragraphs 29-31; and
This document relates to the Management of Offenders etc. (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 4 March 2005

- establish a Home Detention Curfew scheme which will allow early release for low risk prisoners, allow a better reintegration into communities and lower the pressure on prisons.

**Criminal Injuries Compensation Authority (CICA).**

7. The Bill includes provisions which enable the Criminal Injuries Compensation Authority to recover compensation which it has paid to the victims of crime from perpetrators. At present in Scotland, the Authority makes payments of compensation to victims of crime in appropriate circumstances. Perpetrators of crime often do not have the means to pay this compensation but in some cases they do, or later acquire the ability to so do. The realisation that such compensation payments may be recovered from an offender provides another means of discouraging reoffending.

**POLICY OBJECTIVES – SPECIFICS**

**Integrated management of offenders**

*Area partnerships*

8. The provisions in this Bill will support the creation of new area-based partnerships between local authorities and the Scottish Prison Service, the organisations with the lead responsibility for managing offenders in the community and in custody. As the Prison Service is an Executive Agency which has no legal status separate from that of Ministers, new duties can only be placed on the Scottish Prison Service by legislating to place these duties on Ministers themselves. This Policy Memorandum, however, refers directly to the prison service, where appropriate, to assist with interpretation of the provisions in the Bill.

9. The Bill creates the new area partnerships by placing the prison service, local authorities and the new community justice authorities under new duties to co-operate and share information in relation to the management of offenders and by bringing together local government and the Scottish Prison Service in a new joint planning and reporting framework. It is an important feature of the Bill that it brings offender management services more closely together by creating new shared duties and tasks, rather than by legislating for new joint structures with local government and prison service membership. The joint design and delivery of the new area plans for reducing reoffending will be a particularly critical element of the proposed change. Ministerial guidance will be used, as necessary, to ensure that each area plan is underpinned by appropriate local liaison arrangements. Specifically, Ministerial guidance will be used to ensure that the Scottish Prison Service provides a single liaison point for each community justice authority area.

*Area plans*

10. In each area, the new community justice authority will take lead responsibility for coordinating the area plan and producing the annual report, in consultation with the prison service and other partners (explained below). The community justice authority will also have a reporting function in relation to local authorities and the prison service’s performance in relation to the activities covered in the area plan. It will report on this annually.
11. The Executive recognises that other organisations, including the police, the Crown Office and the voluntary sector, will be important partners in the planning and delivery of more integrated offender management and in reducing reoffending. This wider set of partners will be entitled to be consulted on the plan and on annual reports on area performance. Partner organisations will also be expected to be brought within an information-sharing framework within each area. The partner organisations will be designated in a statutory instrument under the Bill, following consultation. The Bill also enables Ministers to identify other organisations which should be consulted, but on which it would not be appropriate to place any new duties.

12. Ministers will issue guidance relating to the processes and expected coverage of the plans for reducing reoffending. Area plans will be expected to contribute to the delivery of a national strategy and targets for offender management and reducing reoffending, which Ministers intend to issue in the spring of 2006. Ministers will be assisted in drawing up the strategy by a new non-statutory national advisory body on offender management, chaired by the Minister and with its membership comprising representatives of the key interests in offender management, including local authorities and the Scottish Prison Service. It is intended that this body should be established by the early summer of 2005.

13. Area plans are intended to cover the relevant work of all the organisations involved in their preparation, with responsibility for final submission of the plan to Ministers resting with the community justice authority. Ministers will approve plans or may seek changes. Again, it is intended that the proposed national advisory body should support Ministers in reaching a view on whether to accept each plan.

14. It is expected that area plans will be provided on a 3 year rolling planning cycle, in line with current practice in Criminal Justice Social Work Groupings. The Bill allows Ministers to establish the frequency. A report on the delivery of the area plan will be given to Ministers on an annual basis, and area plans may be amended in light of that review.

Community justice authority form and function

15. Local authorities will be represented in each area partnership by new community justice authorities; these will usually comprise the areas of several local authorities. Community justice authorities will be wholly local government bodies, bringing individual councils together for the purposes of:

- strategic planning and liaison with other partners;
- receiving and distributing amongst local authorities funds provided by Ministers for criminal justice social work under section 27 of the Social Work (Scotland) Act 1968;
- sharing good practice;
- monitoring and reporting on local authority performance;
- if necessary intervening to ensure the local authority elements of the area plan are delivered; and
- carrying out wider monitoring and reporting functions described above.
16. Where a community justice authority area covers only one local authority area, it will have precisely the same functions in law and practice as a joint community justice authority, except that it will have no co-ordination duties between member authorities. The number of community justice authorities and the area covered by each will be established by order under section 2(1), after consultation. The Bill makes provision for the costs of community justice authorities to be met by Ministers but does not preclude a community justice authority from accepting funds from other bodies, including individual local authorities.

17. The role of the community justice authority will therefore be strategic, and distinct from that of individual councils. There is no change to the current legal position by which local authorities are responsible for delivering criminal justice social work functions, principally under the Social Work (Scotland) Act 1968 and the Criminal Procedure (Scotland) Act 1995. Similarly, the prison service will remain responsible for delivery within prisons. The Bill therefore does not transfer the employment of any staff working with offenders. However, in delivering services, individual local authorities will be under a new statutory duty to co-operate with one another, as well as with the community justice authority and the prison service, as a result of the provisions in section 1 of the Bill. Both the prison service and local authorities will also be expected to comply with the area plan as far as is practicable.

Transfer of functions to community justice authorities

18. The Bill includes provisions enabling local authorities to agree to allow a community justice authority to carry out functions on behalf of its members, or for functions to be transferred to a community justice authority by an order subject to parliamentary approval. The intention of this provision is to provide flexibility in the future, recognising that, for example, authorities in an area may decide at some future stage that the community justice authority offers a more effective vehicle for providing certain services for the area as a whole. The Bill allows this to happen simply by local agreement. The provision allowing transfer of functions by order goes further in enabling a formal transfer of legal responsibility, but only after a due process of parliamentary scrutiny, and also consultation. The Bill also enables local authorities, or Ministers, including the prison service, to transfer property to a community justice authority. The opportunity is also being taken in this Bill to ensure that there is greater flexibility in future for local authorities and the Scottish Executive to develop and fund new forms of criminal justice social work intervention, by amendment to the Social Work (Scotland) Act 1968.

Performance management

19. A key part of these changes is the placing of both local authorities and the prison service within a new performance monitoring and management framework, focussed on delivery of the area plan. It is the intention that new performance management arrangements should be put in place for both the prison service and local authorities. The Criminal Justice Plan announced Ministers’ intention to issue a new Framework Document for the prison service. As the prison service is an Executive Agency, the appropriate means for setting in place performance management arrangements will be through guidance issued to the prison service under this new Framework Document. This guidance will be prepared in consultation with the prison service, local government and other interested organisations, for submission to the national advisory body for comment, prior to issue by Ministers. Existing ministerial powers over the agency will be available to support this new framework. For local authorities and community justice authorities, legislation is by contrast required to establish the new framework. Importantly, the
provisions in the Bill encourage local ownership of performance management, by giving community justice authorities themselves a critical role in monitoring local authority performance and intervening as necessary. If a community justice authority issues a direction to an authority a local authority must comply. Ministers will also have powers to issue guidance in relation to the preparation and content of plans, and also a power of direction over the exercise of functions by community justice authorities. This power is not intended to be used to intervene in the day to day operations of a community justice authority, but it is expected to be used sparingly, where necessary to support delivery of the national strategy by ensuring sufficient coordination and consistency is achieved in key areas – such as the presentation of information in annual reports, frameworks for information sharing or processes for reporting on performance.

20. A community justice authority will be obliged to employ a chief officer who will support its work. The chief officer will also have specific personal duties under the Bill to report to ministers where a community justice authority is failing in its functions, or the prison service is failing to co-operate, or a local authority is failing to comply with the area plan. This provision is intended to provide the chief officer with a reporting duty which he or she must exercise independently of the influence of the organisation about which he or she may have concerns.

21. In cases where Ministers become aware of a failure on the part of the prison service to co-operate in the delivery of an area plan, Ministers already have powers to intervene because the prison service is required to deliver the service that Ministers have a statutory duty to provide. Where a Chief Officer or another prescribed person or body independent of Ministers (the Social Work Inspectorate, HM Chief Inspector of Prisons or Audit Scotland), or any person specified by Ministers for this purpose reports a failure on the part of a community justice authority or a local authority, the Bill establishes new Ministerial powers of intervention.

22. A staged approach to intervention has been adopted in the Bill, similar to that recently used in the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004. Where a local authority is deemed to be failing to meet its obligations, Ministers may direct the community justice authority to take action to remedy the failure. In circumstances where the community justice authority is deemed to be failing as a whole, Ministers will issue a preliminary notice requiring the authority to respond to the identified shortcomings. If this response is unsatisfactory, Ministers may then issue an enforcement direction requiring the community justice authority to take the specified action to remedy the failure.

Information sharing

Information sharing duties between criminal justice agencies

23. In order for the area partnership plans for managing offenders to be successful it is crucial that good communication links exist between community justice authorities, local authorities, the Scottish Prison Service and other criminal justice agencies. The Bill establishes new duties on these criminal justice agencies to cooperate and share information, specifically local authorities/community justice authorities and the Scottish Prison Service. Other partner bodies will be specified by order following consultation on which groups are to be included. The expectation is that agencies such as police, Crown Office, health services and voluntary organisations will be included.
Assessing and managing risks posed by certain offenders

24. The Bill includes specific provisions for dealing with serious and sexual offenders as outlined in recommendation 49 of the report of the Expert Panel on Sex Offending (the Cosgrove report). It provides the police, local government and the Scottish Ministers (exercisable through the Scottish Prison Service) with a statutory function to establish joint arrangements for assessing and managing the risk posed by serious and sex offenders, including the sharing of information. This will tighten the process involved in assessing and managing the risk posed by this high profile group of offenders. It will support the work of the Risk Management Authority and help create the framework envisaged by the Panel.

25. The provisions in sections 9 and 10 respond to recommendation 49 in the report of the Expert Panel on Sex Offending, which states “a statutory duty should be placed upon Chief Constables and Chief Social Work Officers to establish joint arrangements for assessing, monitoring and managing risk”. In making the recommendation, the Expert Panel recognised the benefits being delivered by the arrangements to promote joint working already put in place by the Executive; however the Panel considered that a statutory power would consolidate the position.

26. Effective management of sex offenders can only be achieved if effective arrangements are in place for the management and sharing of relevant information. In 2003 Ministers established the Information Sharing Steering Group, chaired by the Solicitor General, to develop and implement protocols and guidance for the sharing of information on sex offenders between key agencies. This work led to the Information Sharing Steering Group supporting the recommendation to provide a statutory function to underpin current arrangements and that the function should be extended to include the Scottish Prison Service, thus reinforcing other measures in the Bill for closer integration between criminal justice agencies.

27. It is also recognised that these agencies cannot deliver these functions in isolation and the Bill will also require these agencies to act in co-operation with other specified agencies such as, Education, Health, Social Security, Child Support, Housing, including registered Social Landlords, Social Services, Scottish Children’s Reporter Administration and the Risk Management Authority in establishing arrangements and for those agencies in turn to co-operate with the arrangements. Those arrangements include a specific requirement to share information in order to enable the principal authorities to perform their duty.

28. In line with the commitment to reduce re-offending and to protect communities the provisions also extend beyond the recommendation of the Expert Panel on Sex Offending to include cases with a significant sexual element, violent offenders and those other persons who by reason of offences committed by them may cause serious harm to the public. The inclusion of violent offenders will tighten the process involved in assessing and managing risk from this high profile group and support the remit of the Risk Management Authority. This is in keeping with moves to tighten the legislation for the registration of sex offenders in the Sex Offences Act 2003 and the recent additional powers for the courts to obtain more information on this group in the Criminal Justice (Scotland) Act 2003.

Registration of sex offenders

29. A particular issue with regard to the monitoring of sex offenders was identified by the Expert Panel on Sex Offending and the policy intention is to remedy the situation. Sex offenders who fail to register timeously commit an offence in terms of section 91 of the UK Sexual Offences Act 2003 (previously section 3 of the Sex Offenders Act 1997). Under the Act, an offender has to register at any police station in their local police area within three days. The Act makes no provision that would unequivocally allow proceedings to be commenced against sex offenders who initially fail to register and whose present whereabouts are unknown.

30. Proceedings under the section may commence in any court having jurisdiction, in any place where the person charged with the offence resides or is found. The Expert Panel noted that operational difficulties under the 1997 Act had been encountered in cases where a person failed to register, although required to do so, and had then moved to another area. The Expert Panel considered that the sex offender monitoring process would be assisted by a provision enabling the court to have jurisdiction in respect of the sex offender’s last known address to grant a warrant for the individual’s arrest.

31. Thus the policy intention of these provisions is to implement recommendation 47 in the Report of the Expert Panel on Sex Offending (the Cosgrove Report). In doing so the Executive believes that the sex offender monitoring process will be assisted 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.

Home Detention Curfew

32. The purpose of Home Detention Curfew is to reduce reoffending, not in isolation but as a part of the package of measures in the Bill around more integrated/coordinated and effective management and control of offenders (both in and following custody), better reintegration of released prisoners into the community, and contributing to the goal of a safer Scotland.

33. Home Detention Curfew is a system of early release on licence for low risk prisoners, subject to a curfew condition, verified by remote monitoring, which requires the curfewee to remain at or stay away from a particular place for part of the day. Failure to comply with this curfew condition renders them liable to be recalled to custody. Other conditions, including supervision can be included in the licence on a case by case basis.

34. The curfew on release is important since it will help bring structure to lives that are likely to have been chaotic prior to prison. By allowing prisoners to remain at their home, Home Detention Curfew gives prisoners more time to rebuild and establish relationships with family and friends, thus easing their transition into the community. The flexibility of the curfew condition allows prisoners the opportunity to participate in employment or training, which can also function as a reintegrative element and can help prevent re-offending behaviour. This managed transition into the community facilitates better reintegration, and is an important element in helping to reduce reoffending.
Decision making

35. Home Detention Curfew is not a sentencing option for the courts. It is distinct from other uses of electronic monitoring, such as Restriction of Liberty Orders in Scotland, in being part of the management of those sentenced to imprisonment. The decision making therefore lies in the hands of Ministers, rather than the courts. Ministers will make the decision to release on Home Detention Curfew, though in practice this decision will be taken by the officials in Scottish Prison Service on their behalf. Eligible prisoners will be assessed by the Scottish Prison Service and local authority Criminal Justice Social Work.

36. Consideration will only be given to the release of long-term prisoners on Home Detention Curfew following a recommendation for release on parole licence by the Parole Board for Scotland at the half-way stage of such a prisoner’s sentence.

Proportion of sentence and length of Home Detention Curfew

37. Risk does not necessarily correlate to sentence length, and the intention is to offer Home Detention Curfew to both short-term prisoners and to certain long-term prisoners whom the Parole Board for Scotland have assessed as eligible for release on parole licence at the halfway stage of their sentence.

38. The length of Home Detention Curfew will vary according to the length of the sentence. The minimum length of time spent on Home Detention Curfew will be 14 days. For those serving between 3 and 4 months, Home Detention Curfew will last for up to half of the sentence less 4 weeks, i.e. 15 and 18 days for a 3 month sentence (depending on the number of days in the 3 month sentence) and 1 month for a 4 month sentence. For sentences of 4 months and over, the Home Detention Curfew will last for up to one quarter of the sentence, subject to a maximum of 135 days (approximately 4.5 months).

Exclusions

39. Provisions have been included in the Bill to allow for exclusions so that risk to the community from specific categories of prisoner is minimised and managed. Only those who have been assessed as low risk and serving three months or more will be eligible for release on Home Detention Curfew.

40. Several absolute exclusions are set out in the Bill so as to provide clear parameters around which prisoners are eligible to be considered for Home Detention Curfew. These include sex offenders subject to the notification requirements of the Sexual Offences Act 2003, and prisoners subject to extended sentences.

Standard conditions

41. For most prisoners on Home Detention Curfew, the only conditions in the licence will be the curfew condition and a set of standard conditions. These will include the requirement to be of good behaviour and not to commit an offence.

42. The curfew condition requires the person to remain at a particular place for specified periods for not less than 9 hours a day, and will be monitored using remote electronic monitoring
devices. The curfew condition may be tailored to support any other conditions, such as attendance at a rehabilitation project. The curfew condition may also require the released person to stay away from a particular place for specified periods (there are no time restrictions specified in relation to this requirement).

**Long-term prisoners**

43. For long term prisoners, the standard conditions will correspond to the usual conditions imposed as part of the parole licence. These conditions will terminate on expiry of the Home Detention Curfew licence, when the prisoner will become subject to the conditions of the parole licence. Failure to comply with any of the conditions renders the prisoner liable to recall to custody.

**Additional conditions**

44. There will be voluntary assistance for certain groups of offenders, considered on a case by case basis. This will be for those who are more likely to benefit from intervention, notably young offenders and those who continue to show a commitment to address their offending behaviour. The joint assessment by Criminal Justice Social Work and the Scottish Prison Service can be used as a means to identify any need for intervention.

45. As a result of the Reducing Reoffending consultation and the forthcoming work of the Sentencing Commission, there may be developments in post-release supervision and programmes, and the Bill is drafted to allow for the addition of other conditions when these become available.

**Recall and appeals**

46. The decision to recall a person to custody lies with Ministers. Any breach of curfew or conditions will result in a swift return to custody. Recall to custody will be for the remainder of the period without the possibility of further release on Home Detention Curfew (unless the reason for the recall was that the person could no longer be monitored electronically at the place specified in the licence). Whilst offending on Home Detention Curfew will not constitute an offence it will amount to a breach of the licence conditions. Section 16 of the Prisoners and Criminal Proceedings (Scotland) 1993 Act will also apply so that the offender can be returned to custody for the unexpired portion of the sentence.

47. Prisoners are to be able to appeal to the Scottish Ministers where they have not been granted Home Detention Curfew. Prisoners recalled to custody are to be able to appeal against their recall, and this procedure will be administered by the Parole Board for Scotland.

**Criminal Injuries Compensation Authority**

48. The policy objective relates to the desirability and appropriateness of a means of recovering sums paid by the Criminal Injuries Compensation Authority to victims of crimes, from the perpetrators of those crimes. This will in a small but not insignificant way add a deterrent to those who may otherwise commit crimes. It is right in the public interest that, where a perpetrator is financially able or becomes financially able to make payment in respect of the compensation paid, there should be a mechanism for this to be done.
49. In addition to the fact that there is a good justification for such a power existing in the name of the Criminal Injuries Compensation Authority (which it does not have in Scotland at present) such a power was given under the Domestic Violence, Crimes and Victims Act, passed in the UK Parliament, with Royal Assent on 16 November 2004, in relation to the rest of the GB. It would be unsatisfactory not to have an equivalent provision in relation to Scotland.

ALTERNATIVE APPROACHES

Integrated management of offenders

50. The policy defined within the Bill provides the means of establishing an integrated, coherent offender management system through introducing new functions and duties on key organisations involved in offender management. It represents a mid-way point between doing nothing and establishing a fully centralised offender management system.

51. As was made clear during the consultation on reoffending, the Executive does not consider that the status quo represents a viable option in terms of developing and improving the way it manages offenders to reduce reoffending. 70% of those convicted in 2002 had previously been convicted of an offence. This is indicative of the failure of current arrangements to adequately deal with the problems of reoffending. This point was accepted by all stakeholders.

52. A single agency approach was considered in some detail before the current policy was adopted. While it was recognised that a single agency could address many of the weaknesses apparent from the reducing reoffending consultation, this policy also suffered from a number of significant drawbacks. Firstly, it required major structural change which would risk disruption to services during the transition phase. Secondly, the policy would be complex and expensive, due to staff and other resource transfer from current criminal justice agencies to a single body. Thirdly, the central body would have to rebuild many of the local community networks currently in operation. Finally, the policy was unpopular with many in the criminal justice profession which could possibly impact on policy implementation.

53. Ministers concluded as a consequence of the consultation that the desired improvement could be met most speedily and effectively through stepping up the degree of joint working as is described in the provisions of the Bill.

Assessing and managing risks posed by certain offenders

54. Improved information sharing and assessment of serious and sexual offenders is the policy intention. Without a statutory function for the police, local authorities and Scottish Ministers (exercising their functions as the Scottish Prison Service) to establish joint arrangements for assessing and managing the risk from sexual and violent offenders, agencies would continue to work informally and practice would be patchy and there would continue to be barriers to sharing relevant information. The opportunity to work together to reduce re-offending amongst this group would be reduced.

55. Similarly, the strengthening of sex offender monitoring under recommendation 47 of Cosgrove represent a necessary closure of a loophole which is supported by criminal justice
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bodies. Under the current system, if the accused’s present whereabouts are unknown, it may be possible to obtain a warrant in some, limited, circumstances. For example, if the accused has disappeared after conviction and the police have reliable information as to where the offender may have gone, it is possible that the sheriff for the sherifffdom in which the offender is thought to be, could grant a warrant on the basis of the intelligence information. However, the precise jurisdiction will be unknown until the offender is caught and so the sheriff may be reluctant to grant a warrant on the basis that section 91(4) does not provide a clear and unequivocal basis for the commencement of the proceedings.

Home Detention Curfew

56. Alternative ways of delivering Home Detention Curfew are discussed below.

Decision making

57. As noted at paragraph 35, the decision on whether to release a prisoner on Home Detention Curfew will be taken by officials in the Scottish Prison Service on behalf of the Scottish Ministers. Alternatives would have included involvement of the Parole Board. The Parole Board is not generally involved in the release of short-term prisoners, dealing mainly with long-term and life prisoners. The volume of cases to be considered for Home Detention Curfew would be difficult for the Parole Board to manage and would detract from their core business. In relation to long-term prisoners, where the Parole Board already has role in recommending prisoners for release on licence, the Bill ensures that these recommendations, and recommendations as to conditions to be included in the licence, are taken into account in considering the prisoner for Home Detention Curfew. The Parole Board has been given a new role in connection with appeals against recall decisions, as discussed in paragraph 61 below.

Release without monitored curfew

58. To release prisoners without remote monitoring would not facilitate reintegration into the community. Research indicates that reintegration is especially problematic for prisoners on initial release. The structure imposed by the curfew will assist imposing some order to their lives.

Monitoring

59. International research details other methods of monitoring prisoners at home on curfew; for instance random visits, and routine telephone calls to curfewees’ homes. However, the international evidence suggests that such methods offer inconsistent and ineffective monitoring techniques and that the most effective means to monitor a person on curfew at a particular location, or to restrict them from a particular place, is via remote monitoring. The technology has developed and has proven to be consistently efficient at the international level. This is evident in the Scottish context with restriction of liberty orders, and extensive experience in England and Wales.

Licence conditions

60. The Executive considered what form the conditions would take, and decided that Home Detention Curfew should be available as a form of licence (distinct from a parole licence), which might include conditions other than the curfew.
61. Although providing supervision to all prisoners on Home Detention Curfew had been considered, it was concluded that services provided by Criminal Justice Social Work and voluntary agencies, would be more effective when targeted at particular groups, and considered on a case by case basis. The Bill provides flexibility to allow the set of standard conditions to be expanded in future, either for all licensees or for particular groups.

Appeals

62. The Executive explored the options for appeals against recall including the courts, the Executive, Visiting Committees and the Parole Board for Scotland. Given the Parole Board for Scotland’s existing role in determining prisoner release and recall, the Parole Board was considered the best candidate for this procedure.

Criminal Injuries Compensation Authority

63. The only alternative to inclusion of the power of recovery of compensation would be to continue without such a power. If this path was taken, an opportunity to discourage offending would have been missed. Also, a disparity in treatment of offenders in Scotland and the rest of the GB would be apparent. Offenders whose victims had been compensated would not be liable to repay any of this compensation in Scotland, unlike the rest of the GB. Clearly such a disparity is likely to work against the interests of the people of Scotland.

CONSULTATION

Integrated management of offenders

64. The Scottish Executive consulted on reducing reoffending in Scotland from March to May 2004. The process formed part of the Scottish Executive’s commitment to reforming criminal justice in Scotland and the consultation involved a number of separate strands:

- a written consultation, which involved the wide circulation of the consultation material;
- events with stakeholder groups;
- face to face meetings between the Scottish Executive and key stakeholders;
- focus group discussions;
- a survey and discussions with members of the public;
- an on-line discussion; and
- a parliamentary debate.

65. The analysis of responses to the consultation was published on 18 October 2004 and the Executive’s response to the consultation was contained within the Criminal Justice Plan published on 6 December 2004.

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4 Reduce re:habilitate re:form A Consultation on Reducing Re-offending in Scotland
http://www.scotland.gov.uk/consultations/justice/rrrc-00.asp.
Assessing and managing risks posed by certain offenders

66. The recommendations in the report of the Expert Panel on Sex Offending were subject to consultation in 2001. As a result Ministers accepted recommendations 47 and 49 contained in this Bill. In addition, recommendation 49 has been endorsed by the wide number of agencies represented on the Information Sharing Steering Group (Association of Chief Police Officers in Scotland, the Crown Office, the Sheriffs Association, the Scottish Court Service, the Scottish Prison Service, the Association of Directors of Social Work, local authority education and housing, voluntary sector and the National Health Service). The Association of Chief Police Officers in Scotland believe that recommendation 47 is appropriate and if implemented would address an inadequacy in the current regime in Scotland.

Home Detention Curfew

67. The Executive consulted on the use of home detention curfew in 2000 (Tagging Offenders: The Role of Remote Monitoring in the Scottish Criminal Justice System) with a wide range of bodies involved in offender convictions, management, supervision and rehabilitation. These included: local authorities; police, prisons and legal interests; the housing and voluntary sectors; and contractors and research, among others. The consultation asked general and more specific questions about tagging, relating for example, to issues of public safety, tagging as a sentencing option, its use in bail, as an early release mechanism, and the role of remote monitoring in preventing re-offending.

68. The responses indicated general support for the early release of prisoners supervised with remote monitoring. In addition, some responses clearly indicated that other forms of monitoring and supervision alongside the tag would be more beneficial than the tag in isolation. A summary and analysis of the main themes can be found on the Executive’s homepage.

69. Home Detention Curfew has been operating in England and Wales since 1999. To date, this has been largely successful, with a low ratio of curfewees re-offending (2%) and/or breaching (15%) their conditions.

70. The Executive consulted further in 2004, meeting with several bodies to discuss home detention curfew as the policy was being developed. They consulted with the Association of Directors of Social Work, the Scottish Prison Service and the voluntary agencies SACRO (Safeguarding Communities Reducing Offending), APEX Scotland and Families Outside. Consultees were particularly interested in the practical implementation of the scheme, and again, some comments were made about providing access to programmes alongside the tag, in particular with the aim of promoting better reintegration into the community and reducing re-offending.

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6 http://www.scotland.gov.uk/consultations/justice/toem-05.asp
7 http://www.scotland.gov.uk/consultations/justice/tagging-00.asp
Criminal Injuries Compensation Authority

71. The Home Office consulted as part of their Bill process in the spring of 2004, eliciting 30 responses of which three emanated from Scotland. All responses including the Scottish ones were supportive of the proposal. In light of that, there has been no separate Scottish consultation on the proposal as it stands at present.

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

Equal opportunities

72. Provisions within the Bill regarding management of offenders are considered to be non-discriminatory as described below.

- **Sex** – Provisions are applicable to both male and female offenders, without distinction.

- **Ethnicity** – Provisions will be applicable to offenders from all ethnic backgrounds, without distinction. The potentially most intrusive part of the Bill, that is, Home Detention Curfew has been designed to be flexible, and in calculating curfew times will take account of any religious observance requirements, such as fasting periods and times of worship. Instructions about the way Home Detention Curfew operates will be available in languages other than English, such as Punjabi and Hindi.

- **Disability** – Provisions do not discriminate between able bodied and disabled people. It is also possible to fit the Home Detention Curfew monitoring device to various parts of the body. Where it is not possible to attach the monitoring bracelet to a particular limb (usually the lower leg), it will be fitted to an alternative limb. Contractors also have to provide recorded explanations for blind or partially sighted people, make provision for those unable to read, and provide sign language interpreters for the deaf.

- **Age** – Provisions for Home Detention Curfew within the Bill are targeted on adult offenders and will not be applicable to those aged below 16. There are already early release mechanisms in place for these younger offenders, but the Bill allows for electronic monitoring to be included as a condition of the release licence whatever the age of the licensee.

73. Provisions related to compensation payments are also considered to be non-discriminatory. Decisions as to whether to take proceedings in individual cases will depend on the circumstances of those cases. That will include an assessment of the financial circumstances of the defender and the prospects of successfully obtaining an order for payment. The nature of that recovery process means that there are no implications on the proposal in relation to equal opportunities.

Human rights

74. Provisions relating to compensation payments and information sharing/monitoring of serious and sexual offenders have been examined in detail when similar provisions were
introduced in Westminster and were considered compatible with human rights legislation. On provisions relating to the management of offenders, there are no apparent conflicts with Human Rights legislation to resolve.

75. The Executive is satisfied that the Home Detention Curfew provisions in the Bill are consistent with human rights legislation. In particular, the Executive considered that Articles 3, 5, 6, 7 and 8 of the European Convention on Human Rights were likely to be the most relevant in relation to Home Detention Curfew.

- Article 3 – provides that ‘no one shall be subjected to . . . inhuman or degrading treatment’. The Executive considered whether wearing a tag as an alternative to imprisonment might be seen as degrading treatment and concluded, that since tagging arrangements require the device to be unobtrusive, Home Detention Curfew will not raise any issues in relation to Article 3.

- Article 5 – provides that ‘no one shall be deprived of liberty save . . . in accordance with a procedure prescribed by law’. However, the Bill will provide legislative backing to the Home Detention Curfew scheme, and there is likely to be sufficient linkage between the original sentence passed, the release decision and recall to be compliant with this Article.

- Article 6 – seeks to protect procedural fairness in the determination of criminal charges and civil rights and obligations. The Executive considers that the decision to release or recall cannot be characterised as ‘criminal’, nor determinative of that prisoner’s civil rights. In releasing a prisoner on Home Detention Curfew, Ministers are simply allowing part of the detention imposed by the sentencing court to be served in the community. The Executive has, in relation to Articles 5 and 6, allowed for the opportunity for review of a decision to recall by the Parole Board for Scotland.

- Article 7 – Home Detention Curfew in relation to prisoners already serving a sentence might be viewed as a different penalty from that at the time of commission of the offence. However, it is difficult to see that early release on Home Detention Curfew would be viewed as a heavier penalty, and the provision for prisoners to opt out of the system would mean that the penalty is not being imposed.

- Article 8 – the convention permits a public authority to interference with the right to respect for a persons private and family life, home and correspondence in accordance with the law and for the prevention of disorder or crime. With Home Detention Curfew, interference would be justified in accordance with the law and in the interests of public safety, managed in a proportionate way in order to secure effective operation of the curfew.

**Island communities**

76. Currently no island authority is part of a Criminal Justice Social Work Grouping. The Bill’s objective is to ensure a coherent approach and services throughout Scotland and thus the issue of consistency across all of Scotland must be considered. However, the Bill does not define the boundaries of the community justice authorities. This will be achieved by Order following consultation with local government and other stakeholders. These consultations will take specific account of the issues arising for island authorities.
77. Residents of island communities will be assessed by the same eligibility criteria as other prisoners for Home Detention Curfew. The current monitoring contractor, and any subsequent contractor, already provides for such instances. None of the Home Detention Curfew provisions therefore, have any specific effects on island communities.

78. Other provisions within the Bill are not considered to have significant implications for island communities.

Local government

79. The new framework for offender management has a significant impact on the operation of local authorities’ Criminal Justice Social Work Departments. Although service delivery will remain with individual local authorities, the new functions of planning, co-ordination and monitoring will be carried out by the new Community Justice Authorities. Statutory duties are placed on local authorities both directly in terms of co-operation and communication, and through their involvement in community justice authorities. The existing statutory duties on local authorities under the Social Work (Scotland) Act 1968 remain with local authorities.

80. Home Detention Curfew will impact on Criminal Justice Social Work in their requirement to undertake a joint assessment with the Scottish Prison Service. Whilst there is not a requirement for all prisoners on Home Detention Curfew to be supervised – other than by the tag – some short term prisoners may receive conditions or supervision as a condition of licence, determined on a case by case basis. Long term prisoners will be subject to supervisory conditions which will mirror those included on their subsequent parole licence.

81. Other provisions within the Bill will not have any significant consequence for local authorities.

Sustainable development

82. The social impact of the Bill pivots primarily on the contribution that it will make to offender reintegration into the community. The social benefits are that offenders will be managed in a more coherent and co-ordinated way. Moreover, any participation in work or training will yield social benefits and contribute to the sustainability of the local economy.

83. There is also a knock-on effect for the prisoners who remain incarcerated. Greater use of community sentences and Home Detention Curfew will reduce the prison population, which will provide better opportunities for those remaining to engage more constructively with their pre-release plans.

84. Any reduction in reoffending levels, as a result of better offender reintegration, and those in prison being able to serve their sentence more constructively, will result in both social and economic savings at the local and national levels.
This document relates 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

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