SUPPLEMENTARY MEMORANDUM ON DELEGATED POWERS
MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) BILL

Effect of amendments to sections 7(1), (2) and (5)

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: draft affirmative procedure of the Scottish Parliament with prior consultation of specified interested parties

1. Sections 7(1) and (2) of the introduction print of the Bill provided Scottish Ministers with the power by order to transfer functions under or by virtue of section 27(1) of the Social Work (Scotland) Act 1968 (“the 1968 Act”) from local authorities to a community justice authority (“CJA”). The Parliamentary procedure, set out in subsection (5) of that print, is draft affirmative.

2. Amendment at stage 2 to section 7(1) extended the range of functions that can be transferred so as to include functions under or by virtue of sections 27(1A) (persons subject to voluntary supervision), 27ZA (persons arrested or with deferred sentence, and particularly those with dependency problems) and 27B (persons in hostels during a period of supervision) of the 1968 Act, and also to include certain functions of the Prisons (Scotland) Act 1989 (c.45) (namely, those exercisable by Scottish Ministers which relate to the preparation of offenders for release).

3. The order making power in subsection (5) was also amended at stage 2. It now provides that the order cannot be laid unless Scottish Ministers have consulted the CJA (and, in the case of the 1968 Act functions, the local authorities with the CJA area too) as respects a draft order, and secured their agreement to the draft being laid. This amendment was made to respond directly to concerns that the local authorities raised.

New section 10A (Scheme of accreditation and procedure etc. of the Risk Management Authority)

Effect on section 11 of the Criminal Justice (Scotland) Act 2003 (accreditation, education and training)

4. Although not strictly a new power, the Committee may wish to be aware of the effect of the amendments made by new section 10A of the Bill on the existing powers contained in section 11 of the Criminal Justice (Scotland) Act 2003.

5. A fundamental part of the new Risk Management Authority/Order for Lifelong Restriction system established by Part 1 of the 2003 Act is that the risk assessments that the High Court will rely on when deciding whether to make an OLR should be prepared by a person accredited by the RMA and in a manner accredited by the RMA. The Justice Department have been drafting the Accreditation Scheme under section 11 of that Act that sets out the accreditation process. As part of this we need to allow for appeals against decisions by the RMA e.g. that a person should not be accredited, or that their accreditation should be withdrawn. The scheme that has been devised effectively splits the RMA Board
into an Accreditation Committee and an Appeals Committee, so that all decisions are dealt with in-house rather than requiring an external body such as the Court of Session to rule on questions of professional competence. This is, of course, without prejudice to a person’s right to seek a judicial review at the Court of Session of any decision concerning the accreditation process.

6. The problem we have encountered is that the 2003 Act only provides for decisions to be made by “the Authority”, and it is not clear whether powers can be conferred on or delegated to committees or to staff.

7. Section 10A(2) amends section 11 of the 2003 Act to provide that an order under section 11 may authorise decisions to be taken by a committee, and appeals against such decisions to be determined by (another) committee. It also provides that the procedure for decisions and appeals may be prescribed in the order, and that the order may make provision as to the membership of the committees and as to any quorum.

8. Section 10A(3) makes it clear that the Risk Management Authority has general power to establish committees and sub-committees, to regulate their procedure and to delegate its functions to committees, sub-committees, members and staff. This general power is circumscribed by any specific provision made in the order under section 11 of the 2003 Act in relation to decisions and appeals on accreditation.

9. By virtue of section 88 of the 2003 Act, orders under section 11 are to be made by statutory instrument and are subject to the draft affirmative procedure.

**New section 11(1B) (New section 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993)**

**Effect on section 20 (the Parole Board for Scotland) of the Prisoners and Criminal Proceedings (Scotland) Act 1993**

10. Section 11(1B) does not create any new order making powers. However, the Committee will wish to note the effect of the amendment made by section 11(1B) on the powers in section 20 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act).

11. Section 11(1B) inserts a new section 1AA into the 1993 Act to provide that sex offenders whose conviction makes them subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (the 2003 Act) and who have been sentenced to more than six months but less than 4 years will be released on licence at the halfway point of sentence and be subject to supervision in the community for the remainder of the sentence.

12. New section 1AA also applies the powers in section 17 of the 1993 Act for Scottish Ministers to revoke the licence of an offender in this category and return him to custody either at their own hand or on the recommendation of the Parole Board. Prisoners returned to custody will be entitled to make representations to the Board about the decision to revoke their licence and to be considered for an oral hearing before the Board considers their suitability for re-release. The Parole Board can direct Scottish Ministers to re-release the prisoner following appropriate considerations.
13. Section 20(4)&(5) of the 1993 Act provides that Scottish Ministers may by rules make provision with respect to the proceedings of the Parole Board and give directions as to the matters to be taken into account when discharging its functions under Part 1 of the 1993 Act (detention, transfer and release of offenders). These powers would allow Scottish Ministers to make new rules or give new directions as required in respect of the category of offender to whom new section 1AA applies. There are no plans at present to change the existing rules. To date, no directions have been made under the section 20(5) powers. None are intended in relation to this category of prisoner.