

[Custodial Sentences and Weapons \(Scotland\) Bill](#)

Bill Number: SP Bill 80
Introduced on: 2 October 2006
Introduced by: Cathy Jamieson (Executive Bill)
Passed: 15 March 2007
Royal Assent: 19 April 2007

[2007 asp 17](#)

Passage of the Bill

The [Custodial Sentences and Weapons \(Scotland\) Bill](#) [SP Bill 80] was introduced in the Parliament on 2 October 2006. The Justice 2 Committee, as lead committee, commenced taking Stage 1 oral evidence on the general principles of the Bill at its meeting on 24 October 2006. The Stage 1 debate took place on [11 January 2006](#). The [Bill \[as amended at Stage 2\]](#) was republished following completion of Stage 2 consideration on 27 February 2007. The Stage 3 debate is due to take place on 15 March 2007.

Purpose and objectives of the Bill

Parts 1 and 2 of the Bill deal with custodial sentences. They contain provisions aimed at delivering on Executive commitments to end the automatic and unconditional early release of offenders and to achieve greater clarity in sentencing. The Executive had asked the [Sentencing Commission for Scotland](#) to review a number of criminal justice issues, including arrangements for the early release of prisoners and their supervision once released. The Commission's work in this area was followed by publication of the Executive's proposals in ['Release and Post Custody Management of Offenders'](#) (2006).

Part 3 of the Bill deals with weapons. In 2004 the First Minister announced a five-point plan to help tackle the problem of knife crime. Legislative provisions relating to three elements of the plan are now set out in the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#). Options in relation to the remaining two elements of the plan were set out in the Scottish Executive consultation paper ['Tackling Knife Crime: a Consultation'](#) (2005). Provisions taking forward some of the consultation options were included in the Bill (as introduced), with the intention of putting in place safeguards which will help to prevent non-domestic knives and swords falling into the wrong hands.

Provisions of the Bill

Parts 1 and 2 of the Bill (custodial sentences) include provisions replacing the current system of automatic and sometimes unconditional early release for

determinate sentence prisoners with a new sentence management regime for sentences of 15 days or more. Under the new regime such sentences will comprise a custody part and a community part. A minimum period of custody, between 50% and 75% of the total sentence, will be set by the court at the time of sentencing. Where it is set at less than 75%, the Parole Board will, on the basis that the offender still poses a risk of serious harm to the public, be able to direct that the offender is kept in custody up to a maximum of 75% of the sentence. Offenders will be on licence during the community part of the sentence (a minimum of 25% of the total sentence). Breaches of licence conditions may result in recall to custody.

Part 3 of the Bill (weapons) contains provisions introducing a licensing scheme for the commercial sale of non-domestic knives and swords and placing further restrictions on the sale of swords (a ban on their sale subject to exemptions for legitimate purposes).

Parliamentary consideration

In relation to Parts 1 and 2 of the Bill (custodial sentences) the Justice 2 Committee's Stage 1 Report stated that:

“The policy objectives of the Bill; to provide a clearer, more understandable system for managing offenders while in custody and on licence in the community, to take account of public safety by targeting risk and to have victims’ interests at its heart were welcomed by all from whom the Committee heard.” (para 21)

However, the Stage 1 Report also highlighted a number of concerns in relation to whether the Bill (as introduced) would achieve these policy objectives. The Committee had fewer concerns in relation to Part 3 of the Bill (weapons) and supported both the introduction of the licensing scheme and further restrictions on the sale of swords.

The Stage 1 plenary debate focussed on the provisions in Part 1 and 2 of the Bill. It was similar to the deliberations of the Justice 2 Committee in that support for policy objectives in this area was tempered by concerns as to whether the provisions of the Bill would achieve the objectives.

Amendments to Parts 1 and 2 of the Bill (during Stage 2) included: (a) an amendment placing, on the face of the Bill, the standard conditions to be attached to an individual's licence on release from custody; (b) an amendment clarifying the court's power to increase beyond 50% the proportion of the sentence which is to be served in custody, making clear that a list of matters which the court should take into account in this situation is not exhaustive; and (c) an amendment ensuring that when the court sets the custody part of the sentence, it will say what that means in actual time. These amendments were in response to concerns raised by the Justice 2 Committee at Stage 1.

Amendments to Part 3 of the Bill included the adding of a new section making the possession of an offensive weapon or knife in prison a criminal offence

(subject to certain defences). The amendment was in response to a recommendation made by the Justice 2 Committee.