

CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Custodial Sentences and Weapons (Scotland) Bill introduced in the Scottish Parliament on 2 October 2006. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(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 80-EN.

POLICY OBJECTIVES OF THE BILL - GENERAL

2. The Custodial Sentences and Weapons (Scotland) Bill contains provisions on two broad policy areas: provisions on custodial sentences and provisions relating to knives and swords.

3. Parts 1 and 2 of the Bill contain provisions relating to custodial sentences. These provisions deliver the Scottish Executive's commitments to end automatic and unconditional early release of offenders (as provided presently by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended)) and to achieve greater clarity in sentencing. The policy is described in detail in the Executive's publication *Release and Post Custody Management of Offenders*¹, published on 20 June 2006. These parts of the Bill are considered in detail at paragraphs 6-58 of the Policy Memorandum.

4. Part 3 of the Bill contains provisions relating to non-domestic knives and swords. The objective of this part of the Bill is to put in place safeguards which will help to prevent these potentially dangerous weapons falling into the wrong hands. The Bill therefore provides for the introduction of new restrictions on the sale of non-domestic knives and swords. These provisions are part of the Executive's reform of knife crime law and are a vital component of a wider package of measures designed to tackle knife crime and violence more generally. This part of the Bill is considered in detail at paragraphs 59-117 of the Policy Memorandum.

5. The effects of the Bill on equal opportunities, human rights, island communities, local government, sustainable development etc are considered in detail at paragraphs 118-136 of the Policy Memorandum.

¹ <http://www.scotland.gov.uk/Publications/2006/06/20120843/0>

CUSTODIAL SENTENCES

Policy Objectives

6. The objectives of Parts 1 and 2 of the Bill are twofold. In practical terms, the provisions will end the current system of automatic and sometimes unconditional release and replace it with a new management regime for custodial sentences that will:

- Provide a clearer, more understandable system for managing offenders while in custody and on licence in the community.
- Take account of public safety by targeting risk.
- Have victims' interests at its heart.

Through this process we intend to enhance public protection, reduce re-offending and increase public confidence in the justice system in a way that will fulfil society's expectations for punishment and deterrence.

Background

7. Public protection is of paramount importance. Reducing re-offending rates can have an impact on future levels of crime. To achieve this requires work with individual offenders. Under the new provisions, sentences will be managed in a way tailored to the risk of harm posed by individual offenders and to the scope for rehabilitating all offenders. The new arrangements are not intended to affect the range of disposals available to the courts although the courts will, when imposing a sentence of 15 days or more, be required to state the minimum period to be spent in custody for the purposes of retribution (in other words, punishment for the crime) and deterrence.

8. A transparent sentencing regime will improve public confidence in the criminal justice system. Victims in particular need transparency and certainty to help them come to terms with a crime and its aftermath. The lack of clarity in the current arrangements can lead to confusion and cause further distress at a traumatic time.

9. The plans set out in the Executive's publication *The Release and Post Custody Management of Offenders* build on the recommendations of the judicially-led Sentencing Commission for Scotland, established in November 2003. One of the Commission's early tasks was to carry out a thorough review of the current early release arrangements. The Commission produced a consultation paper - *Early Release from Prison and Supervision of Prisoners on their Release*² in June 2005. The Commission reported their final findings in January 2006³.

10. The Commission's report contained 11 recommendations for a new regime, the basis of which would:

² <http://www.scottishsentencingcommission.gov.uk/publications.asp>

³ <http://www.scottishsentencingcommission.gov.uk/publications.asp>

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- make a substantial contribution to the promotion of public confidence in the criminal justice system;
- be expressed in clear statutory provisions that are easy to understand;
- enable the punishment of offenders in a manner proportionate to the gravity of their offending;
- so far as possible promote the rehabilitation and resettlement of offenders;
- promote the deterrence of offenders from further offending and contribute to the deterrence of would-be offenders from becoming involved in crime; and
- improve the protection of the public.

Summary of Key Proposals

11. The Bill will provide for the following:

- For sentences of 15 days or more, a combined sentence management structure comprising a period in custody (the custody part) which will be a minimum 50% of the sentence and a period on licence in the community (the community part). The courts will set the custody part when passing sentence.
- The courts will have the power to increase the custody part (up to a maximum of 75%) at the time of sentence for the purposes of retribution and deterrence (punishment).
- The courts will explain the consequences of the combined structure when imposing the sentence.
- An offender's risks and needs will be reviewed during the custody part. If there are indications that the offender still presents a risk of serious harm to the public at the end of the custody part (provided that this is not the maximum 75%), the case will be referred to the Parole Board for Scotland to consider whether or not the offender should continue to be detained in custody on grounds of risk. The Parole Board cannot order an offender to be detained beyond the period imposed by the court.
- The community part will be a minimum 25% of the sentence. The offender will be on licence throughout the duration of the community part. Conditions will be attached to the licence to allow for a variable and flexible package of measures and obligations that the offender must meet.
- Serious breaches of licence conditions which show that the offender is an unacceptable risk to public safety will result in the offender being recalled to custody.
- For sentences of less than 15 days the offender will spend the full period in custody and will be released unconditionally.
- The statutory provisions that support the Parole Board for Scotland will be amended to reflect its revised role and functions under the new arrangements.

12. These new measures do not stand alone. They are part of the Executive's wider programme of reform of the justice system. In criminal justice terms, they will build on the operational offender management structures introduced by the Management of Offenders etc. (Scotland) Act

2005. There will be joint working arrangements, akin to those in the 2005 Act that deal with sex and violent offenders, which will be adapted proportionately to take account of the offence and the sentence. This will ensure sentence management benefits from the greater integration of the activities of criminal justice agencies already underway.

13. The new measures are a radical departure from the current arrangements. An appropriate operational framework, which will build on the integration work already begun, will be put in place to ensure that the new measures have maximum impact in terms of reducing reoffending and enhancing public protection. Work on planning for the delivery of the new processes is already underway.

Key Information

14. The provisions in the Bill are for offenders who are given a determinate sentence. The arrangements for life prisoners will not change and are re-enacted in the Bill. Offenders subject to the 1993 Act requirements at the time of being sentenced will be dealt with under those provisions until their sentence expires.

Combined structure

15. There will be a system for managing the offender's sentence covering both the custody part and the community part of the sentence. This combined structure approach will apply to all sentences of 15 days or more and will allow for better tailoring around the risk of serious harm posed and the individual's needs. The implications of the sentence will be explained at the time it is imposed. The statutory minimum for the custody part will be 50% but this can be increased up to 75% by the court for "punishment" purposes. The custody part can also be increased at a later stage following review by the Parole Board for Scotland on grounds that the offender still poses a risk of serious harm to the public.

16. Once an offender has served the custody part he/she will move on licence to the community part of the sentence. Conditions will be attached to the licence to reflect the offender's risk and needs and to ensure better reintegration into the community to enhance public protection and reduce reoffending. Serious breaches of a community licence condition could see the offender returned to custody for the remainder of the sentence.

17. The Bill provides that Scottish Ministers may, by order, vary the minimum sentence length to which the combined structure applies.

Custody part

18. The minimum custody ("punishment") part that the court can order is 50% of the sentence; the maximum is 75%. The Bill sets out the factors that the court can take into account when increasing the custody part beyond 50% of the sentence. The custody part can be appealed both by the offender and the Crown (for unduly lenient sentences). Scottish Ministers may, by order, vary the proportion that the statutory minimum custody part bears to the total sentence.

19. During the custody part, the risk of serious harm to the public that an offender may pose will be assessed on a regular basis as part of the sentence management process. There will be

provision for joint working arrangements between Scottish Ministers (in practice the Scottish Prison Service) and the Local Authorities to enable the appropriate risk assessment and risk management processes to be set up. The level of the joint working and the assessment required will be proportionate to the nature of the crime and the length of the sentence. Risk will be assessed on the basis of up-to-date sentence management information compiled with input from the relevant bodies with responsibility for managing the offender and the sentence. This will include previous convictions, response in custody (including interventions aimed at reducing the risk of reoffending), and the offender's plans when placed in the community. As the offender is in custody at this point, provision is made for the Scottish Ministers to refer potentially high risk offenders to the Parole Board for Scotland to review the case for continued detention on grounds of risk of serious harm to the public.

Detaining the prisoner beyond the court imposed minimum custody part

20. Assessment of whether an offender's risk makes him/her suitable to move to the community part will be made against the test of the risk of serious harm to public safety. This assessment will take account of a variety of factors including the nature and likelihood of reoffending. Information about an offender's risk will be compiled, as appropriate, under the processes to be set up for joint working while the offender is in custody. Assessments and planning will be carried out by the Scottish Ministers with input from the local authority criminal justice social work services. If the assessment shows that there is a likelihood that the offender, if placed in the community at the end of the custody part, would cause serious harm to the public, the case will be referred to the Parole Board for it to consider the case for continued detention.

21. Where a case is referred to the Parole Board it may, in effect, either direct that the offender continues to be kept in custody or direct that the offender moves to the community part of the sentence. If the offender moves to the community part, Scottish Ministers must place the offender on licence. The Parole Board will direct Scottish Ministers to attach conditions to the offender's licence that it considers appropriate to the circumstances of the offence and the offender including supervision by a local authority criminal justice social worker until the end of the sentence.

22. If the Parole Board considers that the offender would be a risk of serious harm, it will not direct that he or she progresses to the community part. If there are still more than 4 months remaining before 75% of the custody period elapses, the Board will look at the case again. Four months is the minimum period of time in which it is considered that an offender can make a meaningful change to the status of his or her risk. The maximum period between reviews will be 2 years. Where the offender has less than 4 months remaining before 75% of the custody part elapses, the Parole Board will not look at the case again, but instead will specify conditions to be attached to the community licence. In these cases, the licences must include a requirement that the offender is supervised by a local authority criminal justice social worker until the end of the sentence.

Community part

23. All sentences of 15 days or more will have a community part of at least 25% of the sentence. This will ensure that the offender is subject to some form of restriction for the entire sentence and also help them reintegrate back into the community. It is hoped that providing such support

as is considered necessary for the individual offender's risk and needs will contribute to reducing reoffending.

24. The offender will be on licence for the entire community part. Conditions will be attached to the licence. If the offender moves to the community part at the end of the court imposed custody part, Scottish Ministers will set the licence conditions. If the offender's case is referred to the Parole Board, it will set the licence conditions. All offenders with a sentence of 6 months or more will have a supervision condition attached to their licence. This is to ensure that section 27(1)(ac) of the Social Work (Scotland) Act 1968 will apply to all these cases whether or not the case has been referred to the Parole Board thus giving practical effect to the proposed joint working arrangements. Supervision will be proportionate to the case of the offender and the risk posed. All offenders referred to the Parole Board for it to consider the case for continued detention will also be given a supervision condition when they move to the community part.

25. Licence conditions can be varied during the community part to take account of changes in an offender's circumstances. This will enable appropriate management of the offender throughout the community part. For large numbers of offenders (particularly those with shorter sentences) it may be enough to require the offender "to be of good behaviour", thus putting the onus on them to take control of his or her life and not re-offend. At the other end of the spectrum a full package of conditions will be available, such as attending drug or alcohol counselling, restrictions on visiting certain places/locations and undertaking intensive supervision where necessary.

26. The new Community Justice Authorities, created by the Management of Offenders etc. (Scotland) Act 2005, assume their full functions from April 2007. Ways of reshaping services around the needs and risks of particular groups of offenders within these new structural arrangements are already being taken forward. The new structure will allow a longer period to work with offenders but the focus will be on them taking responsibility for their future behaviour. There will be a supporting framework for the community part that will allow for a variable package of measures to manage the offender's individual needs and risk of serious harm posed.

Breaches of community licence

27. Under the 1993 Act, Scottish Ministers and the Parole Board can revoke an offender's licence and order a return to custody for breaches of condition(s) if satisfied that this is necessary for the protection of the public. The Bill will separate this function by giving Scottish Ministers alone this power. This measure, supported by the Sentencing Commission for Scotland, will result in a more transparent, effective and swifter recall system.

28. An offender will be told why they have been recalled. Scottish Ministers must refer the case to the Parole Board for it to consider the case for the offender's continued detention. Before directing an offender's return to the community on licence, the Board must be satisfied that it is no longer necessary for the purpose of public protection to continue to detain the offender.

29. If the Parole Board considers that it is not necessary to detain the recalled offender it will direct Scottish Ministers to return the offender to the community, on licence, immediately. Unless revoked again, the offender's licence will be in place until the end of the sentence. When

directing that an offender be returned to the community, the Parole Board will direct the conditions to be attached to the offender's licence.

Sentences of less than 15 days

30. The Bill provides that offenders sentenced to less than 15 days will spend the full period in custody. They will be released unconditionally at the end of the sentence.

Life Prisoners

31. The provisions for the imprisonment and release on life licence for offenders who are given a life sentence are presently set out in the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended). There is substantial jurisprudence to indicate that the current provisions and operational processes remain fit for purpose in terms of compliance with the European Convention on Human Rights. It is not proposed to amend the law as respects the treatment of life sentence prisoners. The provisions are re-enacted in this Bill. The measures in the Bill will apply to those given a life sentence for an offence for which the punishment is fixed by law (murder), to those on whom the court imposes a "discretionary" life sentence (for an offence other than murder), to those given an Order for Lifelong Restriction and to children sentenced to detention without limit of time.

32. On expiry of the court imposed punishment part, the life sentence prisoner will have the right to have his or her case for continued detention reviewed by the Parole Board. The Board will either direct the Scottish Ministers to release the prisoner on life licence or order his or her continued detention. Where the Board does not direct release, the case must be reviewed no later than 2 years after the date of the last review.

33. Life sentence prisoners who are released will remain on licence for their lifetime. The conditions may be varied to take account of changes in the offender's circumstances. All life prisoners will be supervised by a local authority criminal justice social worker.

Children convicted on indictment and sentenced to detention

34. Section 208 of the Criminal Procedure (Scotland) Act 1995 provides that where a court sentences a child to detention, Scottish Ministers will direct where the child is to be detained and prescribe the conditions of that detention. It is the Executive's policy that, wherever possible, children will not be detained in prison or a Young Offenders Institution. In practice children normally serve the period of detention, up to around him or her reaching 18 years of age, in secure accommodation. At present, the provisions covering the release of adult offenders in the 1993 Act apply to sentenced children except that they are released on licence regardless of the length of the sentence imposed by the court. The new arrangements will also apply to children sentenced to detention and there will always be a supervision condition attached to their licence.

Extended sentences

35. The courts will retain the power to order an additional period of supervision (extended sentence) provided currently by section 210A of the Criminal Procedure (Scotland) Act 1995. This disposal applies to sexual or serious violent offences and is aimed at enhancing public protection. It is used where the court considers that the period that would otherwise be spent on

licence (the community part under the new proposals) is not adequate for the purposes of protecting the public from serious harm.

Other powers to manage offenders

36. The arrangements introduced through the Management of Offenders etc. (Scotland) Act 2005 known as Home Detention Curfew are re-enacted in the Bill. These measures can provide a useful incentive in appropriate cases. However, exercise of this option would be subject to strict controls, prescribed in the Bill, e.g. high risk offenders and sex offenders will be automatically excluded.

Release on compassionate grounds

37. The Bill re-enacts the provisions that allow Scottish Ministers to release offenders on licence on compassionate grounds subject to prior consultation with the Parole Board if circumstances permit.

Offenders subject to deportation

38. Offenders who are to be deported will be subject to the same sentence management arrangements as other offenders.

The Parole Board for Scotland

39. The Parole Board for Scotland exists under the provisions of the Prisons (Scotland) Act 1989 and the Prisoners and Criminal Proceedings (Scotland) Act 1993. Currently the Board's main duties are to:

- Recommend that Scottish Ministers release, on licence, determinate sentence prisoners serving 4 years or more from the half-way point of sentence until the two thirds point (when they must be released automatically on licence) and impose conditions on the release licence.
- Direct that Scottish Ministers release, on life licence, at a point after the expiry of the court imposed punishment part, a life sentence prisoner if satisfied that it is no longer necessary for the protection of the public to detain the prisoner and impose licence conditions.
- Recommend Scottish Ministers to revoke the licence of any offender and recall him/her to custody.
- Direct the Scottish Ministers to re-release any offender who has been recalled to custody.
- Recommend the inclusion, subsequent insertion, variation or cancellation of licence conditions.

40. The Board will remain as a Tribunal Non-Departmental Public Body and will continue (for as long as is required) to discharge its functions under the 1993 Act. Provision will be made for it to take on the following functions:

- Consider the case of an offender who meets the statutory criteria to be detained beyond the court imposed custody part on grounds of risk of serious harm to the public.

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- Direct that Scottish Ministers move such offenders to the community if the Board considers that the risk test is not met and direct that Scottish Ministers include conditions on the community licence.
- As at present, direct that Scottish Ministers release, on life licence, at a point after the expiry of the court imposed punishment part, a life sentence prisoner if satisfied that it is no longer necessary for the protection of the public to detain the prisoner and impose licence conditions.
- As at present, consider the case for re-release of a recalled offender and, direct that Scottish Ministers return such offenders to the community on the appropriate terms if the Board considers that continued detention is not necessary for the protection of the public.
- As at present, direct that Scottish Ministers set, vary or remove licence conditions in cases referred to them.
- As at present, consider the case of an offender who makes an appeal against a recall to custody following a breach of Home Detention Curfew condition(s).

41. *Release and Post Custody Management of Offenders* contained a commitment to review the "constitution and title of the Parole Board ... to ensure that it is fit for purpose". It has been concluded, after consideration, that the title remains fit for purpose. However, the constitution will change to include a person who has knowledge and experience in the assessment of the risk of harm to the public posed by offenders and a person who has knowledge and experience of victims' interests.

Associated measures

42. The Bill applies the new arrangements to offenders detained under mental health provisions. The effect of these is that any time directed to be spent in hospital will count as part of the offender's original sentence. The Bill also deals with fine defaulters and those in contempt of court and arrangements for offenders serving more than one sentence.

43. The practice of consecutive or concurrent sentencing will end. Each sentence will be treated individually for sentence calculation purposes.

44. There will be no equivalent of section 16 of the 1993 Act, which provides that where a person commits an imprisonable offence before the expiry of a custodial sentence previously imposed, a court may order the person to serve the balance of the original sentence before beginning to serve any sentence for the new offence. This is because the prisoners concerned will serve the whole of the minimum custodial term (in other words the punitive part of the sentence) in prison and any return to prison thereafter will be because the person has seriously breached the conditions of his or her licence and in so doing presents an unacceptable risk. However, there would be nothing to prevent a court from taking into account the fact that an offence had been committed during service of the community part of a previous sentence when imposing any sentence for the offence.

45. The new measures mean that all offenders sentenced to 15 days or more will serve the community part of the sentence on licence. This removes the need for the equivalent of section

14 of the 1993 Act which sets out the general arrangements for the release of a short-term prisoner (except a sex offender whose offence was committed after 30 September 1998) who is subject to a supervised release order.

46. Offenders sentenced for non-payment of fine, contempt of court etc (known as non-offence terms) will serve the full term in custody. This is because the entire period is taken to be the “punishment”.

Consultation

47. The new measures derive from the recommendations in the Sentencing Commission’s report *Early Release from Prison and Supervision of Prisoners on their Release*. This report followed a detailed consultation by the Sentencing Commission based on the consultation paper of the same title published in June 2005. In total, 50 official responses were received. These came from criminal justice organisations (12), local authorities (11), the voluntary sector (11), other national organisations (1) and individuals (15). A full analysis of the responses is contained in the Sentencing Commission’s final report.

48. The overwhelming majority of respondents to the Consultation consider that the law should continue to provide that part of a sentence should be served in the community. They consider that the arguments in favour of such a regime are in essence to maintain good order in prisons, to encourage prisoners to address their offending behaviour by participation in prisoner programmes, and to provide a prisoner after release with compulsory supervision and support (in the case of long-term prisoners).

49. The majority do not consider that the size of the prison population should determine the existence and nature of the release regime although a number note the potential impact on the population that would arise from the abolition of automatic early release.

50. On the case for and against there being different schemes applying to short and long term prisoners, a number considered the current division at four years to be an artificial one. However, others suggested it would need to continue for pragmatic reasons, for example, the impracticality of operating discretionary release, involving the Parole Board, for the large number of short-term prisoners.

51. A number of respondents felt that automatic and/or unconditional early release should continue for offenders who pose little or no risk to the public, who were felt to be the majority of short-term prisoners. A third view was that the existing procedures for the early release of long-term prisoners should be retained (i.e. automatic release on licence at two-thirds of sentence) on the basis that it is more sensible to have high risk offenders re-integrated into the community on supervision rather than releasing them at the end of sentence with no supervision.

52. Several respondents indicated that while all early release should not be discretionary, neither should it be automatic in the form that it is at present. Rather, the system should be changed to one of two-part sentencing whereby offenders are sentenced to a period in custody followed by a period on supervision in the community.

53. Many of those who were of the view that all early release should be discretionary expressed strong views that automatic early release should be discontinued since it results in the true length of prison sentences bearing little resemblance to the sentence imposed by the court. It was suggested that this undermined the authority of the court, and had no value in terms of prisoner management since prisoners are released early irrespective of their behaviour in prison.

54. As regards the points at which prisoners should become eligible to be considered for early release, some thought the status quo (i.e. 50% and two thirds) as good as any whereas others thought that they should be later in the sentence and a few thought they should be sooner.

55. In light of the commitment to bring forward early legislative plans to reform the current system of automatic and sometimes unconditional release and achieve greater clarity in sentencing, and given the recent comprehensive consultation undertaken by the Sentencing Commission, it was concluded that no further consultation was required before introducing this legislation. The Executive's plans are detailed in *Release and Post Custody Management of Offenders*, published on 20 June 2006.

Alternative Approaches

56. The Executive has made it clear that the existing system for releasing offenders that determines the point of release by length of sentence, not risk of serious harm, is no longer fit for purpose. The current system is also difficult to understand and this can be particularly distressing for victims. Retaining the status quo, while legally competent, is therefore not a viable policy option.

57. Requiring offenders to serve the full period of the sentence in custody was considered. Apart from the significant resource implications, it was concluded that this option was not the most effective way to achieve the Executive's policy of reducing reoffending/breaking patterns of offending. Under such a structure offenders would have to be released unconditionally at the end of the sentence. There would be no incentive for offenders to address their offending behaviour while in custody, or for those who were prepared to do offence focussed work to have that continue in the community.

58. *Release and Post Custody Management of Offenders* noted that the role proposed for Scottish Ministers (in practice the Scottish Prison Service and the Scottish Executive Justice Department, acting under delegated authority) in referring cases to the Parole Board and recalling offenders for breach of community licence conditions would be reviewed to ensure that these proposals were the best way of dealing with such cases. The Executive has concluded that these arrangements are the most practical, effective and efficient way of delivering these aspects of the new policy. There remains scope for fine tuning of how the Scottish Ministers' functions are split between SPS and the Justice Department, but these do not affect the terms of the Bill and accompanying documents.

KNIFE CRIME: RESTRICTIONS ON THE SALE OF NON-DOMESTIC KNIVES AND SWORDS

Policy Objectives

59. The objective of Part 3 of the Bill is to put in place new restrictions on the sale of swords and non-domestic knives which will help to prevent these dangerous weapons falling into the wrong hands. These provisions are part of the Executive's reform of knife crime law and are a vital component of a wider package of measures designed to tackle knife crime and violence more generally.

Background

60. Every year in Scotland, far too many people are scarred, injured and killed by knives and swords. Murder statistics show that knives and other sharp items continue to be the most common method of killing in this country. The latest figures show that 72 of 137 homicides in 2004/05 involved the use of knives. These weapons consistently account for around half of all murders each year. In these statistics, 'knives' includes the use of other sharp or pointed weapons but more detailed information on weapon type is not collected so a breakdown of weapon types cannot be provided.

61. National statistics report on knife carrying offences but do not contain information on weapon use for other offences, which can involve the use of knives (for instance 'assault'). However, an analysis of data for Strathclyde indicates that there were 1,301 knife attacks in 2004/05. Of these, 1,100 were in a public place and involved the use of a non-domestic knife.

62. As national statistics do not collect information on weapon types, the available data does not identify sword use. However, swords are designed as deadly weapons, are likely to result in serious injury if used, and reports from the police and from hospitals make clear that swords are being used to commit crimes and to inflict injury. Indeed, advice from the police is that the use of swords is becoming more common, with 'samurai' swords in particular becoming a weapon of choice for growing numbers of young men with criminal intentions. This is a similar picture to that presented by a previous study at Glasgow A&E units reported in evidence presented to the Justice 2 Committee during their consideration of the Police, Public Order and Criminal Justice (Scotland) Bill⁴. This study indicated that 23% of A&E attendances involved assault with a knife, with approximately one murder for every thirty incidents involving a knife.

63. Other available information indicates that the incidence of knife crime is actually higher than that shown in reported crime statistics. A recent survey undertaken in the Accident & Emergency department of Glasgow Royal Infirmary indicates that only around half of all knife attacks are reported to the Police. Over the period February to August 2006 use of a knife or other sharp weapon was recorded in 19% of 758 A&E attendances, of which only 49% had been reported to police. This is a similar picture to that presented by a previous study at Glasgow A&E units, which indicated that 23% of A&E attendances involved assault with a knife, with approximately one murder for every 30 incidents involving a knife.

⁴ <http://www.scottish.parliament.uk/business/committees/justice2/02-05/j205-3202.htm#Col1829> (col. 1849)

64. While comparisons are not straightforward, figures for the rest of the UK indicate that knife crime is much more common in Scotland than elsewhere. Other evidence presented to the Justice 2 Committee⁵ showed that the murder rate involving knives is three and a half times higher in Strathclyde than anywhere else in the UK. International comparisons are more difficult still as data definition, collection and interpretation is subject to wide variation, but the comparative figures available indicate that the incidence of knife crime is much higher in Scotland than in other comparable countries.

65. Further information can be found in ‘Homicide in Scotland 2004/05’⁶ (which also provides details of UK and international comparisons) and ‘Criminal Proceedings in Scottish Courts 2004/05’⁷.

Legal Background

66. Scots law has always regarded an attack with an offensive weapon as a serious aggravation of the common law crime of assault. Successive legislation has also introduced tighter and more specific controls to tackle the carrying and sale of knives and target the prevention of crime. A wide range of powers is now in force and there is a range of penalties available to the court, including fines and imprisonment. These powers and penalties are set out in a number of pieces of legislation. The short summary here concentrates on offences relating to sale, with further offences relating to possession and carrying of weapons being contained in the Criminal Law (Consolidation) (Scotland) Act 1995.

67. The **Restriction of Offensive Weapons Act 1959** prohibits the manufacture, sale or hire, the exposure or possession for the purposes of sale or hire, or the lending or giving to another person, of a flick knife or gravity knife. The maximum penalty on summary conviction is imprisonment for a term not exceeding 6 months, or a fine not exceeding level 4 on the standard scale (currently £2,500), or both.

68. The **Criminal Justice Act 1988** (Section 141) makes it an offence to manufacture, sell or hire, expose or possess for the purposes of sale or hire, or lend or give to another person any specified offensive weapon. The importation of these weapons is also prohibited. Seventeen weapons have been specified as offensive weapons for the purposes of this Act; including sword sticks, push daggers, death stars and butterfly knives. The maximum penalty on summary conviction is six months imprisonment, or a fine not exceeding level 5 on the standard scale (currently £5,000), or both.

69. The **Criminal Justice Act 1988** (section 141A) as amended recently by the **Police, Public Order and Criminal Justice (Scotland) Act 2006** also prohibits the sale of swords and non-domestic knives (also any blade, razor blade, axe, any bladed or sharply pointed article or any item made or adapted for causing personal injury) to a person under 18 (16 for knives or blades designed for domestic use). The maximum penalty on summary conviction is imprisonment for a term not exceeding 6 months, or a fine not exceeding level 5 on the standard scale (currently £5,000), or both.

⁵ <http://www.scottish.parliament.uk/business/committees/justice2/or-05/j205-3202.htm#Col1829> (col. 1846)

⁶ <http://www.scotland.gov.uk/Publications/2005/12/13133031/30316>

⁷ <http://www.scotland.gov.uk/Publications/2006/04/25104019/0>

70. The **Knives Act 1997** makes it an offence to market a knife in a way which indicates that it is suitable for combat. The maximum penalty on summary conviction is imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (currently £5,000) or both. The maximum penalty on conviction on indictment is imprisonment for a term not exceeding 2 years, or a fine, or both. Section 35 of the Criminal Proceedings etc. (Reform) (Scotland) Bill (as introduced) would have the effect of raising the maximum term of imprisonment on summary conviction to 12 months.

A Partnership for a Better Scotland – Review of Knife Crime

71. Tackling knife crime is a priority for the Executive. As part of the commitment in the Partnership Agreement ('A Partnership for a Better Scotland')⁸ to supporting stronger, safer communities, the Executive undertook to 'review the law and enforcement on knife crime'. The objectives of the Review were to ensure that the law in Scotland is clear, to ensure it protects innocent victims and to provide a stimulus for a positive change in the culture of Scotland in relation to knives and violent crime through strengthening knife crime law.

72. The Review therefore set out to examine the current law on knife crime to identify any gaps in the legislation and any aspects which had become outdated or required strengthening. As will be clear from even the brief summary above, existing law on knife crime is generally clear, strong and comprehensive. However, the Review identified improvements which could be made to powers of arrest and sentencing for knife crime offences and highlighted a significant gap in the comparative lack of controls on the sale of knives and swords.

First Minister's Five Point Plan on Knife Crime

73. The outcome of the Review was announced in November 2004, when the First Minister set out a Five Point Plan on knife crime. In doing so, he made clear that his strong view, and that of the Executive, was that far too many young men in Scotland viewed the carrying of knives or offensive weapons as an acceptable practice when it is not.

74. The Five Point Plan set out to reinforce the message that the carrying and use of knives is not, cannot, and will never be, acceptable. The Plan involved:

- Doubling the maximum sentence for possessing a knife from two years to four years;
- Strengthening police powers of arrest for the carrying of knives or offensive weapons and ensuring that the police make more use of stop and search powers;
- Increasing the minimum purchasing age for non-domestic knives from 16 to 18;
- Introducing a licensing scheme for the sale of non-domestic knives and similar objects; and
- Banning the sale of swords.

⁸ <http://www.scotland.gov.uk/Publications/2003/05/17150/21952>

75. The first three points of the Plan were implemented in the Police, Public Order and Criminal Justice (Scotland) Act 2006⁹ and came into effect on 1 September 2006.

76. The 2006 Act:

- increased the maximum sentence for carrying a knife in public or in a school from two years to four years (bringing it into line with the penalty for carrying offensive weapons);
- removed limitations on police powers of arrest for such offences (previously the power of arrest was limited to circumstances in which the police were not satisfied as to the person's identity or place of residence, or where arrest was considered necessary to prevent the commission of a further offence involving a knife or offensive weapon); and
- increased the minimum age of persons to whom non-domestic knives may be sold from 16 to 18 (bringing the age limit into line with those for alcohol and fireworks).

77. This part of the Bill takes forward the final two points of the Plan concerning the introduction of restrictions on the sale of non-domestic knives and swords. These provisions have been developed following consideration of the responses to the Executive's proposals set out in *Tackling Knife Crime - a Consultation*, further details of which are provided in the section below on 'Consultation'.

Other Action on Knife Crime

78. It should be clear that the Bill's provisions on knife crime are as a result of the Executive's Review of the law on knife crime. However, it would be wrong to view the reform of the law on knife crime in isolation.

79. In considering the Bill's provisions on knives and swords it is essential to see them in the context of the Executive's wider programme of actions to tackle knife crime and violence more generally. It must be emphasised that the Bill does not represent the only action which the Executive is taking on knife crime but instead is just one component, albeit a vital one, of that wider package of measures.

80. The package includes shorter-term measures (such as the recent knife amnesty, which resulted in over 12,500 weapons being surrendered)¹⁰ and longer-term measures (such as the educational initiative launched by the Minister for Justice on 24 August¹¹, recognising that such a deep-seated problem cannot be solved overnight and demands a mixture of approaches.

81. An essential element of the package is the Lord Advocate's new guidelines on the prosecution of knife crime, which came into effect at the end of the knife amnesty. These guidelines will ensure that knife crime is dealt with both quickly and effectively, with the

⁹ <http://www.opsi.gov.uk/legislation/scotland/acts2006/60010--g.htm>

¹⁰ <http://www.scotland.gov.uk/News/Releases/2006/02/08090745>

¹¹ <http://www.actiononviolence.com/aov/files/Educational%20Phase%20Launched.pdf>

prospect of more severe punishment for re-offenders. Under the guidelines, those caught carrying or using a knife will normally be kept in police custody until they appear in court. Where they have previous convictions for a similar offence the Crown will oppose bail and will normally prosecute the case before a judge and jury and, therefore, before a court with higher sentencing powers.

82. Enforcement action on knife crime also forms a central part of the package of measures. This is a key part of the work of the Violence Reduction Unit (VRU), which has been established by the Police, with the assistance of the Executive, to oversee a year-long Safer Scotland initiative to address knife crime and violence more generally. These enforcement initiatives include: the use of new hand-held metal detectors funded by the Executive; a crackdown on knife carrying following the end of the amnesty which removed a further 1,000 weapons from the streets in 5 weeks; utilising stop and search powers to target knife crime hot-spots; and the deployment of airport style metal detectors at railway stations. Further information on the VRU and its work can be found on the 'Action on Violence' website¹².

Consultation

83. In June 2005 the Scottish Executive published *Tackling Knife Crime: A Consultation*¹³, which sought views on options for restricting the availability of swords and knives.

84. *Tackling Knife Crime* set out a range of options for banning the general sale of swords and introducing a licensing scheme for the sale of non-domestic knives. It asked 15 specific questions under the headings of: banning the sale of swords; banning the sale of samurai swords; licensing individual purchasers of swords; licensing the sale of swords; licensing the sale of non-domestic knives and banning the purchase of non-domestic knives from unlicensed sellers.

85. A total of 181 responses were finally received and the 178 responses received before the end of 2005 were included in the Analysis of Responses published in March 2006¹⁴. Responses were published at the same time¹⁵.

86. 110 responses were from individuals and 68 from groups (including local authorities, community safety partnerships, legal representatives, and the police). A large number of respondents were individuals and groups with a special interest in owning and using bladed implements, representing a wide range of sporting, cultural, religious and trade interests (including antique collecting, fencing, highland dancing, historical re-enactment, martial arts and import, export and manufacture).

87. Four petitions were also received with 4,303 signatures in total. Three were MSP-sponsored petitions to 'Back Action on Knife Crime' and supported the First Minister's Five Point Plan. The other was submitted to the Public Petitions Committee of the Scottish Parliament by the 'Save Our Swords' campaign and opposed "the introduction of any ban on the sale or possession

¹²http://www.actiononviolence.com/aov/aov_display_home.jsp?p_applic=CCC&p_service=Content.show&pContentID=21&

¹³<http://www.scotland.gov.uk/Publications/2005/06/27110147/01518>

¹⁴<http://www.scotland.gov.uk/Publications/2005/11/30165358/53589>

¹⁵<http://www.scotland.gov.uk/Publications/2005/11/30165358/53589#a20>

of swords in Scotland which are used for legitimate historical, cultural, artistic, sporting, economic and religious purposes”. The MSP-sponsored petitions had a total of 2,284 signatures while the ‘Save Our Swords’ petition had 2,019 signatures.

88. Of those respondents who gave specific answers to the consultation questions, a narrow majority were in favour of a licensing scheme to control the sale of non-domestic knives. The suggested licence conditions and consequent costs for businesses were generally thought to be reasonable.

89. Respondents were strongly opposed to a general ban on the sale of swords and a specific ban on the sale of ‘samurai’ swords. However, there was support for the alternative option of controlling the availability of swords through a licensing scheme. A large majority of responses were in favour of a wide range of people and purposes being exempted from any ban on swords.

90. A narrow majority of respondents were against individual licences for the purchasers of swords and there was a clear preference for the alternative option of licensing sword sellers. The clear consensus was that the onus of a licensing scheme should be placed on retailers rather than individual purchasers. There was also a consensus that unlicensed retailers should be prevented from selling non-domestic knives or swords.

Consideration of Alternative Approaches

91. *Tackling Knife Crime – A Consultation* considered a range of options for restricting the availability of swords and non-domestic knives. As well as the options represented by the provisions in this Bill, the paper considered the options of: a complete ban on the sale of swords (with no exceptions); a ban on specified types of swords, such as ‘samurai’ swords – with and without exceptions; a licensing scheme for those wishing to purchase swords (along similar lines to the firearms licensing scheme), banning the purchase of swords by anyone who was not a member of an approved organisation (effectively a licensing scheme for groups whose members wished to purchase swords); and making it a criminal offence to purchase a non-domestic knife or sword from an unlicensed seller.

92. Further details of these options are set out in *Tackling Knife Crime* and in the Analysis of Responses to the consultation.

93. The Executive gave careful consideration to all the options and the responses to our consultation, including those who argued that there was no need to legislate on this matter. However, we cannot and will not ignore the fact that these weapons, in the wrong hands, can be lethal. The Executive therefore remains convinced that legislation is required to introduce new controls on the sale of non-domestic knives and swords.

94. Part 3 of the Bill therefore sets out to address that need and fill the gap in current legislation by ensuring that the Scottish Ministers will have appropriate powers to ban the sale of swords and requiring businesses who wish to sell swords or non-domestic knives to be licensed. The ban on the sale of swords will be implemented by using the powers in existing legislation, modified by the Bill, to make it an offence for anyone to sell swords (subject to certain defences, which will allow swords to be sold for specified approved purposes). The mandatory licensing

scheme for the commercial sale of swords and non-domestic knives is to be reinforced by making it a criminal offence for businesses to sell such articles without a licence. The terms of the licensing scheme are intended to further reinforce the limited defences to a ban on the sale of swords by requiring licensed swords sellers to make appropriate checks on the *bona fides* of potential purchasers.

Banning the Sale of Swords

95. The Bill provides for the introduction of a ban on the sale of swords by enhancing Ministers' existing powers to enable them to make an order prohibiting the sale of swords subject to specified defences. It is intended that these defences will relate to legitimate religious, cultural and sporting purposes.

96. The ban on sale of swords builds on the model of the existing statutory ban on offensive weapons in section 141 of the Criminal Justice Act 1998. Section 141 provides that any person who manufactures, sells or hires, or offers for sale or hire, exposes or has in his or her possession for the purpose of sale or hire, or lends or gives to any other person a designated offensive weapon shall be guilty of an offence. The import of any such weapon is prohibited by section 141(4) of the 1988 Act. The power provided by this section has been used in the past to ban a wide range of offensive weapons, including swordsticks and push daggers, as specified in the Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005.¹⁶

97. This power could have been used to introduce a blanket ban on swords. However we recognise that, unlike the items prohibited by section 141 at present, there are legitimate uses for swords that should continue to be permitted. The approach adopted is therefore to build on the provisions of section 141, but allow them to be adapted in their application to swords to allow for legitimate uses.

98. The Bill's provisions reflect this approach. It is intended that the order made under the Bill's provisions will provide that it shall be an offence to sell, hire, lend or give a sword – to avoid creating loopholes and enhance enforceability. Unlike other orders made under section 141, it is envisaged that the order relating to swords will not make it an offence to expose or offer for sale a sword. This avoids making sellers guilty of an offence before they have had an opportunity to check the purchaser's intended use and confirm that it is for a permitted purpose.

99. There are defences under section 141 in respect of weapons which are made available to a museum or gallery or used for cultural, artistic or educational purposes if lent or hired from a museum or gallery, and in respect of weapons used for the purposes of the Crown or of a visiting force. These defences will also apply to the prohibition on the sale of swords.

100. In addition, the Bill allows defences for other purposes to be specified by Order and Ministers will use this power to provide exceptions to the ban on sale for specified purposes including: religion, culture (highland dancing, theatre, film, television, antique collecting, re-enactment and living history) and sport (fencing and those martial arts organised on a recognised sporting basis).

¹⁶ <http://www.opsi.gov.uk/legislation/scotland/ssi2005/20050483.htm>

101. An exception to section 141 is currently made for antique weapons, which are defined as weapons over 100 years old at the time of the alleged offence. It is intended to use the powers provided by the Bill to except a wider range of antique swords. This reflects the approach adopted in firearms legislation (specifically section 58(2) of the Firearms Act 1968) and will cover antique swords “sold, transferred, purchased, acquired or possessed as a curiosity or ornament”. This will mean that additional historic swords (for example from the Second World War), would also be included within the exception for antiques.

102. These additions to the existing defences under section 141, and the other modifications of those powers in respect of swords, will address the issue of the legitimate uses of swords such as:

- Antique Collecting – the preservation of the past by many individual collectors in this country is often to the benefit of our museums and national heritage bodies.
- Fencing – fencing swords are used in organised events across the UK and internationally;
- Film, television and theatre – swords are frequently used as props in period dramas;
- Manufacture – sword-smiths in Scotland manufacture swords, in some cases to extremely high specifications, involving traditional techniques and attracting international interest and renown;
- Martial arts – swords are used in many martial arts organised on a national and international basis;
- Re-enactment – re-enactment societies do much to bring significant aspects of Scotland’s history to life, using quality reproduction weapons;
- Religion – the sword is of particular religious significance to Sikhs; and
- Scottish Highland dancing – the traditional Scottish sword dance, when authentically performed, inevitably involves swords.

103. For swords, there will also be a defence for activities carried out with the authority of the Scottish Ministers. Such authority would require to be applied for in writing and, if granted, would be subject to appropriate conditions. This will permit individual applications to be made to Ministers where exceptional cases arise outwith the permitted purposes otherwise provided for.

Licensing the Sale of Swords and Non-Domestic Knives

104. The Bill provides for the introduction of a new mandatory licensing scheme for the commercial sale of swords and non-domestic knives. The scheme will apply to those persons who carry on the business of a dealer in swords, non-domestic knives and similar items. The licence will be known as a knife dealer’s licence.

105. The Civic Government (Scotland) Act 1982 provides a framework for this legislation. The Bill’s provisions build on the current provisions of this Act, applying those provisions and also modifying and extending them where necessary to adapt them to the licensing of the sale of

swords and non-domestic knives. Local authorities will act as licensing authorities in same way as with other licensing schemes under the 1982 Act.

106. It will be a criminal offence for a business to sell swords or non-domestic knives to the public without a licence. The maximum penalty for such an offence on indictment will be two years imprisonment and/or a fine (with a maximum of 12 months imprisonment and/or a fine not exceeding the statutory maximum under summary procedure).

107. The licensing scheme will apply to swords and non-domestic knives and knife blades (i.e. knives and knife blades other than those designed for domestic use). This means that dealers selling only domestic knives, such as cutlery and DIY products, will not require a licence. This draws the same distinction between domestic and non-domestic knives as section 75 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 which amends Section 141A of the Criminal Justice Act 1988 to increase the minimum age of sale for non-domestic knives from 16 to 18.

108. The Bill also gives powers to Ministers to provide that a licence will not be required in order to sell designated articles. It is intended that this power will be used to provide that a licence will not be required to sell folding pocketknives, *sgian dubhs* or *kirpans* where the blade is less than 7.62 centimetres (3 inches). This would reflect the current law on carrying knives in public (section 49 of the Criminal Law (Consolidation) (Scotland) Act 1995), which provides a specific exception for penknives of this size and provides defences in law for knives (such as *kirpans* and *sgian dubhs*) carried for religious reasons or as part of a national costume. Dealers who wish to sell larger versions of these knives will however require a licence.

109. In addition to swords and non-domestic knives (and non-domestic knife blades), a licence will be required to sell any other articles which have a blade or are sharply pointed and which are made or adapted for use for causing injury to the person (for instance, arrows or crossbow bolts).

110. A licence will also be required for businesses hiring, lending, giving, offering or exposing for sale swords, non-domestic knives and similar items to avoid creating an enforcement loophole. While any business selling swords or non-domestic knives to the public will require a licence, businesses who sell exclusively to other businesses or professions will not require to be licensed. Any businesses selling swords or non-domestic knives by auction will require a licence, but auction houses selling such items on behalf of others will not require to be licensed (unless they wish to sell such items on their own behalf). The requirement for a licence will not apply to those who are only engaged in private transactions that do not take place in the course of business.

111. The requirement for a licence will apply to persons with retail outlets or other places in a local authority's area where transactions take place in the course of business; for example, those who trade from market stalls or from vehicles. A licence will be required even where the dealing in such knives is incidental to the dealer's primary business. The Bill provides that anyone also licensed as a 'second-hand dealer' under the 1982 Act shall have their licence conditions adjusted appropriately, if required, to ensure that they do not conflict with the terms of their knife dealer's licence.

112. The legislation will also apply to Scottish businesses who sell over the internet or by mail order. Those with retail premises will apply to their local authority in the normal way. Internet-only dealers, who distribute goods from premises in Scotland and wish to continue to sell swords or non-domestic knives, will need to apply to the local authority where their distribution premises are located for a licence.

113. The Bill provides powers which the Scottish Ministers intend to use to set strict licence conditions and specify types of licence conditions which must be attached to all knife dealer's licences. Local authorities will be able to determine the details of any conditions not specified by Ministers and will be able to impose additional licence conditions suitable for their locality or appropriate to individual businesses. The Bill provides for different conditions to apply to different types of item.

114. The Scottish Ministers will use the power to set minimum conditions for both sword and non-domestic knife dealers. These conditions will include:

- requiring retailers to record a description of the type of sword or non-domestic knife sold;
- requiring retailers to keep records of those to whom they sell swords or non-domestic knives;
- restricting the display of swords or non-domestic knives on the licensed premises to ensure that they are not visible from the street or any entrance to a dealer's premises;
- enabling local authorities to specify such further conditions relating to storage as are appropriate to the locality or individual premises, e.g. storage in locked cases or preventing visible display within the shop itself;
- enabling local authorities to specify the means by which identity should be established, e.g. by photographic means or utility bills.
- enabling local authorities to require other security measures appropriate to the premises, e.g. overnight storage of swords and non-domestic knives, or use of CCTV; and
- enabling local authorities to specify the packaging requirements for swords and non-domestic knives sold by mail or otherwise.

115. In respect of swords, the Scottish Ministers will use the power conferred by the Bill to require that dealers record full details of the intended use of any sword, take reasonable steps to confirm that it is for an authorised purpose, and record what steps they took to do so.

116. The Bill provides that it will be an offence for the licence holder to break any of the conditions of their licence. It will also be an offence for a person knowingly to provide false information to a seller in connection with the purchase of a sword or knife, where the seller is required to collect that information by a condition of their licence. The maximum penalty for these offences on summary conviction will be a fine not exceeding level 5 and level 3 on the standard scale, respectively (currently £5,000 and £1,000).

117. The Bill will confer powers on local authority trading standard officers and the police to enter premises where unlicensed dealing in knives is suspected of taking place, or where a dealer

is suspected of breaching conditions of their licence. In the case of unlicensed premises, the powers allow documents and records to be inspected and copied. The Bill will also allow articles to be seized, with the prospect that the dealer would forfeit all swords or knives seized or in stock should he or she be convicted of the offence. Similar forfeiture powers are contained in the Knives Act 1997 in relation to the sale of combat knives and material likely to stimulate or encourage violent behaviour involving knives. Part II of the Proceeds of Crime (Scotland) Act 1995 already contains provisions on forfeiture, but these apply only to property which has been used for the purpose of committing, or facilitating the commission of, an offence, or was intended to be used for that purpose.

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

Equal Opportunities

What is the policy for? Who is the policy for? What are the desired and anticipated outcomes?

118. Our provisions on custodial sentences will end automatic, unconditional release of offenders and achieve greater clarity in sentencing. The relevant measures in the Bill are intended to enhance public protection and reduce reoffending. These measures are part of the developing package of reforms to the criminal justice system that is intended to benefit all the people of Scotland. The desired and anticipated outcome is a reduction in reoffending which in turn will lead to safer communities.

119. Tackling knife crime is a priority for the Executive. As part of the commitment in the Partnership Agreement (*A Partnership for a Better Scotland*) to support stronger, safer communities, the Executive undertook to 'review the law and enforcement on knife crime'. The objectives of the Review were to ensure that the law in Scotland is clear, to ensure it protects innocent victims, and to provide a stimulus for a positive change in the culture of Scotland in relation to knives and violent crime through strengthening knife crime law.

Do we have full information and analyses about the impact of the policy upon all equalities groups? If not, why not?

120. The effects of the Bill have been carefully considered in relation to their potential impacts on different equality groups. The policies that will be implemented through the Bill will apply across all of Scotland and there is no intention that the Bill's provisions will have a differential or discriminatory impact on equality groups. It is the Executive's view that the Bill does not impact in any differential or discriminatory sense upon groups which are defined by personal attributes or characteristics such as gender, marital status, age, race, disability, religion, sexual orientation, language, social origin or political belief. Membership of the Parole Board will be subject to the public appointments process, as prescribed by the Office of the Commissioner for Public Appointments in Scotland.

Has the full range of options and their differential impacts on all equality groups been presented?

121. The policy on the release and post custody management of offenders has been the subject of full and comprehensive consultation with a wide range of stakeholders. A wide range of equality groups, as well as groups representative of equality issues (such as the Commission for

Racial Equality, Equal Opportunities Commission, Disability Rights Commission Scotland and Age Concern Scotland), were included in the consultation process. A basic objective of the Executive's policy is enabling everyone, but especially victims and offenders, to understand the effects of sentences.

122. The introduction of a licensing scheme for the sale of non-domestic knives and the banning of the general sale of swords has been subject to full and comprehensive public consultation. A wide range of organisations, trade and sporting, cultural and religious bodies were consulted. As the *kirpan* (a ceremonial sword or dagger) is of particular significance to Sikhs, the consultation paper *Tackling Knife Crime* was specifically drawn to the attention of Sikh religious groups.

123. The Executive have had previous discussions about the *kirpan* with Sikh representatives of the Interfaith Council. At that time, Sikh representatives were concerned that Sikhs could be charged for carrying a *kirpan* in public. An explanation of the legal position was provided i.e. while it is an offence to carry a sword or dagger in public, it is a defence in statute that an article is carried for religious reasons, although it is up to the individual to satisfy the police, and ultimately the courts, that the article is being carried for religious reasons.¹⁷

124. Consideration has been given to whether Sikhs could be indirectly discriminated against by a ban to be introduced on the sale of swords. The Executive wish to avoid this and, as made clear above, it is intended that swords sold for religious purposes (which will include the Sikh *kirpan*) will be an exception to the ban on the sale of swords. In addition, it is intended that shops selling only smaller *kirpans* will be exempt from the licensing scheme.

What are the outcomes and consequences of the proposals? Have the indirect, as well as the direct, effects of the proposals been taken into account?

125. The outcomes and consequences are as set out in the answer to the first of these six questions on equal opportunities. Both the indirect and direct effects have been fully taken into account. In its widest context, the policy is intended to build on the reforms to the criminal justice system that are already underway or in place aimed at delivering a safer Scotland for all, by enhancing public protection, reducing reoffending and tackling knife crime.

How have the policy-makers demonstrated that they have mainstreamed equality?

126. As discussed elsewhere in this policy memorandum, the policy provisions in the Bill have been the subject of extensive consultation. Throughout the policy development process the Executive has been vigilant for the possibility of discriminatory or significantly differential impacts. There is a representative of the ethnic community on the Sentencing Commission and Victim Support Scotland is also represented.

127. The Sentencing Commission for Scotland received no representations in response to *Early Release from Prison and Supervision of Prisoners* to suggest that the provisions of the Bill will impact negatively upon equality interests. The Equal Opportunities Commission pointed out that the Equality Act will require any new arrangements to 'consider how men and women in the

¹⁷ See sections 49 and 49A of the Criminal Law (Consolidation) (Scotland) Act 1995.

criminal justice system have different needs and develop different approaches with the equality duty in mind’.

128. As specific provision will be made to avoid potential indirect discrimination on religious grounds (as explained above), it is not anticipated that Part 3 of the Bill will have a differential effect on women or men, on different social groups, on disabled or non-disabled persons or on different ethnic groups. This apart, the Executive has received no representations in response to *Release and Post Custody Management of Offenders* or *Tackling Knife Crime* to suggest that the provisions of the Bill will impact negatively upon equality interests.

How will the policy be monitored and evaluated? How will improved awareness of equality implications be demonstrated?

129. The Scottish Executive is committed to monitoring the outcome of the proposals to end automatic, unconditional early release and to provide clarity in sentencing. A range of approaches will be used, such as prison statistics and community justice statistics. Evaluation will form part of the plans for implementation that are being taken forward in tandem with the legislation.

Human Rights

130. It is considered that the provisions on the release and post custody management of offenders are compatible with Convention rights, as defined in the Human Rights Act 1998. Consideration has been given to whether the new release arrangements should apply to those who committed the relevant offence before the date on which the Bill’s provisions will be commenced. This raises an issue about the application of Article 7(1) of the European Convention on Human Rights (ECHR). A decision has been taken that the new arrangements (other than those for life sentence prisoners) will only apply to those convicted of offences committed after the commencement of the provisions. The provisions for life sentence prisoners are, in essence, a restatement of the current law and so the same issue does not arise.

131. The restrictions on the sale of swords and non-domestic knives provided for in this Bill are considered to be compatible with the European Convention on Human Rights. The Bill provides the power to make exceptions to the ban on the sale of swords and these exceptions will be framed so as to enable those undertaking legitimate activities (for example religious activities) involving swords to continue to have access to such swords.

Impact on island communities

132. The provisions of the Bill apply equally to all communities in Scotland. The measures provided for have no differential effect on island communities. No consultation responses raised specific issues regarding island communities.

Impact on local government: Custodial Sentences

133. The current statutory supervision responsibilities of local authorities for offenders in the community extend principally to those sentenced to custodial sentences of 4 years and over and those sex offenders serving sentences of more than 6 months. The measures provide for all

prisoners serving sentences of 15 days or longer being subject to licence conditions on release. The intensity and extent of supervision by local authority criminal justice social work services of those on licence will be determined in large part by the joint assessment to be carried out by SPS and authorities of the degree of risk of serious harm likely to be presented by the offender on release from custody. The measures will lead to local authorities contributing to large numbers of additional risk assessments and to supervising much higher numbers of offenders during the community part of the sentence.

Impact on local government: Restrictions on the sale of swords and non-domestic knives

134. It is intended that the provisions of this part of the Bill will form part of the licensing framework which exists under the Civic Government (Scotland) Act 1982 and which is administered by local authorities. Enforcement of the licensing scheme will mainly be a matter for local authorities trading standards departments. Like other licensing schemes, local authorities will have significant discretion as to how the scheme will operate in their areas, with the power to specify licence conditions appropriate to their locality.

135. Similarly, the Bill provides local authorities with considerable discretion in setting licence fees. This will enable local authorities to ensure that the costs of enforcing the scheme can be recovered. Further information on the issues for local government is set out in the section above on licensing and in the Financial Memorandum.

Sustainable Development

136. The measures contained in this Bill have no impact on sustainable development.

This document relates to the Custodial Sentences and Weapons (Scotland) Bill (SP Bill 80) as introduced in the Scottish Parliament on 2 October 2006

CUSTODIAL SENTENCES AND WEAPONS (SCOTLAND) BILL

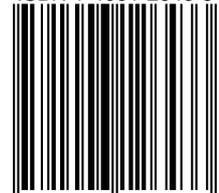
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