Passage of the

Management of Offenders etc. (Scotland) Bill 2005

SPPB 86
Passage of the

Management of Offenders etc. (Scotland) Bill 2005

SP Bill 39 (Session 2), subsequently 2005 asp 14

SPPB 86

EDINBURGH: RR DONNELLEY £60
# Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td></td>
</tr>
<tr>
<td><strong>Introduction of the Bill</strong></td>
<td></td>
</tr>
<tr>
<td>Bill (As Introduced) (SP Bill 39)</td>
<td>1</td>
</tr>
<tr>
<td>Explanatory Notes (and other accompanying documents) (SP Bill 39-EN)</td>
<td>21</td>
</tr>
<tr>
<td>Policy Memorandum (SP Bill 39-PM)</td>
<td>51</td>
</tr>
<tr>
<td><strong>Stage 1</strong></td>
<td></td>
</tr>
<tr>
<td>Stage 1 Report, Justice 2 Committee</td>
<td>69</td>
</tr>
<tr>
<td>Extract from the Minutes, Finance Committee, 12 April 2005</td>
<td>259</td>
</tr>
<tr>
<td>Official Report, Finance Committee, 12 April 2005</td>
<td>260</td>
</tr>
<tr>
<td>Written submission to the Justice 2 Committee</td>
<td>266</td>
</tr>
<tr>
<td>Supplementary submission from the Scottish Executive to the Justice 2</td>
<td>281</td>
</tr>
<tr>
<td>Committee</td>
<td></td>
</tr>
<tr>
<td>Additional information from the Scottish Executive, 26 May 2005</td>
<td>289</td>
</tr>
<tr>
<td>Extract from the Minutes of the Parliament, 16 June 2005</td>
<td>294</td>
</tr>
<tr>
<td>Official Report, Meeting of the Parliament, 16 June 2005</td>
<td>295</td>
</tr>
<tr>
<td>Scottish Executive correspondence regarding the Stage 1 Report on the</td>
<td>319</td>
</tr>
<tr>
<td>Management of Offenders etc. (Scotland) Bill, 28 August 2005</td>
<td></td>
</tr>
<tr>
<td><strong>Before Stage 2</strong></td>
<td></td>
</tr>
<tr>
<td>Correspondence from the Minister for Justice to the Convener of the</td>
<td>325</td>
</tr>
<tr>
<td>Justice 2 Committee, 28 August 2005</td>
<td></td>
</tr>
<tr>
<td><strong>Stage 2</strong></td>
<td></td>
</tr>
<tr>
<td>1st Marshalled List of Amendments for Stage 2 (SP Bill 39-ML1)</td>
<td>327</td>
</tr>
<tr>
<td>Groupings of Amendments for Stage 2, Day 1 (SP Bill 39-G1)</td>
<td>336</td>
</tr>
<tr>
<td>Extract from the Minutes, Justice 2 Committee, 20 September 2005</td>
<td>337</td>
</tr>
<tr>
<td>2nd Marshalled List of Amendments for Stage 2 (SP Bill 39-ML2)</td>
<td>345</td>
</tr>
<tr>
<td>Groupings of Amendments for Stage 2, Day 2 (SP Bill 39-G2)</td>
<td>354</td>
</tr>
<tr>
<td>Extract from the Minutes, Justice 2 Committee, 27 September 2005</td>
<td>355</td>
</tr>
<tr>
<td>Bill (As Amended at Stage 2) (SP Bill 39A)</td>
<td>365</td>
</tr>
<tr>
<td>Revised Explanatory Notes (SP Bill 39A-EN)</td>
<td>393</td>
</tr>
<tr>
<td>Supplementary Financial Memorandum (SP Bill 39A-FM)</td>
<td>417</td>
</tr>
</tbody>
</table>
After Stage 2
Correspondence from the Deputy Minister for Justice to the Convener of the Justice 2 Committee, 25 October 2005 419
Correspondence from the Minister for Justice to the Convener of the Justice 2 Committee, 27 October 2005 420
Extract from the Minutes, Finance Committee, 25 October 2005 421
Extract from the Minutes, Subordinate Legislation Committee, 25 October 2005 423
Extract from the Minutes, Subordinate Legislation Committee, 1 November 2005 426
Official Report, Subordinate Legislation Committee, 1 November 2005 427
Report on Management of Offenders etc. (Scotland) Bill As Amended at Stage 2, Subordinate Legislation Committee 429

Stage 3
Marshalled List of Amendments selected for Stage 3 (SP Bill 39A-ML) 439
Groupings of Amendments for Stage 3 (SP Bill 39A-G) 446
Extract from the Minutes of the Parliament, 3 November 2005 447
Official Report, Meeting of the Parliament, 3 November 2005 448

Bill (As Passed) (SP Bill 39B) 475
Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format but with minor typographical and layout errors corrected. An exception is the Groupings of Amendments for Stage 3 (a list of amendments in debating order was included in the original document to assist members during actual proceedings but is omitted here as the text of the amendments is already contained in the Marshalled Lists of Amendments for Stage 3). In addition, the document entitled, ‘Additional information from the Scottish Executive, 26 May 2005’ has had some paragraphs removed and an explanatory note added to avoid repetition of material in this volume. Extracts from the Official Report are re-printed as corrected for the archive version of the Official Report.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
Stage 2: the Bill returns to a committee for detailed consideration of amendments;
Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Clerking and Reporting Directorate. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Finance Committee reported to the Justice 2 Committee on the Bill at Stage 1. The Finance Committee report is included in Annex A of the Stage 1 Report. However, the minutes and the oral evidence for the Finance Committee meeting of 12 April 2005 were not included in that report, and they are therefore included in this volume after the report. The Stage 1 section of this volume also includes two submissions to the Justice 2 Committee that were not in the Stage 1 report.

After Stage 1, further correspondence was sent to the Justice 2 Committee from the Scottish Executive regarding Stage 2 amendments. This document is reproduced in the section ‘Before Stage 2’.

Similarly, after Stage 2, two further pieces of correspondence were sent to the Justice 2 Committee from the Scottish Executive regarding Stage 3 amendments. These document are reproduced in the section ‘After Stage 2’.
A Supplementary Financial Memorandum was produced after Stage 2, and the Finance Committee took evidence on it on 25 October 2005. The Official Report and minutes of that meeting are in the section ‘After Stage 2’.

Forthcoming titles

The next titles in this series will be:

- SPPB 87: Environmental Assessment (Scotland) Bill 2005
- SPPB 88: Licensing (Scotland) Bill 2005
- SPPB 89: Housing (Scotland) Bill 2005
- SPPB 90: Family Law (Scotland) Bill 2005
Management of Offenders etc. (Scotland) Bill
[AS INTRODUCED]

CONTENTS

Section

Duty to co-operate

1 Duty to co-operate

Community justice authorities

2 Community justice authorities
3 Further provisions as respects community justice authorities
4 Special duties of chief officer of community justice authority
5 Power of Scottish Ministers to require action by community justice authority: failure by that authority
6 Power of Scottish Ministers to require action by community justice authority: failure by local authority
7 Transfer of functions to community justice authority
8 Transfer of property to community justice authority

Assessing and managing risks posed by certain offenders

9 Arrangements for assessing and managing risks posed by certain offenders
10 Review of arrangements

Amendment of Prisoners and Criminal Proceedings (Scotland) Act 1993

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

Miscellaneous

12 Offender’s failure to comply with notification requirements: jurisdiction of Scottish courts
13 Recovery of criminal injuries compensation from offenders
14 Further amendments and repeal

General

15 Supplementary and consequential provision etc.
16 Interpretation
17 Commencement
18 Short title
Management of Offenders etc. (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the establishment of community justice authorities; to make further provision for the supervision and care of persons put on probation or released from prison etc.; to amend Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 so as to make further provision as respects the release of prisoners on licence; to make further provision as respects the jurisdiction of the Scottish courts in proceedings for offences in relation to the notification requirements of Part 2 of the Sexual Offences Act 2003; to make provision about the recovery of compensation from offenders; and for connected purposes.

Duty to co-operate

1 Duty to co-operate

(1) The Scottish Ministers, community justice authorities and local authorities are to co-operate with one another in carrying out their respective functions in relation to relevant persons.

(2) In this Act—

(a) to “co-operate” may, without prejudice to the generality of that expression, include to exchange information (“co-operation” being construed accordingly); and

(b) “relevant person” means—

(i) a person who is supervised by, provided with advice, guidance or assistance by, or the subject of a report by a local authority (or, by virtue of section 7, by a community justice authority) as part of the provision by the local authority (or community justice authority) of a service for the purposes mentioned in section 27(1) of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prison etc.); or

(ii) any other person if that person is detained in custody.

(3) The reference in subsection (1) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45).
Community justice authorities

(1) The Scottish Ministers may by order made by statutory instrument establish, for an area specified in the order, a body corporate to be known as a community justice authority.

(2) A community justice authority is not to be regarded as the servant or agent of the Crown or have any status, immunity or privilege of the Crown; nor are its members or employees to be regarded as civil servants.

(3) Subject to subsection (4), an order under subsection (1) may include provision with regard to—

(a) the constitution and proceedings of the community justice authority;
(b) matters relating to the membership of that authority; and
(c) the supply of services or facilities by appropriate local authorities to that authority.

(4) No person may be a member of the community justice authority who is not—

(a) a councillor of an appropriate local authority; and
(b) nominated for such membership by that authority.

(5) The functions of a community justice authority are—

(a) at such intervals as the Scottish Ministers may determine—

(i) to prepare, in consultation with the partner bodies, the Scottish Ministers, the appropriate local authorities and such other bodies as the Scottish Ministers may specify, a plan for reducing re-offending by relevant persons; and

(ii) to submit that plan to the Scottish Ministers (the plan as approved under subsection (14) being referred to in this section and in section 4 as the community justice authority’s “area plan”);

(b) to monitor the performance of—

(i) appropriate local authorities; and

(ii) the Scottish Ministers,

in complying with, and in co-operating with each other, the community justice authority and others to facilitate compliance with, the area plan;

(c) in so far as it considers such performance by—

(i) a local authority to be unsatisfactory, to issue such directions to that authority; or

(ii) the Scottish Ministers to be unsatisfactory, to make such recommendations to the Scottish Ministers,

as it thinks fit;

(d) to promote good practice in the management of the behaviour of relevant persons (“management” being management with a view to reducing re-offending by those persons);

(e) to allocate to the appropriate local authorities any amount paid to it under section 27A(1) of the Social Work (Scotland) Act 1968 (c.49) (grants in respect of community service facilities);
(f) to arrange with the partner bodies that, so far as practicable, any information—
   (i) relating to relevant persons; and
   (ii) in the possession of any of those party to the arrangements,
       is furnished or made available to the others party to them;

(g) as soon as practicable after the end of each financial year, to report to the Scottish
      Ministers on—
   (i) its activities and performance during that year in discharging its functions
       under this section; and
   (ii) the activities and performance during that year of appropriate local
       authorities, partner bodies and the Scottish Ministers in complying with, or
       facilitating compliance with, the area plan; and

(h) any function which it has by virtue of section 7 of this Act.

(6) In preparing a report under paragraph (g) of subsection (5), the community justice
      authority is to consult as mentioned in paragraph (a)(i) of that subsection.

(7) The Scottish Ministers may by order made by statutory instrument amend subsection (5)
      so as (either or both)—
   (a) to add to the functions for the time being described;
   (b) to alter or omit any of those functions.

(8) Different provision may be made under subsection (7) for different community justice
      authorities.

(9) The Scottish Ministers are from time to time to inspect and assess the arrangements set
      in place, and the services provided, by local authorities for complying with the area plan
      and to satisfy themselves as to the sufficiency of those arrangements and services.

(10) The Scottish Ministers may from time to time issue to a community justice authority—
    (a) directions as to the exercise of its functions under this section; and
    (b) guidance as to the preparation and content of any plan under this section.

(11) In carrying out—
    (a) their functions under section 27 of the Social Work (Scotland) Act 1968, an
        appropriate local authority are;
    (b) by virtue of section 7 (of this Act), its functions, or functions on behalf of an
        appropriate local authority, under that section 27, a community justice authority
        is,
        so far as practicable, to comply with the area plan.

(12) The Scottish Ministers are, so far as practicable, to comply with the area plan.

(13) If directions are issued—
    (a) under subsection (5)(c)(i), the local authority receiving the directions;
    (b) under subsection (10)(a), the community justice authority,
        must comply with them.
(14) The Scottish Ministers, on receiving a plan by virtue of sub-paragraph (ii) of subsection (5)(a), may approve it or require the authority to revise the plan, in such manner as the Scottish Ministers may specify, and to re-submit it under that sub-paragraph.

(15) Subsection (14) applies in relation to a plan re-submitted as it applies to one submitted.

(16) In this section—

an “appropriate local authority” is a local authority the area of which is comprised within the area of the community justice authority; and

“partner bodies” means such bodies as are for the time being designated as such for the purposes of this section by the Scottish Ministers by order made by statutory instrument.

(17) The references in subsections (5)(b)(ii) and (g)(ii) and (12) to the Scottish Ministers are to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45) as is the first reference to the Scottish Ministers in each of paragraphs (a)(i) and (c)(ii) of subsection (5).

(18) A statutory instrument containing an order under—

(a) subsection (1) or (7) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament;

(b) subsection (16) is subject to annulment in pursuance of a resolution of the Parliament.

3 Further provisions as respects community justice authorities

(1) Subject to any directions issued under section 2(10)(a), a community justice authority may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with the exercise of, its functions; and without prejudice to that generality may in particular enter into contracts.

(2) A community justice authority—

(a) is to appoint a chief officer; and

(b) may appoint as staff such other persons as it considers requisite for enabling it to exercise its functions.

(3) The remuneration and conditions of service of a chief officer or other person appointed under subsection (2) are to be such as the community justice authority may determine.

(4) A community justice authority may—

(a) pay, or make arrangements for the payment of;

(b) make payments towards the provision of; and

(c) provide and maintain schemes (whether contributory or not) for the payment of, such pensions, allowances and gratuities to or in respect of its employees, or former employees, as it thinks fit.

(5) The reference in subsection (4) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.

(6) The expenditure of a community justice authority, in so far as it is not met from any other source, is to be paid by the Scottish Ministers.
4 Special duties of chief officer of community justice authority

(1) Where it appears to the chief officer of a community justice authority that—

(a) the authority is failing, or has failed, satisfactorily to exercise its functions under this Act; or

(b) an appropriate local authority or the Scottish Ministers are failing to comply with the community justice authority’s area plan,

the chief officer is, as soon as practicable, to report the failure to the Scottish Ministers.

(2) Without prejudice to section 2(5)(g)(ii), the chief officer is, whenever required to do so by the Scottish Ministers, to report to them on the activities and performance, during such period as is specified in the requirement, of the community justice authority, appropriate local authorities, partner bodies and the Scottish Ministers in complying with, or facilitating compliance with, the community justice authority’s area plan.

(3) In subsections (1) and (2), “appropriate local authority” means a local authority the area of which is comprised within the area of the community justice authority.

(4) The reference in subsection (1)(b) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45) as is the second reference to the Scottish Ministers in subsection (2).

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

(1) Where it appears to the Scottish Ministers on a report under section 4 or by a person mentioned in subsection (2)—

(a) that a community justice authority is failing, or has failed, satisfactorily to exercise its functions under this Act; and

(b) that the issue under this section of an enforcement direction to the authority would be justified,

they may issue a preliminary notice to the authority.

(2) The persons are—

(a) a person authorised under section 6(1) of the Social Work (Scotland) Act 1968 (c.49) (supervision of establishments providing accommodation for persons and inspection of records etc.);

(b) the Chief Inspector of Prisons for Scotland;

(c) Audit Scotland;

(d) a person specified by the Scottish Ministers for the purposes of this section and of section 6.

(3) A preliminary notice is one which—

(a) informs the authority of the apparent failure mentioned in subsection (1)(a); and

(b) requires the authority to submit to the Scottish Ministers, within such period as is specified in the notice, an appropriate written response.

(4) An appropriate written response is one which—
(a) states that the authority is not so failing (or as the case may be has not so failed) and gives reasons supporting that statement; or
(b) acknowledges that the authority is so failing (or has so failed) but gives reasons why an enforcement notice should not be issued to it.

If a response is given under subsection (4)(b), the authority must either describe in the response the measures it proposes to take to remedy the failure or explain why no such measures need be taken.

Where, following service of the preliminary notice and the expiry of the period specified in that notice, it still appears to the Scottish Ministers that the circumstances are as mentioned in paragraphs (a) and (b) of subsection (1), they may issue an enforcement direction to the authority.

An enforcement direction is one which requires the authority to take, within such time as is specified in the direction, such action as is so specified, being action for the purpose of remedying, or preventing the recurrence of, the failure.

An authority to which an enforcement direction is issued under this section must comply with it.

The Scottish Ministers may vary or revoke an enforcement direction.

The Scottish Ministers may, instead of or as well as issuing an enforcement direction to the authority, make such recommendations to the authority as they think fit.

When the Scottish Ministers issue, vary or revoke an enforcement direction they are to—
(a) prepare a report as to their exercise of the power in question; and
(b) lay that report before the Parliament.

The Scottish Ministers may by order made by statutory instrument amend subsection (2) so as (either or both)—
(a) to add to the persons there described;
(b) to alter the description of, or omit, any of those persons.

A statutory instrument containing an order under subsection (12) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

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

Where it appears to the Scottish Ministers, on a report under section 4 or by a person mentioned in section 5(2)—
(a) that a local authority are failing, or have failed, satisfactorily to exercise their functions under section 27 of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prison etc.) in relation to—
(i) relevant persons; or
(ii) one relevant person provided that the person making the report considers such failure to be symptomatic of some general failure of the local authority in the exercise of their functions under that section; and
(b) that the issue under this section of an enforcement direction to the authority would be justified,

they may issue a preliminary notice to the community justice authority.

(2) Subsections (3) to (11) of section 5 apply in relation to an apparent failure mentioned in subsection (1)(a) (of this section) as they apply in relation to an apparent failure mentioned in subsection (1)(a) of that section.

(3) For the purposes of that application references in those subsections of that section to “the authority” are to be construed as references to the community justice authority except that the references in paragraphs (a) and (b) of subsection (4) of that section are to be construed as references to the local authority.

(4) But, notwithstanding that exception, the word “it” in paragraph (b) of subsection (4) of that section is to be construed as a reference to the community justice authority.

7 Transfer of functions to community justice authority

(1) This section applies to functions under or by virtue of section 27(1) of the Social Work (Scotland) Act 1968 (c.49) which are exercisable by local authorities.

(2) The Scottish Ministers may by order made by statutory instrument provide that, within the area of a community justice authority, a function—

(a) to which this section applies; and

(b) specified in the order,

is instead to be exercisable by the community justice authority.

(3) A community justice authority and each of the local authorities comprised within the area of the community justice authority may jointly determine that a function to which this section applies is to be exercisable on behalf of those local authorities by the community justice authority.

(4) The Scottish Ministers may, under subsection (2), make different provision for different community justice authorities.

(5) A statutory instrument containing an order under subsection (2) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

8 Transfer of property to community justice authority

(1) For the purpose of facilitating the discharge by a community justice authority of that authority’s functions, a local authority or the Scottish Ministers may transfer property to that authority.

(2) Where such transfer occurs, no right of pre-emption or other similar right operates or becomes exercisable.

Assessing and managing risks posed by certain offenders

9 Arrangements for assessing and managing risks posed by certain offenders

(1) The responsible authorities for the area of a local authority must jointly establish arrangements for the assessment and management of the risks posed in that area by any person who—
(a) is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c.42);
(b) has been convicted on indictment of an offence inferring personal violence; or
(c) has been convicted of an offence and by reason of that conviction is considered by the responsible authorities to be a person who may cause serious harm to the public at large.

(2) It is immaterial—
(a) for the purposes of paragraph (a) of subsection (1), where the offence by virtue of which the person is subject to the notification requirements was committed; or
(b) for the purposes of paragraph (b) or (c) of that subsection, where the offence of which the person has been convicted was committed.

(3) In the establishment and implementation of those arrangements, the responsible authorities must act in co-operation with such persons as the Scottish Ministers may, by order made by statutory instrument, specify.

(4) It is the duty of—
(a) any persons specified under subsection (3) to co-operate; and
(b) the responsible authorities to co-operate with each other,
in the establishment and implementation of those arrangements; but only to the extent that such co-operation is compatible with the exercise by those persons and authorities of their functions under any other enactment.

(5) The Scottish Ministers may issue guidance to responsible authorities on the discharge of the functions conferred on those authorities by this section and section 10.

(6) In this section and in section 10, the “responsible authorities” for the area of a local authority are—
(a) the chief constable of a police force maintained for a police area (or combined police area) any part of which is comprised within the area of the local authority;
(b) the local authority; and
(c) the Scottish Ministers.

(7) The Scottish Ministers may by order made by statutory instrument amend the definition of the “responsible authorities” in subsection (6).

(8) A statutory instrument containing an order under—
(a) subsection (3) is subject to annulment in pursuance of a resolution of the Parliament;
(b) subsection (7) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

(9) Different provision may be made under subsection (3) for different purposes and for different areas.

10 Review of arrangements

(1) The responsible authorities must keep the arrangements established by them under section 9 under review for the purpose of monitoring the effectiveness of those arrangements and making any changes to them that appear necessary or expedient.
(2) As soon as practicable after the end of each period of 12 months beginning with 1st April, the responsible authorities must—

(a) jointly prepare a report on the discharge by them during that period of the functions conferred by section 9; and

(b) publish the report in the area of the local authority.

(3) The report must include—

(a) details of the arrangements established by the responsible authorities; and

(b) information of such description as the Scottish Ministers have notified to the responsible authorities that they wish to be included in the report.

Amendment of Prisoners and Criminal Proceedings (Scotland) Act 1993

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

(1) The 1993 Act is amended as follows.

(2) In section 1A(1)(c) (release of persons serving more than one sentence to be on a single licence), after the word “Act” where it first occurs insert “, other than on licence under section 3AA”.

(3) After section 3 insert—

“3AA Further powers to release prisoners

(1) Subject to subsections (2) to (5) below, the Scottish Ministers may release on licence under this section—

(a) a short-term prisoner serving a sentence of imprisonment for a term of three months or more; or

(b) a long-term prisoner whose release on having served one-half of his sentence has been recommended by the Parole Board.

(2) The power in subsection (1) above is not to be exercised before the prisoner has served whichever is the greater of—

(a) one quarter of his sentence; and

(b) four weeks of his sentence.

(3) Without prejudice to subsection (2) above, the power in subsection (1) above is to be exercised only during that period of 121 days which ends on the day 14 days before that on which the prisoner will have served one half of his sentence.

(4) In exercising the power conferred by subsection (1) above, the Scottish Ministers must have regard to considerations of—

(a) protecting the public at large;

(b) preventing re-offending by the prisoner; and

(c) securing the successful re-integration of the prisoner into the community.

(5) Subsection (1) above does not apply where—

(a) the prisoner’s sentence was imposed under section 210A of the 1995 Act;
Management of Offenders etc. (Scotland) Bill

(b) the prisoner is subject to a supervised release order made under section 209 of that Act;

c) the prisoner is subject to a hospital direction imposed under section 59A of that Act or a transfer for treatment direction made under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);

d) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c.42);

e) the prisoner is liable to removal from the United Kingdom (within the meaning of section 9 of this Act);

(f) the prisoner has been released on licence under this Part of this Act or under the 1989 Act but—

(i) has been recalled to prison other than by virtue of section 17A(1)(b) of this Act; or

(ii) before the date on which he would but for his release have served his sentence in full, has received a further sentence of imprisonment; or

g) the prisoner has been released (whether or not on licence) during the currency of his sentence but has been returned to custody under section 16(2) or (4) of this Act.

(6) The Scottish Ministers may by order do any or all of the following—

(a) amend the number of months for the time being specified in subsection (1)(a) above;

(b) amend the number of weeks for the time being specified in subsection (2)(b) above;

(c) amend a number of days for the time being specified in subsection (3) above;

(d) amend any paragraph of subsection (5) above, add a further paragraph to that subsection or repeal any of its paragraphs.”.

(4) In section 5(1) (fine defaulters and persons in contempt of court), after the words “except sections” insert “3AA.”.

(5) In section 9(3) (persons liable to removal from the United Kingdom)—

(a) in paragraph (d), for the word “immigrant” there is substituted “entrant”; and

(b) (the word “or” immediately preceding that paragraph being omitted) after that paragraph there is added “or

(e) if he is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c.33).”.

(6) In section 11 (duration of licence), after subsection (3) insert—

“(3A) Subsections (1) to (3) above do not apply in relation to release on licence under section 3AA of this Act.

(3B) A licence granted under section 3AA of this Act remains in force (unless it is revoked) until the date on which the released person would, but for his release under that section, fall to be released under section 1 of this Act.”.
(7) In section 12 (conditions in licence)—

(a) after subsection (2) insert—

“(2A) In its application to a licence granted under section 3AA of this Act, subsection (2) above is to be construed as if, for the words “shall include” there were substituted “may include”; and

(b) after subsection (4) insert—

“(4A) Subsection (3)(b) above does not apply in relation to a condition in a licence granted under section 3AA of this Act; but in exercising their powers under this section in relation to a long-term prisoner released on such a licence the Scottish Ministers must have regard to any recommendations which the Parole Board has made for the purposes of section 1(3) of this Act as to conditions to be included on release.”.

(8) After section 12 insert—

“12AA Conditions for persons released on licence under section 3AA

(1) Without prejudice to the generality of section 12(1) of this Act, any licence granted under section 3AA of this Act must include—

(a) the standard conditions; and

(b) a curfew condition complying with section 12AB of this Act.

(2) Subsection (1) above is without prejudice to any power exercisable under section 12 of this Act.

(3) In this section, “the standard conditions” means such conditions as may be prescribed as such for the purposes of this section.

(4) In subsection (3) above, “prescribed” means prescribed by order by the Scottish Ministers.

(5) Different standard conditions may be so prescribed for different classes of prisoner.

(6) Subsection (4) of section 3AA of this Act applies in relation to—

(a) the exercise of the power of prescription conferred by subsection (3) above; and

(b) the specification, variation or cancellation of conditions, other than the standard conditions, in a licence granted under section 3AA of this Act, as it applies in relation the exercise of the power conferred by subsection (1) of that section.

12AB Curfew condition

(1) For the purposes of this Part, a curfew condition is a condition which—

(a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified; and

(b) may require him not to be in a place, or class of place, so specified at a time or during a period so specified.
(2) The curfew condition may specify different places, or different periods, for different days but a condition such as is mentioned in paragraph (a) of subsection (1) above may not specify periods which amount to less than nine hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).

(3) Section 245C of the 1995 Act (contractual and other arrangements for, and devices which may be used for the purposes of, remote monitoring) applies in relation to the imposition of, and compliance with, a condition specified by virtue of subsection (1) above as that section applies in relation to the making of, and compliance with, a restriction of liberty order.

(4) A curfew condition is to be monitored remotely and the Scottish Ministers must designate in the licence a person who is to be responsible for the remote monitoring and must, as soon as practicable after they do so, send that person a copy of the condition together with such information as they consider requisite to the fulfilment of the responsibility.

(5) Subject to subsection (6) below, the designated person’s responsibility—

(a) commences on that person’s receipt of the copy so sent;

(b) is suspended during any period in which the curfew condition is suspended; and

(c) ends when the licence is revoked or otherwise ceases to be in force.

(6) The Scottish Ministers may from time to time designate a person who, in place of the person designated under subsection (4) above (or last designated under this subsection), is to be responsible for the remote monitoring; and on the Scottish Ministers amending the licence in respect of the new designation, that subsection and subsection (5) above apply in relation to the person designated under this subsection as they apply in relation to the person replaced.

(7) If a designation under subsection (6) above is made, the Scottish Ministers must, in so far as it is practicable to do so, notify the person replaced accordingly.

(9) In section 12B (certain licences to be replaced by one), after subsection (3) insert—

“(4) References in this section to release on licence do not include release on licence under section 3AA of this Act.”.

(10) In section 17 (revocation of licence), at the end add—

“(7) References in this section to release on licence do not include release on licence under section 3AA of this Act.”.

(11) After section 17 insert—

“17A Recall of prisoners released under section 3AA

(1) If it appears to the Scottish Ministers as regards a prisoner released on licence under section 3AA of this Act that—

(a) he has failed to comply with any condition included in his licence; or

(b) his whereabouts can no longer be monitored remotely at the place for the time being specified in the curfew condition included in the licence, they may revoke the licence and recall the person to prison under this section.

(2) A person whose licence is revoked under subsection (1) above—
(a) must, on his return to prison, be informed of the reasons for the revocation and of his right under paragraph (b) below; and
(b) may make representations in writing with respect to the revocation to the Parole Board.

(3) After considering such representations the Parole Board may direct, or decline to direct, the Scottish Ministers to cancel the revocation.

(4) Where the revocation of a person’s licence is cancelled by virtue of subsection (3) above, the person is to be treated for the purposes of section 3AA of this Act as if he had not been recalled to prison under this section.

(5) On the revocation under this section of a person’s licence, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.”.

(12) In section 45 (making of rules and orders)—
(a) in subsection (2), after the word “Any” insert “order made under section 12AA(3) or”; and
(b) in subsection (3), after the word “section” insert “3AA(6),”.

Miscellaneous

12 Offender’s failure to comply with notification requirements: jurisdiction of Scottish courts
In section 91 of the Sexual Offences Act 2003 (c.42) (offences relating to the notification requirements of Part 2 of that Act), for subsection (4) substitute—
“(4) Proceedings for an offence under this section may be commenced in any court—
(a) having jurisdiction in any place where the person charged with the offence—
(i) resides;
(ii) is last known to have resided; or
(iii) is found; or
(b) which has convicted the person of an offence if the person is subject to the notification requirements of this Part by virtue of that conviction.”.

13 Recovery of criminal injuries compensation from offenders
(1) The Criminal Injuries Compensation Act 1995 (c.53) is amended as provided for in subsection (2) of section 57 of the Domestic Violence, Crime and Victims Act 2004 (c.28).

(2) But in the provision to be inserted, by virtue of subsection (1) (above), into that Act of 1995—
(a) as section 7A(1), for the words “Secretary of State” substitute “Scottish Ministers”;
(b) as section 7B(3), for the words “Secretary of State” substitute “Scottish Ministers”; and
(c) as section 7D, for subsection (4) substitute—

“(4) For the purposes of section 6(3) of the Prescription and Limitation (Scotland) Act 1973 (extinction of obligations by prescriptive periods of 5 years), the date when the obligation to pay that amount became enforceable shall be taken to be—

(a) the date on which the compensation was paid; or

(b) if later, the date on which the person from whom the amount is sought to be recovered was convicted of an offence to which the injury is directly attributable.”.

(3) In section 11 of that Act of 1995, after subsection (8) insert—

“(8A) No regulations under section 7A(1) or order under section 7B(3) shall be made unless a draft of the regulations or order has been laid before, and approved by a resolution of, the Scottish Parliament.”.

(4) In Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c.52), in paragraph 1 (application of section 6 of that Act), after sub-paragraph (d) insert—

“(dd) to any obligation arising by virtue of section 7A(1) of the Criminal Injuries Compensation Act 1995 (recovery of compensation from offenders: general);”.

14 Further amendments and repeal

(1) In section 27 of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prisons etc.)—

(a) in subsection (1)—

(i) at the beginning insert “Subject to any order or determination under section 7 of the Management of Offenders etc. (Scotland) Act 2005 (asp 00),”; and

(ii) after paragraph (ab) insert—

“(ac) making available to the Scottish Ministers such background and other reports as the Scottish Ministers may request in relation to the exercise of their functions under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9);” and

(b) after subsection (1) insert—

“(1A) In paragraph (b)(i) and (ii) of subsection (1) above, “enactment” includes an Act of the Scottish Parliament.

(1B) The Scottish Ministers may by order amend subsection (1) above so as (any or all)—

(a) to add to the functions for the time being described;

(b) to omit any of those functions;

(c) to alter any of those functions.”.

(2) In section 27A of that Act (grants in respect of community service facilities)—

(a) for subsection (1) substitute—

“(1) The Scottish Ministers may (any or all)—
(a) pay to a community justice authority, for allocation under section 2(5)(e) of the Management of Offenders etc. (Scotland) Act 2005 (asp 00) as grants to the local authorities within its area;

(b) make a grant to a local authority of;

(c) make a grant to a community justice authority, in respect of any function exercisable by that authority by virtue of section 7(2) of that Act of 2005, of,

such amount as the Scottish Ministers may determine in respect of expenditure incurred by, as the case may be, those local authorities, that local authority or that community justice authority, in providing a relevant service.

(1A) In subsection (1), a “relevant service” means a service—

(a) for the purposes mentioned in section 27(1) of this Act;

(b) for enabling those local authorities, that local authority or that community justice authority to comply with the area plan prepared by the community justice authority under section 2(5)(a)(i) of that Act of 2005; or

(c) for such other similar purposes as the Scottish Ministers may prescribe.

(1B) Any grant made under, or paid by virtue of, subsection (1) above is subject to such conditions as the Scottish Ministers may determine.”; and

(b) in subsection (2), for the words “(1)(b)” substitute “(1)(c)”.

(3) In section 90 of that Act (orders, regulations etc.), after subsection (3) add—

“(4) A statutory instrument containing an order under section 27(1B) or 27A(1A)(c) of this Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

(4) In the Schedule to the Repatriation of Prisoners Act 1984 (c.47) (operation of certain enactments in relation to prisoner), in paragraph 2 as substituted by section 33(1)(b)(i) of the Criminal Justice (Scotland) Act 2003 (asp 7) (prisoners repatriated to Scotland)—

(a) in sub-paragraph (1), after the words “and (7)” insert “, 3AA”; and

(b) in sub-paragraph (2), for the words “or 2(2) or (7)” substitute “, 2(2) or (7) or 3AA”.

(5) In Schedule 1 to the Crime (Sentences) Act 1997 (c.43) (transfer of prisoners within the British Isles)—

(a) in paragraph 10—

(i) in sub-paragraph (2)(a), after the word “3,”, where it first occurs, insert “3AA,”; and

(ii) in sub-paragraph (5)(a), after the words “2(4),” where they first occur, insert “3AA,”;

(b) in paragraph 11(2)—

(i) for the word “or”, where it occurs for the second time, substitute “to”; and

(ii) in head (a), after the word “3,”, where it occurs for the first time, insert “3AA,”; and

(c) in paragraph 11(4)(a), after the words “1A,” insert “3AA,”.
(6) In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) (devolved public bodies), after the entry relating to the Common Services Agency for the Scottish Health Service, insert—

“A community justice authority”.

(7) In section 24(c) of the International Criminal Court (Scotland) Act 2001 (asp 13) (limited disaplication of certain provisions relating to sentences), after the word “3,” insert “3AA.”.

(8) In part 2 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (asp 11) (persons liable to investigation: Scottish public authorities), after paragraph 21 insert—

“21A A community justice authority.”.

(9) In Part 7 of schedule 1 to the Freedom of Information (Scotland) Act 2002 (asp 13) (Scottish public authorities), after paragraph 62 insert—

“62A A community justice authority.”.

(10) In section 40(1) of the Criminal Justice (Scotland) Act 2003 (asp 7) (remote monitoring of released prisoners), the words from “but” to the end are repealed.

General

15 Supplementary and consequential provision etc.

(1) The Scottish Ministers may by order made by statutory instrument make—

(a) any supplementary, incidental or consequential provision;

(b) any transitory, transitional or saving provision,

which they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under subsection (1) may amend or repeal any enactment (including any provision of this Act).

(3) Subject to subsection (4), a statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Parliament.

(4) A statutory instrument containing an order made by virtue of subsection (2) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

16 Interpretation

In this Act—

“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9);

“community justice authority” means a body corporate established under section 2(1);

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39); and

“relevant person” has the meaning given by section 1(2).
17 **Commencement**

(1) This section and sections 13, 15, 16, and 18 come into force on Royal Assent.

(2) The remaining provisions of this Act come into force in accordance with provision made by the Scottish Ministers by order made by statutory instrument.

(3) Different provision may be made under subsection (2) for different purposes and for different areas.

18 **Short title**

This Act may be cited as the Management of Offenders etc. (Scotland) Act 2005.
Management of Offenders etc. (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the establishment of community justice authorities; to make further provision for the supervision and care of persons put on probation or released from prison etc.; to amend Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 so as to make further provision as respects the release of prisoners on licence; to make further provision as respects the jurisdiction of the Scottish courts in proceedings for offences in relation to the notification requirements of Part 2 of the Sexual Offences Act 2003; to make provision about the recovery of compensation from offenders; and for connected purposes.

Introduced by:  Cathy Jamieson
On: 4 March 2005
Supported by: Hugh Henry
Bill type: Executive Bill
These documents relate to the Management of Offenders etc. (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 4 March 2005

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Management of Offenders etc. (Scotland) Bill introduced in the Scottish Parliament on 4 March 2005:
   - Explanatory Notes;
   - a Financial Memorandum;
   - an Executive Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 39–PM.
EXPLANATORY NOTES

INTRODUCTION

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

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

THE BILL

Integrated management of offenders

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

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

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

7. In submitting the area plan to Ministers for approval, the community justice authority will be able to refer to guidance and performance targets provided by Ministers. Ministers will be assisted in the production of guidance and targets by a non-statutory national advisory body which the Executive will establish in 2005 and which will allow key criminal justice bodies a
These documents relate to the Management of Offenders etc. (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 4 March 2005

high level input into the development of strategic shared objectives for the management of offenders. As the national body is advisory in nature, no reference to it is made in the Bill.

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

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

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

Section 1 – Duty to co-operate

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

Section 2 – Community justice authorities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. Subsection (2) gives the chief officer responsibility for reporting to Ministers when required to do so by Ministers on the activities and performance of community justice authorities, local authorities, partner bodies and Ministers (that is, by the Scottish Prison Service) as to the effect their cooperation in facilitating compliance by those authorities with the area
These documents relate to the Management of Offenders etc. (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 4 March 2005

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7 – Transfer of functions to community justice authority

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

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

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

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

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

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

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

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

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

Section 10 – Review of arrangements

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

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

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

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

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

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

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

- provide a new power to release prisoners on licence (Home Detention Curfew), and prescribe the limits on this power, including the period during which a prisoner is eligible for release on Home Detention Curfew licence and the categories of prisoner that are excluded from consideration;

- set out the conditions which must or may be included in the licence, including a curfew condition;

- provide for the revocation of the licence and recall to custody where the prisoner fails to comply with the conditions of the Home Detention Curfew licence, and for an appeal to the Parole Board; and

- provide for the application or otherwise of various sections of the 1993 Act to the new type of licence.

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

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

- short-term prisoners serving a sentence of at least 3 months and under 4 years. Such prisoners are eligible to be released automatically and unconditionally once they have served one half of their sentence (section 1(1) of the 1993 Act); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 13 – Recovery of criminal injuries compensation from offenders

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

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

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

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

Section 14 – Further amendments and repeal

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

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

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

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

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

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

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

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

FINANCIAL MEMORANDUM

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

INTRODUCTION

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

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

INTEGRATED MANAGEMENT OF OFFENDERS

Costs on the Scottish Executive

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

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

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

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

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

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

113. The Bill also places new statutory functions on Scottish Ministers, in the form of the Scottish Prison Service, for example for cooperation in the production and implementation of action plans to reduce reoffending. The Scottish Prison Service will be expected to undertake these functions within its budget.
Costs on local authorities

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

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

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

Costs on other bodies, individuals and businesses

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

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

Savings

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

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

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

Costs on the Scottish Executive

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

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

Costs on local authorities and the police

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

125. It is important, however, to build up the framework to support the new provisions. Therefore the Executive is working with local authorities, the police and the Scottish Prison
Service to develop joint tools for use in the risk assessment of sex offenders. Funding of £150,000 has been earmarked for the necessary enhanced training for 400 frontline police and social workers in assessing the risk which individual sex offenders pose to communities. The tool is already used by the Scottish Prison Service.

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

126. No additional costs are expected.

**Savings**

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

**REGISTRATION OF SEX OFFENDERS**

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

**HOME DETENTION CURFEW**

**Assumptions/Estimates**

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

**Assessment and eligibility**

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

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

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

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

Costs to the Scottish Executive

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

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

1 http://www.scotland.gov.uk/library5/finance/serpems-00.asp
137. Based on the estimate of 310 prisoners on Home Detention Curfew (approximately 300 short-term prisoners plus 10 long-term), the total cost of the remote monitoring would be £2.6m. As noted below, there will be efficiencies to be gained from purchasing all electronic monitoring services jointly with predicted savings of £1.5m on the costs of Restriction of Liberty Orders based on the present contract pricing structure.

Scottish Prison Service

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

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

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

Costs to local authorities

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

Assessment

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

Supervision

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

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

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

Costs to other bodies, individuals and businesses

Costs to the police

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

Costs to the Parole Board

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

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

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

Risk and uncertainty in such estimates

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

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

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

Savings

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

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

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

---

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

**CRIMINAL INJURIES COMPENSATION AUTHORITY**

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

**Costs to the Scottish Executive**

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

**Costs to local authorities**

159. No additional costs are expected.

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

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

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

**Savings**

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

---

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

SUMMARY OF ESTIMATED NEW COSTS ASSOCIATED WITH THE BILL

<table>
<thead>
<tr>
<th><strong>Integrated management of offenders</strong></th>
<th><strong>Initial Costs</strong></th>
<th><strong>Ongoing Costs (per year)</strong></th>
<th><strong>Paragraph</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>- Costs to SE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJAs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>National advisory body</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Costs to SE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preparing guidance (consultant)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Prison Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Enhanced training)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Police Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ViSOR + secondment)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Costs to LA/Others (local protocols)*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Joint arrangements for assessing and monitoring serious and sexual offenders (Cosgrove 49)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Costs to SE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preparing guidance (consultant)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Prison Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Enhanced training)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Police Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ViSOR + secondment)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Costs to LA/Others (local protocols)*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Registration of sex offenders (Cosgrove 47)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Home Detention Curfew</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Costs to SE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(remote monitoring)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(remote monitoring – savings on RLOs)</td>
<td>Approx £20,000</td>
<td>£2.6m (£1.5m) Savings</td>
<td></td>
</tr>
<tr>
<td>Scottish Prison Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Administration)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Records system)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Savings from reduction in prison population)</td>
<td>£135,000</td>
<td>(£600,000) Min savings</td>
<td></td>
</tr>
<tr>
<td>- Costs to LA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Assessments)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Supervision)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Costs to others</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parole Board for Scotland</td>
<td></td>
<td>Max £60,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Criminal Injuries Compensation Authority</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Costs to others (CICA)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Recoveries from offenders)</td>
<td>(£100,000) Max savings</td>
<td>(£100,000) Max savings</td>
<td></td>
</tr>
</tbody>
</table>

*Cost falls on LA social work, police boards and prisons.
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

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

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

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

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

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

POLICY MEMORANDUM

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, Reform\(^1\), 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 Communities\(^2\). 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
• 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 co-ordinating 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
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 sheriffdom 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 curfewes’ 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.

---

4 Red:uce 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 Sheriff’s 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.

---

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
This document relates to the Management of Offenders etc. (Scotland) Bill (SP Bill 39) as introduced in the Scottish Parliament on 4 March 2005

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.
Justice 2 Committee

10th Report, 2005 (Session 2)

Stage 1 Report on the Management of Offenders etc. (Scotland) Bill
Justice 2 Committee

10th Report, 2005 (Session 2)

CONTENTS

REPORT

ANNEX A – REPORT FROM THE FINANCE COMMITTEE

ANNEX B – REPORT FROM THE SUBORDINATE LEGISLATION COMMITTEE

ANNEX C - EXTRACTS FROM THE MINUTES

ANNEX D – ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

ANNEX E - OTHER WRITTEN EVIDENCE
Justice 2 Committee

Remit and membership

Remit:

To consider and report on matters relating to the administration of civil and criminal justice, the reform of the civil and criminal law and such other matters as fall within the responsibility of the Minister for Justice, and the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigations of deaths in Scotland.

Membership:

Miss Annabel Goldie (Convener)
Jackie Baillie
Bill Butler (Deputy Convener)
Colin Fox
Maureen Macmillan
Mr Stewart Maxwell
Jeremy Purvis

Committee Clerking Team:

Clerk to the Committee
Tracey Hawe
Gillian Baxendine

Senior Assistant Clerk
Anne Peat

Assistant Clerk
Steven Tallach
Justice 2 Committee

10th Report, 2005 (Session 2)

Stage 1 Report on the Management of Offenders etc (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. The Management of Offenders etc. (Scotland) Bill was introduced on 4 March 2005 by Cathy Jamieson, the Minister for Justice. On 8 March 2005 the Parliament designated the Justice 2 Committee as lead committee for this Bill. Under Rule 9.6 of the Parliament’s standing orders, it is for the lead committee to report to the Parliament on the general principles of the Bill.

2. The Justice 2 Committee received reports from the Finance Committee and the Subordinate Legislation Committee. These are attached as Annexes A and B.

3. All evidence provided to the Justice 2 Committee is included at Annexes D and E to this report.

BACKGROUND AND CONSULTATION

4. This Bill aims to reduce levels of reoffending in Scotland through improving the management of offenders by greater integration of the work of criminal justice agencies.

5. In Scotland, almost two thirds (around 30,000) of all individuals convicted of a criminal offence in 2002 had at least one earlier conviction. Between 1995 and 2000, of those released from custodial sentences, between 59% and 66% were reconvicted within 2 years.¹

6. Due to differences in how data is measured and collected, international comparisons are difficult, but available figures suggest lower reconviction rates

¹ Statistical information in paragraphs 5, 6 and 7 is taken from Supporting Safer, Stronger Communities: Scotland’s Criminal Justice Plan (Scottish Executive 2004) and Spending Review 2004 Technical Notes (Scottish Executive 2004)
for other parts of the UK and for countries such as Sweden, Norway and the USA.

7. Reconviction rates in Scotland are slightly lower following community-based sentences. For example, 50% of those receiving a probation order and 42% of those beginning a community service order in 1999 were convicted of further offences during the following 2 years. This compares with a 60% reconviction rate in respect of those released in 1999 following a custodial sentence. The Committee is aware that the characteristics of offenders receiving community and custodial sentences will differ and that such differences may impact on the likelihood of reoffending.

8. In 2004, the Scottish Executive issued its consultation on reoffending, Reduce, Rehabilitate, Reform.\(^2\) From responses received, there appeared to the Executive to be weaknesses in the way that offenders were being managed which in themselves were contributing to the levels of reoffending in Scotland. Those weaknesses are listed in the Bill’s policy memorandum as: 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.

9. In December 2004, by way of response, the Scottish Executive published its Criminal Justice Plan Supporting Safer, Stronger, Communities\(^3\) setting out its proposals for addressing those weaknesses.

10. This Bill takes forward the proposals which require legislative change, with “the primary objective of the Bill [being] 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.”\(^4\)

11. The Bill specifically seeks to (1) create new functions and duties in relation to offender management primarily for Scottish Ministers (through the Scottish Prison Service) and local authorities, (2) form new local government bodies, Community Justice Authorities (3) introduce information sharing duties and responsibilities for Scottish Ministers (through SPS), CJAs and other agencies, (4) introduce new arrangements for assessing and managing the risk posed by serious and sex offenders, (5) establish a Home Detention Curfew Scheme for low risk prisoners and (6) enable the Criminal Injuries Compensation Authority to recover from perpetrators compensation paid out to victims.

12. Outwith this Bill, but in parallel, a new non-statutory national advisory body is to be established, chaired by the Minister for Justice and comprising representatives from the key players in offender management. The advisory body will be responsible for developing a common strategy, framework, objectives and targets.

---

\(^2\) [www.scotland.gov.uk/consultations/justice/rrc-00.asp](http://www.scotland.gov.uk/consultations/justice/rrc-00.asp)

\(^3\) [www.scotland.gov.uk/library5/justice/scip-00.asp](http://www.scotland.gov.uk/library5/justice/scip-00.asp)

\(^4\) Policy Memorandum SP Bill 39-PM, Paragraph 3
EVIDENCE RECEIVED BY THE COMMITTEE

13. The Committee issued its call for evidence in March 2005 and received 20 written submissions. The Committee took oral evidence as follows:-

12 April 2005

Alan Baird and David Crawford, Association of Directors of Social Work (ADSW),
Margaret Anderson and Helen Munro, Forth Valley Criminal Justice Grouping,
Anne Ritchie, Argyll, Bute and Dunbartonshire Criminal Justice Partnership, Harry Garland, Orkney Islands Council and
Jim Dickie and Councillor Eric Jackson, COSLA.

19 April 2005

Tony Cameron and Alec Spencer, Scottish Prison Service,
Sue Brookes, HM Prison Cornton Vale, David Croft, HM Prison Edinburgh and Bill Millar, HM Young Offenders Institution Polmont.

3 May 2005

Dr Andrew McLellan, HM Chief Inspector of Prisons for Scotland and Professor James McManus, Parole Board for Scotland,
Bernadette Monaghan, Apex Scotland, David McKenna and Neil Paterson, Victim Support Scotland, Donald Dickie and Susan Matheson, SACRO and Angela Morgan, Families Outside,
Dr Mike Nellis, University of Birmingham, Roger Houchin, Glasgow Caledonian University, Roger McGarva, National Probation Service,
Deputy Chief Constable Bob Ovens, The Association of Chief Police Officers in Scotland (ACPOS) and Douglas Keil, the Scottish Police Federation (SPF).

Finally on 10 May 2005 we took evidence from Cathy Jamieson, the Minister for Justice.

ISSUES CONSIDERED BY THE COMMITTEE

General

14. From our evidence, it was clear that much of the Bill and particularly the intentions behind the Bill were welcomed. All of our witnesses and all of our evidence suggested that there is merit in improving lines of communication and information-sharing. Apex Scotland summed up its support: “the Bill will provide national direction by requiring all the constituent parts of the system to sign up to shared outcomes and goals, with a focus on reducing reoffending. Instead of
just thinking about internal processes and management systems, people will need to think about what they can do to contribute to public safety and protection and to reducing reoffending.”

15. Prison governors felt that the Bill would bring them closer to partners, increase scope for ensuring strategies and plans are complementary, ensure common language, techniques, systems and processes and improve accountability and evaluation. All of this was likely to deliver more consistent service provision across the country.

16. Although the intentions behind the Bill were universally welcomed there were some specific areas of concern raised with us.

17. Some of these, such as the case for structural change, the role of Criminal Justice Authorities and concerns about the powers of directions are addressed in more detail later in this report.

18. Some witnesses had more general concerns. For example, Professor McManus (Parole Board for Scotland) told us that much of the Bill is predicated on the mistaken belief that sentencing is directed towards stopping reoffending when, in fact, in Scotland sentencing is about punishment and there is no direct link between punishment and stopping reoffending. He called for greater involvement of the police given that they are the only agency tasked with crime prevention.

19. Many of our witnesses cited the crucial need for involvement of a wider range of partners and agencies and the need to look beyond the confines of criminal justice services to address the social policy issues.

20. Roger Houchin (Glasgow Caledonian University) suggested that punishment and rehabilitation have been conflated, with criminal justice measures being used to try and address symptoms of social exclusion and deprivation. Such an approach is in his view “doomed to failure” and cannot be addressed by structurally altering justice delivery.

21. According to a study by him, from a snapshot of Scotland’s prison population, a quarter came from just 53 of Scotland’s 1222 local government wards and half of the prison population came from 155 of the wards. He found that the imprisonment rate for men was 24 times that of women, is heavily skewed towards young people from a small number of particular areas in Scotland.

22. The Committee was not surprised to be told that the greatest contributing factors to levels of offending and reoffending are social factors; addiction, homelessness and unemployment, and that the greatest barriers to addressing reoffending are the criminal habits developed over many years, the corrosive

---

5 Official Report, 3 May 2005, Col 1556, Bernadette Monaghan
6 Official Report, 3 May 2005, Col 1546, Professor James McManus
7 Official Report, 3 May 2005, Col 1572, Roger Houchin
8 Social Exclusion and Imprisonment in Scotland, 2005 (www.sps.gov.uk/keydocs/Social%20Exclusion%20Report)
9 Official Report, 3 May 2005, Col 1532, David Croft
effects of addiction, the destructive experience that some people have of education, limited access to jobs and the gamut of issues that are related to poverty.10

23. Our witnesses saw it as vitally important to involve housing authorities and agencies, health authorities, education providers, employment services, family services and other support providers to go beyond merely addressing offending behaviour and to bring a much wider range of services to bear on the lives of individuals.

24. In response to these points, the Minister stated that the provisions in the Bill were aimed at developing a strategic approach to reoffending across the criminal justice system and that the Bill is only part of a wider reform agenda. The non-statutory advisory body will take that wider reform agenda forward and the Criminal Justice Authorities themselves will comprise local authorities with responsibility for reaching out and engaging other agencies and partners.

25. The Committee, by majority (one member dissenting11) welcomes the new strategic approach to managing reoffending but recognises that the proposed structural reforms will not, in and of themselves, reduce reoffending. The Committee expects that the Bill, accompanied by the wider package of reforms, will bring about renewed focus on consistency, quality and co-ordination in the management of offenders. The Committee notes that the Executive believes that the Bill could reduce reoffending by 3% and considers this goal to be reasonable.

Community Justice Authorities

26. Sections 2 to 8 of the Bill make provision for the establishment of a number (yet to be determined) of community justice authorities (CJA). Each CJA will be responsible for planning, co-ordinating and managing offender services in the community. Each CJA will, after consultation with partner bodies, local authorities, Scottish Ministers and others, produce an area plan and report annually to Ministers against that plan.

27. CJAs will be responsible for monitoring compliance with the local area plan, promoting good practice and allocating funds to the appropriate local authorities.

28. Each CJA will appoint a chief officer and other staff as it sees fit. The Executive estimates the annual running cost of each CJA to be around £200,000, made up of the salary of the chief officer, accommodation, administrative costs, running costs and costs of a committee structure.

29. The Executive is presently consulting on the numbers and boundaries of the CJAs, their membership and other issues of constitution. Two options for reconfiguration have been proposed: four CJAs based broadly on existing

10 Official Report, 3 May 2005, Col 1545, Dr Andrew McLellan
11 Annabel Goldie dissented from paragraph 25
Scottish Court Service areas or six CJAs based broadly on the six sheriffdoms.\(^\text{12}\)

30. A number of the concerns we heard related specifically to the proposals for CJAs.

**The Argument for Structural Change**

31. At present there are 32 local authorities in Scotland each with social work departments with responsibility for criminal justice issues. Since 2002, following a proposal by COSLA, for CJSW purposes local authorities have operated in 14 funding and planning units (8 non-statutory criminal justice social work partnerships, 3 unitary authorities and the 3 island authorities). The 14 units operate on the basis of local agreement and consensus.

32. We heard evidence from ADSW and the criminal social work groupings in support of the existing arrangements and calling for recognition of the considerable change that criminal justice social work has been through over a number of years.

33. The example of Forth Valley Criminal Justice Grouping, where three large national prisons are situated, was highlighted. The three component authorities receive one budget managed between them and we were told there is a high degree of collaboration and co-operation.

34. An important feature in Forth Valley is the coterminosity with Central Scotland police and NHS Forth Valley areas. In the view of Margaret Anderson (Forth Valley Criminal Justice Grouping), the coterminosity model should not be lost and any move to a larger CJA could complicate Forth Valley Grouping’s current robust information-sharing and partnership arrangements.

35. The need for further structural change was questioned by ADSW who felt there were more effective ways of addressing reoffending than through creating another layer of bureaucracy.\(^\text{13}\)

36. ADSW commented that all existing research suggested that changes to structures would not in themselves address offending or reoffending\(^\text{14}\) and that the larger CJAs were, the harder it would be to produce common services across the whole area.\(^\text{15}\)

37. For ADSW, the important issues were the provision of services to deal with the underlying problems of alcohol, drugs, housing and the other problems that existed before an individual entered prison.

\(^{12}\) Management of Offenders: Consultation on Community Justice Authorities (http://www.scotland.gov.uk/Publications/2005/03/31155757/57583)
\(^{13}\) Official Report, 12 April 2005, Col 1471, Alan Baird
\(^{14}\) Official Report, 12 April 2005, Col 1473, David Crawford
\(^{15}\) Official Report, 12 April 2005. Col 1484, David Crawford
38. COSLA too expressed reservations about the proposed restructuring stating “structures of themselves will not deliver either improved outcomes or worse outcomes. It is the activity that goes on that is important.”

39. Both ADSW and COSLA, felt that the running costs of each CJA, in the region of £200,000 per annum, could be better used to fund front-line services and to enhance the programmes already being delivered.

40. In favour, SACRO welcomed the move to CJAs “because we will be in an environment in which people are required to share information and consult with us.” Others, particularly ACPOS, SPF and prison authorities voiced support for the changes in general, given the informality of the current arrangements.

41. Although the Committee acknowledges that many of the existing relationships work well, we agree with Bill Millar (HM Young Offenders Institution Polmont) that it is “too important to be left to chance…many of the good relationships that exist are based on goodwill and a willingness to co-operate. If goodwill does not exist and there is no requirement to form a relationship and to agree on targets, objectives and areas to work in partnership, the chances are it might not happen.”

42. In response to the reservations about structural change, the Minister cited the evidence of the consultation, inconsistencies highlighted in some social work inspection reports on the criminal justice groupings, good practice not always being shared and some practices not coming up to the standards sought in future. The expectation was that these matters would be addressed by the creation of the CJAs.

43. The Committee notes and acknowledges the concerns expressed by ADSW and COSLA about recent organisational changes but by majority (two members dissenting) accepts the need for and welcomes the creation, on a statutory basis, of Community Justice Authorities.

The Role of the Chief Officers

44. In addition to questions about the need for CJAs, concerns about the proposed chief officers were raised. For example Councillor Jackson (COSLA) said “there is an issue about such a post and about where the post of chief social work officer would fit in.”

45. ADSW and COSLA suggested that the chief officer posts could be regarded as roles (as opposed to jobs) which could be taken on by existing directors of social work, chief social work officers or by one officer from a designated lead authority. Precedent for this approach could be found in local government legislation.

---

16 Official Report, 12 April 2005, Col 1491, Jim Dickie
17 Official Report, 3 May 2005, Col 1559, Susan Matheson
18 Official Report 19 April 2005, Col 1535/7, Bill Millar
19 Annabel Goldie and Colin Fox dissented on the basis that insufficient time had been afforded to assess the efficacy of the existing CJSW units.
20 Official Report, 12 April 2005, Col 1496, Cllr Jackson
46. There was concern about a lack of clarity and the potential for conflict of responsibilities between chief officers and local authority chief social work officers and national and local criminal justice boards. ADSW found it difficult to see what the real responsibilities of the chief officer would be given that service delivery would still remain with the local authorities which could give rise to conflict with chief social workers.

47. The Minister pointed out that chief social work officers have a wide range of responsibilities. A chief officer of a CJA would have responsibility for working across different local authorities and ensuring that the correct strategies were in place across those local authority areas. The Minister did accept that “there could be creative tensions in the relationships between CJA chief officers and local authority chief social work officers”21 but stated that it would not always be a bad thing, what is important is that people will be working together to improve services.

48. In relation to possible conflicts with criminal justice boards, the Minister stated that the purpose of CJAs was different from that of criminal justice boards. Criminal justice boards focus on efficient operation of disposals through the courts whereas CJAs will deal with what happens to people once through the court system and sentenced. The work of the Boards and the CJAs is intended to be complementary.

49. The Committee notes the concerns expressed by ADSW and COSLA about the duplication of roles. Nonetheless, providing that the relevant roles are clearly defined, the Committee by majority (one member dissenting22) believes that the chief officers will have a clear focus on implementing strategies to tackle reoffending and on that basis is supportive of the proposals.

The number and configuration of CJAs

50. Although, as noted previously, the Executive’s consultation on CJAs is still underway, we did hear some evidence on the configurations proposed by the Executive.

51. COSLA stated that they wished further thought to be given to the numbers of CJAs, and although they were prepared to consider 6 groupings, it would only be acceptable on the understanding that a review of the sheriffdoms would take place within 2 to 3 years.

52. Although SPS expressed no view on the number of CJAs, Tony Cameron, Chief Executive, SPS, did say that from the perspective of a national organisation “all things being equal, the fewer authorities the better…fewer authorities would reduce transaction costs and would mean that front-line delivery would be likely enhanced.”23

21 Official Report, 10 May 2005, Col 1611
22 Annabel Goldie dissented from supporting the proposals
23 Official Report, 19 April 2005, Col 1516, Tony Cameron
53. Clearly for a national organisation such as the Scottish Prison Service, the Committee can see why it could be argued that fewer CJAs would be desirable. Additionally, fewer CJAs would presumably also be less costly for the Executive; however the argument on numbers was put differently by some of our other witnesses.

54. Roger Houchin (Glasgow Caledonian University) said that the problems faced by the prison service are consequential upon the way the prison system is organised. "The issue is not how many CJAs we have but how we organise our prison service so that it least impedes what we might wish to achieve in our communities." In his view a solution is required to address the way in which the prison system interacts with communities, as opposed to trying to fit structures in the community to the prison system.

55. ACPOS also flagged up the importance of CJAs reflecting recognised geographical areas that communities can identify with; and noted the difficulties of achieving this in Scotland where boundaries are not always coterminous.

56. In response to the concerns expressed by representatives from existing groupings, the Minister stated that the intention was to build on both good practice and the existing groupings. Account had been taken of the areas where groupings have come together.

The number and configuration of CJAs - Islands’ Authorities

57. The 3 islands’ authorities are not presently part of any existing groupings. We were told that their service delivery differs from that of the mainland with criminal justice services embedded in the wider community and that the islands’ authorities are consistently top of tables for numbers of reports made and numbers of offenders seen within required timescales and at the bottom of tables for the amount of criminal activity.

58. All three islands’ authorities welcomed moves to consider how best to address levels of offending collectively. Both Shetland Council and Comhairle nan Eilean Siar acknowledged the advantages of strategic planning, developing shared resources, dissemination of good practice and better co-operation with SPS through being linked to a CJA. All three however had concerns about budget allocation, staff transfers and potential diminution of service provision.

59. Orkney Islands Council was less enthusiastic about being part of a CJA and said that "the involvement of elected members on the boards would discriminate against the island authorities in a major way with regard to the population driver and the criminality driver. It would be a perverse way of dealing with authorities that are relatively successful if the money were to go to authorities that have the most criminal activity."
60. In response to the specific concerns of the islands’ authorities, the Minister stated that there was no reason why the current embedded approach could not continue. There would be no transfer of staff from constituent authorities but that it would be important for people in the islands to get the benefits of being part of a wider CJA. The Minister stated that she was “not convinced that having them as stand-alone units is the best way in which to protect their interests.”

61. The Committee draws the Minister’s attention to the evidence we received on the potential number of CJAs, including the view of COSLA that they would consider six groupings on the basis that a review of the sheriffdoms takes place within 2 – 3 years. The Committee awaits the outcome of the consultation on CJAs with interest and seeks an assurance that there will be a period of stability to allow new structural arrangements to bed in. The Committee is aware from the Executive’s additional memorandum of the timescale for the consultation process. The Committee shares the Minister’s desire to set out the Executive’s position in advance of the Stage 3 debate.

Powers of Direction and Intervention
62. Section 2(10) of the Bill gives Scottish Ministers the power to direct how community justice authorities exercise their functions as set out in section 2(5).

63. We were told by COSLA that the powers of direction were their “single greatest concern” and that there was “no precedent for granting such powers in respect of a local government service.” COSLA was concerned that the powers appeared unlimited and could be used even when there was no failure by a CJA.

64. In the Executive’s additional written memorandum the Committee was told that the general power of direction contained in section 2(10), which Ministers would be able to use without representations from a third party, are aimed at CJAs. These powers would be used where there was no specific statutory failure but where it would be desirable to provide some national direction as to how functions, such as reporting performance, would be carried out. They could also be used to direct a CJA to adopt, or discontinue, a particular course of action.

65. Sections 5 and 6 of the Bill give Scottish Ministers a power of direction to require action in the event of failure either by a CJA or local authority. COSLA saw these powers as similar to those in other areas such as health, community care and education and stated that they accepted the requirement for these powers, although “would not go so far as to say we are happy with them.”

66. ADSW acknowledged the parallels between these powers and those that exist in other areas but remained concerned about the reasons for a Minister becoming involved in the work of a CJA. In its view, the scrutiny provided by...
inspections and audits should be sufficient and there should be no need for the powers of direction as provided for in sections 5 and 6.\textsuperscript{33}

67. The additional Executive memorandum received by the Committee stated that the powers of direction contained in sections 5 and 6 specifically address the situation where there is an independently verified failure on the part of either a CJA (section 5) or a local authority (section 6) to carry out specific functions. The powers provide a structured approach by which Ministers can require specific action to be taken by a CJA in the event of a failure by a CJA or a local authority which has been reported to Ministers. \textbf{The Committee welcomes this clarification of the definitions and relationships between the various powers of directions contained in section 2(10) and sections 5 and 6 of the Bill. The Committee notes from the additional memorandum that “Ministers are limited to requiring specific action by the CJA in relation to the authority and cannot issue directions to the local authority.”\textsuperscript{34}}

\textbf{Duty to Co-operate}

68. Alongside the establishment of CJAs, section 1 of the Bill creates an obligation on Scottish Ministers (presumably through the SPS), CJAs and local authorities to co-operate with each other in carrying out their respective functions in relation to the management of offenders.

69. There was some concern that major players in the criminal justice system were not identified as core players and also placed under a statutory duty to co-operate and that insufficient recognition was given to them, for example, voluntary organisations and procurators fiscals.\textsuperscript{35}

70. In response, the Minister said she wanted to ensure that those whose primary purpose was dealing with criminal justice (SPS and criminal justice social work departments in local authorities) were compelled to work together. Others with slightly different or more varied roles and responsibilities should also be involved but there was a need to ensure involvement without compromising the independence of some, such as the Crown Office or Procurator Fiscal Service.

71. \textbf{The Committee agrees that Scottish Ministers, CJAs and local authorities should be obliged to co-operate and whilst the Committee awaits the outcome of the consultation on membership of CJAs, we observe that good practice would suggest that CJAs should encompass a wide membership.}

\textit{Interface}

72. Traditionally, the primary duty of prisons has been to incarcerate. Tony Cameron (SPS) stated that there was no universally held view on whether prisons can rehabilitate in addition to imprisonment but added “we can do something modest to help rehabilitation.”\textsuperscript{36}

\textsuperscript{33} Official Report, 12 April 2005, Col 1489/91
\textsuperscript{34} Para 4, Supplementary written evidence, Scottish Executive, Annex E
\textsuperscript{35} Official Report, 12 April 2005, Col 1493
\textsuperscript{36} Official Report, 19 April 2005, Col 1509
Throughout our evidence we heard that in recent years, the SPS has made progress in addressing and easing the problem of transition from prison to community.

Tripartite arrangements have brought about improvements in co-operation between prisons, local authorities and the Scottish Executive acknowledged by our witnesses. Nonetheless the lack of a national strategy and a formalised national vision was noted by Alan Baird (ADSW) and Alec Spencer (SPS).

There was an acceptance and a willingness to do more: “speeding up and systemising joint working, as provided for in the Bill, will improve the performance of the criminal justice system.” Helen Munro (Forth Valley Criminal Justice Grouping) said: “we need closer ways of working with the SPS. However the nature of the SPS’s business and governance means that its structure is very different to ours.”

COSLA said: “it is important to recognise that the prison system is a national system...not clear about how that system can be modified or changed to fit comfortably with the notion of community justice authorities at a local level...the big challenge for us is our relationship with the SPS.”

SACRO said it might not be easy for nationally managed prisons to relate to regional CJAs and called for consideration of a devolved system of regionally managed community-facing prisons. ADSW were also unclear as to how SPS would relate to CJAs locally.

Tony Cameron, SPS, did not see a problem in being a national organisation saying: “most countries of Scotland’s size have single prison services...that approach gives us considerable economies of scale and not all prisoners are incarcerated next door to their home.”

The Committee emphasises the importance of ensuring an effective interface between SPS and CJAs. Evidence suggests that this might be difficult to achieve. The Committee urges the Minister to clarify with SPS how this will be achieved in practice.

Communication and Throughcare

One of the most important areas for co-operation in the management of offenders is throughcare arrangements between prisons, local authorities and communities.

We were told that the proportion of those serving sentences of 4 years or more has increased significantly with the consequence that most prison programmes

---

37 In 2001, the Executive convened the Tripartite Group to promote closer working relations between the Scottish Executive, the Scottish Prison Service and local authorities.

38 Official Report, 19 April 2005, Col 1506, Tony Cameron

39 Official Report 12 April, 2005, Col 1481

40 Official Report, 12 April, Cols 1492/3

41 Written evidence, SACRO, Annex D

42 Official Report, 19 April, Col 1515
have concentrated on this group.\textsuperscript{43} However of the 35,000 people entering prison each year, the majority of them are short-term prisoners, 80\% of whom receive sentences of less than six months, which in effect means a period in prison of less than three months.\textsuperscript{44}

82. Some services are presently provided for short-term prisoners, in education for example but rehabilitative services are not normally included. On entry to prison, between 70\% and 80\% of men and 98\% of women test positive for illegal drugs,\textsuperscript{45} so a significant period of a sentence can be spent in detoxification. The shorter the period in prison, the less the prison service can do.

83. We were also told by Tony Cameron (SPS) that there is a limit to the amount of information that can be collected or received in relation to prisoners serving short sentences. This lack of information and therefore information exchange clearly contributes to the tendency for short-term prisoners “to be discharged into the community and not be received by anybody.”\textsuperscript{46}

84. We were told about gaps in transitional services for addicts returning to the community\textsuperscript{47} and a lack of information passing to the police who said that the first time they knew that someone was back in the community was when another offence was committed.\textsuperscript{48} Margaret Anderson (Forth Valley Criminal Justice Grouping) said that local authorities needed to know who was in the system and that this was starting to happen for long-term prisoners and for priority short-term prisoners. Clearly this is something that requires continued efforts.

85. The Committee is aware of the Links Centres in some prisons which make provision for the situation of agencies such housing, employment and education in the prison in order to establish relationships with prisoners and assist transition on release. Links Centres are welcomed as a step towards continuity.

86. Clearly continuity of support is important in managing the release of offenders from prison. On release, the vast majority of short-term prisoners are not in receipt of statutory supervision and we were told that local authorities are not funded to provide generalised support. For the great majority of people there has been no co-ordinated network of support on release.

87. The new arrangements under the Bill will improve the situation by ensuring that many short-term prisoners, not currently covered by the flow of information or supervision, will receive voluntary assistance.\textsuperscript{49}

88. \textit{In order for the provisions of this Bill to be effective, it is imperative that basic information is routinely exchanged and transmitted between

\textsuperscript{43} Official Report, 19 April 2005, Col 1510
\textsuperscript{44} ibid
\textsuperscript{45} ibid
\textsuperscript{46} Official Report, 19 April 2005, Col 1514, Tony Cameron
\textsuperscript{47} Official Report, 19 April 2005, Col 1535, David Croft
\textsuperscript{48} Official Report, 3 May 2005, Col 1592, Doug Keil
\textsuperscript{49} Official Report, 19 April 2005, Col 1512, Alec Spencer
relevant agencies. The Committee believes that there is considerable scope for improvement in the collection, receipt and transmission of basic information in respect of short-term prisoners which of itself should contribute to improvements in throughcare.

Assessing and Managing Risks Posed by Certain Offenders

89. Section 9 of the Bill requires responsible authorities (police, the local authorities and Scottish Ministers through the SPS) in the area of a local authority to establish joint arrangements, including information-sharing, for the assessment and management of risks posed by the presence of serious and sex offenders. Section 9(3) makes provision for Scottish Ministers to specify, in secondary legislation, with whom the responsible authorities must co-operate.

90. The Committee notes that, following the recommendation of the MacLean Committee on Serious Violent and Sexual Offenders, the Criminal Justice (Scotland) Act 2003 established the Risk Management Authority. That Body is responsible for addressing the lack of a standardised approach to risk assessment and management and deficiencies in inter-agency information exchange, developing policy and undertaking research specifically in relation to the most serious and violent offenders.

91. Professor McManus (Parole Board for Scotland) expressed reservations about the emphasis being placed on sex offenders when statistical evidence suggested there were other categories of offenders that pose a greater threat to communities and are more likely to offend.

92. In his view there was a danger that the development of risk assessment and management models could become skewed as a result of the emphasis being placed on sex offenders and that there was too much control without demonstrable benefits in increased public protection. Dr McLellan (HM Chief Inspector of Prisons for Scotland) called for increased management of sex offenders to be matched by an increase in the preparation for the release of such prisoners.

93. Nevertheless improved information-sharing and putting joint arrangements on a statutory footing in respect of serious and sex offenders were welcomed by our witnesses.

94. Some evidence suggested that in the past, the Data Protection Act had prevented information being shared. The statutory requirement to share information, as provided by the Bill, was therefore welcomed. Police organisations suggested that the Information Commissioner should be asked to advise partner agencies on mechanisms that could be used to ensure the development of appropriate protocols for the sharing of information.

---

50 Official Report 3 May, Col 1554
51 Official Report 3 May 2005, Col 1554
52 Written evidence, ACPOS, Annex D, ASPS, Annex E
95. ADSW suggested that the Bill ought to go further and require the involvement of the NHS and a range of other agencies to ensure robust risk assessment and management of offenders who could potentially cause serious harm.

96. We note from Roger McGarva, National Probation Service (which covers England and Wales) that their biggest success had been in the management of dangerous offenders through the establishment of multi-agency panels on which the health service, the police, the Probation Service and education were represented.

97. It is clear that the provisions will bring about improvements to the existing working arrangements but we note that they will require the involvement of the police in the risk assessment and management of certain individuals which will be an area of new work for the police.

98. Police organisations are seeking clarification of the numbers involved and the types of offences that fall within these provisions, as they did not feel able at this stage to quantify the task or assess what skills, training and assessment tools will be needed.

99. On information-sharing, our evidence of what is in place presently was mixed. We were told that the SPS has computerised links with SCRO and that discussions are currently taking place about how SPS can link its information systems with those of the police.

100. We were also told by the Police about ViSOR, a police IT system being developed to support the registration, risk assessment and management of both sexual and violent offenders. ViSOR has been rolled out to all eight Scottish forces and work to integrate this system with SPS and Criminal Justice Social Work systems is underway.

101. In its report to us, the Finance Committee expressed concern that ongoing revenue costs for ViSOR had not been fully explored prior to publication of the Bill and the Bill’s accompanying financial memorandum.

102. The Minister confirmed that the purpose of these provisions in the Bill was to ensure that information can be and is shared, both between police authorities, local authority departments and between local authorities and others, such as health boards.

103. The Minister also confirmed that ViSOR is not dependant on the passage of this Bill and that additional finance had been provided to ensure roll-out across all eight police authorities. The Minister did acknowledge that a number of financial issues remain to be resolved. The Committee assumes the ongoing cost of ViSOR is one of those issues.

104. The Committee welcomes improved information-sharing requirements as a positive development and supports the further development of such arrangements.
Home Detention Curfews

105. Section 11 of the Bill introduces a new discretionary power to the SPS to release certain prisoners on Home Detention Curfews (HDC) or licences a short time before they would be eligible for automatic release. For those serving sentences of 4 years or more, the provisions will allow for release on licence on the direction of the Parole Board. All releases on HDC will be remotely monitored and will be subject to standard conditions.

106. Only certain categories of low-risk prisoner will be eligible for consideration for HDC. For example, those who will not be eligible include sex offenders subject to notification requirements, prisoners subject to extended sentences and, as clarified by the Minister in evidence, prisoners who have a history of domestic violence. A prisoner must be serving a sentence of at least 3 months and must spend a minimum of 4 weeks in custody. Time on HDC will depend on the length of the sentence but cannot be less than 14 or more than 135 days.

107. Most of our evidence suggested that there was merit, albeit possibly limited by the support that would be available, in HDC for certain low-risk prisoners.

General

108. Scottish Ministers estimate that there will be around 7,500 assessments for HDC in a year, about a third of which will pass and be granted HDC. At any one time there will be about 300 prisoners on HDC, for an average period of 55 days each.

109. We heard from Mike Nellis (University of Birmingham) that the most recent evidence from England, where HDC has been operational since 1999, is that 21,220 offenders were released from prison on HDC in 2003 of which 13% were subsequently recalled to prison. 54% of all recalls were for breach of the HDC conditions, including being absent from the curfew address, threatening monitoring staff or damaging equipment. In his view, HDC in England had made a strong contribution to securing closer links between prisons and support agencies in the community.

110. From the prisons perspective, David Croft (HM Prison Edinburgh), did not see how HDCs in themselves would contribute to reducing reoffending but felt that nevertheless they should be welcomed as allowing a return to the community for those for whom prison is no longer able to do anything.

111. Sue Brookes (HM Prison Cornton Vale) said that HDC would be particularly useful for female offenders to assist stability and allow better access to services in the community, particularly if conditions requiring access to particular

---

53 Official Report, 10 May 2005, Col 1621
54 Official Report, 10 May 2005, Col 1630,
services are attached. She did not feel that a general provision for supervision would represent the best use of resources.\textsuperscript{56}

112. From a community perspective, Apex Scotland expressed optimism about HDC, if targeted properly, given the need to test work carried out in prisons: “we could spend a lot of money doing work in prison but not know whether it has any benefit until the prisoner goes back out to the context in which they live”.\textsuperscript{57}

113. Families Outside, although supportive of HDC, called for appropriate support for families in addition to support for the offender, given the implications of HDC.

114. SACRO (and others), although not opposed to the principle of HDC, said that HDC would not of itself address the factors associated with offending. There were also concerns that HDC could reduce the opportunities for pre-release work in prisons.

115. The police were generally supportive of HDC in the circumstances proposed by the Bill, albeit as part of a package of rehabilitation measures and on the basis that HDC was not perceived by the public as a soft option.

116. The issue of HDC being perceived as a soft option was also raised by Victim Support Scotland who called for the victim notification scheme to be extended to counter further problems with public confidence in sentencing.\textsuperscript{58} In response to written questions the Minister stated that any changes to the Victim Notification Scheme would depend on evaluation of the Scheme which was due to be completed during 2006 and would take into account new developments such as HDC.\textsuperscript{59}

117. The Minister said that the new HDC arrangements are part of package of measures to ease transition back to and offer a structured way of accessing services in the community. The proposals allow for identification of prisoners who might be eligible; planning for release on HDC can then take place as part of a sentence management programme which would include pre-release preparation. The Minister said “It is important to recognise that they (HDCs) will not be...a get-out-of-jail-free card or an alternative to sentence.”\textsuperscript{60}

\textit{Decision to Release on Home Detention Curfew and Appeal Mechanism}

118. The discretionary power to release a person on HDC will be exercised by Prison Governors on behalf of Scottish Ministers, informed by a risk assessment involving prison and local authority criminal justice social work staff.\textsuperscript{61} The Bill does not specify the way in which the discretionary power would be used. This was a particular area of concern for two of our witnesses.

119. Professor McManus (Parole Board for Scotland) and Roger Houchin (Glasgow Caledonian University) both told the Committee that in recent years,\textsuperscript{56} Official Report 19 April 2005, Col 1539
\textsuperscript{57} Official Report, 3 May 2005, Col 1564
\textsuperscript{58} Official Report, 3 May 2005, Col 1565
\textsuperscript{59} Scottish Parliament written answers S2W-16487 and S2W-16488
\textsuperscript{60} Official Report, 10 May 2005, Col 1622
\textsuperscript{61} Explanatory Notes, SP Bill 39 - EN Para 72
in order to fully comply with the Human Rights Act 1998, there has been a move away from giving prison governors discretion over release dates. This is in common, over the last 20 years, with other countries in Europe moving further away from administrative frameworks towards quasi-judicial frameworks to ensure full protection of individual rights.

120. In Professor McManus' view it will be crucial for Regulations made under this Bill to “provide a watertight algorithm that, in effect, makes those decisions for governors.” He went on to say that as the Bill makes no proposals for a proper appeal mechanism against any decision made and as different governors will apply different rules, there is a risk that the process will be arbitrary and therefore open to abuse. A mandatory system for the release of short-term prisoners with certain conditions was preferred by Roger Houchin.

121. The Minister stated that risk assessment is already used within the prison system before transfer to low-security open conditions or granting home leave and that existing arrangements will be built upon. Discussions about how any appeal against a decision to refuse HDC are taking place and it was likely that any appeal would be considered by someone other than the decision maker. The Minister advised that the proposed system for deciding on release and recall had advantages of speed and simplicity and would be compliant with ECHR.

122. Provided there is robust assessment of the suitability of individual offenders for release on HDC, the Committee, by majority (one member dissenting) believes that HDCs are a welcome option. The Committee anticipates that there will be a relatively limited usage of HDCs but they will form part of a package of wider measures.

Conditions

123. Much of our evidence made mention of what might be required by way of conditions attached to release on HDC over and above the three “standard conditions” i.e. the curfew condition, the requirement to be of good behaviour and the requirement not to commit an offence.

124. There was a general consensus that HDC of itself would not reduce levels of reoffending and that if the intention was for HDC to address reoffending, it would be necessary to attach conditions for release over and above the standard conditions.

125. Mike Nellis said that HDC would only work if prisoners volunteered for it, that rehabilitation through electronic monitoring would only be achieved by the addition of professional and social support and that care should be taken to

---

62 Official Report, 3 May 2005, Col 1549
63 Official Report, 3 May 2005, Col 1553
64 Official Report, 10 May 2005, Col 1622
65 Annabel Goldie dissented on the basis that for as long as automatic early release applies to prison sentences, HDCs are inappropriate
66 Policy Memorandum, SP Bill 39 – PM, Para 41
ensure that any associated conditions were not onerous, leading to breach or failure.\textsuperscript{67}

126. SACRO voiced support for effective integration by way of advice, guidance and assistance for those not subject to statutory supervision but entitled to voluntary assistance.

127. Margaret Anderson (Forth Valley Criminal Justice Grouping) said that although HDCs would be a useful adjunct, they must be underpinned by sound risk assessments, which would identify a need for additional supervision, a point also made by Dr McLellan (HM Chief Inspector of Prisons for Scotland).

128. Margaret Anderson also expressed concerns about the resource implications and questioned whether robust assessments could be carried out for £100 or whether robust supervision could be undertaken for £250, as suggested in the Bill’s accompanying Financial Memorandum.\textsuperscript{68}

129. Professor McManus (Parole Board for Scotland) felt that issues around HDC had not been properly addressed. He told the Committee that the most successful schemes he had seen were in the United States and had “all started off by pretending they could work by keeping a person in a house, but every single one of them had to give in and use some form of supervision to assist the person in addressing the issues that come up in the domestic situation and those that gave rise to the offending in the first place.”\textsuperscript{69}

130. Professor McManus wanted to see every prisoner subject to some supervision on leaving prison “in order to give meaning to the whole sentence.” He observed that long-term prisoners are supervised to the end of their sentences and did not see why half of a short-term prisoner’s sentence should effectively be written off.\textsuperscript{70}

131. The Minister acknowledged that HDCs alone would not reduce reoffending. She said that HDCs would allow some responsibility to be placed on the individual and that opportunities for involvement for short-term prisoners in voluntary throughcare and work would exist. The Committee notes the Minister’s evidence that there are opportunities for those serving short sentences to access voluntary throughcare.\textsuperscript{71}

132. The Minister was reluctant to say that all those on HDC would be allocated a certain amount of social work time. Instead individual needs would be considered. HDC would allow responsibility to be taken by the individual to address the assessed needs and any requirement for high levels of mandatory supervision would suggest unsuitability for release on HDC.\textsuperscript{72}

\textsuperscript{67} Official Report, 3 May 2005, Col 1584
\textsuperscript{68} Official Report, 12 April 2005, Col 1487
\textsuperscript{69} Official Report, 3 May 2005, Col 1549
\textsuperscript{70} Official Report, 3 May 2005, Col 1552
\textsuperscript{71} Supplementary written evidence, Scottish Executive, Annex E
\textsuperscript{72} Official Report, 10 May 2005, Col 1619/1619
133. The Minister said additional conditions may be required for around a quarter of those released on HDC. The example of someone with an addiction problem being required to continue to be involved in a treatment programme was given.\textsuperscript{73}

134. The Committee shares the expectation that HDCs of themselves will not have any effect on reoffending unless there is consideration of attaching conditions for release over and above the standard conditions. The Committee agrees that it is desirable to have a wider package of support available to help offenders address their behaviour or problems but that elements of this may not always be expressed as conditions.

**Breach of HDC**

135. Non-compliance with the curfew or conditions or offending will constitute a breach. Where a person on HDC fails to comply with the curfew conditions, this will be detected by the electronic monitoring service provider who will be responsible for notifying the SPS. Where a person on HDC fails to comply with one of the other conditions of licence, the appointed supervising officer will be responsible for notifying the SPS. SPS would then decide what action to take.

136. Any decision to recall an offender to prison would be for the SPS\textsuperscript{74}. The Bill’s policy memorandum states that prisoners recalled to custody will be able to appeal against recall, a procedure which will be administered by the Parole Board for Scotland\textsuperscript{75}.

137. The Scottish Executive estimates that around 300 offenders will be apprehended and returned to custody each year resulting in “some additional cost to Scottish police forces, but these should be absorbable.”\textsuperscript{76}

138. From the Minister’s evidence, the Committee understands that not all those who breach their HDC would be referred to the police. There were concerns from ACPOS that if there was a high level of referrals to the police, the costs would not be absorbable and some other police function or duty would not be undertaken.

139. The status of HDCs will be compromised if action following any breach is not prompt. The Committee welcomes the clarification provided in the Executive’s additional memorandum about action to be taken in the event of breach.

**Recovery of criminal compensation from offenders**

140. This section permits the Criminal Injuries Compensation Authority (CICA) to recover sums paid to victims of crime from the perpetrators of those crimes, bringing Scotland into line with the rest of Great Britain. CICA has advised that it is content with what is proposed.

\textsuperscript{73} Official Report, 10 May 2005, Col 1623  
\textsuperscript{74} Supplementary written evidence, Scottish Executive, Annex E  
\textsuperscript{75} Policy Memorandum, SP Bill 39-PM, Para 47,  
\textsuperscript{76} Financial Memorandum, Para 146,
141. The Committee notes and welcomes this provision which of itself could discourage offending.

Issues Raised by the Finance Committee

142. In its report to us, the Finance Committee expressed concern about the lack of consultation on the cost implications of the Bill itself. The Minister responded that there had been a fairly extensive timetable of consultation prior to the introduction of the Bill and she did not see the lack of formal consultation on the Bill as a problem, given the work that was carried out pre-introduction.\footnote{Official Report, 10 May 2005, Col. 1628}

143. Earlier in this report the Committee acknowledged the Minister’s evidence that a number of financial issues, including the ongoing revenue costs of the ViSOR database, remain to be resolved. The Committee would be grateful to receive details of and an update in due course on these issues from the Minister.

144. The Subordinate Legislation Committee did not draw any matters to our attention.

CONCLUSIONS

145. The Committee, by majority (two members dissenting\footnote{Annabel Goldie and Colin Fox dissented on the basis that the case for statutory change of structures had not been made. Annabel Goldie further dissented on basis that HDCs, allowing early release in addition to existing provisions for automatic early release of prisoners, were inappropriate}) recommends that the Parliament agrees to the general principles of the Bill.
ANNEX A – REPORT FROM THE FINANCE COMMITTEE

Finance Committee

Report to the Justice 2 Committee on the Management of Offenders (Scotland) Bill

The Committee reports to the Justice 2 Committee as follows—

1. Under Standing Orders, Rule 9.6, the lead committee in relation to a Bill must consider and report on the Bill’s Financial Memorandum at Stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee on the Financial Memorandum for the Management of Offenders Bill, for which the Justice 2 Committee has been designated by the Parliamentary Bureau as the lead committee at Stage 1.

3. At its meeting on 12 April 2005, the Committee took evidence from officials from the Scottish Executive. An electronic version of the oral evidence for this meeting can be viewed here: http://www.scottish.parliament.uk/business/committees/finance/or-05/f05-1002.htm#Col2449

4. The Committee also received written evidence from:
   - the Association of Chief Police Officers in Scotland
   - COSLA
   - the Criminal Injuries Compensation Authority
   - the Scottish Prison Service; and
   - Strathclyde Joint Police Board.

5. The Committee would like to express its thanks to all those who submitted their views.

Objectives and the Financial Memorandum

6. The Bill makes provision in a number of areas as follows:
   - establish new functions and duties for organisations involved in managing offenders in Scotland;
   - introduce new information sharing duties on Scottish Ministers and others;
   - 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 for Minister to ensure compliance with new duties;
   - 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;
   - strengthen the sex offender monitoring process;
   - establish a Home Detention Curfew scheme.

7. The Financial Memorandum estimates costs as follows:
   - Establishment of CJAs: £200,000 per annum each (number of CJAs dependent on outcome of ongoing consultation but expected to be less than 14. Costs therefore in the range £400,000 - £2.8m)
   - Establishment of national advisory body: £50,000 per annum
   - Assessment and monitoring of serious and sexual offenders: £541,250 initial costs to Scottish Executive and £21,000 initial cost to Local Authorities, police boards and prisons*
   - Home Detention Curfew: £4.235m per annum, to be offset by savings of £2.1m per annum (i.e. total additional expenditure £2.135m per annum) cost to Scottish Executive, plus
£20,000 initial costs; £875,000 per annum cost to Local Authorities; and £60,000 per annum cost to Parole Board for Scotland

- Recovery of compensation from offenders: savings estimated at £100,000 per annum maximum

*since publication of the Financial Memorandum, the Executive confirmed that an additional £100,000 has been made available to the Scottish Police Service to roll out the ViSOR (Violent and Sex Offenders) database, thus bringing this total cost to £641,250

Consultation

8. A major consultation exercise in the form of a document called "Re:duce, Re:habilitate, Re:form – A consultation on reducing reoffending in Scotland" took place during 2004, but no consultation took place either on the draft Bill or on the associated Financial Memorandum. The Executive stated that this had been because the timescale for the Bill was very tight.

9. Whilst the Committee has no evidence that the costs set out by the Executive are incorrect, by the officials' own admission that 'because of the curtailed timetable, to some extent we were unable to develop some of the costs—for example at the SPS—in the financial memorandum as much as we would normally hope to do.' 79 As a matter of principle, the Committee believes that the Executive should refrain from introducing important legislation unless costs have been fully explored.

10. The Finance Committee expresses concern that the timescale to which Executive officials were working did not enable full and proper consultation on costs to take place. The Finance Committee suggests that the lead committee explore with the Minister the reasons behind the truncated timescale.

Costs on the Scottish Executive

Community Justice Authorities

11. The Financial Memorandum states that the cost for each Community Justice Authority (CJA) will be £200,000 per annum. The Executive is in the process of consulting as to how many CJAs there will be in the final structure. The proposals are for either 4 or 6 CJAs in total (ie a total projected cost of £800,000 - £1,200,000 per annum).

12. COSLA in its written evidence had queried the breakdown of this £200,000. During oral evidence, Executive officials gave a breakdown as follows:

| Item                                                           | Estimated Cost p/a £ |
|                                                               |                      |
| Salary of chief officer (including national insurance contributions) | 70,000               |
| Accommodation costs                                           | 10,000               |
| administrative support (2 staff)                              | 50,000               |
| general running costs, including stationery, IT and telephones | 40,000               |
| additional costs (eg travel and subsistence, planning and consultation costs) | 30,000               |
| TOTAL                                                          | £200,000             |


13. COSLA raised concerns as to the general principle of spending money on the establishment of CJAs in the context of ‘a very tight spending review settlement for justice’. Members pursed this issue with Executive officials during the oral evidence session.

14. The Executive referred members to the responses to the consultation document “Re:duce, Re:habilitate, Re:form – A consultation on reducing reoffending in Scotland” (2004), which highlighted the need for joined-up services, greater consistency, better communication and better integration of services, which is precisely what the community justice authorities will aim to do in their role.

Costs on other bodies

15. ACPOS noted in its evidence that in addition to the set-up costs for the ViSOR database noted above, there will be ‘obvious revenue costs arising from this, which have not been taken into account.’

16. The Executive confirmed in a follow-up letter to the Committee after giving evidence that:

“The [initial implementation] budget will also fund a scoping exercise intended to identify the issues and costs which will arise in terms of the partnership working between the Police Service, Criminal Justice Social Work (CJSW) and the Scottish Prison Service (SPS), all of which will access and use ViSOR to jointly manage Sex Offenders in Scotland.

“Secondly, with regard to the ongoing training, maintenance and development costs, ACPOS confirm that the ongoing revenue cost of ViSOR has yet to be determined. Notwithstanding the costs for service delivery of ViSOR are expected to be rolled up in the overall Police National Computer costs to Police Forces. Moreover whilst the costs involved in the provision of ViSOR to the Police Service both north and south of the border have so far been minimal, these have yet to be determined by the partner agencies.”

17. The Committee expresses some concern that ongoing revenue costs for the ViSOR database have not been fully explored prior to publication of the Financial Memorandum, although it recognises the Executive position that these costs are unlikely to be high. The Committee recommends that the Justice 2 Committee seek further information from the Minister about the scoping study on costs alluded to above.

18. In relation to the powers to release prisoners on licence or under home curfew arrangements, Strathclyde Joint Police Board (SJPB) stated that ‘The Financial Memorandum does not address the, perhaps unquantifiable, costs of re-arresting persons released early under the new arrangements on licence’. The SJPB submission went on to say that: ‘If 300 [the estimate contained within the FM] becomes a gross under-estimation then the financial inequity of suggesting that the cost can be absorbed into the police service becomes even more untenable.’

19. In oral evidence, the Executive responded to this by informing the Committee that the figure of 300 was ‘based on several years experience of the system that operates in England and Wales.’

20. Members questioned the Executive as to what provision had been made for unforeseen or higher costs following implementation of the Bill. The Executive reported that Ministers were still deciding the total amount of money which should be directed to the Community Justice Authorities. In relation to the home curfew provisions, officials stated that the margins of error

80 COSLA written evidence
81 Finance Committee, Official Report 12 April 2005, col 2454
82 Letter from Susie Braham, Bill Team Manager, to Convener, Finance Committee dated 18 April 2005
83 Strathclyde Joint Police Board, written evidence
84 Finance Committee, Official Report 12 April 2005, col 2454
contained in the Financial Memorandum provided adequate cover for the potential ranges of costs. Officials also noted that an additional £100,000 had been provided for the implementation of the VISOR database since publication of the Financial Memorandum and that “the secondment from the local authority criminal justice social work department—currently £15,000 for two days a week—will increase to five days a week while we scope and look at measures to implement VISOR in the Scottish Prison Service and local authorities.”

21. The Finance Committee draws the attention of the Justice 2 Committee to the issues highlighted in this report.

86 ibid
87 ibid
APPENDIX A: WRITTEN SUBMISSIONS

SUBMISSION FROM ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND

I refer to your correspondence dated 15 March 2005, in relation to the above subject, which has been considered by members of the Finance and Best Value Business Area and can now offer the following by way of comment in respect of the questions posed.

Consultation

1. It is difficult to estimate the actual costs, which will be incurred by forces as a result of this Bill, as it will depend greatly on the amount of work flowing from the legislation. No additional sums have been included in the Police Grant Aided Expenditure settlements for 2005/2006 to 2007/2008 to address these costs. Consultation has not occurred to date due to time constraints, however work is proposed in early course.

2. This has not been represented in the Financial Memorandum.

3. Yes. Consultation has not occurred to date due to time constraints, however, work is proposed in early course.

Costs

1. As per 1 above.

2. A full cost evaluation of the impact of the Bill’s implications should be undertaken in the first year to try and determine if extra costs have been incurred or, alternatively, have savings been achieved in other areas to compensate.

3. Again, it is difficult to comment on the ability to pay until the costs become apparent. However, the Bill will be introduced and the costs will require to be met from existing police budgets.

Wider Issues

1. It would have been helpful if a full evaluation of the revenue costs had been undertaken, prior to the announcement of Spending review figures and then some cognizance of the additional costs could have been included in the settlement. Although the police service welcomes the financial input made to the capital costs of setting up the standardised database, there are obvious annual revenue costs arising from this, which have not been taken into account. Accordingly, they must be met from existing police budgets unless additional funding is allocated in the future.

2. Members agree, that there will be future costs associated with the Bill, which will need to be addressed. As stated above, it is impossible to quantify these costs at this time.

I trust that the foregoing is of assistance to you.

Chief Constable
(Hon. Secretary)

SUBMISSION FROM CRIMINAL INJURIES COMPENSATION AUTHORITY

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
Reply: Yes.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Reply: Yes.

3. Did you have sufficient time to contribute to the consultation exercise?

Reply: Yes.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Reply: Yes. I would emphasise that the Criminal Injuries Compensation Authority (CICA) would exercise this power only where there was no real reason to doubt that the action would be successful. This being so, on the basis that the costs of a successful action would be reimbursed to the CICA, the net cost would be zero or negligible.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Reply: Please see reply to question 4.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Reply: The figure is entirely and inherently uncertain. A few successful cases (given that the maximum award payable is £500,000) could result in recovery of a sum well above the estimate, while one could envisage years with no successful cases. In general, 'best guess' is probably a more accurate term than 'estimate', and as such we do not disagree with it.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Reply: Not applicable to the CICA.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Reply: Not applicable to the CICA.

Howard Webber
Chief Executive
Criminal Injuries Compensation Authority
6 April 2005
SUBMISSION FROM COSLA

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

There was no consultation on the draft Bill, hence COSLA did not comment on the financial assumptions made.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Not applicable, given response to question 1.

3. Did you have sufficient time to contribute to the consultation exercise?

Not applicable.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill has no direct financial implications for COSLA as an organisation. However, there are two issues for COSLA in relation to the Memorandum’s provisions in relation to Community Justice Authorities:

- We are not convinced that in the context of a very tight spending review settlement for justice, scarce resources should be directed to the establishment of CJAs. £200,000 multiplied by a yet to be determined number of CJAs represents a significant sum of money that could perhaps be more effectively directed elsewhere as part of the effort to reduce re-offending.
- We would welcome further detail on how the £200,000 breaks down into the component elements set out in the financial memorandum.

1. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

As per above, the Bill has no direct financial implications for COSLA. However, in respect of local authorities, COSLA does not share the Scottish Executive’s confidence that the Sex Offenders Assessment provisions will necessarily be cost neutral. We would invite the Executive to both justify that assertion in detail and also to retain some form of contingency to ensure that any additional costs that do arise are met from Executive funding.

COSLA would also wish clarification on whether the Executive has made any provision for recurring funding for the risk assessment training of police and social workers (i.e. £150,000), given that there will be recurring demand for training in this area. The Memorandum suggests that no such funding provision has been made.
Although we cannot be entirely certain of the annual costs to local authorities arising from the Home Detention Curfew scheme (i.e. £750,000 for assessment and £125,000 for supervision), we do accept that based on available information, these appear reasonable estimates.

1. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes, although clearly COSLA would welcome an Executive commitment to provide additional funding should unforeseen costs arise in practice.

Wider Issues

2. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Prison Service

We have no concerns in relation to the accuracy of the associated costs presented in the Memorandum. However, we would wish to take the opportunity to comment on the striking increase in SPS expenditure over a 3-year period from 2005-08. There is no indication in the Memorandum whether this increase is expected to continue beyond 2008 or not. It may be that this kind of analysis is presented elsewhere (e.g. in SPS management documents), but in a context where resources are scarce, it is valid to use the Bill process to ask whether this phenomenal increase in SPS expenditure represents the best approach to reduce re-offending. COSLA has always questioned whether proper consideration has been given to diverting these additional resources from the prison service into community sentences and initiatives that may be more effective in reducing re-offending.

COSLA shares Ministers’ hope that this legislation will contribute to a reduction in prison numbers over time, that will assist a re-direction of resources from the SPS to community alternatives. However, in previous cases where there has been a deliberate policy of transferring resources from institutions to community alternatives (e.g. community care), there has been an identified need to factor in bridging funding. COSLA would welcome some indication of whether Ministers have given this any consideration in relation to the reducing re-offending agenda.

National Advisory Body

COSLA has no substantive comment to make on the projected £50,000 administrative costs associated with this, which seem a reasonable estimate.

3. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

There may be administrative costs associated with the transfer of assets from individual local authorities to a CJA if that occurs at some future point.

SUBMISSION FROM THE SCOTTISH PRISON SERVICE

Consultation

a) Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

b) SPS provided a full response to the consultation exercise on “Re:duce, Re:habilitate, Re:form - A consultation on Reducing Reoffending in Scotland” which preceded the

c) SPS provided initial costing on the likely SPS costs of the Home Detention Curfew element of the Bill proposals. SPS was subsequently consulted on the financial implications. Views on the financial implications of some costs have been refined, as thinking on the implementation of the Bill has developed. This paper includes costs which reflect our current understanding of the implication of the Bill for the SPS.

d) Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes. See (4) and (5) below.

a) Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

b) If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

c) Paragraph 114 reports that “The Scottish Prison Service will be expected to undertake these functions within its budget.” Scottish Ministers have not yet determined budgets, including for SPS, for the period 2007-08 onward.

d) SPS currently estimates that in addition to the £135,000 mentioned at paragraph 139, it will need to find approximately c£2m will be needed to deliver the extra services and improvements expected as an outcome of the Bill’s implementation.

e) SPS estimates its full costs for the main elements of the Bill to be:

- Community Justice Authorities, planning and liaison: c£0.25m
- Improvements to service delivery, assessment of need, community link arrangements and administrative and management support, and training: £1.1m
- Home Detention Curfew (based on 7,000 to 7,500 risk assessments and release decision-making of short term prisoners, and management of a small number of long-term prisoners): c£0.23m. This figure is greater than that previously estimated at paragraph 139 as initial scoping work on the HDC decision-making process has highlighted the need to budget for management time involved.
- Sex Offenders (improved information sharing, liaison and services, assessments, programme development and training) c£0.5m.

- The above gives a total of recurring costs of c£2m a year.

- Additionally, SPS estimate one-off preparation and set-up costs of up to c£1m over the full two-year lead in period (April 2005 to March 2007). These costs include staff, planning and operational costs, capital expenditure on IT and its development, appointment of staff prior to April 2007 and staff training for new roles and relationships, and potential HR costs including trawling/vertising and costs of internal transfers.

a. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

b. Yes, so far as can be foreseen and subject to the point made at 4(a). However, SPS has for some time been set rigorous financial targets to improve value for money and drive down the cost base as other providers of prison services can deliver satisfactory prison
outputs for significantly less. SPS has been reducing its cost base to become more competitive. Also, Government departments and agencies are being required to make efficiency savings to contribute to the Efficient Government Programme.

c. SPS continues to make reductions in its running costs to contribute to reinvestment in the prison estate, to fund inflationary pressures of running costs such as utilities and staff pay, and to invest in improved services to offenders in order to support the Ministers policy to reduce reoffending. Some SPS resource reallocation will be required eg for health issues (such as addictions and mental health) and for the implementation of this Bill and progress in re-aligning costs during 2005-06 and 2006-07 will help fund these priorities.

d. SPS has just launched a major exercise, in partnership with the TUS, designed to alter our structure and staffing to assist in creating better value within the organisation. The results of this exercise will, we expect, make a further contribution to meeting the estimated additional demands.

e. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes. The figures aim to take account of margins of uncertainty as far as these can reasonably be estimated and avoid optimism bias.

Wider Issues

a. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Below are some aspects of ongoing policy issues which impact on financial/operational matters.

b. The Management of Offenders Bill builds on a longer-term strategy in which SPS has been a key player within the SE JD CSD Tripartite Group (SPS, ADSW and SE JD). Significant funding has already been provided through the Tripartite Group to local authority Criminal Justice Social Work for improvements to throughcare, beginning with long term prisoners, and being extended to high risk offenders (i.e. sex offenders) and other special groups. SPS has met its obligations under the new arrangements from within its existing funds.

c. Additionally, through the auspices of the Tripartite Group, but with the additional involvement of the Substance Misuse Division, SE Health, and local DATs and SATs, SPS is transferring its current ‘Transitional Care’ service for short-term sentenced drug abusers to a community based ‘Addictions Throughcare Service’. Local authorities will run this. In addition to further moneys being made available by SE JD CSD and Health, SPS will be transferring £0.4m of its funding to the community run service.

d. The focus on improved management, assessment, treatment and supervision of Sexual Offenders continues. SPS has an important part to play and welcomes the work of ISSG (Solicitor General’s working group on Information Sharing) and the concept of ‘core partners’ with police and social work for information sharing in the management of Sexual Offenders. Integrated offender management is a key requirement and should ultimately lead to reductions in duplication of assessments through, for example, use of joint assessment tools, paperwork and other costs. These anticipated efficiencies are to be welcomed, not only for the savings to taxpayers which they should bring, but because an efficient service (which communicates well with each other, pools information and understands what each players role is) is more likely to contribute to public safety.

e. Prison population numbers are projected to rise and new prisons are being planned both to cater for increased numbers to improve the standard of existing accommodation and replace old accommodation. One of the stated aims of the policy underpinning the Bill is to
reduce prison numbers by keeping out of prison those who do not require to be expensively locked up. This may be achieved through:

- reducing the numbers on remand by an increase in use of bail;
- by sending fewer to prison through the increased use of alternative sentencing disposals or diversion from prosecution;
- by reducing the length of sentence of those committed to prison; and
- by providing options for earlier release of those assessed as not posing a risk to the public (such as through the proposals on Home Detention Curfew).

However, it is likely that, initially, such policies will result in only small reductions of numbers of prisoners in individual prisons, and any savings generated will be marginal (i.e. the cost of food, clothing, bedding). That is why the figure of £0.6m (paragraph 140) is given. This represents the marginal daily cost of 300 prisoners from the various prisons throughout Scotland who might be expected to be on HDC, once fully running.

Were a significant reduction in prisoners to come from a single large prison and say a whole accommodation unit for 300 be closed, with associated savings in staffing and so on, this might release savings of around £3m. The closure of a medium size prison holding a similar number, with associated savings on infrastructure services such as kitchens, industries, administration and security could release approximately £6m. These figures are a more realistic estimate of what could be realised should all offenders on HDC be released from one establishment and replace the crude estimate of £9.9m previously offered (paragraph 153). As releases on HDC will be spread throughout the SPS estate such savings are extremely unlikely and any savings from the measures in the Bill have to be set against the current projections which show a rising prison population.

a. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

It is not possible to say without seeing such legislation or guidance.

**SUBMISSION FROM STRATHCLYDE POLICE JOINT BOARD**

The following observations are offered to the questions put in the questionnaire on the Financial Memorandum for the Management of Offenders Etc (Scotland) Bill.

**Consultation**

1. No.
2. Not applicable.
3. Not applicable.

**Costs**

4 & 5. These two questions will be taken together. It is very difficult to say whether the financial implications for the police service have been reflected accurately in the Financial Memorandum just as it is equally difficult to say that the Police Authority can meet the financial costs associated with the Bill. The reason for this is that the elasticity of demand for the new duties placed on the police service is almost impossible to determine on a theoretical basis in advance of the functions becoming live.

There are three particular issues which it is worth commenting on.

The first is not necessarily directly related to the Police Authority. Section 2 of the Bill provides for the creation of Community Justice Authorities and the cost element is referred to in paragraph 111 of the Financial Memorandum. It is suggested that £200,000 per annum is a sufficient resource to
run such an authority. Given the logistical and operational requirements which may be generated by a Community Justice Authority it is thought that this financial provision may be on the light side and that in practice the actual cost could double. A lead authority arrangement might curtail costs.

Section 9 provides for the assessment and managing the risk posed by serious and sex offenders. The Chief Constable is one of three parties required to contribute to this process. The costs to the police service of meeting obligations imposed here are discussed at paragraphs 124 and 125 of the Financial Memorandum. It is suggested that the only financial implication here is funding required to provide training to police officers and social workers and that a budget of £150,000 is considered appropriate.

However this now picks up on the earlier remarks here. This is a new duty and to do it properly will require resources. It is unrealistic to suggest that this new burden can be met satisfactorily at the same time as the current level of service can be maintained. Management of the risk posed by serious and sex offenders is an issue subject to proper heightened media and public scrutiny. There is considerable expectation on all authorities involved here. It will in all probability be unrealistic to expect this new service to be provided to a satisfactory degree without also anticipating either that it will have an impact on current service provision or that it will require greater resourcing to maintain both levels of service provision.

Section 11 addresses further powers to release prisoners on licence or release prisoners under home curfew arrangements. The Financial Memorandum does not address the, perhaps unquantifiable, costs of re-arresting persons released early under the new arrangements on licence, if that proved to be necessary. The Memorandum concentrates on the new proposed home curfew arrangements. The costs to the police service is identified as being the need to re-arrest those in breach of the conditions of home curfew, which is estimated at 300 offenders each year, a cost which the memo says at paragraph 146 is simply absorbable by the police service. The same argument must be considered as set out above. A new obligation is being created and it is unrealistic to expect that a new burden can be carried out to a satisfactory degree without in some way impinging on the current level of service in other areas. If 300 becomes a gross under estimation then the financial inequity of suggesting that the cost can be absorbed into the police service becomes even more untenable.

Overall there has to be a full evaluation of the impact of the Bill’s implications over the first year of operation and to determine to what extent additional costs have been incurred or, if it can be identified, what other area of service has been reduced to compensate. Appropriate adjustments in the police Grant Aided Expenditure settlements for future years would require to be made.

Notwithstanding the generality of review considered appropriate it is probably essential that in relation to the assessment and managing of the risk posed by serious and sex offenders that a more interim review is undertaken to ensure that the expectations delivered on the passing of the Bill are in fact created and delivered.

6. The Financial Memorandum leaves very little margin of uncertainty. The Financial Memorandum is in fact fairly prescriptive as to the expenditure which it considers will arise. It is felt that in the nature of the activities covered by the Bill the margins of uncertainty in financial terms are much wider than the Financial Memorandum contemplates.

Wider Issues

7 & 8. These two questions are taken together. At the expense of becoming a little repetitious it is considered that because of the linkage which the Bill’s proposals make into the criminal justice system and because of the uncertain nature of the demand from the new burdens and duties created in the legislation it is very likely that costs unforeseen at the moment will emerge in future years as the arrangements in the Bill become live.
ANNEX B – REPORT FROM THE SUBORDINATE LEGISLATION COMMITTEE

Subordinate Legislation Committee

Report on Management of Offenders etc. (Scotland) Bill at stage 1

The Committee reports to the lead Committee as follows—

Introduction

1. At its meetings on 3 and 10 May 2005, the Subordinate Legislation Committee considered the delegated powers provisions in the Management of Offenders etc. (Scotland) Bill at stage 1. The Committee submits this report to the Justice 2 Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

2. The Executive provided the Committee with a memorandum on the delegated powers provisions in the Bill, which is reproduced at Annex 1.

3. The Committee’s correspondence to the Executive and the Executive’s response to points raised are reproduced at Annex 2.

Delegated Powers Provisions

4. The Committee considered each of the delegated powers provisions in the Bill. The Committee approves without further comment: sections 2(7), 2(16)(b), 9(3), 9(7), 11(3), 11(8), 11(11), 13, 14(2)(a), 15 and 17(2).

Future Consultation

5. The Committee identified delegated powers provisions in the bill where it wished to establish the Executive’s plans in relation to future consultation on their exercise, due to the type or extent of the power involved. The Committee was content with the Executive’s response to the issues raised and sets out explanation below.

Section 2(1) Community Justice Authorities

6. Section 2(1) confers on Ministers the power, by order, to establish community justice authorities (CJAs). These bodies have the functions set out in section 2(5). Section 2(3) makes clear that orders made under section 2(1) may include provision with regard to the constitution and proceedings of the CJA and matters relating to the membership of the CJA.

7. The Committee therefore noted that orders made under section 2(1) are potentially wide in scope and may make provision for a number of key facets of a CJA. The Committee recognised the Executive’s intention to consult with key stakeholders before making provision under this section but sought clarification in relation to consultation on future orders, given that a specific requirement to consult was not included on the face of the bill.

8. The Executive agreed that the orders made under section 2(1) are potentially wide in scope but highlighted that such orders will be made under affirmative procedure by virtue of the provisions of section 2(18)(a). The Executive stated that its usual practice was to consult with interested parties before laying a draft of the Order, although there may be circumstances where such consultation is unnecessary or inappropriate. The Committee was content with the Executive’s response.
9. Section 5(2) lists those bodies, other than the chief officer of a CJA mentioned in section 4, who may report to Ministers on the failure of a CJA, or a local authority under section 6, to carry out its functions properly. The Committee noted that section 5(12) allows Ministers, by order, to amend this subsection to add to, amend or omit from the list.

10. The Committee requested clarification of the Executive’s intention in relation to future consultation on orders made under section 5(12).

11. The Executive stated its recognition of the significance of the power to amend section 5(2) by subordinate legislation and outlined that it had therefore found it appropriate that any such order should be subject to affirmative procedure as set out at section 5(13).

12. The Executive stated that it would consult with interested parties before laying a draft of an order, although there may be circumstances where such consultation is either unnecessary or inappropriate. The Committee was content with the Executive’s response.

Section 7(2) Transfer of functions to community justice authority

13. Section 7(2) confers on Ministers the power, by order, to transfer functions mentioned in section 27(1) of the Social Work (Scotland) Act 1968 to CJAs. Section 27(1) of the 1968 Act confers various functions on local authorities to provide services in relation to the supervision and care of offenders. The Committee noted that these include provision of social background reports to courts and children’s hearings and supervising, advising, guiding and assisting persons in its area under supervision by court order. Section 7(4) allows Ministers, in any such order, to make different provisions for different CJAs.

14. The Committee considered that, given the discretion conferred on local authorities and CJAs in section 7(3), Ministers may use section 7(2) to transfer functions by order against a background of a failure of the CJA and local authorities to agree to that transfer voluntarily. The Committee therefore sought clarification of the provisions at 7(2) and 7(3) and agreed that it was particularly important to seek clarification on the Executive’s future plans to consult in relation to section 7(2).

15. The Executive stated that a distinction can be drawn between the provisions of section 7(2) and section 7(3). In section 7(2), Ministers will have the power by order to provide that functions currently exercisable by local authorities by virtue of section 27(1) of the Social Work (Scotland) Act 1968 will be exercisable instead by one or more than one CJA. In section 7(3), a CJA and each local authority within the area of that CJA may jointly determine that functions will be exercisable on behalf of the local authorities by the CJA. The Executive did not accept that the provisions of section 7(2) and section 7(3) achieve exactly the same result. Accordingly, the Executive considers that the circumstances in which one provision applies may not be the same as the circumstances in which the other applies.

16. The Executive stated that it intends to consult with interested parties before laying a draft of an order but that there may be circumstances where such consultation is either unnecessary or inappropriate. The Committee was content with this response.

Section 14(1)(b) Further amendments and repeal

17. Section 14(1)(b) inserts a new section 27(1B) into the Social Work (Scotland) Act 1968. This new provision confers on Ministers the power, by order, to amend, add to or omit any of the functions of local authorities set out in section 27(1). These functions relate to a local authority’s duty to provide services to those on probation or released from prison. The power is subject to affirmative resolution procedure.

18. The Committee asked for the Executive’s comments on its plans to consult before using the power in relation to the amendment of local authority duties under section 14(1)(b).
19. The Executive stated that its intention was to consult with interested parties before laying a draft of the Order, although there may be circumstances where such consultation is either unnecessary or inappropriate. The Committee was content with this response.
ANNEX 1

Management of Offenders etc. (Scotland) Bill
Memorandum to the Subordinate Legislation Committee

Purpose

This memorandum has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with rule 9.4.A of the Parliament's Standing Orders, of provisions in the Management of Offenders etc. (Scotland) Bill introduced to the Scottish Parliament on 4 March 2005. It outlines the reasons for seeking the proposed powers and describes the purpose of each of the provisions for subordinate legislation in the Bill.

Outline and scope of the Bill

The Bill takes forward a number of the Scottish Executive’s policy commitments from the Criminal Justice Plan “Supporting Safer, Stronger Communities” published 6 December 2004.88 In summary, the Bill:

- promotes an integrated framework for managing offenders through a more coherent and integrated delivery of offender management services by community justice authorities, consisting of members of local authorities, nominated by the authorities and supported by a chief officer and staff;
- requires community justice authorities and the Scottish Prison Service to work together to provide an action plan for co-ordinated delivery of offender services across the community justice area;
- imposes a duty on the Scottish Ministers (exercising functions under the Prisons (Scotland) Act 1989) community justice authorities and local authorities to co-operate and exchange information with one another in carrying out their respective functions;
- imposes a duty on the police, local authorities and the Scottish Ministers to establish joint arrangements for assessing and managing the risk posed by sex offenders and offenders convicted of specified categories of offence, including the sharing of information.;
- strengthens procedures for taking action when sex offenders subject to the notification requirements contained in the Sexual Offences Act 2003 fail to comply with these requirements;
- provides for the creation of a Home Detention Curfew scheme which will allow early release for low risk prisoners and allow a better reintegration into communities and reduce the number of offenders detained in prisons; and
- enables the Criminal Injuries Compensation Authority to recover, in the civil courts, from perpetrators of crimes, sums which the Authority has paid out under the Criminal Injuries Compensation Scheme to victims of those crimes.

Rationale for Subordinate Legislation

In considering whether matters should be specified on the face of the Bill or left to subordinate legislation, the Scottish Executive has weighed the importance of the matter against the need to:

- ensure sufficient flexibility in responding to changing circumstances, and the ability to make changes quickly in the light of experience without the need for primary legislation; and

88 http://www.scotland.gov.uk/library5/justice/scjp-00.asp
allow detailed administrative arrangements to be set up and kept up to date within the basic structures and principles set out in the primary legislation, subject to the Parliament’s right to challenge the inappropriate use of powers.

Overview of Delegated Powers

Section 2(1)

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument.
Parliamentary procedure: affirmative procedure of the Scottish Parliament

Section 2(1) provides an order making power to the Scottish Ministers to establish community justice authorities. Community justice authorities will have the role of planning, co-ordinating, monitoring and reporting on the services delivered by local authority criminal justice teams and the Scottish Ministers through the Scottish Prison Service. These authorities are expected to comprise a number of neighbouring local authorities although a single authority may comprise a community justice authority. The Order will prescribe the number and boundaries of each community justice authority and will be made following consultation with key stakeholders. The intention is to set out membership of the community justice authority, the number of members for each constituent local authority, the method and weighing of voting within the community justice authority and other detailed issues relating to the constitution of community justice authorities.

Agencies involved in criminal justice work are already organised in a number of different ways, such as police force areas, sheriffdoms, criminal justice social work groupings, etc., which are not always co-terminous. The Executive recognises that there is a legitimate debate on the size of each community justice authority area and its boundaries and thus intends to consult on this issue in spring 2005. Thus the Bill provides the framework for the establishment of community justice authorities by order. The Order will be made subject to affirmative resolution procedure, thereby offering the Parliament the chance to scrutinise and debate the constitution, shape and number of community justice authorities before the authorities can be established.

Section 2(7)

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument.
Parliamentary procedure: affirmative procedure of the Scottish Parliament

Section 2(7) provides the Scottish Ministers with an order making power to amend section 2(5) of the Bill. Section 2(5) specifies the statutory functions of community justice authorities.

This power allows Ministers to alter the functions of community justice authorities without requiring primary legislation where a change is deemed appropriate. In recognition that this power enables Scottish Ministers to amend primary legislation, an order made under this subsection would be subject to scrutiny and debate through the affirmative resolution procedure in the Scottish Parliament.

Section 2(8) provides that any order under section 2(7) can prescribe different provisions for different community justice authorities. Thus the power to prescribe functions is precise and allows Ministers to specifically direct the activities of individual community justice authorities where this is deemed necessary. This provision offers further justification for the use of affirmative resolution procedure.

Section 2(16)(b)

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument.
Parliamentary procedure: negative resolution of the Scottish Parliament

This provision offers further justification for the use of affirmative resolution procedure.
Section 2(16)(b) enables the Scottish Ministers to designate by order bodies as “partner bodies”. Community justice authorities will be under a duty to consult with partner bodies in preparing a plan for reducing reoffending, (Section 2(5)(a)(i)), and to share offender information (Section 2(5)(f)). Partner bodies are not identified in the Bill and the bodies to be included will be the subject of consultation. Establishing the list of partner bodies by order eliminates the need to amend primary legislation should any body change its name or cease to exist or should a new relevant body come into existence. As this may occur relatively frequently and be uncontroversial in nature, full scrutiny associated with affirmative procedure could place a disproportionate burden on the Parliament.

**Section 5(12)**

Power conferred on: the Scottish Ministers  
Power exercisable by: order made by statutory instrument  
Parliamentary procedure: affirmative procedure of the Scottish Parliament

Section 5(12) provides the Scottish Ministers with an order making power to amend subsection 5(2) of the Bill. Section 5(2) identifies the bodies and people who may report to Ministers on the failure of the community justice authority in the carrying out of its functions. Section 5(12)(a) enables Ministers to add to the persons described in Section 5(2) while Section 5(12)(b) allows Ministers to alter or remove any of these persons. Such amendment would also apply in relation to the power to report on failures by local authorities in accordance with section 6. The intention of the power is to allow amendment of the list without the necessity of amending primary legislation. However, it is recognised that such changes may generate concerns on the extent of who should report on the activities of the community justice authorities. These changes would also result in amendment to primary legislation. Therefore the order will be subject to affirmative procedure in the Scottish Parliament to allow full scrutiny and debate of any amendment to the persons described in Section 5(2).

**Section 7(2)**

Power conferred on: the Scottish Ministers  
Power exercisable by: order made by statutory instrument  
Parliamentary procedure: affirmative procedure of the Scottish Parliament

Section 7(2) provides Scottish Ministers with the power by order to transfer functions described in section 27(1) of the Social Work (Scotland) Act 1968 from local authorities to a community justice authority. This provision will give flexibility to enable community justice authorities to deliver any of the individual elements of criminal justice social work services as described under Section 27(1) of the Social Work (Scotland) Act 1968 in place of local authorities where that is considered more appropriate. Different provision may be made for different community justice authorities by virtue of section 7(4) thereby giving Ministers flexibility to deal with community justice authorities on an individual basis. It is recognised that the exercise of this power would involve a shift of statutory responsibility by in effect amending existing provisions in primary legislation that confer functions on local authorities. Affirmative resolution procedure is considered more appropriate.

**Section 9(3)**

Power conferred on: the Scottish Ministers  
Power exercisable by: order made by statutory instrument  
Parliamentary procedure: negative resolution of the Scottish Parliament

Section 9(3) provides the power to prescribe the persons with whom the “responsible authorities” (i.e. the local authority, the police and the Scottish Ministers) must cooperate in the establishment and implementation of the arrangements for the assessment and management of risk posed by certain offenders. The categories of offenders subject to these arrangements are specified in section 9(1).

The effective management and assessment of offenders who are subject to the provisions of section 9 will require the co-operation of a number of agencies. The provisions of section 9(3) will
allow Scottish Ministers to compile and subsequently amend the list of agencies required to cooperate with the “responsible authorities” in the implementation of these arrangements, as the need is identified, without further primary legislation. It is considered that negative resolution procedure is appropriate on the basis that the decision to include many of the bodies that will be specified will be uncontroversial.

**Section 9(7)**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** affirmative procedure of the Scottish Parliament

Section 9(7) provides an order making power for Scottish Ministers to amend the definition of “responsible authorities”.

The categories of offender covered by section 9 are those which are most likely to pose a risk to the community. The three main agencies identified in the current provisions as “responsible authorities” are local authorities, the police and the Scottish Ministers. These agencies currently play a primary role in the management of high risk offenders and it is considered appropriate that there should be express reference to them on the face of the Bill. It is likely that the power in subsection (7) would only be used if Scottish Ministers required to add to the list of agencies that require to be included as “responsible authorities”. In such an event it would be desirable that the definition could be amended speedily. Identifying suitable primary legislation to incorporate such an amendment is likely to incur delay and not be in the interest of improving community safety. The affirmative resolution procedure will however provide the opportunity for close scrutiny and debate by the Parliament before any amendment could be effected and is considered appropriate as the effect of the order will be to amend primary legislation.

**Section 11(3)**

(*New section 3AA(6) (further powers to release prisoners) of the Prisoners and Criminal Proceedings (Scotland) Act 1993.*)

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** affirmative procedure of the Scottish Parliament

Section 3AA provides a new power for the Scottish Ministers to release prisoners on licence. It prescribes the limits on this power, including the period during which a prisoner is eligible for release and categories of prisoner that are to be excluded from consideration.

Subsections 3AA(1),(2) and (3) limit the period during which the new power can be exercised and the general category of prisoner in respect of whom the power can be exercised. It can only be exercised:

- for short term prisoners (i.e., prisoners serving a sentence of less than 4 years) serving a sentence of 3 months or more;
- for a defined group of long-term prisoners (i.e., prisoners serving a sentence of 4 or more years) where the Parole Board has made recommendations as to their release at the half way stage of their sentence;
- once such a prisoner has served one quarter of his sentence, or four weeks of his sentence (whichever is longer); and
- within 135 days of the point when he would have served half of the sentence. It also provides that the power cannot be used within 14 days before the prisoner would have been released.
Section 3AA(5) provides for a number of exclusions from the new power. These cover situations where the prisoner may be considered as a high risk, where special post-release arrangements are in place or where the prisoner has failed to comply with the conditions contained in a previous licence.

Subsection 3AA(6) provides an order making power to adjust the parameters set out in subsections (1), (2), (3) and (5). This would allow the minimum sentence length in respect of short-term prisoners, the minimum period to be served in custody and the maximum and minimum lengths of the licence period to be adjusted, and for the list of exclusions to be amended. This power should be read alongside section 27(2)(b) of the 1993 Act, which provides a power for references in the Act to particular proportions of a prisoner’s sentence to be adjusted. This existing power will allow the reference to “one quarter” of the sentence in section 3AA(2)(b) to be amended.

The power is considered necessary to ensure that the parameters of the new system can be kept in step with other aspects of the early release arrangements in the 1993 Act, and in light of experience of the system in practice. The list of exclusions may also require to be updated to take account of other legislative changes and experience. It is not intended that this power will be used in the short-term.

In common with the existing power in section 27(2), it is considered appropriate for orders under this section to be subject to the affirmative resolution procedure. The amendment made by section 11(12) to section 45 of the 1993 Act provides for this.

Section 11(8)

New section 12AA(3) (conditions for persons released on licence under section 3AA) of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

- **Power conferred on:** the Scottish Ministers
- **Power exercisable by:** order by statutory instrument
- **Parliamentary procedure:** negative resolution

Section 12AA sets out the conditions to be included in a licence under section 3AA. The licence must include a curfew condition (as set out in section 12AB) and a set of “standard conditions”. Further conditions can be imposed under the existing section 12.

Subsections (3) and (4) provide that the standard conditions are to be prescribed by order by the Scottish Ministers, and subsection (5) provides that different standard conditions can be prescribed for different classes of prisoner. Subsection (6) requires Ministers, in exercising the power of prescription and in specifying additional conditions, to have regard to considerations of protecting the public at large, preventing re-offending by the prisoner, and securing the successful reintegration of the prisoner into the community, as they do when deciding whether to release a prisoner on HDC licence under the new section 3AA(1).

For short-term prisoners, it is proposed that the standard conditions should initially be to:

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

For long-term prisoners, it is proposed that the standard conditions should initially be to:

- report forthwith to the officer in charge of the office at [name of office];
- be under the supervision of such officer to be nominated for this purpose from time to time by the Chief Social Work Officer of [named local authority];
- comply with such requirements as that officer may specify for the purposes of supervision;
• keep in touch with the supervising officer in accordance with that officer’s instructions;
• inform supervising officer if changes place of residence, gains or loses employment;
• be of good behaviour and keep the peace; and
• not travel outside Great Britain without prior permission of the supervising officer.

In the case of long-term prisoners, these are based on the usual conditions recommended by the Parole Board for inclusion in licences relating to long-term prisoners released under section 1 of the 1993 Act. Other than the second and third points listed above, the conditions included in the licences of such prisoners are non-statutory, and each condition must be specifically recommended by the Parole Board. Prescribing the standard conditions for HDC licences by order will provide greater certainty. It will also reduce the administrative burden. The proposed standard conditions will need to be consistent with the considerations set out in subsection (4) of the new section 3AA (applied by section 12AA(6)) for each individual prisoner.

The order-making power allows the standard conditions to be updated to keep in step with other aspects of the early release arrangements in the 1993 Act, eg changes in the usual conditions used by the Parole Board, and in light of experience and developments of the system in practice.

It is considered appropriate for orders under this section to be subject to the negative resolution procedure. The amendment made by section 11(12) to section 45 of the 1993 Act provides for this. As noted above, the equivalent usual conditions for other forms of release licence are not subject to any form of Parliamentary control or scrutiny.

Section 11(11)

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

Although not strictly new powers, the Committee may wish to be aware of the effect of the amendments made by section 11(11) of the Bill on the existing powers contained in section 20 of the 1993 Act.

Section 11(11) introduces a new power into the 1993 Act to allow the Scottish Ministers to revoke the HDC licence on which a person has been released and recall that person to custody. Persons recalled to custody under the new section 17A will be entitled to make representations in writing with respect to the revocation to the Parole Board (section 17A(2)(b)). By virtue of subsection (3) of the new section 17A, the Parole Board may direct the Scottish Ministers to cancel the revocation after considering such representations.

The existing section 20(4) of the 1993 Act provides that the Scottish Ministers may by rules make provision with respect to the proceedings of the Parole Board. The current rules are contained in the Parole Board (Scotland) Rules 2001 (SSI 2001/315). This power would allow rules to be made to cover the new role of the Parole Board in considering representations made by persons recalled to prison under section 17A.

Section 20(5) further provides that the Scottish Ministers may give the Board directions as to the matters to be taken into account by it in discharging its functions under Part 1 of the 1993 Act. That power would extend to the new role of the Parole Board under section 17A. No such directions are in effect, nor is it intended that the power would be used in relation to home detention curfew.

Effect on section 245C of the Criminal Procedure (Scotland) Act 1995 (remote monitoring)

Although not strictly a new power, the Committee may wish to be aware of the effect of the amendments made by section 11(8) of the Bill on the existing powers contained in section 245C of the 1995 Act.
Section 245C(3) of the 1995 Act provides that the Scottish Ministers shall by regulations specify devices which may be used for the purpose of remotely monitoring the compliance of an offender with the requirements of a restriction of liberty order. Current provision is contained in the Restriction of Liberty Order (Scotland) Regulations 1998 (SI 1998/1802), as amended by SI 1999/144 and SSI 2002/119. Section 11(8) of the Bill inserts a new section 12AB into the 1993 Act. Subsection (3) of that new section applies section 245C of the 1995 Act in relation to compliance with the curfew condition in a HDC licence as it applies in relation to compliance with a restriction of liberty order. The effect is that the existing regulations under section 245C(3), and any future regulations, will have effect for HDC licences.

Section 13

Under the Criminal Injuries Compensation Scheme, the Criminal Injuries Compensation Authority (CICA) may make payments of compensation to persons who have been victims of crime. Section 13 of the Bill amends the Criminal Injuries Compensation Act 1995 (under which the Scheme is made), the effect of which is to give the CICA the power to recover certain of the sums paid out by it, from persons previously convicted of the offence to which the payment of compensation relates.

Section 13 of the Bill has the effect of extending the amendments made to the Criminal Injuries Compensation Act 1995 by section 57 of the Domestic Violence, Crime and Victims Act 2004 to Scotland, subject to the modifications, set out at section 13(2) & (3). There are two types of power involved.

Firstly is the establishment, through regulations, of an administrative regime for recovery of compensation. This will involve making provision for the conferral of functions on officers of the CICA for the purpose of seeking recovery, the giving of notice of an intention to seek recovery, the procedure to be followed in contested recovery proceedings and provisions for the reviewing of decisions to recover.

As these regulations supplement the powers of the CICA under the Criminal Injuries Compensation Scheme, it is appropriate for the degree of Parliamentary scrutiny of the regulations to match the degree of Parliamentary scrutiny of the Scheme. The Scheme is subject to affirmative resolution procedure (by virtue of section 11 of the Criminal Injuries Compensation Act 1995) and the Bill therefore makes provision for the regulations too to be subject to affirmative resolution procedure.

Secondly, there is proposed to be a power by order to amend the statutory list of relevant information to be contained in a recovery notice, as such information is set out at section 7B(2) of the Criminal Injuries Compensation Act 1995. This power to amend is intended to be exercised by order under section 7B(3).

That list is believed to be sufficiently comprehensive to cover the information which it is relevant and appropriate to be given to a person, from whom recovery is sought. However, to cover the possibility that, once the powers under these sections are applied, it becomes clear that additional (or less) information ought properly to be contained in a recovery notice, the power to modify the list as appropriate, is proposed at section 7B(3).

More commonly, such a detailed provision might be entirely contained in secondary legislation. That is not the case here and the power to modify is an appropriate safeguard, to facilitate the adjustment of the requirements of a recovery notice, without necessitating further primary legislation.

Such an order making power, relating as it does to the power to amend a provision set out in primary legislation, should appropriately be subject to affirmative resolution procedure.

Section 14(1)(b)

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>order made by statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative procedure of the Scottish Parliament</td>
</tr>
</tbody>
</table>
This section inserts into section 27 of the Social Work (Scotland) Act 1968, as a subsection (1B), provision to allow Scottish Ministers by order to amend the list of functions specified in section 27(1) of the 1968 Act. This enables alterations to be made to the list of functions local authorities may undertake without primary legislation being required. This will enable the statutory framework to reflect properly the way in which local authorities’ criminal justice social work responsibilities may develop over time, for example by involvement in the delivery of new forms of disposal. Since the amendments are being made to primary legislation affirmative resolution procedure is considered to be appropriate.

Section 14(2)(a)

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative procedure of the Scottish Parliament

This inserts into section 27A of the Social Work (Scotland) Act 1968, as a subsection (1A), provision to allow Scottish Ministers to add purposes falling within the definition of the term “relevant service” for the purposes of section 27A(1). This enables Ministers to provide funds to the community justice authorities for the purposes of providing services under section 27 of that Act for complying with area plans or for other similar purposes that Ministers may prescribe. Since the amendments are being made to primary legislation affirmative resolution procedure is considered to be appropriate.

Section 15

Power conferred on: the Scottish Ministers
Power exercisable by: order by statutory instrument
Parliamentary procedure: affirmative procedure if amending primary legislation
negative procedure if amending subordinate legislation

Section 15 enables the Scottish Ministers the power by order to make supplementary, incidental, consequential, transitory, transitional or saving provision deemed necessary or expedient for the purposes or in consequence of, or for giving full effect to any of the provisions within the Management of Offenders etc (Scotland) Bill. Affirmative resolution procedure is considered appropriate where amendments are being made to primary legislation. Negative resolution procedure is considered to be appropriate where the amendments are made to subordinate legislation.

Section 17(2)

Power conferred on: the Scottish Ministers
Power exercisable by: order by statutory instrument
Parliamentary procedure: none

Section 17(2) provides power to the Scottish Ministers to commence provisions of the Act by order (other than sections 13, 15, 16, 17 and 18 which commence on Royal Assent).
ANNEX 2

On 3 May 2005, the Committee asked the Executive for further explanation of the following matters:

**Plans for future consultation at sections 2(1) and 5(12)**

The Committee noted that orders made under section 2(1) are potentially wide in scope and may make provision for a number of key facets of a community justice authority (CJA). The Committee recognised the Executive’s intention to consult with key stakeholders before making provision under this section but seeks clarification in relation to consultation on future orders, given that a specific requirement is not included on the face of the bill.

The Committee would also welcome clarification of the Executive’s intentions in relation to future consultation on Orders made under section 5(12) which allows Ministers to amend the list of bodies specified in section 5(2).

**Section 7(2): Transfer of functions to CJA**

The Committee considered that, given the discretion conferred on local authorities and CJAs in section 7(3), Ministers may use section 7(2) to transfer functions by Order against a background of a failure of the CJA and local authorities to agree to that transfer voluntarily. The Committee therefore also seeks clarification on the Executive’s future plans to consult in relation to section 7(2).

On a related point, the Committee would also be grateful for the Executive’s comment on its plans to consult before using the power in relation to the amendment of local authority duties under section 14(1)(b).

**The Scottish Executive responded as follows:**

**Section 2(1)**

The Executive agrees that the Orders made under section 2(1) are potentially wide in scope. It is for that reason that such Orders will be made under affirmative procedure by virtue of the provisions of section 2(18)(a). In accordance with its usual practice the Executive would intend consulting with interested parties before laying a draft of the Order although it recognises that there may be circumstances where such consultation is either unnecessary or inappropriate. The Executive does not consider it appropriate therefore to impose a statutory requirement to consult. The Executive cannot commit future Administrations to continuing with the current policy regarding consultation.

**Section 5(12)**

In recognition of the significance of the power to amend section 5(2) by subordinate legislation the Executive considers it appropriate that any such Order should be made by affirmative procedure and provision for that has been included in section 5(13). The comments made regarding consultation in connection with section 2(1) also apply in connection with this section. The Executive would intend consulting with interested parties before laying a draft of the Order although it recognises that there may be circumstances where such consultation is either unnecessary or inappropriate. The Executive does not consider it appropriate therefore to impose a statutory requirement to consult. The Executive cannot commit future Administrations to continuing with the current policy regarding consultation.
Section 7(2)

The Executive considers that a distinction can be drawn between the provisions of section 7(2) and section 7(3). In terms of section 7(2) Ministers will have the power by Order to provide that functions currently exercisable by local authorities by virtue of section 27(1) of the Social Work (Scotland) Act 1968 will be exercisable instead by one or more than one Community Justice Authorities. In terms of section 7(3) a Community Justice Authority and each local authority within the area of that Community Justice Authority may jointly determine that functions will be exercisable on behalf of the local authorities by the Community Justice Authority. The Executive would not accept that the provisions of section 7(2) and section 7(3) achieve exactly the same result. Accordingly the Executive considers that the circumstances in which one provision applies may not be the same as the circumstances in which the other applies.

An Order made under section 7(2) will be made by affirmative procedure by virtue of section 7(5). The comments made regarding consultation in connection with section 2(1) also apply in connection with this section. The Executive would intend consulting with interested parties before laying a draft of the Order although it recognises that there may be circumstances where such consultation is either unnecessary or inappropriate. The Executive does not consider it appropriate therefore to impose a statutory requirement to consult. The Executive cannot commit future Administrations to continuing with the current policy regarding consultation.

Section 14(1)(b)

An Order made under section 27(1B) of the Social Work (Scotland) Act 1968, inserted by section 14(1)(b) of the Bill, will be made by affirmative procedure. This is provided for by virtue of proposed section 90(4) of the 1968 Act inserted by section 14(3) of the Bill. Since the power conferred by proposed section 27(1B) involves amendment of primary legislation (namely the provisions of section 27(1) of the 1968 Act) the Executive considers it appropriate that such an Order should be made by affirmative procedure. The comments made regarding consultation in connection with section 2(1) also apply in connection with this section. The Executive would intend consulting with interested parties before laying a draft of the Order although it recognises that there may be circumstances where such consultation is either unnecessary or inappropriate. The Executive does not consider it appropriate therefore to impose a statutory requirement to consult. The Executive cannot commit future Administrations to continuing with the current policy regarding consultation.
ANNEX C - EXTRACTS FROM THE MINUTES

JUSTICE 2 COMMITTEE

EXTRACT FROM MINUTES

11th Meeting, 2005 (Session 2)

Tuesday 12 April 2005

Present:

Bill Butler (Deputy Convener) Colin Fox
Miss Annabel Goldie (Convener) Maureen Macmillan
Stewart Maxwell Jeremy Purvis

Apologies were received from Jackie Baillie.

Management of Offenders etc. (Scotland) Bill – witness expenses: The agreed to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any witness expenses in the inquiry.

Management of Offenders etc. (Scotland) Bill: The Committee took evidence from—

Panel 1
Alan Baird and David Crawford, the Association of Directors of Social Work
Anne Ritchie, Head of Social Work Operations, West Dunbartonshire Council and Argyll, Bute and Dunbartonshire Criminal Justice Grouping
Helen Munro, Director of Community Services, Stirling Council and Margaret Anderson, Head of Service (Children and Families; Criminal Justice), Falkirk Council, both Forth Valley Criminal Justice Grouping
Harry Garland, Director of Community Social Services, Orkney Islands Council

Panel 2
Councillor Eric Jackson, COSLA social work spokesperson
Jim Dickie, Director of Social Work, North Lanarkshire Council and COSLA
Stephen Fitzpatrick, Team Leader, Community Resourcing, COSLA
PRESENT:
Jackie Baillie
Bill Butler (Deputy Convener)
Miss Annabel Goldie (Convener)
Maureen Macmillan
Stewart Maxwell
Jeremy Purvis

Apologies were received from Colin Fox.

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) BILL — WRITTEN EVIDENCE: The Committee considered the written evidence received.

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) BILL — ORAL EVIDENCE: The Committee took evidence from—

Panel 1
Tony Cameron, Chief Executive, Scottish Prison Service
Alec Spencer, Director of Rehabilitation and Care, Scottish Prison Service

The meeting was suspended from 3.24pm to 3.29pm

Panel 2
David Croft, Governor, HM Prison Edinburgh
Bill Millar, Governor, HM Young Offenders Institution Polmont
Sue Brookes, Governor, HM Prison Cornton Vale
JUSTICE 2 COMMITTEE

EXTRACT FROM MINUTES

14th Meeting, 2005 (Session 2)

Tuesday 3 May 2005

Present:

Jackie Baillie
Colin Fox
Stewart Maxwell

Bill Butler (Deputy Convener)
Miss Annabel Goldie (Convener)
Jeremy Purvis

Apologies were received from Maureen Macmillan.

Management of Offenders etc. (Scotland) Bill: The Committee took evidence from the following witnesses—

Panel 1
Dr Andrew McLellan, HM Chief Inspector of Prisons for Scotland
Professor James J. McManus, Chairman, Parole Board for Scotland

Panel 2
David McKenna, Chief Executive, and Neil Paterson, Director of Operations, Victim Support Scotland
Bernadette Monaghan, Director, Apex Scotland
Angela Morgan, Director, Families Outside
Susan Matheson, Chief Executive, and Donald Dickie, Criminal Justice Adviser, SACRO

The meeting was suspended at 3.18 pm until 3.24 pm

Panel 3
Dr Mike Nellis, University of Birmingham
Roger Houchin, Glasgow Caledonian University
Roger McGarva, Head of Performance and the Regions, National Probation Service

Panel 4
Douglas Keil, General Secretary, Scottish Police Federation
Bob Ovens, Deputy Chief Constable, ACPOS
JUSTICE 2 COMMITTEE
EXTRACT FROM MINUTES
15th Meeting, 2005 (Session 2)

Tuesday 10 May 2005

Present:
Jackie Baillie
Colin Fox
Maureen Macmillan
Jeremy Purvis

Bill Butler (Deputy Convener)
Miss Annabel Goldie (Convener)
Stewart Maxwell

Management of Offenders etc. (Scotland) Bill: The Committee took evidence on the Management of Offenders etc. (Scotland) Bill from–

Cathy Jamieson MSP, Minister for Justice
Andrew Brown, Bill Team Leader, Reducing Reoffending Division
Susan Wiltshire, Branch Head, Criminal Justice Projects Division
Brian Cole, Head of Branch 1, Community Justice Services Division
Sharon Grant, Head of Branch 2, Community Justice Services Division.

The Committee agreed to consider a draft Stage 1 report in private at a future meeting.
Management of Offenders etc. (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to. The Committee agreed to consider a revised draft report in private at its next meeting.
JUSTICE 2 COMMITTEE

MINUTES

18th Meeting, 2005 (Session 2)

Tuesday 31 May 2005

Present:

Jackie Baillie
Colin Fox
Maureen Macmillan
Jeremy Purvis

Bill Butler (Deputy Convener)
Miss Annabel Goldie (Convener)
Stewart Maxwell

Management of Offenders etc. (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to with further changes to be finalised by correspondence.
On behalf of the Joint Committee for the above Criminal Justice Social Work Partnership, the following points are submitted for consideration by the Justice Two Committee.

### National Advisory Body

This Committee welcomes the introduction of a National Advisory Body. This is regarded as an important step in establishing a national strategy for criminal justice. It will, however, be important that the national strategy provides direction for criminal justice in its widest sense and not exclusively for criminal justice social work and the Scottish Prison Service. In consequence, there is now the opportunity for the National Advisory Body to provide leadership in establishing a target prison population for Scotland. This Committee considers this approach to be essential if Scotland’s criminal justice system is to be effective and efficient. The current high levels of custody in Scotland compare unfavourably with most of the rest of Europe. This is largely accounted for by the high levels of short-term prison sentences imposed in sheriff courts throughout Scotland. It is apparent that the provision of quality community based disposals will not, in themselves, reverse the trend towards the ever-increasing use of imprisonment. This Committee believes that the National Advisory Body must seize the opportunity to tackle this central question.

### Community Justice Authorities

The proposed structure and composition of Community Justice Authorities is not yet clear. This Committee has the following reservations regarding the proposed structure.

There is no guarantee that the proposed restructuring will improve the effectiveness of criminal justice social work services.

This Committee is of the view that the current arrangements which operate within this criminal justice social work partnership are effective and that the development of services during the partnership’s existence has been based on an effective partnership approach involving all three local authorities. The Committee is now concerned that this positive approach will be overtaken by structural changes which may leave this grouping as a minor partner in a new larger organisation.

The partnership ethos within this grouping has resulted in a number of posts and two teams which have a partnership wide remit. It is unclear how the current arrangements will transfer into a new organisational structure. At the present time, partnership arrangements are underpinned by a Minute of Agreement signed by all three local authorities. It is not yet clear how these current arrangements might be sustained within the new structural arrangements. This may require an amendment to the Minute of Agreement and the approval of the new Community Justice Authority. The alternative, of dismantling current partnership arrangements, is regarded as neither practical nor desirable.

Finally, the perceived weaknesses of current groupings do not appear to be addressed by the new arrangements. In particular, the Social Work Services Inspectorate report on criminal justice social work services in Tayside makes reference to effective partnership arrangements in the “end note” section of the report. The positive reference to the arrangements established in this grouping are in danger of being undermined by the proposed restructure. It is not evident how the Community Justice Authorities might replicate the progress made within this partnership or aspire to the integrated approach referred to in the SWSI report.

### Chief Officer

This Committee has a number of reservations regarding the establishment of a Chief Officer’s post. In the first place, this post, which has no managerial role, may be seen to be yet another level of bureaucracy. Secondly, there would appear to be the potential for tension and to some extent duplication between this post and the directorates of individual local authorities.
Furthermore, the objective of establishing a post which will provide a degree of independent oversight of service delivery may be viewed as being undermined by the potential for Community Justice Authorities to assume direct responsibility for services.

**Power of Direction**

It is appropriate that the Bill provides the Minister with a Power of Intervention where Community Justice Authorities are deemed to have failed in exercising their functions. This power, along with the requirements that strategic plans are approved by National Advisory Body, should be sufficient to ensure that local authorities are held to account in relation to the statutory responsibilities this Bill places upon them. The Power of Direction, which is also included in the Bill, should therefore be unnecessary. If the responsibility for service delivery and management of resources is to lie with local authorities, the Power of Direction should be deleted from the Bill.

**Boundaries**

This Committee will take the opportunity to respond separately to the current consultation on the boundaries of Community Justice Authorities. However, it should be noted that the option of coterminosity with sheriffdom boundaries would also require some adjustment to sheriffdom boundaries. In the case of this grouping, this would require that steps should be taken to bring the entire area covered by East Dunbartonshire Council within the Sheriffdom of North Strathclyde.

---

**SUBMISSION FROM THE ASSOCIATION OF DIRECTORS OF SOCIAL WORK**

The Association of Directors of Social Work welcomes the opportunity to submit evidence in respect of the Justice 2 Committee’s consideration of the Management of Offenders etc (Scotland) Bill and in particular welcomes the reinforcement of the role of local authorities as the organisations best placed to provide criminal justice social work services. ADSW has worked closely with COSLA and the Scottish Executive on this issue over the last two years. ADSW fully supports the written submission made by COSLA in relation to the Committees consideration of the bill.

Before addressing the specific contents of the Bill there are two general points that we would wish to make.

**Organisational arrangements**

Since the reorganisation of local government in 1996 the organisational arrangements for criminal justice social work have been under virtually continuous review. The debate around Review of Criminal Justice Social Work Services in Scotland “Community Sentencing - The Tough Option”, the creation of the grouping, the calls for a single correctional agency and now the proposals for community justice authorities (CJAs) have all contributed to a climate of instability which have not assisted in providing and developing criminal justice social work.

The research commissioned by COSLA and conducted by Professor Andrew Coyle highlighted that no set of organisational arrangements will in themselves reduce offending or re-offending. The effectiveness of CJA in planning and delivering services must be judged over the long term and will be undermined by calls for further organisational change.

**Resourcing**

The creation of CJA as envisaged by the Bill will require significant additional funding at a time when the resources available to criminal justice social work are static. The additional funding provided in recent years to support those leaving prison is welcomed and yet barely scratches the surface of the real levels of need. Accredited programmes are massively expensive in terms of staff time to develop and deliver and there is a plethora of Scottish Executive sponsored pilots (e.g., drug courts, youth courts, Community Reparation Orders, Restriction of Liberty Orders) which - if evaluated as effective - could not be rolled out nationally on the basis of current expenditure plans.

We share the Executive’s commitment to reducing offending, re-offending and the inappropriate use of imprisonment. The proposals contained in the Bill will create – and fund - new boards and new chief officers but no new services. ADSW are not convinced that this is the best use of resources.
Specific comments on the Bill

Duty to co-operate

ADSW welcomes the proposal for a Duty to Co-operate and hopes that the clause will reinforce the need for strong and effective links between the Scottish Executive, the Scottish Prison Service and local authorities at both a strategic and an operational level.

Community justice authorities

The creation of Community Justice Authorities builds on the existing strengths of local authorities in providing criminal justice social work services within a framework of national standards and of democratic accountability. In providing a structure for the governance of criminal justice social work it builds on the work of the existing groupings in a way that adds clarity and will aid decision-making. ADSW welcomes the recently announced consultation on the number and composition of groupings.

We wish to take this opportunity to reinforce the view that boundaries for CJAs cannot be considered properly without looking at the boundaries of other bodies, particularly the Sheriffdom and Health Boards.

The functions of the Community Justice Authorities in terms of planning are helpful and constructive however the functions in terms of the monitoring of performance could result in a confusion of roles with other bodies with similar functions (e.g., Social Work Inspection Agency, Audit Scotland, Care Commission etc). While it is right that there is effective scrutiny of what are key public services, there needs to be careful consideration of the nature and extent of this in order to avoid wasteful duplication. Any addition to the existing layers of scrutiny needs to be well thought out to ensure that it does not impose an excessive burden on service providers and that the additional costs of such inspection represents value for money.

Chief officer of the community justice authority

ADSW believes the issue of the appointment of a chief officer for each community justice authority is an issue that requires full examination. Discussions with the Scottish Executive have confirmed that such posts will carry no managerial responsibility for the services provided by local authorities, carry no statutory responsibility in respect of either service delivery as a whole or in respect of the decisions made in relation to individual offenders. The role is therefore limited to planning and scrutiny as outlined in Section 3 and 4 of the Bill with the posts being relatively highly paid. The view of the Executive is that the role needs a level of both seniority and independence. ADSW's view is that such duties could be undertaken within existing designations and structures and at considerably less cost.

We believe that an alternative model could be developed which sees the Chief Officer designation as a “role” rather than a “job”. We believe that a helpful parallel exists with the role of the Monitoring Officer as defined in the Local Government and Housing Act 1989 and that redefining the nature of the Chief Officer role could present a significant saving in terms of the administrative costs of CJAs and avoid the potential for confusion of roles. ADSW believes that the current proposals in relation to the potential transfer of responsibilities from local authorities to CJAs may result in a confusion between the role of the Chief Officer of the CJA and the statutory responsibilities of the Chief Social Work Officer. ADSW is clear that the Chief Social Work Officer remains responsible for all transferred services.

Powers of intervention

ADSW acknowledges the parallels between the powers of intervention outlined in Sections 5 and 6 and those that exist in other areas of policy (e.g., Joint Future). However, it considers that the arrangements outlined in Section 7 of the Bill contain a fundamental contradiction. If it is the case that the existence of a post of Chief Officer of a CJA is justified by the need for scrutiny and independence then the inclusion of proposals which allows the Chief Officer to become the operational manager of service cannot be consistent with such a role. The aim is to encourage local authorities to develop shared and joint services, but the nature of the Chief Officer role as currently expressed in the Bill does not support this.
**Other measures**

ADSW supports the strengthening of arrangements for both the assessing and managing risks posed by certain offenders as set out in sections 9-10. It is our view that improved information sharing between agencies will make a significant contribution to enhancing public safety. ADSW has concerns that only the responsible authorities defined in the Bill (Local Authorities, Police and Scottish Prison Service) will be obliged to act in co-operation to manage the risks. There are many other agencies, of which Health would be a prime example, which equally must be seen as "responsible authorities" in reducing the risks posed by certain offenders.

ADSW is currently involved in the development of Home Detention Curfews and supports its use where it provides an appropriate alternative to imprisonment.

**Key Questions for the Committee**

ADSW believes there are several key questions that the Committee may wish to consider.

1. *Is the role of Chief Officer of the CJA correctly defined and does the creation of posts of Chief Officer represent best value?*

2. *Is there a possibility of confusion of role amongst the various bodies over-seeing criminal justice social work services?*

3. *Will CJAs be supported by the level of resources necessary to successfully undertake their role?*

**SUBMISSION FROM THE CONVENTION OF SCOTTISH LOCAL AUTHORITIES**

COSLA thanks the Scottish Parliament’s Justice 2 Committee for the opportunity to contribute to the scrutiny of the Management of Offenders etc. (Scotland) Bill. This Bill will have wide-ranging implications for local government, in particular criminal justice social work. The Committee will be aware that COSLA has been actively engaged in consideration of the issues addressed in this Bill since the Scottish Executive Partnership Agreement in May 2003 included a commitment to introduce a single correctional agency. Our evidence should therefore be viewed in this context of long-standing engagement with the reducing re-offending agenda.

COSLA has no comment on to make on those elements of the Bill related to specific areas of operational practice, such as sex offender management and home detention curfews. These are issues which our professional colleagues within the Association of Directors of Social Work (ADSW) are better qualified to provide a local government perspective on. Rather, COSLA’s written evidence focuses on the governance and political issues arising for local government from the Bill. However, COSLA does wish to place on record that it fully supports the written submission made by ADSW to the Committee in relation to this Bill.

This evidence submission contains the following:

- An account of COSLA’s general position in relation to the Bill.
- A detailed account of specific elements of the Bill where COSLA has concerns.
- A wider COSLA perspective on issues to be addressed through secondary legislation.

**General principles of the Bill**

COSLA is largely supportive of the general principles of the Bill. It accepts that Ministers’ wish to legislate for improvement in the management of offenders in Scotland is legitimate, based on the evidence of previous consultations. It also supports most of the specific provisions made in the Bill. However, COSLA’s general support for the Bill is qualified in two respects:

- It is not convinced that improved arrangements for the management of offenders alone will deliver the desired reduction in re-offending levels. As the attached COSLA response to the Reduce, Rehabilitate, Reform consultation makes clear, COSLA believes that other key factors such as revised sentencing policy, better use of resources and enhanced social inclusion are integral to
achieving a reduction in re-offending. None of these key factors are addressed in this relatively narrow Bill.

- There are specific provisions within the Bill that COSLA believes require particular scrutiny by the Committee. In some cases, COSLA believes that those provisions will require to be amended as the Parliamentary process proceeds. These issues are set out in detail immediately below.

**Provisions of the Bill requiring particular scrutiny**

**Powers of direction**

Section 2(10)a of the Bill will provide Ministers with powers to direct a CJA across the range of activities detailed in section 2, including:

- Production of area plan – including consultation and submission of the plan
- The monitoring of performance of local authorities and Scottish Ministers (i.e SPS)
- Directing local authorities where performance is unsatisfactory
- Making recommendations to Ministers where SPS performance is unsatisfactory
- Promotion of good practice
- Allocation of funds to local authorities
- Sharing information between partner bodies
- Reporting annually on activities

The Committee is asked to note that these powers are distinct from Ministerial powers of intervention in the event of failure by a CJA (see below). That is, these powers of direction are designed to apply even where no failure has occurred.

COSLA believes that such powers are completely incompatible with a meaningful local democratic role for CJAs and knows of no precedent where equivalent powers have been granted in respect of a local government service. Further, COSLA believes that the inclusion of such unlimited Ministerial power leaves the entire system open to micro-management from the centre. COSLA accepts that this may not be Ministers’ intention in relation to this provision, but there is nothing in the Bill to prevent it from being the effect. That is, there are no limits within the Bill on the application of the proposed powers. For that reason, COSLA would ask the Committee to note that this provision represents the single greatest concern local government has in relation to this Bill.

In the interests of supporting appropriate levels of local democratic control of local services, COSLA will actively seek to have these powers removed from the Bill at Stage 2. However, it would also ask the Committee to use the Stage 1 process to require the Justice Minister to place on public record:

- the intent underlying these powers;
- how Ministers envisage them being applied in practice;
- why Ministers therefore consider them to be justified; and,
- how they can be reconciled with the principle of appropriate levels of local democratic control over local services.

**Chief Officer**

COSLA has a number of concerns regarding the role and status of the proposed chief officer. These are:

- The absence of any clear rationale for this position being created at all.
- The use of scarce resources to create this potentially marginal role.
- The potential this role has for conflicting with that of the chief social work officer in individual local authorities.
- The potential loss of experienced criminal justice managers from mainstream social work activity within local authorities to better paid, but less directly influential (in respect of offender management/reducing re-offending), chief officer roles within CJAs.
- The apparent contradiction between the independent ‘whistleblower’ role of chief officers, with possible staff management role should member local authorities ever decide to transfer staff to the direct management of the CJA. The assumption appears to be that a chief officer (if ever granted management responsibility) would not require the same level of independent scrutiny that is being proposed for individual local authorities. COSLA believes this to be both illogical and unjustifiable.
Powers of transfer
Section 7 of the Bill provides Ministers with powers to transfer functions from individual local authorities to CJAs. The intention here is to allow any future transfer of staff/service delivery. The crucial issue here is who has the power to decide if and when any such transfer occurs. It is of paramount importance to COSLA that only CJAs themselves should be able to initiate this transfer. Were the Bill to grant Ministers unfettered powers of transfer it would leave the entire system open to micro-management from the centre, and completely undermine any element of local democratic accountability.

COSLA’s understanding is that this is not Ministers’ intention or desire. It therefore asks the Committee to seek a reassurance from the Minister that the Executive will sponsor an amendment at Stage 2 clearly removing any possibility that transfer can be initiated without the consent of the CJA concerned.

Powers of intervention
COSLA accepts that Ministers should have powers of intervention should CJAs fail in their duties under this Bill. Further, COSLA believes that the intervention powers provided for in the Bill are proportionate. However, COSLA would ask the Committee to seek the following reassurances from the Justice Minister on its behalf:

- That ‘failure’ will relate only to the non-exercising of specific and clearly identifiable statutory duties placed on CJAs under this Bill. That is, these powers cannot be applied in response to a more vaguely defined ‘failure to reduce re-offending’, which COSLA has consistently maintained cannot be delivered by CJAs in isolation from other key partners.
- SPS will be subject to equivalent accountability, despite being exempt from these provisions on the basis of it being an agency of the Executive. COSLA accepts that Ministers’ intention is to hold SPS equally accountable in respect of their offender management role, but would wish this assurance to be provided on the public record. COSLA would also ask that the Committee invite the Justice Minister to clearly identify how transparency will be achieved in respect holding SPS to account for any failure to fulfil its offender management role.

Issues outwith face of the Bill

CJA boundaries
Although not in the face of the Bill, the issue of Community Justice Authority boundaries is currently being consulted upon formally by the Scottish Executive. COSLA will carefully consider all relevant issues before determining its final response to this consultation, which concludes on 23 June. However, at his juncture we would wish to draw the Committee’s attention to the following key points that Council Leaders have already agreed will inform COSLA’s final consultation response:

- COSLA is willing to support a review of the status quo of 14 CJSW authorities, provided Ministers adopt an objective, evidence-based approach to the consultation, rather than work back from a pre-determined answer on what the number of boundaries should be.
- COSLA will only be willing to even consider 6 CJAs if Ministers demonstrate a willingness to review Sheriffdom boundaries to ensure that they would be co-terminous with CJAs.
- COSLA will continue to support the Island authorities’ case for special consideration.

In particular, COSLA is concerned that the 6 CJA option presented in the consultation paper is largely justified on the basis that it will enable co-terminosity to be achieved between the new CJAs and existing sheriffdoms. As the paper itself recognises, no such co-terminosity would exist under the existing sheriffdom boundaries. COSLA therefore welcomes Ministers’ commitment to review the sheriffdom boundaries. However, we would ask the Committee to seek reassurances from the Justice Minister that:

- The “long-term” timescale referred to in the consultation paper means a review within the next 2-3 years. If the proposed timescales were beyond this timescale COSLA would have concerns as to the long-term commitment of Ministers to the offender management structures being proposed in this Bill – and local government believes that long-term stability in structural arrangements is what this sector desperately requires if progress is to be made.
- Ministers will not be deflected from conducting this review by the powerful justice system lobby that would be affected by the resulting boundary changes.
Shared responsibility for successful delivery

The Bill as it is framed appears to be imbalanced in respect of the responsibility it places on local government to deliver the desired improvements in offender management practice and re-offending levels. COSLA accepts that technical legal restrictions prevent the Scottish Prison Service being directly referred to in the Bill. Nonetheless, the suspicion remains that local government may be held principally responsible for delivering the reduction in re-offending that all concerned desire – and therefore any failure to achieve that aim. COSLA wishes to be clear that local government is willing to accept full responsibility for all matters under its own control in this regard, including its own performance in respect of offender management. Its lingering concern is that it will be held responsible for matters outwith its control. Specifically, it would ask the Committee to invite the Justice Minister to provide further assurances that:

- SPS performance will be scrutinised in a manner equivalent to that of CJAs.
- Other partner agencies will be placed under an appropriate statutory obligation (see below).

Links between CJAs and SPS locally

Given the relationship between the new CJAs and SPS is placed at the very heart of the Bill, it remains a critical concern of COSLA’s that the mechanics of how the SPS will organise itself to achieve this local fit remains unclear. The Committee is invited to seek clarification from both SPS and the Justice Minister on how this will be achieved. At present, anecdotal evidence suggests that outwith the centre of the organisation in particular, considerable work needs to be done to prepare SPS staff for the changes that lie ahead.

Ensuring meaningful tie-in arrangements for ‘other’ partners.

This issue is included in the CJA consultation paper published on 31 March. In line with COSLA’s firm belief that improved offender management alone cannot deliver the desired reduction in re-offending, we are keen to ensure that Scottish Ministers confirm their desire to place appropriate statutory imperatives on all relevant agencies to support CJAs’ efforts to reduce re-offending at the local level. It is likely that COSLA’s consultation response will call for clear statutory duties on key players such as the Police and Crown Office/ Procurators Fiscal to support the implementation of local offender management plans. The Committee is asked to clarify Ministers’ own thinking in relation to what form of legal duties, if any, they envisage placing on these key agencies. COSLA considers the consultation paper to be somewhat vague in this respect.

SUPPLEMENTARY SUBMISSION FROM THE CONVENTION OF SCOTTISH LOCAL AUTHORITIES

COSLA welcomes the opportunity to respond to this highly important consultation document. COSLA would like to take this opportunity to congratulate Ministers on their willingness to adopt such an open and comprehensive approach to consultation. This government’s exploration of the issue of re-offending is without known precedent anywhere in the world. COSLA trusts that Ministers will therefore give all due consideration to the evidence that emerges from the consultation process.

From the outset, COSLA itself has publicly stated its commitment to be guided by the evidence that is generated by this consultation. For example, were the evidence emerging from the consultation to point conclusively towards a single [correctional] agency as the best means of achieving a reduction in re-offending levels, COSLA has already indicated that it would give that measure its support.

However, it must be stressed at this point that as an active participant in the consultation process, to date, COSLA’s very clear view is that the available evidence does not support the single agency option. Therefore, whilst COSLA very strongly shares Ministers’ commitment to the strategic objective of reducing re-offending, the consultation response that follows reflects the fact that available evidence points to better alternatives than a single agency.

COSLA believes that there is a more ambitious alternative for achieving the degree of integration and common purpose that will be required to meaningfully address the problem of re-offending. This is, that the principles of integrated working should be applied to criminal justice policy, with a view to establishing a national consensus around the need to drive down prison numbers and hence re-offending rates. These principles reflect those that have been established in relation to community planning and in other areas of social work, including Joint Future and Integrated Children’s Services. Such a model would see the development of a national strategy under the auspices of a national
forum, to be delivered through formal partnership working at the local level under the umbrella of community planning. Further details of COSLA's proposals are provided later in this paper.

It should be noted that COSLA's response assumes a strategic focus. Responses from our member councils and from the criminal justice partnership groupings address some of the more detailed issues around operational practice.

COSLA Research

As a contribution to an evidenced-based approach to the issue of re-offending, COSLA commissioned Professor Andrew Coyle, Director of the International Centre for Prison Studies (ICPS) at the University of London, to assess "whether the available international evidence supports the hypothesis that a single national correctional agency for Scotland would be likely to reduce re-offending and the use of custodial sentences". COSLA received Professor Coyle’s report in October 2003 and shared it with Ministers as part of its contribution to a mature debate on the issue. The report concludes that there is no international evidence that particular organisational arrangements for the delivery of criminal justice provision lead to a higher or lower use of imprisonment or affect re-offending rates. However, there is strong evidence that a clear policy direction involving all players, allied to effective local delivery of services, is important.

Consultation Issue 1: Roles and Responsibilities

- What are the strengths and weaknesses of the current system providing offender services?
- How could these services be improved?
- How could the organisation and structure of these services be improved?
- How can the organisations involved better focus on shared objectives? What should these objectives be?
- Is it possible to improve accountability for reducing reoffending rates? If so, how do we go about this?

The increasing numbers in prison and the unacceptable levels of re-offending confirm that the current system for dealing with offenders in Scotland requires considerable improvement. However, that must not blind decision-makers to the many strengths that are inherent to that system. These include:

- There is a significant range of existing provision in both prison and local authorities that could be harnessed to address offending behaviour.
- Local connection and knowledge is a strength in developing services, as is local collaboration between agencies. On an informal basis that provides greater information.
- The Social Work value base recognises both the importance of the individual and the social inclusion agenda.
- There is a drive to improve services across all agencies.
- Local Strategic Planning now encompasses all major services and agencies. The development of an effective plan focused on reducing re-offending could fit in comfortably with the developing community planning process.
- Community service is still seen as an effective disposal.
- Throughcare demonstrates that joint working is a possibility

However, if genuine improvement is to be achieved, it is imperative that weaknesses within the current system are acknowledged and addressed. These include:

- There is still a lack of support for community based disposals amongst the public.
- Although there is increasing evidence of agencies working together, access into services at the right time can still be poor.
- There is a lack of common assessment tools, whilst information sharing between agencies remains poor.
- Prisons are geographically distant from the communities that offenders come from. This presents a major obstacle to maintaining community contact, both in relation to families and relevant support services.
- There are still concerns that sentencing practice varies and that disposals do not necessarily lead to good outcomes in terms of managing offending; for example, short term sentences are seen as not being effective, yet are still used frequently when a community alternative would have been possible.
COSLA believes that the issue of accountability will not be addressed by making one agency responsible, but by making all parties responsible. Given that the system will require all key agencies to contribute, making one agency responsible will be completely counter productive, since it will invite other agencies to neglect their own obligations. A single agency for example, would reduce rather than enhance accountability.

Consultation Issue 2: The Purpose of Prison

- What can be done to improve the rehabilitation of short term prisoners?
- Individuals can end up in prison because of persistence rather than seriousness. How can the issue of persistence be effectively addressed?
- How can an institution which isolates individuals from communities also effectively reintegrate individuals back into society?
- What are the most effective and appropriate ways of managing sentences for long and short-term prisoners to reduce reoffending?

Most informed commentators accept that too many people are in prison and that Scotland’s growing prison population is a national embarrassment. In common with Ministers, COSLA believes that the purpose of prison is to ensure community safety and to protect the community from violent and dangerous offenders. Too many individuals currently serving custodial sentences in Scotland, particularly those serving short sentences, fail to meet these criteria.

Collectively we must find better ways of dealing with those many thousands of offenders each year that inappropriately receive custodial sentences. The answer lies in the increased use of community-based sentences. All available research evidence confirms that community-based disposals are more effective than prison sentences in reducing recidivism.

As Ministers have themselves acknowledged repeatedly, hugely valuable community-based work with offenders is taking place across Scotland. However, COSLA is the first to acknowledge that there is scope for enhancing the range and consistent quality of community-based programmes. We also believe that a demonstration of that improvement will surely instill the confidence some sentencers currently lack in relation to community-based disposals.

However, COSLA has not seen any evidence that a single agency would provide the key to achieving increased credibility for community sentences. Rather, COSLA’s view is that two key developments must take place if this increased credibility is to be achieved:

- A national political consensus must develop around the need to drive down the use of custodial sentences. As Professor Coyle’s research indicated, the development of this consensus has been a pre-requisite for radical reductions in prison numbers in other countries, most notably Finland. As happened in these countries, sentencers would clearly have to ‘buy in’ to that consensus for it to deliver positive outcomes. Our response further develops this idea of a national consensus below.

- The re-deployment of resources from custodial to community-based sentences would logically follow the development of a consensus. To set this in context, how many drug treatment places, neighbourhood mediation centres, after school education centres, victims services and how much intensive social work with troubled families could be purchased for the £21 million that will be required per annum to run Scotland’s two planned private prisons? There is no evidence to suggest that the creation a single agency would make that re-deployment more likely. Indeed, the evidence from Sweden’s single agency is that community-based sentences are being squeezed to finance the growing number of those serving prison sentences.

There is also scope for looking more imaginatively at the options for combining custody with community-based programmes designed to re-integrate offenders into their communities. Whilst there are undoubtedly people whose liberty needs to be curtailed, there are a range of alternatives to full custody, including Restriction of Liberty Orders, weekend or evening prison. The advantage of the latter would be that those who have employment could continue in that and those who require access to services could continue with that. It is important to recognise that while the Consultation Report identifies a lack of continuity from prison to the community, going into prison disrupts people’s access to services and in the longer term they are going to require access to community based facilities to
support their particular needs. Those who are involved in persistent offending receiving short term sentences are often extremely vulnerable in their own right, and short term prison sentences break the chain of support available in the community.

For those for whom a period in Prison is appropriate, a period on Community Supervision that helps ensure successful reintegration back into the community should be part of their sentence. For example, someone sentenced to a year could serve six months in Prison and six months in a community-based setting.

Consultation Issue 3: Addressing Re-offending

- What kind of interventions are most successful in tackling reoffending behaviour?
- How can we ensure that offender programmes are effective and consistent across Scotland?
- How can we ensure that community and prison based programmes are complementary to each other and ensure maintenance of the progress an individual has made?
- What needs to be done to ensure that measures to reduce reoffending are improved?

In common with most consultees, COSLA’s succinct response on how best to address re-offending is to keep as many offenders out of prison as possible. All available evidence indicates that sentences based on deterrence are least effective in addressing re-offending. This evidence is particularly apposite in relation to that group serving short custodial sentences which must be the main focus of the drive to reduce re-offending. Collectively we must ask ourselves whether sentencing someone to 6 months in prison is more or less likely to lead him to re-offend than a community-based sentence that allows him to retain his job, home and social support networks. Equally, given the knowledge that only a tiny minority of those serving short sentences access any kind of support programmes whilst in prison, does it not make more sense to impose community-based sentences which can perhaps include a restorative element, whilst at the same time addressing addiction problems that led them to offend in the first place?

Managing risk and imposing surveillance are limited, specific and may be necessary in many cases. But real results will only come with social reintegration into the community and more access for ex-prisoners and convicted people to housing, health services, training or work. So it is hard to see how seamless management of offenders is likely to be achievable, relevant or produce a useful outcome under a single agency.

Effective intervention also requires a quick response if the person is not co-operating. However, the breach process through the courts is slow and cumbersome and ineffective in maintaining the motivation of the individual. For punishment to work it has to be unavoidable, speedily administered and most crucially of all, support changed behaviours in future. It follows that successful intervention depends on looking at the whole justice system and how it works together, not just those specific elements of the system that would come under the auspices of a single agency.

Consultation Issue 4: An Integrated Approach

- What are the barriers in the current arrangements to achieving a seamless management of sentenced offenders?
- What can be done to improve service delivery across all the agencies involved so that we challenge offenders to stop offending?
- How can information best be shared between agencies to reduce reoffending?
- What are the barriers to communication and how can these be overcome?
- What are the key agencies that community based criminal justice services and the Prison Service need to work closely with?
- What organisational structures would provide an effective solution?
- Would the establishment of a single agency to deliver custodial and non-custodial sentences provide the most effective solution?
- How might the strengthening of the adult justice system improve the way work is undertaken with the children’s hearings system?

There is undoubtedly scope for enhancing the co-ordination of offender management, particularly in respect of the links between the Prison Service and criminal justice social work. Specifically, there is scope for improved information sharing, perhaps through integrated ICT systems and a standard
protocol for the exchange of relevant information. There is also a need to understand the basic rules and responsibilities of the different parts of the Criminal Justice system, what their value base is and how these different parts can most effectively link together. There is an awareness raising and training agenda associated with that, which could be met by a structured programme of joint training for SPS and criminal justice social work staff. Assessment and work with offenders that takes place prior to custody should also be routinely continued within the prison setting and passed back into the community upon the release of the offender. However, even this early in the lives of the criminal justice partnership groupings, there is evidence of improving joint working between these sectors, as exemplified by the Social Work Services Inspectorate’s recent inspection report on the Argyll and Dunbartonshires Partnership.

COSLA resolutely believes that an improved relationship between SPS and criminal justice social work does not require the establishment of a single agency. There is no evidence to suggest that such a structural change is necessary to improve joint working. Such a change would however guarantee the creation of a schism between criminal justice social work services and the whole range of support services to offenders provided by local authorities. In fact, the creation of a single agency, dislocated from the provision of a range of services, capable of tackling and reducing reoffending, would constitute a failure to recognise the complex nature of this issue. For example, drugs and alcohol remain important factors in an offending lifestyle. Could a single agency by itself really provide the support required to ensure that a drug addict did not re-offend? The answer is of course that any single agency would be required to work in partnership with a whole range of other services, generally provided by local authorities. No single agency can provide all of the services required to prevent an offender re-offending. Structural boundaries will inevitably exist somewhere in the system, a single agency would simply re-position those boundaries, very likely with damaging consequences.

There are real dangers that the establishment of a single agency would destroy the advanced form of joint working that exists under the current structure of criminal justice services. It would unavoidably result in significant disruption to important local processes. For example, common data systems within social work services contribute to the effective tracking and supervision of high risk offenders in the context of child protection and the protection of vulnerable adults. It would lead to the splintering of existing relationships with local authority children’s services for the provision of youth offending services, and with Mental Health Services.

Similarly, the creation of a single agency would impact on the ability to manage risk in relation to Child Protection and Vulnerable Adults. The development of protocols to manage sex offenders has ensured effective information sharing between criminal justice and child care social work teams in relation to children who are vulnerable in the community.

As indicated in the introduction, COSLA believes that there is a more ambitious alternative for achieving the degree of integration and common purpose that will be required to meaningfully address the problem of re-offending. This is, that the principles of integrated working should be applied to criminal justice policy, with a view to establishing a national consensus around the need to drive down prison numbers and hence re-offending rates. These principles reflect those that have been established in relation to community planning and in other areas of social work, including Joint Future and Integrated Children’s Services. They are as follows:

- All the parties must agree on an agenda set of objectives, in some sort of Forum chaired by the appropriate Ministers – see proposal below in relation to the National Criminal Justice Forum.
- Delivery of desired outcomes will depend on a number of separate agencies. It is impossible to corral all relevant agencies (e.g. the judiciary) into a single entity, so given that boundaries are guaranteed to exist somewhere in the system, concentrating on the inter-relationships between the various agencies and managing how they work together becomes the focus. This could be progressed at the local level through a formal partnership of the key agencies, which would be part of the overall community planning process.
- Retention of local service delivery is crucial. The network of relationships, both formal and informal that have developed across the country are highly valued by the plethora of agencies involved and must not be jeopardised by the creation of a single agency. Professor Coyle’s report strongly urges Scotland’s policy-makers to learn from the experiences in England, where the centralisation of probation services had an almost wholly detrimental effect on the management of offenders.
- Lastly, is the question of joint responsibility. The absolutely crucial point to make here is that this accountability issue will not be addressed by making one body responsible, but exactly by making all parties responsible.
An essential element of the national strategy would be public education and awareness raising around the re-offending and the (in)effectiveness of prison. The media has a role to play in this. Whilst COSLA is not suggesting that cultural change in relation to how crime and punishment is perceived and reported will be easy to deliver, it is will be an essential element of any strategy to reduce the prison population and re-offending. We should seek to take our lead from countries such as Sweden and Finland, where the removal of party politics from the equation has led to more mature and effective policy.

There is potential to develop the existing Criminal Justice Forum into an overarching policy body given that as currently constituted it comprises all the key players in the criminal justice system – crucially, including the judiciary – and could be chaired by the Justice Minister. By bringing together these key players it has facilitated some very far reaching discussions over its ten year existence, albeit that these have been taken “behind closed doors”. The Forum could be transformed with little change in its membership into a policy advisory body which could drive an agenda of reducing the prison population.

The experience of Community Care Services is that service delivery has improved with developments under the Joint Future Initiative of strategic partnerships. There is no logic that dictates that these same principles cannot be transferred to the criminal justice sector.

Consultation Issue 5: Effectiveness & Value for Money

- What are the current sources of inefficiency and ineffectiveness in the community-based and prison services in Scotland?
- How can these be addressed?
- How might organisational restructuring be used to address these inefficiencies in the system?
- Are there other solutions which would not require organisational restructuring?
- How could a single agency meet these challenges?
- Are resources currently being used in the most effective way in delivering sentences and programmes?
- If not, how might we improve the effective use of resources?

COSLA accepts that a system which promotes a rising prison population at a time of falling crime and when it is known that prison results in the highest reoffending rates, is inefficient. As this response has already made clear, COSLA’s clear view is that political leadership, rather than the establishment of a single agency is required to reverse this highly uneconomic trend.

COSLA would argue that local authority community based disposals are not funded at the level required to achieve the desired reduction in offending. A national strategy aimed at reducing re-offending should seek to balance these provisions against the requirement to demonstrate ‘effective practice’ and best value.

It is difficult to see how costs could be reduced through the creation of a single agency. Organisational change is not only expensive and highly disruptive, but also represents a gamble since there is no evidence that such a structure would be effective. The expected negative consequences for staff recruitment and retention would almost certainly result in a loss of knowledge and expertise. Overall, there is genuine concern that focusing attention on the huge managerial problems of pulling a single agency together would only serve to distract from the task of reducing re-offending.

Added to this, there is growing evidence from the Joint Future Initiatives and the Integration of Children’s Services agendas that closer working can be achieved without major organisational disruption. These approaches have also led to discussions on shared resources and pooled budgets, presenting opportunities to develop services across boundaries and make savings through economy of scale.

To genuinely address the issue of re-offending also requires us to take a broad view of the criminal justice system. For example, there is an issue in relation to the cumbersome nature of the system, with its in-built delays that prevent effective intervention with individuals early in their journey through it. Services delivered to the offender in the community are frequently disrupted by their being sent to Prison, whilst lack of aftercare following short sentences often prevents offenders from being effectively reintegrated back into the community. These are issues that could be addressed as part of a national strategy to drive down re-offending and prison numbers.
There are also issues around sentencing policy that need to be addressed if we are going to make more efficient use of resources. At the moment we have individuals who receive ineffective community based disposals according to their needs and others who are sent to Prison for inappropriate periods of time, which apart from allowing some community respite do nothing in the longer term to reduce that person’s propensity to re-offend. We have serious concerns that unless the system is looked at as a whole, the re-offending issue will not be addressed.

Conclusion

COSLA believes that this consultation exercise has generated a genuine enthusiasm across the criminal justice sector for tackling the hugely complex and difficult issue of re-offending. It has also brought together a range of stakeholders who have never before had the opportunity to collectively consider the issues at hand. The result is a wealth of information and ideas that must now be used to further the policy objectives of this exercise. To fail to do so would mean that an unprecedented opportunity had been missed.

COSLA firmly believes that a comprehensive and co-ordinated national and local strategic approach would now provide the best route forward for tackling re-offending and the factors associated with it. A national strategy would determine priorities, set objectives and recognise that all criminal justice services have an important role in reducing reoffending. The main agencies; police, procurators fiscal, the courts, local authorities, prison service and voluntary sector could be linked into the national strategy and resourced appropriately to achieve these objectives. COSLA is convinced that national leadership and co-ordination of a reducing re-offending strategy, implemented through local networks of key agencies working in partnership, provides a greater chance of achieving the Scottish Executive’s goals than any single agency ever could.

The introduction of a single agency would be expensive, disruptive, distracting and would offer no guarantee of improvement. No evidence, internationally or domestically, has been produced to suggest that a single agency would provide a solution to re-offending. Ministers cannot ignore the fact that their ambitious and unprecedented consultation exercise has found there to be no appetite for a single agency within the criminal justice community in Scotland. This lack of support is not restricted to local government, but is also to be found in other parts of the public sector as well as the voluntary and academic sectors. There is however, an appetite to work together to tackle re-offending and prison numbers. COSLA invites Ministers to reject the single agency option and to work with their partners in local government and beyond to develop a more imaginative and effective policy response.

SUBMISSION FROM FORTH VALLEY CRIMINAL JUSTICE

Introduction

The Forth Valley Criminal Justice Grouping welcomes the opportunity to provide evidence to the Justice 2 Committee on the provisions contained in this Bill. The Forth Valley Criminal Justice Grouping consists of Clackmannanshire, Falkirk and Stirling Councils and we have three national prisons located in our boundaries i.e. HMP and YOI Glenochil, HMP and YOI Compton Vale and HMYOI Polmont.

We support the ultimate aim of the Bill of reducing re-offending in Scotland. We consider that some but not all of the provisions contained in this Bill will make a positive contribution to reducing re-offending in Scotland and offer comments on the following key aspects of the Bill:

- The duty to co-operate (S1)
- Community Justice Authorities (S2-8)
- Assessing and managing the risks posed by certain offenders (s9-10)
- Home detention curfew (s11)

The duty to co-operate

We are concerned that the duty to co-operate is limited to Scottish Ministers, Community Justice Authorities and Local Authorities. If the aim of reducing re-offending is to be achieved, it is essential
that strong partnerships are forged between all the agencies that can contribute both to the effective management of offenders and to their social inclusion. We would estimate that, at any one time, there are four times as many offenders being dealt with in the community by criminal justice agencies as are in prison. It is therefore of critical importance that strong community based partnerships are maintained which must include local authorities, Police, NHS, Crown Office and Procurators Fiscal Service, Scottish Courts Administration, the Registered Social Landlord Housing sector and the Voluntary sector. This is not to detract from the importance of there being close working relationships between the Scottish Prison Service and local authorities in the interests of achieving effective throughcare for those offenders who enter the prison system. A much wider range of partnerships is needed, however, to make an impact on the much bigger population of offenders who are not in the prison system. In our view the duty to co-operate should extend to this wider range of agencies.

Community Justice Authorities

Lack of clarity on boundaries
The provisions in the Bill do not specify the boundaries of the Community Justice Authorities, which will be critical to their effectiveness. The recent consultation document indicates a preference for boundaries to be set to take account of Sherrifdoms or Scottish Court Service area boundaries. There is no clear rationale to suggest that setting boundaries in this way would contribute to a reduction in re-offending. By contrast, there are strong arguments to believe that setting boundaries, which take account of key partnerships, is likely to contribute positively to improving services. We are fortunate in the Forth Valley Criminal Justice Group to have boundaries that are coterminous with Forth Valley NHS and Central Scotland Police, who are key partners. Whilst we welcome the recognition of the importance of preserving the existing groupings, we would advocate that groupings such as ours should not be absorbed into wider Community Justice Authorities. Any move towards a larger Community Justice Authority would potentially complicate rather than strengthen working relationships with key partners, including arrangements for sharing information, and in our view would be counterproductive to the overall aim of reducing re-offending. A significant concern is the extent to which criminal justice social work services across a wide area could be integrated with local community planning functions, which is essential if services are to remain responsive to local need and to community safety.

Co-operation of Scottish Prison Service
A key aspect of this Bill is the duty of the Community Justice Authorities, local authorities and the Scottish Prison Service to co-operate with each other in the development and the delivery of the area plan, for which they will be held accountable. The Bill does not address how this interface with the Scottish Prison Service will operate in practice. In the Forth Valley, there are 3 major prison establishments, HMYOI Polmont, HMP and YOI Glenochil and HMP and YOI Cornton Vale. The constituent local authorities are responsible for the provision of social work services to these establishments. Forth Valley residents may serve prison sentences in 14 of the existing 16 prison establishments in Scotland. This creates significant logistical difficulties, both for how the duty of co-operation is to be enacted by the Scottish Prison Service and for how the performance of the Scottish Prison Service is to be monitored.

Accountability for reducing re-offending
The provisions in the Bill give elected members of Community Justice Authorities significant responsibilities for the planning and delivery of area plans and significant levels of accountability for the outcomes of these plans. The Bill implies that the most significant outcome for which Community Justice Authorities will be held accountable is a reduction in re-offending, with Ministerial powers of intervention to be applied in the event of perceived failures. The issue of how re-offending is defined and measured is extremely complex and systems need to be in place which enable local authorities to identify the scale and seriousness of re-offending. This is particularly important if effective practice is to be identified and developed.

Local authorities to date have not been able to routinely access reconviction information on those offenders who they have been responsible for supervising, and have been forced to rely on proxy indicators e.g. the completion rates of community disposals. This is a very unsatisfactory starting point from which to introduce these new statutory responsibilities. Clear agreements need to be reached on how information on re-offending is to be measured and how feedback is to be obtained, with timescales that allow for practice to be improved. Likewise no attempt is made to define how any failure to comply with the area plan is to be defined and this also requires to be clarified. No
recognition is given to the potential of failures being related to the level of resource allocation made by
the Scottish Executive to the Community Justice Authority.

Finally, we have concerns about the role of chief officers, as defined in the Bill, and are unclear about
the policy intentions behind these provisions and the likely impact on re-offending.

Assessing and Managing the risks posed by certain offenders
This part of the Bill creates additional statutory responsibilities for local authorities, the Police and the
Scottish Ministers to establish joint arrangements for the assessment and management of risks posed
by serious and sex offenders. This provision has the potential to strengthen existing arrangements,
however, it will be dependent on the development of an agreed national approach to assessing and
managing risk, which will also be a function of the newly established Risk Management Authority.

Currently in Scotland there is no agreed national approach to how the risks posed by serious violent
offenders are to be assessed and only in recent weeks has a national approach to the assessment of
sex offenders been agreed, training in relation to which is ongoing. The Scottish Executive requires to
ensure that an agreed approach to the assessment of serious violent offenders is introduced and
adequately resourced before these sections of the legislation are enacted. It should be noted that the
cost of this has not been incorporated in the policy memorandum, which accompanies this Bill and it
will be important for these additional costs to be assessed and resources made available.

Finally, in the case of long term prisoners, it will be important to ensure that the Parole Board is aware
of and in agreement with any agreed national approach to risk assessment and risk management. It
will also be important to ensure that the current tensions between the rights of prisoners to have
access to information before the Parole Board and the rights of third parties to confidentiality, is
resolved. These tensions can result in third parties refusing to provide information which has a
bearing on the level of risk an offender poses or can result in third parties feeling that their personal
safety is compromised by providing this information.

Home Detention Curfew
We are not clear about the policy intention behind this part of the Bill. If it is to contribute to a
reduction in re-offending, evidence would suggest that electronic monitoring alone is unlikely to
achieve this. We note that these licences are not expected to routinely contain a supervision
requirement, which will limit their potential to impact on offending behaviour.

From a community safety perspective, we would want to be assured that decisions taken in respect of
prisoners are based on a full and robust assessment of the risks posed by prisoners and the level of
supervision they may require in the community. We would agree that local authority criminal justice
social work services have an important role to play in undertaking these assessments in conjunction
with the Scottish Prison Service.

The policy memorandum which accompanies the Bill acknowledges that their will be resource
implications for local authorities in providing risk assessments in respect of prisoners who are to be
considered for Home Detention Curfew and for those released prisoners who are considered to
require additional supervision. The financial estimates contained in the policy memorandum are,
however, very concerning. The average cost to the local authority of providing a Home Detention
Curfew assessment is assessed as up to £100 and the average cost of the local authority supervising
an offender subject to Home Detention Curfew is assessed as £250. This compares to the annual unit
cost of £8,400 for electronic remote monitoring. The local authority costs associated with the
assessment and supervision of such offenders are likely to be substantially greater than this, if a
robust approach is to be taken to assessing and managing risks. It will be essential for these costs to
be met by the Scottish Executive.

Conclusions
This is a highly significant Bill for local authorities in a number of ways. It introduces significant
changes to the responsibilities of local authorities and gives new responsibilities to the elected
members who will make up the Community Justice Authorities. By contrast the Bill does not bind key
partner organisations into the new arrangements, which is a significant weakness that could be
addressed by way of an amendment. Other suggested improvements which would be critical to the
success of this legislation are:
• The retention of the boundaries of the existing Criminal Justice Groupings where these are already
coterminous with Police and NHS Board areas.
• Clarification on the practical mechanisms for ensuring the co-operation of the Scottish Prison Service in the development and delivery of area plans.
• Clarification on how re-offending is to be measured and failures of compliance defined.
• A nationally agreed approach to the assessment and management of violent offenders which is appropriately resourced.
• A more realistic approach taken to the costing of assessment and supervision by local authorities of Home Detention Curfew orders.

SUBMISSION FROM THE ORKNEY ISLANDS COUNCIL

Orkney Islands Council welcomes the opportunity to submit evidence to the Justice 2 Committee in respect of the Management of Offenders etc (Scotland) Bill. Orkney Islands Council has been in direct communication and discussions with the Scottish Executive over a considerable period concerning the particular issue of the Islands’ special circumstances, in relation to the legislation. Orkney consists of 67 islands, 18 of which are inhabited, and has a population of approximately 20,000. Orkney is different to Shetland and the Western Isles because of the high number of non-connected inhabited islands, and this does present communication and transport issues in delivering all services including Criminal Justice services in accordance with National Standards.

General Issues

The introduction of the Management of Offenders etc (Scotland) Bill is recognition that in mainland Scotland there are current weaknesses in the existing system of managing offending which does reflect upon overall levels of reported crime. However, it does not recognise the strength of Criminal Justice Social Work Services in the Orkney Islands and the high levels of success based on National Standards, Best Value reviews, and indeed Northern Constabulary crime figures. However, despite this level of success, Orkney is not complacent and will continue to strive for even higher quality of services within its improvement culture. Orkney has a community with continuing low levels of crime, which are not accidental but based on stable multi-agency partnerships within a strong community.

Within the Bill there are a number of overarching issues.

• Orkney is a self contained area, which is bordered by sea. Accordingly, to make Orkney part of a Criminal Justice Authority (probably with Aberdeen Moray, Aberdeen City, and Highland) defies logic in terms of each CJA having a strategic plan. Orkney’s strategic plan will be fundamentally different to Aberdeen for example, in nearly every respect and to force “a one size fits all” solution may deteriorate services in Orkney.

• Partnership working is a keystone of the proposed CJAs and is seen as the strength of the Orkney present system. However, the partnership which must work is not with other local authority services, but with the local agencies, such as the police, and court staff in Orkney. Orkney’s success is based on this local partnership working. Criminal Justice Social Work Services are integral to Orkney’s Community Safety Partnership and other local community planning arrangements, for example, the Drugs, Alcohol and Smoking Action Team (DASAT).

• Orkney Islands Council does accept that it needs to continue to improve the working partnership with the Scottish Prison Service (SPS), but in context this is for less than 5% of the criminal justice workload. The individual working links with the SPS at Inverness Prison and more rarely, Cornton Vale, are important to maintain. It will be the local links on a case by case basis that will improve the service delivery and therefore the outcomes given the extremely small number of custody cases.

Section 1 – Duty to Cooperate

Orkney Islands Council supports the fact that Scottish Ministers, CJAs and Local Authorities are to cooperate with one another in carrying out their relevant functions. It is important to recognise that Orkney at present successfully links centrally to the Scottish Executive, and with the present Northern Partnership grouping.
Section 2 – Community Justice Authorities

The Bill and the “Consultation on Community Justice Authorities” both recognise that the island authorities have particular circumstances that need to be explored in some detail, and this will continue outside the Committee scrutiny.

Orkney Islands Council is strongly of the view that Orkney will not meet the main objectives of the legislation – to reduce offending – by being part of a CJA, and indeed may increase offending. This is based on the following evidence.

Partnership Working

The Bill bases its main concept on the justified evidence that if Criminal Justice Agencies work closely together in partnership, the coordinated services will produce better results in terms of reduced offending. Orkney agrees with this position but the local evidence shows a very high level of partnership which does produce the local result of low levels of offending. Orkney’s Criminal Justice Service enjoys co-location with Housing, Children’s Services, Community Care Services and Community Safety staff, and co-terminously with Police, Procurator Fiscal, Sheriff Court and NHS services. The Criminal Justice team has been proactive in promoting the sharing of information and ideas across the Justice sector through the encouragement of, and attendance at, Court User Group meetings.

This partnership extends across complex areas of work such as Sex Offenders Strategy, DASAT, Child Protection, Community Safety and just as importantly links to Youth Justice.

A CJA will not impact upon this local partnership and integrated working, and this is the essence of delivering in the Orkney Criminal Justice setting.

Statistics

The statistics for Orkney’s Criminal Justice services show a very high level of service delivery, which again impacts upon levels of criminality.

Social Enquiry Reports (SERs)

Orkney Islands Council ranked first out of 32 Scottish Councils in 2001-02, 2002-03 and 2003-04, with 100% allocation of reports within 2 days, and 100% of reports to Court on time.

Probation Orders

Orkney Islands Council ranked first out of 32 Scottish Councils in 2001-02, 2002-03 and 2003-04 for seeing new probations within 1 week, with 100% compliance.

Community Service Orders

Orkney Islands Council ranked first out of 32 Scottish Councils in 2001-02 for average hours per week completed Community Service. In 2002-03 and 2003-04 Orkney Islands Council’s performance was higher than the Scottish average.

Supported Accommodation

In 2004-05, SACRO’s Supported Accommodation service for offenders in Orkney has achieved a greater than 75% occupancy out-turn.

Youth Justice

Latest quarterly indications from Scottish Children’s Reporter Administration (SCRA) for July – September 2004 have Orkney ranked first out of 32 Councils for Youth Justice performance across a range of indicators, including percentage of persistent offenders, and social work reports being submitted on time.

Orkney’s Crime Levels 1991 – 2004
Statistical evidence from partners in the Northern Constabulary shows a small decrease in reported crime and offences, from 1388 offences in 1991 to 1364 in 2002/03. The corresponding period shows a growth of confidence and use of criminal justice social work services by courts.

<table>
<thead>
<tr>
<th>1990</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 Social Enquiry Reports</td>
<td>56 Social Enquiry Reports</td>
</tr>
<tr>
<td>8 Probation Orders</td>
<td>25 Probation Orders</td>
</tr>
<tr>
<td>0 Community Service Orders</td>
<td>24 Community Service Orders</td>
</tr>
</tbody>
</table>

In the total Northern Constabulary area the 1991 figures for reported crime and offences is 36,877, and this increases to 41,106 in 2002/03. This area increase and indeed national increase highlights the Orkney success in dealing early with low tariff crime in the community, which is reducing high tariff offences and custodial sentences.

These statistics are vitally important to the Orkney method of joint working and close liaison with all agencies concerned with crime and the prevention of crime.

**Customer Satisfaction**

In the 2004 Best Value Service Review of Orkney’s Criminal Justice Social Work Services, a performance questionnaire was sent to 140 local stakeholders, including service users, staff, sentences and partner agencies.

It found 98% of respondents “satisfied” or “very satisfied” with the quality of work undertaken. No respondents were “totally unsatisfied”.

These customer satisfaction figures must be seen as a real success given the present lack of general confidence in the national criminal justice services. It is because Orkney manages its own services, sets its own targets, and delivers services to meet local community needs.

**Section 2 (5) The functions of a Community Justice Authority**

Orkney’s Criminal Justice services already complete the functions expected of a CJA:-

- Annual reporting on Strategic Planning to elected members.
- Monitors performance (see statistics above), with a view to improving practice or resolving unsatisfactory practice.

**Promotes good practice**

There are formal links with other island authorities, which includes sharing strategic plans.

**Allocate resources (financial and staffing)**

The Criminal Justice services are 100% ring fenced funding from the Scottish Executive. These resources are allocated appropriately on an annual basis and reported to elected members. The main issue around resources is the issue of minimum viability of a small team to enable effective delivery of service. The Criminal Justice Service is integrated with other mainstream social work services, such as out of hours services, and child protection services. Any loss of control of the resources would jeopardise the delivery of these other services, as well as jeopardising the emergency cover for criminal justice services.

**Training**

Orkney would want to make use of national training on the same basis as the present arrangements. For example, the Scottish Executive are promoting training on the new sex offender risk assessment tool called VISOR, this is national training. Orkney will also continue to buy in training, as it is always more effective because of the travel arrangements to a remote island service. Orkney’s Criminal Justice Service also gains resources from the Community Social Services Department training section and in the use of opportunities such as “fast track” graduate training. There has been joint training agreed between the island authorities, which shares relevant skills and experiences.
Section 3 - Further provision as respects community justice authorities and Section 4 – Special duties of chief officer of community justice authorities

Orkney Islands Council’s position on the appointment of a Chief Officer has to reflect its view on CJAs. The Chief Officer role may be appropriate for mainstream CJAs, but as a small island authority, the validity of the role has to be questioned in terms of workload, as the job carries no managerial responsibility for local authority staff, no statutory responsibility for any aspect of service delivery and has a role only in planning and scrutiny. It may not be possible to recruit appropriately to the post within our community.

Orkney’s existing Chief Officials presently carry out all the required functions with management responsibility and accountability at considerably less cost. The proven results in Social Enquiry Reports, Probation Orders, Community Service Orders linked with Customer Service satisfaction of 98% proves a system that is high quality service.

If Orkney is part of a CJA it will be difficult for the Chief Officer to understand the different context of criminal justice services in a remote, rural island setting. This will be a real disadvantage to Orkney, and indeed other island authorities.

Section 5 and 6 – Power of Scottish Ministers to require action by Community Justice Authority: failure by that authority

Given the high level of success and performance enjoyed by Orkney Islands Council at the present time, this is not a recognisable scenario. However, Orkney Islands Council takes its leadership and management responsibilities for criminal justice services extremely seriously and accordingly would resolve all issues that are within its powers and resources.

Section 7 – Transfer of functions to Community Justice Authority

This is one of Orkney Islands Council’s main areas of concern about delegated budgets to CJAs which in effect means staff resources. Given Orkney’s low levels of criminality it is entirely conceivable that if the budget powers are transferred to a CJA, that Orkney will have a reduced budget and another local authority an increased budget because of the levels of criminality. The current arrangements of direct funding to the island authorities must remain in place to ensure the minimum viability of the criminal justice service at its present levels, and integration with other services.

Conclusion

Orkney has a record of strong political oversight of its Criminal Justice Services based on annual reporting which results in high quality services and involvement in strategic planning directly and indirectly by other processes. Orkney’s Criminal Justice Services are mainstream provisions which interface locally with Children’s Planning, Mental Health Planners, Community Planning etc, because they are integrated and managed within the Local Authority. Orkney’s politicians and Chief Officers believe that being part of a CJA will lead to a diminution of its Criminal Justice Services, which will impact upon economic and regeneration planning in the future.
Management of Offenders etc (Scotland) Bill: Stage 1

15:05

The Convener: Item 3 concerns our scrutiny of the Management of Offenders etc (Scotland) Bill. It is my pleasure to welcome to the meeting a clearly formidable body of men and women from social work. We are pleased to have Alan Baird and David Crawford from the Association of Directors of Social Work. Anne Ritchie is head of social work operations at West Dunbartonshire Council and is involved in the Argyll, Bute and Dunbartonshire criminal justice grouping. Helen Munro, director of community services with Stirling Council, and Margaret Anderson, head of children and families and criminal justice services with Falkirk Council, are both on the Forth valley criminal justice grouping. Finally, Mr Harry Garland—I am glancing at you all as I read this information out—is the director of community social services for Orkney Islands Council. We very much appreciate such a splendid turnout. It is of great assistance to the committee.

I know that committee members are interested in various areas and wish to ask questions on them. It may be appropriate for one or two of you to respond to questions. If one of you feels able to plough ahead, we will assume that the rest of you agree with what is being said. However, if anyone has a different or contrary view, please feel free to speak up.

I will start the ball rolling with a general question on the background to the bill. The Executive’s consultation suggested that there were weaknesses in the way in which offenders are managed and that one of the deficiencies was a lack of shared objectives and accountability and a lack of communication and integration between criminal justice service deliverers. Is that an accurate reflection of the situation? Would one of you like to volunteer a response?

Alan Baird (Association of Directors of Social Work): It is important to recognise the considerable change that criminal justice social work has been through over a number of years. Indeed, in the past two years, we have had, in awaiting the consultation and bill, a feeling of planning blight. Prior to that, criminal justice partnerships were established; they are now only two full financial years into their operation. Some of the work of partnerships is being scrutinised through inspections, so we are getting a sense of how much progress we have made.

A national strategy to underpin all the work that is done not only by local authorities, but by the Scottish Prison Service and voluntary
We think that a monitoring role that is helpful. I am aware of the initial proposal for one big co-ordinated agency. Do the current proposals dispel that disquiet?

**Alan Baird:** There is a lot to examine in the current proposals. You are absolutely right to reflect our view that local authorities are the best place for criminal justice services to remain. However, it is important that, if that is to be the case, we examine the opportunities and challenges that are ahead of us.

Some provisions in the bill concern us. If I may, I will touch on one or two of them. First, the role of the proposed chief officer within the community justice authority will carry no responsibility in respect of service delivery as a whole, or in relation to decisions made on individual offenders. The post is unnecessary and could bring conflict to councils' chief social work officers, who, as the chief probation officers, clearly have responsibility for criminal justice services.

We are also concerned about the costs that have been attributed to the new infrastructure associated with the community justice authorities. The £200,000 or so that has been identified for each community justice authority might be better used to resource front-line services so that we can make a real impact on reducing reoffending.

It is important to say that we have certainly never shirked responsibility for accountability in the local authorities and that we are more than able to take forward a model in which an existing director of social work or a chief social work officer could have a role in monitoring the work, progress and perhaps the problems that may arise in each community justice authority.

**The Convener:** Are you suggesting that one of the existing directors of social work could drive CJA activity?

**Alan Baird:** We think that a monitoring role could be considered. It is difficult for us to see what the real responsibilities of the new chief officer would be. We know that the responsibilities are to do with planning, finance and accountability to the minister, but we think that there are more effective ways of dealing with such things than through creating another layer of bureaucracy and putting considerable public funds into the community justice authorities' infrastructure.

The situation in Forth valley is complex because there are three large national prisons there: Cornton Vale in Stirling, which is the national prison for women; a prison for high-tariff offenders at Glenochil in Clackmannanshire; and the national young offenders institution in Falkirk. A small number of prisoners in those institutions come from the Forth valley area, which gives rise to real complexity. Whether restructuring is the answer—it sometimes looks as though it is, but it is not always—has not been completely thought through yet, nor has how we should begin to address the deep problem of people who are in and out of prison with short sentences. I refer to Cornton Vale in particular. Most of the women in question come from the large cities.

**Mr Stewart Maxwell (West of Scotland) (SNP):** I am interested in what has been said about the possible drawbacks of restructuring. Do the witnesses agree with the Executive that the proposed community justice authorities are likely...
to improve strategic direction, particularly on reoffending?

15:15

David Crawford (Association of Directors of Social Work): All the research suggests that structures and the inevitable processes of restructuring will not in themselves address offending or reoffending. Offending is an individualised activity that happens for a host of reasons.

There is a general concern about reoffending by people who have left prison. For many years, most people have left prison without appropriate supervision or support. The number of people who leave prison on parole is small and the number of other licences is relatively small. Our view is that, if we want to address that, although we must have appropriate structures, what is most important is individual services that deal with whether a person’s drink or drug problem is being addressed, whether they have somewhere to go that is likely to assist them in keeping out of trouble and whether they have the support to address the issues that they had before they entered prison.

It is important not to create the expectation that establishing the perfect structure will reduce reoffending. All local authorities are committed to providing services and planning them properly. The groupings have operated for only a relatively short time, but we have shown through them that local authorities have a large network of shared and joint services. However, networks and planning will not by themselves reduce reoffending. We must work with offenders and address a range of issues about them and the communities in which they will live.

The Convener: I see some witnesses nodding enthusiastically in support of that. Is there any dissent?

Harry Garland (Orkney Islands Council): I do not dissent from the view that was just expressed, but I point out that the islands’ perspective on criminal justice provision is somewhat different from that on the mainland. The three island authorities are not part of the current grouping system. That is particularly relevant to the comments that Alan Baird made about continuity of service. For many years, the island authorities have provided a criminal justice service that is embedded in the wider community, because the authorities are small. The three island authorities are consistently at the top of tables for performance indicators on the number of reports that are made and the number of offenders who are seen within the requisite timescales. We have performed well.

We are at the bottom of the table for the amount of criminal activity. That is relevant. The island authorities welcome the efforts that are being made to consider how we can collectively address offending and reoffending, but in the islands we are keen to ensure that the bill imposes nothing that will have a negative effect on areas that provide a good service to communities by maintaining low levels of crime and of recidivism.

The Convener: Have you identified any such threat?

Harry Garland: Our concern is that the funding for, potential political representation on and overall planning for community justice authorities will detract from the islands’ ability to provide planning and integrated services. We are working at a high level with the voluntary sector, the public and the other agencies that are involved in criminal justice. Although we understand the tenor of the bill and the intentions that lie behind it, we—certainly the politicians on my council—are concerned about the potential diminution of services.

If, as the Executive has indicated, funding is to be allocated on the basis of rates of criminality or population, the resources and staffing that my council has at the moment, both of which are thoroughly integrated within our wider services, may well be reduced at some point in future.

Maureen Macmillan (Highlands and Islands) (Lab): When you say that they are thoroughly integrated, are you saying that your criminal justice social worker also undertakes other social work duties?

Harry Garland: The nature and the size of the services in the three island authorities is such that we have to make the best use of all our facilities—we have to make use of all the best bits of best value, if you like.

Although the criminal justice resources are funded 100 per cent by the Scottish Executive, which we welcome, staff in our criminal justice service are also part of our out-of-hours and stand-by services. Because of our geography, we are not in the position to buy into some of the larger groupings that exist in mainland Scotland for out-of-hours service provision. Likewise, our criminal justice staff are involved in much wider managerial and specialist roles, whether those relate to training or support networks.

The loss of the embedded nature of our criminal justice provision would have a major impact on our ability to provide the linked mental health, drugs, community care, police, children’s panel and youth justice services—the gamut of services that need to work together to maintain our low criminal justice figures.
Our corporate best-value review was carried out just last year. Service users, members of various agencies and partners were asked to indicate their satisfaction with our criminal justice service. We had a considerable return—98 per cent of those who returned the questionnaire indicated that they were either satisfied or very satisfied with service delivery.

**Mr Maxwell:** The issues that I want to raise have been touched on by panel members. The Executive’s consultation highlighted a number of difficulties in people achieving effective transition between prison and the community. Committee members have heard similar responses from prison officers, prisoners and other agencies during our visits to prisons. What are the key factors for an effective transition from prison into the community? Although the answer may seem obvious, it should have been obvious for years, yet we still seem to be failing, as we keep coming up against the same responses—the transition from prison to the community remains a problem.

**David Crawford:** Research suggests that two or three factors are important if people are to make a successful transition from prison to the community. They need stable and sensible accommodation. They also need employment, training or something that gives them some purpose—if it is at all possible to arrange that—and some form of appropriate support that deals with the range of issues that they may have. Those issues can include family or mental health difficulties, drugs or alcohol problems. If no attempt is made to address those issues, people’s return to the community will run into problems.

The most crucial thing to say is that, over the years, local authorities have not provided generalised support for people leaving prison because we have not been funded to provide that service. The creation of 100 per cent funding for criminal justice services over the years has defined the priorities, which are probation, parole, community service and a range of other initiatives as and when they have been rolled out. Only marginal resources have been made available for the generalised support for people who leave prison.

The situation is beginning to change. The new throughcare arrangements have started in some places and are working their way through. However, it is important that people do not take the view that there has been a system of supports to the average short-term prisoner leaving prison and that that system has somehow broken down. For the vast majority of those people, there has not been a co-ordinated network of support.

Another important factor from our perspective is the need to consider what would assist people. There is undoubtedly an issue about the nature of the prisons estate. The further away people are from the communities to which they are returning, the harder it is to build up all the appropriate links before someone is discharged. We understand the frustrations that exist from the SPS’s point of view, but from a local authority point of view we should point out that there are many large councils, such as Fife Council, that do not have a prison in their area, whereas there are relatively small council areas, such as Clackmannanshire, with huge prisons. That is a mismatch and, if we aspire to do something about it, we need to put resources into generalised support. The issues cannot be fixed overnight, but we need to ensure that the prison estate of the future enables as many people as possible to be discharged from local prisons with the appropriate links in place.

**Margaret Anderson (Forth Valley Criminal Justice Grouping):** I agree with all that David Crawford has said. In the past couple of years, there have been substantial improvements in relation to the difficulties that have been described. There has been a much more coherent approach through the tripartite group, in which representatives from local authorities, the Scottish Prison Service and the Justice Department, which are the key partners, have begun to iron out some of the problems. That approach is beginning to show signs of success. All of that has been achieved without major structural change.

The extent to which there has been investment in the services is a significant point. Arising from the work of the tripartite group, some additional investment has begun to be made in the services, which has been beneficial. Some of the basics are now beginning to be put in place. For example, we need to know who prisoners are and who is currently in the system and we are beginning to get that information. We know who all the long-term prisoners are who will ultimately come out and require supervision in communities in Scotland. We are also beginning to know who the priority groups of short-term prisoners are. Information sharing is critical and there are encouraging signs that it is beginning to happen. We need continuity in service provision between what is developed in prisons and what can then continue to be developed in the community, so there needs to be collaboration in delivering programmes.

**The Convener:** Do you agree with Mr Crawford that there is a funding void somewhere?

**Margaret Anderson:** There certainly has been a funding void. The situation is beginning to get better but the gap is not totally filled yet. The level of unmet need in the prison population is potentially vast, so I would certainly argue that there is a need for greater investment to assist in maintaining continuity of service provision,
particularly for the short-term prison population, who tend to be in and out quite a bit. When they come out of prison, the vast majority of short-term prisoners are currently not in receipt of statutory supervision, and funding for what is referred to as voluntary supervision is low.

Mr Maxwell: I have a question about the distance between the community that a prisoner comes from and the prison that he is in. When I visited Low Moss during the Easter recess, I found that there were a number of prisoners from Dundee there. In fact, there was no communication at all between the local authority in Dundee and the prison until the week when I was there, when I was told that links had just begun to be established. Links were also being made between Low Moss and local authorities in the Lothians. There were problems of overcrowding, changes to the estate and refurbishment of parts of the estate.

Is there funding to deal with the distances involved? It seemed to be a problem that more than one person would have to travel down for a full day at the prison. That meant that it was difficult to resource that part of the process effectively. Do you think that the bill will lead to better integration of prison and community services?

The Convener: Do we have a volunteer to answer that? I know that Anne Ritchie has not had a chance to contribute to the discussion. Would you like to say something?

Anne Ritchie (Argyll, Bute and Dunbartonshire Criminal Justice Partnership): Not on this topic. Alan Baird needs to answer.

15:30

Alan Baird: As the director of social work in Dundee, I know only too well about the problems of prisoners being some distance from the local community. Ideally, we would want short-term prisoners from our area to be placed in Perth prison. However, it is a question of prioritising to whom we provide the services. Under the throughcare arrangements, the priority for us will be to make contact with those prisoners who will come out on a statutory order and to prepare jointly with the prison for their discharge date.

It could be that the prisoners to whom Stewart Maxwell referred were short-term prisoners, for whom we have no statutory responsibility. As David Crawford said, we are not funded to make contact in such cases. I am not sure whether making contact with short-term prisoners in that situation would be a good use of limited resources. That is Dundee City Council’s position.

Mr Maxwell: Will the bill lead to better integration of services?

Alan Baird: Margaret Anderson gave a good answer when she said that much had changed and was continuing to change. There are a few more improvements that we can highlight, such as the setting up of a joint accreditation panel, which will ensure consistency between the programmes of the SPS and what happens in the community, which have been too separate. I understand that the panel is in a shadow year and will begin to operate fully next April.

David Crawford and I have been involved in discussions with the SPS on transitional care arrangements for short-term prisoners with drug and alcohol problems. The potential exists for us to grab some of the chaotic drug users who go in and out of prison through a revolving door and get them into services early. Continuity between the internal work of the SPS and what happens in the community will strengthen considerably in the future.

The Convener: In the event that that desirable aspiration is met, is there sufficient capacity in Scotland to deal with such referrals?

Alan Baird: That remains to be seen. In a modest way—with the resources that are currently available—we, along with the SPS and the Executive, are trying to move towards a model that could be rolled out across Scotland, if it works. Of course, much is dependent on the resources being available. Our colleagues in the Executive and the SPS are committed to making the arrangements for short-term prisoners with drug and alcohol problems work.

Margaret Anderson: The bill focuses on integration between prisons and community agencies. It is easy to lose sight of the fact that the vast majority of offenders in Scotland are dealt with in communities rather than in the prison system. Partnerships across community agencies are crucial to reducing reoffending. The bill does not address that aspect to any great extent.

If we focus on local government and the SPS, there is a danger that other agencies, such as the police, the national health service and the voluntary sector, will be excluded. Those bodies are important partners at local level in making an impact on and reducing reoffending among the many offenders who are in our communities.

Bill Butler (Glasgow Anniesland) (Lab): We have talked a great deal about the lack of consistency in provision of offender management throughout Scotland, which was accepted in the Executive’s consultation on reoffending. The panel has to some extent talked about gaps in service provision, the reasons for the gaps and the problems that they present. Margaret Anderson
mentioned that the bill does not talk about community agencies as such, which she sees as a possible defect. I want to turn round the issue. How effective will the bill be in addressing the lack of consistency? Are there other defects in the bill, or is the problem only that it does not talk about community agencies? The panel members have talked a little about investment and resourcing, but what else needs to be done alongside legislation?

Anne Ritchie: Argyll, Bute and Dunbartonshire criminal justice partnership has gone a long way towards becoming an effective partnership. We have a joint committee of the three component local authorities with a single manager, through which we have addressed issues about effectiveness and about data sharing among the three local authorities; effectiveness is the key issue. Mr Maxwell asked earlier whether the bill will address problems through the introduction of effective organisation. The issue is what is effective in preventing offending and reoffending. We know what is effective and we know what work needs to be done, so the question is how we set about doing that work structurally and whether the bill will have an impact on that.

Bill Butler: Will you answer your question?

Anne Ritchie: Effectiveness comes from targeted work on offending behaviour. Principally, that means the work that was outlined in the initiative on getting best results—the what works agenda. We have had significant success in delivering such programmes in our partnership area. The key question is whether anything in the bill will build on that.

Bill Butler: Indeed. Will you have a go at that question as well?

Anne Ritchie: That is the serious issue. If something is seen to be lacking in the existing partnerships, we should address and tackle that, rather than look to a structural solution to address the issues.

Bill Butler: Are you saying that the bill does not have potential added value? If you are, you might as well say it here and now.

Anne Ritchie: If the existing partnerships have faults, those are what we should tackle. The existing arrangements may require more work, but the challenge is to work on effectiveness in the partnerships.

Bill Butler: You will tell me if I am wrong, but I think that you are, in effect, saying that there is no need for the legislative course that we are considering.

Alan Baird: I will refer to a couple of sections of the bill. The bill is in part about offenders who may pose serious harm to communities. The work of the Solicitor General for Scotland’s information-sharing steering group, of which I was part, led to sections 9 and 10, which pick up on and strengthen some important risk assessment and risk management systems. At their heart, those sections will mean that the Scottish Prison Service, chief constables and directors of social work must prepare annual reports. I would go further and say that if we are to increase consistency we ought to involve the NHS and a range of other agencies to ensure that assessment and management of offenders who will, potentially, cause serious harm is as tight as it can be. That is one of the important strengths of the bill.

Bill Butler: So, you are saying that aspects of the bill are potentially advantageous, but that the issue is not simply legislative, but is about examining existing structures and working to improve them.

Helen Munro: I agree that the structures exist and that the issue is about making them work. In the Forth valley we have a good track record of working with serious sex offenders and violent offenders when they come out of prison, and we have an excellent relationship with the local police force. As director, I am not as operationally involved as some of my colleagues are, but I know that the criminal justice service has in the past five years been in a state of volatility. There have been many proposals, and people have said, “This might happen, that might happen and that might happen,” which is not a good way to embed the excellent services of Anne Ritchie, for example.

I have brought with me a plethora of reports on summary justice, the Sentencing Commission and on this, that and the next thing. They are excellent pieces of work, but somebody needs to stand back and say, “Okay, let’s see what we’ve got,” and build on the good bits rather than look endlessly for structural solutions.

The Convener: To be clear, we are getting a strong signal from you all that, although you do not dismiss the bill—in fact, you find aspects of it to be worthy—you question the wisdom of structural change when what is needed is review and improvement of existing structures.

Helen Munro: That is very much the case.

The Convener: The backdrop is the hefty mountain of documents that you held up, but I presume that legislation from this Parliament has also placed on social work departments and local authorities obligations that must all be assimilated.

David Crawford: Under the current arrangements, we were asked to form ourselves into groupings; the vast majority of local authorities in Scotland did so and the arrangements are relatively informal. There are different arrangements in different places, which people
might perceive as inconsistency, but that does not mean that the services are different, although the ways in which they are organised can be different.

During the lifetime of the groupings, which has been only three years, we have developed a far greater range of shared and joint services. We have also dealt with all the legislative changes that we have been asked to deal with, including drug treatment and testing orders and restriction of liberty orders, and we have participated in a range of pilots and initiatives, including youth courts and drugs courts. Local authorities have tried hard to rise to the challenge.

To answer Mr Butler’s question, it would be wrong to think that further structural change in itself will reduce offending or reoffending. It is fairly clear that it will not, although it can assist in getting local authorities to work together on planning and service delivery. Alan Baird has already mentioned accreditation and ensuring that programmes are consistently delivered by properly trained staff and in a way that is subject to proper scrutiny. That can all be done, but structural change in itself will not bring about a reduction in offending or reoffending.

**The Convener:** We are hearing a strong message from you.

**Maureen Macmillan:** I have questions about community justice authorities, which you have almost answered, although I want to clarify one or two points. CJAs will be responsible for producing area plans to reduce reoffending, and for monitoring the performance of authorities and the Scottish Prison Service in delivering them. Are you saying that that job is already being done by local groupings?

**Helen Munro:** We produce area job plans and annual reports and there is scrutiny by the Justice Department, the social work services inspectorate and so forth. At the moment, we do not produce an annual plan on an area basis with the Scottish Prison Service. As I said, we would find it inordinately difficult to do that in Forth valley because the three prisons in our area are national prisons and the service that we operate is a local service. Most of the people with whom we deal are Forth valley residents and they are not in the prisons in our area.

The situation is complex. That said, we need closer ways of working with the SPS. However, the nature of the SPS’s business and governance means that its structure is very different to ours.

15:45

**Maureen Macmillan:** I, too, feel that that is at the root of the problem. There must be a better way of engaging the SPS in working with local authorities.

Although at the moment various groupings deliver criminal justice services, I do not have a handle on the numbers that are involved. I know that the Executive proposal is that there will be either four CJAs based on Scottish Court Service groupings, or six CJAs based on sheriffdoms. The proposal for the area that I represent is that Grampian and the Highlands will be grouped together and the island authorities will have a separate arrangement. Will the proposal for the six areas that are based on the sheriffdoms be unmanageable? What are your thoughts on the size of those CJAs, if that proposal were to go ahead?

**Margaret Anderson:** If I may, I will give the view from the perspective of the Forth valley criminal justice grouping. Our strong view, which relates to a point that I made earlier, is that the strength of the grouping comes from the strength of the local community partnerships, which are critical to maintaining offenders in the community. Our key local partners in Forth valley are the police and the health service. Our grouping is fortunate to be coterminous with our key partners.

If Forth valley had to move into a larger community justice authority, even if it were to be on the basis of the smaller of the two options, we would have to work with more than one police authority and more than one national health service board. Either of the two proposals has the potential to complicate our present strong and robust information-sharing and partnership arrangements.

The strong view in the Forth valley is that a model that includes coterminosity, particularly for key partners such as the police and health boards, is worth preserving. It is not worth complicating the present arrangements.

**The Convener:** Is that view shared by the rest of the panel? I am looking for a simple yes or no answer.

**Harry Garland:** Yes.

**Anne Ritchie:** Yes.

**David Crawford:** An important point needs to be made in relation to the sheriffdoms. Clearly, we understand that it is appropriate to consider the boundaries of other criminal justice organisations to see whether a fit can be found, but it is also clear that the sheriffdoms offer a partial fit only in part of Scotland and are not the answer in some areas. In Ayrshire, for example, the three councils form a natural grouping although they are in two different sheriffdoms. It is clear that consistency is required, which can be developed by examining local authority boundaries. We can go only so far,
however. The groupings will need to be sensible from the local authority perspective and changes will need to be made to the boundaries of other organisations.

The example that I gave of Ayrshire is a good one. Whatever the size of the CJA, no one would suggest that it should be broken up in the future. As I said, although people would assume that the three Ayrshire authorities will be in the same CJA, they are in two different sheriffdoms. Although local authority boundaries can of themselves take us so far, we must consider the boundaries of other organisations. Certainly, in the west of Scotland, the sheriffdoms and health boards—both of which are key partner providers—have major problems in respect of the boundaries issue.

Helen Munro: In the colour version of page 26 of the consultation paper—I will hold up a copy to demonstrate my point—we see a good graphic representation of the existing groupings and of what might be in terms of coterminosity. Page 26 of the paper is worth looking at.

Maureen Macmillan: How were the existing groupings come by? Were they imposed on you or did you volunteer for them?

David Crawford: The Convention of Scottish Local Authorities proposed groupings and a compromise solution was found. A number of local authorities agreed to work together in groupings, although some local authorities felt that it was not appropriate for them to be in groupings.

The Convener: There was pragmatic administration rather than legislative change.

David Crawford: There was no legislative change.

The Convener: The process was driven by what worked.

David Crawford: It was done by agreement. It is also important to say that the groupings have worked since then on the basis of local agreement and consensus rather than on the basis of statute.

The Convener: I know that Colin Fox had questions about the chief officer of the CJA, but we have actually covered quite a lot of that. Is there anything you still want to ask, Colin?

Colin Fox (Lothians) (SSP): Do any of the witnesses have further comments? Following what has been said about boundaries, what concerns do you have about membership, support and staffing for the community justice authorities? Are your anxieties the same as those about boundaries and coterminosity?

David Crawford: The Association of Directors of Social Work’s position is set out in our submission, and Alan Baird has already explained that we are concerned about the role of the chief officer and about whether it is a role or a job. We believe that it is a role that could be taken on by existing senior officers and that there are parallels in local government legislation with regard to the existing role of people such as monitoring officers. Monitoring is a statutory responsibility that people have as a part of their job. We know that there will be competition for resources, so we want resources to be spent on services rather than on relatively highly paid posts.

There is an issue about the number of CJAs. The larger they are, the harder it will be to produce common services across the whole area. If there are four, or even six, for Scotland, it will be difficult to provide the services. Merely by dint of geography and the different natures of constituent local authorities, there would need to be quite a complex substructure.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I would like clarification. Are the groupings different from, or the same as, the criminal justice social work units? You are calling yourselves groupings with regard to the local authority areas that currently co-operate but, in so far as they are constituted and recognised by the Executive, are they criminal justice social work units?

David Crawford: Yes.

Jeremy Purvis: The units were determined by Jim Wallace, when he was Minister for Justice, so they are not just a pragmatic evolution of local authorities’ co-operation; they are constituted and determined by the Executive as social work units.

Helen Munro: The groupings are not constituted like police or fire boards. In Forth valley, we have elected members and officers who meet regularly, but our grouping is not a formally constituted body like a police board. However, we must remember that the justice budget in local government services is unique in that it is 100 per cent funded from the Executive Justice Department at the centre. Rather than going to the three local authorities, the money comes to the grouping, which must then decide how best to use the resources. Anne Ritchie’s grouping is probably the most evolved in respect of how it does that.

Jeremy Purvis: It would be useful to clarify the terminology. You are defining them as groupings. The consultation mentions the CJSW units and the eight partnerships. Are they all one and the same thing?

Anne Ritchie: Yes. In fact, we call our grouping a partnership because of the extent of the minute of agreement that bounds it.

Jeremy Purvis: I am grateful for that clarification.
I have a question relating to serious offenders and sex offenders. I think that it was the Forth valley criminal justice group—or partnership, or unit—that stated that it welcomes the proposals in the bill, but looks for “development of an agreed national approach to assessing and managing risk”.

Harry Garland commented on VISOR—the violent and sex offenders register—which has already started. Could the witnesses expand on what would be required for a national risk assessment? I know that the ADSW’s evidence referred to the necessity for national training and to the bodies that would need to be involved.

**Margaret Anderson:** There is now, where sex offenders are concerned, a nationally agreed approach to risk assessment. That approach is underpinned by training, the aim of which is to achieve consistency throughout Scotland geographically and among agencies in Scotland. At present, no parallel work is being done in relation to violent offenders—that is an outstanding issue—nor is parallel work being done on a general approach to assessing the risk of reoffending in Scotland. We require agreed policies about how to approach the difficult issue of assessing offenders, and we require agreed approaches to managing the risks that have been identified. Such policies are being developed. At present, general guidance exists on management of offenders, but with the introduction of the Risk Management Authority that agenda will become much more important.

The point in our submission is that, although the bill’s introduction of clear responsibilities for agencies to co-operate in assessing and managing risks is welcome, there needs to be—because we have the Scottish Prison Service, which is a national organisation that works with local government—an agreed approach to co-operation. That approach must be resourced. It is heartening that training on the approach to assessing sex offenders in Scotland is being resourced, but that has not yet happened in respect of assessment of violent offenders—it is important that that happens. I am sure that all those issues are on the agenda, but our point is that it would be fair to deal with them before we give agencies statutory responsibilities in relation to assessments.

**Jeremy Purvis:** I seek a comment from the ADSW on that call for an expansion of national provision for risk management and training. At national level, the CJAs would be able to coordinate and incorporate the national approach within their local plans and to scrutinise it and work to it. My reading of the ADSW’s written evidence is that the emphasis should be more on the agencies that will be involved at regional or partnership level with the responsible bodies that are stipulated in the bill.

**The Convener:** Can we keep this to a question, Mr Purvis?

**Jeremy Purvis:** The views are not necessarily consistent—one is a call for a national approach and the other is a call for local partners to work together in their areas.

**Alan Baird:** Our point is that we need a national strategy that we can sign up to with our colleagues in other agencies. That strategy would be applied locally, which is how we will get consistency throughout Scotland.

**Maureen Macmillan:** I want to clarify a point about the island authorities—Orkney Islands Council, Shetland Islands Council and the Western Isles Council. Is each island group a separate criminal justice unit, or is there an umbrella group?

**Harry Garland:** The three island authorities are totally separate in that regard. However, we work with the northern criminal justice grouping. Along with any changes in the bill, we would want to continue to have a link with a grouping. We utilise the link to gain access to specialist training and service provision. We have the best of both worlds, because we have links with Edinburgh through auditing and monitoring of our services, which is done not just by the Executive, but by the social work services inspectorate, the Scottish Commission for the Regulation of Care and the Mental Welfare Commission for Scotland. The three island authorities work together fairly closely on strategic plans and on some of the geographical problems. However, the island authority areas have different population spreads, different geography and transport challenges and, at times, different linkages to prisons. We are separate but, as I indicated earlier, we have managed to maintain high levels of performance and low levels of criminality with that separate criminal justice provision through linking appropriately, when necessary, with the northern grouping.

16:00

**Maureen Macmillan:** So Orkney, Shetland and the Western Isles all have separate, ring-fenced criminal justice money from the Executive.

**Harry Garland:** That is correct. The funding comes directly to the council. Our strategic plans are approved by our local councillors and we also look to our local partnerships in that regard. We feel a strong sense of achievement about that.

**Maureen Macmillan:** I presume that you are slightly anxious about the possibility that the
funding might not trickle down to you if you were put in a bigger grouping.

Harry Garland: In our response to the consultation, we made clear our belief that the involvement of elected members on the boards would discriminate against the island authorities in a major way with regard to the population driver and the criminality driver. It would be a perverse way of dealing with authorities that are relatively successful if the money were to go to authorities that have the most criminal activity. We are extremely concerned about that and our local politicians are exercised by the matter.

Bill Butler: I want to talk about the home detention curfew disposal. The panel will know that the SPS, on behalf of Scottish ministers, will be able to release low-risk prisoners early on licence. You will also be aware that prisoners will be considered in two categories: short-term prisoners who are serving a sentence of three months or more; and long-term prisoners who are recommended for release by the Parole Board for Scotland at the halfway point in their sentence. Will home detention curfew orders reduce reoffending? Are there any risks associated with them? Do you agree with the eligibility criteria and the proposals for risk assessment?

Margaret Anderson: It is the view of the Forth valley grouping that home detention curfew orders alone are unlikely to reduce reoffending. More must be done than merely issuing home detention curfew orders.

Bill Butler: To be fair, that is recognised. Do you think that the proposal is a useful adjunct?

Margaret Anderson: It is a useful adjunct, but I would add some caveats. The assessment process must be robust, sound risk assessments must be done to underpin decisions about who would be released from prison and those risk assessments must help to inform decisions on whether there is a need for supervision over and above the requirement for remote electronic monitoring.

Bill Butler: If those caveats were met, would the proposal be useful?

Margaret Anderson: Yes. However, in our submission, I highlighted the fact that there are concerns about the estimates that have underpinned the provisions in the bill. In our view, there cannot be robust risk assessment for the estimate of up to £100 that is contained in the policy memorandum that is attached to the bill, nor can there be robust supervision for the estimate of up to £250. On top of that is £8,400 for the remote monitoring aspect of the orders. It is important that the resource implications of the provision be addressed. That is an important caveat.

Bill Butler: Does anybody have a contrary view or an additional view? I think that the witnesses are all satisfied, convener.

The Convener: I think that they are all worried about the caveats.

Mr Maxwell: I presume that the members of the panel are aware that home detention curfew orders have been used in England. Do you have any views—perhaps based on experience of contacts south of the border—about the success or otherwise of the operation of the system in England?

Margaret Anderson: It is difficult to make a comparison with England because the legislation in England is different. People leaving prison in England are more likely to be subject to other forms of supervision. I understand that in England the provision would run alongside other provisions for supervision, whereas in Scotland, unless there are specific circumstances to warrant it, the proposal would mean that home detention or curfew would act as a stand-alone provision with no automatic condition under which supervision would be required. I understand that that proposal is very different to the way in which offenders are managed south of the border. It is difficult therefore to make a direct comparison; we cannot compare like with like.

Colin Fox: Is the risk assessment process in England and Wales adequate for assessing who is suitable for consideration for home detention?

Margaret Anderson: To be honest, that question is difficult to answer because I do not know how risk assessment is done in England and Wales. I am clear that an approach to risk assessment in Scotland would need to involve the risk that is posed by the prisoner and a household’s issues in respect of having an offender on home detention or curfew.

The experience of restriction of liberty orders shows that careful assessment must be done. If a person is to be restricted to their home, consideration must be given to child protection issues that may arise. For example, would the family dynamics be changed to the extent that people in the household were placed at risk? There is also the potential that the conditions of home detention or curfew could place the released prisoner at risk.

A complex and careful risk assessment needs to be undertaken—one that goes beyond the risk that the individual poses to the community and which also examines the implications for the prisoner of being detained in their own home.

The Convener: I call Bill Butler and ask him to be brief.
Bill Butler: I will be brief. Margaret Anderson spoke about risk assessment, which is obviously important, but I understand that the proposal relates specifically to low-risk prisoners. Does that affect your view of the proposal?

Margaret Anderson: It is important that the provision be directed at low-risk prisoners.

Bill Butler: That is exactly what the provision is meant to do. We are talking about sentences of three months or more and about prisoners who are halfway through their sentences. Does that have weight for you?

Margaret Anderson: I certainly find it significant that the proposal applies to low-risk prisoners. We need to be careful about what we mean by low risk. Are we talking about low risk of harm or—

Bill Butler: Do you agree with the eligibility criteria? They specifically mention three months or more and people who are halfway through a sentence and whose release is recommended by the Parole Board for Scotland.

Margaret Anderson: The provisions in respect of the Parole Board are totally sensible. It would be difficult to conceive of a system that did not link into the Parole Board.

The Convener: I would like clarification of something that you said about possible issues in the home. A person who is in prison on a low-risk conviction may be known to the social work department because of issues relating to their home life but which have nothing to do with the conviction. Is that your area of concern?

Margaret Anderson: Yes. That must form part of the assessment. Some impacts of home detention or curfew go beyond the individual offender; I am thinking of the impact on families, neighbours and communities.

The Convener: The panel has been very patient with us. The committee has welcomed the opportunity to question you extensively on the proposals. Does any panel member have a concluding observation or remark to make on a matter that we have not covered in our questioning?

Margaret Anderson: That is exactly what the provision is concerned that such central involvement in the process of local democracy could interfere with the work of community justice authorities. The scrutiny that inspections and audit give should be enough; the powers of direction under sections 5 and 6 do not need to be included in the bill.

The Convener: On behalf of the committee, I thank the panel for appearing before us today. Some of you have travelled some distance to be with us. As I said, we value your attendance.

16:11

Meeting suspended.

16:15

On resuming—

The Convener: I welcome from the Convention of Scottish Local Authorities Councillor Eric Jackson, who is its social work spokesperson and is from East Ayrshire Council; Jim Dickie, who is director of social work with North Lanarkshire Council; and Stephen Fitzpatrick, who is COSLA’s team leader for community resourcing. We are glad to have you with us. I am sorry that you have been slightly delayed in coming before us, but I am sure that you realise that the previous session was interesting and helpful, and that members wanted to take advantage of having social work representatives with us this afternoon.

I understand that Councillor Jackson wants to make some brief introductory comments.

Councillor Eric Jackson (Convention of Scottish Local Authorities): We welcome the opportunity to meet the committee today to put forward the collective view of Scottish local government. We are hugely interested in the bill, particularly in its potential to support the development of safer communities. Before we take questions, I put on the public record our appreciation of the inclusive approach that the Scottish Executive has adopted. We have all welcomed and are grateful for the opportunity to work with the Executive at political and officer levels to develop the bill. We share the dual aims of improving the management of offenders and reducing reoffending. We very much support large parts of the bill. As is clear from our written evidence, there are other sections that we are concerned about. Many of those concerns were expressed in the preceding evidence session, so we might go over some of the same ground.

Mr Maxwell: Given your involvement in developing the bill, do you have any comments on the issues that were raised in the preceding session, most of which I presume you heard? In particular, I am thinking about the comment that changing the structure is not the way to go, and
that we must sort out some of the issues and problems with the partnerships that exist.

Councillor Jackson: We support the view that was expressed that, by themselves, changes in structures will not make a difference, although we support some of the proposed changes. It is particularly important to us that all the partners in the process have ownership of it. Some of the proposed changes are already happening in some areas, so we are already formalising best practice.

Mr Maxwell: What key factors are required for effective transition from prison to the community? We discussed with the first panel not only the transition from prison to community, but how the relationships between different organisations within communities need to be dealt with to prevent reoffending effectively.

Councillor Jackson: Transition has always needed to be examined carefully. Resourcing has already been raised. The process is developing. I can point to many instances of work that is already happening. For example, we now have local authority staff, in particular social workers, working in prisons and there are case meetings between social work and housing.

Jim Dickie (Convention of Scottish Local Authorities): I will roll together responses to the two points that Mr Maxwell has raised. I reiterate the point that structures of themselves will not deliver either improved outcomes or worse outcomes. It is the content of the activity that goes on within those structures that is important. There are issues about the scope of the changes that are taking place, in terms of their being too great in some respects and perhaps not imaginative enough in others. One of the key issues at the heart of the bill, which will influence the effectiveness of its outcome, is the need to adopt a whole-system approach.

Just as it is important to consider what happens to people when they are in prison, when they come out or when they are in the community—if they have not been in prison but have been involved in offending behaviour—it is important to take into account who goes into the criminal justice system and what judgments the police, procurators fiscal, sheriffs and High Court judges make. In effect, those decisions create the customers with which we and the Scottish Prison Service are working, and we have an opportunity in the course of the legislative process to think about some of the wider issues. I do not think that it is enough simply to focus on what we do with people in prison or, indeed, in the community. Systems need to be more inclusive and comprehensive.

Members have already had set out for them some of the elements that would make for effective work in managing the transition between prison and the community. It is quite clear that the 100 per cent funding arrangement and the national standards and objectives framework within which criminal justice social work is delivered were an important step forward when they were implemented. Arguably, at this stage in the development of criminal justice social work, they have become something of a straitjacket. They set out in fairly simple—some would argue simplistic—terms the work that will be done to justify the spend that the Executive has judged that each grouping or partnership will incur. That stifles creativity to some extent, and I would expect the review of the system to look for a more imaginative and creative approach that truly allows partnerships, groupings or CJAs to examine the criminal justice issues in their territory.

The SPS is an important partner, and it is important to recognise that the prison system is a national system. I am not clear—and I do not think that COSLA is clear—about how that system can be modified or changed to fit comfortably with the notion of community justice authorities at a local level. I would argue that the distribution and functions of individual prisons in the short to medium term would make that difficult to manage. If we are going to address that issue, it will be important to consider the vision that we have for a criminal justice system in Scotland in the round. We must consider all the elements, not just prison and community social work.

Mr Maxwell: I am beginning to suspect that there is concern across a range of organisations about the changes in the structure. Will the bill as a whole, and CJAs in particular, improve matters, add anything or create more difficulties? Elements of the bill have been welcomed, but I wonder about CJAs. Mr Dickie said that the Scottish Prison Service is a national service and that CJAs are regional authorities. Are those structures the correct way to go?

Councillor Jackson: We are saying that the bill is a positive piece of legislation, which we broadly welcome, but it is only part of the answer. That is the caveat that we would put on it.

Bill Butler: You say that the bill is only part of the answer and Mr Dickie talked about systems needing to be more inclusive and about having a more imaginative approach. The Executive consultation identified a lack of consistency in the provision of offender management services throughout Scotland. Even if the bill is only part of the answer, how effective will it be in addressing that lack of consistency? What specific actions need to be taken alongside the bill to make the approach to the multiplicity of challenges that offender management poses more imaginative and creative?
Further thought must be flexible coherence. We all need to be tied into a system that enables us to work collaboratively and effectively. We operate in an imperfect world and there is scope for improvement—no one would deny that, certainly not at this end of the table. However, the committee has heard substantial evidence from our colleagues from the ADSW and from the criminal justice groupings that substantive progress has been made in the past two or three years. As one of the participants in the groupings, I acknowledge the difficulties that people have overcome to achieve a basis on which they can build progress. One of our pleas is that, in making changes, we should recognise the scope for improvement when authorities work together. At this stage, that means principally local authorities working together within the groupings or partnerships. However, the new entities—the CJAs—will bring in new core partners and non-core partners.

**Bill Butler:** Is that what you meant when you said that systems need to be more inclusive?

**Jim Dickie:** Yes, absolutely.

**Bill Butler:** Will you expand on that?

**Jim Dickie:** At present, major players in the criminal justice system are not identified as core partners in the system. COSLA’s view is that, to get the kind of criminal justice system that we want in Scotland, we must recognise the contribution of all the partners in the system, whether they are voluntary organisations, procurators fiscal, the SPS or criminal justice social work departments. We all need to be tied into a system that enables us to work collaboratively and effectively.

**Bill Butler:** So you are arguing for an holistic approach to the system.

**Jim Dickie:** Yes—it must be holistic in terms of vision and collaboration. I have no truck with the notion of a single organisation, because the turbulence that would be involved in creating such an organisation would be unhelpful. To some extent, the CJAs will help to build on the positive measures that have been taken. Whatever we do through the bill, we must ensure that we do not discard the progress that has been made, but build on it.

**Bill Butler:** So you think that we should be after flexible coherence.

**Jim Dickie:** Absolutely.

**Colin Fox:** I want to press you on your comment that the bill will address the lack of consistency throughout Scotland. Is it your view that local authorities working together, whether through four or six CJAs, will introduce consistency within areas and that the national advisory body will ensure that the same standards are set throughout Scotland?

**Councillor Jackson:** The bill addresses the lack of consistency. Different practices exist, so it will be helpful to have a formal approach to consistency. The big challenge for us is our relationship with the SPS, to which Jim Dickie alluded. The challenge for the SPS will be at least as great.

**Jim Dickie:** We operate in an imperfect world and there is scope for improvement—no one would deny that, certainly not at this end of the table. However, the committee has heard substantial evidence from our colleagues from the ADSW and from the criminal justice groupings that substantive progress has been made in the past two or three years. As one of the participants in the groupings, I acknowledge the difficulties that people have overcome to achieve a basis on which they can build progress. One of our pleas is that, in making changes, we should recognise the scope for improvement when authorities work together. At this stage, that means principally local authorities working together within the groupings or partnerships. However, the new entities—the CJAs—will bring in new core partners and non-core partners.

**Bill Butler:** Is that what you meant when you said that systems need to be more inclusive?

**Jim Dickie:** Yes, absolutely.

**Bill Butler:** Will you expand on that?

**Jim Dickie:** At present, major players in the criminal justice system are not identified as core partners in the system. COSLA’s view is that, to get the kind of criminal justice system that we want in Scotland, we must recognise the contribution of all the partners in the system, whether they are voluntary organisations, procurators fiscal, the SPS or criminal justice social work departments. We all need to be tied into a system that enables us to work collaboratively and effectively.

**Bill Butler:** So you are arguing for an holistic approach to the system.

**Jim Dickie:** Yes—it must be holistic in terms of vision and collaboration. I have no truck with the notion of a single organisation, because the turbulence that would be involved in creating such an organisation would be unhelpful. To some extent, the CJAs will help to build on the positive measures that have been taken. Whatever we do through the bill, we must ensure that we do not discard the progress that has been made, but build on it.

**Bill Butler:** So you think that we should be after flexible coherence.

**Jim Dickie:** Absolutely.

**Colin Fox:** I want to press you on your comment that the bill will address the lack of consistency throughout Scotland. Is it your view that local authorities working together, whether through four or six CJAs, will introduce consistency within areas and that the national advisory body will ensure that the same standards are set throughout Scotland?

**Councillor Jackson:** The bill addresses the lack of consistency. Different practices exist, so it will be helpful to have a formal approach to consistency. The big challenge for us is our relationship with the SPS, to which Jim Dickie alluded. The challenge for the SPS will be at least as great.

**Jim Dickie:** We operate in an imperfect world and there is scope for improvement—no one would deny that, certainly not at this end of the table. However, the committee has heard substantial evidence from our colleagues from the ADSW and from the criminal justice groupings that substantive progress has been made in the past two or three years. As one of the participants in the groupings, I acknowledge the difficulties that people have overcome to achieve a basis on which they can build progress. One of our pleas is that, in making changes, we should recognise the scope for improvement when authorities work together. At this stage, that means principally local authorities working together within the groupings or partnerships. However, the new entities—the CJAs—will bring in new core partners and non-core partners.

**Bill Butler:** Is that what you meant when you said that systems need to be more inclusive?

**Jim Dickie:** Yes, absolutely.

**Bill Butler:** Will you expand on that?

**Jim Dickie:** At present, major players in the criminal justice system are not identified as core partners in the system. COSLA’s view is that, to get the kind of criminal justice system that we want in Scotland, we must recognise the contribution of all the partners in the system, whether they are voluntary organisations, procurators fiscal, the SPS or criminal justice social work departments. We all need to be tied into a system that enables us to work collaboratively and effectively.

**Bill Butler:** So you are arguing for an holistic approach to the system.

**Jim Dickie:** Yes—it must be holistic in terms of vision and collaboration. I have no truck with the notion of a single organisation, because the turbulence that would be involved in creating such an organisation would be unhelpful. To some extent, the CJAs will help to build on the positive measures that have been taken. Whatever we do through the bill, we must ensure that we do not discard the progress that has been made, but build on it.

**Bill Butler:** So you think that we should be after flexible coherence.

**Jim Dickie:** Absolutely.

**Colin Fox:** I want to press you on your comment that the bill will address the lack of consistency throughout Scotland. Is it your view that local authorities working together, whether through four or six CJAs, will introduce consistency within areas and that the national advisory body will ensure that the same standards are set throughout Scotland?
Councillor Jackson: We have accepted that if performance is unsatisfactory, the powers of intervention can be used. Our concern is that the powers of direction apply even when no failure by a CJA has occurred.

Maureen Macmillan: I do not understand why a minister would want to interfere if everything was going well.

Councillor Jackson: Neither do we. That is why we object.

Jim Dickie: That is part of our concern. The powers of intervention appear to meet ministers’ normal expectations in other settings, such as health and community care and education. However, the powers of direction go beyond that, arguably into an organic arrangement that might allow ministers to direct new organisational arrangements without further consultation. We are concerned about going beyond the framework that we are discussing without following due process. The arrangement is unusual. We do not dispute the proposed powers of intervention, which deal more than adequately with ministers’ concerns, but the powers of direction are a new creature.

Maureen Macmillan: You are happy with the powers of intervention, provided that they are applied even-handedly—I note that you want the Scottish Prison Service to be subject to the same accountability as are local authorities. You are most concerned about the powers of direction, which seem to be lesser powers.

Jim Dickie: The powers of direction are vaguer. We need the minister to explain the expectations of having such powers and to justify them. We do not know what they add to the proposed powers of intervention, beyond the view that they open the door to more radical change, because the basis on which ministers can direct is not limited. We are a bit concerned about such an open-ended power, which is inimical to the notion of local democracy.

Maureen Macmillan: You are happy with the powers of intervention, which deal more than adequately with ministers’ concerns, but the powers of direction are a new creature.

Maureen Macmillan: You are happy with the powers of intervention, provided that they are applied even-handedly—I note that you want the Scottish Prison Service to be subject to the same accountability as are local authorities. You are most concerned about the powers of direction, which seem to be lesser powers.

Jim Dickie: The powers of direction are vaguer. We need the minister to explain the expectations of having such powers and to justify them. We do not know what they add to the proposed powers of intervention, beyond the view that they open the door to more radical change, because the basis on which ministers can direct is not limited. We are a bit concerned about such an open-ended power, which is inimical to the notion of local democracy.

Councillor Jackson: We would welcome that. For the record, we accept ministers’ requirement for the powers of intervention, although I am not sure that we would go so far as to say that we are happy with them.

Jim Dickie: We recognise the requirement.

The Convener: The distinction is noted.

Jeremy Purvis: I will ask a brief supplementary question for the purpose of comparison. We heard from the criminal justice social work partnerships, for which there has been national provision of both funding and a framework. Are ministerial powers connected with those partnerships?

Jim Dickie: There are two strands to the accountability of existing partnerships. In effect, accountability operates through the individual local authorities that are party to the partnership and through directors of social work, or their equivalent, in each authority. There is also a strand of accountability through the funding that goes to the host authority and is exercised through that authority, which binds in the partner authorities in discharging the functions of the partnership. The system is pretty tightly controlled at the moment. There is little scope either to digress from responsibilities or to overlook or fail in those responsibilities. Ministers have a fairly close handle on the current situation.

Jeremy Purvis: A close handle could also be seen as direction.

Jim Dickie: No. I understood that we were talking about powers of intervention. Such powers provide an element of legislative oversight of the functions of local government or other public sector agencies, which we recognise. They are fairly closely defined so that if agencies default on their obligations, the minister has the power to intervene.

What we are seeing with the proposed powers of direction is much vaguer. They are linked to failure but to other issues that we are not quite clear about. We are not clear why ministers need such additional powers when they already have powers of intervention.

Jeremy Purvis: But the powers do not exist within the social work arena.

Jim Dickie: That is our view.

Colin Fox: In its submission, COSLA, like the ADSW, did not see much attraction in the idea of a chief officer for the community justice authorities. What does COSLA view as the driver for a community justice authority to meet its targets, integrate service and management and take a step forward? If that is not the responsibility of a chief officer, whose responsibility would it be?

Councillor Jackson: There is an issue about such a post and about where the post of chief social work officer would fit in. We are not convinced of the need for a specific post. As the committee heard, the functions of the post could be carried out by someone other than a dedicated person.

Jim Dickie: Our view is that establishing such a post would be unhelpful and an unproductive use of resources. We have had an estimate of approximately £200,000 per authority and we would end up with something like that.
There are a number of problems. As matters stand, in each individual authority, there are senior officers who would have the capacity to discharge the relevant functions, with some modest additional infrastructure to support the work of the community justice authority. We think that that could be achieved more cost effectively.

Mr Fox’s point about the driver is an important one. I ask him to consider the performance of the groupings or partnerships, which have been in existence for a relatively short time but which in large part have demonstrated, with some individuality between groupings, their drive to achieve improvements.

For example, the grouping that I work with in Lanarkshire has developed new services specifically for working with sex offenders, for making accommodation arrangements and for managing the three courts in Lanarkshire on a joint basis. It also works in a number of other areas. There are ways in which we have moved forward, and that process has been driven by people such as those whom I suggested could take the lead responsibility for the community justice authorities, without having to spend more money. That money, if it exists, would be better spent on enhancing the programmes that we are delivering. That is a matter on which we have strong views.

Colin Fox: Are you talking about breaking down the lead responsibility into a number of responsibilities instead of having someone with overall responsibility?

Jim Dickie: No. Community justice authorities will consist of a number of local authorities and a number of chief social work officers, and our proposal is that the authority of one of those officers should be designated as the lead authority. That individual would be the lead officer and the other authorities would be tied into the arrangement in a formal way. It would not be a voluntary arrangement; they would be obliged to operate within a framework. I do not think that there would be a great deal of difficulty with such an arrangement. Some difficulty with it might have been found when the groupings were being set up, because people were a wee bit unsure and uncertain, but things have moved on since then.

Councillor Jackson: In certain areas, that is already happening. In Ayrshire, for example, we are about to sign a new minute of agreement, which will create a single manager for the three authorities.

Jim Dickie: We have already heard about the models that exist in Argyll and Bute and Dunbartonshire.

Mr Maxwell: In effect, you are saying that they should be like boards. South Lanarkshire Council is the lead council for the fire board in Strathclyde, and that is the kind of operation that you are thinking of. A specific statutory board would not be set up, but it would be that kind of operation, in which a single authority takes the lead.

Councillor Jackson: There are parallels with that example, but it is not exactly the same.

The Convener: Would you like to make any concluding points?

Councillor Jackson: We have not touched on powers of transfer. We understand that ministers’ intention is that the power of transfer should fall to the CJA and should not be directed from outside. It will be up to the CJA whether it transfers staff to the criminal justice authority or whether staff are left with the constituent authorities. We believe that it is important to reinforce that, because it is open to interpretation.

The Convener: On behalf of the committee, I thank you for attending this afternoon. I am sorry that we started a bit later than was indicated, but it was obviously necessary to get as full a representation of views as possible. We are grateful to you for attending this afternoon.
Management of Offenders etc (Scotland) Bill: Stage 1

14:08

The Convener: Agenda item 2 is stage 1 of the Management of Offenders etc (Scotland) Bill and, in particular, consideration of the written evidence that the committee has received. I remind members that yesterday, following a Social Work Inspection Agency report, the minister announced an audit of sex offender cases to ensure that sex offenders are subject to comprehensive risk assessments and that appropriate arrangements for supervising them are in place and are kept under review. Most members will be aware of that announcement. A hard copy of the report has been sent to me. It appears that other members have not received a copy of the report, but the clerks have informed me that copies will be circulated to members, as the report is clearly relevant to what we are considering. If there is any delay in receiving that, please let the clerks know.

I must thank the clerks for preparing an extremely helpful summary of the written evidence to date. Members have received copies of all the submissions. Do members want to comment on that written evidence at this stage? Do any questions arise on which people want to seek clarification?

Members indicated disagreement.

The Convener: Item 3 on the agenda is oral evidence for the purposes of scrutinising the bill. Members will be aware that we have two panels of witnesses before us this afternoon, and our first witnesses are representatives of the Scottish Prison Service.

On behalf of the committee, I welcome Tony Cameron, chief executive of the Scottish Prison Service, and his colleague Alec Spencer, who is director of rehabilitation. Mr Cameron, I am given to understand that you would like to make a brief introductory statement, which I am assured will take two minutes.

Tony Cameron (Scottish Prison Service): We look forward to helping the committee by answering any factual questions that we can. We strongly support the objectives of the Management of Offenders etc (Scotland) Bill as described in the policy memorandum. The Scottish Prison Service’s primary interests in the bill are in the integrated management of offenders, including such matters as the joint arrangements for assessing and managing serious sex offenders, and in the home detention curfew proposals. We believe that speeding up and systematising joint working, as provided for in the bill, will improve the


performance of the criminal justice service. We do not believe that the status quo is as good as it could be.

Because the Scottish Prison Service is an agency of the Scottish Executive, the functions that we perform are legally those of Scottish ministers, so there are no references to the Scottish Prison Service as such in the bill. We work under a framework document that has just been altered to reflect the bill’s proposals. That was published on 4 March. I sent a memorandum to the Finance Committee in response to a letter asking for written evidence saying that we believe that, on the basis of the bill’s provisions as we read them, the broad order of estimate of cost would be up to about £2 million annually, with set-up costs of £500,000 to £600,000. We cannot assess the cost accurately until we know a number of things about the implementation of the bill, but that is our estimate on the basis of the bill as it stands.

We very much look forward to working with the community justice authorities and with local authorities in a joint attempt to tackle offending and to improve the protection that we provide to the Scottish public.

**The Convener:** Thank you very much, Mr Cameron. You have probably partially answered a question that I was going to ask about your submission to the Finance Committee. Quite simply, the question was about that estimated figure of £2 million. You say that you are reasonably content that that can be met within budget, although you point out that the budget for 2007-08 has not yet been determined. I am anxious to ascertain whether you have any budgetary concerns that you would wish to signal at this stage.

14:15

**Tony Cameron:** No. As you correctly point out, our budget has been set by Parliament up to 2006-07, but not beyond—that is true for the whole of the Executive, not just the SPS. Our turnover as a business is more than £300 million, which includes some capital. It is a considerable sum. The sum of £2 million is by no means small, but it is not a sum that we think we cannot find. That begs the question what our budget will be in future years, which I cannot say, but on the basis of the size of our organisation, and the current budget, those sums are manageable and can be found. We are making efficiencies in our operation in order to do a number of things, including that.

**The Convener:** My second question reaches out to one of the wider issues that you signalled in your submission to the Finance Committee. One of the purposes of the bill is to try to reduce pressure on prison capacity. Have I understood your submission correctly? Do you feel that, over the longer term, any implementation of the scheme that is proposed in the bill would be unlikely dramatically to reduce the prison population in any one institution? You would instinctively see it more as perhaps a slight reduction in capacity over the piece.

**Tony Cameron:** That is a difficult question. For a long time, statisticians in the Executive have produced prisoner population projections. Those are not estimates of what the future prison population might be. What they do is observe very long runs—20 or 30 years—of what has happened to the prison population. Experience has shown that the big determinants of any prison population are the numbers committed to prison and the length of sentences. Those are powerful predictors of future prison population. In recent years, all such projections have predicted an increase in the prison population, and in most years—though not in every year—over the past 50 years, since the end of the second world war, we have observed an increase in the prison population. We do not see an end to that. The prison population is projected to rise by around 100 a year over the next 10 or more years.

The provisions in the bill might well reduce the number of prisoners below what it would otherwise have been. That is not necessarily to say that the prison population will decline, merely that there will be fewer prisoners than there would otherwise have been. One of the key impacts of the bill will be the home detention curfew, one of the purposes of which is to shorten the incarceration period, with electronic tagging for the last portion of the sentence. Based on such estimates as can be made, we can say that that might result in a prison population of up to 300 fewer than it would otherwise have been. That is not to say that the prison population will decline absolutely, but it illustrates what an impact of the bill might be.

The impact on the prison population of the CJA arrangements is much more difficult to predict, but we would not have thought that they will have such a dramatic effect on the prison population that we could empty a whole prison. Given that the marginal costs are small compared to the capital costs—a gate and a wall are there whether we have a few prisoners or a lot—we would not make a big saving. There is not a commensurate saving.

**The Convener:** That is helpful. Thank you.

**Maureen Macmillan (Highlands and Islands) (Lab):** The Executive’s consultation on reoffending suggested that there was a serious weakness in the way in which offenders were managed. There was a lack of shared objectives and accountability, and a lack of communication and integration between the criminal justice deliverers. Could you
give an indication of the current levels of integration and co-operation between the SPS, social work and other agencies, including voluntary agencies?

**Tony Cameron:** In general, integration and co-operation have improved. Traditionally, the primary duty of prison services, as servants of the courts, has been to incarcerate those whom the court decides should suffer a deprivation of their liberty. A debate has been going on for a very long time internationally about whether prisons can do more than incarcerate people. Can they try to rehabilitate them as well as imprison them? There is no universally accepted view on that, but our view in the SPS is that we can do something modest to help rehabilitation, although we cannot make people better by waving a magic wand. That was the underlying principle behind the launch two or three years ago of the SPS vision, which set out for ourselves and for the public the fact that we ought to attempt a more correctional mission, rather than only an incarceration mission.

We have put increasing financial and staff resources into interacting with other agencies. In a number of establishments we have link centres, which involve people who are employed by outside bodies, such as local authorities, other Government departments and voluntary organisations, working in prison alongside our own staff. We have increased markedly the interaction and level of co-operation with other criminal justice partners and the voluntary sector, although one can always do more in that regard.

We have increased our provision for learning and for the acquisition of skills among prisoners, such as reading and basic education skills, without which their life chances are much less. Specific programmes have been designed by experts to address offending behaviour. That is a very difficult thing to do, but we are attempting to do it.

The recent Audit Scotland report on our work was very complimentary about the developments that had taken place. We are pleased to see the provisions in the bill, which go very much in the same direction as we think that it is sensible for a prison service to go. The bill will provide more of a structure within which our work with local authorities and other criminal justice partners can take place.

**Maureen Macmillan:** You said that your programmes had "increased markedly". I am not sure what that means. What percentage of prisoners are now involved in such programmes, in which there are links with social work or voluntary agencies?

**Tony Cameron:** I am not sure that I can give a figure for the number of prisoners involved in programmes that have such links. What we report every year to Parliament is the number of programmes and approved activities that take place and the amount of education that we deliver. Alec Spencer can probably give you some figures, but in recent years provision has gone up by orders of magnitude rather than marginally.

**The Convener:** Mr Spencer, could those figures be submitted to the clerks?

**Alec Spencer (Scottish Prison Service):** Certainly.

**Tony Cameron:** The figures are in our annual reports, which are submitted to Parliament each year.

**Maureen Macmillan:** Are we talking about programmes for long-term prisoners or for short-term prisoners? My perception is that the problem lies with the short-term prisoners, who go in and out of prison.

**Tony Cameron:** I say by way of a preliminary comment that in recent years the proportion of the total prison population that is represented by long-term prisoners—those serving sentences of four years or more—has increased significantly. The main driver in the rise of the prison population in recent decades has been the number of long-term prisoners. They are the ones who have been imprisoned for the most serious offences—often the most violent offences. They are the most difficult to work with, and we have concentrated some of our most sophisticated and expensive programming on them because the payback if we are successful is likely to be the largest.

Every year, 35,000 people come into prison. Most of them are short-term prisoners. We provide something for them, by way of education, but not the sophisticated programmes that we provide for long-term prisoners. In any allocation of programmes, we try to target our resources where we think the greatest need lies and the greatest payback will be. Short-term prisoners are often in for relatively short times. Around 80 per cent of short-term sentences are for less than six months, which means that people stay in prison for under three months. If there is a period of remand, the average length of that period is 20 days. Therefore, some people are imprisoned for a very short time.

Between 70 and 80 per cent of men, and around 97 or 98 per cent of women, test positive for illegal drugs on entry to prison. As a result, a significant amount of the already short sentence will be a detox period. During that period, it can be difficult to think about other programmes, because we are dealing with health care and other basic stuff. In earlier consultations, our evidence was that very short periods of imprisonment are poor value for taxpayers’ money. That is because of the
limitations on what we can realistically expect to do in the time.

Maureen Macmillan: But those are the very people who are more likely to be back in prison a couple of months later.

Tony Cameron: The propensity to come back to prison varies. About half of all people who are incarcerated are reincarcerated within two years. That is not peculiar to Scotland.

Maureen Macmillan: What sort of information is routinely exchanged between local authorities and the prisons? What are the protocols for that?

Alec Spencer: Before answering that, I would like to pick up on your previous point if I may.

We deliver a series of programmes and approved activities, and we can give you the figures later. The approved activities are much shorter interventions and they are primarily for shorter-term prisoners. We also deliver a huge amount of education—I think that more than 400,000 hours will be delivered this year. Much of that will be for short-term prisoners.

Something that is not recognised is the amount of work that is done in link centres in various prisons—for example, work to do with accommodation, employment and addictions. Mr Cameron has already referred to drug programmes and Mr Croft, who will give evidence shortly, might be able to tell you about the sort of work that is done with the large number of short-term prisoners in Edinburgh prison.

You asked about information. At the moment, intelligence is exchanged between the prisons and the police. That is mostly done at a local level, although it is also done at a national level. However, most of the information that is exchanged is between the prisons and the local social work departments. That is normally done through the social work unit based in the prison. The Scottish Prison Service provides that service. We pay for social workers in prison, and they communicate with external social work departments.

Most of the information is about long-term prisoners who are subject to statutory supervision. With the new arrangements under the bill, many short-term prisoners—who are not currently covered by that flow of information or that supervision—will receive voluntary assistance. Through our link centres we will exchange a lot of information about our core assessments, about people’s particular needs in accommodation, employment, addiction, health care, debt management and so on, and about other interventions that are required. We hope that that information will be passed through what we are going to call the community integration plan, which we will work out in co-ordination with social work and other agencies. We will try to pass that information on and make it available through a common database.

14:30

The Convener: Will that follow a universal protocol throughout the entire Prison Service or will how it works be down to each individual prison?

Alec Spencer: National protocols are already in place in relation to long-term offenders. Mr Cameron recently signed a national concordat with other agencies about sharing information about sex offenders. We are in the process of arranging protocols with local authorities, police and health services, among others, to ensure that we have an appropriate information flow about sex offenders. We hope that information sharing about ordinary short-term offenders will be part of the discussion that will follow the enactment of the bill. We will have discussions with the Association of Directors of Social Work, local authorities and voluntary sector agencies to ensure that the information that we are obtaining from prisoners and the assessments that we make meet their requirements; indeed we already have such discussions.

Maureen Macmillan: You are talking about what is going to happen, not the present situation. Are you saying that at the moment the arrangements are not in place for short-term prisoners, but you are hoping to put them in place?

Alec Spencer: In some prisons arrangements are already in place in the sense that they have a link centre. The governors of Edinburgh and Polmont prisons will be able to tell you about their current arrangements. They already have agencies coming in and working with them and they share information, but that does not happen on a formalised national basis. Your earlier question was what would be the difference between now and the future. At the moment we do not undertake formalised joint planning between the Prison Service and local authorities. I hope that under the new arrangements we will be told that we must be part of that and undertake that sort of work. We do not have a formalised joint vision; the two primary groups of criminal justice social work and the Prison Service have their own visions of trying to reduce reoffending, but we do not have a formalised national vision. I hope that those things will ensue and that we will be able to work together on the protocols and arrangements.

Jackie Baillie (Dumbarton) (Lab): I understand the need for a joint vision, but some practical things are not working, which is perhaps the nub
of the issue. We heard evidence last week from some of the social work partnerships that they do not always know who is in the system, who is coming out, when they are coming out or what the priority groups are. I am keen to understand what is being done to address that practical problem.

Tony Cameron: The circumstances vary, as Alec Spencer said. We have people who are sentenced to a term of imprisonment with a punishment part of 30 years, who are incarcerated for a long period and are not available to go into the community. We also have a significant number of people coming into prison overnight and departing the next day. They come in from court in the evening and we know that they are coming only when they arrive and we must deal with them. If prisoners serve short sentences of just a few days, the amount of information that we can collect or receive is limited. Between those two extremes are the bulk of prisoners. There is no doubt that the churning effect happens mostly at the short-term end. The shorter the period, the less we can do. As I said in my opening remarks, traditionally we have concentrated on long-term prisoners.

We can do a certain amount of work for short-term prisoners but not rehabilitative work. We can pass on information if we have it, but the information flows regarding people who are in for only a very short time are necessarily pretty small. That can be a practical issue both ways. The new arrangements offer the prospect of formalising and making arrangements that are suitable for each area. For example, the arrangements for a big inner-city area will be rather different from those for a remote area.

Jackie Baillie: My concern stems from the fact that it is not even about the exchange of vast amounts of qualitative information; it is about the exchange of just basic information, such as who is in, who is coming out and when they are coming out. I would have expected the basic infrastructure for that to have been in place now. I understand your analysis of the problem; I am really trying to get at what you see as the solution.

Tony Cameron: The solution comes from the proposals in the bill. You are quite right; at the moment, our job is to incarcerate those who are sent to us by the court and those whom the prosecutors send to us on remand. The latter make up about a sixth to a fifth of our total prison population and are innocent until their trial is disposed of. Special arrangements have to be made for them and we often do not know much about them, as they are not criminals at that point. At the moment we do not have the same system of statutory supervision for very short-term prisoners that we have for long-term prisoners and sex offenders.

Short-term prisoners are sentenced by the court to a short term of imprisonment, they serve it and they go out. We have tried to address some of the issues by establishing link centres in prisons that deal with that type of prisoner to try to ensure that the transition from prison to community is not as disruptive as it has traditionally been. All the problems and issues that those prisoners had at the point of entry into prison are still there when they leave, but they have the additional issue of having been incarcerated.

At the end of the sentence, the tendency has been for short-term prisoners to be discharged into the community but not to be received by anybody. They go home, if they have a home to go to, and they pick up the threads of their life again. We are trying to make that transition a bit better and a bit more joined up. That requires work by us, which we have started on the basis of our own view of what needs to be done. However, we need and would welcome the co-operation of voluntary agencies, local authorities, housing, and the police, in certain cases. We are ready to improve the situation because, for short-termers, it has not been a seamless process.

The Convener: Would you clarify a simple factual matter? At the moment, if a prisoner is admitted not on remand but to serve a sentence that has been imposed by a court, are there any data on that prisoner’s record sheet or log about where their home address is thought to be and where they are likely to go on release? Is there then any contact with the local authority for that area?

Tony Cameron: There is some, but not all prisoners will divulge their place of residence.

Alec Spencer: If someone is sentenced to a one-month prison term, we will have their criminal record number and warrant and we may know their home address, but we have absolutely no statutory duty to advise anybody that that person is going to return to that area. They are not subject to supervision. Unless they are a schedule 1 prisoner or sex offender, in which case there may be other requirements, there is no protocol or arrangement in place for us to notify anybody. Indeed, the evidence from social work services is that they do not have the resources and are not geared up to deal with that sort of information coming from prisons. Somebody who is serving a one-month sentence is not a statutory case.

The Convener: What is a statutory case?

Alec Spencer: A statutory case is a prisoner who is serving a sentence of four years or longer. They are subject to supervision.

The Convener: A non-short-term prisoner.
Alec Spencer: Yes. Somebody who is serving a long-term sentence or who is a lifer is subject to statutory supervision, and various protocols are in place to ensure that we notify social work services, the Parole Board and so on. There is no statutory obligation for people who serve fewer than two years in prison to have supervision, and there is therefore no reason for us to notify any authority about their release.

The Convener: And there is no commonsense intervention either.

Tony Cameron: If the court imposes a sentence of longer than four years, that sentence necessarily carries with it certain other things. If the sentence that is passed is shorter than that—if it is, for example, one week, one month or one year—after that period has expired, the person is simply free to go. They have a right to exit the prison and we must discharge them on that day. There is no requirement for the prisoner to have contact with anyone after they have left the prison gate. That is the present system; it is not the one that we would devise, but that is what the law is at the moment.

Jackie Baillie: Whether or not there is a statutory obligation, there is an issue of good practice.

Let us move on to evidence that we received last week from some of your partners in the criminal justice authorities, who said:

“The big challenge for us is our relationship with the SPS”.—[Official Report, Justice 2 Committee, 12 April 2005; c 1495.]

Do you see a problem with the fact that the SPS is a national organisation whereas criminal justice authorities are local organisations? If you had a blank sheet, how would you ensure that the degree of communication and co-operation that is required would take place?

Tony Cameron: We do not see our being a national organisation as a problem for us. Most countries of Scotland’s size have single prison services; however they are constructed, they tend not to be local organisations. That approach gives us considerable economies of scale, and not all prisoners are incarcerated next door to their home, if they have one. There are various specialist units or prisons in most countries, in which prisoners of certain types—especially long-term prisoners and women prisoners—are cared for.

As the Executive’s proposals set out, if one were to design the system today, one might not start with the 32 local authorities. We have a large number of local authorities, some of which happen to have prisons within their areas, although most, by definition, do not. Even if there is a prison in a local authority area, it may not serve that area. For example, Shotts prison does not really serve the area surrounding the prison: it is a national facility for very long-term prisoners and lifers.

We do not see a problem. We are keen to work with local authorities, and there is a challenge for us to do so. The proposals that are before us are for the creation of a small number of authorities to co-ordinate, share best practice and give some coherence to local arrangements. The precise number of those authorities is not for us to determine; that is a matter for ministers, under the bill, but we would be happy to work with whatever number of authorities the ministers decide to have.

Two scenarios are painted in the consultation document, one involving four authorities and one involving six authorities. From the perspective of a national organisation, all things being equal, the fewer authorities, the better. Having fewer authorities would reduce transaction costs and would mean that front-line delivery would be likely to be enhanced. However, we have no view on whether there should be four, six or another number of authorities. The basic provisions in the bill are for a relatively small number of such authorities, and the challenge is for us to co-operate with them in working to reduce reoffending and increase safety.

The Convener: We have quite a lot of material to cover; therefore, I ask members to make their questions as concise as possible. I know that the panel will co-operate by being as crisp as they can with their answers.

Mr Stewart Maxwell (West of Scotland) (SNP): I have a quick question on a slightly different subject. In paragraph 5(c) of your written evidence to the Finance Committee, you state:

“SPS has just launched a major exercise … designed to alter our structure and staffing”.

Can you expand on that and give us some detail of what that entails? When will you complete that restructuring exercise?

14:45

Tony Cameron: The budget settlements under which we must operate at the moment contain an expectation that we will make a contribution to the Executive’s efficient government initiative and, more generally, that we will start to address in a major way the fact that the SPS is not a competitive provider. We can acquire places that are just as good at a much lower cost than those that we can provide at first hand. That is not a desirable position from our point of view or from the point of view of our staff or the taxpayer.

We have been conducting a series of efficiency exercises throughout the service. There is a limit to how much those across-the-board exercises can deliver—it gets increasingly hard as one
makes efficiencies and as the various prisons and directorates at headquarters get as near as we are going to get. We are hoping for a 5 per cent saving this year; we delivered a 5 per cent saving last year and 1 per cent the year before.

To continue the necessary pursuit of efficiency, we needed to conduct an exercise like the one that was conducted about 10 years ago, in which the boundaries of staffing were redrawn and the terms and conditions of service for certain people were altered. Another exercise was conducted 10 years before that. My perception was that to get a step change in our efficiency over and above what we have already achieved, we needed to carry out such an exercise, which we have not given a precise timescale.

My colleague, Peter Withers, who is one of the most senior board members, has agreed to lead the exercise. He led the previous one 10 years ago, so he has expertise. He is gathering together a team of people right across the service in a radical way. That team’s work will feed through to pay negotiations with our staff; it will also provide a new structure, which I hope will persist for the next five to 10 years.

Mr Maxwell: The exercise will look at everything.

Tony Cameron: Mostly, it will look at the bulk of where our resources are, which is in our 15 prisons.

Mr Maxwell: Are you referring to staff?

Tony Cameron: I am not just referring to staff, although there are aspects to consider in that regard, such as structures and gradings. I have not said that the exercise should be confined to this or that. I deliberately wanted to carry out a wide exercise involving all prisons and the bits of headquarters that are necessary if we are to look at how we become a more competitive provider.

The Convener: I do not know whether it is within your competence to answer this question, but do you have a view on how the proposed community justice authorities will improve strategic direction with regard to reoffending?

Tony Cameron: That is quite difficult. The bill provides for a focal point that will involve however many local authorities are in each CJA area. We have found from sharing our experience among prisons that there are judgments to be made about what is best provided locally and what is best provided nationally or regionally, if I may describe the community justice authority areas as regions. There is a wide perception among the public that the criminal justice system is rather inefficient and does not work as well as it might. As has been mentioned, the status quo is not regarded as a very good option. The exercise will be an incremental attempt to improve co-ordination.

Reducing reoffending is difficult to do. With a static and ageing population of about 5 million, one would think that the number of people going to prison would fall because most people in prison are young. That has not happened and there seems to have been a tendency over the past 50 years for prison populations to rise, despite there being no increase in population. That paradox is not peculiar to Scotland; the phenomenon has been observed in some other countries.

To reduce reoffending, one has to get at the root causes. That requires everyone—including us—to address themselves to what is needed. Although there is a lot of literature about reoffending, rather little is known about it. What we know for sure is that people are less likely to reoffend as they get older, if they have a house or somewhere to go on release, if they have a job or something equivalent that gets them up in the morning and, in most cases, if they have maintained some satisfactory family contact—I use the word “family” in its widest sense. Prison gets in the way of those things; it makes them harder to maintain than if the person were in the community. We know that programmes to address offending behaviour that are delivered in the community have a higher success rate than the prison-based programmes have. There is something about the mental state of incarcerated people that makes programmes less successful. However, we should be able to reduce reoffending by co-ordinating better and using best practice with all the players in the area.

The Convener: I infer from your answer that the programmes might have a role to play but that they do not provide a total solution.

Tony Cameron: I agree absolutely that they do not provide a total solution.

Maureen Macmillan: A little while ago, you spoke about the possibility that services in certain criminal justice areas would become more efficient because communications would be easier. However, I am not sure that those improvements in administration will reduce reoffending rates. We have had written evidence from small local authorities, such as the island authorities, that feel that being involved in large community justice authorities would be counter-productive. What are your thoughts on that?

Tony Cameron: Our experience is that the delivery of admittedly complex services is more effective if it is done in larger units. That is not to say that, for some things, what is needed is not an extremely local solution.

I can speak only from my experience. Until relatively recently, we had two areas in the prison service—the north and east area and the south
and west area—but we now have only one area, if you can call it that. We did not do that simply because it seemed like a nice thing to do; we think that there are benefits that come from economies of scale. Some local services have to be provided in the islands rather than being procured from Glasgow or Edinburgh. If someone is coming out of Inverness prison and going back to Lewis, we will need to liaise with Lewis, obviously. There are quite a lot of things that one can do in units that are larger than any of the 32 that we have at the moment.

Maureen Macmillan: Do you think that, under the umbrella of those larger units, there is room for local flexibility?

Tony Cameron: Yes. As I understand the provisions of the bill, the local authorities will still be statutorily responsible for the delivery of criminal justice social work in their areas. Unless I am wrong—which is possible, as this is not a bit of the bill that I am as familiar with as I am with others—that arrangement will not change. The question, however, is whether bringing elements together in a structured way is likely to be successful. Our view is that it is likely to be more successful than the present arrangements are, although we cannot prove that. We think that that is a plausible proposition that would chime with our experience.

Jackie Baillie: A lot of what I am about to ask about has been covered already, but it would be helpful if you could summarise the position.

Everybody would acknowledge that it is difficult to achieve effective transitions from prison back into the community. What factors do you think contribute to ineffective transition? What have you done about them and what remains to be done?

Tony Cameron: As I said earlier, housing and what, in a modern setting, I suppose we would call the benefits that are provided for people who have no job are important factors in relation to reducing the chances of reoffending. Doing preparatory work so that people can get jobs—some people will get jobs—or college places, for example, before they leave prison would be a good idea. In the past, we would not do such work. However, we have done a great deal about family contact. Visits are not what they used to be. Much more accent is now put on encouraging families to visit prisoners and on making visits easier and more useful.

The link centres that we are establishing are initiatives that will try to bring into prisons expert providers such Jobcentre Plus and housing providers, as otherwise prisoners cannot get expert advice on such matters until they leave. We do not want to push prisoners out the door and say “There’s the money for the bus and here’s your discharge grant. Goodbye and don’t darken our door again.” We are working progressively, but we will not get where we want to be overnight—that will take time. However, we have put in a lot of effort. David Croft, who is on the next panel, can tell to the committee about HMP Edinburgh, where we have done things most successfully. We have to start somewhere, so we have started with Edinburgh, but work is also being done in Barlinnie, Cornton Vale and so on.

Jackie Baillie: That was a helpful summary.

Currently, your performance indicators measure bums on seats in programmes. In the light of what you have said, would not it be better to have more results-based or outcome-based performance indicators?

Tony Cameron: It would be. There is a whole philosophy about what it is sensible to specify as the things that we want from public sector and private sector organisations. Measuring outcomes in the social sphere is particularly difficult. Everybody would agree that it would be ideal if we could measure the effect of each programme on offending, reoffending or the propensity to offend, but all the literature that Alec Spencer and I have seen suggests that separating what is done in prison from all the other influences that are brought to bear—bearing in mind what I said about the chaotic lifestyles and drug addictions that many prisoners have—is exceedingly difficult. Therefore, a second-best approach is taken. We fall back on the bums-on-seats approach because bums on seats can be counted, although we know that they are not an outcome and we should not kid ourselves that they are. A decreasing number of reconvictions or convictions could be attributable to random causes or be something to do with ascertainment, the courts, housing or other conditions out there that impact on individuals once they leave prison. Separating things out has so far defeated everybody in every jurisdiction that I know of, although doing so would be desirable.

The Convener: Much of the ground that Stewart Maxwell was anxious to ask questions about has now been covered, but he may want to ask about a specific matter, such as individual prisons.

Mr Maxwell: You are right.

The Executive’s consultation identified a lack of consistency in the provision of offender management services throughout Scotland. Do the witnesses want to comment on that finding and on the gaps that exist in service provision? What are the reasons for such gaps? In particular, I
want to know which prisons are better at offender management and at providing successful transition into the community, and why they are better at doing such things?

**Tony Cameron:** I will deal first with the final question on offender management, which is interesting.

As I said earlier, over the years we have put most resources into dealing with long-term prisoners, which necessarily means into a small number of prisons. If you were to ask me about where the largest number of programmes and the most expensive programmes are, I would say Shotts, which is prison for very long-term prisoners, Glenochil and Kilmarnock—those are the top three prisons in that respect. In respect of education, Kilmarnock would be followed by Barlinnie, which would probably be followed by Edinburgh—I am guessing—and then Perth. It depends what the population of the prison is. It is not necessarily a matter of being better or worse. We have only 15 prisons and none of them is a mirror image of another—they are all different. For example, the size of the population differs, from 1,200 prisoners in Barlinnie to a little over 100 in Inverness, so we are not comparing like with like.

15:00

I agree with your comments on variation in provision. The biggest such variation, which has existed for many years, is in accommodation. We have some excellent new accommodation with sanitation and television, but we also have slopping out. If we are talking about basic provision, the biggest difference is in basic living conditions. In prisons where there is slopping out, it is difficult to talk intelligently with prisoners about leading a normal life because they are not leading a normal life while they are slopping out.

As you know, one of the SPS’s biggest challenges has been to secure sufficient resources to reduce slopping out and the sharing of cells as quickly as we possibly can because that would provide a more normal basis for dialogue with prisoners about their condition. We still have slopping out at Peterhead, Edinburgh and Polmont. If I had been asked the question in committee a few months ago, that list would have included Barlinnie too, but we have ended slopping out in Barlinnie after 125 years. We are pleased about that.

Basic living conditions are important for addressing offending behaviour and dealing with prisoners’ behaviour in prison as well as outside. Sharing of cells, which happens when we have a greater number of prisoners than that for which we have the capacity, necessarily constrains what is done.

One big benefit among the many that the new arrangements for transporting prisoners from prison to prison and to and from court have had over the past six months to a year is the fact that staff are no longer being taken off duties in workshops or education supervision. Some short-term absences are caused by prisoners being taken to hospital, but the broad mass of such absences has been taken away. I am sure that the governors who will follow us in giving evidence will agree that that has transformed the management of the rehabilitation and care agenda within all our prisons, particularly the big local prisons and the young offenders institution at Polmont.

**The Convener:** I thank you for mentioning the governors: they are waiting patiently, so I remind members of the need to drive their questioning along.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** I have three quick questions. The first is a cynical one that comes out of my welcome visit to Edinburgh prison last week—I am grateful to the prison staff, who, incidentally, confirmed Tony Cameron’s final point.

As release on home detention curfew would be at governors’ discretion, rather than be part of a rehabilitation service, could it be misused as a way of helping governors with cash flow or flow of prisoners if they were able to release prisoners on home detention curfew sooner than they would be released on day release or under another mechanism?

**Tony Cameron:** The cost difference between keeping 100 and 110 prisoners in a prison is marginal in relation to the total cost, which includes the prison structure and security. Therefore, putting 10 prisoners on home detention curfew would not save a huge amount—somebody would have to pay for the tagging system anyway. If we consider the total cost to the taxpayer—as we should—there would be a big saving only if a whole hall or prison could be released on home detention curfew; at the margin, not much money would be saved.

There would be no incentive for a management team to say, “Oh, we’re a bit tight on the budget. Why don’t we shove a few people out?” as we do not like to release prisoners who are not supposed to be out. There is a great sense of protecting the public in the Scottish Prison Service and, whatever else we are inclined to do, we are not inclined to take chances. Sometimes we have to make a judgment about risk, which will sometimes turn out with hindsight to have been wrong. We will be pretty careful about home detention curfew.

**Jeremy Purvis:** My first question was less about cost than about management of the numbers of prisoners coming in and the numbers
of them wanting out, given your requirement for flexibility.

My second question is on risk. With regard to risk management, the evidence that we received from Safeguarding Communities—Reducing Offending and social work departments was fairly consistent. That evidence was that there were question marks over the supervision of prisoners who would be under a curfew. I think that it was Mr Spencer who said that there was no statutory supervision of short-term prisoners. What mechanism would the SPS—in partnership with bodies such as local authority social work departments and CJAs—consider putting in place to help to monitor prisoners who were under a curfew? Perhaps you think that the SPS would have no role in that.

**Tony Cameron:** We have not worked out all the details, but the present suggestion is that the SPS should judge who should be allowed to go on home detention curfew. Some prisoners will not be eligible for those arrangements. The intention is that an electronic monitoring system—the bracelet system—will be used in the vast majority of cases, apart from one or two. It will not be used in combination with local authority supervision or any other daily or weekly supervision. The monitoring will be done electronically.

It is proposed that the home detention curfew will be used mainly for short-term prisoners who, as we have already explained, would not normally get statutory supervision or any other form of compulsory supervision after the end of their sentence. Like any citizen, such people can avail themselves of the help that is provided by social work departments or other public agencies. Our intention is that a judgment will be made following the conducting of a risk assessment and the production of a report on matters such as whether the prisoner has a proper home to go to and whether the arrangements have a chance of working. Neither the SPS nor the local authorities would carry out routine supervision on top of the electronic monitoring.

**Jeremy Purvis:** Given that you have limited information on prisoners, how will you be able to gauge risk management effectively and to assess accurately not only how likely it is that they will reoffend but the threat to the safety of society that they pose? Indeed, you might not have any information on a very large number of your prisoners. I think that you said earlier that you did not know where a fair number of your prisoners lived.

**Tony Cameron:** If we do not know where a prisoner's residence is, we will not be able to tag him.

**Jeremy Purvis:** I understand that.

**Tony Cameron:** The proposed arrangements provide for a report to be sent to the SPS by the social work department. That report could say a number of things, such as that home detention is okay for the prisoner in question or that it is not okay. There could be several different reasons for that. A judgment must be made. At the moment, a number of long-term prisoners, especially those who are in open prisons or who are reaching the end of their sentences, go out to work each day and come back. There is a calculation to be made of relative risk.

In the main, the short-term prisoners whom we are speaking about are not in prison because they are violent or represent a danger to the public. They are serving a sentence that society has imposed because they have committed a crime. In general, a very large proportion of our short-term prisoners—perhaps as much as half the total prison population—are not in for crimes of violence or similar offences. That is not to say that they will not commit another offence but, in one sense, they are not a danger to the public. If we thought that they were likely to be violent, we would think very hard about whether they should be released.

**The Convener:** Is there a risk assessment template that you propose to apply throughout the SPS if the bill becomes law or is the service still working on that?

**Tony Cameron:** We are still working on it and we will need to continue to work on it with our colleagues in the other criminal justice agencies. We need to liaise with social work colleagues and the police, for example. We have not worked out the total modalities.

**The Convener:** I think that all my colleagues would agree that that is a pretty fundamental component of the whole proposal. I suspect that, when the bill comes up for debate in Parliament, members of all parties will raise that issue. Are you able to offer us any comfort on how the negotiations are proceeding?

**Alec Spencer:** All short-term prisoners are subject to a core assessment. We intend to use many of the factors that are already in that core assessment to aid our judgments. Home detention has not yet been introduced. If it is the will of Parliament that it should be introduced, we will talk to the police and local authority social workers to find out what they think are the important risk factors. That will ensure that the assessments that we undertake in prison are appropriate.

Members will note that home background reports will be drawn up as part of the arrangements for a home detention curfew, to which Mr Cameron referred. Therefore, assessments will be made in the community. We
will make assessments in prison of prisoners, their level of risk and their needs. All of that will be combined before a decision has to be taken. The governors who make those decisions will be very conscious of the need to ensure that public safety is paramount.

Jeremy Purvis: You have not mentioned the Risk Management Authority. Will it become a body that will co-ordinate all the relevant information, so that there is a consistent, national approach?

Alec Spencer: The Risk Management Authority deals with very serious offenders who have committed crimes such as murder and serious sexual offences. They are subject to orders for lifelong restriction and would not be subject to home detention curfew. They are extremely dangerous people of whom perhaps 10 a year would come under the—

Jeremy Purvis: I did not ask for clarification of what the authority currently does; I asked whether its role could be extended to offer a consistent, national approach.

Tony Cameron: Under current plans, the answer is no. We would make our own assessment of whether prisoners could either go home at weekends or go out to work, as we do for prisoners released at present. The issue concerns an extension of that end of the business rather than management of the extreme sex offenders or murderers to whom Alec Spencer referred.

Jeremy Purvis: Does the Scottish Prison Service have experience south of the border? You might have seen the research that indicated that home detention curfews had a negligible effect on reconviction rates; the difference was a matter of a few fractions of a per cent. Have you any observations on that?

Tony Cameron: In general, it is quite difficult to make comparisons with a very different system. However, the objectives of this process are based on the belief that, for those who are suitable, short-term sentences of up to 135 days would be better provided for in the community under an electronic tag system.

Basically, the technology is new—it was not available a few years ago—and is becoming reliable. It is already used with offenders as an alternative to custody, towards the end of a sentence when a judgment is made about whether it would be safe and sensible to release a person earlier than would otherwise be the case, with a monitor. That is not something that we would normally do, but the technology seems to have a place and increases our armoury in providing appropriate penalties for criminals.

Bill Butler (Glasgow Anniesland) (Lab): Would a requirement for social work supervision for those on home detention curfew be of benefit? At present, the bill does not envisage such supervision as standard. What is your view?

Tony Cameron: We do not have a view. At present, society provides for supervision in the community following release for those who serve short-term prison sentences, except in a limited number of exceptions.

Bill Butler: Would that be of benefit?

Tony Cameron: The question is whether it would be effective and cost-effective. I do not know whether it would be because it is not within our experience.

Bill Butler: Does Mr Spencer have a view?

Alec Spencer: The important issue is whether prisoners will get the required support. If they have an opportunity when on home detention curfew to access employment, or to remain in the family home and not offend—and, therefore, have the possibility of integration—that is better than being in prison.

To go back to the previous question, if the statistics from the south show that there is no discernible—or only a marginal—benefit from people being outside rather than in, there will be no point in keeping them in prison, because it will not have a negative effect on reoffending and it will reduce the pressure on the prison system. We will then be able to focus our resources on those who need them. However, that does not answer the question about supervision in the community.

Bill Butler: In effect, you are saying that the support that might be provided by social work supervision would be of no real benefit compared with all the other forms of support. Is that what you are saying?

Tony Cameron: No.

Alec Spencer: No.

Bill Butler: Well, what are you saying? Could you make it clearer for me because I am not following you?

The Convener: We will take one respondent at a time. Mr Cameron.

Tony Cameron: There is a question of an opportunity cost. In any debate about whether something is of benefit, one has to decide what one would give up to pay for it. Comparing it with what the money would be spent on otherwise measures how much one wants it and how beneficial one thinks it will be. We do not know what the thing we would have to give up is, so we cannot know whether it would be beneficial, because we do not know how much damage
would be caused by giving up the thing that we would have to give up to pay for it. Without that information, the question cannot be answered.

**Bill Butler:** I think that I follow that.

I have another crisp question; perhaps we could have a crisp answer. What plans are there to notify victims of the early release of prisoners?

**Alec Spencer:** Currently we operate a scheme whereby we notify the victims of those who have committed violent, including sexual, offences. There will be no additional requirement for us to notify victims of short-term offenders who are released under the new provisions in the bill unless they are already within the existing structure.

**Bill Butler:** Do you think that there should be?

**Tony Cameron:** That is not a matter for us.

**Bill Butler:** Speak as a citizen.

**Tony Cameron:** I am not a citizen here; I am a civil servant. I cannot answer as a citizen. There are rules about civil servants.

**The Convener:** At the moment there are rules that govern whether you have to notify victims. You do so for certain categories of prisoner and you do not do so for certain others. Other than saying that, you do not want to give an opinion.

**Tony Cameron:** Those rules do not apply to the people we are considering today.

**Maureen Macmillan:** We will return to risk. The bill makes special provision for dealing with serious and sexual offenders and gives police, local government and Scottish ministers, through the SPS, statutory functions to establish joint arrangements for assessing and managing the risk that such offenders pose. Of course, that resonates with what has happened recently. What will the SPS’s responsibilities be in progressing that?

**Alec Spencer:** The SPS has been party to the information sharing steering group—ISSG—that has been examining the Cosgrove recommendations. We have already signed a joint concordat with other agencies for information sharing and are working on protocols with the individual agencies. We are now engaged in an agreed common risk assessment for all agencies—the risk matrix 2000—so we will be involved in common training and assessment so that we are all talking the same language. An information sharing pilot is already being undertaken at Peterhead, where they have good liaison through Grampian police. We are considering how we can extend that information flow into the new United Kingdom police violent and sex offenders register—VISOR—that has just been rolled out in Scotland.

We are already working on a number of accredited programmes. In fact, when the joint community and prison accreditation panel, which was established after 1 April, gets into swing, we intend to introduce joint programmes to ensure that programmes begun in prison can be continued in the community and that we are all working on and dealing with the same material. A range of measures is in train.

We must also ensure that any information that we have is passed on. At the moment, concerns have been expressed about data protection but, by making use a core partner with the police and social work agencies, the legislation will enable us to pass appropriate and relevant information more comfortably between agencies. As a result, we hope to receive at the point of sentence information from police and social work and, when sex offenders are released, we hope to pass on to authorities information that we have gleaned in interviews and in programmes in which offenders have talked about the patterns of their offending behaviour. Such an approach will ensure that child protection is improved on the outside.

**Maureen Macmillan:** There is no equivalent agreed national approach to violent offenders. Is any work planned in that regard?

**Alec Spencer:** Part of the Risk Management Authority’s remit is to develop national standards for risk assessment of violent offenders. We have acquired from another jurisdiction a violence prevention programme that we are delivering in one prison and will shortly introduce in two long-term prisons. We will also discuss with the joint accreditation panel the question of how we can best broaden the programme to ensure that it can be used inside and outside prison.

**Maureen Macmillan:** VISOR has been mentioned a couple of times. Although the letter to Mr McNulty, the convener of the Finance Committee, deals with this matter, will you explain to the committee what VISOR is and how you use it?

**The Convener:** I think that the question is more about how the Scottish Prison Service engages with VISOR and whether it will have training and resource implications.

**Alec Spencer:** Our operational people are currently working on that. As members know, VISOR is a computerised police system that lists and categorises violent and sex offenders, those who are registered or have been previously registered and so on. Through the police’s intelligence system, it also holds information on individuals that might be of use to Disclosure Scotland and in assessing people’s suitability to work with vulnerable people.
As I said, our operational people are currently discussing with police how we can link our information systems. At the moment, the SPS has a computerised link with the Scottish Criminal Record Office, and we must ensure that we can also exchange information between the VISOR system and the SPS and that we share appropriate information and intelligence with the police. As far as information feeding is concerned, I know that the staff at Peterhead prison who are involved in the pilot project with Grampian Police will be acutely aware of VISOR’s introduction, and Bob Ovens of the Association of Chief Police Officers in Scotland, is certainly involved with the SPS in developing those links.

The Convener: On behalf of the committee, I thank both witnesses for their attendance this afternoon. I know that the session has been fairly protracted, but we have found it helpful.

I declare a five-minute comfort break to allow people to draw breath and come back refreshed for the next panel.

15:24

Meeting suspended.

15:29

On resuming—

The Convener: I reconvene the meeting and welcome three prison governors. Audrey Mooney, the governor of Aberdeen prison, should have been with us, but sadly she is unable to be here because of family circumstances. However, I welcome David Croft, the governor of Edinburgh prison; Bill Millar, the governor of HM Young Offenders Institution Polmont; and Sue Brookes, the governor of Cornton Vale prison. I thank the witnesses for their patience. I am sure that they realise that we were anxious to get through a lot of material with Mr Cameron and Mr Spencer. I have just been speaking to members of the committee and we think that some areas have probably been adequately covered, so this part of the meeting might be a little shorter than it might otherwise have been. I invite Mr Croft to make a brief introductory statement.

David Croft (HM Prison Edinburgh): As governors in charge of prisons in the Scottish Prison Service, we very much welcome the Management of Offenders etc (Scotland) Bill. The proposed structure will bring us closer to our partners in criminal justice social work departments and will increase the scope for ensuring that our strategies and plans are complementary. Currently, there are positive local partnerships between prisons and agencies within criminal justice social work departments, which operate mainly on the basis of good will, professional respect and mutual commitment to reducing reoffending. The formalising of the arrangements will provide greater scope for joined-up working towards complementary goals and, ultimately, will ensure greater integration of offender services, the aim of which will be to reduce reoffending.

We welcome the proposals on home detention curfew for selected prisoners who are nearing the end of their sentence and have been assessed as requiring only a low level of supervision in prison. Such prisoners are rarely held in prison because they continue to present a risk to the public; they are there merely to complete the sentence that the court awarded. The weekend home leave scheme that currently operates provides an example of an approach whereby early access to the community is granted. The scheme applies to prisoners in open prisons; such prisoners might be serving sentences from 18 months to life and are usually granted home leave every four weeks as part of their preparation for release. Any reduction in prisoner numbers that arises from the home detention curfew scheme will enable us to concentrate our scarce resources on areas in which they are most needed.

Maureen Macmillan: What are the current levels of co-operation between the witnesses’ prisons and social work and voluntary agencies?

Sue Brookes (HM Prison Cornton Vale): There is a considerable amount of co-operation between Cornton Vale prison and agencies in the community. Our establishment has a link centre so, as people come into prison, the job centre and other such agencies try to establish relationships that will help with employment and homelessness on release. We also do work on specific, themed areas. We have a group that includes social work representatives from outside the prison, which tries to develop strategies for the management of family issues and the development of our family centre. We also have considerable links with local health care providers, because there are mothers and babies and pregnant women who need midwifery care in the prison. We have many links with the community, but they tend to relate to specific issues rather than to an overall plan.

The Convener: Does that happen regardless of the length of sentence?

Sue Brookes: Sorry, in what respect?

The Convener: The evidence that we heard from Mr Cameron indicated that a big distinction is made between long-term prisoners and short-term prisoners. In Cornton Vale, the proportion of short-term prisoners is high, so I am interested in what you said.

Sue Brookes: Most prisoners from Cornton Vale are not liberated directly to the Stirling area.
However, the prison needs to have good relationships with the Stirling area, because we access services such as nursery provision for women with babies who go out to the open prison, and health care resources such as the local hospital. There are a number of issues in respect of which we liaise directly with the community and the local authority.

We send a large number of women back to different areas, which requires quite a lot of effort. The more areas that we have to liaise with—

The Convener: Can you tell us more about that?

Sue Brookes: Yes. Agencies from the Glasgow area come to the link centre to consider homelessness, for example. From our perspective, the fewer areas that we have to work with the better, because that gives us more opportunity to make concrete relationships and arrangements for release.

Maureen Macmillan: However, I worry that you will not make relationships with the people who will deal with the women once they get back to Shetland, the Western Isles or wherever. You will deal with somebody who is far removed from the person who will deal with the woman when she gets home.

Sue Brookes: On liberation, we already send women right across Scotland. From my perspective, the smaller the number of agencies or areas that we have to work with the better: any reduction in the current number would be an improvement.

The Convener: I was interested in how the SPS perceives the role of the community justice authorities. Mr Cameron said that his view was that, although they would be helpful, they would not be a solution on their own. Am I correct to assume that the three of you share that view?

Bill Millar (HM Young Offenders Institution Polmont): Yes. HM Young Offenders Institution Polmont has similar problems to Cornton Vale with regard to being a national establishment. We have to maintain contact with the whole of the country, so if we have to establish such a relationship with fewer authorities, it will make life a bit easier for us.

Maureen Macmillan: Will you tell us a bit about the relationships that you currently have?

Bill Millar: Again, the situation is similar to that at Cornton Vale. As Polmont is the only young offenders institution in the country, we take and liberate individuals from throughout the country. That means that in some areas relationships are patchy. Social work departments are primarily interested in those whom they have a statutory obligation to pick up on liberation. In the main, such relationships are very good. Links are established prior to liberation and visits to the institution are made by community-based social workers, who access our link centre regularly and make face-to-face contact with individuals to establish a relationship prior to their release into the community.

The links are not as strong when we move beyond the statutory obligation. The situation varies around the country. Social work departments in some areas have looked beyond the statutory obligation. There is a lot of interest in youth justice and young offenders, so links are being established. Whether or not there is a statutory obligation, social work departments in some areas already express an interest and make contact. In the main the links that exist are good and strong, but they vary around the country. Much of that is down to the resources that are available to community-based social work departments.

David Croft: HM Prison Edinburgh has outstanding relationships with the various voluntary and statutory agencies. We are in the fortunate position of servicing the offender system—if you like—for the Borders and the east of Scotland. As a consequence, many of the agencies are on the doorstep of the people whom they seek to serve. Twenty-four agencies come into the prison at some time every week to provide a variety of services. There is mutual recognition among all of us and throughout society that addictions, homelessness and unemployment are the three major contributory factors to reoffending. As a consequence, we have agreed that we should seek to support those areas.

The advantage of joined-up working is that the relevant agencies come into the prison. There is a recognition that a prison sentence starts in the community and finishes in the community. It is particularly valuable for agencies to come into the prison to plan and work with a prisoner prior to his release into the community—I am talking primarily about short-term prisoners in Edinburgh. In that, we are significantly advantaged because we are in the locality that we serve.

Maureen Macmillan: I have visited Saughton and seen the programmes that operate there. However, if the work that the three of you are doing is so good, why do we need legislation to join it all up?

David Croft: As governor of HMP Edinburgh, I am at a greater advantage in terms of the services that I get than are the governors of most prisons. I include local services in that. I alluded to that advantage in my introductory statement. The services that we get are based on good will, mutual commitment and good relations. We need to formalise services in some way so that they do
not break down. Offenders should be able to depend on them always, and we need to plan for consistent service delivery over the years. I believe that that is the critical aspect of the proposals.

Maureen Macmillan: Thank you for that helpful response.

Bill Millar: Governors approach the management of offenders from their own perspective and in the interests of their own organisations. We do not use the same language or the same assessment techniques. Sometimes the information that we generate is of more value to one agency than it is to another one.

One of the advantages that could result from the bill and from the creation of the community justice authorities is that all of us will start to use common language and techniques and the same systems and processes. It will not matter which prison or authority is accessed; all of us will speak the same language. I think that that will lead to a higher degree of success.

Sue Brookes: I, too, believe that that is the primary issue. For female offenders, we want to ensure that interventions, programmes or services are specific to the needs of the offender and that they are consistently available in different parts of the country. I hope that the establishment of the CJAs and the chief officer role will provide us with greater consistency of access and availability.

Jackie Baillie: I will change substantially the questions that I planned to ask and focus on some of the comments the panel has made. By and large, it sounds as though the partnership arrangements that are in place are great. I agree with your analysis of the causes of problems and the barriers. That being the case, I return to Maureen Macmillan’s point about the reasons for the present levels of reoffending. What is your analysis of some of the solutions that are required to plug the gap? Frankly, we are talking not just about putting good practice arrangements into statute but about gaps in provision.

Have you done any analysis of reoffending rates? It sounds as if what you are delivering is working, but do you know whether it is? Where do you think the gaps are?

Sue Brookes: We have not done any specific local analysis of reoffending rates. One of our hopes for the bill is that it will improve opportunities for accountability and evaluation. As David Croft said, there should be greater opportunity for consistent evaluation as people move into prison, experience life inside it and move out again. It would be useful if the opportunity to track offenders were applied consistently in different areas. I am thinking specifically of female offenders, given their relatively small number.

I would like to have interventions and services that are designed specifically and appropriately for the needs of women. It would be useful to have interventions that women can access partially in prison and partially in the community after they leave prison. Such an opportunity has the potential to increase the chance of reducing offending.

Bill Millar: From the perspective of young offenders, I can say that we have done some fairly recent analysis. Probably about two months ago, we took a snapshot of our population in order to determine how many were recidivists and how many were first-time offenders. On that day, 75 per cent of the population had served a previous custodial sentence for an average of seven offences.

If relationships are so good, why are we not making a better impact on reoffending rates? As I said previously, I think that that is because our focus is not always on the areas that could have the greatest impact.

The prison service has targets, objectives and management contracts to service and we therefore focus on the areas to which they direct us. The same will apply to other agencies, which might not be focused on the areas that would have the greatest impact on reoffending. The resources are not always in place, even if we can identify the issues.

15:45

Many social factors will affect an individual’s decision to commit crime. That is not an area on which the prison service can have a huge impact. We have attempted to identify the key causal factors and determine which ones we can impact on while the person is in custody. Mr Croft referred to issues such as housing and employability. We can try to make the offender more attractive to the community and more able to fit back in and make a useful contribution. We try to identify the causal factors as I have outlined. If the community services are doing likewise—I said earlier that we might not be using the same assessment tools—there can be duplication of work and resources, which are not necessarily applied to the widest areas in which we could make a difference.

Looking ahead, the requirements in the bill would provide a real opportunity to focus the resources where they can reap the best results. I hope that if we are joined up—to use Mr Croft’s terminology—and the assessments are done jointly in the first instance and the agencies can agree where we can have the greatest impact, you will see a reduction in recidivism and offending rates.
David Croft: I could be excused for being the eternal optimist, but the records are two years old and we might find in two years' time that we have made a difference. We are maturing significantly our relationships and inputs as the years go by and I would like to think that the slowing down of the recent increase in prison numbers might be down to our making a difference, but I cannot prove that.

I see the gaps as primarily in the transitional arrangements for prisoners who are addicted to drugs going back into the community. There are not nearly enough accessible services. The services for people who are already in the community who need support for drug problems are in such demand that linking prisoners into them is difficult. We have taken significant steps forward and have been able to identify people and link them into services, but in the gap between a prisoner leaving the prison and accessing the treatment, many other things get in the road. The significant gap is because of prisoners’ continued misuse of drugs on release from prison.

The Convener: What sort of things get in the way?

David Croft: The thing that gets in the way is just the reality of a prisoner being released and having his appointment to see a general practitioner a week later. He has to wait. If he has an addiction, he will not wait that long: he will go somewhere else. Even those who are released who have conquered the problem in prison have a week to try to come to terms with their new life and meet their old friends again. There are so many impact factors in the week or two weeks immediately after someone is released that we really need to link people with services within 24 hours. Work is going on with agencies in the community and the local drug action teams to try to improve the situation. That is the most significant gap that lets us down.

Mr Maxwell: A number of points have cropped up in your comments. What are your thoughts on the current partnerships? You say that you support the bill and the proposed CJAs. We heard evidence last week from criminal justice social workers, social workers, local authorities and the Convention of Scottish Local Authorities. Many of them seem to think that the current partnerships are working well and that, if they need to be improved, legislation is not necessarily required. They are concerned that we are restructuring yet again, relatively soon after they have set up those partnerships. Will you expand on why you think restructuring—rather than dealing with and improving the current partnerships—would assist?

Bill Millar: It is probably too important to be left to chance. One of the points that we alluded to earlier was that many of the good relationships that exist are based on good will and a willingness to work together professionally. If good will does not exist and there is no requirement to form a relationship and to agree on targets, objectives and areas to work in partnership, the chances are that it might not happen. Formalisation gives us an obligation: we are more likely to focus our attention and resources on what there is a formal requirement to deliver, particularly when resources and staff time are at a premium. When we have finite resources to work with, we will not do things on which we will not be measured and which are not required of us. Formal structures and arrangements eliminate the possibility that not everybody would buy in to the same degree.

Mr Maxwell: Evidence we received last week indicated to me that there is a formal structure and that the resources—the funding, effectively—from the Executive are going not to individual local authorities but to a partnership or grouping of local authorities that buy into a formal arrangement and work together collectively. It seemed a fairly formal relationship. It may not involve the SPS and the prisons directly. Is it not just a case of amending the current situation rather than restructuring it entirely? Are you saying that there is no formal relationship?

Bill Millar: Much of the focus has been on the short-term offender and the short-term recidivist. The formal structures to which I think you are alluding are the tripartite arrangements, which focus on the more serious end of the offender range. The vast majority of our prisoner population does not come into that category. They are at the very short-term end, where there is not the same requirement for a relationship between community agencies and the prison system.

David Croft: I am unfamiliar with the formalities of the structure that you understand to exist. There are formalities within the statutory provision for long-term prisoners, but I am unfamiliar with other formal structures. There are some scouting groups on how we might share information in future but, unless I am misinterpreting the question, I am unfamiliar with—

Mr Maxwell: The evidence from local authorities and ADSW was that there are effectively criminal justice partnerships between various agencies that work collectively across local authority boundaries to deal with offenders. Maybe prisons are not involved in that.

David Croft: I am unaware of formal arrangements in that regard. Social workers are contracted in from community justice social work departments to work with us, and we have statutory supervision arrangements that come from outside, but I am unfamiliar with the other aspects. On the quality of the partnerships, one of the questions asked was why it is necessary to
create a structure to make all this work if it is working okay just now. There is nothing in my management experience that contradicts the view that without a structure we will never get anybody accountably delivering anything. I am talking about the size of the present reoffending problem in Scotland. That is where I believe the proposed structure would be a benefit.

**Sue Brookes:** As Bill Millar says, where there are national policies or agreements about procedures that need to be applied to long-term prisoners, they are appropriately applied almost individually, and relevant agencies are involved in discussions about what will happen to that individual. That process works well.

Like David Croft, however, I do not have experience of a significant amount of local consultation on general management issues concerning offenders as a group. We tend to work with our local authority on specific themed areas such as addictions, families, mental health and health care issues. The opportunity to join that up and see it as a collective vision for the management of female offenders, as opposed to the case management of individuals as they move through the system, is probably the biggest value of the proposed structure.

My understanding of the arrangements is that the community justice authorities and the chief officers will have an obligation to consult what are described as local key players. That will definitely bring the prison into a more direct relationship with the community. There is no doubt but that the more accountable we are and the more shared outcomes are evaluated, measured and made available to the public, the more organisations will focus on issues around reoffending. For those reasons, a more formal consultation mechanism would be useful.

**Mr Maxwell:** I have one further question on a slightly separate issue. The bill is intended to cut reoffending rates. In your opening statement, Mr Croft—tell me if I have got this wrong—you said that people who are serving short-term sentences are only serving the sentence that has been awarded by the court. I did not really understand what you meant by that. Surely that is the whole point of the sentence. What did you mean by saying that they are only serving the sentence that was awarded by the court? You seemed to be talking about it in relation to the HDCs—the home detention curfews—which you said you support. If those offenders are only serving the sentence that has been awarded by the court and you think they should be outside, whether through the HDC scheme or some other method, do you think that HDCs will contribute to the drive to reduce reoffending?

**David Croft:** I do not see how HDCs would contribute to the reduction of reoffending. I just think that they will allow prisoners who no longer pose a risk and for whom prison is no longer able to do anything to go into the community. In my introductory statement, I was referring to a prisoner who, with 135 days of their sentence left to serve, was likely to qualify for release because they posed no risk and presented no management difficulties in prison and had already had their primary and secondary needs addressed in relation to offending behaviour and social care. Quite rightly, they would be required to finish their sentence, but if they presented no further risk in the prison and the prison could make no further progress with them, I would support the use of an HDC.

**The Convener:** You are saying that the person presents no further risk in the prison. Surely the question is: what risk may they present in the community?

**David Croft:** I am sorry if I did not make myself clear. I assume that we would not release anyone who presented a risk to the community. The risk assessment would have concluded, first, that they posed no risk in the prison and, secondly, that they would present no risk if they were released into the community. A whole host of prisoners would qualify, in such circumstances, if such a disposal were available to us.

**The Convener:** Thank you for that clarification.

**Mr Maxwell:** I am trying to think what the purpose of HDCs would be, other than the release of certain prisoners. I thought that one of the aims of home detention curfews was to reduce reoffending, but you said clearly that you think HDCs would have no impact on reoffending.

**David Croft:** In my view, the incentive not to reoffend would exist only in the last 135 days of a person’s sentence. I can think of no reason why, once that period had expired, their having had the home detention curfew afforded to them would be an incentive not to reoffend. The major deterrent to their reoffending in the 135-day period would probably be that, if they happened to go back to prison—God forbid—they would probably not qualify for an HDC again.

**Jeremy Purvis:** I have two questions on the curfews—I would like Mrs Brookes to answer the first one. I understand that the experience in England is that there has been a higher rate of curfews for women offenders than for men. However, we have also heard, in the wider context of the bill, about throughcare assessments in institutions and throughcare in society. The curfew is a mechanism for putting inmates back into society, but my reading is that the two proposals are effectively being kept separate—the
supervision of the curfews is not linked with the throughcare services in prison or the enforcement of throughcare services in the community, although that could be of benefit. How would that link in, or should it link in, with the work that you are doing and the gaps that you have indicated exist?

16:00

Sue Brookes: I take the view that the home detention curfews would be particularly useful for female offenders. The risk issues for female offenders may be different—we might want to research that over time. The current absconding rates for female offenders are certainly very low, so the relationship with the establishment—what might almost be seen as women’s desire to seek support—is a good thing and should be maximised.

For long-term female offenders who are out in our independent living units, we already try to engage with social work departments for throughcare on release. My understanding of the home detention curfews is that—[Interruption.]

The Convener: I know that my convener’s irritation is equalled only by my colleague’s discomfiture, but after that mobile phone interruption I hope that we will all be technologically quiet. I am so sorry, Mrs Brookes. Please continue.

Sue Brookes: I can give examples of women who have children with them in prison and who have moved out to the independent units with their children. One can imagine circumstances where a home detention curfew would better facilitate that person’s integration into the community, their child’s access to services and a whole range of other issues. I understand that there is a possibility that conditions might be added to the home detention curfew. I have to confess that I am not entirely sure how that will be managed, but I guess that the process would develop through consultation. For female offenders or for offender groups with specific needs, the addition of different types of conditions might be considered.

I do not think that a general provision that all offenders on home detention curfew should be supervised is necessarily the best use of money. We might want to evaluate individual cases and look at the kind of support that people would need in the community and we might add different conditions accordingly. There might be standard conditions for the vast majority of short-termers, but for specific individuals who clearly have distinct needs—if they have young children, for example, or addiction problems—we might look for additional support. Does that make sense? The answer would depend on the individual.

Jeremy Purvis: It does. Before Mr Croft and Mr Millar comment, I think that it would be of great assistance to the committee—and certainly to me—if you could answer some other questions to help us to find out how the measure will be applied in Scotland. As we are currently scrutinising the bill, there will be further questions on what you have just said about how you perceive conditions and how curfews could be used—all of that would, presumably, be dealt with through consultation and regulation, although at this stage we do not know. We would like to know what questions there would be about every individual and whom you would ask the questions of. Presumably, you would ask them not only of the individual, but of the various partner agencies. What is the extent of the conditions that you would seek to use, if there are to be conditions? That issue is particularly important to us if we are considering whether the home detention curfews can be linked with other aspects of the bill. As the bill stands, that does not seem clear.

Sue Brookes: Various mechanisms might be used in that process. For example, in Cornton Vale we have a local risk management group, which is a multidisciplinary group that considers women’s progress as they move through their sentence. It is used primarily for long-term offenders. We put to the risk management group for scrutiny all cases in which women are to access the independent living units. That reassures me that appropriate scrutiny is given to the relevant needs of every individual who gets access to the community and the risk that they represent. It may well be that we will put cases that involve home detention curfews to that group. We also produce community integration plans. In Cornton Vale, we write specific addictions plans for women who go out into the independent living units. Perhaps these mechanisms could be expanded to facilitate the home detention curfew process.

Jeremy Purvis: So you would say that home detention curfews could be used as a means to enforce—I hate to use that word—those plans or to provide a degree of stability for the individual in their chaotic lifestyle.

Sue Brookes: A lot of women come into Cornton Vale in a chaotic state. That is possibly one of the reasons why they come into prison—it is perceived that they will not engage in services externally. In a relatively short time, often with good health care, such women become much more stable and, in my judgment, are able to cope. On the levels of support that are required, each prisoner is an individual in their own right and must be considered on an individual basis.
The Convener: To clarify, what does the home detention curfew add to the scenario that you describe?

Sue Brookes: It is an opportunity for people better to access services in the community. I welcome the opportunity for women to be more stable and for us to know where they are and that they are going to access services.

The Convener: What is it about the home detention curfew that will make that happen? Is it the sanction, or the fact that if it is breached—

Sue Brookes: It is the both the stability that it offers and the requirements that it places on offenders, given that we can apply conditions whereby people must access particular services. Those factors work together; they are complementary.

Bill Millar: I reiterate the points that Sue Brookes made. My reading of the home detention curfew is that it depends on what ministers want it to deliver. If its role is to reduce the burgeoning prisoner population and remove from prisons those who do not need to be there because they do not pose a real threat to public safety, that offers significant benefits and has merit. Such individuals are the people whom David Croft described. They are near the end of their sentence and they do not pose a great threat to public safety, so they can serve the final part of their sentence in the community under home curfew arrangements.

If the spirit of home detention curfews is to tackle and reduce reoffending, I suppose that its success will depend on what conditions we impose. The Prison Service is in a position to apply some conditions that might be of benefit in that regard, along the lines that Sue Brookes described. Much depends on the conditions to which an individual is released. Is the home a supportive environment? Are the relationships that exist in the home supportive? Many of the people for whom we have responsibility are not welcome in the home, which is the last place that they want to be. Trouble is created when they are in that environment. They would obviously not be good candidates for home curfew and they are unlikely to impact positively on reducing reoffending.

We could impose conditions that facilitate some form of community integration plan, with a requirement on the individual to attend interviews and tackle the factors that caused them to offend in the first place. That might include interviews with employers and contact with social work departments. We arrange interviews for prisoners in advance of liberation, but they do not always turn up. Such interviews might be with a housing department, a social work department or a drug support agency. We rely on that individual following the process through, but often that does not happen. As a result, one benefit of using the home detention curfew would be to—

Jeremy Purvis: I am sorry to interrupt you. At the moment, those services are supplied by the link centres. However, as long as the curfew is in operation, you might have a tool that, for the first time, provides in a community setting a degree of the enforcement that you can currently bring to bear while the individual is in your care in the institution.

Bill Millar: I agree. There is an opportunity to use the curfew in such a way.

Jeremy Purvis: We will hear from the minister later in the process, but I realise that at the moment things are still at a very early stage.

David Croft: The greater the specific needs of the individual whom you are likely to release, the greater the risk that they will pose. As a result, in the interests of the public, you are unlikely to want to take such a risk. We need to strike a balance as far as those needs are concerned.

As for what we take into account in the risk assessment process, we give consideration to bottom-line issues such as the level of supervision that the individual needs in prison, the addiction issues that they might have, their conduct in prison and their family relationships. We then engage with partners in social work departments on matters such as the conditions to be set out in home background reports and the question whether the family even wants the individual to be released. Consideration might be given to any victim issues that could arise if the individual went back into the community. Although, in the bill, the Executive has not worked up anything like the range of issues that would be taken into account in a risk assessment, I imagine that those seven headlines would at least be included in the process.

The Convener: Bill, do you have any questions?

Bill Butler: The questions that I was thinking of asking have been covered, convener, so I will not waste the committee’s time.

Maureen Macmillan: I wonder whether the panel can add anything to the SPS’s comments about arrangements for assessing and managing the risks posed by serious sex offenders or seriously violent offenders.

The Convener: Is there anything that the witnesses want to add to what Mr Cameron and Mr Spencer have already said?

Sue Brookes: As the number of female violent and sex offenders is relatively small, the risk issues for them might be different. Perhaps we
should not miss this opportunity to take a fresh look at risk issues for female offenders and the extent to which they might differ from those for male offenders.

The Convener: If the witnesses have nothing further to add, I, on behalf of the committee, thank them very much for attending this afternoon’s meeting. You might well have thought that we were covering ground that Mr Cameron and Mr Spencer had already covered, but I assure you that we have found it very helpful to speak to individual governors of prisons.
When Jack McConnell gave the Apex Scotland Annual Lecture in September 2003, he said that punishment should fit the crime, adding that within the act of punishment, offenders should be given an opportunity to change their behaviour and re-engage with their community as full and productive members.

This cannot be achieved, he went on to say, by a criminal justice system in which victims and the public have little confidence and does not trust: despite major investment in community sentences over the last ten years, the prison population is at an all time high. In fact, Scotland’s prisons are amongst the most overcrowded in Europe and six out of ten offenders are reconvicted within two years of leaving the prison gates.

These issues can be addressed in one of two ways: either we keep on building more and more prisons to house as many as 10,000 prisoners within the next decade - many of whom will be serving sentences of less than six months for minor offences - or we can look at a more joined up approach, with a shared focus on reducing re-offending amongst all the agencies which deliver services for offenders, whether in prison or in the community.

Thankfully, the Executive believes that the challenges of reducing crime and the fear of crime and restoring public confidence in the way criminal justice services operate, can best be achieved by a much more coherent system. It has set out its intentions in Scotland’s Criminal Justice Plan, launched in December last year and in The Management of Offenders Bill, published yesterday.

The Bill concentrates on managing the transition from prison to community more effectively, in order to reduce the chances of an individual offending again on release. Those who offend must decide, for themselves, to change their behaviour. We know from research that they will do so if they have a reason to re-evaluate where they are at in life and to resolve their difficulties. Access to stable accommodation, the chance to re-engage with family and training and employment opportunities and assistance with drug, alcohol and other health problems, are the key.

Providing assistance with these issues requires a range of agencies to work together: so the Bill focuses on the key relationship between the Scottish Prison Service (SPS) and the 32 local authority Social Work departments across Scotland.

The Executive’s earlier consultation on Reducing Re-offending highlighted a lack of direction, a lack of consistency and a lack of accountability for performance, among local authority criminal justice social work services. Put bluntly by the Minister for Justice, we have an offender management system that is simply out of step with modern needs and demands.

The Bill sets out proposals for a reformed system for offender management, to be fully in place by 2007/08. These include a National Advisory Board, chaired by the Justice Minister, to develop a national strategy and guide and monitor prison service performance; new governance arrangements between Ministers and SPS and more public scrutiny of the decisions it takes; groups of local authorities coming together to form new Community Justice Authorities and; new obligations on both SPS and local authorities to work in partnership and manage offenders returning to the community in a seamless way.

The Bill proposes to build on what we already have in place, rather than the earlier idea of bureaucratic change through the creation of a single agency to merge the prison service and local authorities. But this decentralised approach comes at a price: the new Community Justice Authorities will have to demonstrate that they are using their resources effectively and providing services consistently. They will have to provide a plan to Ministers that will be sent back if it is not good enough and will have to publish an annual report to demonstrate to their communities and Parliament that they are performing.

In short, national direction and accountability, with the power to intervene, is the price of a more flexible, integrated and accountable system at the local level.
One of the proposals in the Bill that has received much media attention is the introduction of Home Detention Curfews. These will allow selected low-risk prisoners to spend the last part of their sentence in the community, subject to a curfew and monitored by electronic tagging. Already available in England, it is argued that these could reduce Scotland’s prison population by three hundred and fifty places, in turn reducing overcrowding and improving the ability of prisons to carry out constructive, rehabilitative work with others.

Some argue that this is a “get out of jail free card”, but Ministers have stressed that they believe in “serious time for serious crimes”, like murder, rape and class A drug dealing, whilst acknowledging at the same time that a few weeks in jail for minor offenders is ineffective. With sentences of less than six months, as most are, prisons can do little more than process people.

Targeted appropriately, it offers individuals the chance to re-build family relationships and engage with agencies that can address housing, health and employability needs, thus increasing the chance that they will not re-offend. We will only know if any work undertaken in prison is successful once the individual has returned to the community. If it proves not to be and they continue to offend, they will end up back inside to serve the rest of their sentence.

To go back to the Apex Lecture in 2003, Jack McConnell said, rightly in my view, that the criminal justice service is a public service, central to which is respect and support for victims. The needs of victims and communities are best served if those who offend are not only punished, but given opportunities to move on from their behaviour. In order to achieve this, we need a public justice service for the 21st century in which all its constituent agencies – police, prosecution, courts, social work and prisons - work together towards the shared aims of protecting the public and reducing re-offending.

SUBMISSION FROM THE ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND

I refer to your correspondence dated 13 April 2005 in relation to the above subject, which has been considered by members of the General Policing and Crime Business Areas, and can now offer the following by way of comment.

In recent years considerable progress has been made regarding inter-agency working and co-operation within the Criminal Justice System. The police have always sought to co-operate fully with CJS partners to the benefit of the CJS and victims, but members welcome the formalisation of the duty to co-operate through legislation.

The duty to co-operate includes the exchange of information in relation to relevant persons, which is supported by members, however they agree that the legislation would benefit from greater specification in relation to the information to be exchanged. The views of the Information Commissioner may be useful in this regard.

The current definition of a relevant person does not appear to include accused persons wanted on warrant. The need for criminal justice and public sector agencies to share information was recommended by the short-term working group on warrants, led by Ricky Gray, Deputy Chief Constable, Strathclyde Police. Recommendation 2 proposed that the Scottish Executive should consult with relevant central government departments regarding the legislative changes needed to enable this.

While the legislative scope of the Scottish Parliament in relation to some UK wide agencies is acknowledged, it may be appropriate to consider including the sharing of information on persons wanted on warrant and public sector agencies in this section.

The establishment of Community Justice Authorities will involve locally elected members in the criminal justice process and will no doubt increase accountability and further improve partnership working. However, care must be taken to ensure that the remit of the Community Justice Authorities does not conflict with that of National and Local Criminal Justice Boards. There are clearly areas of overlap, which could lead to mixed messages and duplication of effort if roles and
responsibilities are not clearly defined. Difficulties regarding performance reporting could also be encountered in this respect.

The Bill, in its current form, gives considerable power to Scottish Ministers to issue direction to Community Justice Authorities and consequently Local Authorities. Scottish Ministers also have the potential power to increase the functions of Community Justice authorities, albeit a statutory instrument would require to be laid before Parliament.

Without limitation or restriction on the scope of these powers, this introduces or could lead to a high degree of centralised control in the CJS. The effect of this part of the Bill is that, in theory, the Scottish Executive (via Scottish Ministers) are in the position of being able to introduce legislation extending the functions of Community Justice Authorities and then setting targets and issuing directions, which by virtue of the legislation would have to be complied with.

Members welcome the exclusion of sex offenders, and the other categories of offenders detailed, in relation to the home detention curfews.

Notwithstanding, impacting on re-offending and the integration of offenders back into the community are objectives to be supported and should be regarded as fundamental to any modern CJS. However, a balance requires to be struck between managing offenders in the community and public confidence in the judicial system.

The early release of some prisoners who pose no risk to the public in line with the foregoing, should have a positive impact on the CJS overall. However, the public perception of these measures can be very different. Care must be taken in managing the perception that the offender is getting off lightly or has failed to serve the sentence imposed. The consequence of a failure to do this will be a loss of public confidence in the CJS.

Consideration should be given to imposing the release conditions at an earlier stage in the process. This may assist in managing the perception that the offender has got off without serving the sentence imposed.

Risk assessment and a robust supervision process are essential if the measures are to have credibility and be effective. It must always be borne in mind that the individuals being dealt with have already failed to comply with the legal system and consequently, there requires to be appropriate resources in place to cope with the additional demands that will be placed on the various agencies.

Resources are a key issue in ensuring that this part of the legislation is effective and in ensuring that there is no risk to the public, which will ultimately have a direct bearing on public confidence.

Members acknowledge that the provisions of sections 9 and 10 of the Bill have their origin in Recommendation 49 of the Cosgrove Report. Members support the principal underpinning the provisions, albeit there is a need to receive further information in relation to Section 9 (1) (b) and (c). The principal for the statutory duty to be placed on “the responsible authorities” to establish joint arrangements for the assessment and management of risk posed by certain categories of offenders is welcomed.

Section 9 (1) (a) – this is an area of activity that currently is undertaken but is not supported by legislation. It is acknowledged that the proposals in the Bill are supported by the work of the Information Sharing Steering Group which was chaired by the Solicitor General. Additionally, the introduction of ViSOR to Scotland in early 2005 will assist the facilitation of the provisions in Section 9. A separate note summarising ViSOR is included for the information of the Committee. (Appendix A)

However members expressed concern as to precisely what role is expected of the police in the management of sex offenders in the community. Since 1997 legislation has imposed greater responsibilities on the police in what can only be described as a very specialist area. The type of skills and training coupled with advice and support from experts in this area is critical. Additionally, members expressed concern that apart from legislation and travel abroad notifications, there are
no requirements placed on these sex offenders to register their co-operation with the police. Members welcome the current ongoing review by Professor George Irving into the operation of the Sex Offender’s Registration Scheme.

Section 9 (1) (b) – this will be a new area of responsibility for the police. This is not an area where we are currently actively working with other responsible authorities for the assessment and management of the risks posed. Members acknowledge that the provisions have merit and, if properly undertaken and resourced, using the correct skills, training and risk assessment tools, there is potential to reduce risk and better protect the public. At this stage however, it is not possible to quantify the task for the police as further information is necessary. This involves numbers and scope of offences that offenders have been convicted of. Once this is known there will be an opportunity to further assess what skills, training and assessment tools will be needed. It will be important that our experience from the introduction of the 1997 legislation on sex offenders is used to address the type of difficulties experienced. Officials on behalf of the Scottish Executive are addressing this requirement.

Section 9 (1) (c) – like section 9 (1) (b), this is a new area of activity for the police where more definition is required before ACPOS will be able to provide meaningful comment. That information has been requested and again officials on behalf of the Scottish Executive have undertaken to provide it.

Turning to the broader issues of achieving effectiveness through the provisions of the Bill, members agree that Section 9 (3) is critical. It is important that agencies who can assist in the assessing and managing risks process are involved. Without the provisions included in Section 9 (4), the responsibility potentially may be unreasonably placed on only those agencies designated “responsible authorities”.

Section 10 – members support the review arrangements proposed.

Members support the principal of having offenders contribute towards any payments made to victims by the Criminal Injuries Compensation Authority. However, management of this will require resources, albeit the intention is to pursue individuals through the civil courts. It should also be borne in mind that criminal courts already have the power to make compensation awards to victims.

Annex A – ViSOR: The National Violent and Sex Offender Register

Following a mandate from ACPO Crime Business Area in England and Wales, the Police Information Technology Organisation (PITO) has been developing an IT system to support the Registration, Risk Assessment and Management of both sexual and violent offenders. This work is being carried out under the ViSOR project, based at New Kings Beam House, London. ViSOR is unique in that it is the only IT solution apart from PNC that will be delivered as a managed service with full support from within the Hendon Data Centre. The system will be networked to forces via the Criminal Justice Extranet. As a central, Home Office funded project, ViSOR has been being adopted by all forces in England and Wales, who are due to “go live” throughout 2004/05. Details of all registered sex offenders, including their descriptive details, images, current risk assessments, management processes and other intelligence will therefore be accessible to all forces. Record ownership can be transferred instantly and the flow and availability of critical management information will surpass any existing mechanisms within forces. The initial role out of ViSOR in England and Wales is to the 42 Police Forces but it is intended that this will be extended to the Probation Service (or its replacement) as the management of sex offenders is a joint responsibility between the Police and the Probation Service in England and Wales. The management model incorporated within ViSOR has been jointly developed and agreed by the Police and Probation Service in England and Wales. It is considered that the system will enable both services to effectively discharge their responsibility.

In 2003 ACPOS Crime Standing Committee - Now the ACPOS Crime Business Area - agreed to establish a working group involving the ACPOS Sex Offenders Working Group (SOWG), Scottish Intelligence Database (SID), SCRO and PITO. Chief Inspector Alistair McKeen, the then Scottish Police Service PITO Liaison Officer, was charged with leading this group. The group was
extended to involve other stakeholders including the Scottish Executive Justice Division, SPIS, the Association of Directors of Social Work and HM Inspectorate of Social Work Services.

The group was tasked with identifying issues that would require to be addressed to enable ViSOR to be implemented in Scotland, together with an estimation of costs. Although ViSOR will, in time, be interfaced to PNC, allowing any changes in descriptive or address details to be automatically exchanged between both systems, it was identified that there would be a need for the same information to be concurrently updated on SID and SCRO. The exercise has therefore included consideration of the creation of interfaces with these systems. In addition, the flow of fresh intelligence on ViSOR subjects would require to be made known both to ViSOR record owners and to SID administrators in forces, depending on which system generates the fresh information. Discussions with SID and SCRO have resulted in agreement in principle on the interface requirements and their technical feasibility.

An exercise was completed to model the processes relating to the registration and management of sex offenders in Scotland, including the paperwork trails through force records offices. As a result of the process modelling and visits to PITO, opportunities were identified to standardise some of the processes in Scotland and these have been highlighted and are being progressed through the SOWG. These changes will facilitate the adoption of ViSOR and allow users to maximise the functionality in ViSOR in Scotland.

**Expected Benefits**

The PITO solution expanded and modified to meet the requirements in Scotland, offers many benefits generally. There is a mixture of both hard savings through improved efficiency, which have been assigned monetary values, and soft savings relating to better risk management and crime detection that cannot be expressed in purely financial terms. The application of the Sexual Offences Act (2003) has created the need for more offenders to register and for the Police to risk assess and manage them.

Though it is clear that sex offenders do not recognise force boundaries and travel extensively throughout the UK, it is also becoming clear that national boundaries are no longer recognised. The requirement for joined up working in this regard now extends potentially to police forces throughout the world. It would be naïve to believe that our previous arrangements in place in Scotland to manage offenders would prepare us to meet the challenges going forward in this regard. ViSOR provides that common system and will make it possible to offer a single point of interface for the United Kingdom.

ViSOR has now been rolled out to all eight Scottish Forces and work is on hand to integrate the Scottish Prison Service and Criminal Justice Social Work. ViSOR also provides the ready-made platform to manage violent and dangerous persons should that become a requirement going forward.

**SUBMISSION FROM FAMILIES OUTSIDE**

Families who lose a member to imprisonment have not been accused, tried or found guilty of any offence yet the impact on them can cause financial, health, housing and emotional problems.

Families Outside is the only organisation in Scotland which has an exclusive focus on families affected by imprisonment. We provide the Scottish Prisoners Families Helpline (SPFH), a unique service used by an average 150 callers per month which provides information, support and signposting to other services. We undertake research, training and policy development and work in partnership with SPS, Local Authorities and other agencies.

Families affected by imprisonment have traditionally been overlooked in criminal and social justice policy in Scotland and their needs for information, support and, where appropriate, involvement in their relative’s sentence management, neglected.
We do acknowledge pockets of excellent practice and recent policy commitments made by SPS to family work. Also the willingness of the Scottish Court Service to enter into constructive dialogue with us on the issue and the increasing recognition by the Executive of families affected by imprisonment. However we are yet to see these commitments and interests fully translated into improved practice and services.

Families Outside therefore welcomes the opportunity to continue to contribute to the debate in Scotland on reducing reoffending and the most effective way to manage offenders.

Over the past year we have provided detailed responses to Reduce, Rehabilitate, Reform and the Justice 1 Committee enquiry into rehabilitation in prisons. Our responses are based on analysis of contact with families through the Helpline and research, including our own, commissioned jointly with the Tayside Criminal Justice Partnership.

The key points of these responses are:

A) **Families can have an important role to play in supporting their relative in prison and on release to reintegrate into their community.**

Research shows that good family ties can reduce the likelihood of reoffending by up to 6 times. A report on resettlement outcomes on release from prison in England 2003 found that “visits appear to be associated with successful resettlement” and recommends “Findings from this survey suggest that opportunities for involving families and/or partners in the resettlement of prisoners should be increased” and research into the value of Family Contact Development Officers in SPS has recently been published which emphasizes the value of investing in family contact.

In line with the evidence base, we believe that the maintenance of family relationships should become part of “core business” for the prison service and responsibilities for responding to the information needs of families should be identified for other parts of the criminal justice system, especially the Courts.

B) **The impact of imprisonment on families can be severe and damaging, particularly for children.**

Children experience emotional, social and developmental disadvantages when they lose an adult carer to imprisonment and they are themselves at greater risk of becoming involved in the criminal justice system. Families should have their own community support needs met to mitigate the health, social, financial and, for children, educational impacts of imprisonment. (This is whether families maintain contact with their relative in prison or not.)

If the valuable role of families in supporting their relative to reintegrate on their release is recognized, then attention must be paid to the needs of families during the period of imprisonment so that they are in a fit state to offer this support.

C) **All agencies in the Criminal Justice system should be aware of the impact of imprisonment on families**

Even where agencies do not have a formal role in relation to support and/or information giving they should have regard to how their response to and their interaction with families can minimize or exacerbate the stress that families experience. Families are often subject to stigma and rejection by their own communities and feel that they are being punished along with the prisoner.

---

89 “Prison Without Bars” Dr N Loucks on behalf of Tayside Criminal Justice Partnership and Families Outside 2004
80 Reducing reoffending by ex-prisoners. Report by the Social Exclusion Unit 2002
91 Keeping in Touch: The Case for Family Support Work in Prison Dr N Loucks on behalf of The Prison Reform Trust 2005
D) The help that families need to cope with the impact of imprisonment, the maintenance of relationships with the person while they are inside prison and the changes to the relationship when they are out, do not all lie within the criminal justice system.

In order to effectively involve and support families and their relative there needs to be integrated delivery of criminal justice and social welfare services to the offender and the family during custody and on release.

Comments on the Bill
Given our submissions we welcome the acknowledgement in Scotland’s Criminal Justice Plan of the importance of family and home circumstances in effecting a successful transition from prison to community.

We also welcome the principles of partnership and cooperation which underpin the provisions in the new Bill and see the National Advisory Body as an essential driver to ensure that a shared vision is translated into practice in terms of agency roles and remits. We would hope to see a recognition of the role and needs of families formally incorporated in this vision.

We believe that the challenge of appropriately involving families affected by imprisonment could then be assisted by the new national and local structures. For example the new structure of accountability for SPS should ensure that standards for family work are set and are maintained at all establishments ensuring continuity and consistency across the service. Additionally the integration of activity across prison and community should increase a more integrated approach to preparation for release – not just preparation of the prisoner as an individual but preparation of the prisoner as husband/partner/father in their capacity as one member of a family unit. This is essential to enable families to reestablish themselves and overcome the stresses of reuniting as a family but is not currently available.

Also, whilst recognizing the need for manageable structures we believe it is essential that the CJAs will be sufficiently permeable to operate with other parts of their own local authorities and other public services.

One example of this relates to the problems which many families face in traveling to visit their relative given the paucity of public transport links to many prisons (not just the obviously remote rural ones) The recent evidence citing the importance of family visits in supporting successful resettlement has already been referenced. The CJA could profitably link to Local Authority Transport Strategies and Statutory Regional Transport Partnerships in order to find strategic sustainable solutions.

The other area we would note at this stage is the proposal for certain prisoners to complete their sentence in the community subject to electronically monitored curfews. We have already publicly stated our overall support for this initiative which reduces the trauma of separation due to imprisonment. It will be welcomed by many families who are sufficiently robust to support their relative to maintain good behaviour, adhere to the curfew conditions and seek education or employment. (In a survey of families needs in Tayside, the families who responded prioritised information about agencies which could help keep their relative out of trouble)

For other families there will be pressures for them in the imposition of the curfew and these pressures could cause further difficulties for the family – especially the children. Although experience of the use of electronic tagging and curfews is limited in Scotland we draw on our experience of home leave to recommend the following a process:

- A social work assessment which includes a home visit to the family and a joint meeting with the family and the prisoner.
- Joint preparation of prisoner and family in order to clarify responsibilities, expectations and concerns

• Provision for support to be available to the family to enable the sentence in the community – served in the family home – to work effectively for the family, the offender and the community
• Monitoring of the family circumstances as well as monitoring of the offender so that support can be adjusted if required.

To reiterate, many families tell us through the Scottish Prisoners Families Helpline that they would like involvement in their relative’s sentence management while they are inside prison: they want to play a role in helping their relative to cope with the experience of imprisonment and then to stay out of trouble on release. However other families contact us because they are very anxious about their relative’s release, especially without joint preparation.

Our view is that if families are to actively play a part in supporting their relative during the part of their sentence that they are serving in the community, then this will be most effective if families are supported when needed.

Logically, families should also be involved in that part of the sentence which is being served in prison. If families can be involved in supporting and reinforcing skill development, rehabilitation or treatment for addiction whilst the person is in prison then they will be in a much better position to support successful reintegration when their relative is completing their sentence in the community and then released.

This approach would achieve greater recognition of the partnership role that families can play in reducing reoffending.

SUBMISSION FROM ROGER HOCHIN, GLASGOW CALEDONIAN UNIVERSITY

I would welcome questions on:

• The underlying proposition that the reforms proposed in the Bill could be expected to reduce reoffending (implicitly by those serving prison sentences);
• My understanding that, in pursuit of efficient use of resources and ease of communications between authorities, it is foreseen that there would be a small number of Community Justice Authorities, each of which would be responsible for an area served by a number of Unitary Authorities;
• The compatibility of the proposal for executive release through Home Detention Curfews with European guidance and particularly the supervision of the European Court of Human Rights;
• The scope of Ministerial discretion conveyed by the Bill.
• The underlying proposition that the reforms proposed in the Bill could be expected to reduce reoffending (implicitly by those serving prison sentences).

I will argue that although any steps to improve communications and co-ordination between agencies responsible for the implementing criminal sanctions are to be welcomed the justification for this should not be that it can be expected to lower re-offending.

I will argue that to conflate the punitive or coercive element of imprisonment with ‘correction’ or rehabilitation of the offender is unhelpful and that a more realistic rationale on which to base sentencing or legislative proposals would be to disentangle the social policy objective of reducing re-offending from the criminal justice outcome of punishment. I will suggest that more coherent and realistic policy would flow from an underlying position that viewed imprisonment as fundamentally damaging. Decisions that CJA’s might take should be premised not on the view that the efficient operation and co-ordination of various bodies that work with persons who have been punished will reduce re-offending but that imprisonment, and the damage it causes, is a collateral cost of a justified need to punish the worst those who give offence, but that the social policy objective of reducing offending should be pursued where the problem occurs, in the community.

In such a model the objective of the prison system is, at the most optimistic, to identify where it can contribute to work being undertaken in the community and, less ambitiously but arguably more relevantly, to seek to limit as much as it can the damage it causes.
I will refer to two pieces of work:


My understanding that, in pursuit of efficient use of resources and ease of communications between authorities, it is foreseen that there would be a small number of Community Justice Authorities, each of which would be responsible for an area served by a number of Unitary Authorities.

I listened to the evidence given the committee last week by prison governors and the arguments they made for reducing the number of CJA’s to as small a number as possible. I well understand their reasoning: particularly as it was advanced by the governors of the prisons for women and children and young adults, respectively. At present these Governors need effective working co-ordination with 16 unitary authorities each if they are to have any prospect of securing resettlement support for 85% those in their charge (See my research report).

From their perspective, the argument for a small number of authorities is absolutely right.

I will argue, however, that their perspective is relatively unimportant. The problem that needs to be addressed, if prisons are to make effective contributions to work undertaken in communities to restore to membership those who are undergoing punishment is to be effective is how the prison system should be organised to least impede the restorative work that has to be engaged where people (in the circumstances of the governors who gave evidence, women, children and young adults) live. Though it may be managerially efficient for the prison system to accommodate all young people or all women in one prison it is manifestly acutely socially disruptive to do so and cannot be expected to contribute to the social policy objective of reducing offending.

In referring to my own research, I shall show that number of places where attention needs to be focused to tackle the underlying association between social exclusion and the imprisoned population is relatively small and suggest that the problem to be tackled lies not primarily in re-organisation of community resources and management but in the responsiveness of the prison system to its service needs.

The compatibility of the proposal for executive release through Home Detention Curfew with European guidance and particularly the supervision of the European Court of Human Rights.

I will argue that the proposal for a discretionary executive power to release prisoners up to 135 days early is retrogressive relative to recent steps taken by the Parliament in the Convention Rights (Compliance) (Scotland) Act, removing finally consideration of early release of prisoners from any Ministerial interest and investing it in the Parole Board and by the Executive in the administrative decision to waive the right of prison governors to make disciplinary awards of additional days in prison.

Any decision to release some prisoners early from their sentence implies an associated decision not to release others. For such decisions to be just and, hence, legal, they must be characterised by standards of impartiality and fairness. They should be exercised independently of the executive.

I shall refer to the Recommendation of the Committee of Ministers of the Council of Europe on Conditional release. Inter alia, this includes that all prisoners should have the opportunity for conditional release, irrespective of length of sentence, and that the scheme may be discretionary – that is subject, like a parole scheme, to consideration of evidence of, for example, continuing risk – or mandatory – that is, available to all, but with continued release subject to compliance with conditions.

At present in Scotland we have a mandatory, non-conditional early release scheme for short term prisoners. This does not include the safeguards recommended in the Council of Europe guidance.
The proposal being considered runs the risk of either of two shortcomings – either inadequate fairness and impartiality, with the consequential risk of grievance and litigation, or a heavy and expensive procedural burden.

I will argue that an improved proposal would be for a mandatory conditional release scheme, in accord with the Council of Europe guidance. This could include a home detention curfew requirement for those for whom it was felt necessary. It could also, very helpfully, include a duty on the responsible agencies to supply all prisoners when released from prison with the support, supervision and guidance services many need.

**The scope of Ministerial discretion conveyed by the Bill**

I shall express concern at the extent of discretion extended to Scottish Ministers in the Bill in, approving local community justice plans, in varying any of the parameters of the Home Detention Curfew scheme by Order and in amending or repealing any of the provisions of this piece of primary legislation by Statutory Instrument.

**Codicils**

*Rates of re-offending, re-conviction and re-imprisonment*

The distinction between the 3 measures is not of purely academic interest. It is somewhat lost in the discussion of the proposals. Re-imprisonment is used rather freely as a proxy measure for re-offending. We know little about rates of offending and re-offending, particularly in areas of crime such as commercial crime and, especially domestic, violence, both of which have social and economic costs considerably greater than crimes of dishonesty such as theft, housebreaking and car thefts. Although the latter group of crimes has declined considerably over the past 15 years, it is around these that criminal justice activity is most heavily focused and it is from the perpetrators of these crimes that the ‘re-offending’ (or re-prosecuted) population comes. Rates of re-conviction and re-imprisonment are strongly influenced by the patterns of work, the priorities and the norms of criminal justice practitioners. They emphasise the crimes of the disadvantaged, which are declining in importance, while the rates of punishment of those guilty of them have been rising.

*Rates of offending and re-offending*

For any given rate of overall offending, the rate of re-offending is a measure of the degree of concentration of the behaviour in the population. For comparable rates of offending, higher rates of re-offending indicate that offending is restricted to a smaller proportion of the population. (Similarly, where the measure is imprisonment, for comparable rates of imprisonment, high rates of re-imprisonment indicate a concentration of punishment on a limited segment of the total population).

For comparable rates of offending, consequently, high rates of re-offending imply generally low rates of offending in the wider population.

We know that imprisonment in Scotland is very highly concentrated on the populations of a small number of our most deprived communities. If by the operation of a curfew system such as is proposed in this Bill, those of the imprisoned population who present the lowest risk (those with the less extensive histories of previous offending and those who will return to less disadvantaged social circumstances) are released early, the consequence will be to tend to reshape the profile of the imprisoned population to concentrate it further to include a higher proportion of the

---

93 Home Office Research Study 217 (2000) “The Economic and Social Costs of Crime”. This English study concludes that the total costs of commercial, public sector, fraud and forgery crimes is 38% of total cost of crime, of violence and sexual offences is 32% and of robbery, burglary, vehicle crime and other theft/handling is 15%. The study aggregates costs ‘in anticipation of crime’ (security measures, insurance) (£5.5b), as a ‘consequence of crime’ (property stolen or damaged, emotional and physical impact etc) (£41.1b) and ‘in response to crime’ (criminal justice costs) (£11.6b)

94 See either the (police) recorded crime statistics or the crime survey.
disadvantaged and regular offenders and to increase the risk of those retained in prison continuing to offend when released.

SUBMISSION FROM SAFEGUARDING COMMUNITIES-REDUCING REOFFENDING

SACRO welcomes this opportunity to contribute to the Committee’s examination of this Bill because it is a significant piece of legislation that has the potential to improve criminal justice services in Scotland. It is important to SACRO not only because we support measures that can help to make our communities safer but also because we are a major service provider. We will be able to deliver more effectively if the environment in which we work encourages improved interagency co-operation in both planning and implementing sound strategies.

This submission follows the order of Sections in the Bill. Where there is no comment on a Section that signifies that we have no views to put forward because we do not have any special knowledge or expertise in the area.

Section 1 Duty to co-operate

SACRO contributed to the Reducing Re-offending Consultation in 2004, by assisting the process itself and in making a full response. We acknowledge that it was a positive exercise and that it exposed some weaknesses in criminal justice services, particularly in that different agencies sometimes appear to work to differing and compartmentalised agendas. That has sometimes resulted in poor information sharing, lack of continuity of service between prison and community and a lack of consistency in strategy across the country.

We, therefore, welcome this requirement on local authorities, the Scottish Executive, the Scottish Prison Service and the proposed new Community Justice Authorities to co-operate.

Sections 2-8 Community Justice Authorities (CJAs)

It appears that, in the first instance, the CJAs’ primary responsibilities will relate to planning, co-ordination and performance monitoring. It is clear that the 32 local authorities retain their statutory duties to deliver criminal justice social work services.

However, Section 7 allows CJAs to take over functional responsibilities should, at some time in the future, the local authorities deem that to be appropriate.

Strategic Direction

If the CJAs are not to become simply another layer of bureaucracy and conduit of funds to local authorities, they will need strong leadership and direction from Ministers and the non-statutory national advisory body proposed to support them. The strategic direction given to the CJAs and their chief officers will need to be clear if the required plans are to be framed in a way that is likely to bring about change. It is likely that immediate local interests will continue to colour constituent authority approaches and this may present real challenges in terms of reaching consensus on strategic issues. While it is right that local needs be taken into account in the planning process, this should not be allowed to lead to a piecemeal, fragmented approach resulting in significant “post code” variations in services.

Partner Bodies

SACRO particularly welcomes the provision in Section 2 (16) that the CJAs must consult not only the SPS but also “partner bodies”. Chapter 3 of the Executive’s current consultation document on the CJA’s makes it clear that the Police, the Crown Office and the Voluntary Sector must be “important partners in the planning and delivery of more integrated offender management”. Partner bodies will be entitled to be consulted on the area plans and performance reports for each CJA and to be brought within the information-sharing framework for each authority.
These proposals should help voluntary sector organisations to contribute more effectively than has been possible to date. The volume and quality of consultation, in our experience, has been variable to date. It has ranged from a full and genuine partnership, through delayed and token arrangements, to virtually none. As a major provider of service in many areas we look forward to contributing at all stages.

We are encouraged that the Consultation document’s proposed definition of partner bodies includes voluntary groups in receipt of public funding for working with offenders. SACRO falls into that category and should therefore become a “designated partner body”.

Contracting

Section 3(1) gives CJAs the power to enter into contracts if local authorities wish them to deliver services on their behalf. However, if local authorities do not transfer that responsibility, national voluntary sector providers will still have to enter into separate contracts with a large number of councils, each with its own approaches to purchasing and commissioning services and setting its own requirements in terms of standards. This can be a major burden for the voluntary sector, especially in a regulatory environment where a service like supported accommodation may already be subject to standards set by the Care Commission, The Scottish Social Services Council and Communities Scotland.

We would argue that the CJAs should co-ordinate the arrangements for purchasing services and agree a common framework for working with the Voluntary Sector within the area of their authority.

Chief Officers

We have some difficulty in understanding the intention of Section 4(1)(a). This places a special duty of the chief officer of a community justice authority to report to Scottish Ministers any failings on the part of that authority to exercise its functions. This would mean that the chief officer would be reporting on shortcomings of the body that employs him or her to enable the carrying out of these functions. Is the chief officer’s primary duty to the employer or to Ministers?

Sections 9 and 10 Arrangements for assessing and managing risks pose by certain offenders

SACRO welcomes this provision which should consolidate, throughout the country, the kind of best practice that already exists in many areas. SACRO staff frequently work with local authorities in providing services which help to monitor and supervise high-risk offenders. In many instances these staff are part of the information–sharing network and contribute to risk management conferences. However, that has not been universal practice so these sections should help to ensure future arrangements are what they should be.

Section 9(3) provides for Ministers to specify the persons with whom the responsible authorities must co-operate. SACRO strongly recommends that these persons should include any staff of “partner bodies” engaged in providing a service to the offender concerned.

Section 11 Home Detention Curfews (HDCs)

SACRO is not opposed in principle to this measure but we believe its limitations should be acknowledged, particularly that tagging by itself does not address the factors associated with offending.

HDCs can fairly be described as a form of executive release that relies on electronic monitoring to restrict movements in the community. The “executive” description points out that the decision to release is taken by a prison manager rather than by automatic release or parole systems. There has been extensive use of this measure in England and Wales so we do know something about what it can and cannot achieve.

In the Policy memorandum that accompanies the Bill, two reasons have been put forward for introducing HDCs:
• To reduce re-offending
• To facilitate better integration of offenders on release.

SACRO is not aware of any evidence that HDCs have a positive impact on re-offending rates. Home Office Research Study 222 (2001) states that “analyses of re-offending suggests the impact is broadly neutral in terms of reconvictions for new offences”. This is not surprising given the relatively short periods of early release and the fact that, as mentioned, tagging by itself does not address the factors associated with offending.

The same Home Office research suggests that there is some evidence that the curfews can help to manage the transition from prison to community. However, it also warned that the English experience of widespread lack of advance notice of the release date and lack of information given to applicants about what HDC would mean for them created real problems. While prisoners were understandably happy to get out early, only good pre-release preparation would facilitate a better transition. Short notice of release would clearly work against that. It should be noted that a considerable proportion of those subject to the curfew in Scotland (those sentenced to less than 4 years) will not be subject to social work supervision so will not receive support unless they go out of their way to seek it.

The one outcome that is most likely to be achieved is that of relieving pressure on prison places. However, the Executive’s policy statement does not state this as a policy objective. The English research showed that this could happen and indeed the Executive itself estimates that it could lead to a reduction in population of around 300.

While this is to be welcomed, SACRO argues that the only effective way to tackle the rising prison population is at the “front end”, that is through changes in sentencing practice. This will require a specific political decision and political leadership to implement a strategy. Any strategy to change in sentencing practice to reducing the prison population, to be successful, would involve a combination of legislation and guidance from the Appeal Court. HDCs can contribute to slowing the growth of the prison population but on their own would not impact significantly on the goal to reduce re-offending.

SUPPLEMENTARY SUBMISSION FROM SAFEGUARDING COMMUNITIES-REDUCING REOFFENDING

Section 1 Duty to Co-operate

The criminal justice agencies alone cannot be expected to have a major impact on re-offending. Accommodation, family relationships, addressing drug and alcohol problems, training and employment play key roles. So, a wide range of community based services need to be deployed on a multi-agency basis. These include Housing, Health and Education as well as those charged with delivering child protection, youth justice, mental health and addiction services. Police, Judiciary, Crown Office and PF service too. Information sharing, planning and implementation needs to be required of a wide group, rather than “expected” as at Para 23 P6 Policy Memorandum.

It may not be easy for nationally managed prisons to relate to regional CJAs. There should be, therefore, consideration of a devolved system of regionally managed, community-facing prisons working closely with a wide range of community services and community interests including employers.

Section 2(16) Partner Bodies

Chapter 3 of the Executive’s current consultation document on Community Justice Authorities indicates that the Executive thinks that the designated partner bodies should be “those public bodies which deal directly with offenders, ex-offenders and victims and those voluntary bodies in receipt of public funds for this purpose.”
SACRO takes the view that offenders’ families have an important role to play in reducing re-offending so bodies that support offenders’ families (e.g. Families Outside) should be included as designated bodies.

Community Justice Authorities

Local Authority Contracts with the Voluntary Sector

In our original submission, we pointed out that national voluntary sector providers such as SACRO would still have to enter into separate contracts with a large number of councils unless there is a transfer of powers to the Community Justice Authorities at some point in the future. We fully accept that there should be well-specified contracts in which the purchasing council’s expectations of the provider are made clear. However, it would be more efficient and less burdensome for the voluntary sector if the new Community Justice Authorities were to be required to co-ordinate the arrangements and agree a common framework for purchasing services including protocols and criteria for judging the suitability and approval of providers.

Chief Officer

We have some difficulty in understanding the intention of Section 4(1)(a). This places a special duty on the chief officer of a Community Justice Authority to report to Scottish Ministers any failings on the part of that authority to exercise its functions. This would mean that the chief officer would be reporting on shortcomings of the body that employs him or her to enable the carrying out of these functions. Is the chief officer’s primary duty to the employer or to Ministers?

Home Detention Curfews and Conditions

We would like to take this opportunity to clarify our response to the question from the Committee about conditions that may be attached to HDC licences. We have no issues with regard to the standard conditions and the curfew conditions. We do wonder in what circumstances it would be necessary for prison managers to impose the additional conditions that would be possible a result of Section 12(7). Those released on HDC licence should be low risk prisoners so the protection of the public and the prevention of re-offending over the comparatively short period of early release should not be significant factors.

As far as securing the successful integration of the offender into the community is concerned, this is more likely to be achieved through the advice, guidance and assistance that ex-prisoners not subject to statutory supervision are entitled to receive on a voluntary basis. Phase 2 of the Executive’s Tripartite Throughcare initiative includes funding to enable this to be delivered. Guidance issued to the local authorities makes it clear that this service must involve pre-release contact with the prisoner leading to an agreed Community Integration Plan and pro-active follow-up support following release. This strategy rightly recognises that the real challenge lies in motivating the prisoners to change and supporting them to sustain their efforts on release. The imposition of additional conditions would not necessarily assist that process.

Offenders are most likely to desist from offending when the rewards of becoming law abiding citizens outweigh the rewards of offending and offending related behaviour such as drug abuse. They need to feel they have some sort of stake in society – a family, a home, a job and other positive alternatives to substance abuse and offending. They welcome help to overcome the barriers to these things but compelling them to address these issues through the use of conditions can be seen as removing their power to choose to change. The majority of curfewees are likely to be ex-short term prisoners who would not normally be subject to compulsory measures so it is hard to see how additional conditions would be construed as helpful.

A Model for Voluntary Assistance

We mentioned that SACRO was engaging in a major partnership with the City of Edinburgh Council to deliver services designed to achieve a continuity of throughcare for prisoners not subject to statutory supervision on release. Jeremy Purvis expressed interest in learning more about this imminent development so we attach some information about it as an annex to this letter.
ANNEX

PROPOSAL FOR A PILOT COMMUNITY LINKS CENTRE

A Voluntary Assistance Service incorporating a Throughcare Addiction Service

City of Edinburgh Council Criminal Justice Social Work Services in partnership with SACRO Throughcare Services

Aims

- To assist the Council to meet their obligations to provide advice, guidance and assistance to prisoners and discharged prisoners who are eligible for and request it, in terms of Section 27(1) of the Social Work (Scotland) Act 1968 as amended by Section 71 of the Criminal Justice (Scotland) Act 2003.
- To assist prisoners and their families to prepare for release
- To provide continuity of care for those leaving custody who wish to go on to receive addiction services in the community.
- To work with sex offenders and serious violent offenders using appropriate risk management procedures in collaboration with the Local Authority, the police and other agencies.
- To help prisoners resettle in the community through the coordination of access to required services and relevant information
- In doing the above to promote greater public safety by reducing the likelihood of further offending.

Objectives

- Through a Community Links Centre where the key agencies work together, to coordinate a range of services to the agreed priority groups, namely:
  - Offenders who present a high risk of harm but who are not subject to statutory aftercare supervision
  - Offenders who have undertaken substance misuse work during their custodial sentence and other prisoners and discharged prisoners who are eligible and wish to receive the service.
- To identify, in collaboration with staff and other agencies in the community and the LINKS Centres at HMP Edinburgh, HMP Cornton Vale and HMYOI Polmont, and the Enhanced Casework Addiction Service (ECAS) in these establishments, the prisoners who come within the above priority groups
- To engage the identified prisoners by explaining the services on offer both during and after sentence, and motivating them to take up the services and continue with them thus providing a seamless transition from custody to the community.
- To assess the needs and risks related to release into the community by utilising assessments produced by the ECAS, and LINKS Centres’ Community Integration Plans together with the views of the prisoner and any available Social Work assessments.
- In the light of the above assessment and in collaboration with the prisoner, to draw up a time-limited action plan in the form of a Throughcare Service Contract between the prisoner and the SACRO worker in regard to action to be taken before and after release.
- Arrange for the provision of a range of services as required:
  - Give practical assistance to facilitate resettlement following release, including help with housing/supported accommodation and financial matters including debt management
  - Make structured links with the police and social work services and other relevant agencies in relation to the management of risk, particularly where a high risk of harm has been identified
  - Provide opportunities for brief structured interventions to address offending related behaviour, building on work already done in prison and utilising programmes available in the community
  - Provide help to establish positive and stable family relationships
Reinforce the work of other supporting agencies, e.g., Apex and employability prospects, substance misuse agencies

Service Description and Processes

The Community Links Centre will be designed to provide proactive encouragement and ready access to a range of supports for prisoners discharged to Edinburgh, the majority coming from Polmont, Cornton Vale and Saughton. It will mirror the interagency work carried out in the LINKS Centres in each of these establishments and provide the continuity of service that will increase the likelihood of successfully sustaining the service user's engagement in the activities and relationships that will break the cycle of offending.

The Centre staff will also provide the Throughcare Addictions Service (TAS) to the specification that is embedded in the Phase 2 strategy and will receive referrals from the Enhanced Addictions Service in each of the SPS establishments. The TAS is to be a major component of the overall Community Links Centre service because a large proportion of those eligible for voluntary assistance are known to have addiction problems. Because of the clear connections between addictions (including problematic use of alcohol) and crime, service users with addiction problems are a priority group.

The Centre will be a “one-stop shop” in that ex-prisoners will be able to have rapid access to expertise in all the difficulties that they confront. However, the Centre will not duplicate or replace local community services, rather it will work to ensure rapid access to them and provide immediate support to sustain the service user through any delays in accessing service elsewhere.

The Community Links Centre SACRO support workers will fulfil the case manager role.

Identifying Appropriate Service Users

The Throughcare Addiction Service (TAS) component of the Centre will give priority to:

- users of addictive drugs
- users with a well established pattern of drug misuse, a pattern of criminal behaviour and a link between the two
- offenders who have demonstrated some commitment to tackling their drug misuse problem
- especially vulnerable prisoners including young offenders and female offenders.

Lower priority categories will include prisoners serving less than 31 days (except young offenders and female offenders). Those on remand or in custody due to fine default will not normally access the TAS service but prioritisation will be sufficiently flexible to accommodate exceptions to the rule, arising from prisoner self referral or special circumstances.

Referrals to the Community Links Centre will be received from:

- Enhanced Casework Addictions Service staff in each of the SPS establishments
- Prison LINKS Centre staff - both prison officers and other agency staff working in the prison
- Prison social workers
- Drugs workers who have identified additional support needs
- Ex-prisoners who see themselves at risk of re-offending
- Families of prisoners and ex-prisoners who see their relative as at risk of re-offending or who need help to sustain their ability to support that person

Engaging Potential Service Users

The Centre will develop a comprehensive package of materials to promote use of the service. Appropriate literature will be distributed not only within the prisons but also to all the relevant community agencies. Leaflets will be made readily available in the courts to offenders, their families
and friends, court social workers and defence agents. The leaflets will include specific information about the TAS, with contents agreed by SPS and EDAT. Centre staff will input (usually indirectly through the material referred to above) to the induction and pre-release courses for prisoners and their families and will liaise with the prisons to ensure that all staff are fully aware of what is on offer.

Effective relationship building with the offender while still in custody

Building on assessment and work carried out during the sentence

Agreeing and reviewing a clear action plan with the offender including specific outcomes as part of the Throughcare Service Contract

Focus on practical needs to assist resettlement on release

**Referrals From Enhanced Casework Addictions Service (ECAS) to TAS**

The ECAS provider will:

- Assess and refer appropriate cases to TAS
- Arrange a pre-release meeting to input addictions element of the Community Integration Plan (CIP)
- Share information on GP prescribing and their own assessments (including CART/ CART+ or other tools)

**Referrals from Prison LINKS Centre**

A referral form is completed and appointment made for the prisoner and the Prison LINKS Centre worker to meet the Community Links Centre SACRO worker pre-release. This meeting introduces the prisoner to the worker s/he will work with on release. Depending on local prison practice, this may be synchronised with the final review of the Community Integration Plan. The SACRO worker and the service user explore together the most promising routes to achieving the shared goals to be recorded in the Throughcare Service Contract, in line with national guidance. Recognising that not all appropriate prisoners and discharged prisoners will immediately see the potential benefits of voluntary assistance, the SACRO worker’s initial contact with the service user will focus on the latter’s self assessment, in particular the practical problems that are anticipated, together with a review of what work has been done in prison. The Prison LINKS Centre Community Integration Plan will assist this process. It is at this first contact that the prisoner is asked for express consent for the sharing of information necessary to assist with resettlement.

SACRO workers are trained in motivational interviewing techniques and use them to help the service user to think constructively about how to make changes s/he wants to make that are likely to reduce the risk of re-offending. For example, this would include discussion about ways to tackle substance abuse issue.

The SACRO worker will explain the nature of the service on offer and SACRO’s ability to link what has happened in prison with what can be followed through on the outside. Contact with serving prisoners will take place in the LINKS Centres in the prisons while initial and subsequent contacts with discharged prisoners will take place in the Community Links Centre and at other locations in Edinburgh.

On release, information from the relevant sections of the Community Integration Plan will be sent to the Community Links Centre where they will be stored in one file that can be forwarded to the Prison LINKS Centre, along with outcomes of the Throughcare Service Contract, in the event of a further prison admission.

**The Throughcare Addiction Service (TAS)**

The key activities of the TAC are as follows:

- Attend and participate in pre-release meeting
- Visit referred prisoners at least twice pre-release during last 6 weeks of sentence, preferably once before and once after the meeting
- Access and discuss assessments and other information from the ECAS provider and other SPS prison sources
Liaise with SPS resources and LINKS centre agencies
Provide induction leaflets
Ensure SACRO staff have disclosure Scotland checks to satisfy SPS security needs
Arrange time and venue of first post release appointment to be held within 48 hours of release unless circumstance demand meeting at release time
Arrange urgent access to treatment
Where not arranged in prison, as a matter of urgency, arrange access to GP/prescribing service.
Sign off Going Straight Contract
Arrange to see offender at least weekly during first 6 weeks
Carry out tasks assigned in Community Integration Plan and Going Straight Contract
Ensure Thoughcare needs are met during and after the 6 week post release period
At end of 6 week period, determine what needs, if any, remain to be addressed by TAS or the Centre's general Thoughcare services.
Rigorous follow-up of those who do not respond to appointments and support for those having difficulty sticking to their Throughcare Service Contracts

The Key General Functions of the Community Links Centre and its staff are:

- Coordinate the work of agencies in the community that both contribute to resettlement and tackle issues related to offending, in particular drug and alcohol misuse
- Provide an allocated worker for each service user to help with access to other services, to support the service user in the type of activities outlined below and to provide links and continuity of service between the prison and the community

The SACRO staff in the Centre – manager, team leader, criminal justice service workers and support workers, will carry out the coordinating functions.

Staff from other key agencies, whose remit is to address needs in relation to housing, health and financial needs, may also deliver services within the Centre. The underlying rationale is that there should be immediate on site help to access the key statutory and voluntary agencies. One option would be to have representatives from Housing, Primary Care Health services and the Benefits Agency working together with the SACRO workers in the Centre each day (part or whole time, depending on volume of demand). That would make it possible to make the most of what these agencies can offer and sustain the released prisoner through the particularly vulnerable period immediately following release. However, the location of the service delivery will be determined after full consultation with the agencies involved.

The service provided is based on the assessments and will include a combination of the following as appropriate to each individual:

- Advice, guidance and practical assistance. This covers a wide range of issues including accommodation/housing, securing full benefit entitlement, access to education, training and employment as well as access to health services.
- Assisting access to drug treatment services and helping to sustain ongoing treatment
- In high risk of harm cases, contributing to and/or attending pre- and post release risk management case conferences (RMCCs).
- Life skills work designed to help the service user with budgeting, healthy eating, basic health information and household management.
- Encouragement and assistance to pursue appropriate, legitimate and constructive leisure interests.
- Advice and guidance about relationships with family and friends and direct contact with family as required both pre- and post release.
- Helping service users access statutory services and those provided by other voluntary organisations though onward referral.
- Support and encouragement to service users to attend programmes that are intended to reduce their risk of re-offending.
- Contributions to the Council’s risk management plan implementation in cases where there is a high risk of harm.
Outreach Support – some potential service users may choose not to come to the centre. In these circumstances the Centre staff will offer an outreach service or refer on to another community-based agency. In the latter case, feedback from the other agency will be sought.

Brief modular interventions designed to address criminogenic need and thus reduce the risk of re-offending, e.g. anger management, alcohol education and relapse prevention and, where appropriate, addressing the harm offenders cause to their victims.

Centre staff will liaise closely with the local authority social workers responsible for the Pathway Planning for young people who have a history of being in care. This group of young people includes young offenders.

Centre staff will liaise closely with the local authority social workers responsible for the Pathway Planning for young people who have a history of being in care. This group of young people includes young offenders.

It is the responsibility of the Centre worker to ensure that the client is linked with support agencies as quickly as possible. Wherever possible, the service user will be linked to the same support agencies that worked with him/her in prison.

In doing all of the above, SACRO staff will work in collaboration with the local services including:

- Social work – criminal justice, community care and children and families'.
- Health (mental and physical), both statutory and voluntary, including primary Care
- Education
- Leisure
- Police
- Employment, statutory and voluntary
- Addictions, including Alcohol and Drugs Action Team (EDAT), CDPS and Primary Care Prescribing Clinic
- Housing

SUBMISSION FROM THE SCOTTISH POLICE FEDERATION

In summary, our views on contents of the above Bill are as follows:

- We support the development of an integrated framework for managing offenders.
- We support the proposed joint arrangements for the police, local authorities and Scottish Ministers to assess and manage the risk posed by sex offenders.
- We support the strengthened procedures for taking action against sex offenders who fail to comply with the requirements of the Sex Offenders Act 2003.

There are a growing number of registered sex offenders in Scotland. The ability of the police and other agencies involved in registration and monitoring is restricted by the resources available. The Scottish Police Federation supports registration and monitoring of sex offenders but believes that experience has shown that insufficient new resources were provided at the outset and that a re-assessment of the requirements and the provision of the necessary new resources should be undertaken as a matter of urgency.

- We support giving the Criminal Injuries Compensation Authority the ability to pursue through the civil courts perpetrators of crimes to recover sums paid to victims.
- We qualify our support for the proposals for Home Detention Curfews.

As the most visible and accessible part of the criminal justice system, police officers receive many complaints about the system from victims and other members of the public. Undoubtedly, the early release of prisoners is the single most complained about feature of the system. There is a very strong feeling that an offender who is sentenced to a term of imprisonment should serve that term or something very close to it and should only be released early on evidence of positive behaviour
and complete co-operation when in the charge of the prison authorities. The Scottish Police Federation would support a change in the arrangements which reduced remission to something closer to one sixth of the sentence.

A prison sentence is a punishment and the length of the sentence equates to the level of that punishment. It has to be recognised that any initiative which has the effect of reducing the length of time served in prison, such as the proposal for Home Detention Curfews, will be seen as a reduction in the punishment. Having said that, the Scottish Police Federation believes there can only be support for initiatives which are proven to reduce re-offending and which are proven to assist prisoners achieve structure in their lives; help them re-build or establish relationships; ease their transition back into the community and which allows them to re-enter employment or training in a controlled manner. These are the reported aims of the Home Detention Curfew proposals and the Scottish Police Federation supports them.

We also support the considerations to be made by Scottish Ministers before exercising the powers in relation to Home Detention Curfews as detailed in section 11 of the Bill, namely:

- Protecting the public at large
- Preventing re-offending by the prisoner; and
- Securing the successful re-integration of the prisoner into the community.

Protecting the public at large must be the primary objective of those with the responsibility of making the decision to release early on a Home Detention Curfew. The risk assessment involved will be an onerous task as every prisoner, as a pre-condition of being in prison, will already have defied the criminal justice system by failing to pay a fine or failure to complete a community based sentence or by committing several serious anti-social and criminal acts.

Whether Home Detention Curfews will help prevent re-offending and result in successful re-integration of prisoners into the community remains to be seen. There should a commitment to monitor, evaluate and review the proposals if necessary, otherwise it will be seen as a measure to do no more than reduce prison numbers.

In the Financial Memorandum attached to the Bill, based on experience in England and Wales, it is estimated that there will be a breach rate of 15% and around 300 offenders would be apprehended and returned to custody each year. The Memorandum acknowledges this will result in some additional costs to the police but states that “these should be absorbable.” This statement can only be true if it is accepted that some other policing task is ignored. There is no unused capacity in the police service and all new or additional work should be costed and expressly catered for in police budgets. We acknowledge the difficulty in forecasting costs for these extra duties but it will be possible and it is essential that the costs are counted and expressly provided for in future budgets.
Scottish Parliament
Justice 2 Committee

Tuesday 3 May 2005

[THE CONVENER opened the meeting at 14:01]

Management of Offenders etc (Scotland) Bill: Stage 1

The Convener (Miss Annabel Goldie): Good afternoon and welcome to the 14th meeting of the Justice 2 Committee this year. We will spend most of this afternoon considering the Management of Offenders etc (Scotland) Bill. I have received an apology for absence from Maureen Macmillan. I remind everyone to ensure that they do not have their mobiles or pagers switched on.

We move to item 1 on our agenda and welcome the first of our four panels of witnesses this afternoon. I am pleased to welcome Dr Andrew McLellan, who is Her Majesty's chief inspector of prisons for Scotland, and Professor James McManus, who is chairman of the Parole Board for Scotland.

Gentlemen, you have been alerted to the fact that we have pressures on our time, so I hope that you will forgive me for suggesting that we dispense with preliminary statements. Committee members have various questions for you.

Jackie Baillie (Dumbarton) (Lab): Good afternoon, gentlemen. Will you give us an idea of what you consider to be the barriers to effective management of offenders? Will the establishment of community justice authorities help us to get over those barriers?

Dr Andrew McLellan (HM Chief Inspector of Prisons for Scotland): In the bill, there is an important but limited barrier, which is the connection that is made between prison and ex-prisoners on release. However, in efforts to reduce reoffending, that barrier is not the most significant one. The more significant barriers include criminal habits that are developed over many years, the corrosive effects of addiction, the destructive experience that some people have of education, limited access to jobs and the gamut of issues that are related to poverty. When we are trying to deal with reoffending, those barriers are more significant than those that are covered by the bill, which are still significant.

Professor James McManus (Parole Board for Scotland): I agree with much that Andrew McLellan has said. Much of the bill is predicated on the assumption that sentencing is directed towards stopping reoffending; it is not. In Scotland, sentencing is about something else: it is about punishment. There is no direct link between punishment and stopping reoffending, which is proven by the number of punished people who reoffend.

The bill is therefore trying to graft on to a system that is about punishment a provision that is about serving the needs of society, stopping reoffending and stopping offending in the first place. That is a difficult thing to do, but the bill will take us forward by providing for co-operation and co-ordination in the process, which will be crucial to maximising the bill's impact—although I would not look for a tremendous increase in success as a result of the bill. If the bill can achieve a 5 per cent reduction in reoffending, it will be doing very well indeed and will provide a substantial service to society. The real causes of crime are things that we cannot control directly without our taking a much more structural approach to the problem.

The Convener: We have heard that progress is being made in our prisons in relation to transition into the community and throughcare. What is your assessment of the current situation?

Dr McLellan: The development and progress of what are sometimes called link centres and sometimes throughcare centres has been one of the most encouraging aspects of life in Scottish prisons in the two and a half years in which I have had an interest in the area. I am always encouraged to find that when visitors go to prisons they tend to visit link or throughcare centres, as they should. First, I am encouraged because they seek to address a hugely important issue that is central to the bill. Secondly, I am encouraged because there is key evidence from prisoners, prison managers and outside agencies—such as housing agencies and Jobcentre Plus—that in link or throughcare centres a positive and hopeful attitude develops in which agencies and prisoners recognise that they have a common interest. The atmosphere in the centres provides opportunities outside the immensely coercive atmosphere in which so much of prison life is carried on.

I am encouraged, although I have reservations; for example, I note that there is no health involvement in link or throughcare centres and, often, the extent of outside social work agencies' involvement has not been what I had expected. However, I do not want that to detract from the positive view that I have of link centres and throughcare centres.

The Convener: Will the bill build on that platform?

Dr McLellan: Yes. I am sure that that is its purpose. From what I perceive of prisoners and prison staff—I have no contact, apart from during inspections, with the outside agencies that I meet
and converse with—I am clear that they are determined that what has traditionally been called “the gap” should be diminished. Prisoners are not always positive about people trying to do good to them, but if they can be made positive in that area, the bill might well build on an existing foundation.

The Convener: For clarification, do you, in your response, distinguish between short-term prisoners and long-term prisoners?

Dr McLellan: I have not offered a response as yet, but I am happy to make such a distinction if you want me to.

The Convener: It is just that you said that generally things were improving. Clearly, you are heartened by that, but is that happening over the piece, or are there differences between the linkages in the short-term sentence regime and those in the long-term prison regime?

Dr McLellan: For a long time the Scottish Prison Service has invested more in long-term prisoners and throughcare at the end of their sentences. I would expect more serious engagement with them, as we find in Shotts, Glenochil and Perth prisons, whose link and throughcare centres are well developed. However, since I began in my role, the significant improvement has been in local prisons and prisons such as Edinburgh and Glasgow where, even 10 years ago, throughcare and link centres would hardly have been contemplated, but are now a significant part of the life of the prisons.

The Convener: Professor McManus, do you have anything to add?

Professor McManus: Again, I agree with an awful lot of what has been said. The notion of using link centres to promote social inclusion is a good one. The paradox, of course, is that they exist in establishments of social exclusion—the example par excellence of social exclusion is prison. To use prisons as vehicles for promoting social inclusion must be a rather expensive way of promoting social inclusion.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Will home detention curfew make an active contribution to reduction of reoffending as well as to aiding rehabilitation back into the community? Will HDC be more effective than keeping prisoners in prison for the duration of their sentence?

The Convener: Dr McLellan can go first, although Professor McManus may have something to add.

Dr McLellan: Whether home detention curfews work will depend on clear and sound risk assessments being carried out; they will be central. That said, there are good arguments for supporting some form of curfew as outlined in the bill. First, if curfew is used in a protected environment—in other words, when the person has not simply been released and there is still a prison connection—it will be possible for prisoners to begin to take responsibility for addressing the important issues that we have talked about, such as health, employment, and housing.

Secondly, anything that can be done to lessen the damage of imprisonment to family relationships will be good for reducing reoffending. Thirdly, as I have said for two and a half years, high prison numbers do not contribute to reducing reoffending. As only a small number of prison places will be released by HDC, I do not want to place too much weight on that, but I welcome a reduction in prison numbers that is based on sound risk assessment and the principle of ensuring public safety.

The Convener: Will you clarify whether you think a significant number of prisoners will be released under HDCs?

Dr McLellan: The answer depends on what you mean by "significant". I do not think that we are talking about thousands of prisoners. Our prisons are overcrowded by 1,200 prisoners. Perhaps I have misunderstood the proposals; your look suggests that I have completely misunderstood them.

The Convener: No; I am interested in what you say. The issue concerns the whole committee. Does the Scottish Prison Service have any projected figure for how many prisoners would be affected by the proposal?

Dr McLellan: I have no way of knowing whether the SPS has such a figure; indeed, it would not be my business to know that.

My final point to Mr Purvis is that, as I am sure he knows, comparable statistics from England suggest that HDC will not significantly reduce reoffending. A year and a half ago, I had the opportunity to visit prisons in Holland. While I was there, I spent time observing how electronic monitoring is carried out. In Holland, a different system is used—supervision is an integral part of the HDC process. There has been a significant statistical effect on reducing reoffending, but small numbers of prisoners are involved and the system is very expensive.

Jeremy Purvis: Before Professor McManus answers, I have another question for Dr McLellan. My colleague Mr Fox will ask questions on conditions, in which the committee is interested. In your role as chief inspector of prisons, you inspect the prisons, but how far do you go in inspecting associated issues, such as tripartite working and links with the Association of Directors of Social Work on throughcare? Is your role as inspector...
limited to situations within prisons and the conditions of prisoners?

Dr McLellan: My role is limited to the conditions of prisoners and the treatment that they receive. Inevitably, in the course of my work I have conversations with all sorts of people, including Professor McManus. The purpose of such conversations is to help me better to understand the conditions and treatment of prisoners in prison.

Professor McManus: My first point on home detention curfew is about the process by which the decision is made on whether to release a prisoner on the tag. In the past few years, we have moved away from giving governors discretion over release dates; for example, we have taken away their power to award additional days, in order that we ensure full compliance with the Human Rights Act 1998 and that justice and fairness are seen to be done in the prison setting. The bill proposes giving the power for exercising such discretion back to governors. It is therefore crucial that regulations that are made under the bill provide a watertight algorithm that, in effect, makes those decisions for governors.

The alternative is a series of challenges. There are no direct proposals in the bill for a proper mechanism to appeal against the decisions. In one memorandum it was proposed that complaints should go through the normal SPS complaints system. Committee members will be aware that that complaints system is headed by a person who does not have a statutory existence and who has no power to make definitive decisions. Something must be done to regularise the process for making the decision in the first place to ensure that it works on rational criteria, which should be specified in regulations.

14:15

I welcome anything that reduces the prison population and gets people out as early as they can safely be out. That is crucial; this is not about getting them out for the sake of getting them out, but about getting them out when they do not pose an unacceptable risk in the community.

I also endorse the chief inspector’s suggestion that tagging, electronic monitoring and home detention will not on their own achieve anything. The most successful schemes that I have seen, which have been in the southern United States, all started off by pretending that they could work by keeping the person in a house, but every single one of them had to give in and use some form of supervision to assist the person in addressing the issues that come up in the domestic situation and those that gave rise to offending in the first place.

Tagging and keeping the person in a place will not, on their own, achieve very much for community safety, but if we add to that a process that provides supervision and assistance in addressing the issues in people’s lives it can help and can have a marked effect on reducing reoffending. I welcome the proposal for a home detention curfew, but I do not see it as a panacea. Issues around it have not yet been fully addressed in the bill. Some of the issues can be addressed in regulations, but they first require proper debate and consideration.

Jeremy Purvis: We have heard from prison governors—you may have seen their evidence to the committee—that every prisoner is an individual and that circumstances will be unique to that individual. If the conditions that would be applied are to be appropriate and if the risk assessment is to be a proper assessment, they will be based on that individual. Therefore, cannot you see that there is an argument for flexibility to enable the curfew to be shaped around the individual, especially since—as I understand it—that would not affect the early-release time? It would, in effect, be in addition to the early-release time. A set formula on time-based release will not bring the flexibility that would enable a curfew to be shaped around the individual prisoner.

Professor McManus: We can work towards developing such criteria, however, as the Risk Management Authority is doing to a great extent. It is developing criteria that can predict—in so far as that can be done accurately—the risk of reoffending.

We would have to take into account the category of offender. For example, it is presumed that sex offenders will not qualify for the curfew, but what about people who commit domestic violence? Manifestly, they should not be considered for being locked up in the house, but they are not mentioned in the bill. In relation to groups such as that we should say, “No. This cannot be allowed.” It would be perfectly safe to release other categories of offender very early in their sentences. Sometimes those will be extremely serious offenders, but they will have a low statistical probability of reoffending.

Colin Fox (Lothians) (SSP): I will press you on the two issues that you have raised. I will come on to supervision requirements shortly. First, what options is the Parole Board likely to consider when it imposes conditions on long-term prisoners who may be considered for home detention curfews? You mentioned domestic violence as an example of a category of offence that would be excluded. That suggestion has something to say for it. You hinted at other categories of offence in relation to which home detention curfews might be more likely. What approach would the Parole Board take in giving guidelines?
**Professor McManus:** The board, in accordance with the proposals in the bill, would not be involved at that stage. The board would make its usual parole or no-parole decision for the person at the 50 per cent stage. Regulation may be had to the conditions that the board has recommended in deciding what conditions would be imposed on the home detention curfew.

I suspect that we are talking about very few long-term prisoners coming through to be considered for meaningful periods of home detention curfew. We generally make a decision eight weeks before a parole qualifying date. By the time the decision got through, there would be little opportunity for a meaningful period of home detention. It might be much more restrictive to move on to home detention curfew when the person who comes, for example, from the open estate, and who will have been home free of curfew all weekend, every second weekend, because he does not pose a risk. Suddenly, under the bill he would be out, but would be subject to a curfew and would wear a tag, which might be a retrograde step in reintroducing that person to the community.

We look for conditions that do two things. They must promote public safety and assist offenders in addressing outstanding issues that will enable them to settle safely in the community. The issue is about getting resources to that offender. Sometimes, a condition will ensure that the offender can jump the queue for drug treatment or drug advice. If a prisoner who is coming out of prison has managed to do something about his drug habit while he is in prison but suddenly has to go into a 12-month queue to continue that treatment, the chances of recidivism clearly increase. However, we are not imposing conditions in order to enable us to let an offender out. We first decide whether the risk can be managed in the community; only when we are satisfied that it can be do we start considering conditions.

**Colin Fox:** The Executive has estimated that 25 per cent of short-term prisoners on home detention curfew would be subject to social work supervision requirements. Does that sound like a reasonable figure? Perhaps both witnesses could answer that question.

**Professor McManus:** I would like every prisoner to be subject to some form of supervision on leaving prison, in order to give meaning to the whole sentence. Long-term prisoners are on supervision to their sentences’ end date, so why should we write off half the sentence of short-term prisoners? Why not use that period to protect the public and assist the individual? The two things go hand in hand. If we used that period of the sentence profitably by building in supervision, we could achieve significant effects.

**Colin Fox:** That is what you would like to happen but, at the moment, the overwhelming majority of short-term prisoners do not get much supervision on release. Based on what is in the bill, do you think that the Executive’s estimate that 25 per cent of short-term prisoners on home detention curfew would be subject to social work supervision requirements is sustainable?

**Professor McManus:** The supervision would have to be resourced much better than it currently is. Of course, there is an issue in respect of recruitment of criminal justice social workers throughout Scotland. However, if we can improve their efficiency through the other arrangements in the early part of the bill, we can improve the overall level and standard of supervision by involving social work and other agencies.

A crucial element that is missing from the current set-up and which might be missed in the new arrangements is housing. Dr McLellan has already mentioned the absence of health input. We need housing, health and employment to be part of the package. We also need the police to be much more involved in the package. I realise that involving the police is a bit of a problem, but the police service is the only agency that is tasked with crime prevention and as the model that we are talking about is primarily a crime-prevention model, involvement of the police would contribute considerably to the success of the new arrangements. The question is, given the police’s constitutional position, how can we get them more involved?

**Colin Fox:** Do you agree with that, Dr McLellan?

**Dr McLellan:** I have not seen the arguments that led to the estimate of 25 per cent, so it is difficult to comment. However, I agree that it would be terrific if 100 per cent of short-term prisoners on home detention curfew were subject to social work supervision requirements, and I agree that 25 per cent is better than 24 per cent. Anything is better than nothing.

I suspect that, because many prisoners are determined not to engage in any supervision upon release and because of the resource implications, the figure of 100 per cent will never be achievable. I sometimes think that we should turn our attention in a different direction. Many ex-prisoners, particularly short-term, chaotic, miserable, despairing ex-prisoners need an auntie. They need somebody who will simply be interested in them.

Of course, that raises huge issues about risk assessment and so on, but I wish that we could find some way of releasing the public good will that exists towards people whose lives are in a mess in a way that would establish some kind of
voluntary support for people on release. I often think that the way in which the children's panels were set up in the 1970s is a model of how to engage the good will of people who want to help other people. I think that that sort of good will still exists. The arrangement should not be informal; it should be structured and supervised. Such an approach might first address partly the gap between 25 per cent and 100 per cent and, secondly, help to provide structure, habit and care in lives that have been unstructured and chaotic and that have never experienced care.

The Convener: I listened carefully to what Professor McManus said. Am I correct in saying that unless the supplementary facilities to which you referred are provided, the home detention curfew will simply be a mechanism for reducing the prison population?

Professor McManus: That is a fair assessment. Nothing else is being built into the system to assist people. A person might be detained in a nice comfortable home, but if they are detained in a horrible home the experience will be pretty awful.

Mr Stewart Maxwell (West of Scotland) (SNP): You expressed concern that power is to be passed back to governors and you suggested that that approach might be open to challenge. In health debates, we talk about "postcode prescribing"—I will borrow that phrase. Are you concerned about challenges in relation to postcode policing, or have I misunderstood you?

Professor McManus: Given recent evidence, if the system were postcode based no one would get out of prison, because certain postcodes are already grossly over-represented in the system. I am concerned, rather, about unstructured administrative discretion to determine the freedom of the citizen. In the past 20 years, every country in Europe has moved further away from an administrative framework for such decisions and towards a quasi-judicial framework in order to protect fully the rights of everyone involved. However, the bill would take a step back by giving prison governors responsibility, without giving them—as far as we know—the training and direction that would be needed to ensure that discretion was exercised fairly.

Mr Maxwell: Is the problem the return to an administrative approach or the fact that different governors might apply different rules—or is it both?

Professor McManus: I am sure that different governors will apply different rules. I do not suggest that governors will use the power arbitrarily or nastily. However, the process will be arbitrary unless it is strictly controlled; an arbitrary process will be abused.

Mr Maxwell: Do the witnesses have views on the new duties in the bill for risk assessment and management of serious and sex offenders?

Professor McManus: The bill is part of a growing package of attempts to control those groups. The Risk Management Authority has a role in that regard. During the past 10 years, most western European countries and the north American countries have struggled with and moved towards attempts to improve the level of control, given that there does not seem to be much that we can do by way of prevention.

I am worried that the approach is targeted at sex offenders, given that the statistical information shows that sex offenders are least likely to be reconvicted. We are missing out on other groups of offenders, such as armed robbers, who pose a serious threat to society and who are much more likely to be reconvicted than sex offenders. The focus on sex offenders is understandable, but given the statistical likelihood of reconviction of offenders in that group, the models that we develop for risk assessment and risk management are likely to be rather skewed. I am worried that that might lead to over-control of the group and to an approach that will reduce liberty without increasing public safety. We must always balance public safety with liberty, but we are going too far towards over-control without being able to demonstrate a manifest benefit in increased public protection.

Mr Maxwell: Does Dr McLellan want to comment?

Dr McLellan: It is inevitable that the Scottish Executive is responding to what are perceived to be public concerns by increasing what Professor McManus rightly calls the control element. As chief inspector, I have no locus on that issue. However, I have a locus in that I hope that increased careful management will be matched by an increase in the careful preparation for release of sex offenders.

Every report that I have published on Peterhead prison has drawn attention to the depressing fact that sex offenders—about whose release the public have most concern—are those who get the least preparation for release. I welcome the bill, but there are central issues that go far beyond it. In the case of sex offenders, we must not just manage them, but engage with them to find a way in which they can be prepared to be released into a safer Scotland.

14:30

Mr Maxwell: Is it your view that continuing support is required for all prisoners, not just for sex offenders?
Dr McLellan: I have said that in discussion of earlier bills. The specific point that I am making is that, for a variety of reasons, sex offenders get less preparation for release than other long-term prisoners.

Mr Maxwell: Why is that?

Dr McLellan: Because, understandably, they do not have the opportunity for home release, which is a key part in the preparation of most—including violent—long-term prisoners. Neither do they have the opportunity to undertake work placements in the community before they are released, which enable long-term violent prisoners of other kinds to prepare for release.

The Convener: Is there anything that you would like to add, Professor McManus?

Professor McManus: No.

The Convener: There are no further questions from the committee. I thank you very much for attending the meeting. It has been very helpful to have you before us.

I welcome our second panel of witnesses. David McKenna and Neil Paterson are from Victim Support Scotland; Bernadette Monaghan is from Apex Scotland; Angela Morgan is from Families Outside; and Susan Matheson and Donald Dickie are from Safeguarding Communities-Reducing Offending. Thank you for being with us this afternoon. When we began to take evidence from our first panel of witnesses, I proposed, because of the pressure of time, that we dispense with preliminary statements. It is not our desire to alienate you or make you feel ill at ease, but there is a lot to get through and I know that committee members have questions for you. Is there a burning issue that any of you want to comment on by way of introduction?

Witnesses indicated disagreement.

The Convener: Thank you. On the basis of where the questions come from and what they are about, I may decide that one organisation is better suited than another to answer them; otherwise, we might have a multiple chorus from “The Sound of Music” going on. However, please do not feel excluded. If you think that you really can offer something that is relevant to a question, please signal that you would like to reply to it.

Jackie Baillie: My first question is for Bernadette Monaghan—to single somebody out. What are the barriers to the effective management of offenders, and will the establishment of community justice authorities help to address any of those?

Bernadette Monaghan (Apex Scotland): That gets straight to the nub of it. I do not think that we have a system, as such. We certainly do not have one that is joined up. We have to accept that, although sentencing has a very limited part to play, it still has a part to play—for example, mention has been made of sex offenders. The level and intensity of the supervision that someone gets when they come back to the community is dependent on the length of their sentence.

We should expect seamless transitions among the different agencies, but things do not always work like that. The bill will provide national direction by requiring all the constituent parts of the system to sign up to shared outcomes and goals, with a focus on reducing reoffending. Instead of just thinking about internal processes and management systems, people will need to think about what they can do to contribute to public safety and protection and to reducing reoffending. That is particularly good.

Given the provisions on national direction and the power to intervene, the national advisory body could have not just an advisory role but a management function to make the new community justice authorities accountable. That is good. On the other hand, we will have a much more devolved system, with much more responsibility being passed to the community justice authorities to determine their own affairs and to produce business plans. It should help that we will have a way of working that gives more responsibility to local agencies but provides national direction and accountability.

It is important that we get away from the notion that the criminal justice system can actually reduce reoffending. I believe that we can give people opportunities, but it is up to them to assess where they are at that point in their life and to make those decisions for themselves. It is particularly important that in the national strategy and with community justice authorities we go beyond simply considering how to challenge offending behaviour through programmes and take into account issues such as accommodation, shelter, family support, employment and access to health services. In future, all the different agencies at the local level need to sit round the table if we are to try to make inroads into reducing offending.

Jackie Baillie: Do you sign up to the view of Professor McManus, who told us that the bill might lead to a reduction in reoffending of something like only 5 per cent?

Bernadette Monaghan: That is difficult to say, as no one knows what will make a particular individual stop offending. However, we know that people have a much better chance of not reoffending if they have appropriate accommodation, family support, skills that will get them a job, a structure to their lives and access to treatment and health care for any addiction issues that they have.
It is extremely difficult to measure success in reducing offending behaviour. We certainly cannot look at reconviction data, but we might be able to measure, for example, whether people are in the community for longer periods in-between prison sentences and whether the nature of their offending is less serious and less frequent. I accept that we need targets and performance measures, but we need to be realistic and accept that whether people reoffend comes down to individual choice. We cannot change people, but we can influence their choices by providing them with a range of opportunities and support systems that we know will go some way towards helping them to move on in their lives.

Jackie Baillie: I think that none of the other representatives on the panel has a different view, so I will move on to my next question, which is for David McKenna. What size should community justice authorities be? Further to the point that Bernadette Monaghan made, what role should the new authorities have?

David McKenna (Victim Support Scotland): First, let me say that the bill is a welcome opportunity to improve the effectiveness and efficiency of criminal justice services in Scotland. There is material potential to impact on reoffending rates, to reduce the number of victims and to improve the confidence of our communities.

The key partners need to be consulted on the structures of the new authorities. Criminal justice social work departments, the Scottish Prison Service and others will need to consider what will work best for the communities that they serve. I welcome the fact that the Government has not been prescriptive about that.

I appreciate that the Government has identified several issues that it wishes to take further stock of and consult on, but it is important that the role of victims is not lost in our criminal justice system or in the community justice authorities. I hope that, in due course, there will be a role for victim representation within the community justice authorities themselves. I do not say that simply through a narrow or limited interest; I truly believe that if we are to build public confidence, if we are to reduce reoffending and if we are to make our communities safer, then victims, offenders and communities should not be regarded as the problem but as part of the solution. If you take action to reduce offending behaviour, you must also consider the impact of that action on victims and make provision for that.

I hope that, in due course, the importance of victims to our criminal justice system will be reflected in the make-up of the community justice authorities.

Jackie Baillie: Would you prefer that importance to be reflected locally, in the national advisory body, or both?

David McKenna: I am not trying to advertise Victim Support Scotland, but we are an effective and valuable service. We provide support in communities throughout Scotland. Organisations such as Victim Support Scotland could have a role in contributing both locally and nationally.

Jackie Baillie: I want to ask Angela Morgan similar questions. What size should the community justice authorities be; what should their role be; and, to pick up on David McKenna’s point, should your organisation be directly involved with the new authorities or have some other kind of relationship with them?

Angela Morgan (Families Outside): We are not really in a position to comment on the size. From what we know from families who contact us, they are not interested in the structures of the organisations or in the titles or professional backgrounds of the people; what the families want is support and information that will let them help in the care, treatment and sentence management of their relative in prison. That is how they can maintain their relationship with the person in prison—although I should say that not all families can do that. Indeed, some of them are the victims of the crime.

The proposed system has great potential and we are pleased with the developments so far. It would be a missed opportunity if the community justice authorities set their boundaries to the limits of criminal justice bodies and to the limits of voluntary organisations that are perceived to work in criminal justice. A community example is HOPE—Helping Offenders Prisoners Families—which works in the west of Scotland with offenders and their families. I spoke to the director last week when I was preparing for this meeting. Of the various projects that the group runs, only one receives funding through a traditional local authority criminal justice stream. Other funding comes from sources as varied as the Community Fund, a social inclusion partnership, and economic development funding.

The community justice authorities will have to be manageable and we will have to think quite broadly. In our submission, I talk about the practicalities of families travelling to prison. Fundamental issues arise: how can people maintain a relationship if they cannot get to see their relative? There will have to be liaison, or some sort of synergy, between the new authorities and local transport planners. That will be made much easier by the local system that is being proposed.
You asked about the size and the role of the community justice authorities, but it will be the processes and the openness that will be important. You also asked about our involvement. We have been working very hard over the past couple of years to gain recognition for the role that families can play. That does not mean all families, and it does not mean that families will have a role all the time, but—in the way that David McKenna suggested—we do think that families can be partners in helping to reduce reoffending. All the evidence shows that to be true. We hope that that will be recognised in strategies through the work of the national advisory board.

Although good work has been done, particularly in the Prison Service, the situation is still vulnerable. Over the years, there have been good initiatives to support families to support offenders in and out of prison. However, those initiatives have fallen by the wayside when very committed people have moved on.

Jackie Baillie: Last but not least, I invite Susan Matheson to comment on the size and purpose of the community justice authorities and SACRO’s role in them.

14:45

Susan Matheson (Safeguarding Communities-Reducing Offending): As the other witnesses said, there needs to be consultation on the size of the community justice authorities. They should assist us to some extent because we will have contact with fewer bodies, but we will need to have meetings with the 32 local authorities. That might mean more meetings rather than fewer, so the bill might not be cost neutral to the voluntary sector as the explanatory notes claim. Our staff will have to work flexibly across boundaries and we might need to restructure. We could not suggest a definitive size at this stage.

The community justice authorities will be advantageous. They will not affect our youth justice or community mediation services, but we will be able to deliver our criminal justice services more effectively because we will be in an environment in which people are required to share information and to consult us. That will be an improvement, because sometimes we are consulted and sometimes we are not.

Section 9 of the bill states that ministers must specify persons with whom the responsible authorities must co-operate. We think that ministers should include our staff and the staff of other agencies that are engaged in providing a service to, or monitoring, offenders. It is important for that to be made explicit.

Bill Butler (Glasgow Anniesland) (Lab): I move on to the related matter of managing the transition from prison back to the community. Our first panel of witnesses—and Dr McLellan in particular—talked about the importance of the development of link centres and throughcare. How can the transition best be managed? Will the bill lead to improvements? Perhaps the witnesses from SACRO could comment first, followed by Apex Scotland.

Donald Dickie (Safeguarding Communities-Reducing Offending): It is fair to say that the Scottish Executive has already introduced some of the right measures to facilitate good throughcare. As well as the statutory changes that involve more intensive supervision of people who are released on supervision, phase two of the tripartite strategy, on voluntary assistance, is beginning to get off the ground. SACRO is heavily involved with one large authority in designing a service that is like a community link centre in the community rather than in prison. The idea is that it is a seamless service; people from the community go in and make contact with prisoners before they are released. They continue to give support and act almost as a case manager when the prisoner is released, helping them to sustain their interest in doing something about their life, changing their offending behaviour and getting them access to services in the community. The bill does not present any barriers to that work; if anything, it will encourage local authorities, community justice authorities and the Scottish Prison Service to help to make such schemes work properly.

Bill Butler: Will the bill help you to create a more seamless service?

Donald Dickie: Yes. I think it is fair to say that it will. As earlier panel members said, it depends on the willingness of prisoners—particularly on release—to sustain an interest. They might say that they want to do something when they are in prison, but it takes a lot of work to keep them motivated when they come out and return to their community, where, for example, drug taking might be rife. If all the agencies co-operate more effectively and share information, that should help us to work towards that goal.

Bernadette Monaghan: Sometimes, we set up services and try to squeeze people into them within the constraints that exist. For me, the SPS Cranston transitional care service is an example of that. We have experience of delivering that service in Edinburgh and Fife, and from talking to our staff I know that they get extremely frustrated with the idea of making three appointments for someone within a fixed period of 12 weeks.

When people come out of prison, they often go into hostels or bed and breakfast accommodation that is totally inappropriate. They find themselves out on the street at 9 o’clock in the morning with nothing to do but walk the streets. What incentive
do they have to sign up for services that we might think look extremely good on paper when we have not really thought about the kinds of people we are working with or their needs?

There is not the flexibility in the service to address their needs. It takes time to engage with people and to say to them, “There are benefits to you if you sign up to this service and we can help you.” That is a different way of working from saying, “We’ve got to meet these targets within a certain timescale.” We need flexibility and to be aware of the kinds of people and their multitude of problems.

Bill Butler: Will the bill help to improve engagement and the flexibility that you said was essential?

Bernadette Monaghan: I would like to think so. We have learned many lessons so far about throughput care and voluntary assistance. As Donald Dickie said, a lot of work is already going on in the Executive to look at that. However, I am not so sure that we have got the priorities entirely right. Our experience is that we have more success with older rather than younger people. We have learned many lessons that could feed into that work.

Bill Butler: How would you reprioritise certain aspects that need to be moved about in order to deal with the situation more effectively?

Bernadette Monaghan: I am not sure that I understand what you are saying.

Bill Butler: You said that the prioritisation seems to be slightly skewed, so how would you reprioritise?

Bernadette Monaghan: As a result of how services are sometimes funded, they have to be prioritised. Our experience in Edinburgh has been that we have more older clients who are at a point in their lives when they are fed up with their lifestyle and they want to access services and sort things out for themselves. We must have services that can respond to them at the right time and at the place that they are at in life. We need some flexibility to wrap the service around them.

Although I accept that we must have performance measures and targets, we also need flexibility to remember that we are dealing with people who have entrenched, complicated problems, some of whom do not fit neatly into the kinds of services on offer.

Neil Paterson (Victim Support Scotland): I offer a word of caution against viewing the bill as a panacea for fixing the throughcare paradigm. The bill sets out a framework that it is hoped will help people to work more closely together. However, the detail in the performance management framework that the Executive will set out and which the authorities will be required to follow will need to take account of a couple of things that we touched on around the table this afternoon. One is the need closely to involve housing providers in the partnership arrangements. Most people in this room will be familiar with the recent social work services inspectorate report into the North Lanarkshire case from two to three years ago when difficulties in inter-council relationships were highlighted. I urge caution because we need to see far more detail before we can confidently say that we will move forward in the way that we all want.

Angela Morgan: I agree entirely with Bernadette Monaghan’s comments about the individual approach. From our point of view, we would like to see much more recognition—although not for all people who come out of prison and not in all circumstances—that people come out into the context of a whole family whose situation should be considered.

In relation to the case that Neil Paterson just referred to, it was noted in the report recommendations that there had been a missed opportunity to involve the family in reintegrating and resettling. As regards risk management, there is a role for families that could be drawn on if that recognition existed.

Jeremy Purvis: Will each organisation comment on whether home detention curfews will contribute actively to the reduction of reoffending? Are there any comments in the light of the previous panel’s evidence or concerns about the proposals? I ask witnesses to answer from right to left along the panel.

Donald Dickie: SACRO takes the view that you have already heard. There is really no evidence to suggest that the bill will have any impact on reducing offending or reoffending. There have been Home Office studies on the extensive schemes that operate south of the border, and their impact is described as neutral. They make virtually no difference one way or another. If that is the intention of the bill, it may be a bit of a disappointment.

The other stated intention of the Executive is to facilitate better integration of offenders on release, which SACRO is obviously most interested in doing in so far as community safety is concerned. You may hear more about the research that was conducted south of the border from a member of the next panel of witnesses. That research certainly seems to suggest that, although the prisoners quite liked it and their families did not mind it, there were serious problems in the administration of reintegration schemes that might even make good integration into the community more difficult rather than easier.
Simply releasing someone a few weeks earlier does not mean that they are going to integrate into the community more easily. In fact, in throughcare initiatives in Scotland, the Executive places much emphasis on pre-release arrangements, such as establishing contacts and other pre-release work. If there is a shortened period of time for pre-release arrangements, and if prisoners here do not understand the system and do not get good information about what is expected—as was the case in England and Wales—there could be serious problems. We recommend that the Executive makes a point of trying to address the difficulties that were experienced in England.

Based on experience south of the border, I believe that the bill will have some impact on slowing the increase in the prison population, but not a huge impact. The Executive’s estimate is that 350 prison places would be affected, which is not a huge impact on the daily prison population of nearly 7,000 or thereabouts. There has been an impact in England and Wales, however, so we might see some reduction in the prison population here in Scotland.

Angela Morgan: The first thing that I would like to say is that it should not be seen as a cheap option. I say that from the experience that we have of how home leave works for families—or does not always work terribly well. Picking up on what Donald Dickie said, the research shows that the impact on families of a member of the family being imprisoned is not proportionate to the length of the imprisonment. The impact of a short sentence on the family can be as traumatic, particularly for children, as the impact of a long one. We want much more work to be done prior to release, even for home leave. Quite often, we get calls to our helpline from family members who say, “I was really looking forward to him coming out, but actually it’s been the most awful weekend.” When you think about it, that is not surprising, because expectations develop but things have changed; the children have grown up and the remaining partner has had to adjust. Without some work done with the prisoner and the family member who has remained outside, there is a risk that family relationships that have been maintained during the period of custody could break down once the person is released from prison, and we hear of examples of that happening.

Although we support the bill in principle, because it reduces the effect of separation, we reinforce what previous witnesses have said. Without supervision and support—not just for the person who has been in prison but for the whole family, where there is a family involved—we are concerned about how effective the bill will be and about further damage to families that are simply not robust enough to cope with the responsibility that they are being asked to take for monitoring and helping somebody to adhere to a curfew.

Jeremy Purvis: The submission from Apex Scotland says of the curfew system:

“Targeted appropriately, it offers individuals the chance to re-build family relationships and engage with agencies that can address housing, health and employability needs, thus increasing the chance that they will not re-offend.”

That is in a slightly different tone from the evidence of the previous witnesses.

15:00

Bernadette Monaghan: I feel quite optimistic about home detention curfew. Like any measure, it needs to be targeted properly, and my understanding is that it will be used for prisoners who are assessed as being relatively low risk and who, towards the end of their sentence, will be able to have a phased return to the community.

Any work that we do in prison has to be tested out, which can happen only when the prisoner is back in the community. We could spend a lot of money doing work in prison but not know whether it has any benefit until the prisoner goes back out to the context in which they live, as Angela Morgan said. My understanding is that, if an offender who is on a curfew reoffends, they will be returned to prison to serve the remainder of their sentence. For Apex Scotland, the home detention curfew simply means that the preparation for release that we would have done in prison will be done with people in the community as part of the curfew package. There can be flexibility in the package to allow offenders to attend appointments at Apex’s local units and have their health issues sorted out. Rather than address such issues in prison, we will simply address them in the community as part of the offender’s return to the community.

We need to reduce the prison population. Although 350 places does not sound an awful lot, it would free up space, staff resources and staff time to do good, constructive work with others who are in prison and need to be there. When we talk about people on home detention curfew, we are talking about people whose issues could probably be addressed in the community towards the end of their sentences. To me, that makes sense because, whether we like it or not, the majority of prisoners return to the community at some point, so we must find a way of testing out whether they are ready to return and whether they can sustain the benefits of any intervention that they had when they were in prison. The point is that it is not only a curfew; within the curfew package, it is crucial that offenders are engaged in constructive work to address the issues around their offending behaviour and tackle some of the problems in their
lives that need to be sorted out to give them a chance of not reoffending.

Jeremy Purvis: I would like to ask Mr Dickie about conditions on home detention curfew, but I also ask Mr McKenna or Mr Paterson to comment.

Neil Paterson: I will raise a couple of related but ancillary questions on home detention curfew.

Jeremy Purvis: It would be helpful if you had answers, too.

Neil Paterson: I might have.

The committee might be aware that the Criminal Justice (Scotland) Act 2003 introduced a statutory provision under which a victim of a crime for which the offender has been sentenced to imprisonment for more than four years will be notified of the prisoner’s release and any associated conditions. The home detention curfew proposal highlights the fact that the four-year ceiling is quite high. Victim Support Scotland is concerned about the public perception of the proposal and how it might be received in communities. That is related to the fact that sentencing policy is complicated. It is fine for us, because we work with sentencing policy and engage with it daily, but the average person on the street does not understand it well, and home detention curfew is another measure that might add to that confusion and contribute to further problems with public confidence in sentencing.

The solution to that would be to extend the victim notification scheme in parallel with the introduction of home detention curfew so that, when prisoners are released on HDC, victims would be aware that that was happening and would have some written material that explained the rationale for the release and the conditions that were attached to it and which gave them a contact whom they could ask for advice if they had any related concerns. That is a plea to the committee to consider the proposal to extend the notification scheme in tandem with the introduction of home detention curfew.

David McKenna: I would go further than my colleague Neil Paterson does. The bill proposes that those who are released on home detention curfew will be subject to the standard conditions but, for most victims and communities, that is meaningless.

The real issue when we release people back into the community—under whatever scheme—is the need for the conditions to be set out clearly and for those conditions to address specifically the often legitimate fears and concerns of victims, their families and the community as well as the needs of offenders. The conditions should be communicated to victims, so that they are aware that someone has been released and know the general conditions under which the release has taken place and that special conditions have been put in place, for example, to prevent the person from coming near their house, street, children or school.

I can never overemphasise this point: in a Scotland that, increasingly, lacks confidence in our criminal justice system, home detention curfew may be a positive way forward but it will not be perceived as such in our communities. It will be perceived as a soft option, and people will think that nothing is being done about the crime from which they are suffering. They will think that wee Jimmy—it is rarely wee Janey; all too often, it is wee Jimmy or wee Johnny—is back on the streets a few weeks after having been arrested for an offence. I am not saying that that is wrong; I am saying that our communities do not understand what is going on. They do not feel supported through the process or informed, and they do not feel protected or safe.

Unless we address those issues, we will not build public confidence or be effective in reducing offending, as our communities will not have the confidence to stand up to it.

Jeremy Purvis: I guess that I will have to be careful about the language that I use—including phrases such as get-out-of-jail-free cards, and so on.

Let us return to what Mr Dickie said about the link centre in a community setting that he has worked with the local authority to set up. Are you able to provide the committee with some written information about that? Has there been any analysis of the effect of that centre?

Donald Dickie: The centre is still in the process of being set up—it is a new proposal. We are working in partnership with the council, but I am sure that it would have no problem with our giving you details about the centre.

Jeremy Purvis: Do you have any comments on what Mrs Monaghan said about the need for a degree of supervision, structure or compulsion? There is a degree of compulsion in the link centre in Edinburgh prison, which I have visited, where prison staff provide some of the services in partnership with your organisations. Could conditions be set for home detention curfews that would provide a degree of compulsion for someone to attend some of the sessions, courses or services that are provided through a link centre in a community setting? Are you considering that as you are setting the centre up?

Donald Dickie: I would not say that. My understanding is that the home detention curfew does not come with additional conditions regarding supervision; the conditions of the curfew are predominantly restrictions on movement.
Jeremy Purvis: Perhaps you can get back to us after reading the Executive’s policy memorandum to the bill, which states that conditions could be applied to home detention curfews. The governors told us in evidence last week that they would be looking for such a provision, and we will hear from the next panel of witnesses what has been the experience south of the border.

Donald Dickie: The link centre proposals are associated with people voluntarily seeking assistance. The principle behind the centre is that people will come and use the service because they want to—because there is something in it for them and for the community if they address their offending behaviour and related issues. I do not know whether making it compulsory for people to attend would make such work a lot more meaningful. In the literature on electronic monitoring generally, it has been suggested that short periods on electronic monitoring can help to hold the interest of young people in particular and give the helping agencies time to engage them. However, of itself, electronic monitoring does not address reoffending: something has to come with it if it is to make a difference in the long term.

The Convener: Is there any specific point that Jeremy Purvis wants to clarify?

Jeremy Purvis: No. If the witness could get back to us after having had another look at the bill and the proposals with regard to the associated conditions, that would be helpful to the committee.

Colin Fox: What supervision and support conditions would the witnesses like to see alongside home detention curfews? I understand the answers about young people in particular, but what parallel supervision and support conditions would the witnesses apply to the use of curfews?

The Convener: We will start with Victim Support and work round.

David McKenna: In a sense, I answered the question earlier. The standard condition with home detention curfew is that the offender will not commit any further offences while they are on home curfew. However, such a condition should be made known to the community and victims. They should also be tailor-made to the experience of the community, the victim and the offender, to whom it should be spelled out, “You must not approach this person or go to this building.” For example, if an offence was committed at a particular shop, the offender should not go back to that shop. That should be spelled out, and the community and the victim in particular should be made aware of that condition. Not only must there be special conditions, but people must know what they can do if they believe that the special conditions have been broken. It is all very well putting special conditions in place, but if there is no effective policing of them they are meaningless.

Colin Fox: What about supervision and support?

Bernadette Monaghan: It comes down to what the individual needs. Presumably, there would be an assessment of the factors that contributed to their being in prison in the first place, and an assessment of what they need to ensure that they have the best chance of settling in the community and not reoffending. We all know that general factors such as employability, accommodation, access to health services—for addictions in particular—and the support of family give people a better chance of staying in the community.

It is important to remember that arrangements are already in place in different prisons such that people prepare for home leave and release by working outwith the prison. For example, Polmont has a unit outside the perimeter fence, which is a way of testing out young men who go to college or work and come back at night. We do not often teach people in prison independent living skills, but we expect them to go out the door and be able to survive on their own. Often, they do not have family support and networks within the community.

The governor of Polmont said that something like 60 per cent of his population could not read or write, or had below functional literacy and numeracy. If they get a job or have some sort of structure in their lives, that will keep them away from their peers or other people who might be involved in drug taking and who might encourage them to reoffend. We have to examine people’s basic skills and what they need.

For me, the issue is the quality of the relationship between the worker and the individual and whether the worker is able to engage that person and offer something constructive. The curfew is still a punishment, but there are opportunities for the person to address the issues and to examine what they need if they are to settle in the community. I am not suggesting that curfews are a panacea for everything—they have to be targeted appropriately. As I understand it, they are for people who are approaching the end of their sentence. They provide a way of doing the work in a community context rather than in prison, and will allow us to determine whether the person is ready to come back to the community.

Those are the basic factors. Anybody who goes back to the community from prison needs food and shelter. There is no point examining their education needs or employability issues unless they have appropriate accommodation and someone to support them. That is the key.

Angela Morgan: If you are looking to motivate people to move away from reoffending, you have
to help them to find an identity that is other than that of being an offender. Many solutions need to be considered outwith the criminal justice system. We want to see support and supervision around what I roughly term family rebuilding. A number of models relate to that, such as family group conferences and various types of relationship building, which are difficult to sell. David McKenna is right that they are seen as soft options, but getting people to face up to what they have done and the impact that they have had on their victims and their families can be used to motivate them to move away from offending. Susan Matheson and Donald Dickie will know far more about that than I do, but restorative justice can help people to recognise what they have done.

We have tried to have this debate with the SPS. It is tricky stuff to grasp, because it is about individuals’ relationships and their perception of themselves, which is much more difficult to measure than, for example, points on a housing list, qualifications or the number of hours of learning. However, it is important to remember that home detention curfew can be equally as powerful and can have as much of an impact on whether somebody is able to move on. That is no comfort to those who are trying to develop policy and present it to the public with a hard edge as something that will reduce reoffending, but the challenge needs to be met under the bill.

15:15

Susan Matheson: It is important that we still have pre-release work. I am not sure that we can say, “Right, we’ll do the pre-release work in the community.” We have to smooth the transition. As has already been said, curfews on their own will not address all the fundamental reasons why people offend in the first place—poverty and problems with accommodation and family relationships have all been listed. If we have home detention curfews, it will be important to support people who are coming out of prison and their families. They should be supported—and perhaps mentored—to keep appointments with agencies so that their needs are met.

Donald Dickie: It has already been pointed out that the vast majority of those who will be placed under curfew are likely to be short-term prisoners with sentences of less than four years, who would not normally be subject to statutory supervision. The Executive envisages that some of those people would want and receive the voluntary assistance services of, for example, a community link centre.

The service should be tailored. The idea is that the SPS has a pre-release meeting at which, as part of the current tripartite policy, a community reintegration plan is drawn up, from which the work that is to be done in the community flows. There is a sort of throughcare contract between the worker in the community and the discharged prisoner under which what is to be done is agreed. The compulsory supervision that a home detention curfew brings might achieve marginal results in the relatively short time that the person is subject to the curfew. It is all to do with engaging the ex-prisoner in doing something to change their life, but a formal state intervention is not necessarily the best way to achieve that.

The Convener: On behalf of the committee I thank you all for being with us this afternoon. We have found it immensely helpful. Thank you for your time.

I declare a brief break of five minutes.

15:18

Meeting suspended.

15:24

On resuming—

The Convener: I welcome everyone back, particularly Dr Mike Nellis from the University of Birmingham, Roger Houchin from Glasgow Caledonian University and Mr Roger McGarva, who has come some distance to join us.

The committee is very grateful to you for being with us, because it was extremely anxious to get some feel for what has been happening with the current regime south of the border to assist us in our scrutiny of the Management of Offenders (Scotland) Bill, which is before the Scottish Parliament. I express our particular appreciation to you for being with us this afternoon. We have a long evidence session this afternoon, so our format has been to dispense with introductory statements and to proceed straight to questioning. If you have any burning comments that you wish to make, you should feel free to do so, but you should keep your comments brief.

Jackie Baillie: I ask each of the panel in turn what they consider to be the barriers to the effective management of offenders, and whether they consider that community justice authorities—or, indeed, the other provisions in the bill—go some way towards addressing those barriers.

Roger McGarva (National Probation Service): I shall set this in the context of the experience in England. I read the evidence of the committee’s previous two sessions, in which there were enormous echoes of the problems that we are facing. Our experience may be a little ahead of yours, but we are facing the same kind of dilemmas. We have no magic solutions—we are
working on those problems just as hard as you are.

The biggest barrier to overall strategic management is getting the right people to the table to make the right decisions. I was a probation officer in England from 1973 to 1997, and my experience was that we could never get the right people to the table to make the right strategic choices to help offenders and protect communities. One of the things that has happened with the establishment of the new National Offender Management Service is the integration of the prison and probation services at very senior levels. The director general of HM Prison Service and the director of the National Probation Service are now both accountable to the permanent secretary, who is responsible for correctional services. That gives us a real opportunity to work bilaterally on issues facing offenders throughout their sentence.

That has been underpinned by the development of the national reducing reoffending action plan, which has seven pathways in it that, in many ways, reflect discussions that the committee has had. The plan emphasises the importance of accommodation, employment, training and education and health issues. We are also putting into those pathways work on finance and debt, as we recognise that many offenders in prison have financial problems that contribute to their offending decisions when they are released. There are also issues to do with families and children. Linked to that is the work that we are doing on attitudes and behaviour, to try to get offenders to reflect on why they are committing offences and to make better choices.

One of the things that has been most valuable in our work has been our efforts to get the Department of Health and the Department for Education and Skills to talk to the Home Office. We have had a lot of success with that. In the past two years, we have gone from having fewer than 4,000 offenders starting basic skills programmes in the community to 32,000. The number of awards for basic skills has increased from less than 1,000 to more than 8,000. That is evidence of our ability to make progress when we get the right people round the table. We had to engage with the Learning and Skills Council to secure the resources to enable that work to be done with offenders. The proposal for community justice authorities is a major step in the right direction because they will bring the right people together. There may be a question of scale, however. When the Probation Service in England moved to being a national service, with 42 areas and a central leadership directorate, our performance improved dramatically. We are now achieving all our targets—apart from one—and it is fair to say that we are getting much better value for money. We have still got a long way to go, and our targets for next year are more demanding than those for last year, but that is what ministers expect.

Jackie Baillie: You seem to suggest that one centrally controlled body is better than the plethora of agencies that we want to co-ordinate locally. Am I picking you up wrongly?

15:30

Roger McGarva: The experience in England is different from that in Scotland. The National Probation Service is and has been a separate organisation from local government. We receive all our money from central Government—it is distributed from the Home Office—so we have a much more centralist approach, although we have 42 probation boards that try to inject a local flavour into how we work in each area. I think that our society is more centralist than yours.

Jackie Baillie: Thank you for that observation.

Roger Houchin (Glasgow Caledonian University): I take a rather different approach. The main barrier to working effectively with people who have committed offences is that we have conflated the ideas of punishment and rehabilitation. A matter for social policy—finding ways in which young men in our deprived communities can play a legitimate part in our society—has become a problem that we are trying to solve with criminal justice solutions. If that is how we set out to proceed, we are doomed to failure.

The research report that I circulated has two parts. First, I took a snapshot of the whole prisoner population and considered where people came from. Scotland has 1,222 local government wards. A quarter of our prisoner population comes from just 53 of those wards, and half our prisoner population comes from just 155 of them. On the night when I took the snapshot, no one from 269 wards was in prison. That finding is extraordinary. Some wards with populations of about 5,000 had more than 50 people in prison on that night.

The age of the prisoner population is heavily skewed to the early 20s. If we take five-year age cohorts from 20 to 60, the number of people who are in prison as we move to the next cohort drops by about 30 per cent until the age of 40, when the drop becomes about 50 per cent with each step along the line. The prisoner population is heavily skewed to a small number of areas in the country and to men. The imprisonment rate for men is 24 times that for women. That is not to suggest that enormous problems do not exist with the imprisonment of women; I am just looking at the problem statistically. The prisoner population is also heavily skewed to young people.
If those findings about the prisoner population are mapped on to findings about social deprivation as measured by the Scottish index of multiple deprivation, the correlation between the extent of a community’s deprivation and that community’s imprisonment rate is almost precise. I will give the committee a startling figure. For the 27 wards in Scotland whose index of multiple deprivation score is higher than 70, the imprisonment rate for 23-year-old men is 3,427 per 100,000. That compares with an imprisonment rate of 532 per 100,000 in Russia. In our most deprived communities, one in nine young men will spend some time in prison in their 23rd year.

We will not solve that problem by structurally altering how we deliver justice. The problem can be solved only by social policy and by addressing the problems in those communities of the absence of legitimate family and economic roles for the young men.

That is an opening statement. I probably do not need to answer your second question.

Jackie Baillie: You need not. I will ask you a quick alternative second question and risk the convener’s wrath. Is it reasonable to have a bill that seeks to manage offenders and the process better, to build the co-operation that we heard about from earlier witnesses?

Roger Houchin: Improved communication and co-ordination between agencies is greatly to be welcomed. I find the term “managing offenders” highly offensive. We are talking about people who are members of our community; they are not offenders. To label people as offenders is to deny what we wish to achieve. We want them not to be offenders. I have problems with the language.

Jackie Baillie: I am sure that the Executive will note your comments.

Dr Mike Nellis (University of Birmingham): I will answer both your questions simultaneously; my answer will fall under six headings. I share and understand Mr Houchin’s reservations about the use of the term “offender management”, but I have become so used to using it that I will use it now.

We need to use interventions of proven effectiveness. By drawing on literature from around the world, we have gone some way towards identifying what techniques there are for working with people who offend. I tend to think that the evidence is a little biased towards certain techniques and I would like to keep open all options for using restorative justice. In that regard, I commend to the committee the continuing research that is being done on restorative justice as a way of working with offenders in the community.

Those effective forms of intervention need to be linked with effective community penalties so that we can do more than just pay lip service to the idea that prison is a penalty of last resort. In England, much attention has been paid to the way in which community penalties are structured to give expression to effective forms of intervention. I am certainly not convinced that we have necessarily got it right, but there are some interesting ideas and experiments around on how a community penalty should look if it is to be effective and give the public confidence.

Strong links should be established between criminal justice agencies and education, health and employment services so that a much wider range of services than just criminal justice interventions can be brought to bear on the lives of individuals. It is patently obvious that people often offend in the first place as a consequence of education, health and employment deficits. It is sensible to have a focus on resettlement because it has long been understood that the period immediately after release from prison is a high-risk time for reoffending. Anything that can be done to cement closer links between prisons and support agencies in the community would be beneficial. I firmly believe that the home detention curfew scheme in England has made a strong contribution to that process.

I am an agnostic on the question whether centralisation is a sensible, viable or effective strategy in England. I am much more in favour of decentralised approaches—that is why I fully understand what is being attempted with the community justice authorities here in Scotland. On paper, that seems a sensible strategy.

The quality of training and the morale of the staff who work with what is a difficult client group should always be given attention when one is considering changing the structures and frameworks within which people work. An excessive pace of change can be detrimental to morale and effective working. In England, I am not sure that sufficient attention has been paid to the needs of the staff group that has been affected by the legislative and policy changes of recent years. I hope that the same mistakes will not be made here.

It is also important to make a clear and determined effort to win the public confidence argument in respect of community penalties. The idea that community penalties must always be seen as a soft-on-crime strategy does not seem to be true. The corollary of seeing them in a different way is that we must recognise that there is a battle to be won in the media and in public debate about the nature of those penalties, what they can and cannot do, what has been achieved and what might be achieved in the future.
Jackie Baillie: Thank you very much. I have a final question for Mr Houchin. How many community justice authorities should there be and how can they interact most effectively with the SPS? In your submission, you referred to statements that the governors made when they gave evidence to the committee.

Roger Houchin: Had I been one of those governors, I would have made similar statements. However, on reflecting on what I heard, I thought that if we are interested in addressing reoffending, the issue is not how many community justice authorities we have but how we organise our prison service so that it least badly impedes what we might wish to achieve in our communities. The problems that were presented to the committee by Sue Brookes and Bill Millar, both of whom are trying to run institutions to serve the whole of Scotland, are a consequence of the way in which the prison system is organised, not the way in which people live in Scotland.

The solution to the problem has to be found in the way in which the prison system interacts with communities where these problems occur, not in how we produce structures in our communities to fit best with the prison system. There is no good way of providing services for women from Aberdeen and Greenock who find themselves in Cornton Vale. We must find how the prison system can manage women who have to be punished in a way that is least destructive to their social welfare.

You will forgive me for not answering your question. Having looked again at the relevant research, I understand why the governors argue that fewer authorities should be involved. For example, Bill Millar and Sue Brookes would have to have effective relationships with 16 different authorities in order to offer a decent service to 85 per cent of the populations of their respective institutions. That is not possible.

That situation is a consequence of the way in which the prison system is organised rather than the way in which our communities are organised. We cannot change the fact that there will always be women from Aberdeen and Greenock in prison. However, deciding whether four, eight or 12 community justice authorities is the correct number will not address the core problem, which is how we manage our prison system.

There is a major problem in the west of Scotland, which has a high proportion of the prison population but little prison accommodation relative to places such as the Forth valley or Tayside, where there is a lot of prisoner accommodation but a small prison population. There are issues to do with a strategy for the prisons estate and for the way in which the prison system is organised. The issues are not fundamentally to do with how we organise local authorities.

Mr Maxwell: Following on from what you said, much of the evidence that the committee received on this and other bills and in our inquiries concerns the problem of the transition from prison to the community. We heard evidence from a range of professionals, individuals and interested parties. What can the Scottish Prison Service do to improve that transition to communities? That seems crucial to what we are trying to do.

Roger Houchin: The Scottish Prison Service has achieved a phenomenal amount in recent years in addressing that problem and putting in place services that are designed to address it. However, it is not in the SPS's grasp to make further progress until we conceive of what we are trying to do as a social policy issue. We must recognise that we will still want to punish offenders, as it is perfectly legitimate for us to do. However, we must separate the issues. First, we must consider what we need to do in social policy terms for the highly concentrated group that we feel a need to punish in order to address their problems in the community. Secondly, we must consider how the prison system should relate to those pockets where there is a deeply felt need to punish people in a way that least gets in the way of the work that needs to be done in the community. The prison system will deliver the punishment that will be required because people will continue to break into cars and do all the things that we do not want them to do. Punishment is a response to that.

The problem of reoffending will be solved not by improving the link from prison into the community, but by improving the capability of the prison system to relate to the quite small number of communities—I referred to the 53 wards where a quarter of the prison population comes from and the 155 wards where half the prison population comes from—that are dysfunctional for the young men who live in them. The prison system must be able to relate to those young men—and, in some of them, young women—in a way that is supportive of what we must do in the communities.

15:45

Mr Maxwell: I accept what you are saying and agree that a long-term approach is required. Nevertheless, although you say that the SPS has done much to improve the transition, do you not feel that much could still be done in the shorter term?

Roger Houchin: I would advocate policies that ensure that people serve the last year or 18 months of their sentence in the locality to which they will return. We have open prisons that are located around Dundee but largely populated by people from Glasgow, yet the open prison system
is intended to prepare those people for release. Clearly, that is a little irrational.

I have already talked about women, children and young people in prison, for whom the problem of severance from their communities is the greatest. Those should surely be the parts of the prisoner population that we should be most sensitive about. Huge investment is currently going into the prison estate. We must be careful that the investment goes into the prison estate in places where prisoners come from and in a way that supports their return to the communities from which they come. I am not convinced that that happens at present.

**The Convener:** Mr McGarva could give us a view on the situation in England and Wales.

**Mr Maxwell:** I was just going to ask a question about that. Would Mr McGarva and, perhaps, Dr Nellis say what has been happening in England and Wales on the issue? Have there been major steps forward in dealing with the transition from prison to the community?

**Roger McGarva:** I hope that we are making some progress. We face the same problem with the number of prisons and the distribution of prisoners as Scotland does. We have about 140 or 150 prisons, from which prisoners can go out to almost anywhere in England and Wales, so the distance from home is a major issue. One of the policies of HM Prison Service is to try to concentrate prisoners who will be released into a particular region in that region. However, the service has difficulties in achieving the right balance of facilities within its estate.

I regard this as a broader criminal justice system issue and not only an issue for HM Prison Service. Behind the development of the concept of offender management—whatever people may think of the word “management”—is the notion that the probation officer will be the person who acts as the facilitator to enable services to be made available to the offender, whether in prison or in the community. As we develop offender management, the offender manager in the community will be the person responsible for making the assessment of the needs of the offender and ensuring that those are supplied, whether in prison or in the community.

We are trying to move away from the notion of specially bought services for offenders to the notion that offenders—whatever they are—have the right to access public services because they are a citizen of the country. A prisoner does not necessarily get special rights to a drugs service, but they have a right to a drugs service because they can access the national health service. The probation officer is the pivot who helps to formulate the sentence plan and enables it to be implemented. That is very much tied up with our development of custody plus because, under the Criminal Justice Act 2003, all offenders and not only those who are serving more than 12 months, as is the case now, will be supervised when they are released into the community. Whatever people may feel about compulsory supervision, when we get to the stage at which everyone is released under supervision, that will mean that work can be done with them. Offenders who are not seen do not have any work done with them—certainly not by the state.

We hope that the increase in our workload of about 80,000 offenders a year under custody plus will be accompanied by sharp reductions in reoffending, provided, of course, that we ensure that the offenders access the right services and that society continues to be tolerant of the way in which we deal with offenders. We have to be mindful of our relationship with the courts, whose sentences reflect public opinion, and continue to work to maintain public confidence.

**Dr Nellis:** The big picture has been well mapped out by my colleagues. I am struck by the importance of voluntary organisations having access to prisons. A lot of attention has been paid to the relationship between the emerging National Offender Management Service in England and voluntary organisations, which Roger McGarva could probably say more about. Access to services that are provided by voluntary organisations is quite crucial to the resettlement of certain individuals.

From my experience of working in the Probation Service, I know that generalising about these issues is often difficult. I can recall many situations in which local prisons have made sterling efforts to assist in the resettlement of prisoners who were returning to their local areas. It would not be true to say simply that the system as a whole either fails or succeeds in that regard. There are many examples of good practice, but we have never been in a situation in which we have been able to generalise them. One prison near where I work in the west midlands seems to be well networked into local voluntary organisations. Through the Society of Friends—or the Quakers—which is one of the avenues through which I involve myself in penal reform, I understand that that has been an effectively constructed network for aiding resettlement processes.

Allied to the issue of voluntary organisations, an important strand to consider is the way in which faith community representation in prison can foster links inside prison that can be continued outside prison.

**Colin Fox:** Earlier, Mr McGarva, you said that the system for information sharing in England and Wales had largely brought the right people
together. What lines of communication and information sharing exist between the police, Probation Service and other criminal justice agencies in England and Wales? How effective are they?

Roger McGarva: I can talk about our successes, but I must also talk about some of our remaining challenges.

The biggest success that we have had relates to the management of dangerous offenders, with the establishment of the multi-agency public protection panels. Every probation and police area in England and Wales has a panel on which the health service, the police, the Probation Service and education are represented. Before dangerous offenders are released into the community, a risk management plan is established for those offenders. We have a series of case conferences in which we bring together the right people to consider the way in which we manage those offenders. The release of dangerous offenders into the community is always going to be controversial, but there are some offenders who have to be released simply because they are coming up to the end of their tariff. The careful management of those people in the community is important.

Colin Fox: I am sorry to interrupt, but what do you mean by “dangerous offenders”?

Roger McGarva: In any probation workload, there will be about 2 per cent of offenders whose potential for committing offences—such as sex offences or violent offences against their partners—represents a real danger. We have developed systems to enable us to exchange information about such dangerous offenders and I think that a similar system exists in Scotland. When I was last an active probation manager, in 1997, those kinds of relationships were in their infancy. However, they have developed considerably since then and the Probation Service and the police now have a much closer working relationship. That might cause disquiet among some of my former colleagues, but it would be nonsensical for the Probation Service to have information on people who are dangerous and who are behaving in ways that are causing concern and not to share that information with the police.

The development of the drug intervention programme has brought together the police, the health service, the Probation Service and the voluntary agencies that work with drug offenders to develop strategies in areas and regions to deliver better services to drug offenders. I note from previous evidence to the committee that an overwhelming number of offenders in Scottish prisons have drug problems. The DIP initiative has been good at accessing treatment for offenders. I said that in England and Wales we are hitting all our targets, but we are not hitting the target on the commencement of drug treatment and testing orders, because it appears that the success of the DIP initiative in diverting offenders into voluntary treatment when they are arrested is such that courts are making fewer DTTOs, because they are convinced that offenders have effective voluntary contact with treatment providers. We regard that as a good outcome—if a person is in treatment with a drugs agency, we regard that as a big plus.

I have given two examples of approaches that work well and there are other valuable examples, which relate to access to services such as learning skills and employment help. However, I will add a rider to what I said: our ability to exchange information on offenders between prisons and the community is often not as good as it should be. We developed a risk and needs assessment tool, called the offender assessment system—OASys—which we have used to carry out 500,000 risk assessments. OASys is a joint development of the prison and probation services and will be the standard risk and needs assessment tool that is used in the community and in prisons. The assessment process starts in the community and continues in prison. Through that more structured assessment process, we will be able to plan and provide better services, because the prison and probation services will be able to aggregate information from OASys and identify the services that we are failing to provide.

We are certainly not doing as well as we should be doing in ensuring that offenders are not continually reassessed for drug problems. Instead of assessing someone three times—in the community, when they go to prison and when they return to the community—we should try to provide a thread that runs throughout their sentence, so that we deliver services rather than continual assessment. Currently, that is an area of weakness.

Colin Fox: You said that your information-sharing system is not as good as it could be. Why is that? Is the OASys initiative a response to the problem?

Roger McGarva: First, our technology was not good enough. By the middle of the summer, it will be possible to send OASys assessments electronically between prisons and the community, which should mean that much more information flows between probation officers and HM Prison Service. Secondly, prisoners move too frequently and we do not always know where they are, which sounds pathetic. We need to develop our data systems so that we can track prisoners better as they serve their sentences. Thirdly, we need to share information better with the other agencies that work with prisoners. An assessment by the Learning and Skills Council, for example, should
be used in prison, so that the assessment process
does not start again when a person goes to prison
or returns to the community.

Dr Nellis: I will add one point about information
sharing in answer to Colin Fox’s question. In
England and Wales, there are a number of prolific
offender projects, which are joint probation and
police operations, as are the multi-agency public
protection arrangements, in which other agencies
are now represented. Prolific offender projects
grew haphazardly during the past five or six years
and only very recently—earlier this year—was a
single strategy set out for prolific offenders, who
are by and large young men who commit drug-
related burglaries. The reason why I think that
those projects are germane to the question is that,
in a research programme in which I am involved
that is indirectly looking at how three of the
projects work, it is clear that, despite the fact that
all the projects appear to have a common brief, all
the agencies work differently from one another.
Although the lines of communication have been
set up specifically to improve liaison and co-
operation between the two agencies, communication
remains very haphazard.

I am not sure that I understand all the difficulties
of bringing the police and the Probation Service
into a close working relationship in respect of their
work with prolific offenders. Certainly, technology
is one aspect of those difficulties and the
geographical location of buildings is another. As
researchers, we found that a genuine
improvement had taken place in the way in which
the police and the Probation Service co-operate in
only one of the three areas—indeed, the
improvement was in half of one of the three areas.

16:00

The rhetoric about increased communication
between the agencies is way in advance of
practice. Whatever is written at either central
Government level or at the level of the 42 police
and probation areas in England and Wales, the
lesson to be drawn for agencies working together
to manage individual offenders more effectively is
that communication between the agencies has to
work at the local level. I am talking about the
communication that should take place very locally
and not about the communication that we
understand will take place in the community justice
authorities in Scotland or in the police and
probation areas. If communication and liaison
between the agencies that have not traditionally
been so close to one another is to be improved, a
lot of leeway and discretion will be required at the
local level.

The Convener: We move on to the issue of
home detention curfew. I have an apology for you,
Dr Nellis. At the beginning of the session, I said
that Mr McGarva was the only witness to have
travelled from afar, but you, too, have done so. I
thought that you were at the University of
Strathclyde already, but I now see that that
privilege awaits you.

Dr Nellis: Indeed.

The Convener: We appreciate your attendance
at the committee today.

I was interested to read your paper on the home
detention curfew scheme—indeed, all members of
the committee found it extremely helpful. You
referred to the Dodgson research of 2001 and said
that no further in-depth research has taken place
since then. Is there a need for further research to
be conducted south of the border into how the
home detention curfew system is working?

Dr Nellis: Academics nearly always say yes to
that sort of question.

The Convener: If we assume that you would not
be commissioned to do the research, is there a
need for it?

Dr Nellis: In policy terms, I would probably say
no, for the simple reason that a lot of policy
proceeds on the basis of very limited research.
Home detention curfew has been researched at
least as well as a number of other measures that
have been developed in England and Wales over
the past five or six years.

Given that home detention curfew is best
understood in England as an emergency measure
and that it was not piloted, it was helpful that the
Home Office produced a reasonably substantial
piece of research work on the first 16 months of its
operation. The Home Office need not have
produced such elaborate research after only 16
months. The research gave people a sense of
vindication and, more important, the confidence to
build on and expand the scheme. Academics
make a habit of going round saying that Home
Office-based research is not as adequate as it
could have been. However, a lot of policy
proceeds on the basis of that sort of research. As I
said, the research vindicated the initiative and
gave people sufficient confidence to take HDC
further.

Public confidence in home detention curfew,
which previous panel members were discussing
when I came into the committee room, is a real
issue. That said, the arguments on such a major
issue can be won. Undoubtedly, Governments are
helped to win the public confidence argument if
they initiate a continuing process of up-to-date
research. To do so does not guarantee that a
Government will win the argument, but research
helps Governments to make the right kind of
responses when highly negative criticisms are
made of an early release strategy such as home
detention curfew. I certainly would not say that you could not be confident in home detention curfew unless more research was done. I would make a case for research in other terms, but I would not want to give the impression that home detention curfew is a non-runner until more research is done.

The Convener: I am trying to get a grasp of your views and I was struck by the second-last sentence in your paper, Dr Nellis. Of home detention curfew, you say:

"Perhaps the best that can be said for it is that at the time it was a rational response to the irrational situation of an inexorably rising prison population."

Dr Nellis: In the English context, I think that that was an apt way of putting it. However, making the release process more structured would be sensible. Electronic monitoring would have a part to play in that, although I would not overrate it or suggest that it could be useful without the other support services that we have spoken about.

In an ideal world, we would have introduced a more disciplined release process in circumstances that were less fraught. However, the fact that we introduced it in circumstances that were fraught has unhelpfully coloured the views of the early years of home detention curfew. It seems to me that in Scotland you could introduce the process less urgently and under slightly less pressure. You may therefore get more things right earlier than we did.

Jeremy Purvis: Does Mr McGarva know how many sentences under custody plus have been made under the 2003 act, as a percentage of other disposals? I am sorry to ask you such a—

Roger McGarva: That is all right; I know the exact answer. The exact answer is zero, because custody plus has not been implemented yet.

Jeremy Purvis: When will it be implemented?

Roger McGarva: We implemented the community order part of the 2003 act on 4 April. Custody plus will probably be implemented from the middle of 2006 onwards. Ministers have made a half-public announcement on it, but we are planning for implementation in autumn 2006.

The Convener: The challenge of the present is enough, Mr Purvis; let us confine us ourselves to that.

Jeremy Purvis: I read Dr Nellis’s report with interest. On page 9, you say:

"The suspicion lingers in the minds of many informed observers that the predominantly low risk prisoners who have been eligible for HDC over the 1998-2005 period are in essence the same type of low risk offenders who, fifteen years ago, would not have been sent to prison in the first place."

Dr Nellis: I am only taking my cue from the two HM Prison Service officials whom I quote in the submission. I think that the statement is probably true. In England, over the past decade, we have sent many more lower-risk offenders to prison than we used to. It stands to reason that they are the ones who are assessed as low risk when they come out through an early-release mechanism. There is an illogicality there.

Whatever I may think the limitations of the National Offender Management Service structure are, there has been a determined effort in England to create ways of dealing with offenders in the community. We want to guarantee that low-risk people cease to go into prison or cease to go in for as long as they have been going in. We will have measures such as custody plus to take care of that.

The quote that you read from my submission is a strong criticism of the principle behind an early-release mechanism of the home detention kind. However, because of the situation that the Government faced in 1998, the mechanism seemed to me sensible. In an ideal world, not so many low-risk people would have been going to prison in the first place. However, many such people were going to prison, so we had to do something. Under the circumstances, I do not think that it was a mistake to create a safety valve and a disciplined process of release from prison.

Jeremy Purvis: Please correct me if I am wrong, but I understand that in England there has been a considerable cost benefit but only a marginal difference in reoffending rates. I was interested in your suggestion that, if Scotland were to adopt the same model, we could do things slightly differently. Would one difference be the conditions that apply? From your understanding of our proposals, would we be using a home detention apparatus to introduce, in effect, a supervision element such as that of custody plus?

Dr Nellis: We may look back at the home detention curfew scheme in England as a precursor to the kind of seamless sentences that are now taking more solid shape in England and Wales. Careful thought needs to be given to the issue of additional conditions. The home detention curfew scheme will work only if prisoners volunteer for it. If too many conditions are attached to it, fewer prisoners will volunteer. I do not believe that many rehabilitative hopes can be pinned on any form of electronic monitoring if it is not accompanied by additional professional and social support. However, electronic monitoring is a useful constraint that can be added to the mix.

Great care must be taken in deciding what other conditions are loaded on to programmes such as the home detention curfew, lest we make them so onerous that people on them are bound to fail. The
research in which I am involved at the moment, which is embedded in prolific offender projects, concerns satellite tracking in England and Wales. The people who are subject to satellite tracking are subject to a large number of other conditions. Most of the other conditions that have been loaded on to people's licences are being breached, whereas the satellite tracking condition is not. I am becoming very sceptical about satellite tracking programmes. What is the point of investing in the electronic aspect of such programmes if we make it so hard for people to complete their period of structured release in the community? The programmes are beginning to look a bit self-defeating.

Admittedly, I am talking about three pilot programmes that use a different, unrelated form of electronic monitoring. However, at the moment the issue of licence conditions and how much one can reasonably load on to them, with the expectation that people will comply, is live in my experience.

Jeremy Purvis: Do the other witnesses want to comment on the conditions attached to home detention curfews? I have no further questions.

The Convener: What is your specific question?

Jeremy Purvis: I would like Roger Houchin and Roger McGarva to respond to Dr Nellis's comments regarding the conditions attached to home detention curfews.

Roger McGarva: The overall level of compliance with licences is good. Our compliance rate is about 90 per cent. Nine out of 10 offenders who are released on licence complete their licence without recall, so the programme is successful, by and large.

Our experience is that a high proportion of people who are electronically monitored on HDCs are not under supervision by the Probation Service. Custody plus will start to tie the two together. The Criminal Justice Act 2003 has three strands. The first is about restriction—tagging, curfews and so on. The second is about punishment and offers much more clarity about unpaid work. The third is about rehabilitation—what we do to help offenders to tackle their problems and to provide them with access to services. If those three elements are in place for offenders who come out on licence, we may be able to offer them more in the future than we offer now.

16:15

Roger Houchin: I have some problems with an early-release system that involves discretionary decisions, when I do not know the standards that will form the basis for those judgments. I do not know whether the committee has referred to the Council of Europe recommendation on conditional release, which is helpful. In the council's terms, we have a mandatory but non-conditional release system for short-sentence prisoners—all short-sentence prisoners are released after serving half their time, under no conditions.

Neither our present system nor what we are proposing complies with Council of Europe guidance, which states that all prisoners should have available either a mandatory system with conditions attached or a discretionary system, such as a parole system. I would be much more comfortable with a mandatory system that had tagging or other appropriate conditions attached to it.

We in Scotland should take pride in the fact that, under the Convention Rights (Compliance) (Scotland) Act 2001, the Executive has been taken out of the parole scheme. Moreover, prison governors have forgone the right to extend the time that prisoners spend in prison through disciplinary awards. Those measures, which represent real human rights advances in the management of prisoners, have not been taken up in England and Wales.

By giving governors the power to release people 135 days early, we are by implication giving them the power to deny that to people whom they decide not to release early. Although I do not have experience of the system down south, I expect that such a measure will result in grievances that, if they are taken to Europe, will be seen to be justified unless the system of consideration can be shown to be fair, just and independent. Such a system will be laborious.

I would far prefer to have a mandatory system for short-sentence prisoners that lets them out with conditions attached and that does not place the onus on an administrator to take a decision. After all, such decisions might be made with the aid of one of the risk assessment tools that have attained something of a magical status in our culture—which is something that we should be careful about—or by going through a proper judicial process of considering all the evidence and giving people the chance to advance their own point of view.

The other problem is that such a measure will further concentrate the most deprived people in prisons, because, as Mike Nellis said, the people who pose the least risk will benefit from it. As a result, the prison population will become even more characterised by high levels of reoffending and deprivation.

The Convener: Just to paraphrase, I think that all three of you are saying that a home detention curfew that has nothing else attached or added on will not stop reoffending. Is that correct?
Dr Nellis: That is my view, but, as Roger Houchin has said, the majority of people who are released as a result of home detention curfews pose a lower risk and do not receive other forms of probation supervision. As your colleague Jeremy Purvis said, such an approach might not be sensible. After all, why are those lower-risk people in prison in the first place?

In general, a lot of people out there are trying to work out what combination of electronic monitoring and social support measures will help to reduce offending with particular individuals in particular circumstances. The home detention curfew could probably be used with higher-risk offenders than has been the case, but the experience in England is that it has largely been used with lower-risk offenders.

The Convener: In a sense, you are all echoing earlier evidence that an awful lot of supportive mechanisms have to be attached to the curfews.

Dr Nellis: Yes.

Roger McGarva: Our experience in England is that we need to move much further to tie in help with accommodation, drugs, alcohol, mental and physical health and all the agendas that you have heard about in your previous evidence-taking sessions.

The Convener: I have a final question for Mr McGarva. I am not clear whether enforcement was easily achieved south of the border when curfew conditions were breached or whether that was another challenge that had to be faced.

Roger McGarva: With regard to people on HDCs, there have been some difficulties in enforcing tagging conditions. Indeed, the press has reported some problems in that respect.

I should point out that, in March, 1,600 people were released on HDCs, which is an increase on the previous month. At the moment, 4,000 people are under HDCs in the community. Roughly 13 per cent of those people have been recalled and, of that group, only about 15 per cent have been charged with a new offence; the others have been recalled for breaching their tagging conditions.

In cases in which the two forms of supervision ran parallel, the relationship between the tagging company and the Probation Service could have been improved. There are not many of those cases, but whenever two agencies operate together there are problems with communication—one of your colleagues asked me about that earlier. However, we are growing through some of those problems and I hope that as community orders in England bed in—an increasing number of offenders will be under not only probation supervision, but electronic monitoring, as ordered by the courts—we will have more experience of liaising with tagging companies.

The Convener: On behalf of the committee, I thank you all for being with us this afternoon. As I said earlier, it is immensely helpful for members to be able to ask persons of your experience the questions that we need to ask. We are grateful to you for attending our meeting this afternoon.

I welcome our fourth panel to the meeting and thank them for their patience. With us are Douglas Keil, who is general secretary of the Scottish Police Federation, and Deputy Chief Constable Bob Ovens from the Association of Chief Police Officers in Scotland. We are grateful to you for being with us. I am sorry that you have had to wait for some time this afternoon, but I hope that you found some of the evidence interesting. The picture that has unfolded has been instructive to the committee.

Jackie Baillie: I will ask the standard question that I have asked everybody, so you should be prepared for it. What are the barriers to the effective management of offenders and do you think that the establishment of community justice authorities will help to address any of them?

Deputy Chief Constable Bob Ovens (Association of Chief Police Officers in Scotland): I apologise; I did not manage to be here for the whole meeting, so I have not heard your question before.

Jackie Baillie: I am starting with you, then.

Deputy Chief Constable Ovens: I am just putting a rider on my answer.

In broad terms, we think that the establishment of community justice authorities is a positive step. I listened to the comments from colleagues from south of the border on where they are—their structures are not dissimilar. There is merit in the proposed arrangements. The current arrangements are informal and I always have worries about informal arrangements: some are good, but some are less effective. The bill's proposals to put the arrangements on a proper footing, with a structure, guidance on how they should operate and accountability and evaluation built in, are to be broadly welcomed.

Douglas Keil (Scottish Police Federation): The Scottish Police Federation takes a similar view. We are not entirely at fault with how the proposed new arrangements would fit in with the existing arrangements, but we see clear benefits in co-ordinating and integrating. We share concerns about the need for clarity and properly defined roles, but we support the proposals in general.
Bill Butler: Do you have any concerns about the likely size and role of CJAs? The ACPOS submission states:

“care must be taken to ensure that the remit of the Community Justice Authorities does not conflict with that of National and Local Criminal Justice Boards.”

It also mentions the danger of “mixed messages and duplication of effort” and ACPOS’s apprehension about centralised control in the criminal justice system.

Deputy Chief Constable Ovens: That is the thrust of what we say. On the emergence of the criminal justice boards, we should be sure about where responsibilities sit in relation to the issues that are being dealt with. We recognise that power can become centralised through the arrangements that are put in place and we must ensure that power is placed locally if the drive is to have local accountability. A balance must be struck between what is prescribed from the centre and what is delivered at the local level.

I have not greatly considered the question of the size of CJAs. However, it is important that the authorities reflect recognised geographical areas with which communities can identify. That is difficult to achieve in Scotland, where boundaries are traditionally not coterminous. I am fortunate in coming from Dumfries and Galloway, which is one of the few regions that have coterminous boundaries. Most regions of Scotland do not have coterminous boundaries and striking the right balance will be challenging.

Bill Butler: Do you want to say anything about that, Mr Keil?

Douglas Keil: No. I have nothing to add to what has been said.

Mr Maxwell: Today and prior to today, we have heard evidence on information sharing—and sometimes the lack of information sharing—between the police and other bodies. I do not know whether you heard Mr McGarva of the National Probation Service say that he hoped that a probation officer would tell the police if he identified something. What information-sharing systems do the police have? With whom do you routinely share information?

Deputy Chief Constable Ovens: That is not an easy question to answer, as it depends on the particular situation. I will focus on sex offenders. When the Sex Offenders Act 1997 was implemented, local information-sharing protocols were developed between the police and local authorities to allow them to discharge the requirements of the registration scheme and the risk assessment process. Some of those protocols were reasonably good, but others were not as good. With the passage of time, it was recognised that information needed to be shared with a much broader range of people, as opposed to only two or three key organisations. There is a clear need for good information sharing, which requires a firm basis.

I am sure that the information that members have received has alluded to the fact that for the past two years, following Lady Cosgrove’s recommendations, a group led by the Solicitor General for Scotland has considered information sharing. A high-level concordat has been produced, which is supported by information-sharing protocols that can be used by agencies below. That approach represents the way ahead—I say that not simply because I was on the group, but because the approach achieves consistency. All the issues to do with information sharing, data protection and the sensitive protection of people’s personal information, which has always been an issue, were explored.

Information sharing for practitioners at the local level can be good if relationships are positive, but relationships are often not positive because people change, new people come in and it takes time for them to build up relationships. That was a weakness in the information-sharing arrangements that existed. We cannot have a honeymoon period; there needs to be a firm basis for information sharing. What we are now establishing—which will be supported by the principles that are built into the bill, particularly in relation to the requirement under section 9 for information sharing—will create a much firmer platform and will achieve consistency. We recognise the need to take account of local variations and issues, but we must have a consistent approach to how we share information in the future.

16:30

Mr Maxwell: Do you have anything to add, Mr Keil?

Douglas Keil: You will wonder why you have called me as a witness. That was a perfect answer.

The Convener: Previous experience has indicated that you are a very uninhibited man, at times.

Mr Maxwell: You mentioned some of the work that is being done on national protocols and concordats. Are there any gaps that still need to be addressed beyond that work?

Deputy Chief Constable Ovens: Those high-level documents have established the basis on which information sharing can be taken forward. We must now roll that out to ensure that there is no gap between the policy and the practice.
People such as myself, who have been involved in policy for some time, know that a gap often arises, which we have to bridge by putting in place training, infrastructures and delivery mechanisms. The violent offender and sex offender register is one of the tools by which people can share information. It is important that people have the right awareness and training, so that people at the front end are not saying to themselves, “I’m not sure whether I can share this piece of information. I don’t understand the legal basis for it.” That is what we have to tackle. We have to move the policy on into practice.

**Mr Maxwell:** I wonder whether Mr Keil can tell us the federation’s view on that. Individual officers have to act as data gatherers if they have any concerns. In the past week or so, the Fire Brigades Union has expressed concerns about whether the data that are gathered by firefighters are being shared with other agencies. Is there a similar problem in the police service?

**Douglas Keil:** Mr Ovens is best placed to tell you about the policy and the arrangements at the police force level. However, I represent the individual officers who are involved in many such partnerships and the question of information sharing comes up. As Mr Ovens said, there can be uncertainty in relation to the legislative position—in relation to sex offenders, for example, but on other matters as well. Everybody is aware of data protection and has been for some time. The Freedom of Information Act 2000 is a relatively new piece of legislation that is causing people to question whether they can share information with this body or that body.

It is extremely difficult to train across the police service in Scotland. There are 16,000 officers and, with the addition of support staff, the figure is heading towards 25,000 people. If we were to give even one day’s training to every officer and member of support staff, the cost would be enormous—in the region of £3 million. Therefore, training has to be done on an as-and-when basis and as best we can.

That is more or less it from my side of the fence. The arrangements that are now in place and how the new proposals will impact on them are matters that are in Mr Ovens’s field.

**Colin Fox:** Let us focus on the transition of offenders from prison into the community. Do you have a view on how the present system works and how it could be improved?

**Deputy Chief Constable Ovens:** We fully accept that each organisation and agency has a role to play in that, and the sharing of information, especially regarding someone’s time in prison, is critical. When an alleged offence has taken place, that is reported through the Crown Office and the information that is gathered by the police forms the basis of a prosecution. Someone may be sent to jail on the basis of that information. In the past, the police have stepped out of the loop at that point, and only when the individual has returned to the community have the police come back into the loop.

That process gives us an incomplete picture, although we are now bridging that gap. There is a flow of information between all the agencies, which allows us to unpick what has happened in prison, to understand the dynamic around an individual and—although we are not specialists on intervention programmes—to understand the output from those programmes. Such a flow of information helps us to understand the critical factors in an individual’s life that will make them a higher risk at certain times. Issues such as alcohol intake and relationships—or the lack of them—are important in that respect. We then work in partnership, with criminal justice social work in particular, on the management of that individual.

It is important that the line between our role and that of criminal justice social work staff is not blurred. They are the professionals—along with other support organisations, such as the voluntary sector—who will support and hopefully deliver the services that will perpetuate an individual’s intervention programme. Our role involves not only registration, but the broader management issues in which society expects us to be involved, particularly in the areas in which we are skilled. If we gather information that we can convert into intelligence, for example, we may start to identify an emerging picture. It is to be hoped that that picture does not suggest to us that someone is likely to offend, but if it does, we can read the signs and, by joining up with other agencies, we can understand any escalation in the level of risk.

**Douglas Keil:** I understood your question to be on the broader issue of release back into the community. We took a close look at the bill and the reported aims—reducing reoffending; easing people’s transition back into the community; building or re-establishing relationships; and access into training and employment—and we cannot argue with any of them. Those aims are entirely laudable. The problem is that often the first time an operational police officer knows that someone is back in the community is when they commit another offence. As a society, surely we could be slightly better informed; that comes down to information sharing and simple communication with other agencies, which can only be a good thing.

**The Convener:** Are there specific issues for the police in relation to the enforcement and breach of home detention curfews? Who would you expect
to trigger the information that there has been a breach?

**Douglas Keil:** We took a close look at that because we are always interested in the impact on the police of new legislation, particularly in relation to resources. From my understanding of the bill, it is estimated that as many as 300 people a year would breach a home detention curfew—that means that 300 people will have to be looked for, apprehended, and put back in prison or back in court. That will have a cost implication. The financial memorandum said that the costs would be absorbable, but that is the case only if we accept that some other police function or duty will not be carried out.

In direct answer to your question, I imagine that whichever company was monitoring the home detention curfew on an electronic monitor would advise the police that there had been a breach, and that the police would have to take action on that.

**Deputy Chief Constable Ovens:** I do not have much to add to that. The devil will be in the detail and it will depend on the guidance. In my experience, not every breach is referred to the police. Usually there are rules about the nature of the breach and the number of breaches that can occur before the police are brought in. That is all I can say without having had sight of the guidance.

It would not necessarily be helpful if every breach were to be referred to the police. I am thinking not only of resource issues, but of the aim of integrating the individual back into society. In that regard, it is important to provide the proper support and to have in place arrangements in which the offender can have confidence.

**The Convener:** If you do not expect the police to be involved in every breach, who will be involved? The tagging company?

**Deputy Chief Constable Ovens:** The tagging company will have guidance relating to the nature of the breach. My understanding is that the breach would probably be dealt with by criminal justice social work or the Scottish Prison Service. Clearly, in serious cases—which is why I say that the devil is in the detail—if someone is absent and cannot be traced, there will be a need to inform the police. As we have heard, the way in which the home detention curfew is used will depend on whether the individual in question is a low-risk or a high-risk offender. A proper risk assessment will have to be done and questions will have to be asked about when the triggers for the involvement of other agencies will kick in.

**The Convener:** Would you expect one of the conditions before release on home detention curfew to relate to who is responsible for dealing with a breach?

**Deputy Chief Constable Ovens:** Yes. That would have to be included in the guidance.

**Jeremy Purvis:** From your written evidence, it is fair to say that you think that home detention curfews will have a positive impact overall on the criminal justice system. Interestingly, however, you go on to say:

“Risk assessment and a robust supervision process are essential”.

We have heard that point from previous witnesses. What role should the police have in relation to that supervision? Perhaps Mr Keil would also like to answer that question.

**Deputy Chief Constable Ovens:** First, you have to deal with the issue of risk assessment. I am sure that everyone who has given you a submission has said that that is a key element. Multi-agency risk assessments are the best, because they allow information to be shared in a way that ensures that the risk assessment is based on all the known information and they enable agencies to come to an agreement on how they view the risk.

I should mention the use of risk assessment tools. Risk assessment is easy to talk about, but complex to deliver. Certainly, the management of sex offenders brought us into areas of which the police had previously not had a lot of experience, in terms of evaluating and validating the information that goes towards the drawing up of the risk assessment tools.

I am not an academic, but I have learned over the past while that not a lot of research has been done in Scotland in this area. Other places, particularly in North America, have done such research and the best thing that we can do at this point is to transfer that research into the Scottish environment. One of your colleagues asked about research and I have come to the view that as much research as possible should be done in a Scottish context. That would ensure that the interventions and risk assessments would have a solid basis.

I have digressed from the answer to the question that you asked. I am struggling to remember the second part of your question.

**Jeremy Purvis:** It concerned the supervision element. It would be helpful if you could say whether you have any role at the moment with regard to the supervision of short-term and long-term prisoners upon release and what role the police should have if we change the system by introducing curfews with conditions.

**Deputy Chief Constable Ovens:** Douglas Keil might want to answer that question as well.
As the bill stands, when we talk about people who would be subject to home detention curfews and those who are sex offenders, we are talking about two different groups of people. Clearly, we have a significant role to play in the supervision of sex offenders; information is made available to us and we work in partnership on that. If I understand the bill correctly, home detention curfews are aimed at a different group of offenders and our role will be significantly smaller. Nonetheless, we will need to create appropriate information-sharing arrangements to ensure that all relevant information is available to the risk assessment process.

16:45

Douglas Keil: Mr Ovens explained the police's role in relation to sex offenders, but I will broaden that out and consider what sort of offender will be subject to a home detention curfew. A wide range of conditions may be applied to the curfew—the individual might have to stay in a particular place at a particular time, or indeed to stay away from a particular place at a particular time. In the case of the latter, I imagine that we would almost certainly be involved if a breach were to be reported by the electronic monitoring company.

Mr Ovens is right to say that we will not be involved in every breach. The Hamilton youth court experiment is an example. In the first instance, the electronic monitoring company is notified of a breach. It may well be due to a technical fault, but if the individual is found not to be where he or she should be, we become involved. The direct answer to your question is that it depends largely on the conditions that are imposed on the home detention curfew.

Jeremy Purvis: At present, the police are not informed about short-term prisoners who are on early release on licence and do not have a role in their supervision. You will have a role in policing home detention curfews when they are introduced, but would you prefer to go further? Victim Support Scotland said that if someone is released on a home detention curfew there should be a mechanism or protocol whereby the community or the victims are informed. Should there be a role for the police in that?

Douglas Keil: I do not think so. I support partnership working, but the police have a clearly defined role. To date—with the exception of sex offenders—there has been little role for us when someone disappears into prison and the same applies on their release. I do not think that the bill will change that dramatically.

The Convener: Sections 9 and 10 cover serious and sex offenders and the assessment and management of the risks that they pose. My question has been partially answered, but I want to be clear. Do the new duties under the bill for assessing such offenders represent an improvement on the existing joint working arrangements?

Deputy Chief Constable Ovens: Yes.

Douglas Keil: Yes.

The Convener: Are there any resource implications for the police?

Deputy Chief Constable Ovens: As we state in our submission, sections 9(1)(b) and 9(1)(c) will bring us into the risk assessment and management of a group of individuals that we do not currently assess or manage, even informally, to a great extent. That will bring us a new area of work. We can see the merit in that, but we need more detail and definitions. We have asked Executive officials to tell us the number of offences that they envisage and the type of offences that will fall within the provisions. We can make guesses about the types of offences; section 9(1)(b) refers to a person who “has been convicted on indictment of an offence inferring personal violence”.

We can imagine what offences that might include. However, it would be helpful to hear the detail from the Executive, which should be able to quantify the numbers so that we can take a more informed view. The bill will take us into an area of work in which we are not currently as active as our partners.

Douglas Keil: Even before the changes were proposed, officers who work in the area often told me that if they had more time and staff they could do a better job. When the Parliament passes new legislation, it can be difficult for us to assess precisely what the impact on resources will be. We should be slightly smarter in looking back and saying, “Experience has shown that this will involve 30 officers’ working years, so the resources should be made available.” As Mr Ovens said, we will need to examine the new proposals closely to find out what the impact will be.

The Convener: Thank you both for being with us and for your helpful contributions. We are grateful to you.
Management of Offenders etc (Scotland) Bill: Stage 1

14:11

The Convener: Agenda item 2 is stage 1 of the Management of Offenders etc (Scotland) Bill. We are pleased to welcome again the Minister for Justice, who will deal with the committee's questions. I also welcome the minister's colleagues from the Justice Department. Susan Wiltshire is branch head of the criminal justice group projects division, Brian Cole is head of branch 1 of the community justice services division, Andrew Brown of the reducing reoffending division is the bill team leader and Sharon Grant is head of branch 2 of the community justice services division.

I invite the minister to make some introductory remarks.

Cathy Jamieson: I will make short introductory remarks. As you see, a number of officials are with me. I have suggested to them that, as the meeting progresses, rather than wait for me to forget to make pertinent points, they may jump in where appropriate and remind me about important points that the committee would want to hear about.

I am pleased to appear before the committee. I have heard and read with interest the points that have been raised in earlier evidence sessions, and I expect today's discussion to be interesting and lively.

The bill is a major plank of the wide-ranging reform of the criminal justice system that is under way, so it is important not to view it in isolation from other changes that we are making. In particular, we should think about changes in the High Court processes, the reforms that are about to come to fruition in summary justice or as a result of the establishment of the Sentencing Commission and the Risk Management Authority, and work on police and community safety initiatives. Our commitment to safer and stronger communities and to ensuring that we improve public safety underpins all those changes. The criminal justice plan, which was published last December, gave an overview of how we intend to progress the comprehensive reform package. I will confine my brief remaining remarks to how the bill came about.

It is important to recognise that the problems of reoffending are a major issue. Our consultation on reducing reoffending raised many issues—many of which we will discuss this afternoon—but one thing was clear throughout the consultation process: the status quo is simply unacceptable and is not an option.

Much of the bill is the Executive's response to many points that different agencies made during the consultation. The bill's provisions are designed to address identified weaknesses, in particular the lack of a strategic approach, accountability and direction; the limited integration of, and communication among, criminal justice agencies; duplication and inconsistency of service delivery that sometimes happens; and the overreliance—if I may use that word without its being taken wrongly—on short-term custodial sentences at times.

I am not so naive as to expect that any one piece of legislation will entirely cure us of the blight of crime or reoffending, but it is clear to me that the reforms must be in place if we are to tackle the problems meaningfully. The bill represents a real opportunity for us to consider how we can improve management of offenders in our communities for the benefit of victims, offenders, criminal justice professionals—all of whom want to do a good job—and, more broadly, the people of Scotland. I will confine my opening remarks to what I have just said and I hope that we can answer questions.

14:15

Maureen Macmillan (Highlands and Islands) (Lab): What effect will the bill have on levels of reoffending? You are saying that it is about structures, so if the bill itself will not be the vehicle for reducing reoffending, who has the lead responsibility for reducing levels of offending?

Cathy Jamieson: There are a number of important points to make in answer to those questions. As I said in my opening remarks, no single bill or structural change will reduce the levels of reoffending because the nature of offending behaviour and of reoffending is complex. We need a strategic approach across all agencies in the criminal justice system to ensure that tackling and trying to reduce reoffending is a goal for each agency and that the agencies are held to account for how they do that.

With the bill, we are trying to deal with issues that were raised in the consultation and which require a legislative solution, but the bill is part of a much wider reform agenda. One of the key points on that wider reform is that, for the first time, we will set up a national advisory body that I, as minister, will chair. We expect that body to establish how best to move on, how best to measure reoffending rates and to set challenging but realistic targets that will be reflected in the national strategy. I know that the committee took evidence on what might be realistic targets to set.

The second question was about who would have lead responsibility for reducing reoffending. Part of the reason for establishing community justice
authorities is to ensure coherent local focus. The core professionals who have responsibility for working with offenders will be brought together and charged with the responsibility for putting local strategies and plans in place in order to break down some of the barriers and problems that exist. Although I would certainly not suggest that the bill is the only thing that requires to be done, it is critical that we put in place the right legislative framework at local level. We have made some changes to the governance of the Scottish Prison Service, and that relationship will be critical, but the bill must also act as a catalyst and a focus for all the agencies to acknowledge that there is a problem with the reoffending rate and take on the problem.

Jackie Baillie (Dumbarton) (Lab): I welcome the minister’s analysis, but I will explore it further. A number of witnesses said that the greatest impact on reoffending can be made through social policy; for example, providing access to housing and to employment and tackling poverty. As you acknowledge that we need to pursue that wider agenda, will you tell us how we can do that, allied to the criminal justice agenda?

Cathy Jamieson: That, too, is in an important question. It is a correct analysis to say that we must, if we want to reduce re offending, reduce offending in the first place. In some instances, that means early intervention, but it also means a robust framework to deal with the problems of youth justice, including antisocial behaviour in communities. It also means that we have to be prepared to consider radical options for keeping out of the court system people who should not be in it.

On the social policy agenda, the community justice authorities will be made up of the component local authorities, but the other partner agencies will have a responsibility to work with them, and the community justice authorities will have a responsibility to reach out to some of those agencies. As Jackie Baillie will be aware, people are much less likely to reoffend if they have access to employment, have roofs over their heads, their addictions are dealt with and they are literate, numerate and able to make their way in the world. All those matters can be dealt with in a coherent framework.

Issues were raised during the committee’s evidence-taking meetings about which bodies should be under a statutory duty to co-operate. It is my view that the key players ought to be under a statutory duty to co-operate with one another, but we must also consider the wider partners that need to contribute, such as housing and health authorities.

Mr Stewart Maxwell (West of Scotland) (SNP): I want to follow up on the bodies that should have a statutory duty to co-operate and on the organisations that should be part of the wider body that is involved in trying to reduce re offending. Obviously, a large number of organisations are involved, some of which have been mentioned. Under the bill, the Scottish ministers, the community justice authorities and local authorities will be involved statutorily, but why is that right and proper, when other bodies will not have that statutory duty?

Cathy Jamieson: The best way to approach the issue is to consider which agencies and organisations have the sole purpose of dealing with the criminal justice agenda. We need to try to ensure that the Scottish Prison Service and criminal justice social work departments in local authorities are compelled to co-operate with one another to produce plans. There is a range of other local partners, some of which I alluded to, such as local health services and voluntary organisations that work with offenders. Obviously, such groups have a slightly different role, but we need to ensure that they are involved. We do not, however, want to compromise the independence of other key players, such as the Crown Office and Procurator Fiscal Service. We must ensure that all those bodies are brought together in a wider grouping and that they co-operate.

A fundamental point that came through strongly in the consultation is that the work of the key players—the Scottish Prison Service and criminal justice social work departments—results in barriers that mean that offenders are not dealt with because there is no joined-up service. I intend to tackle that issue, particularly through the bill.

Mr Maxwell: I understand that the key players are those that are solely focused on the criminal justice sector, but surely there are other organisations whose sole purpose is to deal with offenders, reoffending and various other aspects of the criminal justice system—I am thinking of organisations in the voluntary sector. Should not they be involved statutorily?

Cathy Jamieson: Such organisations are not statutory organisations, which is one difference, although I hope that I have outlined that such organisations are important players. However, the key players that have statutory responsibility for supervision of offenders are the Scottish Prison Service, for people who are in custody, and the criminal justice social work departments, which are responsible for probation orders and community sentences, when there is a statutory order from the court. It is important that we bring in some of the other players; we have an opportunity to do so, not just at local level, but through the national advisory body. That will ensure that organisations that have expertise in working with offenders are on board to help us set the strategy.
Mr Maxwell: In effect, my question was about how important it is that voluntary organisations are on the inside, rather than on the outside. I am sure that you appreciate that.

Cathy Jamieson: Absolutely. I am trying to get across the point that, although the role of such organisations is slightly different, it is nonetheless important. If we get the overall planning right, we will have an opportunity to give those organisations a greater say, not just on delivery of services, but in helping us to shape policy.

Mr Maxwell: There seems to be a lack of clarity among some organisations that have been in touch with us about exactly how the structures that the bill will introduce will operate. How will the system operate and how will the structures look on the ground for the various organisations that you have mentioned, including the SPS?

Cathy Jamieson: There are a number of issues to consider, including the final shape of the community justice authorities, their number and the geographical split. We have been consulting on those issues, and we await the final analysis of the consultation. The Scottish Prison Service is conscious that it will have to consider how it operates and how it may have to change its practices and structures so that it can play its full part in developing local services. The SPS is working on that.

Mr Maxwell: Exactly how will the SPS relate to CJAs locally?

Cathy Jamieson: I am not sure what you mean. Do you want to know how they will operate?

Mr Maxwell: I want to know how the SPS will relate to the CJAs. Obviously, it has not yet been decided how many CJAs there will be but, for clarity, how will the relationship between the SPS and the CJAs work, irrespective of how many CJAs there are?

Cathy Jamieson: I suggest that the best way to look at that is in terms of the outcomes that we expect from community justice authorities. The idea is that a localised plan will be produced for management of offenders. Some of the gaps that were identified through consultation related to a lack of clarity or a lack of a joined-up approach being used in a person’s coming out of prison and their being reintegrated into the community. I expect the CJAs to improve the ability to provide throughcare, to get that working on the ground and to deal with some of the problems around housing, access to services and so on. That will mean—to put not too fine a point on it—that people in the Scottish Prison Service and people in criminal justice social work at local authority level will need to work more closely together in setting out how they will manage that locally.

I am not sure whether that is what you were asking about or whether you were asking whether the SPS will restructure itself completely.

Andrew Brown (Scottish Executive Justice Department): Perhaps I can add something that might help to clarify the situation. The issue for the SPS is dependent on the shape and number of CJAs. A CJA may have one, two or no prisons within its boundaries, so it is difficult for the SPS to develop a model before we know what the CJA boundaries will look like.

Also, there is an issue about local and national prisons; a number of SPS estates serve a national function. The SPS is working on several different models to work out how it can best configure itself with the CJAs. It is considering the emphasis on the role of local prisons and the desire to keep an offender as local as possible within the prison estate. The SPS is working carefully on that, but that work will need to continue in conjunction with the outcome of the consultation exercise.

Mr Maxwell: My question was not related to the internal structure of the SPS. I understand that there is difficulty in that we have not yet reached the point at which we know the number of CJAs, but the roles of local prisons and national centres for the SPS, and the relationship of those two different types of prison to the CJAs, will be important for all the organisations that will be involved.

Cathy Jamieson: That is correct and that relationship will be very important for the organisations, but if the starting point is the need to manage offenders more effectively, the structures and relationships should follow from that. I have always been keen not to say, “This is going to be the structure—we’ll see what happens afterwards.” The point that Andrew Brown made is absolutely correct. Once we have got a decision on the number of CJAs, the people on the ground in those areas and the Scottish Prison Service must work together. The key principle is the desire to improve the service and to break down some of the barriers that were identified during consultation.

The Convener: A specific example for Stewart Maxwell’s question may be a large prison that has a diverse population from all parts of Scotland. What is not clear to the committee is whether such a prison, which is part of the SPS, would have to try to relate to a number of CJAs because its population may, at various times, be released into different parts of Scotland.

Cathy Jamieson: That large prison may currently relate to 32 local authorities. We are trying to develop a more coherent approach, such that there would be a single point of contact with the CJAs and a clearly identified local plan, rather
— 230 —

There are important proposing the powers, you may be received today, it states that it is concerned that, in desirable. In fact, in the briefing paper that we expressed about the ministerial powers of Convention of Scottish Local Authorities has effectively at the end of the day.

ensuring that we manage offenders more others accountable, for improving practice and plans in place and to be accountable, and make forward, to ensure that we have the appropriate responsibility and remit are to drive the agenda

be aware that the plan is not to transfer staff from across different local authority areas. Members will be important that a CJA has a chief officer in post to try to get a more coherent and integrated approach, that has not necessarily happened.

We have seen inconsistencies in some of the inspection reports. We have also seen good practice not being shared and practice not necessarily coming up to the standards that we want in the future. It is important to move on from there and to manage the whole process more effectively, so that we can reap the benefits of the good practice that exists.

Bill Butler: Are you confident that CJAs will deal with the inconsistencies that you have mentioned and will ensure that good practice is shared?

Cathy Jamieson: One of the reasons why it will be important that a CJA has a chief officer in post is to ensure that that happens. There must be an individual who has responsibility for working across different local authority areas. Members will be aware that the plan is not to transfer staff from local authorities but to have a chief officer whose responsibility and remit are to drive the agenda forward, to ensure that we have the appropriate plans in place and to be accountable, and make others accountable, for improving practice and ensuring that we manage offenders more effectively at the end of the day.

Bill Butler: I turn to the doubts that the Convention of Scottish Local Authorities has expressed about the ministerial powers of direction in section 2(10). COSLA questions whether those powers are really necessary or desirable. In fact, in the briefing paper that we received today, it states that it is concerned that, in proposing the powers, you may be “setting a dangerous precedent in relation to Ministerial control of local services”.

Do you see it that way?

Cathy Jamieson: No, I do not see it that way. There is, perhaps, a bit of a misunderstanding around the fact that the powers of direction are intended for the CJAs, not for individual local authorities. That is an important distinction. It is not the Executive’s intention to micromanage local authorities. We have made it clear that the proposal does not include a staff transfer, which means that local authorities will not have to transfer staff, unless they choose to do so. A group of local authorities might see that as a better approach and a better way to work, and it would be up to them to consider that.

It is not our intention to micromanage the CJAs either, and I hope that guidance and discussion will be sufficient to ensure that we get consistency and comparability across the CJAs. Nonetheless, I believe that it is important that we have a power to ensure that, if a CJA is not delivering, we can give it direction on how it should prepare its plan or operate on the ground.

Bill Butler: Do you envisage a CJA being in that situation and those powers being used?

Cathy Jamieson: I hope that that will not happen and that we will only ever consider using the powers infrequently, after we have gone through a process to deal with problems, involving inspection. However, it is important that we have the powers to use if necessary. I stress again that this is not a question of our taking powers to direct individual local authorities. The bill also proposes powers to intervene at various stages that are comparable with powers that have been taken in education. I know that they were not universally welcomed by local authorities, but they were accepted nonetheless.

Bill Butler: For the record, and to satisfy my inquisitiveness, will you give an example or two of the difference between the power of direction and the power of intervention? There seems to be some doubt about that given the local authority apprehensions that I mentioned.

Cathy Jamieson: As I see it, the difference is that the proposed powers of direction in the bill are aimed at the CJAs themselves. If the CJA’s chief officer did not perform, did not produce plans and did not do the work that was expected, the Executive would have the power to direct the CJA rather than the local authority. The difference for local authorities is that there could be staged intervention if an authority failed in its duty to provide a service. Andrew Brown might want to comment on that; he has been involved in the proposals.

Andrew Brown: There are important differences between the powers of direction and the powers of intervention. The powers of intervention are a staged approach to dealing with
a failure by either the CJA or a local authority within that CJA, which has been reported to ministers. The intention behind the powers of direction is a little more subtle. The aim is to get the CJAs to perform in a consistent way, by which I mean for them to monitor and report on performance in a way that allows comparison between the various CJA areas. Without that comparability, the danger is that we have different models for monitoring in each CJA area. That would make it difficult for the minister or, indeed, a national advisory body to compare the success rates of different CJAs in achieving their objectives.

As I said, although the powers of direction will be needed only infrequently, they might be needed to ensure that the benefits that should result from the introduction of coherent and consistent legislation, under which the CJAs will provide services, are replicated in the same way across the country.

Bill Butler: I am obliged.

The Convener: Will the minister clarify whether the structure will sit on top of the existing criminal justice social work groupings? If not, does she expect the groupings to wither on the vine?

Cathy Jamieson: The idea behind the proposed CJAs is that they will build on good practice and on the work of the existing groupings. We do not expect the CJAs to act as another layer and above the existing groupings. We recognise that some of the groupings have come together. We want not to dismantle all that work, but to build on it.

The Convener: Will the members of the groupings be clear about that? If the CJAs are not to be another layer, surely the groupings either stay put or evaporate?

Cathy Jamieson: The idea is for the new CJAs to supersede the existing groupings. We have taken account of the areas where the groupings have come together. Whatever we do with the final map, we will not completely dismantle the relationships that have built up; we will try to improve on them and to get them to work together more coherently.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I seek clarity on the powers of direction. I accept what the minister said about the power not being intended to direct individual local authorities. However, a CJA chief officer could well be acting specifically at the behest of the local authorities in the CJA area. Mr Brown said that what he called the subtle power of direction could be used for reasons of simple comparability—to compare different regions across Scotland—but surely that is different. In effect, there would be a power of direction over the local authorities that are responsible for running the CJA not because of a considerable failure but for reasons of comparability and neat auditing. Surely we would expect other systems, including those of Audit Scotland and others, to audit success or otherwise.

Cathy Jamieson: I do not accept that the power is a power to direct individual local authorities. The important point to remember is that local authorities will continue to employ the staff and to work within the CJA to ensure that local services are delivered. Obviously, the member will be aware of the background; he will know that, because funding is to be provided by the Executive, people will have to meet a number of national standards.

Given that the Executive is trying to work on a national basis to tackle the problems of offending across Scotland and thereby to reduce reoffending, I hope—indeed, I expect—that CJAs will understand the need to work with each other in a way that is compatible. I also hope that they will understand the need for us to compare systems. There are issues around information technology systems and how we would measure a reduction in reoffending rates and a range of issues. However, it is not my intention to use the power to direct individual local authorities.

Jeremy Purvis: The minister might have seen the evidence that we received from the police, who suggested that there might be a conflict of duties and responsibilities between CJAs and local criminal justice boards. In addition, local authorities told us that they see a potential conflict between the role of the CJA chief officer and chief social work officers. An alternative model was suggested under which an existing director of social work, for instance, could undertake the role of CJA chief officer. How do you respond to the concerns? It seems to me that a model has evolved that is based on existing practice within the criminal justice social work groupings. Have you considered another approach?

Cathy Jamieson: I will deal with your last point first. Although it was certainly the intention that there would be an identified officer within the criminal justice social work groupings, that has not happened universally. That is one of the problems that has emerged. I accept that it has been suggested to the committee in evidence that there might be a conflict of interests, but the chief social work officer in a local authority area is responsible for a wide range of duties. The idea of having chief officers of the CJAs is to ensure that the correct strategies are in place across the different local authority areas; it is not about those chief officers having responsibility for managing individual social workers or social work departments. That role will still fall on chief social work officers.
I accept that there could be creative tensions in the relationships between CJA chief officers and chief social work officers, but I do not think that that will always be a bad thing. What is important is that people will be working together to improve services.

It is important to acknowledge that the purpose that CJAs are being set up to serve is different from that which criminal justice boards were set up to serve. The role of criminal justice boards is to focus on the efficient operation of the system in reaching and enforcing speedy disposals through the courts: it is about getting that process up and running. The CJAs will play a role at the opposite end of that spectrum—they will deal with what happens to people once they have been through the courts and have been sentenced. The key themes of ensuring speed, efficiency and effectiveness run through the work of the CJAs and the boards, but they are designed to do different jobs and I do not think that they will be in conflict. In fact, the reverse is true: if they work together, they should be complementary in achieving their objectives.

Jeremy Purvis: Are any of the groupings across which a chief social work officer is co-ordinating failing badly? Which groupings are they?

Cathy Jamieson: I am not sure that it would be helpful to name and shame the individuals concerned without giving them due warning and it is not my practice to do that. If you examine some of the inspection reports that have been produced and some of the evidence that has emerged from the consultation exercise, you will see that it is not universally the case that other agencies have been able to channel all the work through one officer, even when that officer has been identified as a single point of contact. At times, some local authorities have felt it necessary to have each of their officials involved in processes. That is not just inefficient; it is not helpful from the point of view of getting the strategy right. I hope that Mr Purvis will appreciate that I do not feel that it is appropriate to focus on a particular authority.

Brian Cole (Scottish Executive Justice Department): Only one of the eight existing groupings has a single manager for the whole grouping, although a second grouping is about to go in that direction. The constituent authorities of each grouping have chief social work officers, but to date only one grouping employs the practice of having a single manager for the whole grouping.

The Convener: I have studied the provisions in the bill that constitute the position of the CJA chief officer. Will not that person just be seen as your spy in the camp?

Cathy Jamieson: I do not expect that to be the case. Our proposals are not about the Executive being in opposition to what goes on at local authority level. My concern is that we need to have a strategic approach across Scotland. Local authorities were keen to retain the delivery of criminal justice social work services. Members will recall that there were some fairly heated discussions about whether there should be a single organisation to deliver everything. I listened carefully during the consultation exercise and have taken the view that we should go for local delivery of a national strategy. The individuals who will be appointed to the CJA chief officer role will be appointed by the CJAs, so it is not a question of ministers parachuting people in. Our approach is to have a national strategy, but with local delivery of services. On the basis of the consultation, that seemed to be the best way forward.

The Convener: I have a final question about the chief officer role. It seems to me that there is a fundamental flaw, in that they will be paid not by the Scottish Executive but by the CJA.

Cathy Jamieson: We will provide the resources for that.

The Convener: I am sure that that will be a comfort to those who end up being members of the CJA, but nonetheless I presume that the chief officer will be an employee of the CJA, which will determine their conditions of employment.

Cathy Jamieson: Yes.

14:45

The Convener: However, under section 4, if the chief officer thinks that an authority is failing he or she is to report not to the CJA or to the constituent members of that grouping but to the Scottish ministers.

Cathy Jamieson: That is right and proper, because we need to have that relationship between what goes on at the local level and what goes on nationally. We will have a national strategy; it is in the interests of public safety for us to take a strong line on dealing with the problem of offending and reoffending—I am sure that you welcome that. We must try to change individuals’ patterns of behaviour by ensuring that the right resources and programmes are in place and that there are better transitional arrangements between custody and the community. Frankly, up to now the status quo has not been able to deliver that. As I said, I appreciate that there will be what we might describe as creative tensions in some relationships, but nonetheless it is right and proper for the Executive to have an overview of the matter because that is in the public interest.

The Convener: “Creative tensions” sounds like a ministerial euphemism for a big barney.
Cathy Jamieson: No, I do not think that that is the case. As I said, we worked hard during the consultation exercise to try to understand what is important to local authorities in relation to the delivery of services. We listened to local authorities and we listened to criminal justice social workers, who make a wide contribution, particularly in the more remote areas, including those that are covered by the island authorities. We took the view that the correct route was not to transfer staff into a single agency but to try to get the right balance between national direction and oversight of the strategy and local delivery. That is exactly what the bill is intended to achieve.

The Convener: You do not think that there is an irreconcilable conflict in asking the chief officer, to put it bluntly, to clype on the people who pay his or her salary?

Cathy Jamieson: It is not a question of anybody being a clype. At the end of the day, it is all public money and public resources and if we are to change things and improve the services that are in place we need to have good working relationships between what goes on at national level and local delivery. Far from being the clype, the CJAs will be the catalyst in ensuring that we have a joined-up approach, not just at local level within agencies but between national and local services.

Maureen Macmillan: You mentioned local delivery of services and the island authorities. As you will know, those authorities have expressed concerns because they stand outside the current groupings. They think that they have an efficient, holistic system; in the islands, few people are sent to prison and most offenders are dealt with in the community. The island authorities do not have separate criminal justice social work departments and social workers have dual roles. Under the proposals, will the island authorities be able to continue with their holistic approach?

Cathy Jamieson: There are two important points. First, there is no reason why they will not be able to continue with their current approach, which you describe as holistic, because their front-line staff will not be transferred. We heard a lot about that during the consultation, particularly from the island authorities. I also recognise that it is likely that fewer people will be involved in the criminal justice system. On a recent visit to the Western Isles—I was there about something entirely different—a number of people commented that the introduction of electronic monitoring and some other community penalties has been appropriate in their communities because people are able to remain on the island and serve their sentence in a different way. They can remain in employment and support their families rather than being in jail on the mainland, and I was interested in that approach.

However, it would be wrong to suggest that everything will continue as before or to give any guarantees. The important thing will be for people in the islands and other more rural areas to get the benefit of being part of the wider CJA. There are issues around practice, consistency and support for the people who deal with the criminal justice social work case load. I am concerned that we should recognise the particular needs of the islands and remote communities. Although we are having discussions with the island authorities, I am not convinced that having them as stand-alone units is the best way in which to protect their interests.

Maureen Macmillan: Funding has also been raised. At the moment, each island authority has separate, ring-fenced funds. They are worried about losing out financially if they move into a larger grouping. Have you discussed that?

Cathy Jamieson: A number of discussions are being held. To sound a cautionary note, I stress that resources need to be allocated to tackle the problems. The CJAs must identify where the problem areas are and get the right programmes and resources in place to deal with them. Discussions have been continuing, and Andrew Brown might want to comment on the position that we have reached.

Andrew Brown: The minister is correct to point out that a number of discussions are going on. Colleagues are up in the Highlands and Islands this week and next week to talk to local authorities and understand their concerns. Consultation is proceeding on the CJAs, not just on their boundaries but on how they will operate and arrive at decisions. We are concerned to ensure that larger CJAs do not ride roughshod over the smaller partners. I will not say any more on the matter now, other than that we are aware of the concerns and will put them into the mix when assessing the results of the consultation.

The Convener: Let us turn to transition and throughcare. What more do you think prisons could do to assist offenders’ transition back into communities?

Cathy Jamieson: There are a range of issues around the transition from prison back into the community. It would be too simplistic to say that preparation for returning to the community must begin at as early a stage as possible in the custodial career. Part of the current problem, which has been identified and highlighted in the evidence that the committee has received, is that prisoners serving short-term sentences can have little or no opportunity to get to grips with some of the problem areas in their lives. There might have been a punishment element to their sentence, but they might return to their local communities without rehabilitation having been attempted. The
clear message that I want to get across throughout our reforms is that we should always talk about both punishment and rehabilitation. The public want to see punishment, but they also want to have confidence that every effort is being made to ensure that an individual does not repeat their offence.

Throughcare is important. People will be aware that there are distinctions. There are short-term sentences with opportunities for voluntary throughcare, and more use could be made of some services. Work is being done at the link centres and through other resources that are available in prisons. We want more people to come through the prison gates and get involved with prisoners inside prisons, helping them to prepare for their eventual release. The idea behind joining up services is to ensure that that is done more seamlessly and more effectively.

The Convener: Everyone agrees that drug addiction is a considerable difficulty among the prison population, for both short-term and long-term prisoners. Are you content with the current situation?

Cathy Jamieson: I am hesitant to say that I am not content with the situation, in case it becomes a headline, but clearly I am not content that a large number of people with a drug problem go into the prison system and a large number of people come out the other end with a drug problem. We have perhaps not used all the opportunities that are available to us to get people stabilised, to put them on detoxification programmes or to get them on other programmes that treat drug addictions.

The SPS estimates that 75 per cent of men and more than 90 per cent of women who arrive at prison are on drugs and would test positive for them on entry. That shows the scale of the problem and that we must pursue detoxification and stabilisation with prisoners during the first part of their imprisonment, as well as helping them to adjust to life in prison. For short-term prisoners, that can be especially problematic, as there might not be enough time for them to complete some programmes and there might not be an opportunity to get them on to other regimes. We also know that many people, when they return to the community, face a significant wait before they receive an appointment to follow up the treatment that has begun in prison. Often that is the point at which people fall through the net. The issues that I have highlighted are serious and we need to address them.

The Convener: I return to the question that Stewart Maxwell asked about how the Scottish Prison Service relates to local communities. I assume that, if the service is trying to provide meaningful throughcare and transition for prisoners, a relationship must be cultivated between the place where the prisoner is and the place where they may end up on release. All members of the committee are a little unclear about how that will be achieved physically, given the nature of the Scottish Prison Service.

Cathy Jamieson: As we outlined earlier, there are issues that the Scottish Prison Service will have to address. However, if we want to improve the working relationship between the different parts of the system and to manage offenders, we must ensure that, regardless of whether they are in prison, preparing for release back into the community, or at another point in the system, the correct resources are in place. Relationships between prisons and local authority social work and other agencies have been built up. The changes that we are trying to implement are intended to bring greater coherence to such relationships and to provide a better framework. The aim is to remove inconsistencies and to put an end to a situation in which the system works well in some areas, perhaps because of the personalities involved, but does not work so well in other areas, because people are not doing joined-up work. We want to set a national direction. In each CJA area, people will have to produce a plan that demonstrates exactly how they intend to do joined-up work and get results from it.

The Convener: Are you worried that the possibility of a home detention curfew might reduce the opportunity for pre-release work in prisons?

Cathy Jamieson: I saw that some witnesses had suggested as much in evidence to the committee, which surprised me. The provisions for home detention curfews will allow us to highlight the type of prisoners who might be eligible for them and the stage of their sentence at which they might be eligible for release. If that were flagged up as part of a proper sentence management programme, some pre-release work would be done. Clearly, people who were being considered for release under a home detention curfew would have to be given preparation. I would not expect such curfews to be available to people who are in prison for particularly serious offences or who have done nothing to address their problems. Instead of seeing home detention curfews as a disincentive, we can see them as an opportunity for low-risk prisoners to return to the community, to access some of the services there and to make the transition within a structure. At the moment, people are sometimes released without any structure.

Jeremy Purvis: I would like to ask two questions about young offending. Evidence from YouthLink Scotland highlighted an SPS report on young people in custody that showed that 43.6 per cent of young offenders had attended special
schools, 76.2 per cent had a history of truancy, 79.4 per cent had contact with the children’s hearings system and 51.9 per cent had an immediate family member who had been in custody. All of those factors are trigger points for social work and other interventions.

What will the bill do for early intervention, which you highlighted? What will be the youth input to local plans to reduce reoffending? Will there be youth input to and representation on the national advisory body?

15:00

**Cathy Jamieson:** You asked several questions.

**Jeremy Purvis:** I am sorry, convener—I asked three questions.

**Cathy Jamieson:** You asked what the bill will do. I repeat that any one piece of legislation will not in itself solve the problem of youth offending. We must put the bill in the context of the youth crime action plan and other work that has been taken on board, such as fast-track hearings, youth courts and a range of measures that are in place.

You mentioned trigger points. It is right to examine at every stage the possibility of intervening to change young people’s offending behaviour. I return to some points that I made earlier. That involves not waiting until young people are in the adult court system. We must deal quickly and effectively with the first signs of offending behaviour, perhaps through diversionary schemes; through intervention schemes for people who have been through the hearings system; by using antisocial behaviour orders constructively, perhaps with electronic monitoring or perhaps not, depending on the circumstances; and through secure accommodation. All those measures are relevant.

You asked about the representation of young people. How we can involve young people in the process should be considered locally. Several good examples of work of which I am sure you are aware have been done at Polmont young offenders institution. YouthLink and other youth organisations have worked with some young men in Polmont to address their behaviour.

**Jeremy Purvis:** You talked about changing behaviour and providing proper rehabilitation. Some disappointment may be felt if you do not expect the national advisory body and CJAs to have active input from youth work and youth groups.

**Cathy Jamieson:** I am not saying that. I am saying that we must consider carefully how dealing with youth justice and youth offending fits in. We need a better approach. Until now, we have had a clear action plan for the youth justice system. Local authorities have challenges in meeting the national standards for youth justice and in early intervention, to ensure that the full range of resources—including antisocial behaviour orders—is used effectively to try to prevent young people from entering the adult justice system. That is important. If people do not consider the full range of measures for use at the appropriate stage, they fail young people.

When young people enter the adult system, the key issue must be to deal effectively with some of their problems to prevent them from returning. We know that a high proportion of the young people at Polmont have had problems in education, are not literate or numerate and have no possibility of gaining useful employment or sustaining a tenancy without the right support. We must free up time to focus on such programmes. I expect all those issues to be considered as part of a national strategy and to be given a degree of importance.

**Maureen Macmillan:** I will follow up what Jeremy Purvis said. I attended a conference yesterday that addressed issues that relate to attention deficit hyperactivity disorder. One point that was made was that the number of young offenders in Scotland who suffer from the disorder is probably high. Statistics from other countries suggest that as many as 70 per cent of young offenders have the disorder. That has huge implications. Unless they are medicated, the young men and women who are affected will exhibit impulsive and unpremeditated behaviour, which is extremely challenging. The carrot-and-stick approach does not work. Perhaps the carrot works, but the stick does not seem to.

Has the matter caught the minister’s attention? It is more of a health issue than a justice issue. The conference has interested me tremendously in the subject, which I want to pursue.

**Cathy Jamieson:** I would be interested to hear more about the findings of any research that was discussed at the conference. I am sure that Maureen Macmillan could supply that information to me. Her comments raise a number of issues. Early intervention to identify the issues for young people is important, but it is also important to try to provide the appropriate response. That is significant in the context of provision for young people in supervision, who might well end up in secure accommodation. We commissioned the “Review of Young People on Remand in Secure Accommodation” and I was keen to increase not just the number of places but the range and quality of programmes that try to deal with the issues. We acknowledge that many of the young people who end up in secure accommodation might have mental health problems of an unspecified nature or that have not been diagnosed. Such matters could usefully be picked up.
Questions have been asked about whether the SPS has carried out research into the number of young people with autistic spectrum disorders who enter the adult prison system. I am not aware of work on the issue that Maureen Macmillan raised, but I can follow up the matter if she provides me with the information.

Colin Fox (Lothians) (SSP): You mentioned home detention curfews in answer to a question from the convener. The convener, Mr Maxwell and I spent yesterday afternoon in the company of Reliance Monitoring Services in East Kilbride—

Maureen Macmillan: And you did not escape?

Colin Fox: The three of us are now experts on tagging and curfews.

How will home detention curfews contribute to the drive to reduce reoffending? To what extent will they be more effective than completion of the custodial sentence would be?

Cathy Jamieson: I am pleased that the three of you lived to tell the tale and that you were released from Reliance’s custody. I am also glad that you are now experts on tagging and curfews. I hope that Mr Fox will never have to sample Reliance’s wares in any other capacity in future.

The home detention curfew scheme alone will not reduce reoffending. The committee heard evidence that highlighted that point. However, home detention curfews are part of a package of measures that works in a number of ways. For many prisoners, the transition back into the community is difficult and home detention curfews offer one way of easing that difficulty. Members will be aware that currently some prisoners have home leave and that there is provision in the open estate for people to move into community placements as they approach the end of their sentence. However, the key factors in the success of the transition tend to relate to employment and opportunities to retain and build family relationships. In some circumstances, home detention curfews will enable people who do not pose a huge risk to the community and who are motivated to reintegrate to get back to the community to rebuild relationships and become involved in training or seek employment.

Colin Fox: Are you saying that you envisage that home detention curfews will not be used separately but be used as part of a package? Will the home detention curfew always be accompanied by other supervision and support?

Cathy Jamieson: We should be careful about what we mean by “accompanied by”. At some stage, I would be reluctant to suggest that for everyone who goes home on a home detention curfew, the scheme will be accompanied by a huge package of 24-hour, wraparound care. To be frank, I think that a person who needs that level of care should remain in custody. We need to grapple with such issues. The home detention curfew will allow people to begin to take responsibility for themselves and to prove that they can be trusted to be in the community. The electronic tag is part of a framework, part of which is to do with ensuring that people stick to the rules of the scheme. However, the individuals have a responsibility to want to change their behaviour.

Colin Fox: I do not want to get bogged down in a discussion about what we mean by “a framework” or “accompanied by”, but would it be correct to say that you do not envisage the home detention curfew as something that will be used on its own?

Cathy Jamieson: It may be that in some cases the electronic tag is all that is required as an additional support for someone who will be released back out into the community. The important issue is to get the assessment right. What I am reluctant to say—I am not sure whether this is what you are getting at—is that everyone who goes out on a home detention curfew will be allocated a certain amount of social work time. That is not the way to look at this. Instead, we should consider what package of measures individuals need. The home detention curfew scheme is designed for low-risk prisoners who are going back out into the community.

Colin Fox: I will address the wider issue. You will have read the evidence that was given to the committee last week by Professor McManus from the Parole Board for Scotland, who said that he will be surprised if the bill achieves more than a 5 per cent reduction in reoffending overall. Do you share that assessment?

Cathy Jamieson: As I said, just passing a piece of legislation will not result in a reduction in reoffending. It is about changing people’s behaviour. We were criticised when we set a modest 3 per cent target. If we achieve the 5 per cent that Professor McManus talked about, we will have exceeded that initial target. That is one of the issues that the national advisory body would have to examine. We are breaking new ground. I am not aware of other countries having tackled the problem successfully. Many people have said to us that the problem is intractable and that because it is so difficult to address we should not go down this road. However, that does not let us off the hook of trying to change something that is unacceptable. In the initial stage we have set a fairly modest target, but that is an issue that we
would want to consider with the national advisory body.

Colin Fox: What criteria will governors use when they decide which prisoners will be eligible for home detention curfew?

Cathy Jamieson: It is important to recognise that the prison governor’s decision would be informed by an assessment by both the prison and local authority criminal justice social work staff. We are currently trying to draw up an assessment process. It would have to be fairly robust and take into account information such as reports from prison officers, the records in prison, offending history, and perhaps information from the prison liaison officer and from the criminal justice social workers. The assessment would also have to consider the likelihood of the prisoner reoffending and any potential danger to the victims or to the public. I have made it clear that those who wish to be considered would need to be low-supervision prisoners within the prison. I also make it clear that I would not like prisoners who have a history of domestic violence to be included. That is very important because we do not want to put victims at risk.

I would also expect a prisoner’s behaviour in custody to be one of the factors that is assessed along with information from the home background reports. When it is considered that a prisoner does not pose a risk to the community and that there is not a high likelihood of their reoffending, we would be likely to look favourably on a home detention curfew unless their index offence fell within some of the categories of exclusion.

It is important to recognise that this way of assessing people is not entirely new within the prison system. For example, the prison system already has to make assessments before it transfers prisoners to low-security open conditions or grants long-term prisoners home leave. The process that exists must be built on and it must be robust.

Colin Fox: That is interesting. You talked about prisoners who are under low supervision inside prison. Is that one of the criteria that the governors would consider, given that the person will necessarily be under low supervision when they are outside prison on the home detention curfew?

Cathy Jamieson: I hope that we would not move people into low-supervision situations in prisons if they were still assessed as being a high risk. As I have said, some prisoners already go out on home leave and some go out on community placements at various stages. Such decisions and risk assessments are being made at the moment. It is important that there is a robust framework that allows people to make such judgments.

Colin Fox: If prisoners disagree with the governor’s decision that they are not eligible for home detention curfew, what appeal mechanism will they have?

15:15

Cathy Jamieson: As I said, some prisoners would not be considered as being eligible for home detention curfew in the first place, but that issue has been fairly well rehearsed during the course of the committee’s evidence taking. However, prisoners who are assessed as being unsuitable for HDC would be able to appeal. We are currently working with the Scottish Prison Service to consider how such an appeals process might be put in place, but initial discussions suggest that it is likely that the appeal would be considered by someone separate from the original decision maker. That might involve the prison governor, a more senior person and ultimately someone in SPS headquarters. It is important to recognise that there will be a process by which such categories of prisoner will be able to appeal their eligibility assessment.

Colin Fox: Evidence that we received last week suggested that such decisions might be subject to challenge under human rights legislation if they are made simply at the governor’s discretion rather than through a quasi-judicial process. What is your view of that evidence?

Cathy Jamieson: I am aware of that evidence, which I asked people to consider quite closely. We considered whether an entirely administrative system for deciding on the release and recall of prisoners on home detention curfew might be subject to challenge on the basis that such decisions were not taken by an independent and impartial tribunal and were therefore incompatible with the European convention on human rights. However, our advice is that the proposed system, which will have the considerable advantages of speed and simplicity, will be compliant with the ECHR. The decision on whether to release a prisoner on home detention curfew will be taken by the Scottish Prison Service on behalf of Scottish ministers. We have advice to the effect that that would be compliant.

Mr Maxwell: I seek clarity on a fairly straightforward issue. A number of people have expressed concerns about people being let out of prison under home detention curfew. What are the standard conditions that will be attached to an HDC?

Cathy Jamieson: Home detention curfews will have standard conditions. It is important to recognise that they will not be—as they have been described—a get-out-of-jail-free card or an alternative to a sentence. People will still serve
part of their sentence during the process. The standard conditions will require people to be of good behaviour and not to commit any offence. They will need to comply with the curfew and with any other conditions that are specified.

Mr Maxwell: Of those who are expected to be released on HDC, what proportion will have additional, non-standard conditions attached to their release? In what circumstances will additional conditions be considered?

Cathy Jamieson: Obviously, it is difficult to estimate a percentage. Our working assumption is that in about a quarter of cases other requirements may need to be added to those of the curfew. In some instances—this perhaps answers Colin Fox’s earlier question—people with a known addiction problem who have been involved in treatment programmes might be required to continue to be involved in such programmes during the period in which they are on HDC. Such a condition would be in addition to the curfew conditions.

Mr Maxwell: Those who have addiction problems are perhaps an obvious category of prisoner who might have additional conditions attached to their release on HDC. Might the conditions attached to a home detention curfew require a person not just to stay in their home but to stay away from other places, such as the place where their previous offences took place?

Cathy Jamieson: It is always possible that such conditions might be considered. It is important to recognise that the risk assessment process should flag up whether a victim of the original offence was likely to be at risk. In such cases, the individual would not necessarily be considered as appropriate for HDC.

Mr Maxwell: I was thinking more along the lines of the conditions that were explained to us during our visit yesterday to Reliance Monitoring Services, where it was explained to us that the electronic monitoring conditions can include requirements that do not simply restrict the person to being curfewed in their home but keep them away from certain places, such as a shopping centre or other area where they caused a problem.

The Convener: To be fair to the minister, that is covered in proposed new section 12A of the Prisoners and Criminal Proceedings (Scotland) Act 1993, but perhaps one of the advisers can confirm that.

Susan Wiltshire (Scottish Executive Justice Department): The bill allows for prisoners to be restricted away from certain places. We thought about that carefully and it is something that we would wish to happen. As the minister said, if during the risk assessment process we felt that a prisoner was going to pose a danger to the victim or to a member of the public, they would not get an HDC. However, we could restrict a person with an HDC away from places such as football stadiums or shopping centres.

Mr Maxwell: Minister, you said to Colin Fox that you do not consider that electronic monitoring on its own will necessarily have an effect on reducing offending. Evidence we have received has suggested that additional support and supervision will be necessary. I heard you say that there will not be 24-hour wraparound care and that you do not expect there to be a social worker for everybody who is released on an HDC, but many people feel that some additional support would be advantageous and would assist the whole system to be successful. What support will be offered to people who are going to be released on an HDC? You have said what support you think there will not be; what support will there be?

Cathy Jamieson: I hope that I am being clear on this. One of the elements of the HDC is to put responsibility on the offender. There would potentially be access to various supports. Ordinarily, short-term prisoners do not get any support unless they are in particular categories that take up the voluntary throughcare scheme. We are working on the assumption that around 25 per cent of those who are released on HDCs might require some form of additional support.

Mr Maxwell: What kind of support are you talking about? I accept what you are saying—

Cathy Jamieson: Sorry, I did not mean to be rude and interrupt. It depends on the individual’s needs. If someone required assistance because of drug addiction or alcohol misuse—I mentioned that earlier—they may need that kind of support. An individual may require support to enable them to get housing or employment. We ought to be considering the problems in individual circumstances. The reason why I questioned whether those individuals would always get access to social work support is that that will not always be what people need in the circumstances. They might need money advice or help with dealing with a range of other circumstances in their lives.

Mr Maxwell: That is the point of the question. Support would involve all those other types of services. It is not necessarily just about help with drug addiction; it is about money advice and many other things. That support will be necessary for some people because—I assume from what you are saying—the intention is to break the cycle in which someone is in and out of prison all the time, by intervening and offering support. I was concerned not that you were being exactly negative but that you were against providing support for individuals who were being released on an HDC.
Cathy Jamieson: I am never against the in-principle notion of providing support, but the important point is that it is support, which requires individuals to take responsibility for engaging with it and for doing something themselves. I would like a feature of HDCs to be that they place responsibility firmly on the individual. They are being given an opportunity to prove themselves and to move back into the community with a framework. In some instances that will require support, but there is a clear responsibility on the individual. Although there are situations in which people require professional support, there will also be situations in which the family is supportive. They will have accommodation there and the opportunity of training or employment, as they may have commenced a work experience placement or whatever. The HDC gives people an opportunity to be out of prison with those family and community supports already around them. The involvement of the wider professional agencies is not always necessary at that stage.

Jackie Baillie: You said that some perhaps less-informed commentators would regard the home detention curfew as a get-out-of-jail-free card or some kind of soft option. We want the public to have absolute confidence in the criminal justice system. How do you counter that potential negative public perception?

Cathy Jamieson: Members of the committee have been to see at first hand how tagging works. It is not helpful constantly to refer to measures as being hard or soft options, because we need to find effective options. It is also clear from the evidence that the committee received that short prison sentences are not necessarily effective and do not necessarily provide solutions. Therefore, it is incumbent on us to consider the options.

Research on public attitudes to tagging has been done recently. You might recall some of the key points that it raised. It showed positive public support for rehabilitation, but we need to change the view that community penalties are soft options. Members will have heard me speak on the subject a number of times before, but if we want the judiciary to use community penalties, it is important that such penalties are seen to be effective. In a recent example from my area in Ayrshire that was cited in the media, a tag was fitted and the offender broke the curfew but was swiftly brought back to justice. That is the point of the exercise and that example sends a clear message.

Jackie Baillie: The public perception of whether home detention curfew is an effective option will depend on what happens when one is breached. What do you envisage happening if a breach occurs?

Cathy Jamieson: It is important that we put robust measures in place. It is clear that non-compliance with the curfew or with any of the other conditions would constitute a breach. The tagging company or the supervising social worker would pick up any breach and the SPS would be informed. It would then decide what the appropriate measures to take would be. It is most likely that the person would be returned to custody, and it would be a question of that person being brought back and having to face the consequences.

Jackie Baillie: The SPS would take the decision to recall any offender.

Cathy Jamieson: Yes.

Jackie Baillie: The Executive has rightly made support for victims an important plank of its justice agenda. Have you considered extending the victim notification scheme to home detention curfew?

Cathy Jamieson: Committee members will probably be aware that we have been running a victim notification scheme for some time. We are due to evaluate that scheme and we estimate that we will be in a position to do that work by the end of this year. Home detention curfew assessments would need to take account of victim issues—as we have already discussed, that could include keeping offenders away from a particular place—but a number of offenders are not part of the victim notification scheme and I want to consider the whole scheme and think about how we might improve on it.

Jackie Baillie: How will you ensure that the victim’s view is accurately reflected in the risk assessment?

Cathy Jamieson: That raises two different issues. The index offence and reports from prison staff or family liaison officers might provide information that suggests that it would not be in a victim’s interests for an offender to be released on home detention curfew or that a victim might be at risk if the offender was to be so released. There is no specific proposal for a requirement to notify all victims, which does not happen now with release for home leave or into the community to undertake particular work, but I want to consider such issues when we have an opportunity later in the year.

Jeremy Purvis: On risk assessment and serious and sexual offenders, who will be expected to share data and what is being done to ensure that the technology is fit for that purpose?

15:30

Cathy Jamieson: A number of issues are involved in the question. You will be aware of all the work that the Executive is doing to deal with the problem of sex offenders, who are relatively
few but who are the people who are of most concern to local communities. You will also be aware of the establishment of the Risk Management Authority. My concern, which has been evidenced by a number of recent high-profile cases, is that information is sometimes not shared between police authorities—indeed, sometimes it is not shared appropriately even between local authority departments. Information is also not shared between local authorities and other agencies. For example, some health boards may have information that they do not share appropriately. The overall purpose of the exercise is to ensure that information is shared and that people are clear about the fact that they are able to share information without fear of repercussion for their organisation.

Jeremy Purvis: On a practical level, what is being done to ensure that the technology is in place so that that happens?

Cathy Jamieson: I was just checking that with Andrew Brown. Information has been presented to the committee on the violent and sex offenders register scheme. The VISOR scheme is not dependent on the bill and it will go ahead in any case. We have provided additional finance to the Scottish police service to ensure that the scheme is implemented across all eight police authorities. The on-going revenue costs of the scheme have become an issue that the Finance Committee has picked up on.

Again, the purpose of the VISOR scheme is to try to ensure that we have the information that will allow better risk management to take place and improve crime detection rates. The idea is that the existing information-sharing potential should be used to the benefit of the police and the criminal justice social workers who are responsible for monitoring the offenders. It is critical that we ensure that they get the information and that the monitoring process is joined up. Given that all forces will have access to the database, it is important that the intelligence that is added to the database is accessible across the country.

Jeremy Purvis: Before we move to the committee’s questions on VISOR, I return to a question on the Risk Management Authority. Will the authority’s role stay limited in its scope or will it be extended? For example, will the authority take a role as a partner with the SPS and others in determining the risks that are involved in prisoners being released on curfew?

Cathy Jamieson: At this stage, I do not envisage the Risk Management Authority being involved in the development of the home detention curfew assessment process. The authority was set up specifically to deal with the most serious and violent offenders but, as I outlined, the HDC will apply to the low-risk prisoners at the other end of the spectrum. The idea is for the authority to develop policy and to undertake research into risk assessment. The authority will also set standards and issue guidance to those who are involved in the assessment and management of risk. It is important that the authority is able to focus on the relatively small group of serious and violent offenders, as they are the offenders who can cause problems in local communities.

Jeremy Purvis: But, if an element of the information, experience and expertise developed as a result of the research that the authority undertakes is transferable to less serious crimes or to early intervention, you are not opposed to that research being used elsewhere.

Cathy Jamieson: I am never opposed to learning from best practice. That said, in its early stages, the Risk Management Authority must be able to focus its work on the serious and violent offenders whom it was set up to deal with. The authority has a specific job to do in terms of public confidence in the system. I want it to focus on that job in the short term. If, in due course, lessons can be learned, we will be more than happy to look at the issues then.

Bill Butler: You will be aware that the Finance Committee raised the issue of the timetable for the bill not allowing full consultation on costs. Paragraph 17 of its report says:

“ongoing revenue costs for the VISOR database have not been fully explored”.

For the record and the committee’s understanding, will you explain why that did not occur?

Cathy Jamieson: It is important to recognise that the comments that were made by a number of witnesses related to consultation on the draft bill. There has been a fairly extensive timetable of consultation. Before the bill was introduced, we tried to ensure that there was as much consultation as possible with COSLA, for example, by having a number of meetings—I could quote the committee chapter and verse on those, but you probably do not want me to do so. Suffice it to say that between October 2003, when we began the pre-consultation dialogue with key stakeholders, and 7 March 2005, when the bill was published, a number of meetings with relevant organisations took place and a considerable amount of work was done with COSLA to try to ensure that we could deal with problems in advance. The lack of formal consultation on the bill is not necessarily problematic, given the work that went on before it was introduced.

Members will be aware that the financial memorandum was drawn up in discussion with the SPS in particular. A number of financial issues remain to be resolved. The VISOR scheme has...
been discussed in the context of the bill, but it would have happened in any case.

**Bill Butler:** Are you confident that the lack of full consultation on costs will not prove to be problematic?

**Cathy Jamieson:** There will always be issues to do with pinning down the costs. We estimated the costs of setting up CJAs. Some people suggested that we underestimated those costs, but I am not sure that I agree with them, given that we are talking about a chief officer and operating costs, rather than staff transfer. There will also be implications for the Scottish Prison Service, which might need to reorganise. As I said, the SPS is considering the matter. It is worth saying that in the spending review we allocated funds to try to deal with issues that will arise from the implementation of the bill. It is not the case that we have not thought about the matter.

**Bill Butler:** Are you confident?

**Cathy Jamieson:** I am as confident as I can be, given the work that has been done.

**The Convener:** I am no arithmetician. However, the Finance Committee’s report estimated that the costs of the home detention curfew scheme would be £4.235 million per annum. We gathered from our visit to Reliance that the average cost of a tag is about £5,000 per six-month period. A matter about which none of us was clear after hearing the evidence was the number of prisoners who are likely to be eligible for home detention curfew—I accept that it is difficult to give a specific answer on that. It seems that either the costs are relatively trackable or they burgeon.

**Cathy Jamieson:** We have figures on how many people might be on home detention curfew at any one time, which might help.

**Susan Wiltshire:** We estimate that it is likely that about 7,500 people will be assessed for HDC over a year, about a third of whom will pass the assessment and be granted HDC. We also estimate that annually about 2,000 people will be released on HDC, which translates to about 300 prisoners on HDC at any one time.

**The Convener:** The period of HDC would vary, depending on the conditions.

**Cathy Jamieson:** Some people might be on HDC for very short periods; others might be on the scheme for up to 135 days.

**Susan Wiltshire:** We reckon that the average period of HDC will be 55 days.

**The Convener:** If there are no further questions from members, I thank the minister and her departmental colleagues for coming to the committee. We appreciated the opportunity to question you.

The clerks are reminding me that, on the assumption that we do not want to take more evidence on the bill—in effect, time constraints preclude our doing so—the intention is to draft our stage 1 report as soon as possible and consider it in private, perhaps at our next meeting. I am being cued by the clerks as I speak, but that is a rough idea of what is proposed.

We move into private session to consider our draft report on the Licensing (Scotland) Bill.

15:40

*Meeting continued in private until 16:00.*
SUBMISSION BY ANGUS COUNCIL

Angus Council thanks the Justice 2 Committee for the opportunity to make this submission regarding the Bill.

This submission does not comment on the areas of operational practice, such as the home detention curfews, contained within the Bill. Instead the focus is on the structural issues that are contained therein.

The decision not to remove criminal justice social work from local authorities is welcomed. Dealing with the causes of offending relies to a great extent on addressing social inclusion issues, including accommodation, substance misuse, relationships, employment and mental health issues. Among the key partners required for criminal justice social work to be effective are, therefore, other local authority services. Removal of criminal justice social work from local authorities would, therefore, have been counter productive, as it would have significantly weakened the really crucial partnerships necessary in providing effective services. It would also have run contrary to the duties of local authorities and partners with respect to community planning specified in the Local Government in Scotland Act 2003.

Despite the broad welcome for the Bill, there are a number of significant concerns regarding its contents:

• The role of the proposed Community Justice Authorities (CJAs) is very broad, including preparation and monitoring of annual plans, “directing” local authorities which do not perform satisfactorily, receiving and allocating finances to constituent authorities, and the appointment of a chief officer. The financial statement attached to the Bill estimates the cost of a CJA to the Executive at £200,000 per annum. It is hard to see that this figure is realistic. Either the constituent local authorities will be expected to fulfil many of these functions themselves (no finance is provided for this), or the costs to the Executive will be far greater.

• There is a significant performance monitoring and “whistle blowing” role for both the proposed CJAs and the CJA Chief Officers contained within the proposals. Local Authority social work including criminal justice social work is already subject to significant external scrutiny. Audit Scotland requires data to monitor statutory performance indicators and the Scottish Executive requires annual detailed statistical returns. Audit Scotland has recently undertaken a full audit of all young offender cases in Scotland and the Social Work Inspection Agency (expected to expand considerably in the near future) is currently inspecting in detail all local authority criminal justice social work services. The Bill’s introduction of another layer of performance monitoring may lead to duplication.

• The role of the Chief Officer of the proposed CJAs ie to report to Ministers on the performance of local authorities and CJAs themselves could be seen as an additional tier of performance monitoring and the likely deployment of resources towards servicing the greatly increased bureaucracy set up to report on performance. There is a proper balance to be struck between having proper arrangements in place to report and monitor performance and actually delivering the services. Whether the proposals in the Bill achieve this balance is doubtful.

• The Bill represents a compromise. On one hand the Executive has agreed that a National or single Correctional Agency “would have to rebuild many of the local community networks currently in operation” (Page 11, Management of Offenders Etc (Scotland) Bill Policy Memorandum). However, it has proposed a significant restructuring of current arrangements for criminal justice social work, before the latest arrangements – the current groupings – have had the chance to become properly established and fully effective.

• The need for ensuring the effectiveness of social work, including criminal justice social work, is acknowledged and agreed. The need for greater co-operation between all relevant agencies involved in criminal justice, including the Scottish Prison Service is likewise agreed. However
there may be alternative strategies for achieving these goals. These might include increasing the scope of existing agencies such as the Social Work Inspection Agency, and ensuring greater accountability of the Scottish Prison Service.

- The recent Social Work Inspection Report on the performance of the Tayside Criminal Justice Partnership, as well as noting the strong performance of the service in Angus, noted the difficulty for three local authorities taking a consistent approach. The proposed Community Justice Authorities are expected to include a greater number of local authorities than the current criminal justice social work partnerships or groupings. It is concerning that the difficulties so recently noted by the Inspectorate are likely to be exacerbated by the proposals contained within the Bill.

- Whilst it is clear that there is to be further consultation on the boundaries of the proposed community justice authorities, it is understood that Ministers are enthusiastic to see fewer and larger authorities. The practical difficulties of working in Partnership with 6 or 7 different local authorities across very large geographic areas will be great. Making the new proposed community justice authorities work will divert significant time and resources from service delivery.

- There is concern with respect to the possible conflict which will stem from the role outlined for the Community Justice Authority chief officer. It is possible that this person (not required to possess any social work qualification) will issue instructions or directions to a chief social work officer/director of social work (required to be social work qualified) who is already responsible for the management and maintenance of professional social work standards within his/her authority. The chief social work officer for the local authority is legally required to provide criminal justice social work under the Social Work Scotland Acts of 1968 and 1995. The Justice 2 Committee may consider whether the lack of clarity with respect to the role of the proposed post of CJA Chief Officer is likely to be constructive and promote efficiency.

- Finally Professor Andrew Coyle, Director of the International Centre for Prison Studies at the University of London, when asked by COSLA to consider whether a single agency for Scotland would be likely to reduce reoffending concluded that there was no evidence that any particular organisational arrangements led to improved reoffending rates. In the light of this expert advice, the Justice 2 Committee is invited to reflect on whether the restructuring proposed in the Bill actually contains anything which will specifically address its stated aim – to reduce reoffending.

**SUBMISSION BY ASSOCIATION OF SCOTTISH POLICE SUPERINTENDENTS**

The Association of Scottish Police Superintendents welcomes this opportunity to provide written evidence on the Management of Offenders, etc (Scotland) Bill. The Scottish Executive’s 2004 Consultation ‘Reduce, Rehabilitate, Reform’ provided the Association with an opportunity to give consideration to these matters and respond with our views. At that time we highlighted our view that an efficient system could only be delivered “within a culture that recognises the contribution of all partners.....that is adequately resourced, and whose performance is monitored as part of the ongoing process.” We are therefore very pleased to note that the Association’s views are reflected in the Bill.

Having given consideration to the Bill, we set out below the Association’ views in relation to the Bill and hope our response to this call for evidence assists consideration of the implementation process.

**Duty to Cooperate**

The Association supports the proposed statutory obligation for Ministers, community justice authorities and local authorities to co-operate with one another in the execution of their respective functions. We note that whilst previous legislation setting out partnership working has been a catalyst for organisations and agencies working more closely together, it has clearly been down to individual organisations as to whether or not they are prepared to cooperate fully. The police
service has always seen the sense in partnership working, recognising that no single agency can deliver a rounded service and therefore welcomes the proposal to enshrine cooperation in statute.

Community Justice Authorities

The Association supports the creation of the new Community Justice Authorities (CJAs), albeit the boundaries for the CJAs have yet to be defined. By involving local authority elected members in the structure of the CJA will bring a level of accountability to the Authorities as well as a knowledge of issues impacting on social work, housing, education and community planning partners.

The Association further welcomes the recommendation that groups of local authorities are brought together in the new CJAs as this will ensure that there is a coordinated and consistent approach across broad areas covered by a single police authority and health authority who are key players in child protection teams.

Community Sentencing Subject to Electronically Monitored Curfews

The Association is on the whole receptive to the idea of 'electronic tagging' as part of a wider range of non custodial sentencing alternatives, but only for those who are considered non-violent offenders and who pose no risk to the community.

This view reflects our current position with regard to home detention curfews, namely that such a system offers clear benefits in the integrated and coordinated management of offenders, only where the offender would pose no risk to the community and the scheme is part of a package of measures aimed at their rehabilitation. The Association further welcomes the development of post release supervision and any appropriate application of additional conditions to a home detention curfew.

The Association feels strongly that a balance has to be struck between the opportunity to address offending behaviour with the impact that an early release from prison would have on victims and society in general. Electronically monitored curfews must not be seen by either the offending population or the public at large as an easy option, but as a legitimate and measured approach to rehabilitate those who have fallen short of the standards that society deems appropriate. Further, consideration should also be given as to how victims can be informed should Ministers agree to the early release of offenders on a home detention curfew.

The Association wholeheartedly endorses the exclusion of certain categories of offender from the scheme and would be keen to add specifically those found guilty of sex or violence related offences.

Assessing and Managing Risks Posed by Sex Offenders

The Association agrees with the provisions contained within the Bill placing the establishment of joint arrangements for assessing and managing the risk posed by certain offenders on a statutory basis. The Association is pleased to see the provisions of the Bill extended to include violent offenders and those who may cause serious harm to the public as well as those who have been convicted of sexual offences.

The Association further welcomes the opportunity to improve upon existing information sharing arrangements, and in particular the introduction of a specific requirement to share information. In the past the Data Protection Act has been instrumental in preventing some agencies from sharing personal information. By putting up these barriers detection of crimes can at best be delayed and at worst be the source of crimes going undetected, allowing such offenders to continue with their offending behaviour at the expense of often vulnerable victims.

The Association recommends that in implementing this Bill the Justice 2 Committee should legislate for specific areas where information must be shared across agencies.

The Association further suggests that the Information Commissioner should be asked to advise partner agencies on mechanisms that can be used to ensure that appropriate information sharing
protocols are developed which whilst protecting non-offending individuals will ensure that offenders are not allowed to hide behind the screen of anonymity.

**Registration of Sex Offenders**

The Association fully supports the proposal contained in the Bill proposing to extend the powers to deal with sex offenders who fail to comply with registration requirements. We recognise that this is an area which is currently problematical and are keen to see the development of practical solutions which can improve the tracking of such offenders.

**Criminal Injuries Compensation Authority**

The Association fully supports the principal that an offender should be responsible for their actions and believes that where such individuals are in a position to contribute financially to any awards made under the Criminal Injuries Compensation system then such sums should be recovered.

**In Conclusion**

The Association of Scottish Police Superintendents believes that this Bill will go some way to addressing the problem of re-offending within Scottish society. Innovative proposals such as electronically monitored home curfew orders coupled with targeted post release assistance for certain categories of offender have the potential to impact on the re-offending rate. However, it is essential that the public, and offenders themselves, do not see such schemes as a “soft option”. Any alternative to prison needs to be seen to be a meaningful option that will ultimately benefit society at large through the rehabilitation of individuals who offend and who within the current system have little chance to break their offending habit.

---

**SUBMISSION BY HOWARD LEAGUE**

I refer to your letter of 23rd March inviting representation from the Howard League Scotland to give oral evidence to the Justice 2 Committee on this Bill on 3rd May.

The Howard League Scotland has given consideration to the terms of the Bill and feels that the Bill deserves its broad support for the changes proposed. The League’s principal concern at the time of the earlier consultation was that it would be inappropriate and undesirable to introduce a single authority with responsibility for prison services and sentences in the community. That concern has been met and the League naturally supports any measures that may improve co-operation between the existing authorities in delivery of criminal justice social work services. The form of co-operation proposed for the new area-based partnerships appears to resemble other legislative provision for co-operation between statutory authorities carrying out local functions and the League has no reason to question their appropriateness.

So far as the introduction of ‘Executive Release’ of prisoners under curfew arrangements and electronic monitoring is concerned, the League welcomes measures which may allow the re-introduction to the community of prisoners presenting a low risk to public safety. It notes that nothing is being provided in the Bill to require the supervision (as opposed to curfew monitoring) of offenders subject to short term sentences released in this way and the League is therefore dubious that this early release, on its own, will contribute to any reduction in re-offending. It also has misgivings about the sense of isolation and siege that can be associated with the imposition of home curfews and feels such curfews do nothing to help re-integrate offenders within the community. However short term imprisonment is, in many cases, in the League’s view an inappropriate disposal and the measures are therefore worthy of support if only to secure shorter terms of incarceration.

Beyond these general remarks on the Bill the League has no criticism to offer on the provisions and does not wish to offer any oral evidence to the Committee though it is grateful for the opportunity to do so.
The Criminal Law Committee of the Law Society of Scotland ("the Committee") welcomes the opportunity of commenting on the Management of Offenders etc (Scotland) Bill.

The Policy Memorandum makes it clear that the bill is designed to reduce levels of re-offending in Scotland through greater integration of the activities of the criminal justice agencies. The bill envisages the creation of criminal justice authorities and seeks to ensure that all agencies involved in the management of offenders will work together effectively.

The members of the Committee have no direct involvement in this process and it may be that the agencies involved in the provision of these services will be in a position to assist the Justice 2 Committee in relation to whether the bill will achieve the policy objective. The Committee has outlined general considerations which it believes are relevant when addressing the issue of re-offending and which may therefore be relevant when considering re-offending in the context of the bill.

• The Committee believes that to deliver effective intervention, court disposals should be tailored to address the offending behaviour of the individual involved and in this way, assist in effecting rehabilitation.

• If a community based disposal is selected, the order should be implemented as soon as possible to emphasise the importance of the disposal and the link between the offending behaviour and the sentence imposed. Similarly, any breach of such an order should be brought to the attention of the court as quickly as possible so that there is an opportunity for effective early intervention.

• Efforts should be made to encourage greater continuity between prison initiatives and community based programmes so that any work undertaken by an offender in prison can be built upon in a community setting upon release.

• All agencies in the criminal justice system must be willing to participate and exchange information where appropriate and with due regard to data protection issues. Agencies must work together to identify and anticipate local needs and priorities. Joint planning of services is crucial to the effective operation of the system.

• If the proposals contained in the bill are accepted, it will be important to monitor their effectiveness in practice to assess their impact on the sentences imposed on offenders and the level of re-offending in Scotland.

The Committee would welcome clarification on the relationship between the various powers of direction contained in section 2(10) and sections 5 and 6 of the Bill. The accompanying documents to the Bill refer to powers of direction and of intervention. However, the word intervention is not used in the Bill, which refers only to powers to issue directions. The Committee would welcome more information on the apparent distinction between these powers. In addition, the Committee notes the Minister's assurances that the powers will not be applied in relation to individual local authorities and seeks clarification that this is the case for all the powers of direction in the Bill.

The Committee have asked for clarification of the distinction between the powers in section 2(10) and sections 5 and 6. Sections 5 and 6 specifically address the situation where there is an independently identified failure on the part of either a CJA (s5) or a local authority (s6) to carry out specified statutory functions. Ministers will not have the power to initiate this procedure themselves. In these cases, the powers in sections 5 and 6 provide a structured mechanism by which Ministers can require specific action to be taken by the CJA. Ministers will draw the reported
failures to the attention of the CJA and require its response. Only if Ministers are dissatisfied with the response will Ministers have the option of issuing an enforcement direction.

By contrast, section 2(10) provides a general power of direction in relation exclusively to the functions of CJAs. Ministers will be able to use this power at their own hand, without waiting for representations from a 3rd party. Directions may be issued without first inviting the CJA to comment, although Ministers are confident that CJAs will comment on any directions received if they think fit. It is anticipated that section 2(10) will be used to address situations where there is no specific statutory failure, but where it would be desirable to provide some national direction as to how functions – such as reporting on performance, for example – should be carried out. The power in section 2(10) has been included alongside the power to issue guidance, as part of the machinery which will enable Ministers to ensure that these changes deliver the greater national consistency and comparability which respondents to the consultation wished to see. However the power could be used to direct a CJA to adopt, or discontinue, a particular course of action where Ministers consider that appropriate. Some examples of how this might be used in practice are:

- **management and reporting of performance** – directions could be used to establish consistent monitoring regimes which will provide data comparable across CJAs. The Bill also enables CJAs to take action where there is evidence that local authorities are failing to perform adequately, or to make recommendations to Ministers concerning SPS performance. Directions could be used to establish those situations that it would be appropriate for CJAs to take this action; and

- **sharing of information** – directions would provide a means of ensuring consistency across Scotland in how information is shared between partners within a CJA. This would ensure that national organisations do not have to adapt to a variety of protocols used by different CJA areas.

The Committee asked for clarification regarding the use of the term “powers of intervention”. This reference in the accompanying documents is intended to be helpful in highlighting that the powers in sections 5 and 6 are more elaborate and describe a situation where Ministers will be intervening, in a staged way, to require specific action in relation to a particular failure by a particular authority or CJA, rather than being simply a general power of direction, as contained in section 2(10). But the Committee is correct that the section 5 and section 6 powers are a type of power of direction.

The Committee sought reassurances on the impact of these provisions on individual local authorities. Section 2(10) bites only on CJAs and the functions which they exercise. It gives Ministers no powers to issue directions to individual local authorities regarding the exercise of their continuing criminal justice social work functions. Section 6 does address the situation where one of the specified bodies reports a failure of function by an individual local authority. Even in that case, however, Ministers are limited to requiring specific action by the CJA in relation to the authority and cannot issue directions to the local authority.

**Voluntary Throughcare**

The Committee notes the Minister’s evidence that there are opportunities for those serving short term sentences to access voluntary throughcare. The Committee would welcome further information on this, and in particular, whether all those offenders subject to short term sentences are able to access this voluntary throughcare?

Voluntary Aftercare is available to all prisoners serving less than 4 years and not subject to statutory supervision on release and who request such a service while in custody or within 12 months of their release from prison. Voluntary aftercare is sometimes referred to as Phase 2 of the Enhanced Throughcare Strategy.

Before the Enhanced Throughcare Strategy, the prisoners in this group had to request voluntary assistance on their release. If they did so then the local authorities had a statutory obligation to provide it. The new strategy, and the guidance which has accompanied it, introduces a more proactive approach for certain priority groups and is delivered by the new throughcare teams in the local authorities working in partnership with their voluntary sector colleagues.
In addition, the Link Centres located within the Scottish Prison Establishments play a significant role in helping short term prisoners make appropriate links with other community based partner organisations.

The numbers of short term prisoners leaving prison each year is very large and the Tripartite Group (the Executive, the SPS and local authorities) which prepared the new strategy has taken an incremental approach to improving the service by identifying priority groups for this more proactive service. These are high risk offenders (to protect the public) and those who have accepted help with addictions problems in prison (to continue help with their addictions back into the community and to offer other support). An extra £2.3m is being invested each year in the voluntary throughcare service, bringing the total for throughcare to over £6m.

SUBMISSION BY RISK MANAGEMENT AUTHORITY

The Risk Management Authority (RMA) welcomes the Management of Offenders etc. (Scotland) Bill and the measures which it proposes to improve the management of offenders through greater integration of the activities of criminal justice agencies.

The RMA was established by the Criminal Justice Act (Scotland) Act 2003, following the recommendations of the MacLean committee on Serious Violent and Sexual Offenders, to address a lack of standardised approaches to the practice of risk assessment and management and difficulties in interagency communication and information exchange. Further information on the role and development of the RMA can be found in Appendix A.

There are clear areas of common interest between the aims and statutory functions of the RMA and the provisions of the Management of Offenders Bill to promote good practice in risk management with a view to reducing reoffending.

Section 1 of the Bill is of primary importance in the statutory requirement of a duty to cooperate. This requirement will provide a framework for the level of interagency working which the RMA is seeking to develop for the risk assessment and management of serious sexual and violent offenders.

The establishment of community justice authorities and the requirement that they produce an area plan for reducing reoffending in section 2 will be of particular relevance to the RMA in carrying out its statutory role to approve and monitor risk management plans for those high risk sexual and violent offenders who receive an Order for Lifelong Restriction (OLR).

In particular, the provisions for monitoring performance (section 2.(5)(b)5b), promotion of good practice (section 2.(5)(d)5d) and arrangements to ensure the availability and sharing of information (section 2.(5)(f)5f) will reinforce the standards and guidance provided by the RMA to those involved in the assessment and management of risk, further reflected in the cooperation of the RMA with other bodies in the National Concordat for information sharing.

The chief officer of the community justice authority (section 4) will provide a useful liaison role for the RMA in cases where, in exercising its statutory duty to approve and monitor risk management plans, it identifies problems which appear to relate to a systematic failure of compliance with the area plan (sections 5 and 6).

Finally, the RMA has a statutory function to set guidelines, standards and guidance for the assessment and management of risk. This role makes it an appropriate body to be specified by the Scottish Ministers to comment on area plans and instances of non compliance (sections 5 and 6) and the implementation of arrangements for risk assessment and management (section 9(.3)). It is not expected [by whom?] that the RMA would be designated as a “responsible authority” “ under section 9(.6). [As discussed, this is really a matter for the RMA to discuss with the Executive..
In summary, the RMA welcomes the principles and measures set out in the Management of Offenders Bill. These clearly reinforce the commitment to reducing serious reoffending set out in the Criminal Justice Act (Scotland)2003 which established the RMA and provide a framework for an integrated approach to best practice in the risk assessment and management of offenders.

APPENDIX A

Background Information

The Criminal Justice (Scotland) Act 2003 created a new public body, the Risk Management Authority. This followed the recommendations of the MacLean Committee on Serious Violent and Sexual Offenders. The Authority is intended to address two key problems which were identified in the current arrangements in Scotland for offenders at high risk of serious sexual or violent reoffending:

- The lack of a central body acting as a repository of information, guidance and standards and actively taking forward the debate on risk assessment and risk minimisation approaches. Differences in systems and approaches between different agencies reduce the overall effectiveness of the assessment and minimisation package provided to an offender.
- The work of each agency and the individual professionals within them is being made more difficult by problems of interagency communication and information exchange. There are areas where practice in interagency working is already excellent, but there is a lack of consistency across the country.

Statutory Powers and Functions

The Authority will be expert in the fields of risk assessment and risk minimisation. It has the following specific statutory functions to support its role:

- To develop policy and carry out and monitor research in risk assessment and minimisation;
- To set standards for and issue guidance to those involved in the assessment and minimisation of risk;
- To approve and monitor risk management plans for those high risk sexual and violent offenders who receive an Order for Lifelong Restriction (OLR). This sentence will largely replace the discretionary life sentence;
- To accredit people involved in risk assessment and minimisation and the methods and practices used in the assessment and minimisation of risk; and
- To carry out education or training activities in relation to the assessment and minimisation of risk or to commission such activities.

Orders for Lifelong Restriction

The Criminal Justice (Scotland) Act 2003 created a new type of sentence that can be used by the High Court, the Order for Lifelong Restriction. This also follows the recommendations of the MacLean Committee.

The existing sentencing options for judges when dealing with serious violent or sexual offenders who pose a high risk are a mandatory life sentence (if the conviction is for murder), discretionary life sentence, determinate sentence, extended sentence or a community disposal. In addition where the offender suffers from a mental disorder there are already a number of mental health disposals available to the court. While these disposals are adequate to deal with the majority of offending even when the offender poses a degree of risk, there is scope, as the MacLean Committee recommended, to provide for a new sentence designed specifically to address the particular issues connected with a high risk offender and ensure that they are dealt with in a consistent way.
The OLR will be made available to the High Court as a disposal for any offender who is convicted of a serious violent or sexual, or a life endangering offence or an offence which indicates a propensity for violent, sexual or life endangering offending. It will not be available for a high risk mentally disordered offender who is suffering from a mental disorder that meets the criteria for a mental health disposal and where the risk is directly or is in significant part related to that disorder. In these circumstances, the court may impose a mental health disposal as provided for in the Mental Health (Scotland) Act 1984 (to be replaced by the Mental Health (Care and Treatment) (Scotland) Act 2003).

Where the OLR differs from a discretionary life sentence or a long determinate sentence is that there will be specific arrangements put in place for life-long, multi-agency management of high-risk offenders. The process supporting the new sentence will enable the offender's risk to be assessed against statutory criteria prescribed in the Bill which, if it is determined that they are met, will trigger the imposition of the new disposal. The OLR will provide that the offender’s risk is assessed and managed with a view to minimising that risk as far as possible. OLR offenders will serve a “punishment part” of this life sentence as imposed by the court. During the time in prison, a risk management plan (RMP) will be prepared. The plan which will be in place for the rest of the offender’s life will cover steps to minimise the offender’s risk. If the offender's risk can be minimised to a level where it is considered that he or she does not present a risk to public safety and the Parole Board determines that it is appropriate to do so, the offender may be released into the community subject to conditions and requirements designed to keep the risk at an acceptable level. However, the offender will be liable to swift recall to prison if the level of risk rises or if he or she re-offends. The Risk Management Authority will be responsible for ensuring that the risk management plans are updated and followed through.

OLRs are not yet available to the High Court, as a number of preparatory stages have to be completed first. The main one is that risk assessors have to be identified and accredited, and guidelines and standards for their work developed by the Risk Management Authority. This work is the top priority for the newly established RMA and is expected to continue until late 2005. Only then will the courts be allowed to start identifying offenders who should be assessed for an Order for Lifelong Restriction.

SUBMISSION BY THE SHETLAND ISLANDS COUNCIL

The Shetland Islands Council welcomes the opportunity to submit evidence in respect of the Justice 2 Committee’s consideration of the Management of Offenders etc (Scotland) Bill and in particular the recognition of the specific issues relevant to the delivery of community justice services in Shetland, Orkney and Eilean Siar.

Community Justice Authorities

Shetland Islands Council Chief Officers have considered the issue of the creation of the Community Justice Authorities (CJA’s) and recognises the national context in which the proposals to improve the management of offenders through the greater integration of criminal justice services is set. Shetland Islands Council acknowledges the advantages of being linked to a Northern CJA, in areas such as strategic planning, developing shared resources, dissemination of good practice and improved links with the Scottish Prison Service.

However, Shetland Islands Council has significant concerns in relation to the delegation of budget allocation and the potential for transfer of staff.

Financial Delegation

It is proposed, within the consultation document, that the CJA will receive and distribute amongst local authorities funds provided by Ministers for criminal justice social work under section 27A of the Social Work (Scotland) Act 1968.
The issue for Shetland is that if allocation of funding were by virtue of the size of the population or the level of criminality, this local authority would come out low on both counts. Hence, there is the danger that the current level of funding could be reduced in favour of other larger local authorities. Any reduction in funding would have a direct effect on the level and quality of criminal justice social work services that are provided within Shetland.

In order to maintain our current level of funding Shetland Islands Council consider it necessary that an amendment is made to the legislation to ensure that the allocation of funds to Island Authorities falls outside the remit of the mainland CJA.

Transfer of Functions

The consultation document states that the role of the CJA’s will 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 on the ground, principally under the Social Work (Scotland) Act 1968 and Social Work (Scotland) Act 1995.

However, there is provision within the Management of Offenders etc. (Scotland) Bill under S27 whereby the CJA could agree the statutory transfer of criminal justice social work staff into the CJA. This transfer of staff would impact on the sustainability of the provision of social work services in Shetland, in particular the ability of Shetland Islands Council to provide an Out of Hours Service. Furthermore, there would be the potential for the strong links and partnership working with other local authority services to diminish. This would lead inevitably to a less than effective criminal justice service in Shetland.

If the decision of statutory transfer of staff is by majority vote, given the proposed weighting of voting shares is based on population, Shetland would once more be at a disadvantage.

In order that social work provision is not jeopardised within Shetland there would need to be an amendment to legislation ensuring that no statutory transfer of Shetland Criminal Justice staff, into the CJA, can occur without full agreement by Shetland Islands Council.

Single Council CJA

It is clear from the consultation document that Glasgow is the only local authority that is seen to warrant “stand-alone” status. Should this be extended to island authorities, there would need to be a formal agreement with the mainland CJA to allow such authorities to access specialist resources. The absence of this formal duty/agreement would result in Shetland being unable to meet the needs of some high-risk client groups.

Conclusion

The Criminal Justice Plan and the Management of Offenders (Scotland) Bill is to be presented to Shetland Islands Council members during the next committee cycle and it will be recommended that Shetland become part of a mainland CJA providing “freedoms” in relation to funding and staffing are guaranteed.

Electronically Monitored Curfews

It is agreed that the introduction of home curfews will reduce the prison population and enable prisoners to be reintegrated with their families at an earlier stage in their rehabilitation. Shetland Islands Council welcomes the fact that no prisoner will be released without risk assessment and that certain categories of prisoner will be excluded. However, the use of home curfews for very short-term prisoners once again questions the appropriateness of such sentences. It is widely acknowledged that it is impossible to address offending behaviour within such a short time scale and the introduction of home curfews will not improve the situation. The introduction of home curfews will also result in an increase in social work assessment and reports and will require additional funding, particularly for those mainland authorities that have a high percentage of short-term prisoners.
JOINT ARRANGEMENTS FOR ASSESSING AND MANAGING RISKS POSED BY SEX OFFENDERS

Shetland Islands Council welcomes any developments in the strengthening of working relationships in relation to the assessment and management of this category of offenders. Greater powers for the Courts to take action against those who do not comply with the sex offender’s registration scheme will also assist in the management process. It will also hopefully improve public confidence in the registration process.

Criminal Injuries Compensation Authority

Shetland Islands Council agrees that where possible the Criminal Injuries Compensation Authority (CICA) should recover funds paid out to victims. However, the payment to victims should remain the priority of the CICA.

SUBMISSION BY TAYSIDE CRIMINAL JUSTICE SOCIAL WORK PARTNERSHIP

The Tayside Criminal Justice Social Work Partnership welcomes the retention of criminal justice social work services within local authorities which recognises that in order to deal with offending it is necessary to tackle a range of issues such as social exclusion, accommodation, substance misuse and mental health. It is therefore vital that other local authority services are retained as key partners in addition to services such as the Scottish Prison Service (SPS) and the Police.

The Bill appears to be a compromise in that there is agreement that a Single Correctional Agency "would have to rebuild many of the local community networks currently in operation".

However, the proposals represent a significant and expensive restructuring of current arrangements for criminal justice social work, before the latest arrangements – the current groupings – have had the chance to become properly established. Professor Andrew Coyle, Director of the International Centre for Prison Studies at the University of London, when asked to consider whether a single agency for Scotland would be likely to reduce reoffending concluded that there was no evidence that any particular organisational arrangements led to improved reoffending rates. Further organisational change will undoubtedly have an impact on service delivery.

In terms of the content of the Bill, there are a number of areas that require further consideration as follows:

- The role of the proposed Community Justice Authorities (CJA) is very broad, including preparation and monitoring of annual plans, “directing” under performing local authorities, receiving and allocating finances to constituent authorities, and the appointment of a chief officer. It is suggested that the estimated cost of a CJA at £200,000 per annum is unrealistic and there is concern that the constituent authorities will be expected to fulfil many of these functions themselves or the costs to the Executive will be higher than anticipated. CJAs will be dealing with budgets in excess of £10m and involved in complicated planning structures and will therefore require some infrastructure to manage and plan effectively.

- There is a significant performance monitoring role for both the proposed CJA’s and the Chief Officers contained within the proposals. Local Authority social work services are already subject to significant external scrutiny. Audit Scotland requires data to monitor statutory performance indicators and the Scottish Executive requires detailed returns annually. Audit Scotland has recently undertaken an audit of young offender cases and the Social Work Services Inspectorate (soon to become the Social Work Inspection Agency) is currently undertaking a national programme of inspections of criminal justice social work services. The Bill seeks to introduce another layer of performance monitoring at significant financial cost. Many authorities are not, as yet, funded to deliver accredited programmes and there is a real concern that funding will be diverted from frontline services in order to fund an additional tier of scrutiny.
• Further consideration will be required as to the relationship between the Chief Officer of the CJA and Chief Social Work Officers. A Chief Social Work Officer is required to have a social work qualification and is responsible and accountable for oversight and management of the professional standards and quality of social work services provided. The Chief Officer of a CJA will not require a social work qualification yet will have considerable authority over criminal justice social work services. There is scope for confusion between respective roles and responsibilities and the potential for conflict. It is suggested that the distinction between the two roles will not be clear to the general public and other agencies and there are reservations about this aspect of the Bill.

• The Bill requires SPS to have a single point of contact for each CJA. Given that most local authorities and groupings have prisons within their areas which house prisoners from across Scotland and have prisoners of their own in prisons out with their areas it is difficult to see how this will work in practice. Either a senior central manager with overall responsibility for the prison service will need to be the single point of contact, or the SPS representative within the CJA is likely to have no real power or responsibility to effect any meaningful changes.

• The need to ensure the effectiveness of social work is acknowledged and agreed, as is the need to improve greater co-operation between all the relevant agencies involved in criminal justice. It is suggested that this could be achieved by, for example, increasing the scope of existing agencies such as the Social Work Inspection Agency and ensuring greater accountability of SPS. These alternatives might prove effective but less expensive.

• The recent Performance Inspection of the Tayside Partnership conducted by the Social Work Services Inspectorate noted the difficulty of three local authorities coming together to provide consistent services. The proposed CJAs are likely to be significantly larger than current arrangements and it is suggested that the difficulties highlighted are likely to be compounded with up to seven or eight local authorities coming together to agree distribution of funds, priorities, management of resources etc. Potentially there will be significant costs and it is not clear how these will be met. The Partnership welcomes the recently issued consultation on groupings as it is vitally important that consideration is given to the boundaries of other related bodies.

• The proposals to enhance arrangements for assessing and managing the risks posed by certain offenders is welcomed and will ensure a more co-ordinated approach which will improve public protection.

• The proposals to develop Home Detention Curfews are also welcomed

SUBMISSION BY WESTERN ISLANDS COUNCIL

Comhairle nan Eilean Siar recognises the national context in which the proposals for to improve the management of offenders through the greater integration of criminal justice agencies is set.

The Comhairle acknowledges the strength that can be gained from alliances with other authorities, through the proposed Community Justice Authorities.

In considering the proposed mandatory powers of the Community Justice Authorities, the Comhairle recognises that the service, nationally and locally, can be strengthened through the focus that Community Justice Authorities would have in areas such as strategic planning, training, developing some shared resources, dissemination of good practice, arms-length performance monitoring, and improved links through the Scottish Prison Service.

In considering the needs of the community served by Comhairle nan Eilean Siar, the Comhairle views the delegation of budget allocation to the Community Justice Authority to be the substantive area in the mandatory duties that would have a detrimental effect on the service, and social work services in general, at a local level.

Comhairle nan Eilean Siar also takes the view that the potential for the future transfer of functions proposed for the Community Justice Authorities, also acts against the best interests of the communities served by the Comhairle.
In presenting its views on the points set out above, these views are limited to considering the impact of these aspects of the Bill on the efficiency and delivery of services to the area covered by Comhairle nan Eilean Siar, while recognising that there are substantial elements of these concerns shared by the other Island communities.

This evidence is presented with a view to special consideration being given to the Island communities in the consideration of the Bill in these identified areas of concern, not as any commentary on the appropriateness or otherwise of the proposals for the rest of Scotland.

**Financial Delegation**

Annual financial provision for Social Work Criminal Justice services is currently allocated directly to each local authority by the Scottish Executive. The Bill proposes that the budgets for these services be delegated to the Criminal Justice Authorities.

Comhairle nan Eilean Siar considers that this proposal gives insufficient protection to the special needs of services to the local community.

The allocation of funding has until now been sensitive to the special needs of the Island communities, recognising the need for that allocation to be sufficient to maintain the basic structure for local service delivery, and that in that context the unit cost for service provision requires to be higher than the national average.

The Comhairle feel their interests insufficiently protected by the proposed delegated funding mechanism, and wish the current arrangement of direct allocation of funding to the Island authorities to remain in place. This is a view that is shared by the other Island communities.

It is conceivable in the future, faced with funding pressures for the delivery of services, that a Community Justice Authority, operating within its democratic mandate, would take the view that funding should be weighted by the level of measured crime in areas within its jurisdiction, rather than by the special consideration of the minimum allocations required by island communities to sustain local integrated services.

It is therefore proposed that, while participating as full partners in the Community Justice Authorities in other respects of their mandatory functions, the allocation of funding for criminal justice services to the Island communities be retained as a direct allocation from the Scottish Executive.

**Transfer of functions**

Comhairle nan Eilean Siar resists any proposals which open the way to the future transfer of functions from the Comhairle to the Community Justice Authorities.

For these same reasons of long-term sustainability of the integrated service, there are concerns about the permissive powers in the legislation. The reasons for not having a central body directly managing the service are the ones that the Islands expressed in the consultation about the Single Correctional Agency.

The view expressed on behalf of the Comhairle on this section of the Bill is that, although there is reassurance given in the guidance to the Bill that these powers would be used where there was agreement that the transfer of functions was in the best interests of the service, the integrity of social work services to Island communities would be particularly threatened by any transfer of functions.

From the perspective of the Western Isles, the Comhairle has worked hard to put in place a balance between the needs for local specialist skills, knowledge and management, and the advantages that can be gained from alliances with other partners, while retaining the elements of strength that come from the generic service foundation.
As an example of these concerns at a very practical level, any move from the current position of having criminal justice services embedded in the mainstream local social work services could affect the sustainability in the provision of the general social work out-of-hours services. This is an area of responsibility that adversely affects our ability to recruit and retain staff. What might seem a marginal change, such as from a 1 in 7 to a 1 in 5 rota, can make the difference between successfully recruiting and retaining staff or not.

Maintaining the position set out in preliminary consultation with the Scottish Executive, the considered view of the Comhairle is that if there is no special protection for the Islands within the formulation of powers to transfer functions in the future, the Community Justice Authorities will inevitably move to taking on the operational functions. That would detach some of the great positives of our generic base, and be detrimental to outcomes for the community and offenders.

That generic base, in the setting of a small, dispersed authority covering several islands, enables Social Work Criminal Justice services to work in close conjunction with other social work services for community care and children and families, as well as promoting positive joint work with local agencies such as police, the NHS, employment services and the courts.

It is therefore proposed that the Islands Councils be exempt from these permissive powers of the Community Justice Authorities enabling, for example, the mainland partners within a Northern CJA to take responsibility for the direct management of services, while allowing Island Authorities to retain their directly managed services at local authority level.

Conclusion

The three Councils representing islands communities have exchanged views on the proposals contained in the Bill, as they did in the preceding consultations on criminal justice services.

There will be differences of approach in the specific proposals set out by the individual Councils, properly reflecting local considerations, but Comhairle nan Eilean Siar understands that the key issues set out in this paper are views shared by the other Councils covering Island communities.

SUBMISSION BY YOUTH LINK SCOTLAND

YouthLink Scotland is the national youth work organisation for Scotland. We support the development of accessible, high quality youth work services which promote the well-being and development of young people. We are a national voluntary organisation working with both statutory and voluntary bodies. YouthLink Scotland’s membership includes nearly 50 voluntary organisations and 32 local authorities. We welcome the opportunity to submit evidence to the Justice 2 Committee’s Stage 1 Consideration of the Management of Offenders (Scotland) Bill (“the Bill”). YouthLink Scotland’s evidence focuses on the role of the proposed national advisory body, as well as on certain key issues around the provisions of the Bill.

YouthLink Scotland’s evidence is based on our extensive experience of working with young offenders at YouthLink Scotland’s Outlet Youth Centre at Polmont Young Offenders’ Institution (“PYOI”) to assist their rehabilitation. The Outlet Youth Centre provides a wide range of services to the young people, and the recent HM Inspectorate of Prison’s report on PYOI highlighted that its overall work is an example of good practice; HM Inspectorate of Prisons: Report on HM Young Offenders’ Institution Polmont, 5/8/04, Para 7.16 (“the HMI Report”). By way of further background, we attach a copy of the joint YouthLink Scotland/SPS briefing paper, YouthLink Scotland’s Youth Work Services at Polmont Young Offenders’ Institution. YouthLink Scotland staff at the Outlet Youth Centre have also been working with the Scottish Prison Service (“SPS”) to develop transitional support for young people aged 16 – 21 years’ old leaving PYOI, and to embed this support within the SPS system. YouthLink Scotland’s evidence also draws on the in-depth experience of many of our member organisations of working with young offenders.
General

YouthLink Scotland welcomes the statement in the Policy Memorandum accompanying the Bill confirming that 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”. We believe, from our own experience of working with SPS, local authorities and other agencies to provide transitional support for young offenders upon release, that developing a more integrated, joined-up approach to supporting offenders could make a significant contribution to reducing reoffending.

The proposed National Advisory Body

YouthLink Scotland welcomes the Scottish Executive’s commitment to establish a National Advisory Body “to assist Ministers in developing common objectives and strategies for tackling reoffending”. YouthLink Scotland believes that a key focus of the National Advisory Body’s work should be post-release support for, and the management of, young offenders. We believe this is essential given the problems faced by young offenders upon release, and the wide recognition that young offenders are most at risk of reoffending.

Problems faced by young offenders upon release

Significant numbers of young people are already within our prison system. YouthLink Scotland believes that, if a greater level of support is not put in place to assist young offenders to reintegrate back into their communities, the chances of re-offending (which are already extremely high) will increase considerably. YouthLink Scotland, therefore, welcomes the Scottish Executive’s commitment to adopt a more co-ordinated approach to helping prisoners upon release, and to provide an effective throughcare service for all prisoners. The need for such support is highlighted by the fact that many of the young people who offend or commit anti-social behaviour are vulnerable. This is evident in the Scottish Prison Service’s (“SPS”) survey of young offenders, Young People in Custody in Scotland, An Occasional Paper (No.3/2000) which highlights that:

- 76.2% of all young people in custody had a history of regular truancy;
- 43.6% had attended special schools;
- 79.4% reported previous contact with the Children’s Hearing System;
- 45% had been in residential care;
- 63.3% had close friends involved in criminal activity;
- 51.9% had at least one member of their immediate family who had served a custodial sentence; and
- 95.1% admitted taking drugs.

The need for an integrated approach to the support and management of offenders is further undermined by the problems faced by young people upon release. These are often complex, and the factors linked to offending and reoffending are variable and usually multiple rather than single. The provision of support for these young people must, therefore, be responsive to their wide ranging individual needs. These needs often require the young people to engage with a wide range of agents and agencies such as social work, local housing departments, the police, and parole officers which can be a time consuming process.

YouthLink Scotland is aware that some services are being delivered on a multi-agency basis, but our experience of transitional support for young offenders upon release is that the availability of services is patchy. The level and quality of these services is further restricted by the fact that no single agency currently has a statutory responsibility to co-ordinate the support for young people when they complete their sentences, unless they are out on licence or are subject to a Supervised Release Order (“SRO”) at the time of sentencing. Significantly, only a small proportion of young offenders fall within these categories. Furthermore, YouthLink Scotland is aware that Section 71 of the Criminal Justice (Scotland) Act 2003 provides local authorities with a power to "provide advice, guidance or assistance" for any person outwith these categories upon request, rather than placing a statutory duty upon local authorities to do so. In effect, the ability of young people seeking such support on a voluntary basis will depend upon the resources and staffing levels within each local authority.

YouthLink Scotland’s experience is that the majority of young people leaving PYOI would like support on release, but in reality the availability and coordination of support is patchy, and there is
no uniform provision of transitional support for young offenders across Scotland. Indeed, it has become a ‘post code lottery’ through which young people from the Glasgow and Inverclyde areas can expect a higher level of support, owing to the involvement of their local authorities in the transitional support pilot project, than young people from other local authority areas. In addition to the work being undertaken jointly by YouthLink Scotland and the SPS, a number of other agencies work with those at risk of offending and with young offenders upon release, including East Lothian Council, Falkirk Council, the Duke of Edinburgh’s Award, Fairbridge in Scotland, and the Prince’s Trust Scotland to name but a few. There is, however, no strategic, holistic approach to support the rehabilitation of young offenders, and reintegration back into their local communities. Against this background, the anticipated role of the Community Justice Authorities, outlined in the Policy Memorandum, in the “planning, co-ordination and monitoring of the delivery of community offender services” is welcome. We believe that this can help to promote and develop effective multi-agency approaches to post-release support for young offenders across Scotland.

**Youth work sector representation on the National Advisory Body**

We further welcome Ministers’ recognition, in the Policy Memorandum, that “many other agencies have a role in offender management, and that it is important that these bodies both cooperate and contribute to the improved framework for offender management”. To assist this process, we believe it is vital that the advisory body must include representatives from the youth work sector with proven expertise of working with young offenders.

**Section 1 – Duty to co-operate**

We note that Section 1 of the Bill provides that Scottish Ministers (and the Scottish Prison Service), community justice authorities and local authorities “are to co-operate with one another in carrying out their respective functions in relation to relevant persons”. YouthLink Scotland welcomes the proposal to provide an integrated, joined-up approach to the post-release support for, and management of, offenders. YouthLink Scotland believes that an integrated approach by key agencies to the support and management of young offenders is crucial to their rehabilitation. It would, therefore, be helpful if the Justice 2 Committee could clarify if the definition of “relevant persons” will include all young offenders between the ages of 16 and 21 released from prison. We would also welcome clarification by the Committee of how it is anticipated the support and management of young offenders upon release will be addressed by the National Advisory Body, and by the Community Justice Authorities.

**Section 2 – Community Justice Authorities**

YouthLink Scotland welcomes the Scottish Executive’s commitment to improve the planning, co-ordination and management of offender services in the community through the new Community Justice Authorities. We note in Section 2(5) of the Bill that the functions of the Community Justice Authorities will include “to prepare, in consultation with the partner bodies, the Scottish Ministers, the appropriate local authorities and such other bodies as the Scottish Ministers may specify, a plan for reducing re-offending by relevant persons”. YouthLink Scotland strongly believes that these plans must include a focus on the support and management of young offenders upon release, and include provisions designed to reduce their re-offending. We also take the view that the Community Justice Authorities’ monitoring role should include monitoring the support provided for young offenders upon release. This should include all young offenders, whether subject to an SRO, out on licence or seeking support on a voluntary basis.

YouthLink Scotland further welcomes the duty on Community Justice Authorities outlined in Section 5(d) of the Bill “to promote good practice in the management of the behaviour of relevant persons”. We take the view that this can help to make a positive contribution to reducing levels of re-offending amongst young offenders. To facilitate this, YouthLink Scotland believes it is vital that the Community Justice Authorities should consult the youth work sector, at both national and local levels, to provide details of projects and services which have proved highly effective in supporting young offenders upon release, and in helping to reduce reoffending, and could act as examples of best practice.
As previously stated, YouthLink Scotland’s Outlet Youth Centre has been working with PYOI to develop transitional support for young people leaving Polmont, and to embed this support within the SPS system. YouthLink Scotland believes that this programme is an example of best practice (a view supported by the recent HMI Report), which should be developed, and rolled out, across Scotland to promote the rehabilitation of young offenders. In this respect, it is worth noting that seventeen local authorities are currently involved in the transitional support programme, and that more and more local authorities recognise the importance of this programme, and want to become involved. Some local authorities, however, may have difficulties in justifying the use of generic youth work resources to support the criminal justice system at the expense of other youth work priorities. YouthLink Scotland and our member organisations would be happy to provide the Committee with further details about this programme upon request.

Financial Memorandum

We welcome the statement in Paragraph 117 of the Explanatory Notes accompanying the legislation that the Bill will not prevent local authorities contracting voluntary organisations and other organisations to deliver particular services for offenders “where the services they offer are in line with the objectives set out in local plans”.

Present:

Ms Wendy Alexander  Mr Andrew Arbuckle
Mr Ted Brocklebank  Jim Mather
Mr Frank McAveety  Alasdair Morgan (Deputy Convener)
Dr Elaine Murray

Apologies were received from Des McNulty (Convener) and John Swinburne.

**Management of Offenders etc. (Scotland) Bill:** The Committee took evidence on the Financial Memorandum from—

Andrew Brown, Bill Team Leader, Reducing Reoffending Division, Scottish Executive;
George Burgess, Head of Criminal Justice Group Projects Division, Scottish Executive;
Paul Cackette, Head of Civil Justice Division, Scottish Executive; and
Sharon Grant, Branch Head, Community Justice Services Division, Scottish Executive.
Management of Offenders etc (Scotland) Bill: Financial Memorandum

The Deputy Convener (Alasdair Morgan):

Management of Offenders etc (Scotland) Bill: Financial Memorandum

The Deputy Convener (Alasdair Morgan):

The first item on the agenda is evidence on the Management of Offenders etc (Scotland) Bill, which was introduced on 4 March by the Minister for Justice. At our meeting on 15 March, we agreed to adopt level 2 scrutiny, which means taking written evidence from organisations upon which the costs will fall and taking oral evidence from officials. We have received written evidence from the Association of Chief Police Officers in Scotland, the Convention of Scottish Local Authorities, the Criminal Injuries Compensation Authority, the Scottish Prison Service and Strathclyde joint police board.

The officials we have with us this morning are: Andrew Brown, the bill team leader, who is from the reducing reoffending division; George Burgess, who is head of the criminal justice group projects division; Paul Cackette, who is head of the civil justice division; and Sharon Grant, who is from the community justice services division.

Andrew Brown (Scottish Executive Justice Department):

Andrew Brown (Scottish Executive Justice Department):

My particular responsibility is for the provisions on community justice authorities. George Burgess is the lead on home detention curfew issues; Paul Cackette is the lead for the Criminal Injuries Compensation Authority provisions; and Sharon Grant is the lead on the serious and sexual offenders measures.

One point that came up in the evidence and which the clerks kindly shared with us concerns the consultation on the bill and the financial memorandum. It is true that there was no formal consultation on the draft bill or the draft financial memorandum. That was a consequence of the tight timescales to which we were working. There was, however, considerable consultation on the policy leading up to the drafting of the bill, and there were on-going discussions with the key stakeholders in the drafting of the accompanying documents, including the financial memorandum. On the community justice authorities, that involved the SPS and COSLA. On the serious and sexual offenders provisions, that involved the Association of Directors of Social Work and the police authorities. A degree of consultation has gone on throughout the process.

The Deputy Convener:

When you say that a degree of discussion has gone on with the bodies concerned, how does that differ from formal consultation? Would the results have been any different had you been out to formal consultation?

Andrew Brown:

The difference is that we concentrated our discussions with the specific stakeholders. In a more formal consultation, we would have gone wider, perhaps to other organisations that had an interest but which would not be considered to be among the key stakeholders. Inevitably, the discussions that we had were fairly intense, but because of the curtailed timetable, to some extent we were unable to develop some of the costs—for example at the SPS—in the financial memorandum as much as we would normally hope to do. The evidence that the SPS provided took that a bit further and showed in more detail where the costs might arise.

Mr Frank McAveety (Glasgow Shettleston) (Lab):

One of the key submissions is from COSLA, which, as well as expressing concern about the in-principle decision, questions whether criminal justice authorities are the appropriate
measure, given the scarce resources in the local government settlement. A critical question that COSLA asks is by what criteria you are demonstrating that the CJAs will be good value for money.

Andrew Brown: I can speak specifically on the community justice authorities. I do not know whether Mr McAveety is referring specifically to those provisions or—

Mr McAveety: If you could speak on that first, that would be helpful.

Andrew Brown: There is quite a history to the process of establishing the community justice authorities, and I do not want to spend too much time going there. The community justice services that we currently have in place are voluntary groupings, which are designed to try to bring about some savings through working together across local authorities. We would expect efficiency savings in scale and in greater consistency in service delivery. Inspection reports on community justice social work services and the reducing reoffending consultation demonstrated that the groupings were not as successful as they might be in delivering those efficiency savings. As a consequence of the consultation and the inspection reports, ministers decided that it would be sensible to invest an amount of money in placing a statutory duty on local authorities to come together in a formal community justice authority to plan and monitor the delivery of community justice social work services in order to deliver a more efficient and consistent service.

Mr McAveety: How is the £200,000 broken down? How did you arrive at that figure? What are the contingencies if that is an underestimate?

Andrew Brown: I can give you the breakdown of the £200,000 per community justice authority per annum. The salary of the chief officer, including national insurance contributions and so on, is estimated at £70,000 per annum. Accommodation costs are estimated at £10,000; administrative support—we expect perhaps two administrative officers to support the community justice authority chief officer—is estimated at £50,000; general running costs, including stationery, information technology and telephones are estimated at about £40,000; and additional costs to support the authority, such as travel and subsistence, planning and consultation costs, are estimated at £30,000.

You asked what provision has been made for that. For the coming financial year and the year after that, £6 million and £12 million have been identified for the reducing reoffending agenda and for court reform measures. Ministers are still to decide exactly how that will be split, but the reducing reoffending agenda has first call on those resources.

Mr McAveety: What outcomes are you setting for the CJAs? Will those new posts be based on performance-related pay?

Andrew Brown: The working conditions for the staff of the community justice authorities will be determined by the community justice authorities.

On delivery, the bill does not attempt to design specific performance targets; indeed, members are probably aware that the minister is looking to establish a national advisory body, one of the purposes of which will be to help the minister to establish national targets and specific targets against which the community justice authorities will be measured.

Mr McAveety: Are you talking about new posts in each CJA area?

Andrew Brown: Yes. By statute, each community justice authority will employ a chief officer, which will be a new post.

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): The Association of Chief Police Officers in Scotland indicated concern in its written evidence about future costs. Do you have any estimates on future revenue costs? How will costs be settled?

Andrew Brown: Clearly, I cannot say what ministers will decide or what future budgets will be. We considered ACPOS's evidence and got in touch with the association to try to work out its concerns a little more precisely. Its main concern related to some provisions in the bill on serious and sexual offenders, about which I invite Sharon Grant to speak.

Sharon Grant (Scottish Executive Justice Department): We welcome ACPOS's support for provisions in the bill and acknowledge that all the key agencies that will be involved in implementing the provisions in sections 9 and 10, on serious and sexual offenders, are committed to working together to ensure that the arrangements for assessing and managing sex offenders work well.

It might be helpful to give some context. The aim is to put in place a statutory framework around the existing administrative arrangements, which were originally developed under the Sex Offenders Act 1997. At the moment, protocols are in place for the police and local authorities to manage and assess the risk that is posed by sexual offenders, but we aim to develop and extend arrangements to cover violent offenders. ACPOS's concerns are probably mainly to do with violent offenders, because they are not actively managed in the same way as sex offenders are.

We have had preliminary discussions with ACPOS about the issue and have agreed that the main aim should be to get into place provisions on the sex offenders side, then move to a staged process and consider issues relating to violent
offenders. We also plan to consider resource implications at that time. We are working with the tripartite group—which involves the Scottish Executive Justice Department, the Scottish Prison Service and the Association of Directors of Social Work—and have invited ACPOS on to that group to work through the practical issues.

Mr Arbuckle: I can see that there will be additional costs in some areas, but you have given us no indication of the possible scale of recurring costs.

Sharon Grant: Andrew Brown mentioned the lack of time for thorough consultation. We were unable to sit down with ACPOS, the Scottish Prison Service and local authorities to gauge the extent of the costs, but we are about to do so through the tripartite group.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I have a couple of questions about the powers to release prisoners on licence or under home curfew arrangements. In its submission, Strathclyde joint police board states:

“The Financial Memorandum does not address the, perhaps unquantifiable, costs of re-arresting persons released early under the new arrangements on licence”.

Why are costs for re-arresting prisoners who are released on licence not included in the financial memorandum?

10:15

George Burgess (Scottish Executive Justice Department): They are included in the financial memorandum—or at least the memorandum acknowledges that they exist. Like Strathclyde joint police board, we cannot quantify what the costs might be, but to set things in context, we are talking about perhaps 300 offenders a year throughout Scotland. In general, Strathclyde will execute more than 2,000 apprehension warrants in a month, not to mention the much larger number of fine warrants. In that context, we are talking about a very small number.

Monitoring is important, and new arrangements will come into place under the national and local criminal justice boards to monitor levels of business and performance on warrants. Through those arrangements, we can have a closer look at what is happening in practice. The arrest warrants in question should be easier to execute, because in most cases we will know precisely where the offender is. Therefore, matters should be simpler than they would be when we do not know where the offender is.

Mr Brocklebank: Yes, but Strathclyde joint police board states that if the figure of 300—the estimate that you have mentioned and which is mentioned in the financial memorandum—“becomes a gross under estimation then the financial inequity of suggesting that the cost can be absorbed into the police service becomes even more untenable.”

George Burgess: It is highly unlikely that the figure is an underestimate. The figure is based on several years' experience of the system that operates in England and Wales. If every offender who was released under the scheme failed to comply, the upper bound of 2,000 a year throughout Scotland. However, if the figure got anywhere close to that, we would have to consider seriously the operation of the system. Based on our information from the operation of a similar scheme south of the border, 300 is a pretty good estimate.

The Deputy Convener: Frank McAveety asked about the value for money of CJAs. In its evidence, COSLA states that the sum of money—I presume that we are talking about just under £3 million if there are 14 CJAs; I have seen that figure bandied about—“represents a significant sum of money that could perhaps be more effectively directed elsewhere”.

Do you have any comments to make about that?

Andrew Brown: I have a couple of comments to make about what COSLA says. First, there are likely to be fewer than 14 CJAs. I think that that number has been arrived at from the current number of groupings in unitary authorities, but it is expected that there will be significantly fewer CJAs. Indeed, the consultation document on CJAs, which was released last week, proposed two models. One model had four CJAs covering Scotland and one had six CJAs covering Scotland; that represents a fair reduction in the number of CJAs.

There is a genuine case to be made that the proposals will be value for money, given the evidence that has arisen from the consultation on reducing reoffending and the inspection reports on criminal justice social work services. All the messages that we have received are about the need for joined-up services, greater consistency, better communication and better integration of services, which is precisely what the community justice authorities will aim to do in their role. Local authorities will be brought together and there will be delivery against the weaknesses that have been identified in the reducing reoffending consultation.

The Deputy Convener: I do not want to stray into policy matters, as it is not in the Finance Committee’s remit to do so. However, it strikes me that if the authorities are to be called community justice authorities and there are only four of them for Scotland, they will cease to be community justice authorities and will become almost national justice authorities.
Andrew Brown: As I said, we are talking about proposals in a consultation document, and I do not want to pre-empt the outcome of that consultation. However, there is certainly a need to balance the manageability of a CJA, its relative size and the number of local authorities. All those issues are discussed in the consultation document. I do not want to comment further on the consultation.

Mr McAveety: I accept that you do not want to pre-judge things, but is it true that there will not be 14 CJAs?

Andrew Brown: It was generally accepted, even by COSLA, that there would have to be a reduction in the current numbers. That is not a controversial point.

The Deputy Convener: Did Andrew Arbuckle have something to say about the database?

Mr Arbuckle: Not just now, convener.

Jim Mather (Highlands and Islands) (SNP): What provision has been made in the Executive's budget for unforeseen or higher costs following implementation? How will such costs be coped with?

Andrew Brown: Some £6 million has been identified in the budget for community justice authority provisions this coming year and £12 million for the year after. That money has to be directed towards the reducing reoffending agenda, but also towards the various measures on court reform. Ministers are currently deciding how best the money should be split. I cannot answer on the other provisions in the bill. Were you addressing those wider provisions too?

Jim Mather: Indeed I was.

Andrew Brown: In that case, I will hand over to the respective policy leads.

George Burgess: Resources have been identified in the budget for the costs that we foresee for the home detention curfew. There is an indication in the memorandum of the margins of error in those estimates. We are adequately covered for the ranges that we are likely to get.

Sharon Grant: Having originally put up £375,000 for the implementation of the violent offender and sex offender register—the police intelligence database—the Executive has increased that amount to £475,000. Additionally, we have agreed with ACPOS that the secondment from the local authority criminal justice social work department—currently £15,000 for two days a week—will increase to five days a week while we scope and look at measures to implement VISOR in the Scottish Prison Service and local authorities.

Jim Mather: How will the Executive review the costs post-implementation and that will include an assessment of direct and indirect cost savings?

Andrew Brown: The community justice authorities will be under an obligation to report annually on services delivered and we would expect a financial annex to be attached to those reports to explain costs.

As regards costs that might be incurred by other organisations, we do not think that there will be significant increases. Most of those organisations are already involved, or seek to be involved, in the planning process for community justice service delivery. However, let us say for example that there is an unforeseen cost that the police find an additional burden. We expect that the usual reporting cycle of annual reports from the police would identify those costs that are associated with the new obligations. It would be for ministers to consider that as they look at the new spending round.

Jim Mather: I alluded in my questions to savings. You said earlier that the key benefit would be a more efficient and consistent system. When the parliamentary group went to the States for tartan week, it visited the New York police department where there is crisp evidence of savings being made through the clocking up of a lot of community service hours, of a markedly reduced rate in reoffending and of a lot more people being in work and therefore paying taxes rather than receiving benefits. Is any attempt being made to capture the benefits that could accrue in those areas?

Andrew Brown: I wonder whether you are talking about the Red Hook community court in New York.

Jim Mather: I think that I am.

Andrew Brown: We are aware of that model and the minister has been out to visit it. Much of the community work that flows from that court is done very quickly, so an association is made by the offender between crime and punishment. There is a lot to be said for that. I do not want to stray into that policy area, because it is being considered by the Executive under the auspices of the on-going court reform work, but we are conscious of that initiative.

Jim Mather: Nevertheless, without straying into that area, can you say what efforts will be made to capture the cost benefits that could accrue from implementing the bill?

Andrew Brown: I will speak about my area; others might want to come in afterwards. Each CJA will handle set money that is given to it under section 27 of the Social Work (Scotland) Act 1968, which provides that the money must be used on criminal justice services. We expect that the savings that will accrue from the greater integration of local authorities will simply feed back into delivering more and better services.
There is undoubtedly a resource need. For example, once prisoners who are considered to be short-term prisoners are released, there is no obligation on local authorities to support them. Therefore, there is no obligation for a substantial proportion of offenders who leave prison to be given any support. Community justice authorities might be able to use some of the savings to deal with such people.

Sharon Grant: Over the past three years, the infamous tripartite group has been working on what is known as a throughcare initiative—that is where the SPS and local authorities have got together to look at how enhanced throughcare provision or assistance can be given to prisoners prior to release, on release and following release. That support falls into two categories. For long-term prisoners, local authorities have now been funded—and we have amended the law—to allow them to appoint a supervising social worker from the community at point of sentence. That social worker has responsibility throughout the prisoner’s term to visit at least once a year and to engage with the social work unit in the prison, the prison staff and the prisoner to see what progress has been made throughout the sentence. The social worker also makes contact with the offender’s family where appropriate, and where it is agreed with the offender and the family, to try to address any issues that the family has about the prisoner’s imprisonment or preparation for release.

For short-term prisoners, in the Criminal Justice (Scotland) Act 2003, with support from the Scottish Prison Service and the Association of Directors of Social Work, we gave local authorities a statutory function to offer advice, guidance and assistance to short-term prisoners prior to and on release. To enable that to happen, we have contributed an additional £3.5 million in the past two years to build the capacity of local authorities. The Scottish Prison Service is looking at building its capacity so that the local authorities and prisons meet somewhere in the middle. We stopped duplication of work that has already been undertaken and we will develop what we hope will be a more seamless transition from prison into the community. We will address the issues that the majority of prisoners want to be addressed, such as housing, education and employment.

Jim Mather: You mentioned removing duplication. Have the savings accruing from all that effort been quantified?

Sharon Grant: The task has been a big one for the local authorities and the Scottish Prison Service to undertake. At the moment, prisoners are being allocated supervising social workers. We are working with the Scottish Prison Service to consider how we can build into the existing prison sentence management procedures processes that will assist prisoners to move into the community. So far, we have not been able to quantify the savings.

If we reduce reoffending, the Scottish Prison Service will be able to concentrate on its tasks of providing interventions in prison for prisoners who require them and of joining up with the community. Identifiable financial savings might not accrue, but the Scottish Prison Service and local authorities will be allowed to do their job better.

10:30

George Burgess: The costs and savings in respect of the home detention curfew provisions are the clearest. The financial memorandum shows that electronic monitoring has obvious costs but will produce savings by joining up with other uses.

The estimated reduction of about 300 prisoner places will produce savings for the Scottish Prison Service. The SPS’s evidence contains a range of estimates that depend on the extent to which the SPS can adjust the use of the prison estate, but substantial savings are possible. Once the scheme is in operation, we will know exactly how many prisoners have been released on it at any time, so we will be able to quantify costs and savings directly.

Mr Arbuckle: I will return to revenue costs. I welcome the help for the standardised database, but it is strange that no estimate has been made of revenue costs or the cost of the inputting that will have to be undertaken. That is very unbusinesslike.

Andrew Brown: Are we talking about the database?

Mr Arbuckle: Yes. No estimate has been made of the training or inputting costs to police budgets.

Sharon Grant: Does that relate to VISOR?

Mr Arbuckle: I am asking how police budgets will be affected.

Sharon Grant: The figure of £475,000 will fund initial training and roll-out costs. To support that, we have provided an additional £150,000 for training in risk assessment tools. For local authorities, training in risk assessment tools will continue as part of the 100 per cent funding that is provided to local authority criminal justice social work departments.

I will have to come back to you about VISOR. All that I can say is that I take it that the Justice Department has allocated funding or made allowances for VISOR’s continuing upkeep. Most of the costs in introducing the VISOR system in police forces are up front. Thereafter, I understand that the upkeep cost is relatively low. I can write to you with further information.
The Deputy Convener: That would be helpful. Members have no further questions, so I thank the witnesses for their helpful evidence.

If members want to highlight particular issues in our report, the draft of which we will discuss in a fortnight, they can let me know now or e-mail the clerks.
Home Detention Curfew: Developments in England and Wales

Aim
The aim of this paper is to outline the development of the Home Detention Curfew scheme in England and Wales and to highlight some issues that may be of relevance to developing a similar scheme in Scotland.

The Origins of the English Home Detention Curfew Scheme
The Home Detention Curfew (HDC) scheme (early release on electronically monitored curfews) was introduced by the New Labour government in the Crime and Disorder Act, in July 1998, to help manage the 62,000 (and rising) prison population they had inherited on taking office in May 1997. No such scheme had figured in their election manifesto, and the idea probably originated with the probation service, in particular with the Association of Chief Officers of Probation (ACOP 1997) and with Graham Smith, a Chief Inspector of Probation much respected and highly influential in Whitehall, who had commended EM’s use in releasing prisoners to a Council of Europe conference in September 1997 (the report of which did not appear for another two years - Smith 1999).

The HDC scheme became operational on 28th January 1999. It was crisis-managed into existence, without localised trials. The absurdly short lead-in time entailed massive preparatory work from prison staff, area probation services and the newly contracted EM providers. The scheme enabled short sentence prisoners over age 18 - those serving under four years and over three months - to be released up to 60 days early, the exact amount of time being determined by the length of the original sentence. Release and precise curfew specifications were at the discretion of the governor, based on risk assessments by prison and field probation staff. Curfews were to last for a minimum of 9 hours, with 12 hours overnight being anticipated as the norm. Certain exemption criteria were specified from the outset, relating mostly to violent and sexual offenders, those sentenced under mental health legislation and those who had violated previous release conditions. Return to prison was the penalty for serious or sustained non-compliance.
The government anticipated 30,000 releases in the first year (out of 60,000 considered) (PC 44/1998), although in reality, only 14,000 were released (out of 45,000 considered). The proportionately lower release rate (31% rather than 50%) was attributed to the caution of prison governors. (Dodgson and Mortimer 2000), many of whom resented making risky, individualised decisions, creating the appearance of a sophisticated, personalised approach to prisoner resettlement when in reality HDC was primarily a mechanism for managing a dangerously high prison population.

This tension in the way that HDC was presented to the world remains to this day. All informed penal commentators, including former Home Office civil servants (Faulkner 2001:196), believe that the primary driver of the HDC scheme was the urgent need to create a safety valve for the prison system - this explains the haste with which it was announced and the short-lead in time. There was nonetheless sober recognition in the Home Office that political opponents of the government would make inevitably political capital out of anything which smacked of an early release scheme - the government would be branded “soft on crime” So, in all their public statements on HDC they portrayed it less as early release and more as a way of making release from prison

a disciplined return to the community. .... HDC offers to help prisoners reintegrate more effectively into society. It will deprive them of their liberty for a major part of the day, but also provide some structure and order into (sic) their lives (PC 44/1998: para 2.1-2 emphasis added)

This was not entirely disingenuous - it reflected the early stages of a new way of thinking about post-release supervision which, in 1998, was not fully developed. Research had shown that there was a high risk of reoffending in the immediate post-release period - a principled case could be made for introducing more structure and more constraint into that phase of an offender’s life. The question of whether the constraint of electronic monitoring and a night-time curfew alone would be sufficient to make a difference, or whether more resources for resettlement services (employment and accommodation services, for example), was registered in debate at the time, but probably not aired in full.
The Evolution of the Home Detention Curfew Scheme

The Home Office weathered early political criticisms of HDC rather well - because there was a sound principle which could be appealed to - and extended the scheme at the first opportunity. A joint thematic review by the Prison and Probation Inspectorates (HMIP 2001) had strongly supported HDC, noting nonetheless that there were unacceptable variations in its use among prisons of the same functional type, and insisting that some could use it more. In November 2001 new Home Secretary David Blunkett encouraged prison governors to be bolder. Prison Service Director Martin Narey berated them for “deliberately obstructing the process” (Stone 2002:951). A compromise resulted: governors had some time-consuming risk assessment pressures taken off them by the creation of “presumptive HDC” (near-automatic early release for those serving under 12 months), while the scheme itself was expanded from 60 to 90 days (catalysing the immediate release of 600 prisoners). Presumptive HDC also placed pressures on the probation service - it meant that an additional 250 curfewees were released each month - which were dealt with by reducing the requirement for a home circumstances assessment to bare essentials in all HDC cases, not just the new “presumptive” ones (National Probation Service 2002).

HDC was further extended in July 2003. For offenders serving over 12 months (but not those serving less) the maximum curfew period was increased to 135 days. This brought forward the release dates of all eligible prisoners (some new exemptions were added, including prostitution, brothel keeping, living off immoral earnings, indecent exposure, possession of an offensive weapon) by between approximately 1 day and 6 weeks. The intention was to make 1000 more prisoners eligible for immediate release on the 14th July, subject to passing a risk assessment. The releases were, however, to be phased over July and August, to avoid flooding the Probation Service and the electronic monitoring companies with more work (risk assessments and supervision for the former, tightly scheduled home visits to fit tags for the latter).

This scheme did not, in fact, expand on quite the scale intended. Using a network of probation contacts, Fletcher (2003) estimated that only 400 more people - not 1000 - were actually brought forward for release; many more, although eligible in terms of the time criteria, were excluded because their offence now placed them in the expanded exemption categories. Furthermore, in a separate and uncoordinated development in the summer of 2003 the police cracked down on bail jumpers and fine defaulters, leading some prisons to anticipate an increase in population in July and August rather than a HDC-induced decrease. In addition,
extending the HDC maximum to a more onerous 135 days may, paradoxically, have discouraged some prisoners from considering early release.

The various anomalies in the HDC scheme have been accentuated by its extension to 135 days. One consequence of this has been the arrival in prison of offenders who, having spent time remanded on custody, are eligible for early release within a matter of days of arriving in prison (something which the original version of the scheme sought to avoid). Complex, time-consuming risk assessments must still be undertaken by prison and probation staff. As a probation officer administering HDC in a large city prison told me, it would make more sense simply to put the offender straight onto an EM-curfew order (Bob Marsh, personal communication October 2003).

Is the Home Detention Curfew Scheme evidence-based?
The first sixteen months of the Home Detention Curfew scheme was subject to extensive research by the Home Office.


This research was based on statistical analysis of HDC releases, and on a survey of curfewees, family members and supervising probation officers. At this point in time, 72,400 prisoners had been considered eligible for HDC, and 21,400 released on it. The research addressed five issues:

- the pattern of HDC’s use
- variations in recall and release rates
- the views of curfewees
- cost-benefit analysis (over 12 and 16 months)
- reoffending and reconviction

The research concluded:

In general, Home Detention Curfew appears to be operating relatively smoothly and has gone some of the way to achieving its central aim of easing the transition from custody to the community. Furthermore, this has been achieved at the same
time as realising significant cost savings and with very little impact on reoffending (ix)

The HDC scheme has expanded considerably since this research was undertaken. No further in-depth research has been published. The scheme as it currently runs has not been researched with such thoroughness. Nonetheless, it can be said that Dodgson et al (2001) vindicated the initial decision to establish the scheme and gave the Home Office confidence to expand it. **On balance, it has to be said that the HDC scheme is as evidence-led as many other things the Home Office has done over the same period.** The scheme has not been beyond criticism, and to some extent the research has helped the Home Office withstand the impact of this criticism.

**Home Detention Curfew and Reoffending**

The Dodgson et al (2001) study addressed this in the early days of HDC, using samples from the 1998/1999-period when offenders could be released 60 days earlier than they would otherwise have been. The methodology was complex, involving comparisons of predicted rates of re-offending (based on risk level) with actual rates of re-offending for a programme group (prisoners granted HDC) and a control group (prisoners eligible but not granted HDC). The relevant findings are

Reconviction **while on curfew** - 2.1% (n = 31), not reconvicted 97.9% (n = 1495)

Reconviction **after the curfew period** after six months - 9.3% (n = 118) compared to a reconviction rate of 40.5% (n = 558) for those eligible for HDC but not granted it. On the face of it this is an impressive result. Dodgson et al (2001: 54) write “These rates show that those granted HDC have far lower reconviction rates than those who are reused it”. However, two caveats need to be entered:

a) it may be that those who were granted HDC were lower risk offenders than those who were refused it - less prone to reoffending in the first place

b) it is not clear if this pattern of reconviction has been sustained since this research was completed. The maximum period of HDC was 60 days at the time of the research. Now that the maximum period is 135 days, it is likely that
reconviction rates have increased (see section on “current data” below).

It should again be affirmed that measuring reconviction is a complex process, as the chapter devoted to it in Dodgson et al (2001) shows. The point extracted here is a simplification.

Nonetheless, even if the evidence is not regarded as utterly conclusive, there is sufficient basis for believing that release on HDC, in the main, makes a favourable difference. Of the two reconviction figures—“while on curfew” and “after curfew”—the former is arguably more important. A 97.9% non-reconviction rate while on curfew does suggest that some prisoners can be released into the community with only minimal risk to public safety - at a fraction of the cost of imprisonment.

The Cost-Benefits of Home Detention Curfew

The Dodgson et al (2001) research devotes a chapter to this. As with measuring reconviction, cost-benefit analysis is complex. The research calculated the costs in terms of resources actually used. These are greater than the cash payments made to the contractors, and include the costs of pre-release risk assessments made by the prison and probation services, and the costs of recall following breach. These costs are then set against the savings on prison places - and the anticipated costs of building new prisons. The conclusions drawn were as follows;

After 12 months there were net benefits of £36.7m, a saving of 1950 prison places

After 16 months there were net benefits of £49.2m, a saving of 2600 prison places

Saving prison places does not of course mean that cells were left empty. The saved places were used to reduce overcrowding and to house different prisoners. What the advent of HDC forestalled was the need to build new prisons to match demand for places coming from the courts.

The original cost-benefit analysis was predicated on the release of 3700 prisoners on HDC in the first year (later reduced to a 30,000 estimate). This would have yielded benefits of £111m. The actual cost-benefit was much less, because the
numbers released were lower than the original Home Office estimate. It was expected, in 2001, that the net benefits would increase as the cost of contractor payments fell in real terms.

**Criticism of the HDC Scheme**

Some criticism of HDC has focussed on operational issues - eg geographical variation in its use, judgements about the rightness of wrongness of releasing particular individuals. These criticisms tend to be transitory - which is not to say that that, each time they occur, they do not need to be dealt with effectively if the scheme’s credibility is to be maintained. Over and above these operational criticisms, there have been three “fundamental” criticisms of HDC:

1. sophisticated legal criticism - early release from a custodial sentence at the discretion of the prison governor destroys “transparency in sentencing”, and undermines judicial intentions and public confidence.

The Halliday Review of the Sentencing Framework (Halliday 2001:44) was critical of HDC and, against the grain of government policy, proposed terminating the HDC scheme (although not the use of tagging after prison), on the grounds that discretionary early release undermined transparency in sentencing. The HDC scheme, however, had proved itself too useful as a means of managing prison numbers for government to abandon it. The Dodgson et al (2001) research had validated it. The White Paper, *Justice for All* (Home Office 2002b) reflected the Prison and Probation Inspectorate’s pragmatism regarding HDC rather than Halliday’s ostensibly more principled position, arguing that a 2% reoffending rate (among 44,000 releasees) indicated that the scheme

struck a good balance between resettlement of prisoners and providing protection for the public. .... HDC is a key resettlement tool which gives authorities the opportunity to keep an offender under close supervision while managing their transition back to the community. (idem: para 6.26)

Criticisms similar to those of the Halliday Review have been made more recently by Lord Coulsfield (2004), in his enquiry into alternatives to prison. The weightiness of such criticism cannot be ignored.
2. crude media criticism - early release of this kind is proof that the government is “soft on crime’, cynically prepared to dilute the just punishment imposed by a court and reckless about the safety of citizens.

The Conservative Party in opposition have made persistent political capital out of New labour’s early release scheme (albeit without always mentioning electronic monitoring). Using data from the answer to a parliamentary question, it publicised the fact that 200 offences, including two rapes, had been committed by the first 14,000 released offenders. They used this in their first party political broadcast in the 2001 election (Collings and Seldon 2001:68), despite Tom Stacey, founder of the Offenders’ Tag Association and a Conservative himself, having earlier written to the press to point out that HDC successes far outweighed failures (The Daily Telegraph 30th March 2000). The two rapes were clearly dreadful, but were committed by men who did not have known sexual violence in their histories, and who were released in good faith on HDC. The Conservative Party has continued to portray the HDC scheme in one-sided and emotive ways, using posters with the slogan “How would you feel if a bloke on early release attacked your daughter?” in the 2005 election campaign.

Sections of the press have also been critical of the HDC scheme. Thus the release (three months early, six months into an eighteen month sentence for racially abusing a black police officer ) of David Norris and Neil Acourt was denounced on the front page of The Daily Mail (25th January 2003) under the headline “Lawrence duo freed because jails are too full”. Some years before they had been among those accused of Stephen Lawrence’s murder and the tabloid media had persistently proclaimed their “badness”. The lead article cursorily explained the HDC scheme, and quoted the Prison Service’s defence of it. The Mayor of London, the Metropolitan Police, and the head of a unit monitoring racial attacks were then cited as opposing the early release of “violent racists”. A spokesperson for the National Black Police Association was also quoted as saying “This sends out completely the wrong message, that people who perpetrate such crimes can walk free with a tag”. (emphasis added). Similarly, the early release on HDC of Brendon Fearon, notorious as the injured victim of a farmer, Tony Martin, whose house he had tried to burgle was criticised both in principle, and for its particular insensitivity - it occurred within days of Martin himself - who had served his full prison sentence for killing Fearon’s accomplice while protecting his property - being released.

3. penal reform criticism - as a means of managing the size of the prison population, HDC starts at the wrong end of the penal process. While all the English penal reform
groups, primarily concerned with promoting alternatives to custody, tended to take this view, the point was in fact most eloquently expressed by two (serving) senior prison service officials:

> While any relief to the prisons is obviously welcome, this proposal [HDC] is self-evidently a safety valve that demonstrates just how far out of balance the criminal justice system has become. There is something badly wrong in a situation in which more and more offenders are shoved into prison at one end, while the government exercises every ingenuity to invent cumbersome ways of letting them out early at the other. (Dunbar and Langdon 1998:151)

Although less prominent in subsequent debate than the first two criticisms, listed here the Dunbar and Langdon point remains. Is it sensible to send low serious/low risk offenders to prison for short custodial sentences when they could have been managed just as effectively on stringent community penalties, some using electronic monitoring, without incurring the social and financial costs of imprisonment? The suspicion lingers in the minds of many informed observers that the predominantly low risk prisoners who have been eligible for HDC over the 1998-2005 period are in essence the same type of low risk offenders who, fifteen years ago, would not have been sent to prison in the first place. Under the current arrangements, we are arguably paying both the costs of custody and the costs of post-release supervision - hardly the epitome of efficiency or cost-effectiveness.

When the HDC scheme was first implemented it was inevitably seen - despite Home Office language designed to obscure this - as a new type of executive “early release”. In retrospect, subsequent to the debate initiated by the Halliday Review of Sentencing (2000) HDC may come to be seen less as a mechanism of “early release” and more as a precursor of “seamless sentences” - sentences combining both custodial and community elements whose whole point is to provide intensive and protracted supervision after the period in custody ends. Rather than seeing this - as it has been seen in the past - as “aftercare” or “resettlement”, a light and perhaps optional “add-on” to the main sentence, this period of intensive supervision is now intended to be seen as integral to the sentence itself. From this perspective, HDC - although not perhaps in isolation, without other, more obviously constructive licence requirements - can be seen as a rather sensible development. The concept of the seamless sentence is, however, too new at present for the tabloid press to
accommodate; for the foreseeable future these newspapers are likely to persist in deriding HDC as an unwarranted form of early release.

**Current Data: The Impact of the Home Detention Curfew**

The most up-to-date official data on HDC relate to the year 2003. Some 21,220 offenders were released from prison on HDC in 2003, and a total of 2,270 (13%) were recalled to prison. The most common reason for recall, which accounted for 54% of all recalls, was breaching HDC conditions. This includes being absent from the curfew address during curfew hours, threatening monitoring staff, damaging the monitoring equipment or failing to be present for the installation of a new telephone line or equipment. Fifteen per cent of recalls were on the grounds of being charged with a new offence. (Home Office 2004: paras 10.9 - 10.10).

The following tables are drawn from the Offender Management Caseload Statistics (Home Office 2004)

**Home Detention Curfew Release(1) and Population Figures by Sex**

<table>
<thead>
<tr>
<th>England and Wales</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population with sentences of 3 months to less than 4 years</td>
<td>49,527</td>
<td>55,344</td>
<td>54,064</td>
<td>55,370</td>
<td>57,551</td>
</tr>
<tr>
<td>Males</td>
<td>46,248</td>
<td>51,533</td>
<td>50,303</td>
<td>51,413</td>
<td>53,256</td>
</tr>
<tr>
<td>Females</td>
<td>3,279</td>
<td>3,811</td>
<td>3,761</td>
<td>3,957</td>
<td>4,295</td>
</tr>
<tr>
<td>Number released on HDC</td>
<td>14,845</td>
<td>15,514</td>
<td>13,646</td>
<td>20,452</td>
<td>21,223</td>
</tr>
<tr>
<td>Males</td>
<td>13,351</td>
<td>14,009</td>
<td>12,118</td>
<td>18,507</td>
<td>19,081</td>
</tr>
<tr>
<td>Females</td>
<td>1,324</td>
<td>1,505</td>
<td>1,528</td>
<td>1,945</td>
<td>2,142</td>
</tr>
<tr>
<td>Percentage released</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Males</td>
<td>Females</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td>-------</td>
<td>---------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>29</td>
<td>40</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>27</td>
<td>39</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>24</td>
<td>41</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>36</td>
<td>49</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>36</td>
<td>50</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Population on HDC at end of year(2)</th>
<th>2,000</th>
<th>1,700</th>
<th>1,700</th>
<th>3,100</th>
<th>3,700</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average period to be served on HDC (days)</td>
<td>47</td>
<td>49</td>
<td>53</td>
<td>59</td>
<td>82</td>
</tr>
</tbody>
</table>

(1) These statistics are based on information recorded on the central Prison Service IT system at the end of October 2004. Further updates and amendments may be made to records on this system in future resulting in revised figures.

(2) Rounded to the nearest 100

### Home Detention Curfew Recalls by Reason (1, 2)

<table>
<thead>
<tr>
<th>England and Wales</th>
<th>Number of recalls</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1999</td>
</tr>
<tr>
<td>Total</td>
<td>702</td>
</tr>
<tr>
<td>Cases not involving new charges</td>
<td>. . .</td>
</tr>
<tr>
<td>Breach of HDC conditions</td>
<td>. . .</td>
</tr>
<tr>
<td>Installation failure</td>
<td>. . .</td>
</tr>
<tr>
<td>Monitoring failure</td>
<td>. . .</td>
</tr>
<tr>
<td>Change of circumstances</td>
<td>. . .</td>
</tr>
<tr>
<td>Risk of serious harm</td>
<td>. . .</td>
</tr>
<tr>
<td>Breach of non-HDC licence conditions</td>
<td>. . .</td>
</tr>
<tr>
<td>Cases involving new charges</td>
<td>111</td>
</tr>
<tr>
<td>Breach of HDC conditions</td>
<td>. . .</td>
</tr>
<tr>
<td>Inability to monitor</td>
<td>. . .</td>
</tr>
</tbody>
</table>
Risk of serious harm . . - - 
Charged with new offence . . 108 218 399

(1) Prior to 2001 recall cases involving new charges were not separately identified from those cases not involving new charges on the Prison Service IT system.

(2) These statistics are based on information recorded on the central Prison Service IT system at the end of October 2004. Further updates and amendments may be made to records on this system in future resulting in revised figures.

Understanding How Electronic Monitoring Works to Ensure Compliance

Although there can be a degree of stigma attached to the wearing of a tag, electronic monitoring is not primarily a penal technique in its own right - it is a way of ensuring compliance with requirements, in a community sentence, to stay in a place or stay away from a place for set periods. Without electronic monitoring, such requirements would be much harder to enforce, so much so that a criminal justice system may, in fact, not bother with them. Yet such spatial and temporal restrictions on offenders can be useful - so electronic monitoring has earned its place. Nonetheless, whilst electronic monitoring introduces a means of compliance that was not available before, its value and distinctiveness should not be over-rated. Crime reduction, public protection and rehabilitation require a range of approaches with offenders - each of which secure compliance in different ways:

**Incentive-based compliance** - offering some desirable state or good at the end of the process eg literacy, enhanced employment opportunities. Equipping offenders with skills increases their capacity to go straight. “I will give you this/you will gain this”

**Trust-based compliance** - creating a sense of obligation by seeking the offender’s consent; taking the offender at his/her word, accepting their “promise” to do what is required. Trust plays a part in building an offender's character. “Be good/ I believe in You”

**Threat-based compliance** - instilling a fear of future consequences, threatening or administering a sanction at whatever point compliance fails. Old-fashioned deterrence - in individual cases it should be neither underplayed or over-rated. “Co-operate or else”
**Surveillance-based compliance** - instilling an awareness of immediate regulation, as a result of being perpetually or intermittently watched; imposing the real-time or retrospective monitoring of whereabouts and schedules, and storing “incontestable” details on databases. This is what electronic monitoring does. “I am keeping my eye on you”.

**Incapacitation-based compliance** - going beyond the mere restriction to the actual deprivation of an offender’s liberty of action, usually, but not necessarily, by removing the offender to a place of confinement; inhibiting, not just prohibiting a particular action. Perhaps only prison does this in full. “I’ll stop you in your tracks”.

Electronic monitoring is not a panacea or a silver bullet. It has a legitimate part to play in managing offenders in the community (before, instead of and after imprisonment) but by itself, whilst inducing a certain prudence in some individuals, cannot be expected to be rehabilitative. It is not a substitute for rehabilitative measures, and by itself - precisely because it is not incapacitative - it leaves offenders with a choice whether to comply or not - its contribution to public protection is also limited. There will be failures - offenders who do not comply and/or reoffend and the more high profile of these have the potential to damage the credibility of any EM-related scheme.

**Conclusion**

In its own terms, HDC has been a major success - clear evidence of what can be achieved quickly when sufficient political will exists to override the inevitable resistance. It met its implicit objective of making prison numbers more manageable, and its explicit objective of intensifying discipline in the prison release process. It had the incidental effect of winning greater support for electronic monitoring from probation officers - more of them were exposed to it than to EM-curfew orders (whose numbers were initially low), and it was, after all, ensuring that offenders spent less time in prison (Nellis and Lilly 2000). But the overall penal rationale of HDC - in the age of the emerging seamless sentence - remains dubious. Perhaps the best that can be said for it is that at the time it was a rational response to the irrational situation of an inexorably rising prison population. Its subsequent development, in England and Wales, will inevitably be caught up in the changing nature of post-release supervision more generally.
References


SUPPLEMENTARY SUBMISSION FROM THE SCOTTISH EXECUTIVE TO THE JUSTICE 2 COMMITTEE

This document is to provide some additional factual background information on areas of work mentioned by witnesses during the oral evidence sessions on 12 and 19 April. This covers the following topics:

- Criminal Justice Social Work Groupings;
- Scottish Prison Service Joint Accreditation Panel;
- Tripartite Group;
- Throughcare;
- Statutory Supervision on release;
- Voluntary Aftercare;
- Throughcare Addictions Service;
- Working Together; and
- Home Detention Curfew.

CRIMINAL JUSTICE SOCIAL WORK GROUPINGS

Background
- The present arrangements for the delivery of criminal justice social work through 32 local authorities were established in the Social Work (Scotland) Act 1968.

- Prior to 1990s, criminal justice social work services were regarded as a marginalised service. Concerns led the Scottish Office in the early 1990s to introduce National Standards and Objectives (NOS) and a 100% funding arrangement. Real increases in funding followed through much of the 1990’s and this resulted in an increased availability and use of community sentences in Scotland. But concerns about criminal justice social work as a marginalised service continued. (It accounted for less than 1% of overall Social Work budget alone).

Tough Option
- As part of its strategy to promote community disposals, the then Scottish Office undertook a consultation in 1998 on the future of criminal justice social work services in Scotland. The “Tough Options” consultation paper raised a series of questions about the service including whether there was a need for restructuring to allow the service to become more effective and efficient in its delivery arrangements. The options were the status quo, partnerships of local authorities or a national probation service. CoSLA agreed that the status quo was not an option and opposed a national service.

The Groupings
- As a result of this consultation and with the agreement of COSLA, the 32 local authority criminal justice social work services were restructured into 11 mainland groupings/unitary authorities plus the islands. The groupings have no statutory basis but are an administrative arrangement. The aim was to provide for larger authorities able to share resources allowing greater flexibility to meet local needs. CoSLA took the view that there was no need to agree a single model for the new
groupings and instead agreed to a set of underpinning principles which formed the basis of the restructuring agreement between the Executive and COSLA (attached annex).

- COSLA agreed to 8 mainland groupings:
  - Ayrshire Grouping
  - Dunbartonshire, Argyll & Bute Grouping
  - Forth Valley Grouping
  - Lanarkshire Grouping
  - Edinburgh, Lothians & Scottish Borders Consortium
  - Northern Grouping
  - Renfrew, East Renfrewshire and Inverclyde Grouping
  - Tayside Partnership

As well as 3 unitary authorities of Glasgow, Fife and Dumfries and Galloway and the island authorities.

- The new groupings prepared their first 3-year strategic plans for the period 2002-05 during the autumn of 2001 and the new groupings were introduced in April 2002. The objective of the new structural arrangement was to build the capacity of the groupings to deliver the Executive’s forward strategy for the service.

- In 2003, the Social Work Services Inspectorate started its programme of inspections of criminal justice social work services. To date, 4 inspections have been completed –Argyle Bute and West Dunbartonshire, Fife, Glasgow, and Tayside. The fifth inspection of East Renfrewshire, Inverclyde Renfrewshire is in the process of being finalised at present. The reports so far have shown some progress in relationship to partnership working within the groupings but the differing structural models are at varying stages in the evolution process.

**Funding**

- Unlike other parts of social work, CJSW is funded through the 100% funding arrangements, although local authorities are able to top this up from other resources.

- Following establishment of groupings, the Executive took a funding power in the Criminal Justice (Scotland) Act 2003 to enable it make payments on a grouping basis.

- Funding now provided on a grouping basis (or to the unitary authorities) on the basis of 3-year strategic plans for each grouping/unitary authority.

**Relationship with SPS**

- There is no formal mechanism for the groupings to interact with SPS. Interaction will largely be local and specific to particular issues.

- Need to acknowledge the geography of SPS establishments – some CJSW groupings/authorities have no establishments within their areas while others have more than.
• Within this context, Scottish Ministers saw the need for some mechanism to promote partnership working and the Tripartite Group was set up in 2001 with membership from SPS, ADSW and the Executive.

JOINT ACCREDITATION PANEL

Accreditation

• The SPS Accreditation Panel has operated since 1997. It offers accreditation advice to the SPS Board on programmes as well as on-site delivery.

• The Community Justice Accreditation Panel first met in April 2003 and acts as an independent advisory group to Ministers on accreditation issues for programmes in the community for adult offenders.

• When the Community Justice Accreditation Panel was set up, Ministers gave a commitment that it would merge with the SPS panel after 2 years of operation. This is in line with the Executive’s intention of establishing a more joined up approach to management of offenders. It was felt that the Community Justice Accreditation Panel required a period of 2 years to establish its credibility and to develop procedures appropriate to work in the community. From the start however, there has been some common membership and the processes and procedures were designed to facilitate a merger.

• The initial two year period has now passed and the process for establishing a joint panel to cover community justice and prison programme accreditation needs is underway.

• Until this process is complete the existing members from both SPS and SCJAP Panels will meet under interim arrangements for one year under the chairmanship of Sheriff Alan Finlayson.

• The intention is for the Joint Panel to be fully established by 2006.

TRIPARTITE GROUP

1. In 2001, the Scottish Executive convened a Group - the Tripartite Group – to promote closer partnership working between the Scottish Executive, the Scottish Prison Service and local authorities. The Tripartite Group recognised that partnership working was particularly important in ensuring the successful resettlement of an offender within the community and that the provision of support at the point of transition could help to reduce re-offending. It was therefore agreed that the Group should consider throughcare as its first priority.

2. After the publication of the Throughcare strategy, the Tripartite Group went on to consider how to promote partnership working in relation to those individuals leaving prison with an addictions problem and has developed a model for a new throughcare addictions service for short term prisoners to start in August 2005.
3. Following on from this, the Group has just started work, in association with ACPOS, on developing a model to support the arrangements in sections 9 and 10 of the Bill in relation to the assessment and management of registered sex offenders.

THROUGHCARE

4. The term "throughcare" is used to denote the provision of a range of social work and associated services to prisoners and their families from the point of sentence or remand, during the period of imprisonment and following release into the community. These services are primarily concerned to assist prisoners to prepare for release and to help them to resettle in the community, within the law, whether required by statute as part of a licence or because the prisoner seeks such a service.

5. The Executive is currently implementing the enhanced throughcare strategy based on the recommendations of the Tripartite Group Report “Throughcare – Developing the Service” which was published on 23 January 2003. This is available on the Scottish Executive website at www.scotland.gov.uk/library5/justice/tcds-00.asp

6. At its core, the Tripartite Group Report aims firstly to deliver better public protection through the closer supervision of those prisoners released on licence and secondly to provide better support services to address the issues of social exclusion which lead many to reoffend. Supervising Social Workers work in partnership with other agencies to address the needs of each individual. Where appropriate, interventions should build on the work already undertaken in prison and reinforce the prisoner’s motivation for change. Throughcare consists of several elements, including sentence management, pre-release planning, risk assessment and post release supervision. Central to these are good working relationships between the prisoner, their family, Scottish Prison Service staff, Criminal Justice Social Work personnel and relevant staff of voluntary organisations.

7. In implementing the Tripartite Group’s recommendations the Scottish Executive has

- Set up a Throughcare Implementation Group to advise on improvements in practical arrangements for throughcare. It operates as a Subgroup of the main Tripartite Group. This includes practitioners from the 2 services (prisons and criminal justice social work) and representation from the voluntary sector.

- Taken legislative provisions in the Criminal Justice (Scotland) Act 2003 to strengthen arrangements for the provision of throughcare.

- Introduced a staged implementation of the recommendations in the Throughcare report and made available substantial additional funding to this end. This led to an increase in allocations to local authorities from £2.5m in 2002-03 to £4.5m in 2003-04 to £6.7m in 2005-2006.

- Arranged 4 multi-agency training events for criminal justice social workers, prison officers and people working in the voluntary sector to promote local partnership working (held in March 2004).
STATUTORY SUPERVISION

8. **Phase 1** of the enhanced throughcare strategy deals with the group of prisoners subject to **statutory supervision** on release. Under section 27 of the Social Work (Scotland) Act 1968, Local Authorities have **statutory responsibility** for prisoners sentenced to **over 4 years** in prison on release and for those sentenced to any length of custody but subject to a **Supervised Release Order or Extended Sentence**. (Supervised Release Orders and Extended Sentences allow courts to impose, at the point of sentence, additional post-release supervision on licence where necessary.)

9. Local authorities are now in the process of allocating a community-based supervising officer to every prisoner, currently serving more than 4 years in prison, from the point of sentence. This will allow for closer links with community based social work throughout the period of custody, strengthening the ties between the prisoner, their family and the community. This is a major task and it is taking some time to achieve 100% coverage. Those prisoners nearing the end of their sentences are being given priority.

VOLUNTARY AFTERCARE

10. For prisoners serving short term sentences (less than 4 years) and not subject to statutory supervision on release, Local Authorities also have statutory responsibility to offer **voluntary aftercare** which consists of supervision, support and assistance to people who request such a service either before release from custody or within 12 months of their release. Where prisoners serve short sentences, there is a need to **link** them to important services back in the community on their release, such as

   - Housing;
   - Employment;
   - Benefits;
   - Health;
   - Drug/alcohol agencies;
   - Further education/training/ literacy;
   - Social Work Departments.

11. **Phase 2** of the enhanced throughcare strategy identified priorities within the group of prisoners eligible for **voluntary aftercare**. These included high risk offenders and, with the development of the throughcare addictions service, short term prisoners with addiction problems, including young offenders and women prisoners.

THROUGHCARE ADDICTIONS SERVICE

12. Phase 2 now incorporates the new **Throughcare Addictions Service**. This service will commence when the SPS existing transitional care contract ends in August 2005. The Throughcare Addictions Service will be delivered by local authorities as the statutory agency with responsibility for throughcare. It is not the intention that they will provide the addictions service directly but rather they will refer
the offender to a treatment provider in the community. Some prioritisation of the service will be required. The period of contact should normally be confined to the last 6 weeks of the prisoner’s sentence and to the immediate 6 weeks after release. All offenders subject to the Throughcare Addictions Service are also eligible to the broader Phase 2 throughcare arrangements.

**WORKING TOGETHER**

13. **In Phase 3** of the enhanced throughcare strategy the aim is to:

- develop a strong multi-agency approach to throughcare services not only between the Scottish Prison Service and local authorities but also with the voluntary sector and other government agencies working with released prisoners and their families.

- improve the transition process from prison to the community and the exchange of information about individual prisoners especially at point of admission and discharge. Work is about to start on a shared approach to sentence management.

**HOME DETENTION CURFEW**

**Risk Assessment and Decisions on Release**

At Col 1525 – 1527 issues were raised about the risk assessment to be used in determining whether to release a prisoner on Home Detention Curfew. The issue was raised again at Col 1544.

As explained at paragraphs 35 and 36 of the Policy Memorandum, the decision to release will be taken by officials in the Scottish Prison Service on behalf of ministers, following an assessment by SPS and local authority criminal justice social work.

Section 3AA(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (inserted by section 11 of the Bill) requires the power to release a prisoner on Home Detention Curfew licence to be exercised having regard to considerations of:

- Protecting the public at large;
- Preventing reoffending by the prisoner; and
- Securing the successful reintegration of the prisoner into the community.

The assessment by SPS and local authority criminal justice social work will be directed at these considerations. The cost of these assessments is discussed at paragraph 142 of the Financial Memorandum, which explains that work is being done by the Executive with the Scottish Prison Service and local authorities to design the assessment process. This process seeks to build on existing processes as far as possible. A working group has been established by the Scottish Executive Justice Department, with representatives from the Scottish Prison Service and the Association of Directors of Social Work to do this. The group is currently examining the range of information required to inform the assessment, the information that is
already held in the system and how to fill any gaps, and looking at the tiered assessment system used in England and Wales.

At column 1527 mention was made of the Risk Management Authority in connection with the assessments to be made for Home Detention Curfew. As explained by Mr Cameron, the role of the RMA is primarily directed at the risk posed by serious violent and sexual offenders rather than the offenders at the other end of the spectrum being considered for Home Detention Curfew. The RMA is concerned with risks to public safety rather than wider risks of reoffending. While the work of the RMA could help in assessing risk to public safety, that would only be part of the assessment required for HDC.

Conditions

Paragraphs 41 to 43 of Policy Memorandum discuss the standard conditions that will apply to all prisoners released on Home Detention Curfew. The proposed standard conditions are set out in paragraphs 80 and 81 of the Explanatory Notes.

Paragraphs 44 and 45 of the Policy Memorandum discusses the inclusion of additional conditions in the HDC licence. This is discussed in more detail at paragraph 83 of the Explanatory Notes. Section 12 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 will allow the Scottish Ministers to specify additional conditions on a case-by-case basis, having regard to the same considerations as are used in determining whether to release the person on HDC. The improved joint planning by SPS and local authority social work should facilitate this process.

These additional conditions could include social work supervision, or the sorts of conditions described by Sue Brookes and Bill Millar at Cols 1541-1544. As described at paragraphs 143 and 144 of the Financial Memorandum, social work supervision would not be required for every prisoner released on HDC, but could be added on a case-by-case basis. The costs set out there are based on 25% of those released being subject to supervision, and allows for more intensive supervision packages to be used in some cases.

The SE/SPS/ADSW group mentioned above is looking at how the joint assessment can be used to identify and agree the need for additional conditions in individual cases.

Victims Issues

Victim issues were raised at Col 1529 and 1544, both in relation to victim notification and the consideration of victim issues as part of the assessment process.

The provisions of the Bill integrate with the provisions of sections 16 and 17 of the Criminal Justice (Scotland) Act 2003, which provide for victims to receive information and to be able to make representations in certain circumstances. These sections
apply in relation to prisoners receiving sentences of 4 years or more\(^1\). They do not apply in relation to short-term prisoners, who will make up the vast majority of persons released on Home Detention Curfew. Home Detention Curfew will however be available for some long-term prisoners, and the provisions of section 17 will allow victims to receive information and make representations. The Parole Board will consider these representations in deciding whether to grant parole, a precondition for release on HDC. Any special conditions for the parole licence, e.g. to enhance protection for victims, would flow through to the HDC licence.

Victim issues will be an important part of the assessment process for all prisoners being considered for release on Home Detention Curfew, using a combination of information available to the Scottish Prison Service and local authority social work. Additional conditions could be used to enhance protection of particular victims, for example using the curfew to restrict the person away from a particular place. However where significant issues like this are identified, it is unlikely that the person would be released on HDC.

Annex

**TOUGH OPTIONS: CRITERIA**

**Structural Arrangements; Principles/Key Requirements**

- Partnership covers all aspects, including planning, operational, and service delivery;
- Overarching structural model to serve the individual accountability needs of constituent authorities;
- Clear cut lines of financial, operational and staffing accountability;
- Integration of strategic planning process;
- Single budget to manage financial needs of the group;
- Subject to availability of funding, consistency within the group of provision of non core support programmes;
- Single point of entry at a strategic level for engagement with the voluntary sector and related criminal justice agencies;
- Adoption of Best Value principles;
- Adoption of quality assurance approach;
- Consistent application of performance indicators and management information;
- Measurement and evaluation of outcomes;
- Delivery to occur at the local level with links to other planning processes;
- Continuation of operational links with other key areas of social work and housing;
- Development of links with other local agencies.

\(^1\) Section 16 contains a power to adjust this, so that the provisions could apply in future to those serving shorter sentences.
ADDITIONAL INFORMATION FROM THE SCOTTISH EXECUTIVE, 26 MAY 2005

RELATIONSHIP BETWEEN POWERS UNDER SECTION 2(10) AND SECTIONS 5 AND 6

The Committee would welcome clarification on the relationship between the various powers of direction contained in section 2(10) and sections 5 and 6 of the Bill. The accompanying documents to the Bill refer to powers of direction and of intervention. However, the word intervention is not used in the Bill, which refers only to powers to issue directions. The Committee would welcome more information on the apparent distinction between these powers. In addition, the Committee notes the Minister’s assurances that the powers will not be applied in relation to individual local authorities and seeks clarification that this is the case for all the powers of direction in the Bill.

1. The Committee have asked for clarification of the distinction between the powers in section 2(10) and sections 5 and 6. Sections 5 and 6 specifically address the situation where there is an independently identified failure on the part of either a CJA (s5) or a local authority (s6) to carry out specified statutory functions. Ministers will not have the power to initiate this procedure themselves. In these cases, the powers in sections 5 and 6 provide a structured mechanism by which Ministers can require specific action to be taken by the CJA. Ministers will draw the reported failures to the attention of the CJA and require its response. Only if Ministers are dissatisfied with the response will Ministers have the option of issuing an enforcement direction.

2. By contrast, section 2(10) provides a general power of direction in relation exclusively to the functions of CJAs. Ministers will be able to use this power at their own hand, without waiting for representations from a 3rd party. Directions may be issued without first inviting the CJA to comment, although Ministers are confident that CJAs will comment on any directions received if they think fit. It is anticipated that section 2(10) will be used to address situations where there is no specific statutory failure, but where it would be desirable to provide some national direction as to how functions – such as reporting on performance, for example – should be carried out. The power in section 2(10) has been included alongside the power to issue guidance, as part of the machinery which will enable Ministers to ensure that these changes deliver the greater national consistency and comparability which respondents to the consultation wished to see. However the power could be used to direct a CJA to adopt, or discontinue, a particular course of action where Ministers consider that appropriate. Some examples of how this might be used in practice are:

- **management and reporting of performance** – directions could be used to establish consistent monitoring regimes which will provide data comparable across CJAs. The Bill also enables CJAs to take action where there is evidence that local authorities are failing to perform adequately, or to make recommendations to Ministers concerning SPS performance. Directions could be used to establish those situations that it would be appropriate for CJAs to take this action; and

- **sharing of information** – directions would provide a means of ensuring consistency across Scotland in how information is shared between partners.
within a CJA. This would ensure that national organisations do not have to adapt to a variety of protocols used by different CJA areas.

3. The Committee asked for clarification regarding the use of the term “powers of intervention”. This reference in the accompanying documents is intended to be helpful in highlighting that the powers in sections 5 and 6 are more elaborate and describe a situation where Ministers will be intervening, in a staged way, to require specific action in relation to a particular failure by a particular authority or CJA, rather than being simply a general power of direction, as contained in section 2(10). But the Committee is correct that the section 5 and section 6 powers are a type of power of direction.

4. The Committee sought reassurances on the impact of these provisions on individual local authorities. Section 2(10) bites only on CJAs and the functions which they exercise. It gives Ministers no powers to issue directions to individual local authorities regarding the exercise of their continuing criminal justice social work functions. Section 6 does address the situation where one of the specified bodies reports a failure of function by an individual local authority. Even in that case, however, Ministers are limited to requiring specific action by the CJA in relation to the authority and cannot issue directions to the local authority.

VOLUNTARY THROUGHCARE

The Committee notes the Minister’s evidence that there are opportunities for those serving short term sentences to access voluntary throughcare. The Committee would welcome further information on this, and in particular, whether all those offenders subject to short term sentences are able to access this voluntary throughcare?

5. Voluntary Aftercare is available to all prisoners serving less than 4 years and not subject to statutory supervision on release and who request such a service while in custody or within 12 months of their release from prison. Voluntary aftercare is sometimes referred to as Phase 2 of the Enhanced Throughcare Strategy.

6. Before the Enhanced Throughcare Strategy, the prisoners in this group had to request voluntary assistance on their release. If they did so then the local authorities had a statutory obligation to provide it. The new strategy, and the guidance which has accompanied it, introduces a more proactive approach for certain priority groups and is delivered by the new throughcare teams in the local authorities working in partnership with their voluntary sector colleagues.

7. In addition, the Link Centres located within the Scottish Prison Establishments play a significant role in helping short term prisoners make appropriate links with other community based partner organisations.

8. The numbers of short term prisoners leaving prison each year is very large and the Tripartite Group (the Executive, the SPS and local authorities) which prepared the new strategy has taken an incremental approach to improving the
service by identifying priority groups for this more proactive service. These are high risk offenders (to protect the public) and those who have accepted help with addictions problems in prison (to continue help with their addictions back into the community and to offer other support). An extra £2.3m is being invested each year in the voluntary throughcare service, bringing the total for throughcare to over £6m.

Note for the Bill Bound Volume

At this point in the document, the Scottish Executive included sections from an earlier submission which it had sent to the Committee. These sections are headed ‘Voluntary Aftercare’ and ‘Throughcare Addictions Service’, and are already included in this volume in the document immediately before this one.

The Scottish Executive also added the following new paragraph to the section on Throughcare Addictions Service.

Added note: The Throughcare Addiction Service is due to commence when the Scottish Prison Service (SPS) existing transitional care contract ends on 31 July 2005. Whilst it will take time for the new service to be fully operational, local authorities should have contingency plans in place in the interim.

The submission in its original form continues from this point:

HOME DETENTION CURFEW

What will happen in the event of a breach of HDC conditions? Who is responsible for following up any breach?

9. Arrangements for breach and recall are described briefly at paragraphs 46 of the Policy Memorandum and paragraphs 87-89 of the Explanatory Notes.

10. Where a person on HDC fails to comply with the curfew condition, this will be detected by the electronic monitoring service provider, who will notify the Scottish Prison Service (“the Scottish Ministers”). Where a person on HDC fails to comply with one of the other conditions of the licence, e.g. a supervision condition, then the supervising officer appointed as part of that condition would be responsible for notifying SPS.

11. The decision on whether to revoke the licence and recall the offender to custody would then be taken by SPS. As discussed in the Committee on 11 May (Col 1628), SPS will then decide what appropriate measures to take. These might range from a warning (for minor breaches), to variation of the licence conditions, to revocation and recall. Revocation of the licence renders the offender liable to be detained in pursuance of his original sentence. The police would be responsible for detaining the offender and returning him to custody, as happens at present for other licensees returned to custody (see paragraph 88 of Explanatory Notes). (The Committee will be aware of the evidence from the police on this point, which was considered by the Finance Committee). Where the offender is not detained
immediately, the Bill ensures that the time spent unlawfully at large does not count, e.g. if an offender on HDC is recalled a week before the end of his licence, but is not found and returned to custody for some time, he will still be liable to serve that outstanding week of his original sentence.

12. In the case of long-term prisoners released on HDC as a precursor to a period on parole licence, breach and recall would be as described above. However any breach would also be referred to the Parole Board so that they can consider whether their earlier recommendation for release on parole should be revisited.

Appeal process and time limits

13. As described at paragraph 87 of the Explanatory Notes, once a person is returned to prison following recall from Home Detention Curfew, he must be informed of the reasons for the revocation of the licence and of his right to make representations to the Parole Board. The Parole Board Rules will be amended to provide for this appeal process.

14. It is in the prisoner’s interests for appeals to be dealt with as quickly as possible, as the key outcome of a successful appeal would be that the revocation of the licence would be cancelled and the prisoner re-released on HDC – the longer that the appeal takes, the less benefit to the prisoner as he would automatically be released at half-sentence anyway. We are therefore working with the Parole Board to put in place a procedure that allows appeals to be dealt with quickly.

15. We do not envisage placing a time limit on appeals. As noted above, the ever-shortening period before automatic release at half-sentence means that a late appeal would have relatively little practical effect. However there would be some limited value in lodging and hearing an appeal even after the prisoner is released as the recall would prevent the offender from being eligible for HDC on a future occasion – a successful appeal would result in the recall being disregarded for these purposes.

CONSULTATION ON CJAs


17. The consultation will be analysed by external consultants and the timescale is shown below:
   - full copy of responses with consultants by 30 June 2005;
   - a draft report by 29 July 2005; and
   - a final report will be required by 31 August 2005.

18. The report will be published along with the Executive’s response once that is formulated. In line with Consultation Guidance, the actual responses (excluding those where permission has been refused) will be published on the website by the end of July.
19. Ministers are aware of the desirability of the outcome of the consultation being available during future consideration of the Bill but until the responses have been analysed it is not possible to be specific about when their proposals based on the analyses of that consultation will be available.

Reducing Reoffending Division

May 2005
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 3, No. 12         Session 2

Meeting of the Parliament

Thursday 16 June 2005

Note: (DT) signifies a decision taken at Decision Time.

Management of Offenders etc. (Scotland) Bill: The Minister for Justice (Cathy Jamieson) moved S2M-2775—That the Parliament agrees to the general principles of the Management of Offenders etc. (Scotland) Bill.

After debate, the motion was agreed to ((DT) by division: For 89, Against 17, Abstentions 0).

Management of Offenders etc. (Scotland) Bill: Financial Resolution: The Deputy Minister for Justice (Hugh Henry) moved S2M-2933—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Management of Offenders etc. (Scotland) Bill, agrees—

(a) to the following expenditure out of the Scottish Consolidated Fund—

   (i) expenditure of the Scottish Administration in consequence of the Act; and
   (ii) increases attributable to the Act in the sums payable out of that Fund under any other enactment; and

(b) to any payment required to be made by virtue of the Act.

The motion was agreed to ((DT) by division: For 89, Against 3, Abstentions 14).
Scottish Parliament

Thursday 16 June 2005

[THE PRESIDING OFFICER opened the meeting at 09:15]

Management of Offenders etc (Scotland) Bill: Stage 1

The Presiding Officer (Mr George Reid): Good morning. The first item of business is a debate on motion S2M-2775, in the name of Cathy Jamieson, that the Parliament agrees to the general principles of the Management of Offenders etc (Scotland) Bill.

09:15

The Minister for Justice (Cathy Jamieson): Reoffending is corrosive. It tears at families and neighbourhoods, erodes public confidence in criminal justice and saps the efforts and energies of the police and all who work hard every day in our courts, community justice services and prisons. People who offend and offend again clog up our courts and fill up our prisons, often on short sentences. They distort the criminal justice system, which requires more and more effort and resources simply to catch and secure them when those energies and resources would be better used to challenge them to return to law-abiding lifestyles.

In Scotland in 2002, two of every three convicted offenders had at least one previous conviction. Six out of 10 offenders who were released from jail in 1999 were convicted of another offence within two years and one offender in every two who were released from jail in 2001 was returned to jail within two years. That is simply unacceptable, but it is not only about offenders reoffending and being sent to prison again. Of those who received a probation order in 1999, 58 per cent were reconvicted of another offence within two years, while 42 per cent of offenders who began a community service order and 40 per cent of those who were fined were reconvicted for further offences.

Many repeat offenders who end up in prison have already served community sentences, so we must break the cycle of repeat offending. Not only do we need community sentences that work and in which the public have confidence, but we must have custodial sentences that rehabilitate as well as punish. We must have proper sentence management that reduces reoffending and delivers the safer communities that the people of Scotland deserve. Therefore, I am pleased to open the stage 1 debate on the Management of Offenders etc (Scotland) Bill, which is another step in our radical reform of our criminal justice service.

The bill creates a new framework for integrated management of offenders in order to reduce reoffending. It will introduce a home detention curfew scheme to help to manage the return of selected low-risk prisoners from custody back into the community, and will further tighten how we manage sex offenders. It will also establish a further deterrent to people who would offend or reoffend: the Criminal Injuries Compensation Authority will be given powers to recover from offenders the cost of compensation that is awarded to the victims of crime, which will send out a firm message that crime does not and will not pay.

I will address first the new measures for integrated offender management. I am sure that we all agree that we need to get to grips with offenders, particularly repeat offenders, so that they are less likely to reoffend and less likely to keep churning through the system. We know that the current system is not working: the figures speak for themselves and the findings from last year’s consultation echo those failings. I have said repeatedly that when we are faced with a challenge such as this, the status quo is not an option, which is why we have listened and are acting. We are providing leadership and intend to provide national direction.

A new national advisory body will be set up to give a national focus to efforts to reduce reoffending because, for too long, too many services have been pulling in too many different directions. Locally, we need better joint working and better sentence management, which is why the bill will place a new statutory duty on local authorities and the Scottish Prison Service to work together in local partnerships to reduce reoffending. It will also establish new community justice authorities, which will bring together local authorities for co-ordinated service delivery, lead local plans for reducing reoffending and be locally accountable and nationally scrutinised.

We must also get to grips more with offenders’ return from prison to communities, so the bill will introduce a home detention curfew scheme that will help to manage the return of selected low-risk prisoners from custody back to the community. The scheme will allow certain prisoners to serve the remainder of their sentences differently: in the community and subject to curfews that will be verified by a robust electronic monitoring system. I make it clear that home detention curfew will not be an automatic entitlement for prisoners, but will be considered only for prisoners who pass a robust risk assessment. It can offer a way of helping offenders to rebuild relationships and to
participate in employment or training and so help them to settle back in the community while facing up to their criminal actions. Those are all steps that we know can help us in the fight to reduce reoffending.

Events of the past few months tell us that, when it comes to managing sex offenders, criminal justice agencies must be ever vigilant and work ever more closely together if they are to reduce the risk that is posed to our communities and, in particular, to our children. We recognise the proper public concern about sex offenders. We hear that concern and we are continuing to act. The bill will place a new duty of co-operation on chief constables, local authorities and the Scottish Prison Service. It will set up joint arrangements between those services to assess, monitor and manage the risk that sex offenders pose and it will strengthen the sex offender monitoring process by closing a loophole for those who seek to evade the requirements of the sex offenders register.

In March, the First Minister announced a proposal to make all sex offenders who are sentenced to imprisonment for six months or more subject to conditions on their release, on which they would be supervised and liable to recall to prison if they failed to comply. We asked the Sentencing Commission for Scotland for its views on that proposal, but it felt that it could not support our proposal in advance of its wider review of early release. We note that view, but ministers have a duty to protect the public and we believe that it is right to make the change, even in advance of the further work on early release. Therefore, we will introduce the proposal in an amendment at stage 2.

Miss Annabel Goldie (West of Scotland) (Con): The minister alludes to an important issue. I understand from a Press Association press release that was issued overnight that the Sentencing Commission’s chairman, Lord Macfadyen, wrote to the minister saying that, if the Executive was taking that step on the basis that sex offenders posed a greater threat to public safety than other types of offender, the commission was unhappy because it felt that there had to be a consistent approach. I welcome the steps that the Executive is taking—they do not go far enough for me, but they travel in the correct direction—but if that is the Sentencing Commission’s view, is there not a strong argument that the Executive should question the whole concept of automatic early release?

Cathy Jamieson: Members are able to read the Sentencing Commission’s letter; it is published on the commission’s website. The important point is that we asked the Sentencing Commission to do a number of things: we asked it to examine bail and remand, as members are aware, and to examine the concept of early release, on which it will carry out a consultation at some point in, I hope, the not-too-distant future. Given that we have already signalled our intention to try to do something on sex offenders, it is important that we take that forward. I have heard it said that sex offenders are less likely to reoffend than some other offenders, but we need only consider the consequences of such offending for the victims—whose experiences often leave them with lifelong trauma—to realise that we must do everything that we can to close loopholes.

Annabel Goldie is aware of my concern about ensuring that we get the balance right on general early release in the future. We will do more work on that, but it is proper that we introduce measures on early release of sex offenders in an amendment to the bill so that we can tighten the current legislation. I hope that what Miss Goldie said indicates support from the Conservative party for that measure.

Stewart Stevenson (Banff and Buchan) (SNP): Does the minister agree that, although the figures show that sex offenders are least likely to reoffend, that is partly due to the difficulty in detecting and convicting them and that it is highly likely that, although reconviction rates for sex offenders might be low, reoffending rates might not necessarily be so?

Cathy Jamieson: Stewart Stevenson makes a valid point. The possibility that he suggests is one of the reasons why I feel that it is right and proper that we introduce the proposed measures. In some instances, patterns of offending behaviour by sex offenders mean that a considerable time might pass between offences for which they are caught and punished—although that does not mean that they are not necessarily a risk to the public. I stress that that is why we are introducing our proposals.

I mentioned the Criminal Injuries Compensation Authority. It is important that we encourage offenders to face up to the consequences of their offending behaviour whenever we have the opportunity to do so. Section 13 of the bill will give the Criminal Injuries Compensation Authority powers to recover from offenders the cost of the compensation that is awarded to the victims of crime. I believe that, when a crime has been committed and when compensation has been paid from the public purse, it should be possible for the authority to claim that sum back from the offender.

A stronger, safer Scotland needs a criminal justice service that protects the public and punishes offenders, but it must also offer a second chance to those who would benefit from that and who are prepared to take the chance. I believe that the bill will support those aims by creating a
stronger system for management of offenders and by reducing reoffending.

I thank the members of Justice 2 Committee, and of course the committee’s clerks, for conducting their careful stage 1 consideration of the bill. I followed the evidence sessions with great interest and I have read the committee’s report thoroughly. I am glad that so many people who are involved in criminal justice services took the opportunity to come along and present their views. I recognise that there exists a range of views and opinions on a number of issues, which is why it is important that Parliament has the opportunity to scrutinise them. I believe that the committee did that job extremely well at stage 1 and I have no doubt that it will continue its thorough scrutiny at stage 2. I am pleased that the majority of committee members endorse the principles of the bill, although I appreciate that some members felt that they could not do so. I will of course be considering closely the recommendations in the committee’s report, and I will try to respond to them in writing prior to the commencement of stage 2.

I hope that we will have a useful debate this morning. Previous debates have shown quite a degree of consensus in Parliament that the time is right to do something. We must move forward, tighten up the processes and ensure that we have a better system for managing offenders, whether they are in custody or in the community, and we must balance punishment and rehabilitation and keep public safety at the heart of our concerns. That is why I am delighted to move,

That the Parliament agrees to the general principles of the Management of Offenders etc. (Scotland) Bill.
element in their remaining part of society—it will be good news. That must be balanced, as I am sure the Conservatives will be aware, against the level of protection that comes from the knowledge that people are banged up away from society. The argument must be about the balance of increased risk and increased advantage. So far, we are quite convinced that the earlier we reintegrate people into society, the greater the benefit will be.

We welcome the minister's change of heart on community justice authorities. She was persuaded by the vociferously expressed opinion of local authorities in particular that she should not proceed with a national community justice authority, but instead go for local justice authorities. The establishment of a national authority would have been seen as yet another centralising move, which would run counter to the Local Government in Scotland Act 2003, through which we delivered more power to local authorities to take control and to deliver against local needs. The minister's response to those opinions is welcome.

However, do we need a chief executive and extra staff—however few—to undertake responsibility for all those community justice authorities, given that fire boards and joint police authorities can be managed simply by integrating responsibility for those bodies into the responsibilities of senior local government office bearers? I would have to give a not proven verdict on the current suggestions, but that matter can be addressed as our consideration of the bill continues and is no reason to oppose the bill. We will hear what the ministers have to say on the matter.

Other countries—Denmark, Norway, Sweden and Finland spring to mind—have structures that bring together prison and community offender services, and we welcome moves to build on that experience. Such structures can improve lines of communication, enhance information sharing and build more coherent and organised structures to help offenders and the community as a whole.

The CJAs must do what it says on the tin. The different cultures, structures and skill mixes of local authorities, police, the national health service, the Crown Office and Procurator Fiscal Service, the Scottish Courts Administration and registered social landlords and the vital role of the voluntary sector can be melded to increase effectiveness or—if we get it wrong—merged in a Pol Pot-style year zero situation that will set back the cause of community justice for a decade. I am inclined to believe that we will achieve the former, but we must be alert to the danger of the latter.

Ministers will know that I have been a vigorous critic of the Scottish Prison Service and I share much of the frustration that ministers have experienced with it. The bill may represent an opportunity to do something about its performance.

I turn to home detention curfews. Maggie Thatcher—the Tories should listen up—said that prison is an expensive way of making bad people worse. HDCs might help. Of course, Jonathan Aitken, a former Tory, has some experience of them, so he might give the Conservatives advice about their worth. The evidence from England on whether they work is mixed.

The bill is a work in progress, rather like too many bills that we have seen of late. We can see that at least one minister is finding the ministerial seat quite hot today. My whip will not let me take my jacket off whatever the temperature.

Alternatives to prison can work, but that is far from automatic. Reform in society is just as important as reform in the criminal justice system, so we have to address societal needs. Finland, with its low offending and incarceration rates, has much to teach us about handling crime and on how and when criminals and countries take responsibility for their affairs and improve their performance.

09:37

Miss Annabel Goldie (West of Scotland) (Con): I make it clear at the outset that I speak in this debate on political issues as the Conservative spokesman on justice, not as the convener of the Justice 2 Committee. However, as convener of that committee I express my appreciation to my colleagues on the committee, our clerks and the various witnesses, including the minister, who came before the committee, for their collective and respective efforts in producing information, collating it and being prepared to debate it so that we could reach a majority committee view. I thank the minister for her kind acknowledgement of the work that was undertaken.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Will the member give way?

Miss Goldie: Not at the moment.

For political reasons, on which I shall expand in the course of the debate, I was unable to support the majority committee view and dissented from supporting the bill at stage 1 in the committee. I accept that the spirit of the bill is well intended and my party acknowledges that the management of offenders is a vital aspect of our justice system that must be given more time and consideration. If we really want to rehabilitate criminals and deter people from committing crime, they have to know that they will serve a sentence that both reflects the gravity of the crime and gives them the chance to be rehabilitated. I think that Mr Stevenson
acknowledges that the question how we achieve those objectives in practice raises serious questions about the proposals in the bill.

In the limited time that is available to me, I propose to concentrate on the two major aspects of the bill that present problems to me. The first is that the bill is to be enacted within the existing regime of automatic early release from prison of convicted criminals. We know that the public at large are bewildered by automatic early release. They regard it as confusing. Given recent high-profile cases in which persons who were at liberty through automatic early release have committed serious crimes, both the public and victims have good cause to question why the regime continues.

In my party’s view it is irresponsible of the Scottish Executive, and unacceptable from the standpoint of public safety, to introduce a bill that contains provisions that will allow persons who have been convicted of serious crimes, but who will already get out of prison early under automatic early release, to get out even earlier.

**Bill Butler (Glasgow Anniesland) (Lab):** Will the member give way on that point?

**Cathy Jamieson:** Will the member give way?

**Miss Goldie:** I give way to the minister.

**Cathy Jamieson:** Does the member accept that I have made it clear in the information on the bill that I submitted and in the evidence that I gave to the committee that a number of offences for which people had been convicted and imprisoned would not come under the home detention curfew scheme? That point is important.

**Miss Goldie:** Yes. I accept what the minister says, but I draw to her attention a comment that the Home Secretary, Mr Jack Straw, made in 1999 about home detention curfews. He said:

“We have no plans or intention whatever to provide for electronic tagging to facilitate the early release of serious or sexual offenders. Let me make that clear, with a full stop—none whatever.”—[Official Report, House of Commons, 29 November 1999; Vol 340, c 27.]

Yet, as we already know from the experiment in England, matters have not proceeded in a positive way.

**Bill Butler:** Will the member take an intervention?

**Miss Goldie:** No—I am sorry.

The Scottish Executive might be able to explain away that strategy. It is, no doubt, driven by a desire to reduce the prison population by seeking to improve the lot of prisoners. However, the Scottish Conservatives consider that the priorities must be the safety of the public and the best interests of victims. It seems to me that neither of those paramount considerations will be protected by the bill.

In short, if the Scottish Executive will not stand up for public safety and victims, the Scottish Conservatives will. I make it crystal clear that we cannot support the bill for as long as automatic early release applies to prison sentences. We are prepared to lodge an amendment at stage 2 to end automatic early release and if the Executive is prepared to support it, we will support the bill.

The other area of serious concern that I had when listening to the evidence that was presented to the Justice 2 Committee by the Association of Directors of Social Work and the Convention of Scottish Local Authorities is the proposed statutory creation of community justice authorities. A useful co-ordination of activity and co-operation between agencies has been achieved since 2002 by the 14 funding and planning units that were constructed on the basis of local agreement and consensus.

**Stewart Stevenson:** Will the member take an intervention?

**Miss Goldie:** I am sorry, but I really am pushed for time. I apologise.

**The Presiding Officer:** There is a bit of time in hand this morning, so you can have another two minutes if you wish.

**Miss Goldie:** In that case, I will take the intervention.

**Stewart Stevenson:** Ending of automatic early release would mean that there were more people in prison. I have done a quick sum: I think that would cost between £100 million and £150 million extra a year. Does the member think that that is the best way of spending money in the criminal justice system?

**Miss Goldie:** I think that that is a question that Mr Stevenson should pose to the public and to victims and their families. My clear impression is that there is huge concern in Scotland about public safety and, equally important, about confidence in our criminal justice system. To me, the political priority of the Scottish Executive has to be to have regard to that fundamental public concern, which is what I am addressing. If the way of addressing that concern is to increase prison capacity, then it is the political imperative of Government to achieve it.

On the existing structures, I would have thought that there was significant merit in allowing the current partnerships to continue because they meet the aspirations of, and provide the necessary flexibility for, different areas in Scotland.

In evidence, COSLA stated:

“structures of themselves will not deliver either improved outcomes or worse outcomes. It is the … activity that goes
on that is important.”—[Official Report, Justice 2 Committee, 12 April 2005; c1493.]

That is a sensible observation.

We ask our social work departments to bear an intensifying workload and to discharge an exacting level of responsibility. Much of that is attributable to legislation that has been passed by Parliament. I would have thought that a period of consolidation and assessment would be preferable to imposing further statutory bureaucracy on those hard-pressed departments.

The Deputy Minister for Justice (Hugh Henry): The member talks about a period of good co-operation—which is working well—and about further co-operation and consolidation. We have heard the arguments that say, “Give us a bit more time” and “Give us a bit more money”. Despite the time and money, we hear month after month and year after year about cases in different parts of the country where the system, not individuals, is letting the community down. What does Annabel Goldie propose to do about the systemic and systematic failures that threaten communities?

Miss Goldie: There is a considerable advantage in listening to the views of the people who are working in the sector, which I consider to be authoritative.

It seems to me that when the partnerships to which I referred have been in operation only since 2002 and we have a devolved Parliament, a Scottish Executive and a Justice Department, there is ample opportunity to implement the process of consolidation and assessment to which I referred. There is a clear ability, particularly through Audit Scotland, to test what is happening and then to make any necessary adjustments through administrative change. However, I find the proposed imposition of a statutory framework to be alarming because I think that it will exacerbate problems.

In relation to what Mr Stevenson said, the inescapable conclusion that I have reached is that the Executive’s original suggestion—it was subsequently dropped—for a single correctional agency was unpopular and provocative. The suggestion has now been revived, by another name, in little local bits. I have a great deal of sympathy with the view that the estimated running costs of each community justice authority, of about £200,000 a year, could be better used to fund front-line services and to enhance programmes that are already being delivered. For those reasons, I do not find that a convincing case has been made for the creation of those authorities; I dissented in committee from supporting their creation. Unfortunately, the strictures of today’s debate constrain the opportunity for extended discussion, but for the reasons that I have stated, my party will not support the bill at stage 1.

09:46

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I welcome the publication of the bill and the debate this morning. I also welcome Miss Goldie’s clarification in her speech that she speaks on behalf of the Scottish Conservatives rather than the Justice 2 Committee. I hope that she might instruct her party to remove from its website the headline, “Justice two convenor refuses to support management of offenders bill.” That might clarify her position further.

There should be little doubt that one of the biggest factors in the crime rates in Scotland is people who have committed an offence commit another offence within a relatively short period after their release from custody. The minister outlined the figures this morning.

There is double concern for the communities that have had to put up with a further offence being committed in their area because, although the offender had gone through the justice system then the prison system, the state has in effect failed to rehabilitate that individual. In many cases, it is hard to rehabilitate successfully, as Mr Stevenson said. Often, however, the system actively discourages rehabilitation as a result of long delays in cases being brought to trial and an unfortunately high level of short—in some cases, very short—prison sentences being imposed.

Just as we must ensure that our justice system is transparent, fair and efficient, so we must ensure that it is effective in reducing the number of offenders who commit an offence for the first time and the number of those who reoffend once they have been punished. I am certain that the measures in the bill will help in that endeavour.

In our stage 1 inquiry, the committee explored many of the complex issues associated with the subject and inevitably, given that the bill is about structures, we gave much consideration to inter-institutional issues between social work, the police, the court service, the Executive and local authorities. I do not deny that those issues are important—of course they are—for morale and for leadership at the top of the organisations right through to all the staff who work in their fields, who are often extremely committed individuals doing their best. However, that means nothing to our constituents, who simply want the system to deliver better justice.

Community justice authorities will give a focus to what the Justice 1 Committee asked us to do in its recent report on rehabilitation in prisons, which was to give a clearer definition of rehabilitation,
what it means and what is required to make it more effective.

We will fail to reduce reoffending if we continue to deny a greater emphasis on equipping individuals with some of the structure that is missing from their lives and on giving them the skills and support that they have not had. With a statutory duty on all agencies to work together, however, they will do so. It could be argued that, until now, the scene has been patchy. There are some examples of excellent partnership working in Scotland, as I know from my Borders constituency, and many areas are leading in partnership working. However, other areas could benefit from learning from best practice.

I understand that the Conservatives will not support the bill because they believe that the case has not been made for statutory change to structures. That is the ground on which they dissented from the committee’s report. David Croft, the governor of Edinburgh prison, said in evidence:

“On the quality of the partnerships, one of the questions asked was why it is necessary to create a structure to make all this work if it is working okay just now. There is nothing in my management experience that contradicts the view that without a structure we will never get anybody accountably delivering anything. I am talking about the size of the present reoffending problem in Scotland. That is where I believe the proposed structure would be a benefit.”—[Official Report, Justice 2 Committee, 19 April 2005; c 1538.]

Structures are important and they will be effective if we can ensure that all agencies have a duty to work together. The Conservatives seem to oppose that duty. That will not be understood by my constituents or indeed by the communities that the Conservatives claim to represent.

In February, the Justice 1 Committee’s report on rehabilitation in prisons quoted professionals as saying:

“There is a sense that rehabilitation deals with recent matters ... but some of the people with whom we work have long-standing problems since their early childhood. The ‘re’ in rehabilitate is not an option for many people who have had long-standing problems.”

I am aware that the Justice 2 Committee’s work on the bill has been limited, inevitably, to the scope of the bill. However, without a proper and mature debate on earlier intervention we will not begin to address the problem.

Paragraph 13 of the Justice 1 Committee’s report, which we debated in Parliament, states:

“offenders may never previously have been integrated to society.”

I welcome Mr Stevenson’s comments about integration into society. Trying to turn away the tide, as the Conservatives seek to do, is neither progressive nor will it be effective.

Although many individual offenders have not integrated into society, it is unlikely that those individuals will not have been known to public agencies such as the police, social work departments, education authorities or the hearings system—all the agencies that will work together in community justice authorities.

Information from the Scottish Prison Service report, “Young People in Custody in Scotland, An Occasional Paper”, showed us that 76.2 per cent of all young people in custody had a history of regular truancy; 43.6 per cent had attended special schools; over 9 per cent had reported previous contact with the children’s hearings system; over 63 per cent had close friends who were involved in criminal activity; and 52 per cent had at least one member of their immediate family who had served a custodial sentence. Without understanding that such triggers happen early in people’s lives, we will continue to be too late to rehabilitate individuals and that rehabilitation work will be much harder when we begin to undertake it. Therefore, the community justice authorities, which will ensure best practice and a statutory duty to co-operate, will build on the work of criminal justice social work groupings rather than undermine them, as the Conservatives seem to state.

Margaret Mitchell (Central Scotland) (Con): The member speaks of a statutory duty to co-operate. Does that phrase not ring hollow with him? Surely co-operation depends on flexibility and that is precisely what we propose should be allowed to happen rather than structures being imposed by diktat.

Jeremy Purvis: Conservative members cannot argue that the system has to be structured to provide support for the communities that they claim to represent and then deny the fact that the organisations in question—which are paid for out of all our taxes and which work for our communities—should have a duty to work together. When it comes to co-ordinating justice, of course there should be a duty on the police, the hearings system, social work departments and all the other organisations to work together. Frankly, it is ridiculous to say that criminal justice must be more effective, but then not to provide the tools that will enable that aim to be achieved.

Mr Stevenson said that home detention curfews can be a tool to make the rehabilitation of individuals more effective. I support those comments, and I hope that at stage 2 we will build on the evidence that we received with regard to the conditions that can be applied to home detention curfews. For example, there is potential with regard to the alcohol and drug programmes that begin in prison when a sentence is long enough for that to happen but do not continue in
the community, or with regard to the individual attending interviews with housing officers and learning about financial management. Structures will be put in place to afford such work to be done and the conditions of home detention curfew can be shaped around the needs of the individual. We can use the structures that are outlined in the bill to provide active support to individuals in our communities. That will make a real difference and the Conservatives’ approach simply will not.

**The Presiding Officer:** We move to the open debate. There is time for speeches of six minutes plus time for a couple of interventions.

09:55

**Bill Butler (Glasgow Anniesland) (Lab):** As the deputy convener of the Justice 2 Committee, I support the motion in the name of the Minister for Justice. I place on record the thanks of all committee members for the efforts of the clerking team in supporting us in our scrutiny of the bill.

Given the dissent that was registered by the committee’s convener in respect of the committee’s recommendation that Parliament agree to the general principles of the bill, I speak for the committee. The Management of Offenders etc (Scotland) Bill aims to reduce levels of reoffending and to improve the management of offenders by greater integration of the work of the criminal justice agencies. The Justice 2 Committee welcomes the bill, because it provides the basis for a more coherent, integrated approach to addressing offending in Scotland.

In 2004, the nationwide consultation on reducing reoffending, “Re:duce, Re:habilitate, Re:form”, arrived at a broad consensus in recognising a number of serious deficiencies in the way that offenders are managed; those weaknesses contribute to unacceptably high rates of reoffending in Scotland. The consultation revealed a lack of shared objectives and strategic direction in tackling reoffending; a lack of communication between criminal justice service deliverers; inconsistency in the provision of offender services throughout Scotland; and a lack of accountability for reducing reoffending.

The bill’s provisions are not a panacea—they will not in themselves reduce reoffending—but the Justice 2 Committee hopes that the bill, as part of a broader package of reforms, will ensure that local authorities and the Scottish Prison Service focus on consistency, quality and co-ordination. Given that, for example, in the two years from 1999 60 per cent of offenders who were released from prison were reconvicted of other offences, it is imperative that the Parliament acts.

“Supporting Safer, Stronger Communities”, which was published in December 2004, was the Government’s response to the consultation. The majority of the Justice 2 Committee welcomes the creation of community justice authorities, which are new local government bodies that will ensure the co-ordinated delivery of community justice services by local authorities throughout authority areas. That proposal is sensible. My committee colleague Jackie Baillie will go into greater detail on the issues relating to the creation of CJAs that were explored by the committee and which are outlined on pages 5 to 11 of the committee’s stage 1 report.

Section 1 of the bill concerns a matter that is closely associated with the establishment of CJAs; I refer to the creation of an obligation on Scottish ministers—presumably through the SPS—CJAs and local authorities to co-operate with each other in performing their functions with respect to the management of offenders. The Justice 2 Committee believes that good practice dictates that CJAs should encompass a wide membership. Paragraph 79 of our report notes our belief that there should be an emphasis on “the importance of ensuring an effective interface between SPS and CJAs.”

Mr Stevenson alluded to that important element. I hope that the minister will accede to the committee’s request and ensure that the SPS clarifies in detail how that will be achieved in practice. That is essential. Such interaction between the SPS and CJAs is core to achieving improvement in the management of offenders.

I am sure that other members will refer to other important and welcome points in the bill, such as the provision to enable the Criminal Injuries Compensation Authority to recover from the perpetrators compensation that it has paid to the victims of crime—the minister mentioned that in her opening speech—and the improved information-sharing requirement in respect of the assessment and management of the risks that are posed by serious and sexual offenders, which has already been referred to but which I am sure will be referred to again.

**Stewart Stevenson:** The Conservatives mentioned the reservations that they incorporated in the stage 1 report. Another committee member, from the socialists, has also expressed concerns. Since that member is not here to raise those concerns, will Bill Butler comment on their validity and take this opportunity to rebut them or agree with them?

**Bill Butler:** I would not be so impolite. The member in question is not in the chamber. Stewart Stevenson will see from the stage 1 report that the member was concerned about the structure of CJAs, whereas Miss Goldie and the Conservative party are concerned about their structure and the
proposal for home detention curfews. As a democratic socialist, I would not presume to speak for a Trotskyist organisation.

Section 11 seeks to introduce a new discretionary power for the SPS to release certain prisoners on home detention curfew, which is a matter of some contention. Such prisoners would be released a short time before they were eligible for automatic release. The issues have been referred to in the debate. Most of the evidence that we heard suggested that there was merit in home detention curfew for certain low-risk prisoners.

I say to Miss Goldie that we are talking about low-risk prisoners, and she should not conflate them and other types of prisoners. The paramount concern for the Government and this Parliament remains the safety of our communities. That is non-negotiable. Therefore, as the minister said in her speech, only certain levels of low-risk prisoners will be eligible. Sex offenders who are subject to notification requirements, prisoners who are subject to extended sentences and, as the minister clarified in her evidence to the committee, prisoners with a history of domestic violence will be excluded and ineligible for home detention curfew. That should be crystal clear.

All releases on licence will be remotely monitored. Time on HDC will depend on the length of the sentence, but cannot be more than 135 days, as Mr Stevenson said. It is estimated that at any one time about 300 prisoners will be on HDC for an average period of 55 days. It should also be emphasised—perhaps this will comfort Miss Goldie and the Conservative party—that the police, in evidence, were generally supportive of HDC in the circumstances that are proposed by the bill. If the guardians of law and order are generally supportive, I hope that the Conservatives will find some way to change their opinion of HDCs.

The Justice 2 Committee believes that HDC is not a soft option and is not, as the minister stressed in evidence,

"a get-out-of-jail-free card or an alternative to a sentence."—[Official Report, Justice 2 Committee, 10 May 2005; c 1624.]

The committee by majority is of the view that

"Provided there is robust assessment of the suitability of individual offenders for release on HDC ... HDCs are a welcome option"

as

"part of a package of wider measures."

HDCs are not a cure-all, but the committee by majority believes that they will provide a measured, coherent option and better management of offenders in an attempt to reduce reoffending, which is what the bill is all about. That is the serious business of the Parliament today. We should not succumb to the temptation of soundbites that conflate serious issues. That is to be deprecated.

The Justice 2 Committee believes by majority that the provisions of the bill are positive and that, in consequence, the general principles of the Management of Offenders etc (Scotland) Bill should be agreed to.

10:03

Tricia Marwick (Mid Scotland and Fife) (SNP):
The bill allows for the establishment of community justice authorities; seeks to place an obligation on ministers, local authorities and community justice authorities to co-operate; provides powers to intervene where there is a failure on behalf of the local authority; and at sections 9 and 10 seeks to establish joint arrangements for the assessment and management of sex offenders. To the outside observer, it seems to be a dry and technical bill that is mostly concerned with process, but it has the potential to put in place mechanisms that could prevent a repeat of the tragic circumstances that occurred in Tayport in January.

Last week, Colyn Evans was sentenced to life imprisonment for the murder of Karen Dewar, who was 16 years old. She was strangled, mutilated, and her body dumped in a rubbish skip and set on fire. Colyn Evans is now 18 years old. He came to the attention of social work, the police and the children’s reporter when he was 10. Between the ages of 10 and 16 he committed 14 offences, six of which were sexual offences. Of the sexual offences, five related to shameless or indecent exposure. He was never placed on the sex offenders register.

Fife Council and Fife constabulary produced their own internal report on the day that Colyn Evans was sentenced. They examined their involvement with Colyn Evans and admitted that there were shortcomings in communications and written procedures, but concluded that the murder of Karen Dewar could not have been predicted. What could have been predicted, because there were two psychiatric reports to say so, was that Colyn Evans was at high risk of reoffending.

In October 2002, Colyn Evans was reported for an attack on a young boy, and in November 2002 he was reported for indecent exposure to a 31-year-old woman. In April 2002, he was placed in Geilsland residential school, where he was expected to take part in an intensive programme but did not co-operate. Before he was returned home, a report concluded that he was still at high risk of offending. That report was never submitted to the hearing in April 2004, when he was discharged from his supervision requirement. He
was given a flat in Tayport, round the corner from Karen Dewar. The police were never formally advised that Evans was in Tayport. Social work asked the police to carry out an assessment. That assessment was never done, but no one asked why. There were two further incidents in Tayport before Karen’s murder, but despite police involvement they were not linked to Evans’s previous offences.

Fife Council and Fife constabulary’s internal report reveals a catalogue of failure—failure to communicate within authorities, failure to communicate between authorities and, most important, failure to protect a young woman and a community. I often say how lucky we are in Fife to have a local authority, a police force and a health board that all share the same boundaries. Margaret Mitchell says that what we need is flexibility. Flexibility does not work. That flexibility failed Karen Dewar. If communication and joint working cannot happen naturally in Fife, which has those huge advantages, it cannot happen anywhere in Scotland, unless there are statutory obligations on authorities to work jointly.

On Friday, I wrote to the Minister for Justice asking for a full, independent inquiry into the Colyn Evans case.

Cathy Jamieson: I am aware of the letter that Tricia Marwick and some other MSPs wrote to me. This morning, Tricia Marwick has again, very concisely, outlined many of the concerns that were raised in the report prepared by Fife Council and Fife constabulary. I spoke to Ms Marwick just before the debate to indicate that I have sent letters this morning to the conveners of the justice committees and the Education Committee, explaining that I have asked the Social Work Inspection Agency and Her Majesty’s inspectorate of constabulary—which are independent of ministers but which, crucially, have an understanding of the systems—to scrutinise the Fife report, to work with Fife Council and Fife constabulary to expand that report, to look in more detail at some of the issues that have been raised and to come back to us with their findings. Ministers will then meet the chief constable and the chief executive of Fife Council to consider what further lessons may be learned.

I have asked my officials to examine in more detail the crossover between the youth and adult justice systems to see whether there are any lessons that can be learned, particularly in relation to young people who have committed sexual offences. I am concerned about consistency in the way in which such local inquiries are carried out. It was right and proper that Fife Council and Fife constabulary undertook that inquiry. There are more issues that need to be resolved, so I have asked my officials to consider drawing up guidelines to ensure that such inquiries—if any should be required in the future—are undertaken in a consistent manner.

Thank you, Presiding Officer, for your indulgence in allowing me to put that on the record.

Tricia Marwick: I very much welcome the minister’s short statement, and I thank her and the Minister for Education and Young People for agreeing that an independent inquiry should be set up. That will bring comfort to Karen Dewar’s family, who felt dissatisfied with the conclusions of the report from Fife Council and Fife constabulary. There must be the fullest inquiry, and I hope that the inquiry will look at the whole history of Colyn Evans, including the period when he was at Geilsland residential school and his failure to cooperate. If the inquiry is conducted quickly but fully, the lessons that are learned from it could inform the bill at stage 2 and stage 3, and the bill will be better for that. For the sake of a community and a family, the lessons must be learned quickly, so that other communities and families will be protected.

10:09

Jackie Baillie (Dumbarton) (Lab): Like many other members, I welcome the Management of Offenders etc (Scotland) Bill. I believe that, by bringing a renewed focus to tackling offending and improving co-ordination, the bill will provide a sound basis for reducing the number of people who are convicted of a further offence.

It is worth reminding ourselves of the scale of the problem that we face. In Scotland, between 1995 and 2000, of those who were released from custodial sentences, up to 66 per cent—that is two thirds—were reconvicted within two years. It is because of that scale that I am, frankly, astonished that Annabel Goldie and Colin Fox are opposed to the bill. In answer to Mr Stevenson’s oblique question, I suspect that Mr Fox is away starting a revolution, while Miss Goldie is undoubtedly trying to quell one in the Tory ranks—what strange bedfellows!

However, although structural change in the absence of policy substance is never the answer, I think—unlike Annabel Goldie and Colin Fox—that community justice authorities have a key contribution to make, largely because they are set in a much wider package of reform, with ministers clearly taking a strategic approach to tackling reoffending across the criminal justice system. Although it is acknowledged that the proposed structural reforms will not, in and of themselves, reduce reoffending, they will provide us with solid foundations on which to build.

I, for one, am persuaded by comments that were made by one of the committee’s witnesses, who
said that, although existing criminal justice relationships may indeed work well,

“It is probably too important to be left to chance … many of the good relationships that exist are based on good will and a willingness to work together professionally. If good will does not exist and there is no requirement to form a relationship and to agree on targets, objectives and areas to work in partnership, the chances are that it might not happen.”—[Official Report, Justice 2 Committee, 19 April 2005; c 1537-8]

Let us not, as the Tories would do, take any chances. Community justice authorities will ensure that we do not simply rely on good will to promote some Tory notion of flexibility.

Perhaps Miss Goldie has forgotten last year’s national consultation on reducing reoffending. I shall remind her of it. A general consensus emerged about the key weaknesses in the existing system. At that time, we were told that there were no shared objectives, no strategic direction, little communication, lack of communication between criminal justice service providers and inconsistency in the quality and range of offenders services across Scotland. That is not to diminish the work that is undertaken by some criminal justice social work partnerships. I know that the partnership that covers my patch in Dunbartonshire is excellent, but the picture is not the same across Scotland. We need better consistency, better co-ordination and better quality in some areas.

If the Tories’ desire is to listen, I would welcome an acknowledgement that the status quo is not working.

Margaret Mitchell: If the partnership in Jackie Baillie’s neck of the woods is working well, is not there a case for using that example to find out what is happening and for using that information to replicate that work throughout Scotland—something that we fail to do in this Parliament—rather than saying that one size fits all, which is effectively what the bill does?

Jackie Baillie: If Margaret Mitchell had spent any time on the Justice 2 Committee listening to the evidence, she would not have made that comment. The Tories on the Justice 2 Committee have ended up doing what they all do so well. It reminds me of the behaviour of a small child. Basically, they know only one word, which they repeat several times, and that word is “no”. We have yet to find out what the Tories actually think. I would welcome further interventions if I thought that we would hear the Tories setting out their proposals, but I suspect that they will remain sedentary.

I want to focus on two issues that were raised with the committee, the first of which concerns the ministerial powers of direction and intervention. I confess to the chamber that there was genuine

confusion in the committee. We thought that we knew the difference between the power of direction and the power of intervention, and who the powers were aimed at, but we were confused. We were not alone; there is still uncertainty among stakeholders. I know that the minister intends that the power of direction will apply only, as set out in section 2(10), to community justice authorities, but sections 5 and 6 give ministers a power of direction to require action in the event of failure, either by a community justice authority or by a local authority.

It is fair to say that there is concern among local authorities about the scope and intention of those powers. Although I welcome the reassurance that the minister gave to the committee, I urge her further to clarify the matter. In particular, sections 5 and 6 refer to the exercise of power if there has been failure and it would be useful to know what circumstances would constitute failure. The minister indicated that any power of direction would be exercised following guidance. I assume that section 2(10)(b) will need to be amended to enable the Scottish ministers to provide wider guidance and I hope that such an amendment will be lodged at stage 2.

I ask the minister to consider two other matters before stage 3. First, will she consider ensuring that the power can be used only following an order that is subject to affirmative resolution by the Parliament? Such an approach would provide greater transparency and opportunity for scrutiny. Secondly, will she consider the possibility of including in the bill reasonable limits on the use of the power, in relation to the power’s scope and purpose and the time and nature of any intervention? I acknowledge that that would be difficult, but such a measure would reassure stakeholders of the minister’s intentions.

Finally, I echo Bill Butler and say a few words about the interface between the Scottish Prison Service and the community justice authorities.

The Presiding Officer: Please be brief.

Jackie Baillie: I accept that it is difficult for the Scottish Prison Service to work with 32 individual local authorities, but the service will need to make a considerable effort to engage meaningfully with CJAs. The SPS is a single national system, but CJAs will inevitably be much more local. The committee was astonished to hear that basic information was often not exchanged, despite positive work in link centres. We heard of examples in which the police and local authorities were unaware that prisoners had been released into the community, so it should come as no surprise to the minister that the committee believes that there is considerable scope for improving the collection and sharing of basic information.
I look forward to considering some of those points with the minister at stage 2. In the meantime, I urge the Parliament to support the general principles of the bill.

10:17

Robin Harper (Lothians) (Green): Green members welcome the bill—we very much agree with its general thrust and principles. We congratulate the Justice 2 Committee on its work so far and wish it well in the work that it will do on the bill in the future.

Members might expect me to mention the Airborne Initiative, but I will do no more than thank the minister for the detailed letter that she sent in response to my criticisms of the Executive. The matter rests there, although I still have reservations.

If we take the view that high-tariff offenders are the most in need and if we acknowledge that such offenders do the most damage to their communities, we must surely accept that in the long run it is worth investing the most money in that section of the prison population, to try to enable them to adapt to life in the community.

Mr Stewart Maxwell (West of Scotland) (SNP): I accept what the member says about long-term prisoners and the problems that they cause in society. However, the bill’s purpose is surely to consider offenders who serve short sentences in prison for low-level offences, so that they are not allowed to progress to commit more serious offences, as some do as they proceed through what is in effect a criminal career.

Robin Harper: Indeed. I listened carefully and with considerable interest to the speeches of Jeremy Purvis and Tricia Marwick and I thoroughly concur with their observations on the necessity for early intervention. My experience on the children’s panel taught me that early intervention is absolutely necessary. Twenty years ago, Lord Scarman said that there can be no criminal justice without social justice; the children’s hearings system attempts to provide an element of social justice for young people. Despite the continued carping about the children’s hearings system from the Conservative benches, the system’s only problem is the fact that social work in Scotland remains underfunded. The situation would improve if we could put more funding into social work and associated institutions that help children, such as Barnardo’s, which the Parliament considered yesterday in an extremely instructive debate. Early intervention is essential.

I am particularly impressed by the idea of community justice authorities. I draw the minister’s attention to a speech that Baroness Vivien Stern gave to the Howard League for Penal Reform last year—I am sorry, I should have declared an interest at the start of my speech: I am a member of the Howard League for Penal Reform. I will give the minister a copy of Baroness Stern’s speech. The minister is indicating that she already has a copy—perhaps I sent it to her—but I will quote from it nevertheless, for the instruction of other members. Baroness Stern described a community justice centre in one of the poorer areas of New York:

“It is a good class building, a former school, in a very disadvantaged area, of redundant docks, public housing … The Centre is run by the District Attorney, the local prosecutor. It contains a low level court (a problem-solving court). The judge is a judge, and a community development manager, and a local personality who gives away prizes at the local school fetes and community events.

Also in the building is an education centre, a childcare centre, the office of the drug treatment, mental health and other community organisations. Legal services for that disadvantaged community (eg housing rights, repairs) are provided there by lawyers. There are cells under the court like any proper courtroom. There is a mediation service. Quality of life classes run every hour as an alternative to a fine for a small anti-social act. There are community service organisers.”

Baroness Stern continued by setting out some of the system’s advantages. She states:

“First, this is a system that does not divide offenders and victims … from the whole community in which they live … Second, justice is not divided into criminal justice and legal justice”—

indeed, the system operates at all levels, very much as the children’s hearings system does.

“Crime is dealt with under the same roof as access to justice services for those who need to get their roofs repaired … Third, the outcomes are positive rather than negative. The judicial approach is based on the needs of the community and geared to an outcome. The judge tries to solve the problem. Drug treatment can start the day the defendant comes up in court.”

The Management of Offenders etc (Scotland) Bill is an enabling bill that will allow community justice authorities to develop along such lines, by uniting social provision and justice provision under one roof. I wish the bill well in its progress through the Parliament.

10:23

Bill Aitken (Glasgow) (Con): The Parliament has debated reoffending on numerous occasions. It is clear that none of us regards the status quo as acceptable. However, there seems to be a basic misunderstanding of why the reoffending rate is so high. The reason is quite simple: people who have been in custody have committed either a serious crime or a large number of minor offences. It is therefore inevitable that such people are more likely to reoffend. That should be more clearly understood.
Of course we must do something, but, frankly, the bill is not the answer. The public interest must come first in all aspects of the criminal justice system, but time and again the actions of the Executive leave us with the impression that more consideration is given to clearing prisons than to the public interest.

The proposals in the bill have not been properly thought through. If members are not prepared to take my word for that, they should consider the reservations of the Convention of Scottish Local Authorities and the Association of Directors of Social Work.

Robin Harper: If Bill Aitken is so keen on responding to public opinion and considering the public interest, he will be interested to know that an NFO System 3 poll two years ago showed that most people agreed that prison has a negative effect on offenders. More than half of those polled agreed that most offenders come out worse than when they went in. The public think that prisons are not the best way of preventing reoffending.

The Deputy Presiding Officer (Murray Tosh): This is becoming a speech, Mr Harper.

Bill Aitken: I am sorry, but there was some distortion in the sound at the beginning of Mr Harper’s intervention. I will perhaps follow up the matter with him later, privately.

We cannot get past the problems of early release and the message that it sends out to those who are likely to reoffend. That is our principal concern. Let me give an example—I am sure that the minister will agree that it is not an extreme example, but it falls within the criteria that she is proposing. An offender is arrested in somebody’s house. He has that person’s property ready to be taken away, but no violence is involved. He has a bad record. He is taken to the police station, fingerprinted, photographed, cautioned and charged, and then either is kept in custody or appears on a petition warrant at the sheriff court. After due process, he pleads guilty. The sheriff says that the appropriate sentence, given the offender’s record, is 12 months in prison. However, the sheriff reduces the sentence to eight months because of the plea. The sentence then becomes four months because of automatic early release. The minister now proposes that that person would get out after only two months in custody.

The judicial guidelines are quite clear. There are clear arguments in favour of reducing sentences in respect of pleas, although it is arguable whether somebody who is caught red handed in the manner that I described should benefit in that way. The European convention on human rights makes early release automatic. That is quite wrong. As Annabel Goldie said, there have been some high-profile cases—and I understand that many more are in the pipeline—in which people who have been released early have then committed some very serious crimes.

Until today, the minister had been somewhat vague about the categories of people to whom early release would apply. I accept that she has now been a lot more specific. She has stated that sex offenders and violent offenders will not be subject to early release.

Cathy Jamieson: I suspect that Mr Aitken has missed something if he thinks that that point has been made only today. The point has been made consistently and was part of evidence that was given to the Justice 2 Committee.

Bill Aitken: That is as may be, but ministers still have a real problem in this respect. Under article 26 of the United Nations International Covenant on Civil and Political Rights, the minister cannot apply criteria to sex offenders and, arguably, violent offenders that are different from the criteria applied to other offenders. If the minister is not prepared to take my word for it, she should take the word of Lord Macfadyen, who is obviously much more qualified in constitutional law than either me or, with respect, the minister. There is a real problem.

There are attractions in home detention orders, but we have to consider what has happened elsewhere. The criteria in England might not be quite as tight as those proposed by the minister but, in the 18 months following their introduction, 3,748 crimes were committed by people who were subject to the orders. Those crimes included 10 sexual offences and 569 crimes of violence. Does that show that the public interest has come first? If we consider our own local experience, we can see that the figures from the Lanarkshire youth court are a cause for concern. There are many more problems associated with the idea than the minister is prepared to admit to.

As I say, we do not regard the status quo as acceptable. However, any proposals to remedy the situation must make the public interest paramount. The bill does not do that.

10:29

Donald Gorrie (Central Scotland) (LD): As I am not on the Justice 2 Committee, I have not had the benefit of hearing all the evidence. I will therefore stick to general principles rather than the nitty-gritty on which we have had an interesting debate so far.

I want first to pursue the same line of thought that Jeremy Purvis pursued when he gave various figures about the background from which
offenders come. We have to address that issue. Interesting work is being done by people such as those in Strathclyde police’s violence reduction unit.

For reasons that we all know about, more offenders come from certain communities than from others. Instead of having well-meaning people like me going along in a suit and telling people in those communities what they should do, we have to help them to do their own thing. A great deal of energy and enterprise often go into crime because there is nothing else worth doing locally. We should nourish and encourage enterprise, whether it is the enterprise of individuals who are trying to make a living in some way or whether it is the enterprise of people who are setting up a co-operative to provide a service that the local community needs. People need help, advice and a little bit of money just to get started. That can allow them to help their communities from the bottom up, if I may use that cliché. We have to set about helping communities in that way.

We also have to help families in which there are clearly going to be problems. We have to get in at the nursery stage, helping the children and the families. Very good work is being done in Denmark and other countries to help the kind of young people who history shows are likely to have problems and to cause problems later on. If children, families and the communities around them can be helped as early as possible, we will prevent a great deal of offending. Logically, the best way of preventing reoffending is by reducing the amount of offending in the first instance. We should make strong efforts in that regard.

Because of a provision inserted by the Parliament into the Antisocial Behaviour etc (Scotland) Bill, councils have to state in their strategies for dealing with antisocial behaviour what they are doing to provide good recreational, community and sports facilities in their area. I ask the ministers to ensure that that happens and that councils take the provision seriously. Providing good activities for people is one way of helping them not to get involved in bad activities.

In our endless debates on this subject, it has become a cliché to say that short sentences do no good whatever. I know that the minister cannot tell judges what to do, but can something be put in the bill to facilitate discussion between Government and the law industry on short sentences? If short sentences are proved—as I think they have been—to be counterproductive and a complete waste of time, it is surely common sense in a civilised society to do something about it.

It was extraordinarily depressing to read in the Justice 2 Committee’s stage 1 report on the bill that there is “no co-ordinated network of support on release.”

The evidence from Dr Andrew McLellan covered very well the wide range of problems that we have to deal with—our Government is still not good at dealing with wide ranges of problems rather than narrow ones. Dr McLellan referred to “the corrosive effects of addiction, the destructive experience that some people have of education, limited access to jobs and the gamut of issues that are related to poverty.”—[Official Report, Justice 2 Committee, 3 May 2005; c 1547.]

As I say, if we can deal with such problems in families and communities, that will be of great benefit.

I ask the ministers to ensure that continuing funding is available for voluntary organisations that do good and relevant work in this sphere. In a previous debate, there was a slight disagreement—although not with Cathy Jamieson and Hugh Henry—about the phrase “core funding”. If words are the only problem, we can get around that. There must be continuing funding so that people who do good activities can continue those activities without having to temper them to suit the latest whim of the powers that be in project funding. There must be continuing funding on which good organisations can rely, as long as people are satisfied that they are doing good work.

The bill contains many interesting proposals and I look forward to better debates in the future. Perhaps we will have a good stage 3 debate in due course.

10:35

Karen Whitefield (Airdrie and Shotts) (Lab): I welcome the fact that justice issues have been and continue to be a priority for the Scottish Executive, which reflects the level of concern in my constituency and others about the impact of crime and antisocial behaviour in our communities. We all want to make our communities safer and to reduce crime levels. As part of that effort, an important task is to reduce recidivism.

The Justice 2 Committee’s stage 1 report is clear in pointing out that too many people leave our prisons only to reoffend within a short time. It also points out that reconviction rates for offenders who receive community-based sentences are slightly lower. The measures in the bill aim to address those two key points.

As a starting point, we must ensure that all the agencies that deal with offenders work in partnership and in synergy. I welcome the bill’s proposal to set up community justice authorities. Although the committee’s report says that there is much good practice among our local authorities and many examples of good partnership and interagency working, I agree with its conclusion
that there is a need to firm up such partnership arrangements and to put them on a statutory footing. I believe that the proper management of offenders is far too important to be left to informal partnership arrangements.

Safeguarding Communities—Reducing Offending, the Association of Chief Police Officers in Scotland and the Scottish Prison Service all agree that the establishment of community justice authorities, along with the introduction of a duty to co-operate, will help to create a more consistent and effective system for managing offenders. However, there are significant issues relating to community justice authorities that need to be addressed, such as the number of authorities that should be established and the role of the chief officer. It is possible that the chief officer could be placed in a difficult position. As an employee of a community justice authority, he or she will have responsibility for reporting any failings of his or her employer and/or of local authorities to Scottish ministers, which could be a delicate task.

I note the committee’s recommendation that CJAs should “encompass a wide membership”. I agree with that conclusion and suggest that broadening the CJAs’ membership might help to provide security and support both for councillor members of CJAs and the chief officer.

I do not intend to say too much about the bill’s measures to improve the management of serious sex offenders. The need for improved and effective inter-agency working is once again vital and I am pleased that the bill introduces a requirement for all the responsible authorities in a local authority area to establish joint arrangements to assess and manage the risks that such offenders pose. Over the years, there have been too many cases in which sexual abuse—especially of children—has continued because of a lack of information sharing between and, it must be said, within the various relevant agencies.

Like the Justice 2 Committee, I welcome the introduction of home detention curfews as part of a package of measures to facilitate the transition of offenders back into the community. However, like the committee, I recognise that HDCs cannot stand alone; other appropriate support measures will need to be put in place for offenders who are on HDCs. The other side of that coin is that such offenders must take responsibility for their actions and must be aware from the outset that conditions that are over and above the standard conditions for release are attached to HDCs. That point is vital if we are to gain public support for the measure. As Cathy Jamieson said to the committee, HDCs should not be seen as a get-out-of-jail-free card.

There has been broad support for the measures that the bill contains. It is regrettable that Annabel Goldie felt obliged to show her opposition to many of the bill’s central proposals by failing to agree to the committee’s stage 1 report. To me, those proposals seem both rational and reasonable. The aim of improving partnership working between all the agencies that are involved in the management and rehabilitation of offenders is perfectly sensible—except to Annabel Goldie and the Tories. Perhaps that is why Bill Aitken wrongly criticised the youth court in Lanarkshire, which is widely acknowledged to be an excellent example of inter-agency working that has been bought into not only by the police, the procurator fiscal and social work services in North and South Lanarkshire, but—most important—by the community, which thinks that the court is making a significant difference.

The aim of using HDCs as a bridging mechanism for reintroducing offenders into the community towards the end of their sentence has been welcomed by almost everyone, except Miss Goldie and her colleagues in the Tory party. The Executive is taking a reasonable and balanced approach to tackling offending and modernising the criminal justice system in Scotland. Unfortunately, it seems that the Tories are more intent on using an important issue as a political football than they are on improving the situation; they are more interested in rhetoric than in facing up to their responsibilities as legislators.

I am pleased to be able to support the Management of Offenders etc (Scotland) Bill and I look forward with interest to the outcome of the detailed scrutiny of the bill that will take place at stage 2.

The Deputy Presiding Officer: I express my regrets to Paul Martin, but we must now move to the winding-up speeches.

10:41

Mike Pringle (Edinburgh South) (LD): Last December, we had a good parliamentary debate on reducing reoffending. As usual, it was the Tories who said that simply scrapping the early-release scheme would solve the problem of reoffending. Annabel Goldie has reiterated that view today. The Tories’ position is wrong—the bill will address the problem.

In December’s debate, I admitted: “The current figure of 55 per cent for those sentenced to between three and six months in prison is too high. The figure of 60 per cent for those who reoffend within two years is also too high.”—[Official Report, 16 December 2004: c 13018.]

Jackie Baillie cited a figure of 66 per cent, but whether the reoffending rate is 60 per cent or 66 per cent, it is too high and we must tackle the problem. I think that the bill will do just that. The
Executive has the policies to do something about the situation and the bill is part of the solution. It is a shame that, since last December, the Tories have offered no practical alternatives and it is disappointing that Annabel Goldie dissented from the Justice 2 Committee’s stage 1 report simply because it did not advocate the scrapping of early release.

Whether someone has been in prison for three months or three years when they get out is irrelevant to reoffending; what they need is effective rehabilitation and monitoring on release. The bill represents a significant step forward in the management of offenders and seeks to focus all parts of the criminal justice system on reducing reoffending.

Stewart Stevenson said that the aim of the bill was to reduce reoffending by 2 per cent. The committee’s report states:

“The Committee notes that the Executive believes that the Bill could reduce reoffending by 3% and considers this goal to be reasonable.”

Mr Maxwell: The member may not be aware that the Minister for Justice has written to the Justice 2 Committee to clarify that there was a small error in that statement and that 2 per cent is the correct figure. In other words, the report contains a mistake.

Mike Pringle: I accept that; I did not know that that was the case because I had not seen the minister’s letter.

Cathy Jamieson: I can provide further clarification. It is important that we do not get caught up in the notion that the bill is the only thing that will matter when it comes to the target for reducing reoffending. As I said earlier in the debate, the target that has been set is preliminary and I would like the national advisory board to reconsider it in the future.

Mike Pringle: As the minister has said, the bill is a step forward, but we need better joint working.

The Liberal Democrats support the aims of the bill, but if we are to make a significant impact on reoffending, we must use social and economic policies to bring to bear on the lives of offenders a wider range of services, such as those that are provided by housing, health, education, employment and financial service agencies.

In closing the debate for the Liberal Democrats, I will focus on some aspects of the bill that I wholeheartedly support and which will, with hard work, reduce the high levels of reoffending in Scotland to which I have referred. As Donald Gorrie said, short sentences just do not work. Some 80 per cent of the women in Cornton Vale prison are on very short sentences. I believe that the home detention curfew scheme will offer them and many others the chance to get out early, which must be positive.

We have to admit that there are people in our prisons who should not be there. Eighty-two per cent of prison sentences are for less than six months and there is no statutory aftercare or supervision for those sentenced to less than four years. Prison is not working. Twenty per cent of people who are in prison are there for fine defaulting—that is ludicrous. Prison is a place of punishment and reformation for those who have committed the most serious of crimes.

I hope that the HDC scheme will relieve the pressure on our prisons, although I note that, to be released on the scheme, prisoners must already have served a short prison sentence. As the minister said, they must earn the right to get an HDC. Bill Butler and my colleague Jeremy Purvis outlined which prisoners will be eligible and how they will be eligible. That is clear and it must be welcomed. I would like those currently given ineffective short prison sentences to receive strong restorative sentences in conjunction with the curfews. The scheme has been shown to be a strong link between the support agencies and the Prison Service.

The bill provides for the establishment of community justice authorities, through which, as has been mentioned, councils will work together on a statutory basis to improve the consistency and quality of the service throughout local authorities. The sharing of information and implementation of best practice are also needed. Obviously, there are concerns about the CJAs but, as long as island authorities are respected in any structure, councils will have nothing to fear. As smaller authorities work together, that can only improve practice. Moreover, I suggest that there may not be a huge change in the large urban areas. Ministers will be able to ensure compliance, but I would like an assurance from the minister that that power will not be used lightly—it should be used only after serious problems have been identified and all other avenues have been exhausted.

Finally, I highlight the measures enabling the Criminal Injuries Compensation Authority to recover assets from criminals. Nothing deters people more from an activity than if the consequences will hit them in their pocket. That is one of the most effective punishments. If someone profits from criminal activities, they should pay the money back. That measure has been successful in England and in Northern Ireland and I look forward to seeing the recovery of millions of pounds from criminals in Scotland.

The bill offers a real chance to create a culture in our local authorities and our criminal justice system of tackling reoffending. In any system, the
primary concern is for justice for the victim. That will remain the case, but true justice can be achieved by ensuring that a strong restorative sentence is put in place and that the offender is managed so that he or she does not reoffend. As Robin Harper said, the issue is all about early intervention. I support the bill and encourage members to support the motion, thereby rejecting the failed policies of the Tories and sending a strong signal of our commitment to reduce reoffending.

10:47
Margaret Mitchell (Central Scotland) (Con): There has been consensus in the chamber this morning in so far as everyone wants improvements in the rate of reoffending in Scotland. However, the main proposals in the bill are not the way to achieve that objective. Changing the structure will not solve the problem. That is not just the view of the Conservatives but—crucially—the view that is shared by COSLA and others in the front line of the management of offenders, who stress—

Jeremy Purvis: Will the member give way?
Margaret Mitchell: I am precisely 37 minutes into my speech.

Members: Seconds.
Margaret Mitchell: Thirty-seven seconds. If the member does not mind, I will make a little progress.

That view is shared by most people in the front line of service delivery, who stress that the emphasis should be on activity that works, rather than on putting in place a structure that is aimed at delivering that activity.

Like my colleague Annabel Goldie—

Jeremy Purvis rose—

Margaret Mitchell: If the member does not mind, I will press on.

Like my colleague Annabel Goldie, I find it difficult to understand why the Executive is so reluctant to allow the existing criminal justice social work units to bed down. Then there could be a proper assessment of how they are working and any future plan would be devised from informed comment, which is a crucial point. Instead, the Labour-Liberal Democrat coalition is railroading its way through genuine and reasonable concerns, while proclaiming that its now well-documented addiction to consultation is born out of a desire to listen.

Jeremy Purvis: The member will have read the evidence that the committee received from Councillor Eric Jackson from COSLA. He said:

“We are saying that the bill is a positive piece of legislation, which we broadly welcome, but it is only part of the answer.”—[Official Report, Justice 2 Committee, 12 April 2005; c 1494.]

That is exactly what the minister said, and what the Executive coalition is stating.

Margaret Mitchell: Equally, the general thrust from the Association of Directors of Social Work was that the existing system is working well and should be given time to bed down. As always in the Parliament, there is a rush to legislate where legislation simply is not needed. This is another example of that, and people in Scotland and in my party are absolutely fed up with it. Now is the time to say that enough is enough.

In short, people in Scotland are being offered the worst of all possible worlds: on the one hand, a Government that claims to listen through consultation and then does nothing; and on the other hand, a Government that acts in a high-handed manner—as with the present bill—without bothering to listen.

Cathy Jamieson: On that point—

Margaret Mitchell: I am sorry, I really have to move on.

Section 9 of the bill states that information is to be shared among all the responsible authorities. That is not only sensible but is being achieved at present without creating the new community justice authorities, whose responsibilities will potentially conflict with those of existing organisations, and which—more important—will incur costs that would be better spent supporting real action to deliver front-line services.

Jackie Baillie and others have asked what the Conservatives would do. We would allocate sufficient resources to ensure continuity of rehabilitation programmes such as literacy and numeracy programmes, drug and alcohol programmes and debt management programmes, which start in prison and which must continue in the community to ensure the greatest chance of a successful outcome.

Jackie Baillie: Will the member take an intervention?

Margaret Mitchell: I am sorry; I must press on.

Confidence in the criminal justice system is being constantly eroded by the failure of a sentence to mean what it says. I am baffled that Stewart Stevenson and the Scottish National Party do not appear to have any reservations about the introduction of home detention curfews, which will merely serve to aggravate the problem with automatic early release by releasing prisoners even earlier.

Bill Butler rose—
Margaret Mitchell: The concerns about home detention curfews do not stop there. To address the point that Bill Butler made earlier, when HDCs were introduced in England, the then Home Secretary, Jack Straw, made it clear that he had no plans to provide for electronic tagging to facilitate the early release of serious or sexual offenders. However, as we know, under the home detention curfew scheme in England, people convicted of manslaughter, actual and grievous bodily harm, assaulting a police officer, drug dealing, cruelty to children, sex offences, burglary, robbery and theft have all been released.

While being vague about the specific categories of prisoner who would be eligible for the scheme, the minister has said that sex offenders and violent offenders will not be included. She must now give a cast-iron guarantee that that will be the case. It is legitimate to ask for such a guarantee given the experience in England.

In conclusion, I very much regret that our discussion of this important subject fails to concentrate on the delivery of front-line services, which is an essential aspect of the rehabilitation process.

Mr Stewart Maxwell (West of Scotland) (SNP): I begin by referring to Tricia Marwick’s speech, which I thought was absolutely excellent. It brought together clearly and concisely the reasons why it is important that we put these structures in place. It is vital, in cases such as the one that she detailed, that we ensure that we have co-operation among all the bodies that members have mentioned. I would have expected the Tories, having listened to Tricia Marwick’s speech, to begin to wonder whether they have made a mistake and to change their minds about their opposition to the bill..Clearly, structures play an important part.

Miss Goldie: Will the member give way?

Mr Maxwell: No, not just now.

I am sure that the minister agrees that the bill in itself will not make any difference to reoffending rates; but it will put in place the structures that will allow organisations such as the SPS, local authorities and others to co-operate closely in an organised and structured fashion. That is extremely important. As Jackie Baillie said, the current situation is partly reliant on the good will of those in charge of the various bodies throughout the country. That is fine where we have willing, able and motivated individuals who go the extra mile to work together and to integrate services. However, where that is not the case, we are letting down individuals and the communities that they come from. That must change.

The creation of CJAs will mean that there are bodies that are directly responsible for ensuring that various groups work together, that a high standard of service is maintained and that all groups work together to cut reoffending. It is entirely logical that bodies that deal with offenders, such as the SPS, social work, housing, health, education, employment, family services and other support providers, should all be involved in working together to address offending behaviour. However, it seemed to me and to other committee members that the sharing of information among the various bodies was somewhat haphazard. Therefore, it is crucial that, as soon as the CJAs are set up, all participating bodies ensure that information is shared speedily and accurately across the board. Only then will CJAs have the ability to work effectively.

On balance, I support CJAs, but I have certain caveats. Margaret Mitchell’s statement that the SNP unreservedly supports the proposals is not true; we have some issues with HDCs. For example, Stewart Stevenson said earlier that Jonathan Aitken was released on an HDC. That led me to change my mind on the matter; I cannot possibly support such a terrible measure. Seriously, though, unlike the Tories, I can see some merit in HDCs, but only if additional support services are either included as mandatory conditions or available as voluntary options.

There are three standard conditions of the curfew agreement that must be met: the curfew condition itself; the requirement to be of good behaviour; and the requirement not to commit an offence. There is no disagreement about the need for there to be standard conditions that apply to everyone who is released on an HDC. However, the committee felt that, if we really wanted to cut reoffending, there ought to be a package of additional support measures that address an offender’s behaviour and which, like the standard conditions, are mandatory. Jeremy Purvis and Karen Whitefield both mentioned that point.

The committee heard that view expressed in evidence when, for example, Sue Brookes from Cornton Vale said that HDCs would be particularly useful for female offenders, to assist stability and allow better access to services in the community, particularly if conditions requiring access to particular services are attached. Those additional conditions would be tailored to suit the individual, as some people would clearly be helped by an additional drug rehabilitation course or a course to help them to deal with their alcohol problems, while others might require help with literacy or perhaps even employment training.

In some cases, it might be felt that there is no need for additional conditions. If that is the case, that is fine. However, each case must be dealt
with on its own merits. By making the supplementary conditions mandatory in those cases where that is appropriate, HDCs would be much more effective. There is evidence to support that.

Professor McManus of the Parole Board for Scotland said that the most successful schemes that he had seen were in the United States of America. He said that those schemes

“all started off by pretending that they could work by keeping the person in a house, but every single one of them had to give in and use some form of supervision to assist the person in addressing the issues that come up in the domestic situation and those that gave rise to offending in the first place.”—[Official Report, Justice 2 Committee, 3 May 2005; c 1551.]

When the minister gave evidence to the committee, she did not seem convinced about the need for additional mandatory conditions and said that it was up to individuals to take responsibility. I agree that people should take responsibility, but one of the problems with the group of people about whom we are talking is that they are the very people who do not take responsibility for their actions. That is why I believe that it is important that we include additional mandatory conditions where appropriate. Over and above the standard conditions and the use of additional mandatory conditions, support services should be available for those who are being released that they can choose to take up voluntarily.

It is rather unfortunate that the Conservatives have had a knee-jerk response to the idea of HDCs. If risk assessments are carried out, only low-risk prisoners are allowed on to the scheme and we ensure that, where it is deemed appropriate, additional mandatory conditions are added to the HDC to address an individual’s offending behaviour, HDCs could be the best option for some prisoners. Further, if they help to cut reoffending, they will also be the best option for society and communities.

It is imperative that there is no public perception that HDCs are a get-out-of-jail-free card, which is how some Tory members have described them, and it is incumbent on the Executive to ensure that the use of HDCs is not seen as a soft option. Certainly, they must not be used as a quick way of cutting prisoner numbers.

What has been said about the Criminal Injuries Compensation Authority is most welcome, although I have some concerns. Mike Pringle said that he would look forward to the millions of pounds that would come back to the public purse. I would welcome that if it happens but, frankly, some of the people about whom we are talking will not pay or cannot pay and the system might not be as successful as we hope that it might be. However, it is absolutely right that we establish the principle that the people who are responsible for offences should pay compensation if they are able to.

I welcome the fact that the Executive intends to tighten up on sex offenders. That is an important part of the bill and I was glad to hear what the minister said on the subject in her opening remarks.

Before I conclude, I apologise on behalf of Stewart Stevenson, who missed some of the closing speeches as he was called away at short notice on urgent business.

I support the general principles of the bill and feel that, although punishment must always play a part in sentencing, society benefits much more by ensuring that those who commit crime are given the opportunity to see that there is another way. Only by giving them that opportunity can we hope to address the alarming recidivism rate among offenders in Scotland. We must also remember that HDCs are not a get-out-of-jail-free card and remain a part of the sentence. The sentence is not concluded when the offender is released on an HDC; they can be recalled immediately to prison if it is felt that that should happen.

11:01

The Deputy Minister for Justice (Hugh Henry): This has been a useful debate. It is interesting to note that, in the course of the Justice 2 Committee’s deliberations, a consensus has developed that we cannot afford to tolerate the status quo, despite the things that the Conservatives have said. Member after member—many of them committee members—has outlined the desperate problems that Scotland has with reoffending. The rate of reoffending is unacceptable and I think that it would be a dereliction of our duty if we failed to take action.

The committee has done a thorough job in attempting to advance a considered opinion on the wide range of issues that are associated with the bill. I thank all the individuals who participated in the process, including all those associated with the committee, for their work.

This morning, we have heard some eloquent, considered, passionate and thoughtful speeches, which enhance the Parliament’s ability to do its job. That is why I say, with all sincerity, that I am profoundly disappointed that the Conservatives continue not to be influenced by the quality of the speeches from around the chamber on a range of justice-related matters. I know that there are some thoughtful, intelligent and compassionate people in the Conservative party—

Stewart Stevenson: Name them.

Hugh Henry: Individually, when one talks to them, they reflect intelligent thoughts, but when
they come to the chamber collectively, they somehow fail to rise to the occasion. They consistently diminish themselves as individuals, and they diminish their party and, I would argue, the Parliament by not rising to the challenge in the way that other members do. The type of speech that they make contributes little to the process of having a constructive debate.

**Miss Goldie:** I know that the minister does not intend to be patronising, as that is not his nature, but surely he accepts that, if the Parliament exists for any purpose, it is for the articulation of views that might be different from those of the Executive and for the advancement of arguments that might be opposed by the Executive and other parties. Surely the proposition that, in this Parliament, it is flawed for a party to articulate a differing view, on the basis of representations that have been made to it by the public, and, in doing so, to create the very debate without which that view would not be heard, is nonsensical. Is the minister seriously condemning that as an unacceptable mode of parliamentary behaviour?

**Hugh Henry:** Would that that were what is happening, but it is not. If only the Tories were able to advance some intelligent arguments against what we are proposing and to marshal some evidence and statistics that would prove their case. In many justice debates, I have heard speeches in which members have opposed what Cathy Jamieson and I have been saying but have done so in a measured and thoughtful way. Being opposed to our proposals does not mean that they make contributes little to the process of a thoughtless manner.

**Bill Aitken:** Will the member take an intervention?

**Hugh Henry:** No, thank you.

The Tories are unable to back up and justify their arguments. They diminish themselves and they diminish the Parliament.

**Tricia Marwick:** Does the minister agree that it is a bit strange that although Ted Brocklebank—a member for Mid Scotland and Fife—is as concerned as I am about the Karen Dewar case, the Conservatives cannot understand the need for a statutory obligation for the police and local authorities to work together? If Ted Brocklebank was here, I am sure that he would recognise that if there was such working together we might not be in the situation that we are in.

**Miss Goldie:** On a point of order, Presiding Officer. I must question whether it is acceptable conduct for a member to include a specific reference to a member who is not present in the chamber and so cannot rise and explain his position if required.

**The Deputy Presiding Officer (Trish Godman):** I am not sure that Tricia Marwick asked Ted Brocklebank to rise and explain his position, but I take your point. I advise Tricia Marwick to watch out next time she is speaking.

**Hugh Henry:** I do not want to go into the point in respect of the individual, but the point that Tricia Marwick touched on is critical. Margaret Mitchell asked why we should not simply allow the cooperation and flexibility that exist at present to continue. Tricia Marwick—in a measured, concise and moving speech—explained clearly why the status quo is not an option. Even if no other argument was put forward for why our proposals are right, her comments about the need for us to ensure action would suffice. We cannot allow the argument of those who say, “Give us more time and more money,” or, “There need to be cooperation and flexibility.”

**Margaret Mitchell:** Will the minister give way?

**Hugh Henry:** No, thank you.

We would be failing the public if we did not take steps to ensure that action is taken. The tragic case in Fife and the cases that have taken place in recent years in Edinburgh, Lanarkshire and Glasgow are evidence of the need for us to take action.

**Paul Martin (Glasgow Springburn) (Lab):** Will the minister give way?

**Hugh Henry:** Yes, certainly.

**The Deputy Presiding Officer:** Please be brief, Mr Martin.

**Paul Martin:** I have asked the minister before about a number of reviews of housing allocation in respect of registered sex offenders. I ask him, once and for all, whether we will reach a stage at which a policy is in place for all authorities in Scotland in respect of that allocation.

**Hugh Henry:** A number of practical steps have been put in place. In September, there will be an update of the 1999 practice note on housing sex offenders. We are progressing joint training on enhanced risk assessment of sex offenders; we are providing accredited programmes both in prison and in the community; and we are preparing guidance to embed protocols for sharing information in local practice. I hope that Paul Martin will find some reassurance in the fact that those things are being done.

We believe that the argument for action has been made. Therefore, I must agree to disagree with many friends and colleagues with whom I have worked over the years, and Cathy Jamieson is in the same position. We are not prepared to say, “Leave us alone and things will turn out all
right in the end.” The evidence is not there to justify that.

We will come back on a number of specific points at stage 2. Bill Butler asked for clarity on the interface between the SPS and the proposed community justice authorities. There is on-going work on that and we will provide guidance, but we will return to the matter. Jackie Baillie asked for clarification of section 2(10). This is not the time to give specific commitments, but I say to Jackie Baillie that although we will have further discussions with COSLA on the powers of direction, we will do nothing that will constrain our ability to act effectively if that is required. Some of the points about social work funding were misplaced. More money is going in than ever before. I do not have enough time to go into the other detailed arguments that were made.

The case for action and change has been made. If we take the opportunity that is afforded us, we can make changes and improvements for a difficult section of the population; Stewart Stevenson outlined some of the difficulties very well. The Executive is committed to taking action and I hope that the Parliament will support us in that process.

Management of Offenders etc (Scotland) Bill: Financial Resolution

11:10

The Deputy Presiding Officer (Trish Godman): The next item of business is consideration of a financial resolution. I ask Hugh Henry to move motion S2M-2933, on the financial resolution in respect of the Management of Offenders etc (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Management of Offenders etc. (Scotland) Bill, agrees—

(a) to the following expenditure out of the Scottish Consolidated Fund—

(i) expenditure of the Scottish Administration in consequence of the Act; and

(ii) increases attributable to the Act in the sums payable out of that Fund under any other enactment; and

(b) to any payment required to be made by virtue of the Act.—[Hugh Henry.]

The Deputy Presiding Officer: The question on the motion will be put at decision time.
Decision Time

16:56

The Presiding Officer (Mr George Reid):
There are four questions to be put as a result of today’s business. The first question is, that motion S2M-2775, in the name of Cathy Jamieson, on the general principles of the Management of Offenders etc (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Bulter, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis ( Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Ruther Glen) (Lab)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (SNP)
MacDonald, Margo (Lothians) (Ind)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Rothesay and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathclyde) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Murray (West of Scotland) (Con)

The Presiding Officer: The result of the division is: For 89, Against 17, Abstentions 0.

Motion agreed to.

That the Parliament agrees to the general principles of the Management of Offenders etc. (Scotland) Bill.

The Presiding Officer: The second question is, that motion S2M-2933, in the name of Tom McCabe, on the financial resolution in respect of the Management of Offenders etc (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Aruckie, Mr Andrew (Mid Scotland and Fife) (LD)
Ballie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boydack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Claydonsdale) (LD)
Glen, Martyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Margo (Lothians) (Ind)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross)
(ND)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST
Byrne, Ms Rosemary (South of Scotland) (SSP)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)

ABSTENTIONS
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Murray (West of Scotland) (Con)

The Presiding Officer: The result of the division is: For 89, Against 3, Abstentions 14.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Management of Offenders etc. (Scotland) Bill, agrees—

(a) to the following expenditure out of the Scottish Consolidated Fund—

(i) expenditure of the Scottish Administration in consequence of the Act; and

(ii) increases attributable to the Act in the sums payable out of that Fund under any other enactment; and

(b) to any payment required to be made by virtue of the Act.
Dear Annabel

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) BILL - RESPONSE TO JUSTICE 2 COMMITTEE’S STAGE 1 REPORT

1. I am writing to set out my formal response to the recommendations contained in the Committee’s Stage 1 report. I am also taking the opportunity to respond to some of the points raised in the Stage 1 debate. I am pleased that the Committee, by majority, has supported the Bill at Stage 1 and I particularly welcome the constructive points raised in the Committee’s report. The Committee’s points have proved helpful in the development of a number of amendments which I intend to bring forward at Stage 2 and I will be writing to the Committee separately on these.

General

25. The Committee, by majority (one member dissenting) welcomes the new strategic approach to managing reoffending but recognises that the proposed structural reforms will not, in and of themselves, reduce reoffending. The Committee expects that the Bill, accompanied by the wider package of reforms, will bring about renewed focus on consistency, quality and co-ordination in the management of offenders. The Committee notes that the Executive believes that the Bill could reduce reoffending by 3% and considers this goal to be reasonable.

2. I welcome the Committee’s support for the strategic approach to managing reoffending. I fully appreciate the Committee’s view that structural change alone will not provide the improvements we want to see. The development of a national advisory body on offender management, the development of a national strategy and complementary reforms in our courts and police services are all necessary to deliver the services we need to tackle reoffending.
Community Justice Authorities

43. The Committee notes and acknowledges the concerns expressed by ADSW and COSLA about recent organisational changes but by majority (two members dissenting) accepts the need for and welcomes the creation, on a statutory basis, of Community Justice Authorities.

49. The Committee notes the concerns expressed by ADSW and COSLA about the duplication of roles. Nonetheless, providing that the relevant roles are clearly defined, the Committee by majority (one member dissenting) believes that the chief officers will have a clear focus on implementing strategies to tackle reoffending and on that basis is supportive of the proposals.

61. The Committee draws the Minister’s attention to the evidence we received on the potential number of CJAs, including the view of COSLA that they would consider six groupings on the basis that a review of the sheriffdoms takes place within 2 – 3 years. The Committee awaits the outcome of the consultation on CJAs with interest and seeks an assurance that there will be a period of stability to allow new structural arrangements to bed in. The Committee is aware from the Executive’s additional memorandum of the timescale for the consultation process. The Committee shares the Minister’s desire to set out the Executive’s position in advance of the Stage 3 debate.

67. The Committee welcomes this clarification of the definitions and relationships between the various powers of directions contained in section 2(10) and sections 5 and 6 of the Bill. The Committee notes from the additional memorandum that “Ministers are limited to requiring specific action by the CJA in relation to the authority and cannot issue directions to the local authority.”

3. I am pleased that the majority of Committee members accept the need for change and welcome the creation of Community Justice Authorities (CJAs). I appreciate the range of concerns that were raised in relation to some of the CJA provisions, which were carefully considered by the Committee.

4. I welcome the Committee’s support, by majority, for the proposals in relation to the establishment of CJAs and chief officers. I would like to reassure the Committee that we have listened carefully to the comments made about the role of the chief officer as part of our preparation for Stage 2. The Department is satisfied that duplication in the role of chief officer and chief social work officer is not a concern as former will be responsible for undertaking the new roles of planning, co-ordinating and monitoring services over the CJA area while the latter is responsible for the day to day operation of local authority CJSW services. In response to the point that Karen Whitefield raised in the Stage 1 debate about the role of the chief officer, the chief officer will provide a means of alerting Ministers at an early stage to barriers which may prevent the CJA achieving its targets.

5. I also note the Committee’s comments on powers of direction and intervention. It is important that these powers are retained. During the debate, Mike Pringle sought assurance that the power to ensure compliance will not be used lightly, only after serious problems have been identified and all other avenues have been exhausted. I wish to assure Committee that this is the case. I would like to reiterate that I and my officials will continue to work closely with local government, the voluntary sector and prison service contacts to support the policy formulation and implementation.
6. The responses to the consultation on CJAs are currently being analysed. We are currently having further discussions with CoSLA and considering their proposal for 8 CJA areas. I have noted the evidence that the Committee highlights in relation to the number of CJAs and I wish to assure Committee that I will set out the Executive’s position in relation to the number and configuration of CJAs prior to Stage 3. I am also conscious of specific concerns raised with regard to the Island authorities. I can reassure the Committee that I am determined that the new arrangements we put in place will enhance the delivery of services across the whole of Scotland, including the Islands. I am looking carefully at the points made about their position in the consultation responses.

7. Committee members were anxious that the reforms contained within the Bill are given adequate opportunity to settle before further changes are introduced. I recognise that the new arrangements will need time to become established and that we need to take that into account in setting realistic targets for the future. It is important that CJAs, the SPS and others should be given time to make these new arrangements work. However, that should not prevent us from monitoring progress carefully, as I intend to do, and fine tuning arrangements if this seems necessary.

Duty to Co-operate

71. The Committee agrees that Scottish Ministers, CJAs and local authorities should be obliged to co-operate and whilst the Committee awaits the outcome of the consultation on membership of CJAs, we observe that good practice would suggest that CJAs should encompass a wide membership.

79. The Committee emphasises the importance of ensuring an effective interface between SPS and CJAs. Evidence suggests that this might be difficult to achieve. The Committee urges the Minister to clarify with SPS how this will be achieved in practice.

88. In order for the provisions of this Bill to be effective, it is imperative that basic information is routinely exchanged and transmitted between relevant agencies. The Committee believes that there is considerable scope for improvement in the collection, receipt and transmission of basic information in respect of short-term prisoners which of itself should contribute to improvements in throughcare.

8. In relation to the duty to cooperate to ensure more integrated offender management, it may be helpful if I clarify what the Bill seeks to achieve and respond to the point made by Karen Whitefield during the debate about CJA membership. CJA membership is restricted to constituent local authorities. Both the SPS and the CJA are under a duty to cooperate in the production of area plans to tackle reoffending. It is the CJA that is under a duty to consult with partner bodies. I will of course also be setting out the Executive’s position in relation to who the partner bodies of the CJAs should be in my response to the consultation ahead of Stage 3.

9. With reference to the Committee’s emphasis on the importance of ensuring an effective interface between SPS and the CJAs, I am clear that the SPS must be fully committed to facilitating the development of CJAs and to contributing to their success. I am encouraged by initiatives such as the SPS Partnership Conference taking place on 15-16 September, which has been jointly planned with ADSW and the voluntary sector. I agree that the use of the prison estate is of course a critical issue here and I know the SPS has already begun to consider what the options may be.
10. Specifically, it may be helpful for the Committee to know that the allocation of prisoners to establishments throughout the estate will be reviewed in conjunction with CJAs once these are established. The allocation criteria will take account of four factors:

- what is in the best interests of the prisoner;
- the interests of partner organisations;
- contribution to reducing reoffending; and
- operational interests.

11. It is likely we will continue, for some time, to have some prisons, which primarily hold prisoners on a local basis and others who have a national role. Those with a national remit hold long term adult male or specialist prisoner groups or regimes (e.g. females, young offenders, sex offenders, open estate). The role of national prisons will be reviewed in consultation with CJAs once they are operational and as additional prisoner accommodation becomes available (such as that planned for Addiewell and Low Moss). In terms of area planning, I understand SPS intend that there will be one point of SPS contact for planning purposes for Chief Officers in each CJA area. A process of discussion between this SPS Liaison manager, SPS headquarters and the Chief Officer will result in agreement of establishments’ contribution to area plans. Once agreed the contribution to plans is clear this will be included in the contracts, which each prison works to.

12. The Committee has rightly recognised that information sharing is a critical element of the new arrangements and a number of members, during the Stage 1 debate, also made this point. We aim to ensure a smooth flow of relevant information from the community to prisons and prison to community. To achieve this, the SPS has initiated a joint piece of work with ADSW and Police looking at developing an Integrated Case Management system. I am happy to provide the Committee with more on this if they would like me to do so.

13. The Committee raised the issue of short-term prisoners, who are not generally subject to any form of statutory supervision on release. These prisoners have had the right to request voluntary assistance in the form of advice, guidance and assistance from local authorities for many years. This assistance can be requested within twelve months of release from custody. The provisions in the Bill however will strengthen the information flow and communication arrangements between local authorities and the Scottish Prison Service. By so doing, we hope the uptake of voluntary assistance in these priority groups, now being more proactively targeted under Phase 2 of the enhanced throughcare strategy, will increase.

Assessing and Managing the Risks Posed by Certain Offenders

104. The Committee welcomes improved information-sharing requirements as a positive development and supports the further development of such arrangements.

14. The Committee’s support for the improved information sharing requirements is welcomed. The Committee’s view was that the provisions will now require the involvement of the police in the risk assessment and management of certain individuals which is a new area of work. The report also mentions that the police sought clarification of the numbers involved and the types of offences that will fall within these provisions as they did not feel able to quantify the task or assess what skills, training and assessment tools will be needed.

15. The police have been involved for a number of years in risk assessment and management of sex offenders as part of their duties under the Sex Offenders Act 1997. The provisions of sections 9 and 10 will formalise these arrangements and allow the police, local authorities and the Scottish
Prison Service the opportunity to deliver a more consistent and joined up approach, assisted by the use of common assessment tools and shared management plans.

16. On the issue of violent offenders, we will be consulting the Risk Management Authority for guidance on developing a national approach to the assessment and management of this group. We intend to stage commencement so that the provisions are implemented firstly for sex offenders with the provisions relating to violent offenders being phased in. Agencies will of course continue to carry out their existing roles in the management and supervision of such offenders.

17. ACPOS is now represented on the Tripartite Group so that the police can contribute to the work on developing a model for the joint arrangements to translate the new provisions into practice.

Home Detention Curfew

122. Provided there is robust assessment of the suitability of individual offenders for release on HDC, the Committee, by majority (one member dissenting) believes that HDCs are a welcome option. The Committee anticipates that there will be a relatively limited usage of HDCs but they will form part of a package of wider measures.

134. The Committee shares the expectation that HDCs of themselves will not have any effect on reoffending unless there is consideration of attaching conditions for release over and above the standard conditions. The Committee agrees that it is desirable to have a wider package of support available to help offenders address their behaviour or problems but that elements of this may not always be expressed as conditions.

139. The status of HDCs will be compromised if action following any breach is not prompt. The Committee welcomes the clarification provided in the Executive’s additional memorandum about action to be taken in the event of breach.

18. The committee have indicated, by majority, their support for these provisions provided there is a robust assessment of individual offenders. I have already indicated that we are currently working to ensure that there will be a robust and transparent assessment for those eligible to be considered for Home Detention Curfew (HDC). Aside from those who are statutorily excluded from the scheme, all release decisions will be taken with regard to protecting the public, securing reintegration into the community and reducing reoffending. Any prisoner who, during assessment, is considered as posing a danger to victims, including his or her family and the public, will not be granted HDC. A joint assessment process, administered by the SPS and criminal justice social workers, is considered the most effective way to identify such issues.

19. The Committee commented on additional conditions for offenders and support to address reoffending behaviour. Additionally, members in the Stage 1 debate commented on whether these should be made mandatory. I have detailed previously that we estimate that around 25% of those on HDC might have additional conditions of licence alongside the standard conditions. Further, should HDC prisoners wish to access services and support, they will be able to do so.

20. We recognise that a proportion of prisoners on HDC are likely to require a wider package of support to secure successful reintegration into the community and prevent reoffending. Voluntary assistance will be available 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. Such support will address
issues that will help the prisoner to develop and maintain a stable lifestyle, for example seeking training or employment. These are areas which, we know when addressed, contribute to reducing reoffending. 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.

21. I note the Committee’s comments in relation to breaches of HDC. We will ensure that any breach action is prompt. Breach will not be tolerated and will be dealt with swiftly, from the point of detection to the point of redress, including the ultimate sanction of recall to custody.

**Recovery of criminal compensation from offenders**

141. The Committee notes and welcomes this provision which of itself could discourage offending.

22. I welcome the Committee’s support for these proposals.

**Issues Raised by the Finance Committee**

143. Earlier in this report the Committee acknowledged the Minister’s evidence that a number of financial issues, including the ongoing revenue costs of the ViSOR database, remain to be resolved. The Committee would be grateful to receive details of and an update in due course on these issues from the Minister.

23. Lastly, I would like to take this opportunity to update Committee on the costs of the ViSOR database. The Police Information Technology Organisation (PITO) has agreed that no costs will be incurred in terms of ViSOR interface with the Scottish Intelligence Database. They recognise that there will be ongoing revenue costs which will arise in 2006-07. The Scottish Executive and ACPOS are currently in discussion with PITO regarding the costs for Scotland and we expect the costs to be around 10% of costs for England and Wales. We are awaiting the business case, with analysis of benefits from ViSOR (Scotland) and these will be considered in conjunction with ACPOS, ADSW, SPS and Justice Department officials.

**Amendments at Stage 2**

24. As I mentioned earlier, I will set out, in a separate letter to the Committee, the Executive’s plans for amendments which I will bring forward at Stage 2.

25. A copy of this letter is being sent to the Presiding Officer and also to the Convenor of Finance Committee.

Best wishes,

CATHY JAMIESON
I wrote to you recently to respond to the Committee’s Stage 1 Report on the Management of Offenders etc (Scotland) Bill. Once again I would like to thank you and your fellow committee members for the work already undertaken on the scrutiny of the Bill. I undertook to write to you in advance of Stage 2 of the Bill, to inform you of where I intended to bring forward amendments.

I wish to lodge a number of amendments to sections dealing with Community Justice Authorities (CJAs). These amendments are refinements to the current provisions to ensure effective operation of CJAs. A number of these amendments have arisen as a direct consequence of the issues raised during the Stage 1 scrutiny process and in dialogue between the Scottish Executive and stakeholders in recent weeks.

I intend to lodge amendments to the provisions dealing with serious and sexual offenders. In particular, I wish to amend the provisions in sections 9 and 10 of the Bill to cover the responsibilities of health authorities in relation to mentally disordered offenders who have been convicted of sexual or violent offences. This will strengthen the provisions in the Bill in relation to a group who may also pose a risk to the public.

I propose to bring forward several amendments designed to meet the concerns expressed by stakeholders on joint working arrangements on the assessment and management of risks posed by serious and sexual offenders. The amendments will assist in the effective implementation of these provisions and I am confident that they will be welcomed by stakeholders.

A further amendment that I intend to lodge is an amendment to the Order for Lifelong Restriction provisions in section 1 of the Criminal Justice (Scotland) Act 2003 to ensure that the disposals available to the High Court when dealing with high risk mentally disordered offenders, convicted of sexual or violent offences, are in accordance with the policy set out at the time of passage of the Act.
I said during the Stage 1 debate, that I would bring forward an amendment to end the unconditional release of short term sex offenders. I can confirm that this is still my intention. The proposed amendment will mean that sex offenders sentenced to imprisonment for a period of between 6 months and 4 years will be released on licence and subject to supervision for the duration of their sentence. Breach of that licence could of course result in immediate recall to custody.

In relation to the home detention curfew provisions in the Bill, I propose to lodge amendments in order to clarify the appeal process and provide for the possibility of an oral hearing by the Parole Board, rather than relying on written representation.

I intend to bring forward amendments to section 12 of the Bill to extend notification provisions to cover Sexual Offenders Prevention Orders.

There will of course be a number of consequential amendments to existing legislation and I intend to bring these forward at Stage 2.

I hope that you find this summary of the current position with Executive amendments helpful. There are other points which we are still considering bringing forward for Stage 2 and I will write again to alert you as necessary. I understand that my officials are in contact with your committee clerks to provide any further assistance they can. I look forward to discussing these and other issues with the Committee as we continue the consideration of the Bill.

CATHY JAMIESON
Management of Offenders etc. (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 18

Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Hugh Henry

2 In section 1, page 1, line 22, leave out <section 27(1)> and insert <any of sections 27(1) or (1A) or 27ZA>

Section 2

Hugh Henry

3 In section 2, page 2, line 39, after <under> insert—

(i)

Hugh Henry

4 In section 2, page 2, line 41, at end insert <or

(ii) section 27B(1) of that Act (grants in respect of hostel accommodation for persons under supervision);>

Hugh Henry

5 In section 2, page 3, line 12, at end insert—

(5A) Any grant paid to a local authority by virtue of subsection (5)(e) is subject to such conditions as the community justice authority may determine.

(5B) But conditions determined under subsection (5A) are subject to any conditions determined, as respects the grant in question, under section 27A(1B) or 27B(1B) of the Social Work (Scotland) Act 1968 by the Scottish Ministers.>

Hugh Henry

6 In section 2, page 3, line 14, at end insert—

( ) A report made under paragraph (g) of subsection (5) must be published by the community justice authority in such manner as it considers appropriate.

( ) A community justice authority is, on receiving a report submitted to it under section 10(2)(c), to send a copy of that report to the Scottish Ministers.>
In section 2, page 3, line 24, leave out from <may> to end of line 26 and insert—

<(a) may from time to time issue to a community justice authority guidance as to—
   (i) the exercise of its functions; or
   (ii) its actings under section 3; and
(b) where they have issued such guidance but are satisfied that the authority—
   (i) is not complying; and
   (ii) is not likely to comply,
with it, may issue directions to the authority as to the exercise or actings in question.

( ) But before issuing directions under subsection (10)(b), the Scottish Ministers are—

(a) to give written notice of at least 7 days to the community justice authority that they intend to issue the directions; and
(b) to consider any representations in that regard made to them, within those 7 days, by the authority.

( ) The community justice authority may appeal to the sheriff, against any directions so issued, on the grounds (either or both)—

(a) that the directions are unreasonable,
(b) that to issue them was unreasonable.

( ) Within one month after issuing any such directions the Scottish Ministers are to lay a report before the Parliament containing a copy of the directions and a statement as to the reason for issuing them.>

In section 2, page 3, line 37, leave out <(10)(a)> and insert <(10)(b)>

In section 2, page 4, line 8, leave out <bodies as are for the time being designated as such> and insert <persons as are for the time being designated as partner bodies>

In section 3, page 4, line 21, leave out <2(10)(a)> and insert <2(10)(b)>

In section 3, page 4, line 41, leave out <is to> and insert <may>
In section 7, page 7, line 14, leave out from second <section> to end of line 15 and insert—

(a) any of sections 27(1) or (1A), 27ZA or 27B of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prison etc.) which are exercisable by local authorities; and

(b) the Prisons (Scotland) Act 1989 (c.45) which are—

(i) exercisable by the Scottish Ministers; and

(ii) relate to the preparation of offenders for release from imprisonment or from detention in custody.>

In section 7, page 7, line 20, at end insert <; but this subsection is subject to subsection (5)>

In section 7, page 7, line 21, leave out <each of the local authorities> and insert <a local authority>

In section 7, page 7, line 23, leave out <those local authorities> and insert <that local authority>

In section 7, page 7, line 24, at end insert <; but before any such joint determination is made the community justice authority must, as respects its proposed effect, consult—

(a) any local authority comprised within that area and not party to the joint determination,

(b) the partner bodies (as defined by section 2(16)), and

(c) the Scottish Ministers.>

In section 7, page 7, line 29, at end insert—

(b) in the case of functions mentioned in paragraph (a) of subsection (1), unless before the draft is so laid, the Scottish Ministers have—

(i) consulted, as respects the draft, the community justice authority and each of the local authorities comprised within the area of the community justice authority, and

(ii) secured the agreement of them all to its being so laid, and

(c) in the case of functions mentioned in paragraph (b) of subsection (1), unless before the draft is so laid, the Scottish Ministers—

(i) have consulted, as respects the draft, the community justice authority, and
(ii) have secured its agreement to its being so laid.

Section 8

Hugh Henry

18 In section 8, page 7, line 33, at end insert—

<(1A) If by virtue of the revocation of an order under section 7 a function ceases to be exercisable by a community justice authority, that authority must, if requested to do so by whomever is to exercise the function in consequence of the revocation, transfer to that person any property held by it wholly or mainly for the purpose of exercising the function.>

Hugh Henry

19 In section 8, page 7, line 34, leave out <such transfer> and insert <transfer under subsection (1) or (1A)>

Hugh Henry

20 In section 8, page 7, line 35, at end insert—

<( ) Subject to subsection (2), on the transfer of property under subsection (1) or (1A), such rights and liabilities of the transferor as pertain to the property are transferred with it.>

Section 9

Hugh Henry

21 In section 9, page 7, line 38, at beginning insert <Subject to subsection (10),>

Hugh Henry

22 In section 9, page 8, line 3, after <violence> insert <and—

(i) is subject to a probation order under section 228(1) of the Criminal Procedure (Scotland) Act 1995 (c.46), or

(ii) is required, having been released from imprisonment or detention, (or will be required when so released), to be under supervision under any enactment or by the terms of an order or licence of the Scottish Ministers or of a condition or requirement imposed in pursuance of an enactment;

(ba) has, in proceedings on indictment, been acquitted of an offence inferring personal violence if—

(i) the acquittal is on the ground of insanity; and

(ii) a restriction order is made in respect of the person under section 59 of that Act of 1995 (hospital orders: restriction on discharge);

(bb) has been prosecuted on indictment for such an offence but found, under section 54(1) of that Act of 1995 (insanity in bar of trial), to be insane;>
Hugh Henry
23 In section 9, page 8, line 4, leave out <and by reason of that conviction> and insert <if, by reason of that conviction, the person>.

Hugh Henry
24 In section 9, page 8, line 9, after <committed> insert <(or, if the person is subject to the notification requirements by virtue of a finding under section 80(1)(b) of the Sexual Offences Act 2003 (c.42), where anything that he was charged with having done took place)>.

Hugh Henry
25 In section 9, page 8, line 11, at end insert <; or>

( ) for the purposes of paragraph (ba) or (bb) of that subsection, where anything that the person was charged with having done took place.>

Hugh Henry
26 In section 9, page 8, line 12, at beginning insert <Subject to subsection (10),>.

Hugh Henry
27 In section 9, page 8, line 15, at beginning insert <Subject to subsection (10),>.

Hugh Henry
28 In section 9, page 8, line 20, at end insert—

<( ) In the area of each local authority the responsible authorities and the persons specified under subsection (3) must together draw up a memorandum setting out the ways in which they are to co-operate with each other.>

Hugh Henry
29 In section 9, page 8, line 27, after <authority;> insert—

<(ba) a Health Board or Special Health Board for an area any part of which is comprised within the area of the local authority;>

Hugh Henry
30 In section 9, page 8, line 37, at end insert—

<(10) The functions and duties, under the preceding provisions of this section and under section 10, of the responsible authorities mentioned in subsection (6)(ba) extend only to the establishment, implementation and review of arrangements for the assessment and management of—

(a) persons subject both—

(i) to an order under paragraph (a) (order for detention in specified hospital where accused found to be insane) of section 57(2) of the Criminal Procedure (Scotland) Act 1995; and

(ii) to an order under paragraph (b) (special restrictions) of that section;>
(b) those subject both—
   (i) to a compulsion order under section 57A of that Act (order for detention in
       specified hospital etc.); and
   (ii) to a restriction order under section 59 of that Act (provision for restrictions
       on discharge);
(c) those subject to a hospital direction under section 59A of that Act (direction
    authorising removal to and detention in specified hospital); or
(d) those subject to a transfer for treatment direction under section 136 of the Mental
    Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (transfer of prisoners
    for treatment for mental disorder).

(11) But it is the duty of the responsible authorities mentioned in subsection (6)(ba) to co- 
    operate (to the extent mentioned in subsection (4)) with the other responsible authorities, 
    with each other and with any persons specified under subsection (3), in the 
    establishment and implementation of arrangements for the assessment and management 
    of persons other than those mentioned in paragraphs (a) to (c) of subsection (10).

(12) In subsection (6)(ba)—
    “Health Board” means a board constituted by order under section 2(1)(a) of the 
    National Health Service (Scotland) Act 1978 (c.29); and
    “Special Health Board” means a board so constituted under section 2(1)(b) of 
    that Act.

(13) The reference in subsection (6)(c) to the Scottish Ministers is to the Scottish Ministers in 
    exercise of their functions under the Prisons (Scotland) Act 1989 (c.45).

Section 10

Hugh Henry

31 In section 10, page 9, line 5, at end insert <; and
   (c) submit the report to the community justice authority within the area of which the area of the local authority is comprised>

Section 11

Miss Annabel Goldie

1 In section 11, page 9, line 13, leave out subsections (2) to (12) and insert—
   <( ) In section 1 (release of prisoners), for subsections (1) to (3) substitute—
      “(1) As soon as—
      (a) a short-term prisoner; or
      (b) a long term-prisoner,
      has served five sixths of his sentence, the Scottish Ministers may, if recommended to do so by the Parole Board under this section, release him on licence.”.
   ( ) In section 12 (conditions in licence), after subsection (2) insert—
“(2A) Without prejudice to the generality of subsection (1) above, a licence granted
under this Part of this Act may, if so recommended by the Parole Board,
include a curfew condition.

(2B) For the purposes of this Part, a curfew condition is a condition which—

(a) requires the released person to remain, for periods for the time being
specified in the condition, at a place for the time being so specified; and

(b) may require him not to be in a place, or class of place, so specified at a
time or during a period so specified.

(2C) The curfew condition may specify different places, or different periods, for
different days but a condition such as is mentioned in paragraph (a) of
subsection (2B) above may not specify periods which amount to less than nine
hours in any one day (excluding for this purpose the first and last days of the
period for which the condition is in force).

(2D) A curfew condition shall apply for such period (not extending beyond the date
on which the released person would, but for his release under section 1 of this
Act, have completed his sentence of imprisonment) as the Parole Board may
recommend.

(2E) A curfew condition is to be monitored remotely; and subsections (3) to (7) of
section 40 of the Criminal Justice (Scotland) Act 2003 (asp 7) apply in relation
to the remote monitoring of a curfew condition as they apply in relation to a
condition imposed under subsection (2) of that section.”.

Section 14

Hugh Henry

32 In section 14, page 14, line 25, leave out <(ab)> and insert <(ad)>

Hugh Henry

33 In section 14, page 14, line 26, leave out <(ac)> and insert <(ae)>

Hugh Henry

34 In section 14, page 14, line 30, leave out <(1)> and insert <(1B)>

Hugh Henry

35 In section 14, page 14, line 31, leave out <(1A) In paragraph> and insert—

<(1C) In paragraphs (ac) and>

Hugh Henry

36 In section 14, page 14, line 33, leave out <(1B)> and insert <(1D)>

Hugh Henry

37 In section 14, page 15, line 1, leave out <2(5)(e)> and insert <2(5)(e)(i)>
In section 27B of that Act (grants in respect of hostel accommodation for persons under supervision)—

(a) for subsection (1) substitute—

“(1) The Scottish Ministers may (any or all)—

(a) pay to a community justice authority, for allocation under section 2(5)(e)(ii) of the Management of Offenders etc. (Scotland) Act 2005 (asp 00) as grants to the local authorities within its area;

(b) make a grant to a local authority of;

(c) make a grant to a community justice authority, in respect of any function exercisable by that authority by virtue of section 7(2) or (3) of that Act of 2005, of,

such amount as the Scottish Ministers may determine in respect of relevant expenditure.

(1A) In subsection (1) above, “relevant expenditure” means expenditure incurred by, as the case may be, those local authorities or that local authority in—

(a) providing; or

(b) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of,

residential accommodation wholly or mainly for the persons mentioned in subsection (2) below.

(1B) Any grant made under, or paid by virtue of, subsection (1) above is subject to such conditions as the Scottish Ministers may determine.”; and

(b) in subsection (2), for “subsection (1)” substitute “subsection (1A)”.

In section 8(1) of the Prisons (Scotland) Act 1989 (c.45) (provision for constitution of visiting committees), for the words from “at” to the end, substitute—

“(a) by such—

(i) community justice authorities, or

(ii) councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994,

(b) at such times,
(c) in such manner, and

(d) for such periods,

as may be prescribed by the rules.”.

(4B) In section 27(4A) of the 1993 Act (construction of references in Part 1 of that Act to wholly concurrent or partly concurrent terms of imprisonment or detention), in sub-paragraph (i) of paragraph (a) and in each of sub-paragraphs (i) and (ii) of paragraph (b), for the words “is imposed” substitute “commences”.>
Duty to co-operate – definition of “relevant person”
2

Community justice authorities – allocation of grants
3, 4, 5, 37, 38, 39, 40

Community justice authorities – publication of reports etc.
6, 31

Community justice authorities – guidance and directions
7, 8, 10

Community justice authorities - partner bodies
9

Expenditure of community justice authority – nature of duty on Scottish Ministers
11

Transfer of functions to community justice authorities
12, 13, 14, 15, 16, 17, 18, 19, 20

Assessing and managing risks posed by certain offenders
21, 22, 23, 24, 25, 26, 27, 28, 29, 30

Change to early release of prisoners
1

Consequential amendments
32, 33, 34, 35, 36

Prison visiting committees etc.
41
Present:

Jackie Baillie
Miss Annabel Goldie (Convener)
Mr Stewart Maxwell
Bill Butler (Deputy Convener)
Maureen Macmillan
Jeremy Purvis

Also present: Hugh Henry (Deputy Minister for Justice)

Management of Offenders etc. (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.

Sections 4, 5 and 6 were agreed to without amendment.

Sections 1, 2, 3, 7, 8, 9 and 10 were agreed to as amended.

The Committee ended consideration of the Bill for the day, Section 10 having been agreed to.
Scottish Parliament
Justice 2 Committee
Tuesday 20 September 2005

The Convener opened the meeting at 14:02

Management of Offenders etc (Scotland) Bill: Stage 2

The Convener (Miss Annabel Goldie): I declare this meeting of the Justice 2 Committee open. It is our 22nd meeting this year and our sole item of business will be stage 2 amendments to the Management of Offenders etc (Scotland) Bill.

I do not have a note of any apologies. I think that Jackie Baillie hopes to join us, but she may be a little late. Colin Fox is not attending meetings during the month of September.

I welcome Hugh Henry, the Deputy Minister for Justice, and his officials from the Scottish Executive Justice Department. With their papers, members should have received a marshalled list of amendments. I propose that we get under way without further ado.

Section 1—Duty to co-operate

The Convener: Amendment 2, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 3 is consequential to section 2(5)(e) and takes account of amendment 4. The purpose of amendment 4 is to allow for community justice authorities to have responsibility for the allocation of funds under section 27B of the Social Work (Scotland) Act 1968, which deals with grants in respect of accommodation for persons under supervision. It would be sensible for CJAs to have the power to handle and distribute those funds to local authorities. The intention of the provision is to support the integrated delivery of services under our plan.

Amendment 37 is a technical amendment and is consequential to amendment 3. It ensures that the requisite amendments to the 1968 act will contain the correct references.

Amendment 40 relates to amendments 3 and 4. It amends the 1968 act to enable ministers to provide grants to the CJA under section 27B, while retaining the power to provide funds directly to local authorities. That addition to section 14(2) of the bill amends section 27B of the 1968 act, which mirrors the changes to section 27A of the act that the bill already provides for.

Section 14(2) of the bill introduces necessary amendments to section 27A of the Social Work (Scotland) Act 1968. Currently, the bill enables ministers to provide funds to CJAs for distribution to local authorities or for the delivery of functions transferred under section 7(2) of the bill, which deals with the statutory transfer of functions. Amendment 38 inserts a reference to section 7(3) of the bill into the 1968 act. Section 7(3) allows a CJA to perform a function on behalf of any number of the local authorities within its area. The amendment ensures that ministers can additionally provide funds to CJAs for delivering services on behalf of local authorities under section 7(3). That will avoid the need for additional funding transfers backwards and forwards for CJAs or for local authorities.

Amendment 39 is a technical amendment to clarify the location of that subsection as referred to in the 1968 act. That ensures consistency with the cross-reference style as adopted in the act.

Amendment 5 provides CJAs with the explicit power to set conditions on the grant that is to be paid to local authorities under section 2(5)(e) of the bill. At the moment, ministers can set conditions of grant on local authorities. The bill already makes provision for grant conditions on CJAs, which will be set by Scottish ministers through section 27A(1B) of the 1968 act. The amendment provides similar powers to the CJA over local authorities to ensure that it remains possible to apply conditions to the way in which moneys that are provided by the Executive are used. If we did not do that, we would break a well-established link that currently enables ministers to...
impose conditions on local authorities’ expenditure of grant.

I move amendment 3.

Amendment 3 agreed to.

Amendments 4 and 5 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 6, in the name of the minister, is grouped with amendment 31.

Hugh Henry: Amendment 6 places the community justice authorities under a duty to publish their annual report. That would be in line with best practice and in the interests of an open exchange of information. The provision has been drafted to allow CJAs flexibility as to the means and manner of publication.

On a related point, the bill as currently drafted requires the responsible authorities to prepare an annual report on the exercise of their functions in relation to sexual and violent offenders under section 9. There is no provision requiring that anything should be done with that report. At the suggestion of the Association of Directors of Social Work, amendment 31 provides that that annual report be submitted to the CJA. That ensures integration of the requirements that are imposed on responsible authorities under section 9 with the work of the CJA. Amendment 6 completes the cycle by requiring the CJA to submit that report to the Scottish ministers.

I move amendment 6.

The Convener: I seek clarification on a small drafting matter. Amendment 6 refers to “a report submitted to” a CJA “under section 10(2)(c)”.

To put the matter beyond doubt, is that section 10(2)(c) of the Social Work (Scotland) Act 1968?

Hugh Henry: No. The reference is to a paragraph that will be inserted into the bill by amendment 31.

The Convener: That is helpful.

Amendment 6 agreed to.

The Convener: Amendment 7, in the name of the minister, is grouped with amendments 8 and 10.

Hugh Henry: Amendment 7 amends the powers in section 2(10) of the bill for the Scottish ministers to provide guidance and direction to CJAs. As drafted, section 2(10) provides ministers with powers only to provide guidance for the preparation and content of plans under section 2, but that will be amended so that ministers can provide guidance on any of the functions in section 2. Ministers will also be able to issue guidance to an authority as to its actions under section 3. The amendment will enable ministers to be clearer about the CJAs’ role and functions, which will help to ensure that guidance can be used to provide further detail if needed on, for example, the role of the chief officer or relations with local authority chief social work officers.

Amendment 7 will also introduce limits to the scope of the powers of direction in section 2(10). We considered the committee’s comments on the issue and those that members made during the stage 1 debate. While we feel that it is important that the powers are retained, we have considered the wording of the provision further. Amendment 7 has been drafted following discussions with local government, the Scottish Prison Service and voluntary sector representatives.

Amendment 7 will limit the use of directions to occasions on which the ministers are satisfied that a CJA is not complying with the guidance that has been issued or that it is not likely to comply. The amendment will restrict the powers so that directions can be issued only following written notice of ministers’ intention to issue a direction. Ministers will have a duty to consider any representations that are made to them within seven days of the issue of the written notice.

Amendment 7 will also provide CJAs with a right of appeal to the sheriff against the terms of directions. Finally, the amendment will impose an obligation on ministers to report to the Parliament following the issue of directions. Ministers will therefore be held accountable to the Parliament, so ministerial decisions to use the power of direction will be transparent.

Amendments 8 and 10 are consequential amendments that take account of the renumbering in section 2(10).

We have reflected on the concerns that were raised on the issue—I hope that amendment 7 will provide assurances.

I move amendment 7.

Bill Butler (Glasgow Anniesland) (Lab): I welcome amendment 7, because, as colleagues will know, several of us had concerns about the powers of direction. The measures that the minister outlined give a considerable degree of comfort on the issue.

Mr Stewart Maxwell (West of Scotland) (SNP): I concur with Bill Butler’s comments on the Executive’s movement, which is helpful. For clarification, will the minister explain why a period of seven days has been chosen for the time within which anybody who has been directed must object? That seems a short period.
Hugh Henry: We accepted the arguments that were made and produced new measures, but it is fair to say that there are times when we must move quickly. We are concerned that extending the period beyond seven days could introduce unnecessary delays, leading to complications or risks to the quality of service delivery. Having built in safeguards and having sought to give those assurances, we believe that it is necessary—not for the Executive or the authorities, but for reasons of public safety—to ensure that, if concerns exist, the public can be reassured that action will be taken swiftly.

Amendment 7 agreed to.

Amendment 8 moved—[Hugh Henry]—and agreed to.

14:15

The Convener: Amendment 9, in the name of the minister, is in a group on its own.

Hugh Henry: The purpose of amendment 9 is to clarify that CJAs may work with partner bodies that are individuals or office holders as well as those that are organisations. The amendment makes it clear that individuals can be designated as partner bodies for the purposes of section 2 and provides future flexibility in the design of partner bodies.

I move amendment 9.

Amendment 9 agreed to.

Section 2, as amended, agreed to.

Section 3—Further provisions as respects community justice authorities

Amendment 10 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 11, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 11 clarifies the provision in section 3(6) relating to the meeting of CJA expenditure by ministers. As currently worded, the section could be interpreted as meaning that all expenditure of a CJA, in so far as it is not met by any other source, is to be paid for by ministers without any limitation. The amendment ensures that Scottish ministers are not liable to pay all expenditure that is incurred by CJAs, even in the event of a local decision to spend more than the grant that is offered by the Executive. The committee will agree that that is a wholly appropriate and prudent response.

I move amendment 11.

The Convener: As long as the bill for that does not land up in the lap of the hapless council taxpayer, I am not too concerned about the amendment.

Amendment 11 agreed to.

Section 3, as amended, agreed to.

Sections 4 to 6 agreed to.

Section 7—Transfer of functions to community justice authority

The Convener: Amendment 12, in the name of the minister, is grouped with amendments 13 to 20.

Hugh Henry: If the committee will bear with me, I will discuss the amendments in detail. Amendments 12 to 20 amend provisions in sections 7 and 8. Section 7 deals with the transfer of functions to CJAs. Section 8 is concerned with the transfer of property that is associated with the transfer of a function.

The purpose of amendment 12 is to extend the list of functions that can be transferred to a CJA under section 7 to include functions exercised under sections 27(1A), 27ZA and 27B of the Social Work (Scotland) Act 1968. The amendment also includes certain functions that are exercised by Scottish ministers under the Prisons (Scotland) Act 1989. The intention of adding the functions that are exercised under sections 27(1A) and 27ZA of the 1968 act is to take into account the amendments that were made to the 1968 act by the Criminal Justice (Scotland) Act 2003. Amendment 12 links in with amendment 2, which inserts references to those sections into the definition of “relevant persons” for the purposes of the bill.

The effect of adding the reference to section 27B of the 1968 act is to include services for which ministers make grants to local authorities in respect of residential accommodation for persons under supervision. That links in with amendment 4, which inserts such a reference to enable CJAs to allocate to local authorities funds given under section 27B.

Amendment 12 also adds certain of ministers’ functions under the Prisons (Scotland) Act 1989 to the list of functions that can be transferred. Those are functions that are exercised through the Scottish Prison Service and that relate to the preparation of offenders for release from imprisonment or detention in custody. The intention is that those SPS functions that are relevant to the work of a CJA could in future be transferred to a CJA. Such functions could include prison-based social work activities, which the SPS currently purchases from local authorities or others. We have developed the amendment to allow for a future transfer of those functions to the CJA. The intention is that that will support the more integrated system for management of offenders. However, as the amendment makes clear, only the functions related to the preparation
of offenders for release are covered by the section. There is no question of CJAs being able to take on other functions of prisons.

The amendment allows only for the statutory transfer of functions from ministers to CJAs. We are also considering whether CJAs should undertake functions on behalf of Scottish ministers, in effect acting as their agents. That would require amendment to section 7(3).

I turn to amendments 13 and 17. We have listened to the concern of local authorities regarding ministerial powers to transfer functions from local authorities to CJAs. It was never our intention to use such powers against the will of local authorities. Consequently, the original provision was drafted to make a transfer order subject to affirmative procedure. That requirement still exists, but amendment 17 places a further duty to consult local authorities and obtain their agreement to the laying of the order. I argue that the amendment provides sufficient safeguards to ensure that function transfer against the will of local authorities does not occur. Similarly, an order transferring a function from Scottish ministers—in effect, the SPS—to a CJA cannot be laid without the agreement of the CJA to undertake that function.

Amendment 13 is supplemental to amendment 17 and ensures that the statutory transfer of functions under section 7 is subject to the procedures and conditions that are set out by amendment 17 and inserted in subsection (9).

The effect of amendments 14 and 15 is to allow a CJA to deliver a function that is covered by subsection (1) on behalf of any number of the local authorities in its area. The amendments accommodate the wishes of local authorities that wish to transfer the day-to-day delivery of a function, but not the ultimate statutory responsibility for it, and of those that prefer to maintain delivery at local authority level. The amendments do not raise issues of mixed competency, as the statutory responsibility for the function does not change—it remains with the local authority. The amendments also avoid potential disputes within a CJA between local authorities that wish to use the CJA as an agent and those that do not. The amendments provide individual local authorities and CJAs with greater flexibility for decisions on transfer of functions to CJAs.

Amendment 16 imposes a duty on a CJA to consult interested parties when considering undertaking a function on behalf of one or more of the local authorities in its area. The amendment provides a means of ensuring that all local authorities, partner organisations and Scottish ministers are aware of any change in service delivery and is in keeping with the general theme of joint working that permeates the bill.

Amendments 18, 19 and 20 amend section 8. Section 7 provides an order-making power to allow transfer of functions to CJAs from local authorities or the Scottish ministers—in practice, the SPS. Section 8 allows property that is used for the purposes of the function also to transfer to the CJA.

As the bill is drafted, should an order that is made under section 7 be revoked, any property that accompanied the transfer would remain with the CJA. There is therefore a need to amend section 8 to allow the transfer back of any property that is associated with the function to the body that assumes that function following revocation. Amendment 18 will ensure that that is the case.

Amendment 19 seeks to ensure that no right of pre-emption or other similar right operates or becomes exercisable in the case of transfer of property to and further transfer from the CJA. Amendment 20 seeks to ensure that other rights or liabilities that are associated with the property transfer with the property when it is transferred from one body to another.

I move amendment 12.

The Convener: I think that you have given the necessary reassurance but, to put it beyond doubt in my mind, can you say whether it is correct that the transfer of powers as proposed under amendment 12 will not give a CJA decision-making power over the release from prison or detention of any individual?

Hugh Henry: That is correct.

The Convener: That decision remains with current authorities.

Hugh Henry: Yes. As I made clear, we are talking about the exercise of functions that the Scottish Prison Service currently buys in from social work agencies or others, such as the preparation of offenders for release to social work. There is no question of other functions being taken under amendment 12.

Bill Butler: I welcome amendment 17, because it adds the necessary safeguard of affirmative procedure to the requirement to consult and secure agreement from local authorities on the transfer of functions to CJAs.

Maureen Macmillan (Highlands and Islands) (Lab): I have a question on amendment 12, on the preparation of offenders for release from imprisonment and the possible role of the CJA. Would the relevant CJA be the CJA in the area where the prison is located or the CJA in the area from which the prisoner came originally and to where they are going to be sent back? Could it be
both CJAs? I am not sure how it would work for prisoners whose homes were not in the CJA area of the prison.

Hugh Henry: The relevant CJA would be the CJA that is responsible for providing support to the prisoner on release. Sometimes there might be confusion about where that might be and where support might be more appropriately provided. We are discussing with the SPS the use of the prison estate, so it could be either CJA. The whole intention of the bill is to ensure that prisoners are properly prepared before release and properly supported after release. We want to ensure that there is no confusion about responsibility. We will continue to discuss this matter, and if we believe that support should more appropriately be provided in one or the other, we will ensure that it is provided in the way that is most appropriate for the prisoner.

Maureen Macmillan: Thank you. That is a cause of concern in areas without prisons.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Could you clarify amendments 14 and 15, because I am concerned that there is a muddle? We have already clarified the areas on which you will issue guidance—for example on planning, co-ordinating and monitoring CJAs—and how that will be done. However, with amendments 14 and 15, you are in effect offering to let local authorities opt out of combining responsibilities or functions within a CJA. How would that be consistent? If, for example, a CJA covered four local authorities, only one of which asked the CJA to provide services for it, such as the preparation of prisoners for release, how could the CJA then co-ordinate those services, which would in effect be a ministerial instruction?

14:30

Hugh Henry: We have been attempting to reflect some of the concerns that were expressed by members of the Parliament, local authorities, social work professionals and others when we first proposed to set up an agency to tackle reoffending. Members were keen to ensure that responsibility for service delivery still lay at the local level and that we did not inappropriately interfere with that. We took steps to examine the continuity of employment and staff in the bodies concerned. We have separated the need to have strategic organisation and oversight from day-to-day service delivery. Local authorities will still have responsibility for functions in this area, which reflects comments from a wide range of organisations and individuals during the formative stages of the bill.

Jeremy Purvis: If a CJA receives funding directly from the Executive and is vested with the functions of a local authority within its area, would there not be some disparity with regard to how those services could be delivered? One local authority vesting its functions to the CJA could in effect have subsidised services.

Hugh Henry: We want to emphasise that the action plan that is to be developed should ensure consistency across the whole of a CJA’s area. If we reflect on the fact that a CJA will be comprised of individual local authorities, we have to accept that there is the potential for what we could describe negatively as a disparity of service delivery in certain areas. However, it was put to us during the formulation of the bill and during the consultation process that we should not view the process negatively, but rather view it as local decision makers and service delivery agencies taking full responsibility for shaping the services in their area as they best see fit.

We have not attempted to impose a centralisation whereby services will be delivered in exactly the same way in each local authority area under a given CJA. However, given the requirement for the action plan and with the CJA taking overall responsibility, we have attempted to allow the CJA to hold those who are responsible for local service delivery to account should there be a failure to meet the required standards. We are not attempting to dictate exactly how service delivery should be provided in each case. That reflects the debate that took place during the early stages of consultation.

Maureen Macmillan: I welcome the minister’s last remarks. The islands authorities were very keen to uphold those arrangements and to do things in the way that they had traditionally done them, rather than having some other system imposed on them.

Amendment 12 agreed to.

Amendments 13 to 17 moved—[Hugh Henry]—and agreed to.

Section 7, as amended, agreed to.

Section 8—Transfer of property to community justice authority

Amendments 18 to 20 moved—[Hugh Henry]—and agreed to.

Section 8, as amended, agreed to.

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

The Convener: Amendment 21, in the name of the minister, is grouped with amendments 22 to 30.

I will allow time for the minister’s new set of advisers to replace the current set. It looks as
though the weary are being replaced by the energetic, but I am sure that that is not the case.

Hugh Henry: I could not possibly comment—I have too much at stake in future work to make such a suggestion.

With the committee’s indulgence, I will cover a fairly detailed set of amendments. I thank the agencies in the tripartite group and those who gave evidence to the committee who assisted in formulating amendments 21 to 30.

Amendment 29 will extend the definition of responsible authorities in section 9(6) to include health boards and special health boards, otherwise known as the health service. Amendment 30 provides that the health service will be involved in establishing joint arrangements for the assessment and management of the risk that is posed by mentally disordered offenders who also fall within the group of sexual and violent offenders that is defined in subsection (1).

The amendments set out the function and duties under which the health service will act as a responsible authority in relation to the establishment and management of the risk that is posed by mentally disordered offenders who are subject to a compulsion order, restriction order, hospital direction or transfer for treatment direction under the Criminal Procedure (Scotland) Act 1995 and the Mental Health (Care and Treatment) (Scotland) Act 2003.

The amendments will give the health service a statutory function to establish joint arrangements with the other three responsible authorities—the Scottish Prison Service, the local authority and the police—to assess and manage risk, which includes sharing relevant information, for that group of mentally disordered offenders. Significantly, the amendments will allow the health service to formalise the care programme approach that is in place throughout Scotland. Under that process, a range of agencies works with the health service to ensure safe pre-discharge and post-discharge arrangements for mentally disordered offenders.

Subsection (3) gives ministers the power to make an order requiring other agencies to cooperate with the responsible authorities in establishing and implementing the arrangements for offenders who are in the community or being released from prison. The responsible authorities also have a duty to co-operate with those agencies and with one another. It is important that the health service should be under an express duty to co-operate with the other three responsible authorities as regards non-mentally disordered offenders and we will add a new provision—subsection (11)—to achieve that.

Arguably, the provisions in relation to offenders in the criminal justice system could be left as they are. However, including mentally disordered offenders provides the opportunity to close a potential loophole and to cover all the possibilities so far as they are reasonably identifiable.

We are acting in the interests of public safety and—I am pleased to say—with the support of other responsible authorities, namely the Scottish Prison Service, the Association of Directors of Social Work and the Association of Chief Police Officers in Scotland.

I should add that the provisions on mentally disordered offenders have proved challenging to those who were tasked with developing the amendments. I ask for some indulgence from the committee if we need to refine the definitions in subsections (1) and (10) by further amendment at stage 3. It is important that we make these amendments at this stage. We are right to identify the issues for the committee and give members an opportunity to reflect on what is a detailed but significant set of amendments. It is appropriate to make the amendments now, knowing that changes may be required at stage 3, rather than produce the whole set of amendments at stage 3 without giving the opportunity for more considered reflection. The amendments will provide the basis for the creation of a stronger framework within which the justice and health portfolios will work together to manage risks to the public.

Amendment 30 will also insert new subsection (12), which defines the terms “Health Board” and “Special Health Board”, and new subsection (13), which will clarify that the use of the term “the Scottish Ministers” in subsection (6) applies to the exercise of ministers’ functions through the Scottish Prison Service under the Prisons (Scotland) Act 1989. Amendments 21, 26 and 27 are consequential to amendment 30.

Amendment 22 will refine the definition of the violent offenders who will be caught by section 9(1)(b). The amendment defines the group as those who are subject to a probation order or those who will be subject to statutory supervision on release. That includes prisoners who are sentenced to four years or more and those who are subject to an extended sentence or a supervised release order. Amendment 22 will also add new categories to cover mentally disordered offenders who are acquitted on the ground of insanity and subject to a restriction order, and those where a plea in bar of trial on the ground of insanity is successfully made.

The police have been involved in risk assessment and management of sex offenders for a number of years, as part of their duties under the Sex Offenders Act 1997. Sections 9 and 10 will formalise those arrangements and allow the
police, local authorities and the Scottish Prison Service to deliver a more consistent and joined-up approach, assisted by the use of common assessment tools and a shared management plan. However, we accept that establishing joint arrangements to deal with the violent offender group will be a new area of work for the police. We therefore propose to consult the Risk Management Authority for advice on developing a national approach to the assessment and management of that group of offenders. Guidance to underpin the legislation will be issued to agencies on implementation.

To allow proper time for preparation and to learn from experience, we intend to stage the commencement of the act, starting with the provisions on sex offenders and then phasing in those on violent offenders. However, that will not prevent any of the responsible authorities from carrying out their existing functions in respect of violent offenders.

Amendment 23 will amend section 9(1)(c) to clarify that it is the conviction that will be the basis on which the responsible authorities consider that a person may cause serious harm to the public. Amendment 24 is consequential to amendment 22, which will add new paragraph (ba) to section 9(1). Amendment 24 will amend section 9(2)(b) to take into account those persons who are found not guilty of charges by reason of insanity but who are nevertheless required to register under the notification requirements in section 80(1)(b) of the Sexual Offences Act 2003.

Amendment 24 will provide that, for the purposes of determining which authorities must make the arrangements that are required under section 9 of the bill, the location of the offences is immaterial. Amendment 25 will clarify that, in relation to the new groups of mentally disordered offenders that will be included in subsection (1), the location of the offences is also immaterial. An offender who commits an offence outwith the area of a responsible authority—or outside Scotland—can be subject to the joint arrangements that the responsible authorities will have to establish under subsection (1). The relevant test will be whether an offender’s presence in the area poses a risk, which will ensure that offenders who move from area to area will be subject to the provisions.

14:45

Amendment 28 will ensure that, in the area of each local authority, the responsible authorities and persons specified in subsection (3) with a duty to co-operate draw up a memorandum setting out the ways in which they are to co-operate with one another. The memorandum should ensure that the responsible authorities and the agencies with a duty to co-operate have a clear understanding of their roles and responsibilities, which include the sharing of information on the arrangements for the assessment and management of risk.

I hope that the committee agrees that the amendments provide additional safety for our communities. By including mentally disordered offenders, we will plug a gap in the provisions for a group that undoubtedly poses a risk to the public.

I move amendment 21.

The Convener: I know that the amendments in the group form a significant part of the Executive’s amendment of the bill. I think that all members take on board your comments earlier. It is welcome to see amendments of this type coming forward, albeit that they are complex and technically difficult. The opportunity is given to committee members to grapple with the provisions and to other interested parties to submit their views and thoughts. I also appreciate your comment that you may revisit this area at stage 3.

The subject is complex. My question, which I will put in layman’s terms, concerns the involvement of health boards and special health boards. I understand that although persons who may be suffering from mental health difficulties will be covered by the bill, people who have committed criminal acts and who have been sectioned and therefore not become the subject of criminal proceedings will continue to be excluded from the arrangements. Is that correct?

Hugh Henry: That is correct.

The Convener: So they will remain without the criminal justice framework. As no member has a question and the minister does not wish to wind up, I move straight to the question on amendment 21.

Amendment 21 agreed to.

Amendments 22 to 30 moved—[Hugh Henry]—and agreed to.

Section 9, as amended, agreed to.

Section 10—Review of arrangements

Amendment 31 moved—[Hugh Henry]—and agreed to.

Section 10, as amended, agreed to.

The Convener: That concludes our stage 2 consideration of the bill for today. We will continue with our consideration at our next meeting. I thank the minister and his officials for attending the meeting.

Meeting closed at 14:48.
The Bill will be considered in the following order—

Section 1 to 18  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 10

Hugh Henry

47  After section 10, insert—

<Scheme of accreditation and procedure etc. of the Risk Management Authority

(1) The Criminal Justice (Scotland) Act 2003 (asp 7) is amended as follows.

(2) In section 11 (accreditation, education and training), after subsection (1) insert—

“(1A) The order may authorise—

(a) decisions as to cases arising in relation to a scheme of accreditation to be taken by a committee; and

(b) any appeal as to such a decision to be determined by a committee,

in accordance with such procedure as may be prescribed; and without prejudice to the generality of this subsection the order may make provision as to the membership of the committees and as to any quorum.”.

(3) In paragraph 4 of schedule 2 (constitution etc. of the Risk Management Authority)—

(a) for sub-paragraph (1) substitute—

“(1) Subject to any order under subsection (1) of section 11 of this Act, the Authority may—

(a) make provision for the appointment and constitution of committees and sub-committees;

(b) make provision for the exercise of any of its functions by any of its committees, sub-committees, members or employees; and

(c) regulate its own procedure and the procedure of—

(i) any of its committees or sub-committees (including any such committee as is mentioned in paragraph (a) or (b) of subsection (1A) of that section); or

(ii) any member or employee to whom a function has been delegated under head (b) above.

(1A) Delegation under sub-paragraph (1)(b) is to be without prejudice to the power of the Authority itself to exercise the function in question.
(1B) Without prejudice to the generality of head (c) of sub-paragraph (1), regulation under that head may include provision as to any quorum.

(b) in sub-paragraph (2), after “Authority” insert “or of any of its committees or sub-committees or of any of its members by whom functions are exercised by virtue of sub-paragraph (1)(b)”.

Hugh Henry

48 After section 10, insert—

<Orders after assessment of risk

(1) The Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows.

(2) In section 210F(1) (making of order for lifelong restriction)—

(a) in paragraph (a), for the word “a” substitute “any”;

(b) for the words from “shall” to the end substitute “, in a case where it may make a compulsion order in respect of the convicted person under section 57A of this Act, either make such an order or make an order for lifelong restriction in respect of that person and in any other case make an order for lifelong restriction in respect of that person.”.

(3) The title of section 210F becomes “Order for lifelong restriction or compulsion order”.

Section 11

Hugh Henry

49 In section 11, page 9, line 12, at end insert—

<(1A) In section 1(1) (release of short-term prisoners), after “short-term prisoner” insert “, not being a prisoner to whom section 1AA of this Act applies.”.

(1B) After section 1 insert—

“1AA Release of certain sexual offenders

(1) As soon as a prisoner to whom this section applies has served one-half of his sentence the Scottish Ministers are to release him on licence.

(2) This section applies to any short-term prisoner—

(a) sentenced to a term of 6 months or more, and

(b) who, by virtue of the conviction in respect of which that sentence was imposed, is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c.42).

(3) It is immaterial, for the purposes of subsections (1) and (2) above, when the offence of which the prisoner was convicted was committed.

(4) But this section does not apply to a prisoner if the conviction in respect of which the sentence mentioned in subsection (2)(a) above was imposed preceded the date on which section 11(1B) of the Management of Offenders etc. (Scotland) Act 2005 (asp 00) came into force.

(5) Section 17 of this Act applies to such short-term prisoners as are mentioned in subsection (2) above as that section applies to long-term prisoners.
Where a prisoner is released on licence under this section, the licence (unless revoked) remains in force until the entire period specified in his sentence (reckoned from the commencement of the sentence) has elapsed; but this subsection is subject to subsections (7) and (8) below.

Where the prisoner is serving terms which by virtue of section 27(5) of this Act fall to be treated as a single term the licence (unless revoked) remains in force until the relevant period (reckoned from the commencement of the single term) has elapsed.

The “relevant period” mentioned in subsection (7) above is—

(a) the single term after deduction of half the number of days (if any) by which that term exceeds what it would be were there disregarded in determining it such terms (if any) as are imposed for a conviction other than one by virtue of which the prisoner is subject to the notification requirements mentioned in subsection (2)(b) above, or

(b) if to disregard such terms as are so imposed would have the consequence—

(i) that there would not remain two or more terms to treat as a single term, or

(ii) that though two or more terms would remain they would no longer be consecutive or wholly or partly concurrent,

the single term after deduction of half the number of days (if any) by which that term exceeds the term imposed for the conviction, or as the case may be the terms imposed for the convictions, by virtue of which the prisoner is subject to those requirements.”.

Miss Annabel Goldie

In section 11, page 9, line 13, leave out subsections (2) to (12) and insert—

“( ) In section 1 (release of prisoners), for subsections (1) to (3) substitute—

“(1) As soon as—

(a) a short-term prisoner; or

(b) a long term-prisoner,

has served five sixths of his sentence, the Scottish Ministers may, if recommended to do so by the Parole Board under this section, release him on licence.”.

( ) In section 12 (conditions in licence), after subsection (2) insert—

“(2A) Without prejudice to the generality of subsection (1) above, a licence granted under this Part of this Act may, if so recommended by the Parole Board, include a curfew condition.

(2B) For the purposes of this Part, a curfew condition is a condition which—

(a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified; and

(b) may require him not to be in a place, or class of place, so specified at a time or during a period so specified.
(2C) The curfew condition may specify different places, or different periods, for different days but a condition such as is mentioned in paragraph (a) of subsection (2B) above may not specify periods which amount to less than nine hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).

(2D) A curfew condition shall apply for such period (not extending beyond the date on which the released person would, but for his release under section 1 of this Act, have completed his sentence of imprisonment) as the Parole Board may recommend.

(2E) A curfew condition is to be monitored remotely; and subsections (3) to (7) of section 40 of the Criminal Justice (Scotland) Act 2003 (asp 7) apply in relation to the remote monitoring of a curfew condition as they apply in relation to a condition imposed under subsection (2) of that section.”

Hugh Henry
42 In section 11, page 13, line 4, leave out <Parole Board.> and insert <Scottish Ministers.>

( ) The Scottish Ministers are to refer to the Parole Board the case of any person who makes such representations.

Hugh Henry
43 In section 11, page 13, line 5, leave out <such representations> and insert <the case>

Before section 12

Hugh Henry
50 Before section 12, insert—

<Notification requirements where sentence of imprisonment for public protection is imposed in England and Wales

(1) In the table in section 82(1) of the Sexual Offences Act 2003 (c.42) (notification period for persons convicted of sexual offences under requirement to notify the police about certain matters), in the entry relating to a person sentenced to imprisonment for life or for a term of 30 months or more, for the words “or for” substitute “,” to imprisonment for public protection under section 225 of the Criminal Justice Act 2003 or to imprisonment for”.

(2) This section applies in relation to sentences passed before the date on which this section comes into force, as well as to those passed on or after that date.

Section 12

Hugh Henry
44 In section 12, page 13, line 24, leave out <person charged with the offence> and insert <accused>
Hugh Henry

45 In section 12, page 13, line 29, leave out <person of an offence if the person> and insert <accused of an offence if the accused>

Hugh Henry

46 In section 12, page 13, line 30, at end insert <; or

( ) which has made an order under section 104(1)(b) in respect of the accused if the accused is subject to those requirements by virtue of that order>

After section 12

Hugh Henry

51 After section 12, insert—

<Objection to content or finding of risk assessment report: conduct of proceedings

After section 210E of the Criminal Procedure (Scotland) Act 1995 (c.46) insert—

“210EA Application of certain sections of this Act to proceedings under section 210C(7)

(1) Sections 271 to 271M, 274 to 275C and 288C to 288F of this Act (in this section referred to as the “applied sections”) apply in relation to proceedings under section 210C(7) of this Act as they apply in relation to proceedings in or for the purposes of a trial, references in the applied sections to the “trial” and to the “trial diet” being construed accordingly.

(2) But for the purposes of this section the references—

(a) in sections 271(1)(a) and 271B(1)(b) to the date of commencement of the proceedings in which the trial is being held or is to be held; and

(b) in section 288E(2)(b) to the date of commencement of the proceedings,

are to be construed as references to the date of commencement of the proceedings in which the person was convicted of the offence in respect of which sentence falls to be imposed (such proceedings being in this section referred to as the “original proceedings”).

(3) And for the purposes of this section any reference in the applied sections to—

(a) an “accused” (or to a person charged with an offence) is to be construed as a reference to the convicted person except that the reference in section 271(2)(e)(iii) to an accused is to be disregarded;

(b) an “alleged” offence is to be construed as a reference to any or all of the following—

(i) the offence in respect of which sentence falls to be imposed;

(ii) any other offence of which the convicted person has been convicted;

(iii) any alleged criminal behaviour of the convicted person; and
(c) a “complainer” is to be construed as a reference to any or all of the following—

(i) the person who was the complainer in the original proceedings;

(ii) in the case of any such offence as is mentioned in paragraph (b)(ii) above, the person who was the complainer in the proceedings relating to that offence;

(iii) in the case of alleged criminal behaviour if it was alleged behaviour directed against a person, the person in question.

(4) Where—

(a) any person who is giving or is to give evidence at an examination under section 210C(7) of this Act gave evidence at the trial in the original proceedings; and

(b) a special measure or combination of special measures was used by virtue of section 271A, 271C or 271D of this Act for the purpose of taking the person’s evidence at that trial,

that special measure or, as the case may be, combination of special measures is to be treated as having been authorised, by virtue of the same section, to be used for the purpose of taking the person’s evidence at or for the purposes of the examination.

(5) Subsection (4) above does not affect the operation, by virtue of subsection (1) above, of section 271D of this Act.”

Section 14

Hugh Henry
32 In section 14, page 14, line 25, leave out <(ab)> and insert <(ad)>

Hugh Henry
33 In section 14, page 14, line 26, leave out <(ac)> and insert <(ae)>

Hugh Henry
34 In section 14, page 14, line 30, leave out <(1)> and insert <(1B)>

Hugh Henry
35 In section 14, page 14, line 31, leave out <(1A) In paragraph> and insert—

<(1C) In paragraphs (ac) and>

Hugh Henry
36 In section 14, page 14, line 33, leave out <(1B)> and insert <(1D)>

Hugh Henry
52 In section 14, page 14, line 37, at end insert—
<( ) in subsection (2), for the words “the foregoing subsection” substitute “subsection (1) above”.

Hugh Henry
37 In section 14, page 15, line 1, leave out <2(5)(e)> and insert <2(5)(e)(i)>

Hugh Henry
38 In section 14, page 15, line 6, after <7(2)> insert <or (3)>

Hugh Henry
39 In section 14, page 15, line 11, after <(1)> insert <above>

Hugh Henry
40 In section 14, page 15, line 20, at end insert—

<( ) In section 27B of that Act (grants in respect of hostel accommodation for persons under supervision)—

(a) for subsection (1) substitute—

“(1) The Scottish Ministers may (any or all)—

(a) pay to a community justice authority, for allocation under section 2(5)(e)(ii) of the Management of Offenders etc. (Scotland) Act 2005 (asp 00) as grants to the local authorities within its area;

(b) make a grant to a local authority of;

(c) make a grant to a community justice authority, in respect of any function exercisable by that authority by virtue of section 7(2) or (3) of that Act of 2005, of,

such amount as the Scottish Ministers may determine in respect of relevant expenditure.

(1A) In subsection (1) above, “relevant expenditure” means expenditure incurred by, as the case may be, those local authorities or that local authority in—

(a) providing; or

(b) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of,

residential accommodation wholly or mainly for the persons mentioned in subsection (2) below.

(1B) Any grant made under, or paid by virtue of, subsection (1) above is subject to such conditions as the Scottish Ministers may determine.”; and

(b) in subsection (2), for “subsection (1)” substitute “subsection (1A)”.>

Hugh Henry
53 In section 14, page 15, line 28, leave out <after the words “and (7)” insert “, 3AA”> and insert <for the words “2(2) and (7)” substitute “1AA, 2(2) and (7), 3AA”>
Hugh Henry

54 In section 14, page 15, line 30, at end insert—

( ) In section 8(1) of the Prisons (Scotland) Act 1989 (c.45) (provision for constitution of visiting committees), for the words from “at” to the end, substitute—

“(a) by such—

(i) community justice authorities, or

(ii) councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994,

(b) at such times,

(c) in such manner, and

(d) for such periods,

as may be prescribed by the rules.”.

Hugh Henry

55 In section 14, page 15, line 30, at end insert—

( ) In section 27(4A) of the 1993 Act (construction of references in Part 1 of that Act to wholly concurrent or partly concurrent terms of imprisonment or detention), in sub-paragraph (i) of paragraph (a) and in each of sub-paragraphs (i) and (ii) of paragraph (b), for the words “is imposed” substitute “commences”.

Hugh Henry

56 In section 14, page 15, line 34, leave out <after the word “3,”, where it first occurs, insert “3AA,”> and insert <for the words “1A, 3” substitute “1AA, 1A, 3, 3AA”>

Hugh Henry

57 In section 14, page 15, line 36, leave out <after the words “2(4), where they first occur, insert “3AA,”> and insert <for the words “1A, 2(4)” substitute “1AA, 1A, 2(4), 3AA”>

Hugh Henry

58 In section 14, page 15, line 40, leave out <after the word “3,”, where it occurs for the first time, insert “3AA,”> and insert <for the words “1A, 3” substitute “1AA, 1A, 3, 3AA”>

Hugh Henry

59 In section 14, page 15, line 42, leave out <after the words “1A,” insert “3AA,”> and insert <for the words “1A” substitute “1AA, 1A, 3AA”>

Hugh Henry

60 In section 14, page 16, line 6, leave out <after the word “3,” insert “3AA,”> and insert <for the words “1A, 2, 3” substitute “1AA, 1A, 2, 3, 3AA”>
Section 17

Hugh Henry

61 In section 17, page 17, line 2, after <sections> insert <(Notification requirements where sentence of imprisonment for public protection is imposed in England and Wales).>

Long Title

Hugh Henry

62 In the long title, page 1, line 3, after <etc.;> insert <to make further provision as respects the procedures etc. of the Risk Management Authority;>

Hugh Henry

63 In the long title, page 1, line 3, after <etc;> insert <to make further provision as respects the powers of the High Court following the submission of a risk assessment report or of a report under section 210D of the Criminal Procedure (Scotland) Act 1995;>

Hugh Henry

64 In the long title, page 1, line 6, after <2003;> insert <to make further provision as respects proceedings in relation to an objection to the content of a risk assessment report;>
Management of Offenders etc. (Scotland) Bill

Groupings of Amendments for Stage 2 (Day 2)

Risk Management Authority – scheme of accreditation and procedure etc.
47, 51, 62

Assessing and managing risks – Order for lifelong restriction or compulsion order
48

Release of certain sexual offenders on licence
49, 50, 44, 45, 46, 61, 63, 64

Change to early release of prisoners
1

Recall of prisoners released on licence
42, 43

Consequential amendments
32, 33, 34, 35, 36, 37, 38, 39, 40, 53, 54, 55, 56, 57, 58, 59, 60,
Present:

Bill Butler (Deputy Convener)  Cathy Craigie (Committee substitute)
Miss Annabel Goldie (Convener)  Kenny MacAskill (Committee substitute)
Maureen Macmillan

Apologies were received from Stewart Maxwell and Jeremy Purvis.

Also present: Hugh Henry (Deputy Minister for Justice)

Management of Offenders etc. (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division): 47, 48, 49, 42, 43, 50, 44, 45, 46, 51, 32, 33, 34, 35, 36, 52, 37, 38, 39, 40, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.

Amendment 1 was disagreed to by division (For 1, Against 4, Abstentions 0).

Sections 11, 12, 14 and 17 and the Long Title were agreed to as amended.

Sections 13, 15, 16 and 18 were agreed to without amendment.

The Committee completed Stage 2 consideration of the Bill.
The Convener: Item 2 on our agenda concerns the Management of Offenders etc (Scotland) Bill, on which we commenced the stage 2 procedure last week. We continue with that procedure today. Once again, I welcome the Deputy Minister for Justice, Hugh Henry, to our meeting, along with his officials. Members should have received a copy of the papers, including the second marshalled list of amendments. We reached section 10 last week and we pick up from where we left off.

After section 10

The Convener: Amendment 47, in the name of the minister, is grouped with amendment 62.

The Deputy Minister for Justice (Hugh Henry): The purpose of amendment 47 is to ensure that the Risk Management Authority can delegate its functions appropriately so that the board will not have to take every decision. As the legislation stands, there is some doubt about whether that is permitted. We have been working with the RMA to set up arrangements for accrediting risk assessors and risk assessment methods. Those will be provided for in a scheme under section 11 of the Criminal Justice (Scotland) Act 2003. As part of that, we seek to ensure a clear separation between decisions on whether to award or remove accreditation and decisions on appeals. The amendment will therefore allow the scheme to establish separate committees within the RMA to carry out those functions. Amendment 62 is a consequential amendment to the long title of the bill.

14:15

The purpose of amendment 48 is to ensure that the right disposals are available to the High Court when dealing with high-risk mentally disordered offenders. In parallel with the Criminal Justice (Scotland) Act 2003, the Mental Health (Care and Treatment) (Scotland) Act 2003 puts in place new arrangements for dealing with mentally disordered offenders. Amendment 48 will correct a small problem where those two systems touch.

The intention that was set out when the bills were being considered was that, in the small number of cases where an offender meets the criteria for an order for lifelong restriction and the criteria for a mental health disposal, the High Court should have the choice of which route to take. That choice would be guided by the reports that are before it. Unfortunately, the terms of the Criminal Justice (Scotland) Act 2003 are such that, if the offender meets the criteria for an order for lifelong restriction, the court has no option but to impose it. The amendment will put that right and will give the court the choice of disposals that was intended. Amendment 63 is a consequential amendment to the long title of the bill.

The Convener: I seek clarification about whether the Criminal Justice (Scotland) Act 2003 is in force yet; I do not remember.

Hugh Henry: Yes, parts of it are.

The Convener: So amendment 47 would technically link with the provisions of that act.

Hugh Henry: That is correct.

The Convener: I am grateful to you for that clarification.

Amendment 47 agreed to.

The Convener: Amendment 48, in the name of the minister, is grouped with amendments 51, 63 and 64.

Hugh Henry: The Criminal Justice (Scotland) Act 2003 establishes the order for lifelong restriction as a new way of dealing with high-risk sexual and violent offenders. We intend to bring the orders into force early in the new year. Amendments 48, 51, 63 and 64 are concerned with the procedures leading up to the making of an order for lifelong restriction and with the choices that are available to the High Court when dealing with high-risk mentally disordered offenders.

The purpose of amendment 48 is to ensure that the right disposals are available to the High Court when dealing with high-risk mentally disordered offenders. In parallel with the Criminal Justice (Scotland) Act 2003, the Mental Health (Care and Treatment) (Scotland) Act 2003 puts in place new arrangements for dealing with mentally disordered offenders. Amendment 48 will correct a small problem where those two systems touch.

The intention that was set out when the bills were being considered was that, in the small number of cases where an offender meets the criteria for an order for lifelong restriction and the criteria for a mental health disposal, the High Court should have the choice of which route to take. That choice would be guided by the reports that are before it. Unfortunately, the terms of the Criminal Justice (Scotland) Act 2003 are such that, if the offender meets the criteria for an order for lifelong restriction, the court has no option but to impose it. The amendment will put that right and will give the court the choice of disposals that was intended. Amendment 63 is a consequential amendment to the long title of the bill.

14:15

The purpose of amendment 51 is to ensure that there is protection of vulnerable witnesses in court proceedings associated with the new orders for lifelong restriction. Over the past few years, the Parliament has put in place special measures to protect victims of sexual offences and other vulnerable witnesses through the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 and the Vulnerable Witnesses (Scotland) Act 2004. Through the Criminal Justice (Scotland) Act 2003, the Parliament also established the order for lifelong restriction as a new way of dealing with high-risk sexual and violent offenders.

Before making an order for lifelong restriction, the High Court must first order a risk assessment of the offender, which will be prepared by an accredited assessor following guidelines and standards set down by the RMA. However, there is an opportunity for the offender to challenge the assessment in court and to call witnesses. That process happens after conviction and is therefore distinct from the trial. As a result, the special protections for victims of sexual offences and other vulnerable witnesses do not apply. Although we expect the main witness in such proceedings
to be the author of the risk assessment, other witnesses could be called, including the victims of previous offences.

Amendment 51 will close that loophole by applying the victim and witness protections to the procedure for challenging risk assessments. We believe that it is a prudent amendment that will ensure that victims and vulnerable witnesses are protected to the fullest extent possible. Amendment 64 is a consequential amendment to the long title of the bill.

I move amendment 48.

Bill Butler: I welcome what the minister has said about closing a possible loophole in respect of vulnerable witnesses and victims being called to give evidence. That is only right and I am glad that the Executive has lodged amendment 51, which is sensible.

Amendment 48 agreed to.

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

The Convener: Amendment 49, in the name of the minister, is grouped with amendments 53 and 56 to 60.

Hugh Henry: I am pleased to have lodged amendment 49, because it demonstrates once again that we are delivering on the commitment made by the First Minister in November 2004 and confirmed during the stage 1 debate that we would take steps at the first opportunity to end unconditional release for short-term sex offenders. In doing so, we add another measure of public protection to an already impressive collection of measures in the bill, including sections 9 and 10 on assessing and managing the risks posed by sexual and violent offenders, which we debated last week, and section 12 on the sex offender notification requirements, to which we will come later this afternoon.

The effect of amendment 49 is clear: sex offenders who are convicted after the provisions come into force and then sentenced to more than six months but less than four years will be released from prison only on licence and under supervision. That will mean that short-term sex offenders will be released on the same basis as their long-term counterparts—those sentenced to four years or more. They will be subject to the terms of a release licence containing specific conditions, including the requirement to comply with supervision.

Other conditions will be added to the offender’s licence to reflect the nature of the offence and the offender’s risk. For example, an offender may be required to undertake offence-focused work and addiction counselling. The licence will remain in force until the end of the individual’s prison sentence. Failure to comply with those conditions may lead to the licence being revoked and the offender being returned swiftly to custody. No other offence needs to have been committed for that to happen.

That group of offenders will also fall within the joint arrangements introduced by sections 9 and 10 of the bill for the assessment and management of risk posed by sexual and violent offenders. The arrangements in sections 9 and 10 will be further underpinned at operational level by the relevant agencies’ use of common risk assessment tools, information-sharing protocols and integrated case management systems that are designed to work with prisoners from the beginning of sentence in preparation for release and supervision. Amendment 49 means that those valuable measures will apply to short-term sex offenders.

Amendment 49 reflects the Executive’s overarching aim of supporting stronger, safer communities. By ensuring that short-term sex offenders are released into the community subject to a licence and post-release supervision, we will make a valuable contribution to public protection. As well as protecting the public, amendment 49 will enable offenders, if they so choose, to make a positive reintegration into society, with the emphasis on constructive outcomes. The number of offenders who will be affected by the change is not high—the current estimate is that there will be about 80 each year—but the outcome for public protection is unarguably significant.

The Executive is aware that the Sentencing Commission for Scotland could not support our proposal. We are, of course, grateful to the commission for its advice on the matter and for its on-going work on the wider issue of early release. However, the issue is not about numbers or whether such people reoffend more or less than other groups of offenders; the compelling issue is that the long-term and often terrifying impact of sex offending on its victims and communities in general cannot be overestimated. We saw an opportunity to help to reduce that impact, which is why we have acted speedily to introduce the measure. Ministers believe that it is our duty to make the change now to put safety in the community first.

Amendments 53 and 56 to 60 are consequential amendments that will principally ensure that the arrangements for cross-border transfers and the repatriation of prisoners operate correctly.

I move amendment 49.

Bill Butler: I commend most of what the minister has said. We obviously want to support stronger, safer communities, so the ending of unconditional release for short-term sex offenders
is most welcome. The minister said that, after the provisions come into force, those who receive a sentence of between six months and four years will have to go through the process that he outlined. However, is there not a gap? Perhaps I am reading the amendment wrongly—I am no lawyer—but what about those who fall into that category but who were convicted before the commencement of the provisions? If there is a gap, will the minister think about the matter again to see whether anything can be done to bridge it?

The Convener: I will leave the minister to reflect on that, while other members ask their questions.

Mr MacAskill: I have seen the correspondence between the Executive and the Sentencing Commission. Perhaps unusually, I was with the Executive rather than with the commission, which I thought was disingenuous. What will the interface be with the likely outcome of the Sentencing Commission’s review on early release? I appreciate that amendment 49 deals with aspects that are beyond the scope of that review and I fully support the licensing scheme and the change in operation. However, what interaction is envisaged in due course with the early-release proposals?

I would prefer transparency in sentencing—I have sympathy for Miss Goldie’s views on that—but I worry about the practicalities if we change the early-release scheme. What does the minister anticipate will be the potential interface with what might be coming next? I appreciate that the Executive must act now on the matter, but there will be an interface with early release. The biggest difficulty in any future action will be the changeover. We must ensure that people sentenced before 26 September 2005, or whenever the date is, do not receive a different sentencing tariff from those who are sentenced after that—that is not an impossible situation.

The Convener: Minister, my amendment 1, which we will come to in a moment, is all embracing—not that I am asking you to embrace me. I am just pointing out that amendment 1 would be more sweeping in effect than amendment 49 would be. I understand what Kenny MacAskill is questioning you about. If there is a will to end automatic early release, we all want the ending to be a seamless operation. I accept that amendment 49 will make the situation for a particular group of offenders better than it is, but it is still only a bit-piece approach to a wider issue.

Hugh Henry: I do not want to anticipate the debate on amendment 1, except to say that there could be complications if the Parliament accepted both amendment 49 and amendment 1, because inconsistencies would arise. However, I will leave that issue aside just now and turn to Kenny MacAskill’s questions. I reaffirm that the numbers that we are talking about are small. We regard amendment 49 as largely an interim measure, but we believe that it is right to act on it just now. It would be wrong to try to anticipate what the Sentencing Commission might say or what the Executive’s response might be, but we are committed to tackling the inherent problems in the arguments about early release. We will come to that issue shortly.

If amendment 49 is accepted, it would not complicate anything that we want to do in respect of early release. What amendment 49 proposes must be done in any case. If other measures overtook amendment 49, that would be well and good. However, it would be wrong to miss this opportunity in the expectation of something for which we do not know the outcome. Amendment 49 is right and prudent and it will provide safety and protection for the public. I am sure that we will propose robust measures in response to the debate on early release at the appropriate time.

Bill Butler is right: as amendment 49 is currently constructed, the provision would apply only to those convicted prior to the bill’s enactment and who were serving sentences. In that respect, there is a potential gap and he has raised a valid point that is worth considering. We will go back and look at it, but I am not sure at this stage whether something can be done. However, if something can be done, I can assure the committee that we will return to the issue at stage 3.

The Convener: Thank you for that, minister.

Amendment 49 agreed to.

14:30

The Convener: We come to an amendment that requires me to put on all sorts of hats. Amendment 1, which is in my name, is grouped with amendments 42 and 43.

I must make clear a couple of procedural matters in relation to amendment 1. If it is agreed to, amendments 42 and 43 are pre-empted. I should also explain that, as the minister has already pointed out, amendment 1 encroaches to some extent on ground that has already been covered by amendment 49, which we have agreed to. There was no way around that matter, because procedure dictates that we have to deal with amendments in order. That is why amendment 49, in the name of the minister, had to be heard first. However, let me say, in a mood of wild optimism, that if amendment 1 is agreed to, it will be possible at stage 3 to make the necessary technical adjustments to accommodate it in the bill.

I will take only three or four minutes to speak to and move amendment 1 and propose to give the
minister the same amount of time to respond. If other members wish to speak, I ask them to confine their remarks to three minutes or so.

Amendment 1 looks—and is—very technical, so I shall try to clarify its purpose. The first part of it, which refers to section 11, effectively seeks to replace the provisions on automatic early release for short-term and long-term prisoners in the Prisoners and Criminal Proceedings (Scotland) Act 1993 with a scheme in which prisoners would, with the Parole Board’s agreement, be released after they had served five sixths of their sentence. I must point out that, if agreed to, the amendment will also sweep away the bill’s provisions on home detention curfews. I happen to approve of such curfews per se but I do not like the way that they have been added on to existing automatic early release provisions. In recognition of that, the second part of amendment 1 reinstates the home detention curfew provisions to ensure that they are not lost.

Although a Conservative Government introduced automatic early release, it recognised later that it was creating problems. As a result, it sought to scrap the measure in sections 33 to 41 of the Crime and Punishment (Scotland) Act 1997 and to ensure that prisoners would again have to earn remission of up to a sixth of their sentence. However, there was a change of Government; the incoming Labour Government repealed the 1997 act in part V of the Crime and Disorder Act 1998 and since then we have continued with automatic early release. In this Parliament, my colleague Bill Aitken attempted to amend the Criminal Justice (Scotland) Bill to bring automatic early release to an end, but his amendment was voted down at stages 2 and 3.

I feel that, since the matter first surfaced in the Parliament, political sympathies have warmed to the notion that the issue of automatic early release must be carefully examined. Both the minister and the First Minister have commented on the matter and, if we can rely on any information that comes into the public domain, the Sentencing Commission seems to take the view that such a measure might no longer be appropriate.

My impression is that the facility has raised huge public concern about the credibility of the sentencing regime. Indeed, there is evidence for that. When, in the previous session, the Justice 1 Committee—I think—carried out a survey into public attitudes towards sentencing and alternatives to imprisonment, the public expressed very negative views on how sentencing worked with automatic early release. We cannot lose sight of such widespread public concern.

Many of our constituents have been more dramatically affected by a number of high-profile, tragic cases in which people on automatic early release have proceeded to commit very serious crimes on or shortly after their release from prison. We find such situations unpalatable and feel that the time has come to examine the matter.

Of course, the other effect of ending automatic early release—aside from the restoration of the credibility of and confidence in the sentencing system—would be the provision of a system that includes an incentive for a convicted criminal to think about what has happened to him or her and to work towards trying to earn remission rather than having it applied automatically. That is a much healthier situation.

From what the minister said in relation to amendment 49, I am aware that there is no hostility to the concept of what I am proposing but I gather that there might be concerns about the timing. However, I think that there is a need for a message to be sent by this Parliament that we are conscious of the widespread public concern about sentencing, that we acknowledge that the system is not transparent and is difficult to understand and that we recognise the growing belief that the situation is not satisfactory. That would be a timely message for us to send, and amendment 1 gives us an opportunity to send that message.

I accept that, if my amendment is agreed to, the minister might want to alter aspects of it and I point out that he has an opportunity to address those issues at stage 3.

I move amendment 1.

Hugh Henry: I do not disagree that there needs to be a debate about ending automatic early release. However, I would like to put our proposals into a broader context. We have sought to change from top to bottom the way in which our criminal justice system works. We have tackled the reform of the High Court; we are examining summary justice; we are dealing with measures relating to sex offenders; the Management of Offenders etc (Scotland) Bill is under way; a police bill will be introduced shortly; we are examining ways of reforming the legal profession; and we are examining legal aid and so on. Whatever criticism can be made of the Executive, the criticism that we are not paying attention to the problems that are inherent in the Scottish criminal justice system is not one that can be reasonably made. Any change that is made has to be seen as part of that overall package. That is why the way in which we are proceeding—with consideration of what the Sentencing Commission might recommend—is the correct way.

My disagreement with your amendment, convener, is not just to do with timing; it is fundamentally about content. Largely, your proposal is unworkable. Even if it could be made to work, there are serious and significant consequences.
I do not disagree that the Parliament should send a message about the ending of automatic early release. However, I think that any message that is sent by the Parliament needs to be a responsible and practical message that can be substantiated and backed up. I do not think that bringing forward an ill-thought-out proposal that is, perhaps, designed to score political points makes a valid contribution to what is a serious debate.

If the Parliament were to adopt the proposal in amendment 1, would it apply to all prisoners serving their sentence at the point at which the bill was enacted? We estimate that, in that case, an additional 4,000 places would be required. Where would those prisoners be accommodated before the new prisons that would be required were built? Would we return to a situation in which there was significant doubling up of prisoners? Would we have to go back to slopping out?

If the numbers that we calculated when we considered amendment 1 are correct, it would take approximately six new prisons for the system to be able to cope reasonably. Even if we could get the money—I will return to that point in a minute—it would take at least two years to build six new prisons; it could take longer, subject to the granting of planning permission. There is also the question of what would happen to all the prisoners in the meantime, unless the introduction of the proposals was delayed until the prisons were available. The cost of six new prisons would be something like £100 million to £130 million a year. Which budget would you take that from? There are also issues to do with building costs, which are quite significant.

You talk about people looking to the Parliament to do what is right. They should also expect a degree of honesty from us. If we lodge amendments to a bill, we should not only do so in the belief that they can be substantiated, but we should be prepared to articulate loudly and clearly what their consequences might be. If we need six new prisons, where in Scotland will those prisons be built? Do you have a list—secret or otherwise—that identifies the areas in Scotland where the prisons might be? Would they be built in areas such as the ex-Royal Ordnance factory site at Bishopton, which is a huge site, or would you rule that site out? If you ruled that site out, where else in Scotland might the prisons be? If we are to take the amendment seriously, we need to know where the prisoners and the prisons would go. In which communities would the prisons be built? I assume that, if you have done the work that was required to lodge the amendment, you have also done consequential work to identify where the money would come from and where the prisons might be built. Those are questions that the public would legitimately expect to be answered.

Yes, we will move to act on the issue; however, we will not simply tinker with existing arrangements, as amendment 1 seeks to do. It is time that we had a system that takes full account of the need to protect the public, especially victims, and which reflects the public expectation that wrongdoers will be adequately punished. We want to put in place a system that has public protection at its heart and which fulfils the expectation that those who are sentenced to imprisonment will not only serve their time, but will do so in a constructive way that is geared towards addressing offending behaviour. We want to reduce reoffending rates—of which we have spoken so often—and make our communities much safer places.

We acknowledge that change is needed, and we are acting on that; however, this is a complex area of law that needs to be carefully considered. The First Minister has said that he will not be rushed into introducing ill-thought-out reforms that will not convince the public or stand the test of time. That is why we have asked the Sentencing Commission for Scotland to undertake a thorough review and make recommendations on early release. We expect its report to be published by the end of the year. We will build on those findings and reflect on them. We will then bring forward a comprehensive set of proposals for the Parliament to consider.

Amendment 1 has given us an opportunity to restate our commitment to producing proposals; however, there is nothing in what you are saying that merits the adoption of your proposals rather than take a responsible and considered approach. I acknowledge the fact that you lodged the amendment ahead of the First Minister's announcement on the legislative programme, and I hope that you recognise that it is, potentially, premature and probably could not work in any sensible way. I hope that you will, therefore, withdraw the amendment. If you do not, I hope that the committee will reject it.

14:45

I turn now to Executive amendments 42 and 43, on home detention curfew. The purpose of the amendments is to clarify and speed up the appeals process for those who are recalled from release on HDC. Where they are recalled from HDC and wish to appeal, we want any written representations made by the prisoner to be sent to Scottish ministers—in practice, to the Scottish Prison Service. Scottish ministers will then be required to refer to the Parole Board the case of a prisoner whose licence has been revoked and who has made representations. The route from ministers to the board will improve the administration of recall cases, and will bring it into line with the procedure that currently operates in
relation to prisoners recalled from early release on a standard release licence.

Amendment 43 will also allow the board to consider whether certain HDC recall cases—for example those in which the facts pertaining to the recall are in dispute—should be heard at an oral hearing, rather than relying solely on written material. The detailed processes will be set out in the Parole Board rules. In its judgement in the cases of Smith and West earlier this year, the House of Lords ruled that determinate sentenced prisoners should, in certain circumstances, be offered an oral hearing before the Parole Board decides the case. The issues pivoted around common-law fairness and the engagement of article 5.4 of the European convention on human rights.

I invite the committee to support amendments 42 and 43.

Bill Butler: I echo the minister’s words when he said that, as a Parliament, we want a policy that has public protection at its heart—nobody would gainsay that. To achieve that objective, we need practical measures. Although your amendment 1 generates welcome debate, convener, it is impracticable at heart. The minister mentioned the consequential increase in the number of prison places—4,000 I believe—which would require six new prisons. He also talked about the time that it would take to build the prisons. I am sure that the cost per prisoner would escalate.

There would be pressure on the Parole Board, because amendment 1 lays down that the board would have to make recommendations in respect of all those who were to be granted a licence. Is it practicable to consider after two and a half months someone on a three-month sentence to see whether they can be granted one sixth off their sentence?

I do not accept that it is good drafting to delete the home detention curfew proposal with one part of the amendment and then insert it with another. It is a hokey-cokey amendment, which does not work at all.

Does amendment 1 cover new sentences or prisoners who are already serving their sentences? You said that the amendment is about removing automatic early release, but it would do something different—it would remove automatic conditional early release. You know this better than I do, but, as I have found out in the past few months, there is a difference. One of the worrying effects of amendment 1 is that if it were agreed to, there would be no supervision for long-term prisoners. That is unlikely to reduce reoffending and promote the reintegration and rehabilitation that we all see as the other side of the coin and which, if we are to protect the public, must be paramount. However, we have to ensure where possible that best measures are taken to ensure that a prisoner released under conditions is not likely to reoffend. Through amendment 1, you are seeking to end not automatic early release, but automatic conditional early release. What hope would there be then for the proper reintegration of short-term prisoners? There would also be a detrimental long-term consequence for long-term prisoners.

In your summing up, perhaps you could address some of those questions because, in essence, amendment 1 has more demerits than merits.

Mr MacAskill: I have a great deal of sympathy with what you are trying to achieve, convener. However, I have my doubts about whether amendment 1 is the best way of achieving it, or whether, as Bill Butler suggested, the amendment can achieve it at all.

We would all agree that we wish that we were not where we are. We are not in the chamber so, to some extent, who did what and when does not matter. What matters is what we are going to do about it. Lawyers are all aware of the differences: 50 per cent for those serving under four years and two thirds for those serving more than that. The public, however, are baffled; they simply think that whether the sentence is six months, two years or 12 years, what you see should be what you get. There is a lot of merit in such a view.

Arguments about the prospect of early release encouraging good behaviour have all been blown asunder; whether people behave or not, they are granted early release and the whole system is brought into disrepute.

We need to agree on how we can change things. Having seen some of the correspondence from the Sentencing Commission, I am not filled with optimism. However, the commission has been entrusted with the issue and we should consider it in the round.

I do not think that amendment 1 is appropriate. However, that is not because I disagree that change is required. I agree with much of what Bill Butler said. Before devolution, we would have dealt with one piece of Scottish criminal justice legislation every decade or so, and that legislation would have been all-encompassing. However, something as important as automatic early release cannot be dealt with simply by means of an amendment. The issue almost requires an act to itself, or to be the major part of an act.

Amendment 1 would have huge ramifications. Will there be a date after which we would have prisoners in parallel systems, with some serving a pre-act sentence and some serving a post-act sentence? There would also be ramifications for resources—unless we could make other changes
that I would agree with. However, that debate will be for another day.

Amendment 1 would have an effect on an array of other matters—Bill Butler was right to mention the Parole Board. Yes, we have to change, and yes, we need transparency, because that is what the public want. I am not persuaded that incentives for good behaviour are required; other things can be done.

The million dollar question is how to achieve change, and I do not think that it would be achieved by amendment 1. The best that we can do is await the outcome of the Sentencing Commission’s work, and await legislation from the Executive.

The Convener: I thank members and the minister for their contributions. From what has been said, I infer that there is no longer an objection in principle to ending automatic early release. That takes us a significant step forwards from the time when my party was alone in advocating that the practice be brought to an end.

In the minister’s objection to amendment 1, he raised the issue of timing. I accept that that is a perfectly relevant issue to raise. However, in our political process, timing no longer has to be an issue between committees or members in the chamber or ministers or the Executive; it seems to me that timing is now very much an issue of public concern. Public confidence in our sentencing system has become frayed at the edges.

I paid attention to the minister’s objections to the content of the amendment and to his assessment of the practical consequences. Obviously, I cannot comment in detail about his projections of 4,000 additional places, six new prisons and additional funding. However, I accept that amendment 1 would give rise to a need for additional capacity. That would be the practical consequence of a Government taking responsibility for public need. The public feel that the current system is not working. If that is to be addressed, there has to be a political will on the part of Government to allocate the necessary resources.

I am surprised at the estimate of an extra 4,000 places and an extra six prisons. I know that some of the estimates arise from speculation that judges would change their sentencing processes, but I do not think that that is what would happen. I think that judges would make a much simpler calculation and would probably end up dealing out pretty consistent sentences. Instead of having to calculate that if they wanted someone to be in prison for six years, the sentence should be nine years, they would be able simply to sentence people in all honesty and transparency to six years. I suggest that if a political desire really exists to address the issue in the public interest, the practical consequences of that political decision must be taken on board and dealt with.

Mr Butler’s and Mr MacAskill’s objections are similar. Mr Butler’s concern was that long-term prisoners would have no supervision, but that is precisely why I took care to reintroduce home detention curfews. The bill is framed in such a way that it was extremely difficult to draft an amendment that achieves what I am trying to achieve. As I said, the implications of the first part of the amendment meant sweeping out one bit, so I was careful to rewrite in the bits that we do not want to lose. Under my proposal, home detention curfews would be available and conditions would apply.

I detect that although no disagreement in principle is expressed to achieving the end, attitudes vary hugely on the timescale within which to make the change. We disagree fundamentally about that. I feel that the Parliament is under a political imperative to send a message to the public that their concerns have been heard and are being addressed and, in particular, that we have listened to the anxieties and worries of victims and recognised the distress and tragedy that have attended their families. We must show that we are prepared to do something about that.

I heard nothing from other members that indicated urgency, priority or immediacy. I heard that members liked the sound of the idea in general but did not want to be forced on the timing; they would come round to the matter in the future when they felt like it. That sums up the disagreement between my party and the other parties. We think that the time has come to call time on automatic early release.

I thank members for their contributions. It has been interesting to have a debate. I do not propose to withdraw amendment 1—I will press it.

The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

**FOR**
Goldie, Miss Annabel (West of Scotland) (Con)

**AGAINST**
Butler, Bill (Glasgow Anniesland) (Lab)
Craige, Cathie (Cumbernauld and Kilsyth) (Lab)
MacAskill, Mr Kenny (Lothians) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)

The Convener: The result of the division is: For 1, Against 4, Abstentions 0. One solitary mitt was in favour.

Amendment 1 disagreed to.

Amendments 42 and 43 moved—[Hugh Henry]—and agreed to.
Section 11, as amended, agreed to.

The Convener: Before we deal with amendment 50, I will allow time for the minister’s advisers to shift round.

Before section 12

15:00

The Convener: Amendment 50 is grouped with amendment 61.

Hugh Henry: Amendments 50 and 61 relate to the sex offenders register. Currently, anyone in England and Wales who is put in prison for public protection, as provided for by section 225 of the Criminal Justice Act 2003, is subject to the requirements of the sex offenders register for only five years. That was not the policy intention, so the amendments will rectify the situation. Other people who are subject to indefinite sentences, including those who receive the equivalent Scottish sentence of an order for lifelong restriction, are subject to the requirements for an indefinite period. The amendments, which mirror provisions that the Home Office is seeking to introduce in the Violent Crime Reduction Bill, will require those offenders to be on the register indefinitely. The notification requirement will therefore apply for the rest of the offender’s life. Our provisions will apply when such offenders are in Scotland.

In mirroring the provision that is being made in the Home Office’s bill, which deals with England and Wales, we continue as far as possible to maintain a common registration scheme for sex offenders north and south of the border.

By virtue of proposed new subsection (2), the amendment to the 2003 act will apply to sentences that are passed before the bill receives royal assent and will come into force on royal assent. Again, that mirrors the approach that is being taken in England. The courts in England have had power to pass a sentence for public protection since April this year; it is important that the registration requirements apply to any person with such a sentence, whether or not their sentence was passed before our bill receives royal assent.

I move amendment 50.

Amendment 50 agreed to.

Section 12—Offender’s failure to comply with notification requirements: jurisdiction of Scottish courts

The Convener: Amendment 44 is grouped with amendments 45 and 46.

Hugh Henry: Amendments 44, 45 and 46 relate to offenders who fail to comply with the sex offenders register. As drafted, section 12 of the bill will amend section 91(4) of the Sexual Offences Act 2003 to allow proceedings to be brought against sex offenders who fail to register, in any court having jurisdiction in any place where the person charged with the offence resides or is found. At present the bill uses the phrase:

“the person charged with the offence”.

The provision might suggest that the offender has already been traced and charged by the police. However, there might be circumstances in which the person who commits such an offence has not been found and the police might have no knowledge about where that person resides. It is more normal in Scottish statute to refer to the “accused”. Amendments 44 and 45 will make that change and will also cover the situation when a procurator fiscal raises proceedings, irrespective of whether the accused has been located by the police.

Amendment 46 relates to offenders who will be subject to sexual offences prevention orders made by the Scottish courts and who fail to comply with notification requirements relative to the sex offenders register. When section 17 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 comes into force, Scottish courts will be able to impose sexual offences prevention orders on relevant accused persons. The notification requirements of part 2 of the Sexual Offences Act 2003 automatically apply by virtue of the imposition of sexual offences prevention orders.

Amendment 46 will clarify and put beyond any doubt that people who are subject to the notification requirements by virtue of having received a SOPO imposed by a Scottish court can be the subject of proceedings commenced in the court that imposed the SOPO if they flout their legal obligations in relation to registering.

I move amendment 44.

Amendment 44 agreed to.

Amendments 45 and 46 moved—[Hugh Henry]—and agreed to.

Section 12, as amended, agreed to.

After section 12

Amendment 51 moved—[Hugh Henry]—and agreed to.

Section 13 agreed to.

Section 14—Further amendments and repeal

The Convener: Amendment 32 is grouped with amendments 33 to 36 and amendment 52.

Hugh Henry: Amendments 32 to 36 are technical amendments that will ensure that the bill
contains the correct references to provisions in the Social Work (Scotland) Act 1968. Amendment 52 is required as a consequence of the addition of two new subsections after section 27(1) of the 1968 act. Without amendment 52, the existing reference in section 27(2) to “the foregoing subsection” would be read as a reference to new section 27(1B), whereas we want it to continue to refer to section 27(1). The amendments take into account changes made to the 1968 act by the Criminal Justice (Scotland) Act 2003 and the Antisocial Behaviour etc (Scotland) Act 2004.

I move amendment 32.

The Convener: Thank you, minister. Members have no questions, so—

Hugh Henry: I should say one further thing, which is that we may lodge further amendments at stage 3 to tidy up provisions in the bill. I intend to write to the committee in advance of stage 3 to alert it to further amendments on which I have not touched during stage 2.

The Convener: Thank you. We understand that there are drafting complexities, so it is kind of you to offer to do that.

Amendment 32 agreed to.

Amendments 33 to 36, 52, 37 to 40 and 53 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 54, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 54 seeks to amend section 8 of the Prisons (Scotland) Act 1989, which gives ministers the power to designate local authorities as bodies responsible for appointing members of prison visiting committees and visiting committees of legalised police cells. Amendment 54 would extend the provision to allow ministers to designate community justice authorities as also having that function. The effect of the amendment would be that ministers may specify CJAs or local authorities, or a combination of the two, to appoint members of prison visiting committees and visiting committees of legalised police cells. Currently, we expect CJAs generally to make appointments to prison visiting committees, but amendment 54 would provide flexibility, which may be particularly relevant in the case of visiting committees for legalised police cells.

The visiting committees for young male offenders at Her Majesty’s young offenders institution Polmont and for female offenders at Cornton Vale are appointed by Scottish ministers rather than by local authorities. Future arrangements for those specific committees are under review. Depending on the outcome of those considerations, we may wish to refine the provisions further at stage 3.

I move amendment 54.

Amendment 54 agreed to.

The Convener: Amendment 55, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 55 seeks to clarify a provision to be inserted into the Prisoners and Criminal Proceedings (Scotland) Act 1993 that sets out the meaning of “wholly concurrent” and “partly concurrent” terms of imprisonment and detention.

The provision has not yet been brought into force because a minor drafting problem was spotted and required correction. Amendment 55, which seeks to replace references to the date of imposition of sentence to the more appropriate date of commencement of sentence, will achieve the policy intention in relation to the definition of “wholly concurrent” and “partly concurrent” terms of imprisonment and will allow the relevant provision to be commenced.

I move amendment 55.

Amendment 55 agreed to.

Amendments 56 to 60 moved—[Hugh Henry]—and agreed to.

Sections 14, as amended, agreed to.

Sections 15 and 16 agreed to.

Section 17—Commencement

Amendment 61 moved—[Hugh Henry]—and agreed to.

Section 17, as amended, agreed to.

Section 18 agreed to.

Long title

Amendments 62 to 64 moved—[Hugh Henry]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends our stage 2 consideration of the bill. I thank the minister and his advisers for attending the meeting.
CONTENTS

Section

Duty to co-operate

1 Duty to co-operate

Community justice authorities

2 Community justice authorities
3 Further provisions as respects community justice authorities
4 Special duties of chief officer of community justice authority
5 Power of Scottish Ministers to require action by community justice authority: failure by that authority
6 Power of Scottish Ministers to require action by community justice authority: failure by local authority
7 Transfer of functions to community justice authority
8 Transfer of property to community justice authority

Assessing and managing risks posed by certain offenders

9 Arrangements for assessing and managing risks posed by certain offenders
10 Review of arrangements
10A Scheme of accreditation and procedure etc. of the Risk Management Authority
10B Orders after assessment of risk

Amendment of Prisoners and Criminal Proceedings (Scotland) Act 1993

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

Miscellaneous

11A Notification requirements where sentence of imprisonment for public protection is imposed in England and Wales
12 Offender’s failure to comply with notification requirements: jurisdiction of Scottish courts
12A Objection to content or finding of risk assessment report: conduct of proceedings
13 Recovery of criminal injuries compensation from offenders
14 Further amendments and repeal

General

15 Supplementary and consequential provision etc.
16 Interpretation
17 Commencement
18 Short title
Duty to co-operate

1 (1) The Scottish Ministers, community justice authorities and local authorities are to co-operate with one another in carrying out their respective functions in relation to relevant persons.

(2) In this Act—

(a) to “co-operate” may, without prejudice to the generality of that expression, include to exchange information (“co-operation” being construed accordingly); and

(b) “relevant person” means—

(i) a person who is supervised by, provided with advice, guidance or assistance by, or the subject of a report by a local authority (or, by virtue of section 7, by a community justice authority) as part of the provision by the local authority (or community justice authority) of a service for the purposes mentioned in any of sections 27(1) or (1A) or 27ZA of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prison etc.); or

(ii) any other person if that person is detained in custody.
The reference in subsection (1) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45).

2 Community justice authorities

(1) The Scottish Ministers may by order made by statutory instrument establish, for an area specified in the order, a body corporate to be known as a community justice authority.

(2) A community justice authority is not to be regarded as the servant or agent of the Crown or have any status, immunity or privilege of the Crown; nor are its members or employees to be regarded as civil servants.

(3) Subject to subsection (4), an order under subsection (1) may include provision with regard to—

(a) the constitution and proceedings of the community justice authority;

(b) matters relating to the membership of that authority; and

(c) the supply of services or facilities by appropriate local authorities to that authority.

(4) No person may be a member of the community justice authority who is not—

(a) a councillor of an appropriate local authority; and

(b) nominated for such membership by that authority.

(5) The functions of a community justice authority are—

(a) at such intervals as the Scottish Ministers may determine—

(i) to prepare, in consultation with the partner bodies, the Scottish Ministers, the appropriate local authorities and such other bodies as the Scottish Ministers may specify, a plan for reducing re-offending by relevant persons; and

(ii) to submit that plan to the Scottish Ministers (the plan as approved under subsection (14) being referred to in this section and in section 4 as the community justice authority’s “area plan”);

(b) to monitor the performance of—

(i) appropriate local authorities; and

(ii) the Scottish Ministers,

in complying with, and in co-operating with each other, the community justice authority and others to facilitate compliance with, the area plan;

(c) in so far as it considers such performance by—

(i) a local authority to be unsatisfactory, to issue such directions to that authority; or

(ii) the Scottish Ministers to be unsatisfactory, to make such recommendations to the Scottish Ministers,

as it thinks fit;

(d) to promote good practice in the management of the behaviour of relevant persons ("management" being management with a view to reducing re-offending by those persons);
(e) to allocate to the appropriate local authorities any amount paid to it under—
  (i) section 27A(1) of the Social Work (Scotland) Act 1968 (c.49) (grants in respect of community service facilities); or
  (ii) section 27B(1) of that Act (grants in respect of hostel accommodation for persons under supervision);

(f) to arrange with the partner bodies that, so far as practicable, any information—
  (i) relating to relevant persons; and
  (ii) in the possession of any of those party to the arrangements,
  is furnished or made available to the others party to them;

(g) as soon as practicable after the end of each financial year, to report to the Scottish Ministers on—
  (i) its activities and performance during that year in discharging its functions under this section; and
  (ii) the activities and performance during that year of appropriate local authorities, partner bodies and the Scottish Ministers in complying with, or facilitating compliance with, the area plan; and

(h) any function which it has by virtue of section 7 of this Act.

(5A) Any grant paid to a local authority by virtue of subsection (5)(e) is subject to such conditions as the community justice authority may determine.

(5B) But conditions determined under subsection (5A) are subject to any conditions determined, as respects the grant in question, under section 27A(1B) or 27B(1B) of the Social Work (Scotland) Act 1968 by the Scottish Ministers.

(6) In preparing a report under paragraph (g) of subsection (5), the community justice authority is to consult as mentioned in paragraph (a)(i) of that subsection.

(6A) A report made under paragraph (g) of subsection (5) must be published by the community justice authority in such manner as it considers appropriate.

(6B) A community justice authority is, on receiving a report submitted to it under section 10(2)(c), to send a copy of that report to the Scottish Ministers.

(7) The Scottish Ministers may by order made by statutory instrument amend subsection (5) so as (either or both)—
  (a) to add to the functions for the time being described;
  (b) to alter or omit any of those functions.

(8) Different provision may be made under subsection (7) for different community justice authorities.

(9) The Scottish Ministers are from time to time to inspect and assess the arrangements set in place, and the services provided, by local authorities for complying with the area plan and to satisfy themselves as to the sufficiency of those arrangements and services.

(10) The Scottish Ministers—
  (a) may from time to time issue to a community justice authority guidance as to—
    (i) the exercise of its functions; or
    (ii) its actings under section 3; and
(b) where they have issued such guidance but are satisfied that the authority—

(i) is not complying; and

(ii) is not likely to comply,

with it, may issue directions to the authority as to the exercise or actings in question.

(10A) But before issuing directions under subsection (10)(b), the Scottish Ministers are—

(a) to give written notice of at least 7 days to the community justice authority that they intend to issue the directions; and

(b) to consider any representations in that regard made to them, within those 7 days, by the authority.

(10B) The community justice authority may appeal to the sheriff, against any directions so issued, on the grounds (either or both)—

(a) that the directions are unreasonable,

(b) that to issue them was unreasonable.

(10C) Within one month after issuing any such directions the Scottish Ministers are to lay a report before the Parliament containing a copy of the directions and a statement as to the reason for issuing them.

(11) In carrying out—

(a) their functions under section 27 of the Social Work (Scotland) Act 1968, an appropriate local authority are;

(b) by virtue of section 7 (of this Act), its functions, or functions on behalf of an appropriate local authority, under that section 27, a community justice authority is,

so far as practicable, to comply with the area plan.

(12) The Scottish Ministers are, so far as practicable, to comply with the area plan.

(13) If directions are issued—

(a) under subsection (5)(c)(i), the local authority receiving the directions;

(b) under subsection (10)(b), the community justice authority,

must comply with them.

(14) The Scottish Ministers, on receiving a plan by virtue of sub-paragraph (ii) of subsection (5)(a), may approve it or require the authority to revise the plan, in such manner as the Scottish Ministers may specify, and to re-submit it under that sub-paragraph.

(15) Subsection (14) applies in relation to a plan re-submitted as it applies to one submitted.

(16) In this section—

an “appropriate local authority” is a local authority the area of which is comprised within the area of the community justice authority; and

“partner bodies” means such persons as are for the time being designated as partner bodies for the purposes of this section by the Scottish Ministers by order made by statutory instrument.
(17) The references in subsections (5)(b)(ii) and (g)(ii) and (12) to the Scottish Ministers are to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45) as is the first reference to the Scottish Ministers in each of paragraphs (a)(i) and (c)(ii) of subsection (5).

(18) A statutory instrument containing an order under—

(a) subsection (1) or (7) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament;

(b) subsection (16) is subject to annulment in pursuance of a resolution of the Parliament.

3 Further provisions as respects community justice authorities

(1) Subject to any directions issued under section 2(10)(b), a community justice authority may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with the exercise of, its functions; and without prejudice to that generality may in particular enter into contracts.

(2) A community justice authority—

(a) is to appoint a chief officer; and

(b) may appoint as staff such other persons as it considers requisite for enabling it to exercise its functions.

(3) The remuneration and conditions of service of a chief officer or other person appointed under subsection (2) are to be such as the community justice authority may determine.

(4) A community justice authority may—

(a) pay, or make arrangements for the payment of;

(b) make payments towards the provision of; and

(c) provide and maintain schemes (whether contributory or not) for the payment of, such pensions, allowances and gratuities to or in respect of its employees, or former employees, as it thinks fit.

(5) The reference in subsection (4) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.

(6) The expenditure of a community justice authority, in so far as it is not met from any other source, may be paid by the Scottish Ministers.

4 Special duties of chief officer of community justice authority

(1) Where it appears to the chief officer of a community justice authority that—

(a) the authority is failing, or has failed, satisfactorily to exercise its functions under this Act; or

(b) an appropriate local authority or the Scottish Ministers are failing to comply with the community justice authority’s area plan,

the chief officer is, as soon as practicable, to report the failure to the Scottish Ministers.
(2) Without prejudice to section 2(5)(g)(ii), the chief officer is, whenever required to do so by the Scottish Ministers, to report to them on the activities and performance, during such period as is specified in the requirement, of the community justice authority, appropriate local authorities, partner bodies and the Scottish Ministers in complying with, or facilitating compliance with, the community justice authority’s area plan.

(3) In subsections (1) and (2), “appropriate local authority” means a local authority the area of which is comprised within the area of the community justice authority.

(4) The reference in subsection (1)(b) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45) as is the second reference to the Scottish Ministers in subsection (2).

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

(1) Where it appears to the Scottish Ministers on a report under section 4 or by a person mentioned in subsection (2)—

(a) that a community justice authority is failing, or has failed, satisfactorily to exercise its functions under this Act; and

(b) that the issue under this section of an enforcement direction to the authority would be justified,

they may issue a preliminary notice to the authority.

(2) The persons are—

(a) a person authorised under section 6(1) of the Social Work (Scotland) Act 1968 (c.49) (supervision of establishments providing accommodation for persons and inspection of records etc.);

(b) the Chief Inspector of Prisons for Scotland;

(c) Audit Scotland;

(d) a person specified by the Scottish Ministers for the purposes of this section and of section 6.

(3) A preliminary notice is one which—

(a) informs the authority of the apparent failure mentioned in subsection (1)(a); and

(b) requires the authority to submit to the Scottish Ministers, within such period as is specified in the notice, an appropriate written response.

(4) An appropriate written response is one which—

(a) states that the authority is not so failing (or as the case may be has not so failed) and gives reasons supporting that statement; or

(b) acknowledges that the authority is so failing (or has so failed) but gives reasons why an enforcement notice should not be issued to it.

(5) If a response is given under subsection (4)(b), the authority must either describe in the response the measures it proposes to take to remedy the failure or explain why no such measures need be taken.
(6) Where, following service of the preliminary notice and the expiry of the period specified in that notice, it still appears to the Scottish Ministers that the circumstances are as mentioned in paragraphs (a) and (b) of subsection (1), they may issue an enforcement direction to the authority.

(7) An enforcement direction is one which requires the authority to take, within such time as is specified in the direction, such action as is so specified, being action for the purpose of remedying, or preventing the recurrence of, the failure.

(8) An authority to which an enforcement direction is issued under this section must comply with it.

(9) The Scottish Ministers may vary or revoke an enforcement direction.

(10) The Scottish Ministers may, instead of or as well as issuing an enforcement direction to the authority, make such recommendations to the authority as they think fit.

(11) When the Scottish Ministers issue, vary or revoke an enforcement direction they are to—

(a) prepare a report as to their exercise of the power in question; and

(b) lay that report before the Parliament.

(12) The Scottish Ministers may by order made by statutory instrument amend subsection (2) so as (either or both)—

(a) to add to the persons there described;

(b) to alter the description of, or omit, any of those persons.

(13) A statutory instrument containing an order under subsection (12) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

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

(1) Where it appears to the Scottish Ministers, on a report under section 4 or by a person mentioned in section 5(2)—

(a) that a local authority are failing, or have failed, satisfactorily to exercise their functions under section 27 of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prison etc.) in relation to—

(i) relevant persons; or

(ii) one relevant person provided that the person making the report considers such failure to be symptomatic of some general failure of the local authority in the exercise of their functions under that section; and

(b) that the issue under this section of an enforcement direction to the authority would be justified,

they may issue a preliminary notice to the community justice authority.

(2) Subsections (3) to (11) of section 5 apply in relation to an apparent failure mentioned in subsection (1)(a) (of this section) as they apply in relation to an apparent failure mentioned in subsection (1)(a) of that section.
(3) For the purposes of that application references in those subsections of that section to “the authority” are to be construed as references to the community justice authority except that the references in paragraphs (a) and (b) of subsection (4) of that section are to be construed as references to the local authority.

(4) But, notwithstanding that exception, the word “it” in paragraph (b) of subsection (4) of that section is to be construed as a reference to the community justice authority.

7 Transfer of functions to community justice authority

(1) This section applies to functions under or by virtue of—

(a) any of sections 27(1) or (1A), 27ZA or 27B of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prison etc.) which are exercisable by local authorities; and

(b) the Prisons (Scotland) Act 1989 (c.45) which are—

(i) exercisable by the Scottish Ministers; and

(ii) relate to the preparation of offenders for release from imprisonment or from detention in custody.

(2) The Scottish Ministers may by order made by statutory instrument provide that, within the area of a community justice authority, a function—

(a) to which this section applies; and

(b) specified in the order,

is instead to be exercisable by the community justice authority; but this subsection is subject to subsection (5).

(3) A community justice authority and a local authority comprised within the area of the community justice authority may jointly determine that a function to which this section applies is to be exercisable on behalf of that local authority by the community justice authority; but before any such joint determination is made the community justice authority must, as respects its proposed effect, consult—

(a) any local authority comprised within that area and not party to the joint determination,

(b) the partner bodies (as defined by section 2(16)), and

(c) the Scottish Ministers.

(4) The Scottish Ministers may, under subsection (2), make different provision for different community justice authorities.

(5) A statutory instrument containing an order under subsection (2) is not made—

(a) unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament,

(b) in the case of functions mentioned in paragraph (a) of subsection (1), unless before the draft is so laid, the Scottish Ministers have—

(i) consulted, as respects the draft, the community justice authority and each of the local authorities comprised within the area of the community justice authority, and

(ii) secured the agreement of them all to its being so laid, and
(c) in the case of functions mentioned in paragraph (b) of subsection (1), unless before the draft is so laid, the Scottish Ministers—

(i) have consulted, as respects the draft, the community justice authority, and

(ii) have secured its agreement to its being so laid.

8 Transfer of property to community justice authority

(1) For the purpose of facilitating the discharge by a community justice authority of that authority’s functions, a local authority or the Scottish Ministers may transfer property to that authority.

(1A) If by virtue of the revocation of an order under section 7 a function ceases to be exercisable by a community justice authority, that authority must, if requested to do so by whomever is to exercise the function in consequence of the revocation, transfer to that person any property held by it wholly or mainly for the purpose of exercising the function.

(2) Where transfer under subsection (1) or (1A) occurs, no right of pre-emption or other similar right operates or becomes exercisable.

(3) Subject to subsection (2), on the transfer of property under subsection (1) or (1A), such rights and liabilities of the transferor as pertain to the property are transferred with it.

Assessing and managing risks posed by certain offenders

9 Arrangements for assessing and managing risks posed by certain offenders

(1) Subject to subsection (10), the responsible authorities for the area of a local authority must jointly establish arrangements for the assessment and management of the risks posed in that area by any person who—

(a) is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c.42);

(b) has been convicted on indictment of an offence inferring personal violence and—

(i) is subject to a probation order under section 228(1) of the Criminal Procedure (Scotland) Act 1995 (c.46), or

(ii) is required, having been released from imprisonment or detention, (or will be required when so released), to be under supervision under any enactment or by the terms of an order or licence of the Scottish Ministers or of a condition or requirement imposed in pursuance of an enactment;

(ba) has, in proceedings on indictment, been acquitted of an offence inferring personal violence if—

(i) the acquittal is on the ground of insanity; and

(ii) a restriction order is made in respect of the person under section 59 of that Act of 1995 (hospital orders: restriction on discharge);

(bb) has been prosecuted on indictment for such an offence but found, under section 54(1) of that Act of 1995 (insanity in bar of trial), to be insane; or

(c) has been convicted of an offence if, by reason of that conviction, the person is considered by the responsible authorities to be a person who may cause serious harm to the public at large.
(2) It is immaterial—

(a) for the purposes of paragraph (a) of subsection (1), where the offence by virtue of which the person is subject to the notification requirements was committed (or, if the person is subject to the notification requirements by virtue of a finding under section 80(1)(b) of the Sexual Offences Act 2003 (c.42), where anything that he was charged with having done took place);

(b) for the purposes of paragraph (b) or (c) of that subsection, where the offence of which the person has been convicted was committed; or

(c) for the purposes of paragraph (ba) or (bb) of that subsection, where anything that the person was charged with having done took place.

(3) Subject to subsection (10), in the establishment and implementation of those arrangements, the responsible authorities must act in co-operation with such persons as the Scottish Ministers may, by order made by statutory instrument, specify.

(4) Subject to subsection (10), it is the duty of—

(a) any persons specified under subsection (3) to co-operate; and

(b) the responsible authorities to co-operate with each other,

in the establishment and implementation of those arrangements; but only to the extent that such co-operation is compatible with the exercise by those persons and authorities of their functions under any other enactment.

(4A) In the area of each local authority the responsible authorities and the persons specified under subsection (3) must together draw up a memorandum setting out the ways in which they are to co-operate with each other.

(5) The Scottish Ministers may issue guidance to responsible authorities on the discharge of the functions conferred on those authorities by this section and section 10.

(6) In this section and in section 10, the “responsible authorities” for the area of a local authority are—

(a) the chief constable of a police force maintained for a police area (or combined police area) any part of which is comprised within the area of the local authority;

(b) the local authority;

(ba) a Health Board or Special Health Board for an area any part of which is comprised within the area of the local authority; and

(c) the Scottish Ministers.

(7) The Scottish Ministers may by order made by statutory instrument amend the definition of the “responsible authorities” in subsection (6).

(8) A statutory instrument containing an order under—

(a) subsection (3) is subject to annulment in pursuance of a resolution of the Parliament;

(b) subsection (7) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

(9) Different provision may be made under subsection (3) for different purposes and for different areas.
(10) The functions and duties, under the preceding provisions of this section and under section 10, of the responsible authorities mentioned in subsection (6)(ba) extend only to the establishment, implementation and review of arrangements for the assessment and management of—

(a) persons subject both—

(i) to an order under paragraph (a) (order for detention in specified hospital where accused found to be insane) of section 57(2) of the Criminal Procedure (Scotland) Act 1995; and

(ii) to an order under paragraph (b) (special restrictions) of that section;

(b) those subject both—

(i) to a compulsion order under section 57A of that Act (order for detention in specified hospital etc.); and

(ii) to a restriction order under section 59 of that Act (provision for restrictions on discharge);

(c) those subject to a hospital direction under section 59A of that Act (direction authorising removal to and detention in specified hospital); or

(d) those subject to a transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (transfer of prisoners for treatment for mental disorder).

(11) But it is the duty of the responsible authorities mentioned in subsection (6)(ba) to co-operate (to the extent mentioned in subsection (4)) with the other responsible authorities, with each other and with any persons specified under subsection (3), in the establishment and implementation of arrangements for the assessment and management of persons other than those mentioned in paragraphs (a) to (c) of subsection (10).

(12) In subsection (6)(ba)—

“Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29); and

“Special Health Board” means a board so constituted under section 2(1)(b) of that Act.

(13) The reference in subsection (6)(c) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45).

10 Review of arrangements

(1) The responsible authorities must keep the arrangements established by them under section 9 under review for the purpose of monitoring the effectiveness of those arrangements and making any changes to them that appear necessary or expedient.

(2) As soon as practicable after the end of each period of 12 months beginning with 1st. April, the responsible authorities must—

(a) jointly prepare a report on the discharge by them during that period of the functions conferred by section 9;

(b) publish the report in the area of the local authority; and

(c) submit the report to the community justice authority within the area of which the area of the local authority is comprised.
(3) The report must include—
(a) details of the arrangements established by the responsible authorities; and
(b) information of such description as the Scottish Ministers have notified to the
responsible authorities that they wish to be included in the report.

10A Scheme of accreditation and procedure etc. of the Risk Management Authority

(1) The Criminal Justice (Scotland) Act 2003 (asp 7) is amended as follows.
(2) In section 11 (accreditation, education and training), after subsection (1) insert—
“(1A) The order may authorise—
(a) decisions as to cases arising in relation to a scheme of accreditation to be
taken by a committee; and
(b) any appeal as to such a decision to be determined by a committee,
in accordance with such procedure as may be prescribed; and without prejudice
to the generality of this subsection the order may make provision as to the
membership of the committees and as to any quorum.”.

10B Orders after assessment of risk

(1) The Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows.
(2) In section 210F(1) (making of order for lifelong restriction)—
(a) in paragraph (a), for the word “a” substitute “any”;
(b) for the words from “shall” to the end substitute “, in a case where it may make a compulsion order in respect of the convicted person under section 57A of this Act, either make such an order or make an order for lifelong restriction in respect of that person and in any other case make an order for lifelong restriction in respect of that person.”.

(3) The title of section 210F becomes “Order for lifelong restriction or compulsion order”.

Amendment of Prisoners and Criminal Proceedings (Scotland) Act 1993

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

(1) The 1993 Act is amended as follows.

(1A) In section 1(1) (release of short-term prisoners), after “short-term prisoner” insert “, not being a prisoner to whom section 1AA of this Act applies.”.

(1B) After section 1 insert—

“1AA Release of certain sexual offenders

(1) As soon as a prisoner to whom this section applies has served one-half of his sentence the Scottish Ministers are to release him on licence.

(2) This section applies to any short-term prisoner—

(a) sentenced to a term of 6 months or more, and

(b) who, by virtue of the conviction in respect of which that sentence was imposed, is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c.42).

(3) It is immaterial, for the purposes of subsections (1) and (2) above, when the offence of which the prisoner was convicted was committed.

(4) But this section does not apply to a prisoner if the conviction in respect of which the sentence mentioned in subsection (2)(a) above was imposed preceded the date on which section 11(1B) of the Management of Offenders etc. (Scotland) Act 2005 (asp 00) came into force.

(5) Section 17 of this Act applies to such short-term prisoners as are mentioned in subsection (2) above as that section applies to long-term prisoners.

(6) Where a prisoner is released on licence under this section, the licence (unless revoked) remains in force until the entire period specified in his sentence (reckoned from the commencement of the sentence) has elapsed; but this subsection is subject to subsections (7) and (8) below.

(7) Where the prisoner is serving terms which by virtue of section 27(5) of this Act fall to be treated as a single term the licence (unless revoked) remains in force until the relevant period (reckoned from the commencement of the single term) has elapsed.

(8) The “relevant period” mentioned in subsection (7) above is—

(a) the single term after deduction of half the number of days (if any) by which that term exceeds what it would be were there disregarded in determining it such terms (if any) as are imposed for a conviction other than one by virtue of which the prisoner is subject to the notification requirements mentioned in subsection (2)(b) above, or
(b) if to disregard such terms as are so imposed would have the consequence—

(i) that there would not remain two or more terms to treat as a single term, or

(ii) that though two or more terms would remain they would no longer be consecutive or wholly or partly concurrent,

the single term after deduction of half the number of days (if any) by which that term exceeds the term imposed for the conviction, or as the case may be the terms imposed for the convictions, by virtue of which the prisoner is subject to those requirements.”.

(2) In section 1A(1)(c) (release of persons serving more than one sentence to be on a single licence), after the word “Act” where it first occurs insert “, other than on licence under section 3AA”.

(3) After section 3 insert—

“3AA Further powers to release prisoners

(1) Subject to subsections (2) to (5) below, the Scottish Ministers may release on licence under this section—

(a) a short-term prisoner serving a sentence of imprisonment for a term of three months or more; or

(b) a long-term prisoner whose release on having served one-half of his sentence has been recommended by the Parole Board.

(2) The power in subsection (1) above is not to be exercised before the prisoner has served whichever is the greater of—

(a) one quarter of his sentence; and

(b) four weeks of his sentence.

(3) Without prejudice to subsection (2) above, the power in subsection (1) above is to be exercised only during that period of 121 days which ends on the day 14 days before that on which the prisoner will have served one half of his sentence.

(4) In exercising the power conferred by subsection (1) above, the Scottish Ministers must have regard to considerations of—

(a) protecting the public at large;

(b) preventing re-offending by the prisoner; and

(c) securing the successful re-integration of the prisoner into the community.

(5) Subsection (1) above does not apply where—

(a) the prisoner’s sentence was imposed under section 210A of the 1995 Act;

(b) the prisoner is subject to a supervised release order made under section 209 of that Act;

(c) the prisoner is subject to a hospital direction imposed under section 59A of that Act or a transfer for treatment direction made under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);
(d) the prisoner is subject to the notification requirements of Part 2 of the
Sexual Offences Act 2003 (c.42);

(e) the prisoner is liable to removal from the United Kingdom (within the
meaning of section 9 of this Act);

(f) the prisoner has been released on licence under this Part of this Act or
under the 1989 Act but—

(i) has been recalled to prison other than by virtue of section
17A(1)(b) of this Act; or

(ii) before the date on which he would but for his release have served
his sentence in full, has received a further sentence of
imprisonment; or

(g) the prisoner has been released (whether or not on licence) during the
currency of his sentence but has been returned to custody under section
16(2) or (4) of this Act.

(6) The Scottish Ministers may by order do any or all of the following—

(a) amend the number of months for the time being specified in subsection
(1)(a) above;

(b) amend the number of weeks for the time being specified in subsection
(2)(b) above;

(c) amend a number of days for the time being specified in subsection (3)
above;

(d) amend any paragraph of subsection (5) above, add a further paragraph to
that subsection or repeal any of its paragraphs.”.

(4) In section 5(1) (fine defaulters and persons in contempt of court), after the words
“except sections” insert “3AA,”.

(5) In section 9(3) (persons liable to removal from the United Kingdom)—

(a) in paragraph (d), for the word “immigrant” there is substituted “entrant”; and

(b) (the word “or” immediately preceding that paragraph being omitted) after that
paragraph there is added “or

(e) if he is liable to removal under section 10 of the Immigration and
Asylum Act 1999 (c.33).”.

(6) In section 11 (duration of licence), after subsection (3) insert—

“(3A) Subsections (1) to (3) above do not apply in relation to release on licence under
section 3AA of this Act.

(3B) A licence granted under section 3AA of this Act remains in force (unless it is
revoked) until the date on which the released person would, but for his release
under that section, fall to be released under section 1 of this Act.”.

(7) In section 12 (conditions in licence)—

(a) after subsection (2) insert—

“(2A) In its application to a licence granted under section 3AA of this Act, subsection
(2) above is to be construed as if, for the words “shall include” there were
substituted “may include”.,”; and
(b) after subsection (4) insert—

“(4A) Subsection (3)(b) above does not apply in relation to a condition in a licence granted under section 3AA of this Act; but in exercising their powers under this section in relation to a long-term prisoner released on such a licence the Scottish Ministers must have regard to any recommendations which the Parole Board has made for the purposes of section 1(3) of this Act as to conditions to be included on release.”.

(8) After section 12 insert—

“12AA Conditions for persons released on licence under section 3AA

(1) Without prejudice to the generality of section 12(1) of this Act, any licence granted under section 3AA of this Act must include—

(a) the standard conditions; and

(b) a curfew condition complying with section 12AB of this Act.

(2) Subsection (1) above is without prejudice to any power exercisable under section 12 of this Act.

(3) In this section, “the standard conditions” means such conditions as may be prescribed as such for the purposes of this section.

(4) In subsection (3) above, “prescribed” means prescribed by order by the Scottish Ministers.

(5) Different standard conditions may be so prescribed for different classes of prisoner.

(6) Subsection (4) of section 3AA of this Act applies in relation to—

(a) the exercise of the power of prescription conferred by subsection (3) above; and

(b) the specification, variation or cancellation of conditions, other than the standard conditions, in a licence granted under section 3AA of this Act, as it applies in relation the exercise of the power conferred by subsection (1) of that section.

12AB Curfew condition

(1) For the purposes of this Part, a curfew condition is a condition which—

(a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified; and

(b) may require him not to be in a place, or class of place, so specified at a time or during a period so specified.

(2) The curfew condition may specify different places, or different periods, for different days but a condition such as is mentioned in paragraph (a) of subsection (1) above may not specify periods which amount to less than nine hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).
(3) Section 245C of the 1995 Act (contractual and other arrangements for, and devices which may be used for the purposes of, remote monitoring) applies in relation to the imposition of, and compliance with, a condition specified by virtue of subsection (1) above as that section applies in relation to the making of, and compliance with, a restriction of liberty order.

(4) A curfew condition is to be monitored remotely and the Scottish Ministers must designate in the licence a person who is to be responsible for the remote monitoring and must, as soon as practicable after they do so, send that person a copy of the condition together with such information as they consider requisite to the fulfilment of the responsibility.

(5) Subject to subsection (6) below, the designated person’s responsibility—

(a) commences on that person’s receipt of the copy so sent;
(b) is suspended during any period in which the curfew condition is suspended; and
(c) ends when the licence is revoked or otherwise ceases to be in force.

(6) The Scottish Ministers may from time to time designate a person who, in place of the person designated under subsection (4) above (or last designated under this subsection), is to be responsible for the remote monitoring; and on the Scottish Ministers amending the licence in respect of the new designation, that subsection and subsection (5) above apply in relation to the person designated under this subsection as they apply in relation to the person replaced.

(7) If a designation under subsection (6) above is made, the Scottish Ministers must, in so far as it is practicable to do so, notify the person replaced accordingly.

(9) In section 12B (certain licences to be replaced by one), after subsection (3) insert—

“(4) References in this section to release on licence do not include release on licence under section 3AA of this Act.”.

(10) In section 17 (revocation of licence), at the end add—

“(7) References in this section to release on licence do not include release on licence under section 3AA of this Act.”.

(11) After section 17 insert—

“17A Recall of prisoners released under section 3AA

(1) If it appears to the Scottish Ministers as regards a prisoner released on licence under section 3AA of this Act that—

(a) he has failed to comply with any condition included in his licence; or
(b) his whereabouts can no longer be monitored remotely at the place for the time being specified in the curfew condition included in the licence,

they may revoke the licence and recall the person to prison under this section.

(2) A person whose licence is revoked under subsection (1) above—

(a) must, on his return to prison, be informed of the reasons for the revocation and of his right under paragraph (b) below; and
(b) may make representations in writing with respect to the revocation to the Scottish Ministers.
(2A) The Scottish Ministers are to refer to the Parole Board the case of any person who makes such representations.

(3) After considering the case the Parole Board may direct, or decline to direct, the Scottish Ministers to cancel the revocation.

(4) Where the revocation of a person’s licence is cancelled by virtue of subsection (3) above, the person is to be treated for the purposes of section 3AA of this Act as if he had not been recalled to prison under this section.

(5) On the revocation under this section of a person’s licence, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.”.

(12) In section 45 (making of rules and orders)—

(a) in subsection (2), after the word “Any” insert “order made under section 12AA(3) or”; and

(b) in subsection (3), after the word “section” insert “3AA(6),”.

Miscellaneous

11A Notification requirements where sentence of imprisonment for public protection is imposed in England and Wales

(1) In the table in section 82(1) of the Sexual Offences Act 2003 (c.42) (notification period for persons convicted of sexual offences under requirement to notify the police about certain matters), in the entry relating to a person sentenced to imprisonment for life or for a term of 30 months or more, for the words “or for” substitute “, to imprisonment for public protection under section 225 of the Criminal Justice Act 2003 or to imprisonment for”.

(2) This section applies in relation to sentences passed before the date on which this section comes into force, as well as to those passed on or after that date.

12 Offender’s failure to comply with notification requirements: jurisdiction of Scottish courts

In section 91 of the Sexual Offences Act 2003 (c.42) (offences relating to the notification requirements of Part 2 of that Act), for subsection (4) substitute—

“(4) Proceedings for an offence under this section may be commenced in any court—

(a) having jurisdiction in any place where the person accused—

(i) resides;

(ii) is last known to have resided; or

(iii) is found;

(b) which has convicted the accused of an offence if the accused is subject to the notification requirements of this Part by virtue of that conviction; or

(c) which has made an order under section 104(1)(b) in respect of the accused if the accused is subject to those requirements by virtue of that order.”.
12A Objection to content or finding of risk assessment report: conduct of proceedings

After section 210E of the Criminal Procedure (Scotland) Act 1995 (c.46) insert—

“210EA Application of certain sections of this Act to proceedings under section 210C(7)

(1) Sections 271 to 271M, 274 to 275C and 288C to 288F of this Act (in this section referred to as the “applied sections”) apply in relation to proceedings under section 210C(7) of this Act as they apply in relation to proceedings in or for the purposes of a trial, references in the applied sections to the “trial” and to the “trial diet” being construed accordingly.

(2) But for the purposes of this section the references—

(a) in sections 271(1)(a) and 271B(1)(b) to the date of commencement of the proceedings in which the trial is being held or is to be held; and

(b) in section 288E(2)(b) to the date of commencement of the proceedings,

are to be construed as references to the date of commencement of the proceedings in which the person was convicted of the offence in respect of which sentence falls to be imposed (such proceedings being in this section referred to as the “original proceedings”).

(3) And for the purposes of this section any reference in the applied sections to—

(a) an “accused” (or to a person charged with an offence) is to be construed as a reference to the convicted person except that the reference in section 271(2)(e)(iii) to an accused is to be disregarded;

(b) an “alleged” offence is to be construed as a reference to any or all of the following—

(i) the offence in respect of which sentence falls to be imposed;

(ii) any other offence of which the convicted person has been convicted;

(iii) any alleged criminal behaviour of the convicted person; and

(c) a “complainer” is to be construed as a reference to any or all of the following—

(i) the person who was the complainer in the original proceedings;

(ii) in the case of any such offence as is mentioned in paragraph (b)(ii) above, the person who was the complainer in the proceedings relating to that offence;

(iii) in the case of alleged criminal behaviour if it was alleged behaviour directed against a person, the person in question.

(4) Where—

(a) any person who is giving or is to give evidence at an examination under section 210C(7) of this Act gave evidence at the trial in the original proceedings; and

(b) a special measure or combination of special measures was used by virtue of section 271A, 271C or 271D of this Act for the purpose of taking the person’s evidence at that trial,
that special measure or, as the case may be, combination of special measures is to be treated as having been authorised, by virtue of the same section, to be used for the purpose of taking the person’s evidence at or for the purposes of the examination.

(5) Subsection (4) above does not affect the operation, by virtue of subsection (1) above, of section 271D of this Act.”

13 Recovery of criminal injuries compensation from offenders

(1) The Criminal Injuries Compensation Act 1995 (c.53) is amended as provided for in subsection (2) of section 57 of the Domestic Violence, Crime and Victims Act 2004 (c.28).

(2) But in the provision to be inserted, by virtue of subsection (1) (above), into that Act of 1995—

(a) as section 7A(1), for the words “Secretary of State” substitute “Scottish Ministers”;

(b) as section 7B(3), for the words “Secretary of State” substitute “Scottish Ministers”; and

(c) as section 7D, for subsection (4) substitute—

“(4) For the purposes of section 6(3) of the Prescription and Limitation (Scotland) Act 1973 (extinction of obligations by prescriptive periods of 5 years), the date when the obligation to pay that amount became enforceable shall be taken to be—

(a) the date on which the compensation was paid; or

(b) if later, the date on which the person from whom the amount is sought to be recovered was convicted of an offence to which the injury is directly attributable.”.

(3) In section 11 of that Act of 1995, after subsection (8) insert—

“(8A) No regulations under section 7A(1) or order under section 7B(3) shall be made unless a draft of the regulations or order has been laid before, and approved by a resolution of, the Scottish Parliament.”.

(4) In Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c.52), in paragraph 1 (application of section 6 of that Act), after sub-paragraph (d) insert—

“(dd) to any obligation arising by virtue of section 7A(1) of the Criminal Injuries Compensation Act 1995 (recovery of compensation from offenders: general);”.

14 Further amendments and repeal

(1) In section 27 of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prisons etc.)—

(a) in subsection (1)—

(i) at the beginning insert “Subject to any order or determination under section 7 of the Management of Offenders etc. (Scotland) Act 2005 (asp 00),”; and

(ii) after paragraph (ad) insert—
“(ae) making available to the Scottish Ministers such background and other reports as the Scottish Ministers may request in relation to the exercise of their functions under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9);”;

(b) after subsection (1B) insert—

“(1C) In paragraphs (ac) and (b)(i) and (ii) of subsection (1) above, “enactment” includes an Act of the Scottish Parliament.

(1D) The Scottish Ministers may by order amend subsection (1) above so as (any or all)—

(a) to add to the functions for the time being described;

(b) to omit any of those functions;

(c) to alter any of those functions.”; and

(c) in subsection (2), for the words “the foregoing subsection” substitute “subsection (1) above”.

(2) In section 27A of that Act (grants in respect of community service facilities)—

(a) for subsection (1) substitute—

“(1) The Scottish Ministers may (any or all)—

(a) pay to a community justice authority, for allocation under section 2(5)(e)(i) of the Management of Offenders etc. (Scotland) Act 2005 (asp 00) as grants to the local authorities within its area;

(b) make a grant to a local authority of;

(c) make a grant to a community justice authority, in respect of any function exercisable by that authority by virtue of section 7(2) or (3) of that Act of 2005, of,

such amount as the Scottish Ministers may determine in respect of expenditure incurred by, as the case may be, those local authorities, that local authority or that community justice authority, in providing a relevant service.

(1A) In subsection (1) above, a “relevant service” means a service—

(a) for the purposes mentioned in section 27(1) of this Act;

(b) for enabling those local authorities, that local authority or that community justice authority to comply with the area plan prepared by the community justice authority under section 2(5)(a)(i) of that Act of 2005; or

(c) for such other similar purposes as the Scottish Ministers may prescribe.

(1B) Any grant made under, or paid by virtue of, subsection (1) above is subject to such conditions as the Scottish Ministers may determine.”; and

(b) in subsection (2), for the words “(1)(b)” substitute “(1)(c)”.

(2A) In section 27B of that Act (grants in respect of hostel accommodation for persons under supervision)—

(a) for subsection (1) substitute—

“(1) The Scottish Ministers may (any or all)—
(a) pay to a community justice authority, for allocation under section 2(5)(e)(ii) of the Management of Offenders etc. (Scotland) Act 2005 (asp 00) as grants to the local authorities within its area;

(b) make a grant to a local authority of;

(c) make a grant to a community justice authority, in respect of any function exercisable by that authority by virtue of section 7(2) or (3) of that Act of 2005, of,

such amount as the Scottish Ministers may determine in respect of relevant expenditure.

(1A) In subsection (1) above, “relevant expenditure” means expenditure incurred by, as the case may be, those local authorities or that local authority in—

(a) providing; or

(b) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of,

residential accommodation wholly or mainly for the persons mentioned in subsection (2) below.

(1B) Any grant made under, or paid by virtue of, subsection (1) above is subject to such conditions as the Scottish Ministers may determine.”; and

(b) in subsection (2), for “subsection (1)” substitute “subsection (1A)”.

(3) In section 90 of that Act (orders, regulations etc.), after subsection (3) add—

“(4) A statutory instrument containing an order under section 27(1B) or 27A(1A)(c) of this Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

(4) In the Schedule to the Repatriation of Prisoners Act 1984 (c.47) (operation of certain enactments in relation to prisoner), in paragraph 2 as substituted by section 33(1)(b)(i) of the Criminal Justice (Scotland) Act 2003 (asp 7) (prisoners repatriated to Scotland)—

(a) in sub-paragraph (1), for the words “2(2) and (7)” substitute “1AA, 2(2) and (7), 3AA”; and

(b) in sub-paragraph (2), for the words “or 2(2) or (7)” substitute “, 2(2) or (7) or 3AA”.

(4A) In section 8(1) of the Prisons (Scotland) Act 1989 (c.45) (provision for constitution of visiting committees), for the words from “at” to the end, substitute—

“(a) by such—

(i) community justice authorities, or

(ii) councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994,

(b) at such times,

(c) in such manner, and

(d) for such periods,

as may be prescribed by the rules.”.
(4B) In section 27(4A) of the 1993 Act (construction of references in Part 1 of that Act to wholly concurrent or partly concurrent terms of imprisonment or detention), in sub-paragraph (i) of paragraph (a) and in each of sub-paragraphs (i) and (ii) of paragraph (b), for the words “is imposed” substitute “commences”.

(5) In Schedule 1 to the Crime (Sentences) Act 1997 (c.43) (transfer of prisoners within the British Isles)—

(a) in paragraph 10—

(i) in sub-paragraph (2)(a), for the words “1A, 3” substitute “1AA, 1A, 3, 3AA”; and

(ii) in sub-paragraph (5)(a), for the words “1A, 2(4)” substitute “1AA, 1A, 2(4), 3AA”;

(b) in paragraph 11(2)—

(i) for the word “or”, where it occurs for the second time, substitute “to”; and

(ii) in head (a), for the words “1A, 3” substitute “1AA, 1A, 3, 3AA”; and

(c) in paragraph 11(4)(a), for the words “1A” substitute “1AA, 1A, 3AA”.

(6) In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) (devolved public bodies), after the entry relating to the Common Services Agency for the Scottish Health Service, insert—

“A community justice authority”.

(7) In section 24(c) of the International Criminal Court (Scotland) Act 2001 (asp 13) (limited disapplication of certain provisions relating to sentences), for the words “1A, 2, 3” substitute “1AA, 1A, 2, 3, 3AA”.

(8) In part 2 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (asp 11) (persons liable to investigation: Scottish public authorities), after paragraph 21 insert—

“21A A community justice authority.”.

(9) In Part 7 of schedule 1 to the Freedom of Information (Scotland) Act 2002 (asp 13) (Scottish public authorities), after paragraph 62 insert—

“62A A community justice authority.”.

(10) In section 40(1) of the Criminal Justice (Scotland) Act 2003 (asp 7) (remote monitoring of released prisoners), the words from “but” to the end are repealed.

General

15 Supplementary and consequential provision etc.

(1) The Scottish Ministers may by order made by statutory instrument make—

(a) any supplementary, incidental or consequential provision;

(b) any transitory, transitional or saving provision,

which they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under subsection (1) may amend or repeal any enactment (including any provision of this Act).
(3) Subject to subsection (4), a statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Parliament.

(4) A statutory instrument containing an order made by virtue of subsection (2) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

16 Interpretation

In this Act—

“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9);

“community justice authority” means a body corporate established under section 2(1);

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39); and

“relevant person” has the meaning given by section 1(2).

17 Commencement

(1) This section and sections 11A, 13, 15, 16, and 18 come into force on Royal Assent.

(2) The remaining provisions of this Act come into force in accordance with provision made by the Scottish Ministers by order made by statutory instrument.

(3) Different provision may be made under subsection (2) for different purposes and for different areas.

18 Short title

This Act may be cited as the Management of Offenders etc. (Scotland) Act 2005.
Management of Offenders etc. (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision for the establishment of community justice authorities; to make further provision for the supervision and care of persons put on probation or released from prison etc.; to make further provision as respects the procedures etc. of the Risk Management Authority; to make further provision as respects the powers of the High Court following the submission of a risk assessment report or of a report under section 210D of the Criminal Procedure (Scotland) Act 1995; to amend Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 so as to make further provision as respects the release of prisoners on licence; to make further provision as respects the jurisdiction of the Scottish courts in proceedings for offences in relation to the notification requirements of Part 2 of the Sexual Offences Act 2003; to make further provision as respects proceedings in relation to an objection to the content of a risk assessment report; to make provision about the recovery of compensation from offenders; and for connected purposes.

Introduced by: Cathy Jamieson
On: 4 March 2005
Supported by: Hugh Henry
Bill type: Executive Bill
MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Management of Offenders etc. (Scotland) Bill as amended at Stage 2.

INTRODUCTION

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

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

Integrated management of offenders

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

5. The Bill provides for the establishment of community justice authorities by the Scottish Ministers. The number and boundaries of each community justice authority will be established by order following consultation with local authorities. It is however anticipated that most of the community justice authorities will cover the geographical area of more than one local authority. Community justice authorities will be responsible for the planning, co-ordination and monitoring of the delivery of community offender services, that is, those offender services delivered by local authorities. Delivery of services remains the responsibility of each local authority. However, the
Bill is drafted to allow community justice authorities scope to deliver such services, on behalf of local authorities, if the local authorities so choose, or to deliver the services in place of the local authorities if Ministers so decide. The Bill also allows community justice authorities to deliver certain functions relating to the rehabilitation of prisoners that are currently delivered by Ministers through SPS.

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

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

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

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

10. Ministers will also require new powers to develop guidance for plans and performance targets, to approve or reject submitted plans and to take appropriate steps should parties fail to meet their obligations. Ministerial powers of intervention are not specifically required with regard to the Scottish Prison Service given its status as an Executive Agency and further powers are not required in the Bill. For community justice authorities, powers do require to be specified in the Bill. The model of intervention powers taken in the Bill follows those recently accepted by the Parliament in the School Education (Ministerial Powers and Independent Schools)(Scotland) Act 2004. This allows for a staged and proportionate approach to intervention, allowing the opportunity for community justice authorities to respond to any claim
of failure on their part. Ministers will only be able to issue directions if they have first issued guidance and the authority has either failed to comply or is unlikely to do so. Ministers will then be required to give notice to the community justice authority of their intention to issue directions. The community justice authority will have a right of appeal to the Sheriff against any directions issued. The Bill contains powers for addressing performance of individual local authorities by giving the relevant community justice authority power to issue mandatory directions. There is no requirement to give the local authority notice of the intention to issue such directions nor is there a right of appeal to the Sheriff.

Section 1 – Duty to co-operate

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

Section 2 – Community justice authorities

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

13. Subsection (1) provides an order-making power for Ministers to establish community justice authorities and to specify the areas covered by each community justice authority. In so doing the Executive intends to consult with local government and others in determining the number and boundaries of community justice authorities. While community justice authorities will typically cover a number of local authority areas, the Bill does not preclude a community justice authority covering the area of one local authority.

14. Subsection (2) clarifies the status of community justice authorities. They are not crown bodies and consequently employees of community justice authorities are not civil servants.

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

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

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

18. Subsection (5)(a) introduces a duty on community justice authorities to prepare and submit a plan for the management of relevant offenders (as defined in section 1(2)) in the community justice authority area. In so doing, the community justice authority is obliged to consult with Ministers (in the exercise of their prisons functions), local authorities (lying within
the community justice authority area), partner bodies (defined in subsection (16)) and others as Ministers may specify prior to submission to Ministers. The wording “at such intervals as the Scottish Ministers may determine” introduces flexibility on timing of preparation and submission of plans. References to “plan” in the Bill mean the draft plan, whilst references to “area plan” means the plan as approved by Ministers. Currently Criminal Justice Social Work groupings work to a 3 year planning cycle and thus the Bill allows this cycle to continue, or for a different cycle to be established should that be deemed more appropriate. Ministers would intend only to determine these cycles following consultation with community justice authorities.

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

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

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

22. Subsection (5)(e) provides the community justice authority with the power to distribute monies for community justice social work services (as listed under section 27A(1)) (grants in respect of community service facilities) and section 27B(1) (grants in respect of hostel accommodation for persons under supervision) of the Social Work (Scotland) Act 1968 (c.49). The intention is that decisions on the distribution of funds should take account of the services and programmes described in the area plans, so as to support the delivery of the plan.

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

24. Subsection (5)(g) requires the community justice authorities to report to Scottish Ministers after the end of each financial year on the exercise of their functions. Subsection (6A) requires the community justice authority to publish this report.

25. Subsection (5A) allows community justice authorities to set conditions on grants paid to local authorities through section 2(5)(e) of the Bill. Subsection (5B) makes it clear that any
conditions that community justice authorities attach to grants to local authorities, are subject to
conditions set by Scottish Ministers.

26. Subsection (6B) ensures that when the responsible authorities (for the purposes of section
9 of the Bill) have prepared a report on the discharge of their functions under section 9 (i.e. the
establishment and implementation of the joint arrangements for assessing and managing risks
posed by certain offenders) that report should be submitted to the CJA for the area of that local
authority, and CJAs should submit this to Ministers.

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

28. Subsection (8) enables any order made under subsection (7) to prescribe different
provisions for different community justice authorities. Thus the power is precise and allows
Ministers to vary the functions of individual community justice authorities where this is deemed
necessary.

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

30. Subsection (10) provides Ministers with a power to provide guidance, or directions, in
relation to the exercise of any functions under section 2 (community justice authorities) or any
actings under section 3 (further provision as respects community justice authorities) of the Bill.
Ministers intend to draw up this guidance in discussion with the national advisory body
described in the opening section of these notes. Powers of direction that could be used, for
example, to ensure that all community justice authorities’ annual reports contain certain common
features.

31. Subsections (10A), (10B) and (10C) limits the scope of the powers of direction contained
in section 2(10). These provisions:

- restrict the use of directions to occasions where guidance is not being complied with,
or where it is not likely to be complied with;
- restrict the powers of direction so that directions can only be issued following written
  notice of Ministers’ intention to issue a direction;
- include a Ministerial duty to consider any representations made to them within 7
days of issue of written notice;
provide the community justice authority with the right of appeal to the sheriff, against the terms of the directions; and

impose an obligation on Ministers to report to Parliament following the issue of directions.

32. Subsection (11) places a duty on local authorities to carry out its criminal justice social work duties, described under section 27 of the Social Work (Scotland) Act 1968, in compliance as far as is possible with the area plan. This duty is necessary to ensure that the area plan is delivered consistently across the community justice authority area and that local authorities are bound to the contents of the area plan.

33. The effect of subsection (12) when read with subsection (17) is to place a similar duty on Scottish Ministers in respect of their functions under the Prisons (Scotland) Act 1989 (c.45).

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

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

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

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

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

39. Subsection (16)(b) defines the term “partner body” as such persons as are for the time being designated by Ministers as such by order. Partner bodies could include police, Crown Office, local health boards and voluntary groups working with offenders. It is expected that this will be a dynamic group which may change over time and thus definition in primary legislation is undesirable. Establishing the identity of partner organisations by order also allows for a period of consultation with stakeholders on this issue.
40. Subsection (17) clarifies those references to Scottish Ministers within section 2 of the Bill which refer to Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45) and which therefore will in practice attach to the Scottish Prison Service.

41. Subsection (18) describes the Parliamentary procedure to which orders under this section are subject. Thus orders made under subsection (1) and (7) must be approved by a resolution of the Parliament (“affirmative procedure”) while an order made under subsection (16) will be subject to annulment in pursuance of a resolution of the Parliament (“negative procedure”).

Section 3 – Further provisions as respects community justice authorities

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

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

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

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

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

47. Subsection (6) provides that the Scottish Ministers may meet the expenditure of the community justice authority. Additional resources have been made available for community justice authorities by the Executive, as stated in the Financial Memorandum for this Bill. Subsection (6) recognizes that community justice authority expenditure may also be met from other sources, for example, European Union funding or local authority funding transferred with functions to the community justice authority under section 7 of the Bill.
Section 4 – Special duties of chief officer of community justice authorities

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

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

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

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

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

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

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

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

55. Subsection (3) explains that a preliminary notice is one which informs the authority of the apparent failures and requires a written response to the notice within a given time period. Subsection (4) establishes that the written response can state that the authority is not so failing (or so failed) in carrying out its functions, giving reasons supporting that statement. Alternatively the written response may acknowledge the failure and provide reasons why an enforcement direction should not be issued to them. Subsection (5) obliges a community justice authority to explain in the written response to a preliminary notice what remedial measures it has taken or will take to address failures, or the reasons why no remedial action is necessary. Thus a community justice authority has by statute an opportunity to refute or remedy failures before an enforcement direction is issued.
56. Where the period for submission of a written response in subsection (3)(b) has elapsed and it still appears to Ministers that the community justice authority is failing or has failed to exercise its duties and believes the issue of an enforcement direction is justified, Ministers may so do under subsection (6). This wording enables Ministers to intervene when either a written response has not been submitted in the required time, or the written response does not adequately address the identified failures. There is a statutory obligation on the community justice authority to comply with an enforcement direction in terms of subsection (8).

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

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

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

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

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

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

62. Subsections (3) and (4) clarify for the purposes of this section the use of the term “authority” as a reference to either a community justice authority or a local authority.
Section 7 – transfer of functions to community justice authority

63. This section recognises that community justice authorities may evolve in time from a planning, coordinating and monitoring body, to a body which also delivers criminal justice social work services (under sections 27(1), 27(1A), 27ZA or 27B of the Social Work (Scotland) Act 1968 (c.49)).

64. Those functions of the Scottish Ministers, exercised through the Scottish Prison Service, relating to the preparation of offenders for release can also be transferred to a community justice authority. These are functions under the Prisons (Scotland) Act 1989. The effect is that certain functions, such as prison based social work, could in future be transferred to a community justice authority.

65. Subsection (3) also provides for the community justice authority and a number of local authorities, but not necessarily all, within a community justice area to jointly determine that a function may be exercised by a community justice authority on behalf of the local authorities. The subsection imposes a statutory duty on the community justice authority to consult with the Scottish Ministers, the partner bodies, and any relevant local authority not party to the joint determination before it is made.

66. Subsection (5) regulates the Ministerial power to lay an order for the statutory transfer of a function from local authorities to a CJA under subsection (2). Specifically, such an order may not be laid unless Ministers have consulted with and obtained the agreement of the community justice authority and local authorities whose areas lie within the area of that community justice authority. Similarly, an order transferring a function from Scottish Ministers to the community justice authority cannot be laid without the agreement of the community justice authority to undertake that function.

Section 8 – Transfer of property to community justice authority

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

68. Subsection (1A) provides for the appropriate transfer of property, following a revocation of a Section 7 transfer order, from a community justice authority to the body which assumes responsibility for that function where the property in question is wholly or mainly used for the purpose of exercising of the function.

69. Subsection (2) provides that such transfers of property under subsection (1) or (1A) will not trigger any rights of pre-emption or other similar rights.

70. Subsection (3) clarifies that rights and liabilities pertaining to the property, other than those covered by section 8(2) (right of pre-emption and similar rights), transfer with the property.
Section 9-10 – Assessing and managing risks posed by certain sexual offenders

71. Sections 9 and 10 contain provisions which require the police, local authorities and the Scottish Ministers (in practice the Scottish Prison Service) to establish joint arrangements for the assessment and management of risk posed by sex offenders, certain violent offenders and those offenders considered to be a continuing risk to the public. Health Boards are also included as a responsible authority tasked with establishing joint arrangements with the other responsible authorities (i.e. police, local authorities and SPS) for the assessment and management of risk posed by “mentally disordered offenders” who also fall within the categories of offender specified in subsection 9(1).

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

72. Subsection (1) requires the responsible authorities, in the area of a local authority, to establish joint arrangements for the assessment and management of risks posed by certain offenders as defined in that subsection. This includes those subject to the sex offender notification requirements under Part 2 of the Sexual Offences Act 2003, offenders convicted on indictment of an offence inferring personal violence who are subject to a probation order, or who are or will be on release from prison, subject to supervision in the community, and those considered by virtue of their conviction to pose a continuing risk to the public. The arrangements also apply to individuals acquitted on grounds of insanity or found to be insane following proceedings taken on indictment. Subsection (1) is subject to the provisions of subsection (10) which limits the functions and duties of Health Boards and Special Health Boards as responsible authorities so that they cover only those who fall within these prescribed categories of offender, including those acquitted in proceedings on indictment on the grounds of insanity and subject to a restriction order and those where a plea, in bar of trial on grounds of insanity, is successfully made, or who are subject to any of the orders or directions specified in that subsection.

73. Subsection (2) clarifies that it is immaterial where the offences are committed for the purpose of identifying which authorities are to be responsible for making the relevant arrangements. The test for establishing such responsibility is whether the person poses a risk in the local authority area.

74. Subsection (3) gives Scottish Ministers the power to make an order, by statutory instrument, requiring other agencies to cooperate with the responsible authorities in establishing and implementing the arrangements for the relevant group of offenders.

75. Subsection (4) of the Bill specifies that it is the duty of any persons specified in the Order under subsection (3) to cooperate. The responsible authorities also have a duty to cooperate with one another.

76. In addition, subsection (4A) provides that the responsible authorities and the persons specified under subsection (3) must draw up a Memorandum setting out the ways in which they are to cooperate with each other. The purpose of this requirement is to enable the practicalities of co-operation, including the sharing of information, to be determined according to what suits local circumstances. The Memorandum will make clear the purpose of the duty, the principles...
upon which cooperation will take place, the activities involved in co-operating and the systems and procedures which support them and the partners to the agreement.

77. Subsection (5) allows Scottish Ministers to issue guidance to responsible authorities on the discharge of the functions conferred upon them.

78. Subsection (6) defines the responsible authorities in sections 9 and 10 for the area of a local authority namely the police, the local authority, Health Boards or Special Health Boards and Scottish Ministers, although in practice by virtue of subsection (13) the responsibilities of Scottish Ministers apply to the functions exercised on their behalf by the Scottish Prison Service.

79. Subsection (7) enables Scottish Ministers to amend by statutory instrument the definition of “responsible authorities” in subsection (6).

80. Subsection (8) clarifies that the Scottish Statutory Instrument (SSI) made under subsection (3) is made under negative procedure and the SSI made under subsection (7) is made under affirmative procedure.

81. Subsection (9) enables Ministers to make different provision in the order made under subsection (3) for different purposes and for different areas.

82. Subsection (10) provides that Health Boards are responsible authorities only as regards those persons who are subject to any of the orders or directions specified in this subsection. They will also require to fall into the categories specified in subsection (1).

83. However, subsection (11) also provides that Health Boards have a duty to co-operate with the other responsible authorities and with each other and with any persons specified in an order made under subsection (3) in respect of those offenders who are not “mentally disordered”, that is who are not covered by the provisions of subsection (10), but who do fall into the categories specified in subsection (1).

84. Subsection (12) defines Health Boards and Special Health Boards.

85. Subsection (13) provides that the reference to Scottish Ministers in sections 9 and 10 is to Scottish Ministers exercising their functions under the Prisons (Scotland) Act 1989, in practice exercising their functions through the Scottish Prison Service.

Section 10 – Review of Arrangements

86. Subsection (1) requires the responsible authorities to keep the effectiveness of the arrangements under review and to amend those arrangements where necessary.

87. Subsection (2) requires the responsible authorities to jointly prepare an annual report on the operation of the provisions under section 9, publish the report in the area of the local authority and submit the report to the community justice authority. Section 2 (6B) requires the community justice authorities to submit that report to the Scottish Ministers.
88. Subsection (3) provides that the report must contain details of the arrangements established by the responsible authorities, and such information as the Scottish Ministers have specified should be included in the report.

Section 10A – Scheme of accreditation and procedure etc. of the Risk Management Authority

89. Section 10A amends provisions in the Criminal Justice (Scotland) Act 2003 to ensure that functions of the Risk Management Authority can be delegated to committees, board members and staff (section 10A(3)), and that the accreditation scheme to be made under section 11 of that Act can provide for decisions on accreditation and on appeals to be taken by separate committees of the RMA (section 10A(2)). Without this amendment it would not be clear whether powers can be conferred on or delegated to committees of the RMA or to members of its staff.

Section 10B – Orders after assessment of risk

90. Section 10B amends section 210F of the Criminal Procedure (Scotland) Act 1995 (as inserted by section 1 of the Criminal Justice (Scotland) Act 2003) to ensure that the disposals available to the High Court when dealing with high risk mentally disordered offenders convicted of sexual or violent offences are in accordance with the policy set out at the time of the passage of the 2003 Act. Section 210F requires a court, in certain circumstances, to make an Order for Lifelong Restriction, a sentence intended for high risk violent and sexual offenders who meet the risk criteria set out in section 210E. If, following a risk assessment, the court is of the view that the risk criteria are met, it has no option but to make an Order for Lifelong Restriction. However there may be circumstances where a high risk mentally disordered offender who meets the risk criteria is also suffering from a mental disorder that meets the criteria for a compulsion order under section 57A of the Act (inserted by section 133 of the Mental Health (Care and Treatment) (Scotland) Act 2003). In these circumstances, the Court should be able to impose a mental health disposal. The amendment made by section 10B therefore ensures that where a mentally disordered offender meets both the risk criteria for an OLR and the criteria for a compulsion order the court should have the choice between these two disposals.

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

91. This section amends the Prisoners and Criminal Proceedings (Scotland) Act 1993 (the 1993 Act) to provide that short-term sex offenders (those sentenced to 6 months or more but less than 4 years) shall, on release at the half-way point of sentence, be subject to licence conditions – including electronic monitoring if considered appropriate - and supervision for the remainder of their sentence. The provisions in the 1993 Act dealing with licence conditions, supervision, revocation of licence and recall to custody will apply to these offenders. Scottish Ministers will set the licence conditions. Local Authorities will be responsible for supervising these offenders in the same way as is provided currently for all prisoners who are sentenced to imprisonment for 4 years or more, prisoners receiving extended sentences and life sentence prisoners released on life licence. Failure to comply with licence conditions can result in recall to custody by Scottish Ministers in cases of urgency or on the recommendation of the Parole Board for Scotland. The Board will determine suitability for re-release on licence. The oral hearings arrangements will apply to these offenders.

92. Subsection (1A) amends section 1(1) of the 1993 Act so that it no longer applies to those offenders covered by new section 1AA of the 1993 Act (as inserted by subsection (1B) of section
11). In practice this will mean that this group of prisoners will no longer be released unconditionally.

93. Subsection (1B) inserts new section 1AA into the 1993 Act. The effect of this new section is to end unconditional release of short term sex offenders serving sentences of between 6 months and 4 years; to make these offenders subject to licence conditions and supervision for the duration of their sentence; to apply the appropriate existing provisions in the 1993 Act dealing with revocation of licence and recall to custody; and to modify the single terming arrangements in the 1993 Act to ensure that where single terming applies, this group of prisoners will still be subject to an appropriate period on licence following release.

- Subsection (1) provides that on reaching the half way point of their sentence Scottish Ministers are to release relevant prisoners on licence.
- Subsection (2) defines the prisoners to whom the provisions contained in section 1AA apply. These are short term prisoners sentenced to terms of imprisonment of 6 months or more whose conviction means that they are subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.
- Subject to subsection (4), subsection (3) provides that subsections (1) and (2) (requiring short term sex offenders to be released on licence and to be subject to supervision) are applied in respect of a relevant offence that has been committed at any time.
- Subsection (4) disapplies the provisions of new section 1AA to any prisoner convicted of a relevant offence before the coming into force of section 11(1B) of the Bill.
- Subsection (5) applies section 17 of the 1993 Act (revocation of licence) to the prisoners to whom section 1AA will apply as it applies to long term prisoners. In practice this means that these short term prisoners when released on licence will be subject to revocation of this licence and recall to custody for breach of licence conditions.
- Subject to the provisions dealing with single terming in subsections (7) and (8), subsection (6) provides that when a relevant offender is released on licence, and unless that licence is revoked, it will remain in place for the remainder of the sentence.
- Subsection (7) deals with situations in which the provisions of section 27(5) of the 1993 Act apply. It states that two or more sentences are to be treated, in certain cases, as a single term. Subsection (7) provides that, in such cases, the licence will remain in force until the “relevant period”, as defined in subsection (8), has expired.

94. Subsections (2) to (12) introduce a new discretionary power to release prisoners on what is commonly known as Home Detention Curfew. This will allow the Scottish Prison Service, on behalf of the Scottish Ministers, to release prisoners on licence a short time before they would be eligible for automatic release or, in the case of long-term prisoners, (i.e. those serving a sentence of 4 or more years), for release on licence on the direction of the Parole Board. The length of the Home Detention Curfew period varies according to the sentence length, but cannot be less than 14 days nor more than 135 days. The prisoner must be serving a sentence of at least 3 months, and must spend at least 4 weeks in custody. Certain classes of prisoner are excluded entirely.
Release on Home Detention Curfew will be subject to a curfew condition and other standard conditions, and further conditions may also be added on a case-by-case basis. The curfew condition will require the offender to remain at a specified place for at least 9 hours each day, and compliance with this is to be monitored remotely using electronic tagging technology. Decisions on whether to release a prisoner on Home Detention Curfew, and on the conditions to be imposed in the licence, are to have regard to considerations of:

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

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

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

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

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

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

Subsection (3) inserts a new section 3AA into the 1993 Act, subsection (1) of which provides a new discretionary power for the Scottish Ministers to release prisoners on licence. This power will apply to two groups of prisoners:

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

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

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

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

<table>
<thead>
<tr>
<th>Sentence Length</th>
<th>Period to be served</th>
<th>Length of Home Detention Curfew</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 months or more but less than 4 months</td>
<td>4 weeks</td>
<td>Between 15 and 30 days (depending on the length of sentence)</td>
</tr>
<tr>
<td>4 months but less than 18 months</td>
<td>One quarter of sentence</td>
<td>Up to one quarter of sentence</td>
</tr>
<tr>
<td>More than 18 months</td>
<td>Half sentence less 135 days (approx 4.5 months)</td>
<td>Up to 135 days (approx 4.5 months)</td>
</tr>
</tbody>
</table>

101. Section 3AA(5) provides for a number of exclusions from the new power. These cover situations where the prisoner may be considered as a high risk, where special post-release arrangements are already in place or where the prisoner has failed to comply with a previous licence. The specific exclusions listed are for:
• Prisoners subject to extended sentence under section 210A of the Criminal Procedure (Scotland) Act 1995. Extended sentences may be imposed by the courts for serious violent or sexual offences, where they consider that the period for which the offender would otherwise be subject to a licence would not be adequate for the purpose of protecting the public from serious harm from the offender.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- report forthwith to officer in charge of the office at [name of office];
- be under the supervision of such officer to be nominated for this purpose from time to time by the Chief Social Work Officer of [named local authority];
- comply with such requirements as that officer may specify for the purposes of supervision;
- keep in touch with supervising officer in accordance with that officer’s instructions;
- inform supervising officer if changes place of residence, gains or loses employment;
These documents relate to the Management of Offenders etc. (Scotland) Bill as amended at Stage 2 (SP Bill 39A)

- be of good behaviour and keep the peace; and
- not travel outside Great Britain without prior permission of the supervising officer.

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

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

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

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

112. Section 12AB (inserted by subsection (8) of section 11), sets out the arrangements for the curfew condition, which must be included in the Home Detention Curfew licence. The curfew condition requires the released person to remain at a specified place for specified periods. Subsection (2) provides that the curfew may specify different places or different periods for different days, and requires that the total period should be not less than 9 hours each day. Subsection (2) allows flexibility for the curfew to fit round e.g. employment or training or family commitments. The flexibility also allows the curfew condition to be used to support other conditions, e.g. attendance at training or rehabilitation projects. Special provision is made for the first and last days as they will normally only contain part of a curfew period. The flexibility also allows the curfew condition to be used to support other conditions, e.g. attendance at training or rehabilitation projects. Section 12AB also allows the curfew condition to include a requirement for the released person to stay away from a particular place, again for a specified time or period. This is based on similar provision made for Restriction of Liberty Orders, where the courts occasionally include a condition requiring an offender to keep away from a particular address.

113. The curfew condition will be remotely monitored using tagging devices, as is currently done for Restriction of Liberty Orders and similar movement restriction conditions in other forms of court order or release on licence. Subsections (3) to (7) of the new section 12AB provide for the management of the remote monitoring, and make similar provision to that made for Restriction of Liberty Orders in sections 245B and 245C of the Criminal Procedure
These documents relate to the Management of Offenders etc. (Scotland) Bill as amended at Stage 2 (SP Bill 39A)

(Scotland) Act 1995. Subsection (3) applies section 245C of the 1995 Act. That section permits Ministers to make arrangements, including contractual arrangements, for remote monitoring; requires offenders to wear or carry devices to enable the remote monitoring; and provides for regulations to specify the devices which may be used.

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

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

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

117. Subsection (12) amends section 45 of the 1993 Act, which governs the making of rules and orders. The result is that any order made under section 12AA(3) (specification of standard conditions) will be subject to annulment in pursuance of a resolution of the Scottish Parliament, and any order under section 3AA(6) (adjusting time limits, proportions of sentence, exclusions etc.) will have to be laid in draft and approved by the Scottish Parliament before being made (i.e. draft affirmative procedure).
Section 11A – Notification requirements where sentence of imprisonment for public protection is imposed in England and Wales

118. Section 11A amends section 82 of the Sexual Offences Act 2003 (“the 2003 Act”) to take account of persons aged 18 or over who are punished by a sentence of imprisonment for public protection, as provided for by section 225 of the Criminal Justice Act 2003 in England and Wales. Such offenders will be subject to the notification requirements of the 2003 Act for an indefinite period. At present, no express provision for this type of sentence is made in section 82 which means that the notification period is 5 years. The indefinite notification requirements of the 2003 Act will apply when the offender is in Scotland.

119. Subsection (2) provides that the change made by subsection (1) has application in relation to sentences passed both before and after section 11A comes into force.

Section 12 – Offender’s failure to comply with notification requirements: jurisdiction of Scottish courts

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

121. Section 91 contains a number of offences relating to failure to comply with sex offender notification requirements. Under new section 91(4)(a), proceedings can be commenced in any court having jurisdiction in any place where the accused resides, is found, or was last known to reside. Under new subsection (4)(b), proceedings can be commenced in the court which convicted the accused of the offence to which the notification requirement relates. Under new subsection (4)(c), proceedings can be commenced in the court which has made a Sexual Offences Prevention Order (SOPO) under section 104(1)(b) of the 2003 Act in respect of the accused if that person is subject to the sex offender notification requirements by virtue of the SOPO. At present, section 91(4) only allows for proceedings to be commenced in any court having jurisdiction in any place where the person charged with the offence resided or was found.

Section 12A – Objection to content or finding of risk assessment report: conduct of proceedings

122. The Criminal Justice (Scotland) Act 2003 establishes the Order for Lifelong Restriction (OLR) as a new High Court disposal for high risk sexual and violent offenders. Before an OLR can be imposed, the court first makes a Risk Assessment Order under which a risk assessment is prepared by an assessor accredited by the Risk Management Authority. The offender may also instruct his own risk assessment, and has the opportunity to challenge the report prepared for the court. The procedure for objections to reports is contained in section 210C(7) of the Criminal Procedure (Scotland) Act 1995, and both the offender and prosecutor may cite witnesses. In practice, we expect that the witnesses called to give evidence in these proceedings will normally be the authors of the risk assessment reports themselves, but it is possible that witnesses to the offences referred to in the reports may be called.

123. The Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 and the Vulnerable Witnesses (Scotland) Act 2004 provide a range of measures designed to protect the complainer in sexual offence cases and vulnerable witnesses, including prohibitions on the accused conducting his own defence, restrictions on evidence relating to the complainer in sexual offence
These documents relate to the Management of Offenders etc. (Scotland) Bill as amended at Stage 2 (SP Bill 39A)

cases, and special measures such as television links, evidence on commission, use of screens etc. However these special protections apply only to the trial itself and to proceedings on victim statements. As things stand, they would not apply to the court proceedings under section 210C(7) dealing with objections to the content of risk assessments. There is therefore a risk, for example, that an offender could use these proceedings to try to cross-examine a vulnerable witness, even though he may have been prevented from doing this during the trial itself.

124. Section 12A inserts a new section 210EA into the Criminal Procedure (Scotland) Act 1995. This new section applies sections 271 to 271M, 274 to 275C and 288C to 288F of that Act so that the protections they provide in court proceedings will also apply to proceedings under section 210C(7). Subsection (4) ensures that where these protections were available during the trial for a particular witness, they will continue to apply during the later proceedings. Subsection (3) takes account of the fact that the risk assessments may include information about offences other than the one which gave rise to the trial, eg if the offender has a history of sexual offending, and ensures that the protections apply to these witnesses by extending the definitions of “accused”, “alleged” offence and “complainant” appropriately. Subsection (2) provides that, for the purposes of calculating the ages of witnesses in determining whether certain special measures apply, their age at the date of commencement of proceedings in the original trial is to be used.

Section 13 – recovery of criminal injuries compensation from offenders

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

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

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

128. These amendments are the conferring of the powers to make subordinate legislation on the Scottish Ministers rather than the Secretary of State and the insertion of a provision relating to Scottish Parliamentary procedure. There is also a necessary amendment to the law of prescription and limitation in Scotland, to mirror an amendment made to an equivalent statute applying only to England & Wales.
Section 14 – Further amendments and repeal

129. This section makes a number of amendments connected with the provisions in section 1 to 13 of this Bill. Amendments in relation to Home Detention Curfew provisions relate to enactments concerned with cross-border transfer of prisoners, repatriation of prisoners, the International Criminal Court, and remote monitoring of prisoners released on licence.

130. Subsection (1)(a)(i) amends section 27(1) of the Social Work (Scotland) Act to take account of any transfer of functions from local authorities to a community justice authority under section 7 of this Bill.

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

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

133. Subsection (2) introduces amendments to Section 27A of the Social Work (Scotland) Act 1968 to enable Ministers to provide funds to the community justice authority while retaining the power to provide funds directly to local authorities for the purposes of providing services under section 27 of that Act for complying with area plans or for other similar purposes that Ministers may prescribe. Provision is added to enable Ministers to attach such conditions to the payment of grant as they think fit.

134. Subsection (2A) introduces similar amendments, as in subsection (2), to Section 27B of the Social Work (Scotland) Act 1968.

135. Subsection (4) amends the Schedule to the Repatriation of Prisoners Act 1984. Prisoners repatriated to Scotland are eligible for early release, and the Schedule make provision about the calculation of appropriate parts of the sentence. The amendments ensure that these provisions apply appropriately to consideration for release on Home Detention Curfew and to the new arrangements for the release of certain sexual offenders, both provided for in section 11 of the Bill.

136. Subsection (4A) enables Ministers to make provision in the Rules, made under section 39 of the Prisons (Scotland) Act 1989, for the appointment of members of Prison Visiting Committees and Visiting Committees of Legalised Police Cells by specified community justice
authorities or local authorities (or a combination of the two), in place of the existing arrangements whereby appointment is by specified local authorities.

137. Subsection (4B) corrects a provision contained in section 32 of the Criminal Justice (Scotland) Act 2003 which will, when commenced, insert a new subsection into section 27 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The new subsection defines “wholly concurrent” and “partly concurrent” terms of imprisonment or detention.

138. Subsection (5) amends Schedule 1 to the Crime (Sentences) Act 1997. That Schedule deals with the transfer of prisoners and those subject to supervision between England and Wales, Scotland and Northern Ireland. Many of these transfers are “restricted” transfers, that is the prisoner remains subject to the law on early release as it applies in the sending jurisdiction. The amendments made here are to the provisions dealing with restricted transfers from Scotland to England and Wales and to Northern Ireland, and ensure that when necessary arrangements are in place with the corresponding jurisdictions, such prisoners will be eligible to be considered for release on Home Detention Curfew by the Scottish Ministers to an address in that jurisdiction to which they have been transferred, (it is noted that Northern Ireland currently has no system in place to carry out the remote monitoring of offenders released from custody). A minor error in paragraph 11(2) of the schedule is also corrected. The amendments also deal with the new arrangements for the release of certain sexual offenders provided for in section 11 of the Bill, to ensure that new section 1AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 applies as appropriate.

139. Subsections (6), (8), and (9) bring in minor amendments to ensure that references to “community justice authority” are compatible with local government references in existing legislation.

140. Section 24 of the International Criminal Court (Scotland) Act 2001 disapplies various provisions about release of prisoners in relation to persons detained in Scottish prisons serving a sentence imposed by the International Criminal Court. Subsection (7) adds sections 1AA and 3AA to the list, so that ICC prisoners are not eligible for Home Detention Curfew or release under section 1AA (release of certain sexual offenders).

141. Section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 makes special provision about the early release of children sentenced to detention following conviction on indictment. Although similar to the arrangements for release of adult prisoners, the Parole Board may recommend/direct the release of the child at any time, and all such releases are on licence. Given the existence of this early release provision, Home Detention Curfew is not available for section 7 cases. Section 40(1) of the Criminal Justice (Scotland) Act 2003 provides for the inclusion of remote monitoring conditions in licences under Part I of the 1993 Act (parole, non-parole, compassionate) However subsection (1) currently provides that such conditions can only be included if the person has reached the age of 16 at the point of release. It therefore prevents remote monitoring from being used for children released under section 7 of the 1993 Act. Subsection (10) amends subsection (1) of the 2003 Act to remove this age limit. Similar age limits in respect of Restriction of Liberty Orders were removed by section 121 of the Antisocial Behaviour &c. (Scotland) Act 2004.
MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

SUPPLEMENTARY FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament’s Standing Orders, this Supplementary Financial Memorandum is published to accompany the Management of Offenders etc. (Scotland) Bill as amended at Stage 2. The Bill was introduced on 4 March 2005. It has been prepared by the Scottish Executive to assist the reader of the Bill and help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The resource impact of the proposal to end unconditional release for short term sex offenders falls mainly on the Local Authorities and the SPS. Based on 2003 figures, taken from the Scottish Executive Court Proceedings database, it is estimated that around 80 additional offenders each year will be subject to the new licensing arrangements. In terms of supervision, it is estimated that 50-75 of these offenders will be on licence at any one time.

3. A proportion of these will breach their licence and could be subject to recall to custody. It is impossible to predict with any accuracy how many breaches/recalls will result over any given period. However, for indicative purposes, a figure of 25% has been assumed – although this is likely to be much higher than will actually be the case. On this basis and taking the highest number of offenders likely to be on licence at any one time (75), it is estimated that around 18 offenders may be recalled to custody and not immediately re-released. Based on recall taking place on average at the half-way point of a licence period, around 8-10 additional recalled offenders could be in custody in any one year.

Costs on the Scottish Administration

4. Scottish Prison Service: Pre-release work will fall to the Scottish Prison Service (SPS). This will be facilitated through case conferences and risk and needs assessments with the offender and relevant social work staff, both within and outwith the prison. It will also require SPS staff to prepare and submit a dossier to the Justice Department in order that they may consider release licence conditions. SPS estimates that this additional work will cost approximately £100,000 each year, with an additional £50,000 to accommodate up to 10 recalled prisoners in any one year.
Costs on the Parole Board

5. Dealing with breaches of the licence conditions imposed on these offenders will, for most cases, involve the Parole Board for Scotland. Under the proposed arrangements, Scottish Ministers may refer the case of any short term sex offender who has breached their licence conditions to the Parole Board for its consideration. The Board, operating within its existing powers, will then consider whether the offender should have their licence revoked and be returned to custody. The Board will also be responsible for directing their re-release on licence if appropriate. Around 80% of those recalled are likely to be offered an oral hearing before the Board reaches a conclusion about suitability for re-release. This estimate is based on the frequency of oral hearings for long term recalled determinate sentence offenders. The cost of conducting 15 (25% x 75 x 80%) additional oral hearings would be around £15,000.

Costs on Local Authorities

6. On the assumption of 75 additional licences to be supervised at any one time, the cost to criminal justice social work will depend on the level of supervision provided. Standard supervision costs on average £1,000 per person per year but a higher level of supervision would be required for sex offenders. In addition, prisoners may not have undertaken offence-focused programmes in prison because of the shortness of their sentences. The cost of programmes in the community must therefore be added. This, plus the higher level of supervision, is estimated to cost £5,000 per person per year or a total extra cost to local authorities of £375,000. In addition, a proportion of the group may also be tagged at a cost of an extra £1,000 per month or £12,000 per year. We have assumed an additional £180,000 per year to meet this cost of electronic monitoring. Based on 75 licensees at any one time, the overall cost of additional supervision package would therefore be £550,000. The costs of these additional services will be allocated to local authorities on a pro rata basis by the Executive as part of the existing 100% criminal justice funding arrangements.

Costs on police

7. ACPO(S) considers that there are no significant additional resource implications for the police.
CORRESPONDENCE FROM THE DEPUTY MINISTER FOR JUSTICE TO THE CONVENER OF THE JUSTICE 2 COMMITTEE, 25 OCTOBER 2005

I write in advance of Stage 3 of the Management of Offenders etc. (Scotland) Bill to provide further indication of where we intend to bring forward amendments at Stage 3. This follows from the commitment I made at Stage 2.

I intend to lodge some further amendments to the sections dealing with community justice authorities (CJAs). These are mostly amendments to tidy up the provisions and references, and also further refinements to the provisions dealing with the transfer of functions, to respond to stakeholder views. As I indicated at Stage 2, this includes further amendment enabling CJAs to undertake certain Scottish Prison Service functions.

At Stage 2, in presenting the amendments to section 9 of the Bill to include Health Boards as a responsible authority, but only as regards what might be described as “mentally disordered offenders”, I mentioned, because of the complexity in developing the amendment and describing the category of offender covered, that it might be necessary to further refine the definition of mentally disordered offenders by amending at Stage 3. It is my intention to do this.

Also at Stage 2, Committee agreed to an amendment to end unconditional release for short term sex offenders sentenced to imprisonment for 6 months or more. At the time, I committed to look at whether, on coming into force, the change could be applied to relevant offenders who were already serving a sentence of imprisonment for a relevant offence. We have concluded that it is possible to extend the provisions in this way. I therefore intend to bring forward an appropriate amendment at Stage 3.

I am currently considering bringing forward an amendment that would allow the Scottish Prison Service to investigate additional sample collection methods when testing for drugs. I am also considering whether to add provisions to the Bill to deal with an issue, which has arisen very recently, in respect of progress review hearings during the course of a probation order. This has been prompted by a High Court ruling in August which found in favour of a complainant who had contended that the fixing of such hearings was legally incompetent. An amendment would seek to provide courts with an enabling power to hold a review hearing where considered appropriate. Furthermore, I am considering an amendment to provide for early commencement of section 10A, containing the provisions, inserted at Stage 2, which deal with the Risk Management Authority.

I hope that you find this summary of the current position with Executive amendments helpful. I am happy to provide any further explanation, should you require it. I would like to express my thanks to Committee for the work you have undertaken so far on the Bill and I look forward to working with members as the consideration continues into Stage 3.

Hugh Henry MSP
Deputy Minister for Justice
Dar Annabel

I undertook to inform you of any amendments we intend to lodge at stage 3. I wrote to you on 25 October giving you notice of a number of amendments. I am writing to inform you of a late amendment we will lodge today. I apologise for drawing your attention to this at such short notice, however it is only very recently that we were able to formulate an amendment which would have the desired effect.

The amendment will confer a new power on Her Majesty’s Chief Inspectors of Constabulary and of Prisons in Scotland, and Social Work inspectors to co-operate in conducting their inspections of the provision of services to “relevant persons”, as defined in section 1(2)(b) of the Bill. The intention of the amendment is to allow cooperation between inspectorates, including the sharing of information, to assist the inspectorate in assessing the extent to which services are co-ordinated as required by various provisions in the Bill.

It may be appropriate to allow other inspectorates in the future to have this power. For this reason the amendment includes provision to alter the list of designated inspectorates by Order. As there may be concerns surrounding the disclosure of information regarding individuals, I believe that such an Order should be made by affirmative procedure in the Parliament to ensure due consideration of any change to the list of inspectorates.

I hope that this letter is helpful.

Best wishes,

CATHY JAMIESON
Management of Offenders etc. (Scotland) Bill: The Committee took evidence on the Supplementary Financial Memorandum from –

Jane Richardson, Head of Parole and Life Sentence Review Division, Scottish Executive.
Management of Offenders etc (Scotland) Bill: Financial Memorandum

13:19

The Convener: If members can bear with us, I do not think that this item will take terribly long.

I welcome to the meeting Jane Richardson, the head of parole and life sentence review at the Scottish Executive Justice Department, who will answer members’ questions on the financial memorandum to the Management of Offenders etc (Scotland) Bill and additional costs that might arise as a result of amendments agreed at stage 2. As members will recall, we agreed that, if a supplementary financial memorandum had to be produced for a bill, we would take evidence from Executive officials where possible and that, if we still had any concerns about costs, I would raise them on the committee’s behalf during the stage 3 debate.

I apologise to Jane Richardson for keeping her waiting. I would have thought that the information that you have provided is relatively self-explanatory, but do you want to add anything to it?

Jane Richardson (Scottish Executive Justice Department): No. We hope that the minister’s letter and the supplementary financial memorandum are as comprehensive and as helpful as possible. We have nothing to add to them.

The Convener: You have made no statement about the Scottish Prison Service. Are you assuming that the additional costs can be absorbed by the SPS’s existing budget with no knock-on effects?

Jane Richardson: Yes.

The Convener: As there are no further questions, I thank Jane Richardson for coming along to give that brief response. I also thank members for their forbearance and for staying with the meeting. We will ensure that things are run more tightly next week.

Meeting closed at 13:21.
Delegated powers scrutiny: The Committee agreed to raise points with the Executive on the delegated powers provisions in the following bill —

Management of Offenders (Scotland) Bill as amended at Stage 2.
Delegated Powers Scrutiny

Management of Offenders etc (Scotland) Bill: as amended at Stage 2

10:31

The Convener: The delegated powers memorandum to the Management of Offenders etc (Scotland) Bill came rather late. It arrived within the timescale, but the fact that it got to us quite late presented a certain amount of difficulty. However, sterling work has been done, as ever, by our legal team and the clerks. Members will note that a number of issues arise.

The first point concerns section 7, which is headed “Transfer of functions to community justice authority”. The bill was amended at stage 2 to include additional functions in orders made under sections 7(1) and 7(2). Section 7(5) was also amended at stage 2 to include a duty on ministers to consult relevant local authorities and the community justice authority, and to obtain agreement with all of them before laying a draft order. We made various points about that at stage 1. We would perhaps have liked some acknowledgement that we did so, but I suppose that we should be happy that our input has been taken on board. Are there any further points?

Mr Stewart Maxwell (West of Scotland) (SNP): I have no further points to make, but I would say that there has been a curious turnaround in the Executive’s position. We argued our point, but we were dismissed out of hand. Then, the Executive went from opposing what we said to not just agreeing with it, but going further and adopting a very strong position based on the idea that the other bodies concerned effectively have a veto. That is a very different position from the one that the Executive was maintaining not so long ago. It is strange. I would have liked some explanation as to why such a turnaround was made.

The Convener: We have the correspondence that has been going backwards and forwards, but we have not received a fuller explanation of the Executive’s position. I do not see any reason why we cannot ask for that.

Mr Maxwell: It was just curiosity on my part.

The Convener: Is it agreed that we write back to the Executive to request such an explanation? We are obviously happy, at any rate, with the result that has been achieved.

Members indicated agreement.

The Convener: The second point is on section 10A, which is entitled “Scheme of accreditation and procedure etc of the Risk Management Authority”.

The provision amends section 11 of the Criminal Justice (Scotland) Act 2003, which regulates the accreditation scheme to be put in place by Scottish ministers. It specifies that an order made under section 11 of the 2003 act may authorise decisions and appeals to be taken by committees of risk management authorities. Are we happy with that provision?

Members indicated agreement.

The Convener: I welcome Adam Ingram to the meeting.

We now come to section 11(1B), which amends the Prisoners and Criminal Proceedings (Scotland) Act 1993. It adds new section 1AA, which is headed “Release of certain sexual offenders”. Section 11(1B) does not create a new delegated power but, in introducing new section 1AA into the 1993 act, it will have an indirect bearing on a rule-making power in section 20 of that act. However, there do not appear to be any points of concern in relation to that. Do members have any points to raise on the matter?

Mr Maxwell: I have a question. I might be mistaken, but I understood that, under the new rule on early release, sexual offenders were not included—that they were one of the categories to be exempted from the provision. Do I understand correctly that, effectively, certain sexual offenders would in fact be entitled under the early release scheme?

The Convener: We do not know the answer to that question. I think that we should ask the
Executive. There has been a lot of discussion about the matter in the Parliament, so there should be no problem trying to get clarification on it. I propose that we write to that effect.

Mr Maxwell: I presume that it relates to the part of the Management of Offenders etc (Scotland) Bill that provides for home detention curfews. The Minister for Justice came before the Justice 2 Committee, and I understood her to say that sexual offenders would not be considered for release under the home detention curfew.

The Convener: I think that that is right, but there is no harm in getting clarification on the matter.

Mr Maxwell: That would be useful.

The Convener: There are no further points of clarification to raise in our letter on the Management of Offenders etc (Scotland) Bill.
SUBORDINATE LEGISLATION COMMITTEE

EXTRACT FROM THE MINUTES

29th Meeting, 2005 (Session 2)

Tuesday 1st November, 2005

Present:

Gordon Jackson (Deputy Convener)  Dr Sylvia Jackson (Convener)
Mr Kenneth Macintosh  Mr Stewart Maxwell

Apologies were received from Mr Adam Ingram and Murray Tosh.

Delegated powers scrutiny: The Committee considered a response from the Executive on the delegated powers provisions in the following bill —

Management of Offenders etc. (Scotland) Bill as amended at Stage 2

and agreed the terms of its report.
On resuming—

Delegated Powers Scrutiny

Management of Offenders etc (Scotland) Bill: as amended at Stage 2

The Convener: Any minor points that arise during our scrutiny of bills and instruments will be picked up together and put in an informal letter.

First, we come to the Management of Offenders etc (Scotland) Bill, as amended at stage 2. Members will remember that we raised two matters with the Executive. The first of those related to section 7(2), on the transfer of functions to the community justice authorities. The committee noted that the bill had been amended at stage 2 to include a duty on ministers to consult relevant local authorities and community justice authorities before laying a draft order before the Parliament. We suggested that that should be so and the Executive has said that it will do it, but we wondered why there had been a turnaround. The Executive’s reply states that it had regard to the comments that we made and to other feedback, and considered that a turnaround was appropriate.

The second point related to section 11(1B), which seeks to introduce new section 1AA, on the release of certain sexual offenders, into the Prisoners and Criminal Proceedings (Scotland) Act 1993. Stewart Maxwell raised a point of clarification on that last week.

Mr Maxwell: There seemed to be some dubiety about which section of the bill would be affected by what we had in front of us. I was concerned that it would affect the part to do with home detention curfews. However, on further examination, and with the helpful explanation from the Executive, it is clear that that is not the case and that it is a policy issue, which does not apply to this committee’s work. I am happy with that now.

The Convener: Members will see a letter that we received from Cathy Jamieson on this week’s stage 3 debate on the Management of Offenders etc (Scotland) Bill. She has given us advance notice of an amendment about a new power. Does the committee have any concerns about that?

Mr Maxwell: I have no particular concerns about the power that has been suggested. I am slightly concerned, however, about the late notification of the amendment. The stage 3 debate is this Thursday afternoon, and we have been handed the letter on the matter only now. That does not give us any time to examine the new proposal in any detail—or at all. Having inspected the proposal briefly, I think that the power looks okay, apart from that.

The Convener: I am assuming that negotiations on the matter were on-going in the course of stage 2. I welcome the proposal in as much as we have found out about it before the stage 3 debate. I see your point, however. I am assuming that the need for the power was established very late in the day.

Mr Macintosh: I, too, suspect that the Executive did not know until recently that it needed the power. It presumably thought that the inspectors could co-operate without such a specific power. Having discovered that it was required, the Executive was forced to take action speedily.

The Convener: Absolutely. We can certainly listen to the stage 3 debate on the power. I am sure that any one of us can jump up and ask relevant questions.

Mr Macintosh: In any case, I think that we can say that we welcome the power.
Subordinate Legislation Committee

37th Report, 2005 (Session 2)

Delegated Powers of Management of Offenders etc. (Scotland) Bill as amended at Stage 2
Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

   (a) any-

      (i) subordinate legislation laid before the Parliament;

      (ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter,

   and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

   (c) general questions relating to powers to make subordinate legislation; and

   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Dr Sylvia Jackson (Convener)
Mr Adam Ingram
Gordon Jackson (Deputy Convener)
Mr Kenneth Macintosh
Mr Stewart Maxwell
Mike Pringle
Murray Tosh
Committee Clerking Team:

Clerk to the Committee
Ruth Cooper

Senior Assistant Clerk
David McLaren

Assistant Clerk
Jake Thomas

Support Manager
Catherine Fergusson
The Committee reports to the Parliament as follows—

Introduction

1. At its meetings on 25 October and 1 November 2005, the Committee considered the inserted or substantially amended delegated powers provisions in the Management of Offenders etc. (Scotland) Bill as amended at stage 2. The Committee reports to the Parliament on such provisions under Rule 9.7.9 of Standing Orders.

2. Under Rule 9.7.10, the Executive provided a supplementary delegated powers memorandum (“DPM”) to the Committee, which is published at Annex A to this report.

Delegated powers

The Committee considered all of the powers as set out in the DPM and is content with the following as drafted: section 7(1), new section 10A and new section 11(1B) (New section 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993).

Section 7(2) and 7(5) – Transfer of functions to CJA

3. The Committee noted that the bill had been amended at stage 2 to include at section 7(5) a duty on Ministers to consult with relevant local authorities and with the Community Justice Authority before laying a draft Order before the Parliament under section 7(2). The Executive had indicated at stage 1, in answer to points raised by the Subordinate Legislation Committee on this issue, that it did not intend to include specific duties to consult in the Bill.

4. The Committee therefore asked for the reason for the change of approach. The Executive, in its response, stated that it had taken regard of the comments made by the Committee and others at Stage 1, and considers the new measures to be more appropriate. The Committee was content with this response.
ANNEX A

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

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.

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).

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)

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.

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.

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.

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.

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.

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*

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).

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.
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.

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.
ANNEX B

Management of Offenders etc. (Scotland) Bill as amended at Stage 2

1. On 25 October 2005 the Committee asked for an explanation of the following matters –

1. **Section 7(2): Transfer of functions to CJA**

The Committee noted that the Bill has been amended at Stage 2 to include a duty on Ministers to consult with relevant local authorities and with the Community Justice Authority before laying a draft Order before the Parliament. The issue of consultation was raised by this Committee during its consideration of the delegated powers at Stage 1. At that time, the Executive indicated that it did not consider that it was necessary to include specific duties to consult in the Bill.

The Committee, therefore, asks why the Executive has changed its approach in relation to this matter.

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

The Committee seeks clarification of the full impact that the new section 1AA in section 11(1B) will make to the existing 2003 Act in relation to the release of sexual offenders.

2. The Scottish Executive responds as follows –

1. In her letter dated 3 May 2005 the Clerk to the Committee reported that the Committee wished to have an explanation of the Executive’s proposals for consultation in relation to subordinate legislation under 4 separate provisions, namely sections 2(1), 5(12), 7(2) and 14(1)(b).

In its reply to that letter the Executive stated that it did not consider it appropriate to impose a statutory requirement to consult before making subordinate legislation although, as a matter of practice, consultation is normally undertaken. That remains the position as regards sections 2(1), 5(12) and 14(1)(b). The specific requirement regarding consultation highlighted by the Committee in the letter dated 25 October 2005 relates only to Orders made under section 7(2).

The Executive has had regard to comments made by the Subordinate Legislation Committee, by members during the Parliamentary Stages of this Bill and by stakeholder groups and partner bodies. Taking all of these comments together the Executive has concluded that as regards Orders made under section 7(2) it would be appropriate to include in the Bill a requirement to consult with affected local authorities and the Community Justice Authority and only to proceed with the making of the Order if those consulted have confirmed their agreement. This represents a departure from the Executive’s normal practice as regards consultation before making subordinate legislation but it is satisfied that in the
particular circumstances of this case the measures proposed in section 7 of the Bill are appropriate.

2. Section 11(1B), which was added to the Bill at Stage 2, inserts new section 1AA in the 1993 Act. This provides that certain short-term prisoners, who would otherwise be released unconditionally after serving one half of their sentence, will instead be released on licence and will be subject to supervision and other conditions. The new section does not alter the point of release, but simply the post-release regime. The section applies only to prisoners who are subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (ie those who are on the “Sex Offenders Register”).

In contrast, section 11(3) of the Bill inserts a new section 3AA in the 1993 Act to provide for Home Detention Curfew (HDC). Prisoners granted HDC would be released before they become eligible for automatic early release at half-sentence, but would be subject to licence conditions including an electronically monitored curfew. The scheme is intended for low risk prisoners, and section 3AA specifically excludes certain classes of prisoner. One such exclusion (section 3AA(5)(d)) is for any prisoner subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.

The provisions are therefore mutually exclusive. Sex offenders are automatically ineligible for HDC and are instead covered by the new release arrangements in section 1AA.

Scottish Executive Justice Department
Management of Offenders etc. (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 18 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

After section 1

Hugh Henry

3 After section 1, insert—

<Co-operation for purposes of inspections
(1) Where any person mentioned in subsection (2) is conducting an inspection of the provision of services to relevant persons, the persons mentioned in that subsection may co-operate with one another for the purposes of that inspection.
(2) The persons are—
(a) Her Majesty’s Chief Inspector of Prisons for Scotland;
(b) Her Majesty’s Chief Inspector of Constabulary;
(c) a person authorised under section 6(1) of the Social Work (Scotland) Act 1968 (c.49) (supervision of establishments providing accommodation for persons and inspection of records etc.).
(3) The Scottish Ministers may by order made by statutory instrument amend the list of persons in subsection (2).
(4) A statutory instrument containing an order under subsection (3) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.>

Section 2

Mr Jim Wallace

25 In section 2, page 2, line 6, at end insert—

<( ) An order under subsection (1) may specify the area of a single local authority as the area of a community justice authority.>

Mr Jim Wallace

26 In section 2, page 3, line 17, at end insert—
Where a plan under subsection (5)(a)(i) is being prepared by a community justice authority which includes the area covered by Orkney Islands Council, Shetland Islands Council or Comhairle nan Eilean Siar, the authority is to prepare a separate plan for each of those areas and to agree that plan with the local authority covering that area.

Section 3

Mr Jim Wallace

In section 3, page 5, line 18, at end insert—

Where a community justice authority area consists of the area of a single local authority, an officer of that local authority may be appointed as chief officer of the community justice authority.

Section 4

Hugh Henry

In section 4, page 6, line 7, at end insert <; and in subsection (2), “partner bodies” means such persons as are designated by order under section 2(16) as partner bodies>

Section 5

Hugh Henry

In section 5, page 6, line 24, leave out <the> and insert <Her Majesty’s>

Jackie Baillie

In section 5, page 6, line 30, after <period> insert <(being not less than 14 days)>

Hugh Henry

In section 5, page 6, line 36, leave out <notice> and insert <direction>

Section 7

Hugh Henry

In section 7, page 8, line 21, leave out <subsection (5)> and insert <subsections (5) and (6)>

Hugh Henry

In section 7, page 8, line 23, leave out <to which this section applies> and insert <mentioned in paragraph (a) of subsection (1)>

Hugh Henry

In section 7, page 8, line 30, at end insert—
A community justice authority and the Scottish Ministers may jointly determine that a function mentioned in paragraph (b) of subsection (1) is (within the area of that authority) to be exercisable on behalf of the Scottish Ministers by the authority.

Hugh Henry

11 In section 7, page 8, line 37, leave out <have>

Hugh Henry

12 In section 7, page 8, line 38, at beginning insert <have>

Hugh Henry

13 In section 7, page 8, line 41, at beginning insert <subject to subsection (6), have>

Hugh Henry

14 In section 7, page 9, line 4, at end insert—

(6) Where it is proposed to make an order under subsection (2) and a function exercisable by any of Orkney Islands Council, Shetland Islands Council and Comhairle nan Eilean Siar would, but for this subsection, become exercisable by a community justice authority were the order made, the council in question may, before the draft of the statutory instrument containing the order is laid before the Parliament, opt to retain the function; and where the council so opt then—

(a) within the area of the council the function is to continue to be exercisable by them and not by the community justice authority (the draft being modified accordingly before being laid), and

(b) subsection (5)(b)(ii) does not require the Scottish Ministers to secure the agreement of the council to the draft being laid.

Section 9

Hugh Henry

15 In section 9, page 11, line 5, leave out from <both> to end of line 9 and insert <to an order under section 57(2)(b) of the Criminal Procedure (Scotland) Act 1995 (c.46) (imposition of special restrictions in disposal of case where accused found to be insane);>

Hugh Henry

16 In section 9, page 11, line 10, leave out from <both> to end of line 12

Hugh Henry

17 In section 9, page 11, line 24, leave out <(c)> and insert <(d)>
After section 10

Hugh Henry

18 After section 10, insert—

<Probation progress review

(1) The Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows.

(2) After section 229 insert—

“229A Probation progress review

(1) A court may, in making a probation order, provide for the order to be reviewed at a hearing held for the purpose by the court.

(2) The officer responsible for the probationer’s supervision is, before the hearing, to make a report in writing to the court on the probationer’s progress under the order.

(3) The probationer must, and that officer may, attend the hearing.

(4) The hearing may be held whether or not the prosecutor elects to attend.

(5) Where the probationer fails to attend the hearing the court may issue a warrant for his arrest.

(6) At the hearing the court, after considering the report made under subsection (2) above, may amend the probation order.

(7) But before amending the order the court is to explain to the probationer, in ordinary language, the effect of making the amendment; and may proceed to make it only if the probationer expresses his willingness to comply with the requirements of the order as amended.

(8) Sub-paragraph (2) of paragraph 3 of Schedule 6 to this Act applies to amending under subsection (6) above as that sub-paragraph applies to amending under sub-paragraph (1) of that paragraph.

(9) At the hearing the court may provide for the order to be reviewed again at a subsequent hearing held for the purpose by the court; and subsections (2) to (8) above and this subsection apply in relation to a review under this subsection as they apply in relation to a review under subsection (1) above.”.

(3) In section 232(2) (powers of court where satisfied that a probationer has failed to comply with a requirement of his probation order), after the words “subsection (1) above” insert “or of section 229A of this Act”.

Section 11

Hugh Henry

19 In section 11, page 13, line 23, leave out <if the conviction in respect of which the sentence mentioned in subsection (2)(a) above was imposed preceded> and insert <who was released under section 1(1) of this Act in relation to the sentence mentioned in subsection (2)(a) above before>
Hugh Henry

20 In section 11, page 13, line 26, at end insert "(except that where the prisoner is serving terms which by virtue of section 27(5) of this Act fall to be treated as a single term, the reference in the preceding provisions of this subsection to his being released in relation to the sentence mentioned in subsection (2)(a) above is to be construed as a reference to his being released in relation to the single term)"

Miss Annabel Goldie

1 Leave out section 11 and insert—

<Amendment of Prisoners and Criminal Proceedings (Scotland) Act 1993

(1) The 1993 Act is amended as follows, but only for the purposes of its application to prisoners whose sentences were imposed on or after the date on which this section comes into force.

(2) In section 1 (release of prisoners), for subsections (1) to (3) substitute—

“(1) As soon as—

(a) a short-term prisoner; or

(b) a long term-prisoner,

has served five sixths of his sentence, the Scottish Ministers may, if recommended to do so by the Parole Board under this section, release him on licence.”.

(3) In section 12 (conditions in licence), after subsection (2) insert—

“(2A) Without prejudice to the generality of subsection (1) above, a licence granted under this Part of this Act may, if so recommended by the Parole Board, include a curfew condition.

(2B) For the purposes of this Part, a curfew condition is a condition which—

(a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified; and

(b) may require him not to be in a place, or class of place, so specified at a time or during a period so specified.

(2C) The curfew condition may specify different places, or different periods, for different days but a condition such as is mentioned in paragraph (a) of subsection (2B) above may not specify periods which amount to less than nine hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).

(2D) A curfew condition shall apply for such period (not extending beyond the date on which the released person would, but for his release under section 1 of this Act, have completed his sentence of imprisonment) as the Parole Board may recommend.

(2E) A curfew condition is to be monitored remotely; and subsections (3) to (7) of section 40 of the Criminal Justice (Scotland) Act 2003 (asp 7) apply in relation to the remote monitoring of a curfew condition as they apply in relation to a condition imposed under subsection (2) of that section.”.>
After section 11

Hugh Henry

21 After section 11, insert—

<Testing prisoners for drugs

Testing prisoners for drugs
In section 41B of the Prisons (Scotland) Act 1989 (c.45) (testing prisoners for drugs)—
(a) in subsection (1), after the word “urine” insert “or saliva”;
(b) in subsection (2), at the end add “or saliva”; and
(c) in subsection (3)—
(i) in the definition of “intimate sample”, for the words from “blood” to the end substitute “—
( a) blood, semen or any other tissue fluid;
( b) pubic hair; or
( c) material from a body orifice other than the mouth;”;
(ii) the word “and” which immediately follows the definition of “drug” is repealed; and
(iii) at the end add “; and
“saliva” includes oral fluid”.

Section 14

Hugh Henry

22 In section 14, page 22, line 21, leave out <27(1B)> and insert <27(1D)>

Section 15

Miss Annabel Goldie

2 In section 15, page 24, line 3, after <(2)> insert <; or

( ) under section 17(2), bringing section (Amendment of Prisoners and Criminal Proceedings (Scotland) Act 1993) into force.

Section 17

Hugh Henry

23 In section 17, page 24, line 16, after <sections> insert <10A,>
Hugh Henry

24 In the long title, page 1, line 8, after <licence;> insert <to make further provision for testing prisoners for drugs;>
Management of Offenders etc. (Scotland) Bill

Groupings of Amendments for Stage 3

Note: The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Co-operation for purposes of inspections
3

Group 2: Community justice authorities – area covered and island authorities
25, 26, 27, 8, 11, 12, 13, 14

Group 3: Minor amendments
4, 5, 7, 22

Debate to end no later than 30 minutes after proceedings begin

Group 4: Failure by community justice authority – time for response to preliminary notice
6

Group 5: Transfer of functions to community justice authorities
9, 10

Group 6: Assessing and managing risks posed by certain offenders – role of Health Boards
15, 16, 17

Group 7: Probation progress review
18

Debate to end no later than 55 minutes after proceedings begin

Group 8: Release of certain sexual offenders
19, 20

Group 9: Change to early release of prisoners
1, 2

Group 10: Testing prisoners for drugs
21, 24

Group 11: Scheme of accreditation and procedure etc. of the Risk Management Authority – commencement
23

Debate to end no later than 1 hour 20 minutes after proceedings begin
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 3, No. 30       Session 2

Meeting of the Parliament

Thursday 3 November 2005

Note: (DT) signifies a decision taken at Decision Time.

Business Motion: Ms Margaret Curran, on behalf of the Parliamentary Bureau, moved S2M-3504—that the Parliament agrees that, during Stage 3 of the Management of Offenders etc. (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated (each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress):

Groups 1 to 3 - 30 minutes
Groups 5 to 7 - 55 minutes
Groups 8 to 11 - 1 hour and 20 minutes.

The motion was agreed to.

Management of Offenders etc. (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to without division: 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24

Amendment 1 was disagreed to (by division: For 14, Against 96, Abstentions 0)

The following amendments were moved and, with the agreement of the Parliament, withdrawn: 25 and 6

Amendments 26, 27 and 2 were not moved.

Management of Offenders etc. (Scotland) Bill: The Minister for Justice (Cathy Jamieson) moved S2M-3436—that the Parliament agrees that the Management of Offenders etc. (Scotland) Bill be passed.

After debate, the motion was agreed to ((DT) by division: For 96, Against 20, Abstentions 0).
The Deputy Presiding Officer (Murray Tosh): The next item of business is consideration of business motion S2M-3504, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Management of Offenders etc (Scotland) Bill.

Motion moved, That the Parliament agrees that, during Stage 3 of the Management of Offenders etc (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated (each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress):

Groups 1 to 3 - 30 minutes
Groups 5 to 7 - 55 minutes
Groups 8 to 11 - 1 hour and 20 minutes—[Ms Margaret Curran.] Motion agreed to.
Management of Offenders etc (Scotland) Bill: Stage 3

14:55

The Deputy Presiding Officer (Murray Tosh):
We move now to stage 3 proceedings on the Management of Offenders etc (Scotland) Bill. I will begin with the normal announcement about the procedures to be followed. We will deal with the amendments to the bill and then move on to the debate on the motion to pass the bill. For the first part, members should have the bill—that is, SP Bill 39A—as amended at stage 2; the marshalled list, which contains all the amendments that have been selected for debate; and the agreed groupings.

In relation to amendments, the division bell will sound and proceedings will be suspended for five minutes for the first division. The period of voting for that first division will be 30 seconds. This is the first time that we have used the division bell in this context. Thereafter, I will allow a voting period of one minute for the first division after a debate on a group. All other divisions will be 30 seconds.

After section 1

The Deputy Presiding Officer: The first group is on co-operation for purposes of inspections. Amendment 3, in the name of the minister, is in a group on its own.

The Deputy Minister for Justice (Hugh Henry):
The bill contains a number of provisions that are designed to achieve closer working among those charged with the delivery of offender management services. Indeed, that is the thinking behind the creation of community justice authorities. It will be important to be able to gauge the success of those provisions in improving the co-ordinated delivery of services.

Assessing the performance of the prison and police services, social work services and the community justice authorities in delivering joined-up services will in itself require joined-up working. Amendment 3 establishes a power for social work inspectors, Her Majesty’s chief inspector of constabulary for Scotland and Her Majesty’s chief inspector of prisons for Scotland to co-operate in their assessment of the delivery of services to offenders.

Because co-operation is defined in the bill as including information sharing, the provision will put beyond doubt that those bodies may share information about the services that are being delivered for offenders. That will be crucial if we are truly to create an offender-centred management regime. The power will enhance the inspection of offender management services.

I acknowledge that, in future, it may be appropriate to include other inspectorates, such as those that deal with health services. I am, however, conscious of sensitivities surrounding the sharing of information about individuals. Consequently, I feel that it is only right that any alteration to the list of designated inspectorates can be made by an order under the Parliament’s affirmative procedure only.

I move amendment 3.

Mr Stewart Maxwell (West of Scotland) (SNP):
I support amendment 3. It is very sensible and it clears up any doubts that there may have been—although I do not think that there were any—on the need for co-operation.

I have only one question about amendment 3: why did it come so late in the procedure? At no point during the Justice 2 Committee’s stage 2 deliberations was the issue raised, and the Subordinate Legislation Committee—which received the amendment because of the statutory instrument power within it—did not receive it until its meeting on Tuesday morning and so had very little time to consider it. Why did it take until stage 3 before amendment 3 was lodged?

Hugh Henry rose—

The Deputy Presiding Officer: I will call Bill Aitken first and let you wind up at the end, minister.

Bill Aitken (Glasgow) (Con):
Mr Maxwell raises a point that had occurred to me, too. It is unusual that a fairly commonsense amendment should be lodged at the 11th hour and almost the 59th minute.

What is proposed is generally acceptable to us, but it would have saved us a little bit of time if the matter had been introduced much earlier when it could comfortably have been disposed of in committee.

Hugh Henry: I acknowledge that it is always best to give as much notification as possible and to bring things to committee early. In the development of all pieces of legislation—and this one is no different—we look to find where we can improve things. We look for any oversights and we look to find ways of accommodating comments made by committees and others.

I apologise for the delay but we felt that amendment 3 was important. We understand that it would have been desirable to deal with the matter earlier but it was brought to our attention late in the process. As soon as the matter came to our attention, we addressed it.

Amendment 3 agreed to.
Section 2—Community justice authorities

The Deputy Presiding Officer: Group 2 is on community justice authorities—area covered and island authorities. Amendment 25, in the name of Jim Wallace, is grouped with amendments 26, 27, 8, 11 and 12 to 14.

Mr Jim Wallace (Orkney) (LD): The issue of community justice authorities and island authorities has a long history. The Deputy Minister for Justice will know that from the earliest stages Orkney Islands Council and Western Isles Council, in particular, flagged up concerns about potential problems with the incorporation of their areas into a community justice authority covering the whole of the north of Scotland. I am grateful to ministers for the meetings that we have had and the correspondence that we have entered into.

I appreciate that amendment 25 would probably not add anything to the bill because it will be possible to set up a community justice authority that covers a single local government area in any case. However, since I lodged my amendments I have had further discussions with the convener and officials of Orkney Islands Council, and meetings on the matter took place last Friday at the margins of a Convention of Scottish Local Authorities meeting. As a result of those meetings, the amendment that I wish to focus on today is amendment 26, which seeks to ensure that there are separate plans for each island area within the community justice authority plan for the north of Scotland.

I will indicate why there is a case for treating the islands separately. The strategic plans of the three island communities are different from the mainland plans. Any crime is damaging to the victims, but in Orkney we are fortunate to have a relatively low crime rate and only a small number of people receive custodial sentences.

I offer an interesting insight into the way in which island communities are different. Recently, a solicitor in Orkney reported that, under some new rules by Reliance, people who have been convicted and given a prison sentence or remanded in custody are being taken off the island without an opportunity to meet their family before they go. If that happened in Edinburgh, there would be a visiting time relatively shortly thereafter and the family could go and visit the person, but if someone is taken from Orkney to Inverness it will be nigh on impossible for members of their family to have ready access to them. That is an example of the problems that are specific to island communities.

Another problem is the cost of travel. If the community justice authority is based in Aberdeen or Inverness, it might not be possible for people from the island communities to go to a meeting and return later in the day. Often, the meeting will involve an overnight stay—or perhaps two overnight stays, with one at either end. That will be costly and will take up the time of senior officials, which could be used for other work.

Videoconferencing is not the whole answer. A similar area is covered by the social work learning network. When I discussed the matter with social work officials on Monday, an official who is involved in the north of Scotland learning network said:

“the geography of our region, in which population and partners are concentrated in the Aberdeen nexus, has the unfortunate consequence that the northern isles, facing disproportionate high travel costs and time, have not been as influential as we would like. The costs include flights and a whole day out of the islands.”

We must address those practical issues in setting up the community justice authorities.

As I indicated at question time some weeks ago, the performance of Orkney’s criminal justice social work department deserves to be commended. On social inquiry reports, Orkney Islands Council came first out of the 32 Scottish councils in 2001-02, 2002-03 and 2003-04. It allocated 100 per cent of reports within two days and provided 100 per cent of reports to court on time. It is difficult to see how that performance can be improved on, but perhaps we will hear about that later.

On probation orders, Orkney Islands Council was ranked first in 2001-02, 2002-03 and 2003-04 for seeing new probations within one week, with 100 per cent compliance. On community service orders, Orkney Islands Council was ranked first in 2001-02 for average hours of community service completed per week. In 2002-03 and 2003-04, the council’s performance was higher than the Scottish average. In 2004-05, the supported accommodation service for offenders that is provided by Safeguarding Communities—Reducing Offending—SACRO—achieved an occupancy outturn of more than 75 per cent.

The latest quarterly indications from the Scottish Children’s Reporter Administration—for July to September 2004—ranked Orkney first out of the 32 Scottish councils for youth justice performance across a range of indicators, including the percentage of persistent offenders and the number of social work reports that were submitted on time. There is therefore a good track record that we want to make sure continues into the future, and I am sure that ministers share that aspiration.

In a letter to me, the Minister for Justice stated

“I do remain convinced that the islands authorities have much to gain from involvement within a larger Community Justice Authority.”
It would certainly be useful to put on the record precisely what gains are anticipated.

Amendment 14, in the name of the deputy minister, would allow the islands authorities to opt out of the transfer of specific functions while not holding back the mainland authorities, and that is very welcome. However, I ask the deputy minister to take this opportunity to put on record some of the issues that we have discussed and which the Minister for Justice has put to me in correspondence.

Staffing is a particular concern. In small authorities that have small social work departments, those who are engaged in criminal justice social work are often also engaged in other fields of social work. If they were to be ring fenced in some way so that they could do only criminal justice social work, that would put strain on other parts of the social work department, such as weekend cover. It is therefore important that we get some understanding of the staffing position so that the islands authorities will be able to retain their staff and so that there will be no financial detriment to the islands authorities if they are part of a wider community justice authority.

It is not just a question of the islands authorities being able to keep staff; we also need to ensure that funding is in place to allow them to do so. If there is to be new development money in future, the islands ought to get their share of it. That is why I ask for separate plans for the islands authorities to be included in the overall plan for the community justice authority. It would be useful if the deputy minister could indicate that separate plans would be required by ministers when the CJA plan is submitted to them.

Although this might be premature, it might be helpful if, in the same way as the police and fire authorities function, the CJA was to operate a system of rotating meetings so that people from the islands do not always have to go Inverness or Aberdeen, and people from Inverness and Aberdeen could come to enjoy island life in Lerwick, Kirkwall or Stornoway.

If the islands authorities are to be members of a community justice authority, they should be full members. That will require ministers to indicate what they intend to do with the weighting of votes, as happened with the new transport bodies.

The Minister for Justice has already gone a considerable way towards addressing many of my concerns. I will listen carefully to what is said in response to my amendments. It would be helpful to get on the record some reassurance for the islands communities if the community justice authorities are to go ahead.

I move amendment 25.

Hugh Henry: We are certainly aware of some of the specific issues identified and questions raised by Jim Wallace, and we are also aware of the concerns expressed by the islands authorities.

Performance is not just about speed; it is about access to the latest developments in professional practice and access to networks. Of course, good practice is a two-way process. What we are proposing is not just about Orkney learning from others but, potentially, about taking some of the progress identified by Jim Wallace and making sure that others are able to share that information.

Jim Wallace asked specifically about rotating meetings, but that is not a matter for us. I am sure that the members of the CJA would be more than delighted to visit Orkney occasionally, but far be it from me to order them to do so.

We acknowledge the particular circumstances prevalent in the islands, which have to be taken into account in developing policy in the area. That is why we lodged amendment 14. I will return to our amendment shortly, but first I will comment on Jim Wallace’s amendments.

As Jim Wallace indicated, we believe that amendment 25 is unnecessary. There is nothing in the bill to prevent a community justice authority from covering the area of a single local authority.

Amendment 26 would place a duty on the proposed northern community justice authority to provide separate area plans for island authorities. Such a provision does not sit easily with the objective of area plans, which is to improve consistency in delivery, sharing of expertise and the transitions between prison and the community. The amendment would also place additional burdens on all partner bodies, as they would need to deal with up to four area plans within the proposed northern community justice authority area. Amendment 26 would also give island authorities a unique power over the relevant community justice authority by making it impossible for the CJA to submit its area plans without the agreement of the island authorities. No other council in Scotland would have such a right of veto.

Amendment 27 seeks to allow any local authority that is the sole member of a CJA to appoint one of its own officers as CJA chief officer. However, given the chief officer’s important role in monitoring and reporting performance both to the community justice authority and to ministers, the amendment would place chief officers in the impossible position of having a clear conflict of interest between their reporting duties and their employer’s interests. The creation of new chief officer posts that are independent of individual councils is a critical element in improving accountability.
I can give Jim Wallace some assurance, in that his discussions with the Minister for Justice have persuaded her of some of his arguments. Hence, some of the Executive amendments that we have lodged. I can also assure him that, when ministers receive community justice authorities’ plans for scrutiny and approval, we will expect to see evidence in the proposed northern CJA’s plan that the authority has consulted each of the island authorities, considered their particular circumstances and attempted to reach agreement with them.

The Executive’s amendments respond positively to the concerns that have been expressed by island authorities. I hope that the amendments demonstrate that we are not set on a one-size-fits-all solution, as some might suggest. We understand the unique issues that, as Jim Wallace has outlined, island councils face in delivering criminal justice services. In particular, we appreciate that the size and nature of island authorities mean that the sustainability of services requires particular consideration.

Consequently, as Jim Wallace mentioned, any transfer of staff resources to a community justice authority will be unusually sensitive. The bill as drafted allows the transfer of functions and staff resources to community justice authorities from all local authorities within the area of a community justice authority. We recognise that the island authorities are particularly concerned about the implications of such transfers. Therefore, amendment 14 will introduce into section 7 a new subsection that will enable the island authorities to retain functions that other local authorities within the area of a community justice authority have agreed to transfer.

Clearly, if an island authority has chosen to opt out of a function, it would be inappropriate to lay an order to require the authority’s consent. Taken together, amendments 14 and 13 will enable ministers to lay a transfer order that excludes the transfer of functions from any or all island authorities, should such authorities so choose, without requiring the consent of any relevant island authority that is not taking part in the transfer. Such a split in responsibilities between the local authority and community justice authority is feasible in an island context. However, we believe that it would be inappropriate to extend such transfer opt-outs to mainland local authorities, as that would create a complex mosaic of service responsibilities within a criminal justice authority, which would be to the detriment of clarity and accountability.

Amendments 8, 11 and 12 are consequential to amendment 13.

I hope that we have given sufficient assurance for Jim Wallace to consider withdrawing amendment 25. I urge members—

Mr Wallace: Before the minister sits down, will he make it clear that his welcome reassurances on staffing will be followed up by funding? Obviously, there is no point in making such commitments on staffing if funding does not follow them.

Hugh Henry: We already provide 100 per cent ring-fenced funding for criminal justice purposes, so there is a certain logic to ensuring that funding flows in relation to the protection of staff. Clearly, that point will have to be considered. We have already given assurances about the plans and the staff opt-out. As Jim Wallace suggests, it would be ludicrous if we allowed staff to remain without allowing the funding for them flow through.

15:15

Mr Kenny MacAskill (Lothians) (SNP): Jim Wallace is correct to highlight the unique nature of our island communities. We recognise their special needs and requirements. However, we believe that the amendments in the name of the minister address the issue.

The minister addressed to some extent the other issue that I want to raise, but I seek a further assurance that there will not be a one-size-fits-all approach. Although the needs and wants of island communities are distinct, the same could be said of many other areas in relation to criminal justice. The needs and wants of the Angus glens are not necessarily reflected by what is required in a Dundee housing scheme. In east-central Scotland, what happens in the Borders is not necessarily reflected by the requirements of the city of Edinburgh.

We seek an assurance that practice and guidelines will provide an opportunity for the requirements of different areas to be addressed differently. The islands are unique, but there are vastly different areas even in mainland Scotland. It is essential that, in relation to their powers, criminal justice authorities should be given the guidelines and direction that enable them to deal with matters individually, to assuage the fears and alarms not just of island communities but of other rural areas that have raised concerns with me and, doubtless, with the minister.

Hugh Henry: I give Kenny MacAskill the assurance that he seeks. We do not believe in a one-size-fits-all approach. We will scrutinise the plans closely, and we hope and expect that they will reflect the points that the member has made.

Mr Wallace: I am grateful to Hugh Henry for his response to my amendments. It has been useful to get on the record the reassurances that he has
given. In particular, he has reassured us that in its criminal justice authority plan the proposed northern CJA will have to demonstrate to ministers that the island authorities have been fully consulted and that every effort has been made to agree plans that take account of the specific circumstances in the islands. The points that he made about staffing and funding were also welcome.

As I indicated previously, amendment 25 is not necessary, so I seek leave to withdraw it.

Amendment 25, by agreement, withdrawn.
Amendment 26 not moved.

Section 3—Further provisions as respects community justice authorities
Amendment 27 not moved.

Section 4—Special duties of chief officer of community justice authority

The Deputy Presiding Officer (Trish Godman): Group 3 consists of minor amendments. Amendment 4, in the name of the minister, is grouped with amendments 5, 7 and 22.

Hugh Henry: The amendments in this group are minor or technical in nature. Amendment 4 makes it clear that in section 4 the term “partner bodies” has the same meaning as in section 2(16).

Amendment 5 alters the reference in the bill to “the Chief Inspector of Prisons” to “Her Majesty’s Chief Inspector of Prisons”. That is the standardised wording for such references.

Amendment 7 corrects an error in section 5(4)(b) of the bill, which refers to an “enforcement notice”. The correct term is “enforcement direction”, which is used elsewhere in the bill.

Amendment 22 is a technical amendment to ensure that the bill contains the correct references to provisions in the Social Work (Scotland) Act 1968.

I move amendment 4.

Amendment 4 agreed to.

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

Amendment 5 moved—[Hugh Henry]—and agreed to.

The Deputy Presiding Officer: Group 4 is failure by community justice authority—time for response to preliminary notice. Amendment 6, in the name of Jackie Baillie, is in a group on its own.

Jackie Baillie (Dumbarton) (Lab): The purpose of the amendment is purely practical. Section 5 deals with preliminary notices issued by ministers where community justice authorities are perceived to be failing. For the provision to be meaningful, CJAs must have the opportunity to consider and respond to the minister’s notice. As the bill stands, ministers could impose any deadline for a response if they wished to do so. That is not necessarily practical, particularly for CJAs that cover large geographical areas, such as the proposed northern CJA about which we have just heard. In such circumstances, no meaningful political endorsement or ownership of the CJA’s response could be achieved. One would have to question the value of the bill’s preliminary notice provision in that context. The amendment specifies a minimum period of 14 days in which CJAs would be allowed to consider and agree their formal response.

I move amendment 6.

Mr MacAskill: I have a great deal of sympathy with amendment 6. There might be times when an immediate response is necessary; if so, I have no doubt that a CJA will make such a response. However, if we are gearing up to a situation where there might be a dispute, some formal period should be allowed for the CJA to deal with matters expeditiously. Although that period should be a reasonable length, it should be of sufficiently short duration. The provision should not prevent any immediate response to an issue of significant public concern, but I agree that a minimum period should be set to give the CJA the opportunity to make a fuller investigation in the variety of departments under its control. Ms Baillie’s amendment 6 strikes a sensible balance between those two needs.

Hugh Henry: Jackie Baillie proposes to amend section 5, but her amendment also has a read-across to section 6. Section 5 addresses specifically the situation where a failure on the part of a community justice authority to exercise its functions under the bill is independently identified. The powers provide a structured mechanism by which ministers can require specific action to be taken by the CJA. Section 6 deals with a failure by a local authority to exercise its statutory criminal justice and social work functions and provides ministers with the power to require action by the community justice authority to remedy the situation. It follows the same staged approach as described in section 5.

Ministers would initially draw the reported failures of a CJA or local authority to the attention of the relevant CJA by issuing a preliminary notice. The notice would inform the CJA of the failure and require it to submit an appropriate written
response. If ministers were dissatisfied with the response, they would have the option to issue an enforcement direction requiring the CJA to take action to address the failure.

As the bill is drafted, ministers may specify the time within which the CJA must respond to a preliminary notice. The provision follows the same approach to the intervention as that taken in the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004. The approach provides flexibility to enable ministers to intervene as speedily as demanded by the type of failure that has occurred. It is important to have that flexibility.

As Jackie Baillie said, amendment 6 would impose a minimum period of 14 days for a community justice authority to respond to the preliminary notice. I worry that that would limit the flexibility for ministers to decide on a case-by-case basis when a response needed to be provided. There might be circumstances in which immediate intervention is required—to safeguard public safety, for example—in which case a 14-day delay could have serious consequences. We are not prescribing that an immediate response would always be required, but we believe that it is important to have that flexibility. I hope that, with those assurances, Jackie Baillie will seek to withdraw amendment 6.

Jackie Baillie: I stand corrected about the section to which the amendment applies. The minister will not be surprised that I am much more interested in the substance of what he said. I am content with his response that the bill as drafted allows for the necessary flexibility to enable ministers to insist that urgent action be taken and, equally, to allow CJAs to respond in good time. On that basis, I seek agreement to withdraw my amendment.

Amendment 6, by agreement, withdrawn.

Amendment 7 moved—[Hugh Henry]—and agreed to.

Section 7—Transfer of functions to community justice authority

Amendment 8 moved—[Hugh Henry]—and agreed to.

The Deputy Presiding Officer: We come to group 5. Amendment 9, in the name of the minister, is grouped with amendment 10.

Hugh Henry: The committee agreed to an amendment that I lodged at stage 2 enabling certain functions of the Scottish Prison Service relating to the rehabilitation of prisoners to be transferred by order to community justice authorities. I believe that that is an essential additional provision, giving flexibility and encouraging joint working between the organisations. At the time, I also undertook to consider whether it might be possible for a CJA to act as an agent of the SPS—that is, to undertake certain functions relating to prisoner rehabilitation on behalf of the SPS, without requiring a statutory function. That is what amendment 10 will achieve. Thus, the transfer provisions relating to the SPS will mirror those for local authorities.

Amendment 9 is supplemental to amendment 10; it clarifies that the CJA need not consult local authorities and partner bodies prior to agreeing to undertake a function on behalf of the SPS. Such an arrangement would, rightly, be the concern of the CJA and the SPS alone.

I move amendment 9.

Amendment 9 agreed to.

Amendments 10 to 14 moved—[Hugh Henry]—and agreed to.

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

The Deputy Presiding Officer: Group 6 is on the role of health boards in assessing and managing risks posed by certain offenders. Amendment 15, in the name of the minister, is grouped with amendments 16 and 17.

Hugh Henry: I am pleased to bring forward amendments 15 to 17 to refine further the definitions of mentally disordered offenders in section 9(10) and to correct an omission in section 9(11). The definitions of mentally disordered offenders in section 9(10), which were agreed at stage 2, cover people who are subject to a restriction and compulsion order or hospital direction under the Criminal Procedure (Scotland) Act 1995 and a transfer for treatment direction under the Mental Health (Care and Treatment) (Scotland) Act 2003.

Amendments 15 and 16 will not change the policy intention and, therefore, who is covered; they will provide a simpler approach. The categories in paragraphs (a) and (b) of section 9(10) will be defined as those subject to different types of order made under section 57(2) and section 59 of the Criminal Procedure (Scotland) Act 1995. The categories in paragraphs (c) and (d) of section 9(10) are unchanged.

The health service will have a statutory function to establish joint arrangements with the other three responsible authorities—the Scottish Prison Service, local authorities and the police—to assess and manage risk, including sharing relevant information, for that group of mentally disordered offenders. Significantly, that will allow the health service to formalise the care programme approach that is already in place.
across Scotland. Under that process, a range of agencies works with the health service to support the safe pre-discharge and post-discharge arrangements for mentally disordered offenders.

Section 9(3) of the bill already gives ministers the power to make an order requiring other agencies to co-operate with the responsible authorities in establishing and implementing the arrangements for offenders in the community or offenders being released from prison. The responsible authorities also have a duty to co-operate with those agencies and with one another. We think that it is important that the health service should be under an express duty to co-operate with the other three responsible authorities as regards offenders who are not mentally disordered. Section 9(11) achieves that and amendment 17 will fully achieve it by ensuring that reference is made to all the categories referred to in subsection (10).

The provisions in relation to mentally disordered offenders are complex, but we are now confident that they will create a stronger framework within which the justice and health agencies will work together to assess and manage risks to the public. The amendments represent a major step forward in the drive to provide our communities with additional safety. By including health boards in provisions relating to mentally disordered offenders, we will plug a gap in the current situation with regard to a group that can also undoubtedly pose a risk to the public.

The need for a firm legal basis to the probation review hearings that courts have used for many years follows a recent court of appeal ruling that such hearings were legally incompetent under existing legislation. Nevertheless, the court of appeal acknowledged that there could be sound reasons for holding review hearings in appropriate cases.

Amendment 18 imposes a requirement on the offender to attend a review hearing set by the court as part of the probation order. It also provides the court with the power to issue an arrest warrant for the offender’s arrest if he or she fails to appear for the hearing. Moreover, the amendment assists the court in conducting the review hearing by requiring the offender’s supervising officer to submit a written report in advance of the hearing. Personal attendance at the hearing by the supervising officer or procurator fiscal is on a discretionary basis.

Amendment 18 provides the court with the power to amend the conditions of the probation order in light of the supervising officer’s report. However, it may do so only after the effects of the proposed amendment to the order have been explained “in ordinary language” and the offender’s consent has been obtained. The amendment also provides the court with the power to hold further review hearings if appropriate. Finally, the amendment applies to the review hearing scenario the existing powers available to courts in dealing with an offender who has failed to meet the terms of his probation order.

I move amendment 18.

Mr Maxwell: I thank the minister for explaining in some detail the background to amendment 18, which again has come late in the day. Although we support this fairly sensible amendment, I wonder whether there has been any consultation with the probation service on its terms. After all, the service might have to bear additional burdens if people need to appear at hearings for certain probation reports. Has the service been fully involved in the process and does it understand its responsibilities?

Mr MacAskill: To some extent, I concur with Mr Maxwell. Irrespective of how the provision has come about, I believe that it will be beneficial. As a defence agent, I know that when a probation order was imposed, the courts forgot all about it unless its terms were fundamentally breached. The provision will empower our sheriffs and, because it provides them with a more hands-on approach and opportunities for monitoring, it will also help to back up probation officers in any difficulties that they might face.

I seek clarification on a point that probably affects sheriffs more than the probation service. Will sheriffs receive advice on how to use the provision? Will some methodology be provided with regard to instances in which, for example, what might turn out to be a short leash could be put on someone on a probation order? Will the Executive work with the Sheriffs Association to
ensure that the sensible provision works and is used in practice?

Hugh Henry: I should point out that, although the term was probably used as shorthand, we do not have a probation service as such in Scotland. However, I understand what Stewart Maxwell was getting at. Instead of consulting the courts and probation officers on the issue, we are simply allowing them to do what they are already doing, although we are putting that on a statutory footing. Our concern is that they would continue to work without that statutory underpinning. The issue raised by Kenny MacAskill would be a matter for the courts and social workers to address and make progress on, if required.

Amendment 18 agreed to.

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

The Deputy Presiding Officer: Group 8 is on the release of certain sex offenders. Amendment 19, in the name of the minister, is grouped with amendment 20.

Hugh Henry: At stage 2, we delivered on our promise to take action to end the unconditional release of short-term sex offenders. Those offenders will no longer simply be released from prison in a way that allows them, in effect, to drop out of local authorities’ control. They will now be supervised and be subject until the end of their sentences to licence conditions that reflect the nature of the risk that they pose and their offending.

Naturally, we want the important new measures to have maximum impact when they come into force. At stage 2, Bill Butler asked whether we could extend the classes of offender to whom the new measures would apply to include not only those who were convicted on or after the new provisions come into force but those who were already serving their sentence at the time. Following some consideration, Scottish ministers have decided that the new measures should be extended to those in custody at the time of commencement. That is the purpose of amendments 19 and 20.

Of course, we cannot say at the moment exactly how many additional offenders will be involved, because we cannot predict how many may be in custody when the new measures come into effect. Whatever the number, the important point, which relates to what Bill Butler said at stage 2, is that more sex offenders will be subject to the new arrangements. I hope that members will agree that that is an encouraging prospect. However, the provision is not about numbers; it is about enhancing public safety. By lodging the amendments, we are ensuring that the valuable new measures have maximum effect from the time of their inception. In so doing, we are contributing once again to our commitment to support stronger, safer communities.

I move amendment 19.

Mr MacAskill: We fully support the amendments in the minister’s name. We have been calling for such measures for some time and we welcome their arrival now. However, we seek assurance from the minister on the points that have been raised by the Association of Directors of Social Work, although that organisation’s concerns will no doubt have been transmitted directly to him. Clearly, the new measures will have immediate effect and will have significant resource and financial implications, especially for local authorities and, most important, for social work departments. It is quite clear that dealing with people who are covered by the new measures will require significant resource management and that that will impinge greatly on social work departments. As has been outlined today, there have been record numbers of vacancies in social work, so we seek an assurance that local authorities will not be further burdened without the provision of the consequent resourcing.

There are difficulties for which everyone in the chamber has to take responsibility. Having given responsibility to local authorities without any consequent additional resourcing, we need to give them some assurance. Given the sensitivities of the great difficulties and recent tragedies that have occurred, we must ensure that we are not simply passing the buck. I trust that the minister will ensure that local authorities are properly provided for in doing what the Executive, to its credit, is asking them to do. We support the measures.

Hugh Henry: We need to put the matter in context. We are not talking about huge numbers, so I am not sure that there will be a huge resource implication. However, we also need to remember that we fund criminal justice activities 100 per cent and we will clearly continue to fund the demand that exists and the requirement that we identify in each area. The new community justice authorities must also examine what is happening in their areas and identify whether dealing with the specific group of offenders as proposed will have significant resource implications. That information will be fed back in the normal way and we will look at it. Clearly, we are not going to pass the bill and then find that it cannot be implemented simply because there is a resource issue. I hope that we can retain some perspective, put the amendments into the right context and note that we already fund criminal justice activities 100 per cent.

Amendment 19 agreed to.

Amendment 20 moved—[Hugh Henry]—and agreed to.
The Deputy Presiding Officer: Group 9 is on changes to early release of prisoners. Amendment 1, in the name of Annabel Goldie, is grouped with amendment 2.

Miss Annabel Goldie (West of Scotland) (Con): Amendment 1 brings us back to the issues with automatic early release that I raised in the committee at stage 2.

As members will be aware, prisoners who are currently imprisoned in our Scottish jails can automatically get out early after serving half their sentence if they are short-term prisoners, or two thirds of their sentence if they are long-term prisoners. That is a consequence of Westminster legislation that was introduced by a Conservative Government. The Conservative Government recognised that the system was not working and introduced legislation to end it, but the incoming Labour Government of 1997 did not bring the legislation into effect, which is why we still have automatic early release.

The purpose of amendment 1 is to reintroduce a topic that I raised at stage 2. When I lodged an amendment on the issue at stage 2, the minister raised some perfectly proper concerns, which I was prepared to address. He expressed concern that it would be unclear whether the change would be retrospective and concern about the effect of the amendment on prison capacity.

From all that has been said—in particular by the First Minister earlier today—it seems to me that it is universally recognised, including by the Executive, that the system of automatically letting prisoners out early is discredited. The difference between us seems to be whether we should do something now to end the system or whether, as the Executive seems minded to do, we simply go on talking about the issue and expressing concern but do not take any specific measure to bring the system to an end.

Amendment 1 would achieve two things. It would end automatic early release and it would reinstate a requirement for prisoners—short term or long term—to earn an element of early release, which would be a sixth of the sentence that had been imposed. It is important to emphasise that I have also endeavoured in the amendment to retain home detention curfews. I expressed concern in the committee about the application of home detention curfews under the current regime because if, as the Executive proposes, we do not get rid of automatic early release, the practical consequence of the provision on home detention curfews is that prisoners will get out even earlier. That is a matter of profound concern to the public of Scotland. My amendment is drafted so that it would end automatic early release, insert a provision to allow a prisoner to earn remission of up to a sixth of their sentence and allow home detention curfews to be retained.

To try to answer the concerns that the minister expressed at stage 2, I seek to provide that the change would be in the control of the Executive. Amendment 2 would allow the provision in amendment 1 to be brought into effect by affirmative subordinate legislation. In other words, a Scottish statutory instrument would have to be laid before the provision could have effect. That is an attempt to address what I considered were proper concerns expressed by the minister.

Bill Butler (Glasgow Anniesland) (Lab): In Miss Goldie’s suggested scheme, would every case have to be dealt with by the Parole Board for Scotland? If that is the case, does she realise that that would mean up to 11,000 extra cases being dealt with?

Miss Goldie: It is easy to bandy numbers about, but we must make a serious point about the principle. The point is that the system as it currently operates does not enjoy the confidence of the people of Scotland and no wonder: prisoners are getting out early and very serious crimes are being committed during the period of early release. Mr Butler’s point raises an important issue about what is the political priority. I detect that there is a clamour for change, and I do not think that the Executive dissents from that. If that is the case, the Executive must put in place the necessary resources that are consequent on any change to the procedure, and there must be political leadership if the Executive is to change the procedure.

15:45

Stewart Stevenson (Banff and Buchan) (SNP): The member raised the issue of capacity, and I wonder whether I may provide some assistance. If 10 more prison places were required, that would require £1 million of capital spending. If 10 prisoners are kept in prison for three years in addition, that requires £1 million of additional revenue spending. Does that help the member to tell us what the capital and revenue implications of her proposals are?

Miss Goldie: No, but it assists me in once again showing the difference between the Executive, the Scottish National Party and my party. We are considering the concerns of the people of Scotland, which are dramatically depicted in the appalling chronicle of crime that is committed when persons are let out of prison early—during the period of early release. That is why the issue hangs on whether the Executive has the political will to take a decision to end the practice.

Mr Wallace: Will Miss Goldie give way?

Miss Goldie: No, thank you. If the political will is there, it attracts resource, so the Executive has to be clear that the matter is a fundamental priority and a political imperative. That is the difficulty.
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Will the member give way?

Miss Goldie: No. As amendment 1 ensures, the provision would not be retrospective in effect. It would come into effect only when the Scottish Executive so determined.

If the Executive is craven in not being prepared to accept the amendments, that is a stark illustration of what the First Minister was advocating earlier today but does not do. The Executive does not practise what it preaches. Nothing could be clearer if it refuses to back my amendments.

I move amendment 1.

Jeremy Purvis: As a member of the Justice 2 Committee, which may well be losing its convener, I pay tribute to Miss Goldie for her work on that committee during its scrutiny of the bill. Notwithstanding the irony of the heartfelt plea from the new leader of the Conservatives in Scotland for the Parliament to repeal a Conservative measure, Miss Goldie has argued a highly unprincipled and illogical case. She has said in press releases that people who have been released early have committed offences, and that there is therefore an issue of safety for society. If that is what she is arguing, why have any parole at all?

Miss Goldie misses the point. Too many people who are released once their prison sentence has concluded, whether or not that sentence is short or long, commit a second or third offence, not just during the period of their release on licence but within a period of two years. That applies to too many people, particularly to those who committed offences that are subject to short-term sentences. The whole point of the bill is to take an holistic approach to reducing reoffending overall.

We need a system that is capable of reforming offending behaviour. That includes managing releases and the resettlement and rehabilitation of offenders. Miss Goldie argues for a point of principle—to allow prisoners to be released on licence for a sixth of their sentence. If it suits the individual’s rehabilitation for that to be two sixths or a half instead, that should be considered, so we should have the necessary flexibility to allow that to be done.

The whole thrust of the bill’s proposals, as well as the work of the Sentencing Commission for Scotland, starts with much earlier intervention to address the behaviour of individuals. Once someone has offended, we need the right method of punishment so that, with additional effort, offending behaviour as a whole can be reduced. That involves a reduced number of short sentences and more faith being placed in the justice system and in the availability and effectiveness of community disposals that help to address what are, under the surface, the often chaotic lifestyles of offenders. In addition, there must be proper and robust monitoring of more serious offenders on their release.

Looking at one aspect in isolation, as Miss Goldie’s amendments seek to do, is not the way forward. I ask her to consider how many witnesses asked us to consider the issue in isolation during the passage of the bill. None did, of course.

This lunchtime, Miss Goldie tasked the First Minister with not building up the hopes of communities. Amendment 1 would do exactly that. With the Sentencing Commission’s work and the bill we are moving away from an arbitrary approach. We should not revert to one now.

Bill Butler: I extend my congratulations to Miss Goldie on the position that I am sure she will assume on Tuesday and on her early release from the Justice 2 Committee. Notwithstanding that, I will speak against amendment 1, which relates to section 11. The amendment is strikingly similar to the one that Miss Goldie moved at stage 2. Apart from the insertion of a new subsection (1), it is, in effect, the same amendment that was defeated comprehensively at stage 2 and which attracted only the support of its mover. When Miss Goldie moved that amendment, she talked about addressing prison capacity, but she did not do so today, which is not helpful to her case.

Given that the amendment is strikingly similar to the one that Miss Goldie moved at stage 2, I hope that she will forgive me for making a strikingly similar contribution this afternoon. I remain wholly unconvinced by the amendment because of its consequences and lack of practicability.

Annabel Goldie talked about having political will. If the Conservatives ever aspire to government in this country, they will need political will, but they will also need to be practical and say where the money will come from, which was markedly missing from Miss Goldie’s contribution.

Mr Wallace: Mr Butler is absolutely right to say that we should know where the money will come from. It is clear from Annabel Goldie’s response to Stewart Stevenson that she has not got a clue. Does Mr Butler think that she has cleared the amendment with her deputy leader, Murdo Fraser, who always berates the Executive about public expenditure levels?

Bill Butler: I would not like to make assumptions about the internal workings of the Conservative party in Scotland, assuming that the Conservatives are talking to one another. I am sure that they are and that they will continue to talk to one another in opposition in the long years ahead.
Of course all members would agree that we want a bill that has public protection at its heart. No one could argue with that, but to achieve that objective, we need workable, practical measures. Unhappily, even though Miss Goldie’s amendment is modified in one particular, to which I have referred, it remains deficient in that vital respect.

I believe that if amendment 1 were agreed to, it would lead inexorably to an increase in the number of prison places. In his evidence at stage 2, the deputy minister mentioned the figure 4,000, which would necessitate up to six new prisons. Perhaps in summing up Miss Goldie will respond to that specific point, which she failed to address in the committee.

There remains the associated question of how long it would take to build the prisons, which perhaps Miss Goldie would address. When we hear the length of time, we will be able to calculate—or at least Stewart Stevenson will—the associated cost per prisoner.

The Deputy Presiding Officer: You must finish now, Mr Butler.

Bill Butler: I have so much more to say on this, but I will finish by saying to Miss Goldie that we have to take care that the best measures are taken to ensure that a prisoner who is released under condition is not likely to reoffend. The bill is about public safety, but that is the vital other side of the coin. Miss Goldie’s amendment 1 would deliver none of the above. It is impractical and deficient and I hope that she will withdraw it. If she does not, I hope that members will roundly defeat it.

Mr MacAskill: As the lawyers would say, I adopt the comments of Mr Purvis and Mr Butler. As the saying goes, legislate in haste, repent at leisure. We are in fact paying the price for a short-term fix that was carried out many years ago by the Tories to try to reduce the number of prisoners. It is disingenuous of them to come in, as Mr Butler said correctly, to try to provide a solution to that problem when we are trying to deal with another matter.

The issue is of serious concern and Miss Goldie is quite right to raise it. Clearly, people wish transparency in sentencing. They also wish to ensure that those who are a serious danger and threat to our communities are addressed. We need to do that in a manner that will provide a long-term solution and will not create even more problems.

This is not the bill in which the matter should be dealt with. We should have some trust and faith in the Sentencing Commission, which is, after all, made up of people who are distinguished in many fields. We should allow them time and space in which to come forward with a solution that will not simply be aimed at an election campaign, which is obviously gearing up under Miss Goldie and her new deputy, but which will provide a working system for the people of Scotland for years to come.

We have serious problems in our prisons. One of the issues is addressed by Miss Goldie’s amendment. However, we have to address a variety of matters. Simply seeking to have short-term and long-term prisoners dealt with in the same way is utterly nonsensical. We should be seeking to get as many short-term prisoners as possible out of incarceration so that we can deal with them in the community, as Jeremy Purvis has said on record on previous occasions.

We need to take a pragmatic and sensible approach. I do not usually concur with the First Minister or adopt what he says, but I thought that his earlier response to Miss Goldie was quite correct: we should allow the Sentencing Commission to come forward with suggestions and, thereafter, let the Executive produce a bill that will cover the entire area of our sentencing policy rather than only the question of how we manage a minority of serious offenders who are released on licence and a few other add-ons.

Hugh Henry: I congratulate Annabel Goldie on taking on the awesome burden of leading Rag, Tag and Bobtail in the Scottish Parliament. When she was interviewed yesterday, she referred to her vintage. Unfortunately, in relation to the issue that we are discussing, she has a worn 78 that she might want to consider bringing into the 21st century. She is in a groove in which she is saying nothing new. In the committee and today, she was clearly uncomfortable at having to say things that have no great relevance, effect or contribution to make. She has rightly identified an important issue, however, and she is right to say that, between stages 2 and 3, she has addressed one of the questions that was asked of her, which was to do with when the terms of her amendment would come into force. Today we got an answer, of sorts, to that question. She was quite specific: the provisions will come into force sometime and will apply to offenders after that time. So, as we are obviously clear about that issue, we can move on in the debate.

I am not sure which part of our often-voiced commitments to change the current early-release arrangement is unclear. We have said that retaining the status quo is not an option and that we will introduce reforming legislation next year. We have also said that any change will be considered within the broader context of our ongoing top-to-bottom reform of the criminal justice system. That reform is striving to achieve the overarching objectives of enhancing public safety and reducing reoffending.
We have said that the law that was introduced by the Tories needs to be changed. We also accept that change could have significant resource and financial implications, which is why we need to make the change properly. It is utterly wrong to approach this matter in the way in which the Tories are doing.

Annabel Goldie has not answered any of the questions that she was asked at the committee, although, when she sums up, she might answer some of the questions that were just posed by Bill Butler.

Deputy Presiding Officer, on the question of whether extra prisons will be required, I know that you have asked me about a specific concern that you have about your area. Annabel Goldie needs to answer the question of how many extra prisons will be required—perhaps she could use some of the information that was helpfully provided by Stewart Stevenson when she does so. Where will those prisons be? Deputy Presiding Officer, I cannot give you an assurance in relation to the specific question that you asked me, which was to do with whether there will be a prison on the ex-Royal Ordnance factory site in Bishopton. I do not know; perhaps Annabel Goldie can answer that question for you.

This is a complex area of law and we need to get it right. We have a body of experts considering the issue of early release. We will build on the findings of the Sentencing Commission and bring forward a comprehensive set of proposals for Parliament to consider. That is the right way to go about this, rather than endlessly debating sterile political slogans. I hope that, under Annabel Goldie’s leadership, the Conservatives will move on.

16:00

Amendment 2 is a rather strange afterthought. Annabel Goldie suggested that it is a way of addressing a problem. However, it would introduce a novel parliamentary procedure, requiring the commencement order bringing the new early-release regime into force to be debated and approved by the Parliament. I do not know whether Annabel Goldie has spoken to the Subordinate Legislation Committee about her suggestion. When looking at the Family Law (Scotland) Bill recently, it agreed that it would not be appropriate to subject a commencement order to parliamentary procedure when Parliament had already agreed that it was content with the proposal in the bill.

Perhaps amendment 2 is a sign that Annabel Goldie is not sure that her proposals are a good idea. Maybe she wants Parliament to have one last chance to prevent them from coming into force. If we are not sure that the proposals are a good idea, we should not legislate for them now. Far better to follow our approach of having a comprehensive set of proposals for Parliament to consider, based on the Sentencing Commission’s work. I hope that Parliament will reject Annabel Goldie’s suggestions.

Miss Goldie: I commence on a gracious note and thank those members who made them for their kind remarks.

This has been an interesting debate, because it has laid bare a dichotomy at the heart of the Executive. The First Minister is unambiguous in his condemnation of automatic early release. He is on record condemning it on at least three occasions, and he reaffirmed his sense of opprobrium about the continuance of the system earlier today. However, it is a different picture when his colleagues in government contribute to the debate and offer their own explanations as to why they are unable to support amendment 1.

Mr Purvis’s contribution was particularly quaint. He said, “Why pick a sixth of a sentence for remission? It might be that two sixths is appropriate, or whatever.” Clearly, Mr Purvis takes the view that a prison sentence is to have no meaning attached to it whatever. That is precisely the lack of clarity that the public are so frustrated with, and it is precisely the inconclusive approach to the issue by the executy—or I mean Executive; “executor” is an unfortunate slip—with which the public are becoming impatient.

Hugh Henry: Will the member give way?

Miss Goldie: I want to deal with points raised by Bill Butler. As reaffirmed by the minister, Mr Butler homed in on prison capacity. The contributions by the minister and Mr Butler indicated that they are fending off in every possible way they can think of any suggestion that at this stage we should bring an end to automatic early release, notwithstanding the completely unambiguous commitment of the First Minister to do that. Prison capacity, cost and the possible consequences of changing the law in the way I proposed are material considerations that must be taken into account, but the real material consideration is whether the Executive wants to uphold and implement what it says is a fundamental political principle—it either does or it does not. It is clear to me from this afternoon’s speeches that the Executive says one thing about the principle and quite another about its implement.

On capacity, at stage 2 the minister mentioned an estimated figure of 4,000 places, but that assumes that the prison population is a static entity that is unaffected by events. My colleagues and I argue that if we get rid of automatic early release, not only will we respond to the
understandable cry of the public that they do not feel safe while the system operates, but we will introduce a deterrent effect by having a system in which the sentence imposed is the sentence served. We could expect to see a reduction in prison population because of that. We have statistical evidence from Spain and Ireland that a large prison population leads to lower rates of crime.

The other issue that is definitely relevant is that I am certain that the judiciary’s attitude to sentencing would alter because, clearly, when they impose a sentence, judges have to take into account for how long they think the person’s liberty should be removed.

In the debate, I have witnessed a lot of distraction, a lot of evidence used as a smokescreen and many comments that were intended to fob off my party’s attempts, through amendment 1, to do what the public want. I do not intend to withdraw the amendment; I intend to push it to the vote.

The Deputy Presiding Officer (Murray Tosh): The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

In line with the protocol that I announced at the beginning of this item of business, there will now be a five-minute suspension.

16:05
Meeting suspended.

16:11
On resuming—

The Deputy Presiding Officer: We will now proceed with the division.

FOR
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Davidson, Mr David (North East Scotland) (Con)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Montefiore, Mr Brian (Mid Scotland and Fife) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

AGAINST
Adam, Brian (Aberdeen North) (SNP)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craighie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Bailieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Leckie, Carolyn (Central Scotland) (SSP)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Margo (Lothians) (Ind)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweddle, Etrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Wallace, Mr Jim (Orkney) (LD)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 14, Against 96, Abstentions 0.

Amendment 1 disagreed to.

After section 11

The Deputy Presiding Officer: We move now to group 10, on testing prisoners for drugs. Amendment 21, in the name of the minister, is grouped with amendment 24.

Hugh Henry: The purpose of amendment 21 is to allow the Scottish Prison Service to obtain and test saliva samples from prisoners for the purpose of detecting drugs in their system. [Interuption.]

The Deputy Presiding Officer: Order. I do not know whether members had noticed, but the minister has resumed.

Hugh Henry: Presiding Officer, perhaps you could come to my house some time and exercise the same degree of control over my children.

The power for the Scottish Prison Service is in addition to the existing power to obtain and test samples of urine for the same purpose.

Amendment 21 will allow the Scottish Prison Service to develop simplified and more cost-effective processes that take advantage of scientific advances in drug testing. There are a number of advantages in using the method described: for example, the ease and speed of sample collection, and the fact that sample adulteration is less likely as collection can be directly observed. Furthermore, the method eliminates the need for same-gender sample collections; tests can be conducted almost anywhere; and results are available on the spot in minutes.

Amendment 21 will add flexibility to the SPS’s drug-testing regime and will aid the SPS to align its testing practices with those of its partners in the criminal justice system—for example, the police and those who conduct tests for drug abuse to inform drug treatment and testing orders.

Amendment 24 is a consequential amendment to the long title of the bill.

I move amendment 21.

Amendment 21 agreed to.

Section 14—Further amendments and repeal

Amendment 22 moved—[Hugh Henry]—and agreed to.

Section 15—Supplementary and consequential provision etc

Amendment 24 not moved.

Section 17—Commencement

The Deputy Presiding Officer: We now move to group 11, on scheme of accreditation and procedure etc of the Risk Management Authority—commencement. Amendment 23, in the name of the minister, is in a group on its own.

Hugh Henry: Parliament will recall that part 1 of the Criminal Justice (Scotland) Act 2003 introduced new procedures for dealing with high-risk sex offenders and violent offenders. The procedures include the establishment of the Risk Management Authority and a new sentence to be available to the High Court—the order for lifelong restriction.

We have been working with the Risk Management Authority to set up the arrangements for accrediting risk assessors and the arrangements for the risk assessment methods needed before the new orders for lifelong restriction can be brought into force. Those arrangements will be provided for in a scheme under section 11 of the Criminal Justice (Scotland) Act 2003. As part of the arrangements, we want to ensure that there is a clear separation between decisions on whether to award or remove accreditation and decisions on appeals.

At stage 2, the Justice 2 Committee agreed to add section 10A of the bill, which will ensure that the Risk Management Authority is able to delegate its functions appropriately rather than the board having to take every decision. Section 10A also allows the accreditation scheme under section 11 to authorise accreditation decisions and allows appeal decisions to be taken by committees of the Risk Management Authority. As the bill stands, there is doubt about whether that is permitted.
Amendment 23 will bring section 10A into force on royal assent. That will allow the accreditation scheme to be made without delay. In turn, that will allow the order for lifelong restriction provisions in the 2003 act to be brought into force early in the new year.

I move amendment 23.

Amendment 23 agreed to.

Long title

Amendment 24 moved—[Hugh Henry]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

Management of Offenders etc (Scotland) Bill

The Deputy Presiding Officer (Murray Tosh): The next item of business is a debate on motion S2M-3436, in the name of Cathy Jamieson, that the Parliament agrees that the Management of Offenders etc (Scotland) Bill be passed.

16:16

The Minister for Justice (Cathy Jamieson): I am pleased to have the opportunity to open this debate, which takes place at a time when we are engaged in the widest-ranging reform of Scotland’s criminal justice service in more than 50 years. The Management of Offenders etc (Scotland) Bill is part of that wide-ranging reform and we will introduce further legislation in due course.

Our reforms will set criminal justice on a different path. As many members said, it is a path that we need to be on: a path that prevents and diverts, that reduces offending and reoffending and that challenges offenders, whether they are young or old, to return to a law-abiding lifestyle. It is a path where offenders are managed in the community and in custody by strong services and where the tasks and goals that those services share are more important than the pressures that divide them. It is a path where the drive to reduce reoffending is common to all; where working in partnership is an operational reality and not just an aspiration; and where effective offender management is underpinned by effective risk management. It is a path whereby we reduce reoffending and restore public confidence in our justice system.

Last year’s consultation on reducing reoffending confirmed just how far we must push our reforms. It told us that the current way of doing things is not working. It told us that the system is overburdened and fragmented; that too many people are working in silos without seeing the bigger picture; that there are too many competing priorities and that there is not enough communication and not enough sharing of information. We saw a picture of mistrust between agencies instead of openness and co-operation and a picture of geographical difficulties and boundaries that prevent a more integrated approach to managing offenders.

We listened carefully to the consultation and the bill was shaped by it. The Management of Offenders etc (Scotland) Bill will transform how we manage sentenced offenders, not by quick, administrative fixes but by end-to-end improvements that will get to grips with reoffending. The new community justice authorities are the cornerstone of those
improvements. They will bring together local authorities, the Scottish Prison Service and other key agencies to work together in local partnerships and deliver the right services. They will make sure that services are in the right place at the right time; they will improve how we manage offenders both in the community and back into the community; and they will do so with the aim of reducing the likelihood of reoffending. They will also try to join up the range of services that bring law and order and what are sometimes chaotic lives.

The bill is not just about changing structures. We will have a new national advisory body that will provide leadership and much-needed national direction. The bill also contains a number of other important provisions. It will introduce home detention curfews to Scotland. Under strict curfew and subject to electronic monitoring, some of our lowest-risk offenders will be able to serve the last part of their sentence in the community. That will lead to better sentence management, a better grip on the reintegration of people into communities and better protection. We all know that if we ensure that people have the support of family, the opportunity to take up education or employment and the correct supervision to deal with things such as addiction, we will have a better chance of succeeding.

Mr Stewart Maxwell (West of Scotland) (SNP):
When the minister gave evidence on home detention curfews to the Justice 2 Committee she was questioned closely not only on the standard and voluntary conditions that might be applied, but on the possibility of additional mandatory conditions. In committee, she did not appear to be convinced of that approach. Has the minister rethought that? The committee felt quite strongly that it would be important for the success of home detention curfews to have additional mandatory conditions.

Cathy Jamieson: We recognise that there are many people who would be subject to home detention curfews who would require particular forms of supervision or access to particular support services. It is important that we deal with that on a case-by-case basis rather than take a one-size-fits-all approach. That is why I did not favour specific additional conditions that would apply to everyone on a scheme. The important point is that a proper risk and needs assessment has to be done in each case, before anyone is released to home detention curfew.

It is worth mentioning the provision on sex offenders, because I know that members and their communities are particularly concerned about that. Sex offenders and violent offenders often pose the greatest risk. The new powers will ensure that local authorities, the Scottish Prison Service and the police are able to monitor sex offenders more tightly and effectively in the community. Through our amendment, the bill introduces a new post-release supervision regime for all short-term sex offenders who are sentenced to prison for six months or more. Communities will welcome that because it is about better management of those offenders and it offers them better protection.

The bill covers some areas that might not have had as high a profile during its passage. One of those areas is the Criminal Injuries Compensation Authority. It is worth acknowledging that the bill introduces one more way to discourage offending and to encourage offenders to face up to their crimes. That is absolutely central to everything that we do. We want people to take responsibility for their actions and the bill will enable the Criminal Injuries Compensation Authority to recover the cost of compensation from offenders and pay it out to the victims of their crime.

Before I finish, I want to acknowledge the hard work of everyone involved in taking the bill through Parliament. I particularly offer my thanks to the bill team; to the members of the Justice 2 Committee for their careful consideration of a range of quite difficult issues; to the committee clerks for their solid work behind the scenes; and to each of the many organisations and individuals that fed in their much welcomed views during the consultation and throughout the bill’s passage through the committee stages. I add particular thanks to Hugh Henry who worked so diligently at committee stage and to deal with the amendments today. As members can hear, I will be lucky to get to the end of today without my voice giving out completely, so I am particularly grateful to him for that.

I emphasise that while we were taking evidence and listening to people, we took serious account of all the views that people gave. We took them on board, then revised and improved on the original proposals. Of course, that is how the Parliament and its committee system are designed to operate.

I genuinely believe that the Management of Offenders etc (Scotland) Bill sets us upon the different path that I spoke about earlier. We have built a huge amount of consensus around a way forward. There are challenges for everyone out there to put into practice the things that they told us that they wanted to do, and for them to deliver the kind of criminal justice system that many of us have long sought and long worked for. It signals a new era for offender management in Scotland, where the common cause of reducing re-offending brings services together in the pursuit of excellence, whether sentences are in the community or in custody. In so doing, the bill will go some way towards restoring public confidence and making Scotland a safer place.

I move,
That the Parliament agrees that the Management of Offenders etc (Scotland) Bill be passed.

16:24

Mr Kenny MacAskill (Lothians) (SNP): We, too, are happy to commend the bill to the Parliament. We pay tribute to all those, including the minister, involved in bringing the bill forward. We accept that the bill will not provide an overarching solution to Scotland’s criminal justice problems, but it will address the variety of areas that the minister was correct to mention.

We recognise that there is no silver bullet to address the many problems that communities face. Despite the mantras that may be chanted by different political parties, the myriad problems require a multitude of solutions that will each need to be considered. On other days, other bills will be introduced that we might welcome or take issue with, but the bill that faces us today—the Management of Offenders etc (Scotland) Bill—is one that we are happy to support.

I echo the minister’s comments on criminal justice authorities, which will ensure best practice. We recognise that best practice has not always happened and that there have been faults. Those may have been systemic or structural or, sometimes, they may have occurred simply because personality issues have arisen. In the best circumstances, perhaps criminal justice authorities would never be required, but the fact is that the existing failings and flaws need to be addressed.

We know that concerns about the proposed criminal justice authorities were expressed not only by island authorities, as Mr Wallace mentioned during the stage 3 debate, but by mainland authorities. However, provided that the Executive takes on board the fact that there can be no one-size-fits-all solution, we believe that bringing criminal justice matters together will ensure that the necessary systems and parties—both those from different authorities and those from different departments within the same authority—will work together. For that reason, we fully support the proposals.

Clearly, the management of sex offenders has been a significant cause for concern, not only in the newspapers but in our communities where problems have been caused. Members have raised the issue in many different debates and it is a significant problem. The provisions in the bill will go some way towards addressing the problem but they will not solve it. At the end of the day, we live in a society of human beings—and to err is human. Problems will still arise, but we believe that the bill will provide some reassurance.

We take on board the minister’s comments that criminal justice social work will be fully resourced, but we reiterate that the bill will clearly have significant resource implications. The term “wrap-around care” is sometimes used to describe the supervision that serious offenders require, but some offenders will require almost exactly that. For some, a visit from a social worker may be required daily or even several times a day. Such supervision is about ensuring not just the well-being of the individual on whom the social worker is checking up, but the safety of the community in which they live. Given that many such offenders are potential dangers, they will require to be watched—either by social workers or by police officers—with great care. Accordingly, resourcing is a pivotal issue.

Another reason why the bill will be beneficial is that it will provide powers that, to some extent, were perhaps already being exercised even though, in many instances, such powers did not exist. The bill may simply legitimise what is already the practice of many police officers and social workers, who have sought to look after the best interests of the community. There is an obligation on us to ensure that such actions have the full authority of the Government and the Parliament.

Probation orders—such as drug treatment and testing orders and home detention curfew orders—will be beneficial, but they will not be a silver bullet. On their own, they will not provide a solution to the problem but they take us in the best direction. We are happy to accept that.

However, further debates will need to be brought back to the chamber on other days because the major issue is not so much what happens when people are released from prison but—despite what the Conservatives may trumpet—the numbers of people who are in prison, which remain too high. That issue still needs to be addressed. Sadly, society will always have a requirement for prisons to deal with those who commit serious offences for which, in society’s view, the only suitable punishment by which the offender’s card can be marked is imprisonment. For our protection, dangerous offenders must be taken out of our communities, but we have far too many people who are in prison because they are, to some extent, the flotsam and jetsam of our society. Until such time as we address those social problems, we will not be able to address the wider issue.

My final point is that, although overarching bills will be needed to address how the Sentencing Commission determines who goes to prison and other issues such as, to some extent, the period that prisoners are required to serve and how they will be released, we must nevertheless recognise that social problems cannot be solved by the criminal justice system. Matters that are connected with the economy, deprivation and drink and drug
abuse are social matters, which criminal justice authorities—whether prison officers, police officers or social workers—cannot solve; society must solve them.

The Deputy Presiding Officer: I am grateful to Miss Goldie for waiving her closing speech. For that reason, I will give her more latitude in her opening one.

16:29

Miss Annabel Goldie (West of Scotland) (Con): In the chamber at stage 1, I outlined the Conservative party’s two principled objections to the bill. We are concerned by the introduction of the eight criminal justice authorities. In my view, we have achieved useful co-ordination of activity and co-operation between agencies since 2002, through the 14 funding and planning units that were constructed on the basis of local agreement and consensus. I should have thought that there was merit in allowing those partnerships to continue, because they meet the aspirations of and provide the necessary flexibility for different areas of Scotland. Mr Wallace’s amendments highlighted that important dimension.

It is also the case that our social work departments are bearing an intensifying workload and that we expect them to discharge an exacting level of responsibility. Much of that is attributable to legislation that the Parliament has passed. Do we really need to impose further statutory bureaucracy on those hard-pressed departments? From the evidence that was submitted, it did not seem to me that the case had been made.

As has been signalled, our second objection is the introduction of home detention curfews, while automatic early release continues. That will simply allow prisoners out of jail even earlier. I do not accept that the people of Scotland regard that as desirable or sensible. During the debate on amendments, I was struck by the lively and robust contributions that weighed in from every sector of the chamber. Normally that means one thing—that a raw nerve has been struck. I express my profound disappointment that after trails in the media, hints from the Sentencing Commission and big words from our First Minister, at the end of the day we will be no further forward in ending the scandal that is automatic early release of prisoners in Scotland.

Quite simply, it is a disgrace that a prisoner serving less than four years is released halfway through that sentence, regardless of their behaviour, and that someone serving more than four years is released after only two thirds of it. That sends out a message about our justice system, and I do not think that it is a good one. I certainly do not think that it is a deterrent message.

The Executive can come up with all the excuses that it wants. The fact remains that amendment 1 in my name would have allowed it to end early release on a day of its choosing. Mr Henry criticised that provision and seemed to regard it as a deficiency, but I was trying to address the specific concern that he articulated at stage 2. For the moment, the Executive is the devolved Government of Scotland, so for the moment it has the power to end early release. That is why I tried to give it the flexibility that it seems to think would be helpful.

Actions speak louder than words. Clearly, the Executive has no intention of ending early release for short-term and long-term prisoners. Through the bill, it will allow some prisoners out of jail even earlier. That is not justice.

With regret, because there are subsidiary measures in the bill that have merit and that I do not want to diminish, I say that on the two principled grounds that I have outlined the Conservatives are unable to support the bill and will therefore vote against it.

The Deputy Presiding Officer: I call Jeremy Purvis to open for the Liberal Democrats. I will give him some latitude in exchange for his having waived his closing speech.

16:33

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I add my thanks to the staff of the Justice 2 Committee, to the witnesses from whom the committee heard and to both ministers for their openness throughout the process. The confidential pre-legislative briefing that the committee received from the bill team was constructive and provided evidence that there is a mature relationship between Parliament and the Executive.

At stage 1, I said that there should be little doubt that one of the biggest factors in overall crime rates in Scotland is reoffending. There is consensus on that issue. The paper “Costs, Sentencing Profiles and the Scottish Criminal Justice System”, which was published this year, shows that of the 16,607 custodial disposals in 2003, 53 per cent were for less than three months and 21 per cent were for less than 60 days. It is not hard to cross-reference that fact with the Audit Scotland report on rehabilitation in prisons, which shows the reduced benefit for short-term prisoners of services that start in prison but do not continue in the community.

At stage 1, the Justice 2 Committee heard much evidence about the difficulty of successfully rehabilitating individuals. I was impressed with the evidence from the prison governors of Polmont, Cornton Vale and Edinburgh. Although I believe
that they are working hard, they must overcome two main obstacles. One is that prisons have insufficient time to work with many prisoners on their offending behaviour. In addition, there are insufficient tools in legislation to ensure co-ordination of services in the community.

Therefore, in the context of the Management of Offenders etc (Scotland) Bill, which I hope will be passed today, we asked whether we take the right approach to legislation and whether we ensure that rehabilitation services are strategically developed, properly led and enthusiastically managed. We also asked whether we are taking the right sentencing approach. That matter is outwith the scope of the bill, but after my question to the First Minister at lunch time, Parliament will be aware of my views in that regard.

In many cases, it is hard to rehabilitate successfully—we all know that. Mr Stevenson made that point extremely clearly during earlier scrutiny of the bill. However, the system actively discourages rehabilitation as a result of long delays in cases being brought to trial and because of an unfortunately high level of short-term, and in some cases, very short-term prison sentences.

Community justice authorities, which we hope to approve today, will give a focus to what the Justice 1 Committee asked us to do in its recent work on rehabilitation in prisons. That committee wanted a clearer definition of rehabilitation and it wanted to know what is required to make rehabilitation more effective. We have heard that we would not require CJAs in an ideal world, but we do require them, as we also require the sharing of best practice. I hope that that will be a crucial area of responsibility of the new CJAs.

I understand why the Conservatives will not support the bill: they believe that the case has not been made for a statutory change to structures, which is the ground on which they dissented from the committee’s stage 1 report. In response, I quote the governor of HM Prison Edinburgh, David Croft, who said in evidence:

“On the quality of the partnerships, one of the questions asked was why it is necessary to create a structure to make all this work if it is working okay just now. There is nothing in my management experience that contradicts the view that without a structure we will never get anybody accountably delivering anything. I am talking about the size of the present reoffending problem in Scotland. That is where I believe the proposed structure would be a benefit.”—[Official Report, Justice 2 Committee, 19 April 2005; c 1538.]

Miss Goldie: I am anxious to establish a balance of evidence. Does Mr Purvis take the view that the Association of Directors of Social Work was overwhelmingly enthusiastic about the proposed new structure?

Jeremy Purvis: I was not convinced by its evidence because we need to build on existing social work groupings. When Jim Wallace was minister, he piloted those and started the process. I want to continue that process and for it to have a bulwark of legislation behind it so that Parliament and, through it, our constituents know that there is a duty to co-operate.

I am aware that the Justice 2 Committee’s work on the bill is limited inevitably to the scope of the bill, but without a proper and mature debate on earlier intervention, offenders will never be properly integrated back into society. As the minister said, the bill should be seen in the context of much wider work not only on reoffending but on rehabilitation.

I return to structures. The bill has been attacked because of the duty to co-operate. In the stage 1 debate, the Conservatives questioned that duty to co-operate. One simply cannot argue that the system has to be structured to create support for communities and then claim that people should not have the tools to do that. We would be no further forward than the status quo and the status quo is not sufficient. If we are being lectured about needing action and not words in one area of the bill, then we need that in a much bigger area of the bill—namely, action to ensure co-operation between agencies. That is important for early intervention, for rehabilitation of individuals and for having fewer offenders who reoffend on release, and ultimately, it is important to ensure safer communities.

16:39

Bill Butler (Glasgow Anniesland) (Lab): As the deputy convener of the Justice 2 Committee, I wish to place on record my thanks and—I am sure—those of my colleagues for the efforts of the clerking team in its support of the committee through the stages of the bill. I also take the opportunity to wish the Minister for Justice many happy returns because it is her birthday today.

The Management of Offenders etc (Scotland) Bill aims to reduce levels of reoffending and to improve management of offenders by greater integration of the work of the criminal justice agencies. I welcome the provisions of the bill as agreed by Parliament because I believe that they provide the basis for a more coherent and integrated approach to addressing offending in Scotland. It is my view that when the bill is enacted it will ensure that, as part of a broader package of reforms, local authorities and the Scottish Prison Service will focus on consistency, quality and co-ordination. Given that, for example, in the two years following 1999, 60 per cent of offenders who were released from prison were reconvicted of other offences, it is right that Parliament will act today to meet that challenge.
I welcome the creation of the community justice authorities, which will be new local government bodies that will ensure co-ordinated delivery of community justice services throughout their areas by local authorities. I believe that that provision is sensible and that Parliament’s acceptance of CJAs is appropriate. I believe also that the obligation that is placed on Scottish ministers via the SPS, CJAs and local authorities co-operating with one another in performance of their functions with respect to management of offenders is both sensible and essential. In my view, interaction between the SPS and CJAs is central to achievement of the improvement in management of offenders that we all want.

I record my support for section 11 of the bill, which will introduce a new discretionary power for the SPS to release certain prisoners on home detention curfew. Most of the evidence that was taken by the committee suggested that there was merit in HDCs for certain low-risk prisoners. Only certain types of such prisoners will be eligible. Sex offenders who are subject to notification requirements, prisoners who are subject to extended sentences and prisoners who have a history of domestic violence will be excluded from and be ineligible for HDCs, as is right and proper. All releases on licence will be remotely monitored. Time on HDC will depend on the length of a sentence, but it cannot be more than 135 days.

Members should take comfort from the evidence that was given by the police, who are the custodians of law and order, to the effect that they are generally supportive of HDCs. I would have thought that that would have given some comfort to the Conservatives, but apparently it has not. I believe that it is unfortunate that they will dissent in the vote on the bill. In my view, HDCs are not a panacea, but they will provide a measured and coherent option that we should follow.

The Management of Offenders etc (Scotland) Bill is a practical bill. I have been able to touch on only some of its main provisions, but it is a bill that will do good and which I believe is worthy of Parliament’s support.

16:42

Stewart Stevenson (Banff and Buchan) (SNP): One of the first things that happens to a prisoner upon reception is a test of numeracy and literacy. Would that such tests were applied to Conservative party members before they took their seats in Parliament. It is entirely against Scottish National Party policy, of course, for me to assist the Tories in any way, but occasionally one has to break the rules.

Let me just flesh out and illustrate the numbers that I gave previously by reference to Peterhead prison, where all prisoners serve a minimum of four years. There are 296 prisoners there and if we abolish early release, which I accept in principle, we would have a capital expenditure of £30 million to £35 million and a revenue expenditure against our budget of £60 million, which gives something like £100 million. Now, of course, if the Tories argue that that is good expenditure, I will listen to them. However, they have not actually given any numbers.

The argument is about what else that £100 million could be spent on. For example, it could be more police, more social workers or more education for people who are in prison to prevent them from reoffending. To be blunt, the Tories are the economic illiterates of Parliament. They do not even recognise numbers when they see them.

I congratulate the minister on reaching her 31st birthday today, as calculated by the hexadecimal system; by that system, I shall reach 40 in five years.

The Tories also show that they are illiterate through their continuing mantra that a benefit is to be derived from locking up people for a long time. I direct members to the United States’ experience. All the states have their own legal, penal and criminological systems. Some have the death penalty; some do not. Not one shred of academic evidence shows a correlation between sentencing policy and outcomes. Indeed, with one exception, the states where the death penalty prevails have the highest murder rates per head of population. We must take the Tories’ mantras on the matter with a very large pinch of salt.

I join others in wishing Miss Goldie all the best in a personal sense with the poisoned chalice that she is about to accept and with a lame duck second-in-command who did not have the courage of his convictions to put his proposition to his party. I continue to have as much political ill will for her party as I have good will for her.

16:46

Colin Fox (Lothians) (SSP): I knew that it was the minister’s birthday when she said that the bill will transform the current situation and get to grips with reoffending behaviour. On a day when she was more sober, she came before the Justice 2 Committee and said that the Executive expected that the bill could reduce reoffending behaviour by 3 per cent. That shows the real extent of her ambitions when it is not her birthday.

Cathy Jamieson: For the sake of accuracy, it would be very important for Mr Fox to quote for the record our entire discussion, although I appreciate that he cannot do so because time is limited. However, we made it very clear that the 3 per cent was an initial target and that the national advisory
Colin Fox: If I had more time, I could provide the full quotation. However, the figures and claims are already on the record.

The bill attempts to make it seem as if the Executive is moving things forward; in fact, very little in it will meaningfully address the underlying problem of reoffending behaviour. As the Justice 2 Committee report and members in the debate have pointed out, reoffending levels in Scotland are very depressing. The matter is worthy of our time and full consideration, but the bill simply shuffles the seats on the Titanic.

The ministers know full well that offending behaviour can be tackled first by addressing the fact that sentencing policy in this country is more about punishing people than it is about stopping their reoffending. As the Justice 2 Committee report makes clear, all the evidence shows that such an approach is doomed. Members have pointed out—although perhaps not enough—that offending and reoffending levels can be addressed by tackling their main drivers, such as social exclusion, poverty, addiction and deprivation.

Because of overcrowding, the lack of adequate programmes and there being too few prison officers who are trained to intervene, our prisons are failing more and more to discourage people from going straight back out and committing the same crimes over and over again. The principal objection that I raised in the Justice 2 Committee’s report and that I raise again today is that having carried out a major reorganisation of criminal justice social work in 2002, the Scottish Executive proposes yet another reorganisation. The ADSW and the Convention of Scottish Local Authorities have suggested that it would be better to evaluate the experience of the first reorganisation than to set up another one, and they proposed that more powers be given to people on the front line instead of to bureaucrats to police them.

As it has done in so many other debates, the Scottish Executive claims that the proposed legislation is one measure in a basket of measures, one tool in a toolbox, one sandwich in a picnic and one reform in a range of reforms. However, the bill simply shuffles the management structures without addressing the real problem. I dissented in the Justice 2 Committee report on the bill because I agree with the case that was put by ADSW and COSLA; insufficient time has elapsed to allow us to study the full impact of the previous reorganisation. For that reason, the Scottish Socialist Party has not been persuaded to support the bill this evening.

Mr Stewart Maxwell (West of Scotland) (SNP):
I join others in thanking the clerks of the Justice 2 Committee who, as usual, did an excellent job in supporting committee members during the bill’s progress.

I begin by highlighting two of the lesser-mentioned areas of the bill, the first of which relates to the Criminal Injuries Compensation Authority. I realise that the minister talked about the authority at the beginning of the debate.

It is an extremely important achievement to get the bill through Parliament. I believe that it will be welcomed throughout Scotland and I shall be pleased to see it passed tonight. It is also important that we are tightening up the procedures relating to the release of certain sexual offenders. Again, that is most welcome, although it is a matter that has not received much attention in this debate.

On community justice authorities, it makes perfectly good sense that organisations that are connected with rehabilitation of prisoners should work together. That will help to ensure that people who have just been released from prison are given the opportunity to break free from the downward spiral that all too often ends with them back in prison. Jeremy Purvis cited statistics relating to that. To achieve what is envisaged, structures need to be in place to ensure that, on release, prisoners have a place to stay, assistance in staying clear of drugs and drink and help in obtaining work or training in order to give them stability and some hope for the future.

Despite the best efforts of many organisations, too many prisoners have slipped through the net of the existing system. If we are really serious about tackling the horrific reoffending rate in Scotland, a joined-up approach is crucial, and that is where CJAs will have an important role to play. As many members have said, structures alone do not improve situations; however, adequate resources and what is done with them can and will assist in determining the outcomes when combined with those new structures. The Executive must ensure that whatever resources are necessary are allocated to those front-line services to accommodate the extra responsibilities that will arise from that change.

The ADSW argued that “the important issues were the provision of services to deal with the underlying problems of alcohol, drugs, housing and the other problems that existed before an individual entered prison.”

I certainly agree with that statement, but if CJAs work correctly they will facilitate co-ordination of those services to the benefit of the individuals who most require them.
However, I also believe that it would have been helpful to the committee to have had the minister’s response to the consultation exercise on the proposed CJAs somewhat earlier than yesterday. I received a copy yesterday morning from the clerks, but it would have been better if that information had been available to the Justice 2 Committee early enough for members to examine and report on the minister’s response. As it was, we were unaware of some of the detail of the CJAs when the bill was going through stages 1 and 2.

The committee came to the conclusion—although not unanimously, as we have seen this afternoon—that there was merit in home detention curfews for certain low-risk offenders, as Bill Butler pointed out. However, the effectiveness of those curfews will be limited by the amount of support that is available. It is crucial to the success of HDCs that, when additional support services are required, they are included as additional mandatory conditions—a point that I made to the minister earlier—over and above the standard conditions, in addition to their being available as voluntary options where appropriate. The minister responded to my earlier intervention by saying that it is not a case of applying blanket conditions for everybody, but additional mandatory conditions would not be blanket conditions; they would be applied to individual cases and assessed on their merits. However, where additional conditions are necessary, appropriate and helpful, we think that they should be mandatory. That was discussed widely in the committee. It is vital that such additional conditions be properly resourced and in place before HDCs begin.

HDCs will be suitable only for a limited number of prisoners and some categories may benefit more than others. There are far too many women in prison, and the majority of them are inside for non-violent offences. An HDC would allow a prisoner who is the mother of small children the opportunity to rebuild her relationship with her family and to contribute to the well-being of her children in a way that would be impossible if she were still in prison. Surely that is to the benefit of our whole society. Many women prisoners have drug and other problems that HDCs, combined with appropriate conditions and their being properly resourced, could greatly assist with.

Overall, I can see benefits from the use of home detention curfews. Any problems that arise from them will be surmountable. However, neither HDCs nor the community justice authorities on their own will be enough to overcome the problems that prisoners face. The committee took the view that the inclusion of additional mandatory conditions would assist in allowing HDCs to succeed: we want to see HDCs in place, but we want to ensure that they succeed, which was why we took that view. Although I support the bill, which has a lot of good stuff in it, I confess to being a bit concerned that the minister, in evidence to the committee and again this afternoon, has refused to commit to additional mandatory conditions for HDCs when they are necessary. That would have been an improvement.

16:54

The Deputy Minister for Justice (Hugh Henry): There has been an interesting exchange of views this afternoon. I thank members for that and I also thank everyone who has contributed to taking the bill through Parliament. I thank members of the Justice 2 Committee and the convener for their detailed work during the committee stages and also thank the clerks for their sterling work in support of those processes. I acknowledge that the process has not always been easy and I recognise some of the pressures that they faced. I also put on record my thanks to the many organisations that gave up their time to provide evidence to the committee and I thank them for their many contributions throughout the process. Those contributions have been valuable in helping to shape what has been a fast-changing process as we have moved forward.

As the Minister for Justice and many members have said during the course of the debate, the bill is about reducing reoffending and making our communities safer. Some specific questions were asked during the debate. I welcome Kenny MacAskill’s support for the bill. He rightly said that the legislation alone will not solve the problem of Scotland’s reoffending rates. It is important to re-emphasise that it will be the hard work of individuals within the new framework that will bring about the change that we all seek. I have high hopes for what we can achieve, given the positive comments that have been made.

Jeremy Purvis talked about the length of time it takes for cases to get to trial. We acknowledged in our criminal justice plan which was published last December, the importance of faster court processes. That is why we are pursuing landmark reforms to the summary justice system. I hope that that will stimulate some more significant debate.

It was interesting that in the course of the debate Colin Fox and Annabel Goldie came together in a Tory-SSP coalition—a coalition of innate conservatism—to say that there should be and will be no change. Annabel Goldie said that the case has not been made so we should leave the system alone. Colin Fox not only, in an innately conservative manner, supported the status quo, but has not stayed up to date with the changes that have taken place within COSLA and the ADSW. I refer Colin Fox to the ADSW, which
welcomes the opportunity to work with the SPS, and I also refer him to the statement from COSLA, which states:

“We are grateful that Ministers have responded positively to the”

case made by local government.

The statement continues:

“COSLA, along with colleagues from across local government, will now direct its energies and commitment to ensuring that the new arrangements are successful.”

COSLA has left the innate conservatives behind and has moved forward. It is worth our while not only to remind Annabel Goldie and the SSP what they have done this afternoon, but to remind Parliament and the wider public exactly what the Scottish Socialists are opposing. They are opposing tougher measures against sex offenders, recovery of criminal injury payments from offenders, improved drug testing in prisons and improved ability for ministers to intervene in some of the tragic cases where failure takes place. That is shameful.

If I leave the innate conservatives aside, there is genuine good will for the bill in Parliament and among the many organisations throughout Scotland that want to work together to reduce reoffending. I believe that the bill will be a very useful way forward and I thank everyone for their work. I believe that Parliament will do the right thing and leave some of the dinosaurs behind.
The Presiding Officer: The sixth and final question is, that motion S2M-3436, in the name of Cathy Jamieson, on the Management of Offenders etc (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Curran, Frances (West of Scotland) (SSP)
Davidson, Mr David (North East Scotland) (Con)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Leckie, Carolyn (Central Scotland) (SSP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Tosh, Murray (West of Scotland) (Con)

The Presiding Officer: The result of the division is: For 96, Against 20, Abstentions 0.

Motion agreed to.

That the Parliament agrees that the Management of Offenders etc. (Scotland) Bill be passed.
CONTENTS

Section

Co-operation

1 Duty to co-operate
1A Co-operation for purposes of inspections

Community justice authorities

2 Community justice authorities
3 Further provisions as respects community justice authorities
4 Special duties of chief officer of community justice authority
5 Power of Scottish Ministers to require action by community justice authority: failure by that authority
6 Power of Scottish Ministers to require action by community justice authority: failure by local authority
7 Transfer of functions to community justice authority
8 Transfer of property to community justice authority

Assessing and managing risks posed by certain offenders

9 Arrangements for assessing and managing risks posed by certain offenders
10 Review of arrangements

Probation progress review

10ZA Probation progress review

Accreditation etc.

10A Scheme of accreditation and procedure etc. of the Risk Management Authority

Orders after assessment of risk

10B Orders after assessment of risk

Amendment of Prisoners and Criminal Proceedings (Scotland) Act 1993

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

Testing prisoners for drugs

11ZA Testing prisoners for drugs

Miscellaneous

11A Notification requirements where sentence of imprisonment for public protection is imposed in England and Wales
12 Offender’s failure to comply with notification requirements: jurisdiction of Scottish courts

SP Bill 39B

Session 2 (2005)
12A Objection to content or finding of risk assessment report: conduct of proceedings
13 Recovery of criminal injuries compensation from offenders
14 Further amendments and repeal

**General**
15 Supplementary and consequential provision etc.
16 Interpretation
17 Commencement
18 Short title
Management of Offenders etc. (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision for the establishment of community justice authorities; to make further provision for the supervision and care of persons put on probation or released from prison etc.; to make further provision as respects the procedures etc. of the Risk Management Authority; to make further provision as respects the powers of the High Court following the submission of a risk assessment report or of a report under section 210D of the Criminal Procedure (Scotland) Act 1995; to amend Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 so as to make further provision as respects the release of prisoners on licence; to make further provision for testing prisoners for drugs; to make further provision as respects the jurisdiction of the Scottish courts in proceedings for offences in relation to the notification requirements of Part 2 of the Sexual Offences Act 2003; to make further provision as respects proceedings in relation to an objection to the content of a risk assessment report; to make provision about the recovery of compensation from offenders; and for connected purposes.

Co-operation

1 Duty to co-operate

(1) The Scottish Ministers, community justice authorities and local authorities are to co-operate with one another in carrying out their respective functions in relation to relevant persons.

(2) In this Act—

(a) to “co-operate” may, without prejudice to the generality of that expression, include to exchange information (“co-operation” being construed accordingly); and

(b) “relevant person” means—

(i) a person who is supervised by, provided with advice, guidance or assistance by, or the subject of a report by a local authority (or, by virtue of section 7, by a community justice authority) as part of the provision by the local authority (or community justice authority) of a service for the purposes mentioned in any of sections 27(1) or (1A) or 27ZA of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prison etc.); or

(ii) any other person if that person is detained in custody.
The reference in subsection (1) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45).

1A Co-operation for purposes of inspections

(1) Where any person mentioned in subsection (2) is conducting an inspection of the provision of services to relevant persons, the persons mentioned in that subsection may co-operate with one another for the purposes of that inspection.

(2) The persons are—

   (a) Her Majesty’s Chief Inspector of Prisons for Scotland;

   (b) Her Majesty’s Chief Inspector of Constabulary;

   (c) a person authorised under section 6(1) of the Social Work (Scotland) Act 1968 (c.49) (supervision of establishments providing accommodation for persons and inspection of records etc.).

(3) The Scottish Ministers may by order made by statutory instrument amend the list of persons in subsection (2).

(4) A statutory instrument containing an order under subsection (3) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

Community justice authorities

2 Community justice authorities

(1) The Scottish Ministers may by order made by statutory instrument establish, for an area specified in the order, a body corporate to be known as a community justice authority.

(2) A community justice authority is not to be regarded as the servant or agent of the Crown or have any status, immunity or privilege of the Crown; nor are its members or employees to be regarded as civil servants.

(3) Subject to subsection (4), an order under subsection (1) may include provision with regard to—

   (a) the constitution and proceedings of the community justice authority;

   (b) matters relating to the membership of that authority; and

   (c) the supply of services or facilities by appropriate local authorities to that authority.

(4) No person may be a member of the community justice authority who is not—

   (a) a councillor of an appropriate local authority; and

   (b) nominated for such membership by that authority.

(5) The functions of a community justice authority are—

   (a) at such intervals as the Scottish Ministers may determine—

      (i) to prepare, in consultation with the partner bodies, the Scottish Ministers, the appropriate local authorities and such other bodies as the Scottish Ministers may specify, a plan for reducing re-offending by relevant persons; and
(ii) to submit that plan to the Scottish Ministers (the plan as approved under subsection (14) being referred to in this section and in section 4 as the community justice authority’s “area plan”);

(b) to monitor the performance of—

(i) appropriate local authorities; and

(ii) the Scottish Ministers,

in complying with, and in co-operating with each other, the community justice authority and others to facilitate compliance with, the area plan;

(c) in so far as it considers such performance by—

(i) a local authority to be unsatisfactory, to issue such directions to that authority; or

(ii) the Scottish Ministers to be unsatisfactory, to make such recommendations to the Scottish Ministers,

as it thinks fit;

(d) to promote good practice in the management of the behaviour of relevant persons ("management" being management with a view to reducing re-offending by those persons);

(e) to allocate to the appropriate local authorities any amount paid to it under—

(i) section 27A(1) of the Social Work (Scotland) Act 1968 (c.49) (grants in respect of community service facilities); or

(ii) section 27B(1) of that Act (grants in respect of hostel accommodation for persons under supervision);

(f) to arrange with the partner bodies that, so far as practicable, any information—

(i) relating to relevant persons; and

(ii) in the possession of any of those party to the arrangements,

is furnished or made available to the others party to them;

(g) as soon as practicable after the end of each financial year, to report to the Scottish Ministers on—

(i) its activities and performance during that year in discharging its functions under this section; and

(ii) the activities and performance during that year of appropriate local authorities, partner bodies and the Scottish Ministers in complying with, or facilitating compliance with, the area plan; and

(h) any function which it has by virtue of section 7 of this Act.

(5A) Any grant paid to a local authority by virtue of subsection (5)(e) is subject to such conditions as the community justice authority may determine.

(5B) But conditions determined under subsection (5A) are subject to any conditions determined, as respects the grant in question, under section 27A(1B) or 27B(1B) of the Social Work (Scotland) Act 1968 by the Scottish Ministers.

(6) In preparing a report under paragraph (g) of subsection (5), the community justice authority is to consult as mentioned in paragraph (a)(i) of that subsection.
(6A) A report made under paragraph (g) of subsection (5) must be published by the community justice authority in such manner as it considers appropriate.

(6B) A community justice authority is, on receiving a report submitted to it under section 10(2)(c), to send a copy of that report to the Scottish Ministers.

(7) The Scottish Ministers may by order made by statutory instrument amend subsection (5) so as (either or both)—

(a) to add to the functions for the time being described;

(b) to alter or omit any of those functions.

(8) Different provision may be made under subsection (7) for different community justice authorities.

(9) The Scottish Ministers are from time to time to inspect and assess the arrangements set in place, and the services provided, by local authorities for complying with the area plan and to satisfy themselves as to the sufficiency of those arrangements and services.

(10) The Scottish Ministers—

(a) may from time to time issue to a community justice authority guidance as to—

(i) the exercise of its functions; or

(ii) its actings under section 3; and

(b) where they have issued such guidance but are satisfied that the authority—

(i) is not complying; and

(ii) is not likely to comply,

with it, may issue directions to the authority as to the exercise or actings in question.

(10A) But before issuing directions under subsection (10)(b), the Scottish Ministers are—

(a) to give written notice of at least 7 days to the community justice authority that they intend to issue the directions; and

(b) to consider any representations in that regard made to them, within those 7 days, by the authority.

(10B) The community justice authority may appeal to the sheriff, against any directions so issued, on the grounds (either or both)—

(a) that the directions are unreasonable;

(b) that to issue them was unreasonable.

(10C) Within one month after issuing any such directions the Scottish Ministers are to lay a report before the Parliament containing a copy of the directions and a statement as to the reason for issuing them.

(11) In carrying out—

(a) their functions under section 27 of the Social Work (Scotland) Act 1968, an appropriate local authority are;

(b) by virtue of section 7 (of this Act), its functions, or functions on behalf of an appropriate local authority, under that section 27, a community justice authority is,

so far as practicable, to comply with the area plan.
(12) The Scottish Ministers are, so far as practicable, to comply with the area plan.

(13) If directions are issued—

(a) under subsection (5)(c)(i), the local authority receiving the directions;
(b) under subsection (10)(b), the community justice authority,

must comply with them.

(14) The Scottish Ministers, on receiving a plan by virtue of sub-paragraph (ii) of subsection (5)(a), may approve it or require the authority to revise the plan, in such manner as the Scottish Ministers may specify, and to re-submit it under that sub-paragraph.

(15) Subsection (14) applies in relation to a plan re-submitted as it applies to one submitted.

(16) In this section—

an “appropriate local authority” is a local authority the area of which is comprised within the area of the community justice authority; and

“partner bodies” means such persons as are for the time being designated as partner bodies for the purposes of this section by the Scottish Ministers by order made by statutory instrument.

(17) The references in subsections (5)(b)(ii) and (g)(ii) and (12) to the Scottish Ministers are to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45) as is the first reference to the Scottish Ministers in each of paragraphs (a)(i) and (c)(ii) of subsection (5).

(18) A statutory instrument containing an order under—

(a) subsection (1) or (7) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament;
(b) subsection (16) is subject to annulment in pursuance of a resolution of the Parliament.

3 Further provisions as respects community justice authorities

(1) Subject to any directions issued under section 2(10)(b), a community justice authority may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with the exercise of, its functions; and without prejudice to that generality may in particular enter into contracts.

(2) A community justice authority—

(a) is to appoint a chief officer; and
(b) may appoint as staff such other persons as it considers requisite for enabling it to exercise its functions.

(3) The remuneration and conditions of service of a chief officer or other person appointed under subsection (2) are to be such as the community justice authority may determine.

(4) A community justice authority may—

(a) pay, or make arrangements for the payment of;
(b) make payments towards the provision of; and
(c) provide and maintain schemes (whether contributory or not) for the payment of,
such pensions, allowances and gratuities to or in respect of its employees, or former employees, as it thinks fit.

(5) The reference in subsection (4) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.

(6) The expenditure of a community justice authority, in so far as it is not met from any other source, may be paid by the Scottish Ministers.

4 Special duties of chief officer of community justice authority

(1) Where it appears to the chief officer of a community justice authority that—

(a) the authority is failing, or has failed, satisfactorily to exercise its functions under this Act; or

(b) an appropriate local authority or the Scottish Ministers are failing to comply with the community justice authority’s area plan,

the chief officer is, as soon as practicable, to report the failure to the Scottish Ministers.

(2) Without prejudice to section 2(5)(g)(ii), the chief officer is, whenever required to do so by the Scottish Ministers, to report to them on the activities and performance, during such period as is specified in the requirement, of the community justice authority, appropriate local authorities, partner bodies and the Scottish Ministers in complying with, or facilitating compliance with, the community justice authority’s area plan.

(3) In subsections (1) and (2), “appropriate local authority” means a local authority the area of which is comprised within the area of the community justice authority; and in subsection (2), “partner bodies” means such persons as are designated by order under section 2(16) as partner bodies.

(4) The reference in subsection (1)(b) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45) as is the second reference to the Scottish Ministers in subsection (2).

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

(1) Where it appears to the Scottish Ministers on a report under section 4 or by a person mentioned in subsection (2)—

(a) that a community justice authority is failing, or has failed, satisfactorily to exercise its functions under this Act; and

(b) that the issue under this section of an enforcement direction to the authority would be justified,

they may issue a preliminary notice to the authority.

(2) The persons are—

(a) a person authorised under section 6(1) of the Social Work (Scotland) Act 1968 (c.49) (supervision of establishments providing accommodation for persons and inspection of records etc.);

(b) Her Majesty’s Chief Inspector of Prisons for Scotland;

(c) Audit Scotland;
Management of Offenders etc. (Scotland) Bill

(3) A preliminary notice is one which—
   (a) informs the authority of the apparent failure mentioned in subsection (1)(a); and
   (b) requires the authority to submit to the Scottish Ministers, within such period as is specified in the notice, an appropriate written response.

(4) An appropriate written response is one which—
   (a) states that the authority is not so failing (or as the case may be has not so failed) and gives reasons supporting that statement; or
   (b) acknowledges that the authority is so failing (or has so failed) but gives reasons why an enforcement direction should not be issued to it.

(5) If a response is given under subsection (4)(b), the authority must either describe in the response the measures it proposes to take to remedy the failure or explain why no such measures need be taken.

(6) Where, following service of the preliminary notice and the expiry of the period specified in that notice, it still appears to the Scottish Ministers that the circumstances are as mentioned in paragraphs (a) and (b) of subsection (1), they may issue an enforcement direction to the authority.

(7) An enforcement direction is one which requires the authority to take, within such time as is specified in the direction, such action as is so specified, being action for the purpose of remedying, or preventing the recurrence of, the failure.

(8) An authority to which an enforcement direction is issued under this section must comply with it.

(9) The Scottish Ministers may vary or revoke an enforcement direction.

(10) The Scottish Ministers may, instead of or as well as issuing an enforcement direction to the authority, make such recommendations to the authority as they think fit.

(11) When the Scottish Ministers issue, vary or revoke an enforcement direction they are to—
   (a) prepare a report as to their exercise of the power in question; and
   (b) lay that report before the Parliament.

(12) The Scottish Ministers may by order made by statutory instrument amend subsection (2) so as (either or both)—
   (a) to add to the persons there described;
   (b) to alter the description of, or omit, any of those persons.

(13) A statutory instrument containing an order under subsection (12) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

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

(1) Where it appears to the Scottish Ministers, on a report under section 4 or by a person mentioned in section 5(2)—
(a) that a local authority are failing, or have failed, satisfactorily to exercise their functions under section 27 of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prison etc.) in relation to—

(i) relevant persons; or

(ii) one relevant person provided that the person making the report considers such failure to be symptomatic of some general failure of the local authority in the exercise of their functions under that section; and

(b) that the issue under this section of an enforcement direction to the authority would be justified,

they may issue a preliminary notice to the community justice authority.

(2) Subsections (3) to (11) of section 5 apply in relation to an apparent failure mentioned in subsection (1)(a) (of this section) as they apply in relation to an apparent failure mentioned in subsection (1)(a) of that section.

(3) For the purposes of that application references in those subsections of that section to “the authority” are to be construed as references to the community justice authority except that the references in paragraphs (a) and (b) of subsection (4) of that section are to be construed as references to the local authority.

(4) But, notwithstanding that exception, the word “it” in paragraph (b) of subsection (4) of that section is to be construed as a reference to the community justice authority.

7 Transfer of functions to community justice authority

(1) This section applies to functions under or by virtue of—

(a) any of sections 27(1) or (1A), 27ZA or 27B of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prison etc.) which are exercisable by local authorities; and

(b) the Prisons (Scotland) Act 1989 (c.45) which are—

(i) exercisable by the Scottish Ministers; and

(ii) relate to the preparation of offenders for release from imprisonment or from detention in custody.

(2) The Scottish Ministers may by order made by statutory instrument provide that, within the area of a community justice authority, a function—

(a) to which this section applies; and

(b) specified in the order,

is instead to be exercisable by the community justice authority; but this subsection is subject to subsections (5) and (6).

(3) A community justice authority and a local authority comprised within the area of the community justice authority may jointly determine that a function mentioned in paragraph (a) of subsection (1) is to be exercisable on behalf of that local authority by the community justice authority; but before any such joint determination is made the community justice authority must, as respects its proposed effect, consult—

(a) any local authority comprised within that area and not party to the joint determination,
(b) the partner bodies (as defined by section 2(16)), and

(c) the Scottish Ministers.

(3A) A community justice authority and the Scottish Ministers may jointly determine that a function mentioned in paragraph (b) of subsection (1) is (within the area of that authority) to be exercisable on behalf of the Scottish Ministers by the authority.

(4) The Scottish Ministers may, under subsection (2), make different provision for different community justice authorities.

(5) A statutory instrument containing an order under subsection (2) is not made—

(a) unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament,

(b) in the case of functions mentioned in paragraph (a) of subsection (1), unless before the draft is so laid, the Scottish Ministers—

(i) have consulted, as respects the draft, the community justice authority and each of the local authorities comprised within the area of the community justice authority, and

(ii) subject to subsection (6), have secured the agreement of them all to its being so laid, and

(c) in the case of functions mentioned in paragraph (b) of subsection (1), unless before the draft is so laid, the Scottish Ministers—

(i) have consulted, as respects the draft, the community justice authority, and

(ii) have secured its agreement to its being so laid.

(6) Where it is proposed to make an order under subsection (2) and a function exercisable by any of Orkney Islands Council, Shetland Islands Council and Comhairle nan Eilean Siar would, but for this subsection, become exercisable by a community justice authority were the order made, the council in question may, before the draft of the statutory instrument containing the order is laid before the Parliament, opt to retain the function; and where the council so opt then—

(a) within the area of the council the function is to continue to be exercisable by them and not by the community justice authority (the draft being modified accordingly before being laid), and

(b) subsection (5)(b)(ii) does not require the Scottish Ministers to secure the agreement of the council to the draft being laid.

8 Transfer of property to community justice authority

(1) For the purpose of facilitating the discharge by a community justice authority of that authority’s functions, a local authority or the Scottish Ministers may transfer property to that authority.

(1A) If by virtue of the revocation of an order under section 7 a function ceases to be exercisable by a community justice authority, that authority must, if requested to do so by whomever is to exercise the function in consequence of the revocation, transfer to that person any property held by it wholly or mainly for the purpose of exercising the function.

(2) Where transfer under subsection (1) or (1A) occurs, no right of pre-emption or other similar right operates or becomes exercisable.
Subject to subsection (2), on the transfer of property under subsection (1) or (1A), such rights and liabilities of the transferor as pertain to the property are transferred with it.

Assessing and managing risks posed by certain offenders

Arrangements for assessing and managing risks posed by certain offenders

Subject to subsection (10), the responsible authorities for the area of a local authority must jointly establish arrangements for the assessment and management of the risks posed in that area by any person who—

(a) is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c.42);

(b) has been convicted on indictment of an offence inferring personal violence and—

(i) is subject to a probation order under section 228(1) of the Criminal Procedure (Scotland) Act 1995 (c.46), or

(ii) is required, having been released from imprisonment or detention, (or will be required when so released), to be under supervision under any enactment or by the terms of an order or licence of the Scottish Ministers or of a condition or requirement imposed in pursuance of an enactment;

(ba) has, in proceedings on indictment, been acquitted of an offence inferring personal violence if—

(i) the acquittal is on the ground of insanity; and

(ii) a restriction order is made in respect of the person under section 59 of that Act of 1995 (hospital orders: restriction on discharge);

(bb) has been prosecuted on indictment for such an offence but found, under section 54(1) of that Act of 1995 (insanity in bar of trial), to be insane; or

(c) has been convicted of an offence if, by reason of that conviction, the person is considered by the responsible authorities to be a person who may cause serious harm to the public at large.

It is immaterial—

(a) for the purposes of paragraph (a) of subsection (1), where the offence by virtue of which the person is subject to the notification requirements was committed (or, if the person is subject to the notification requirements by virtue of a finding under section 80(1)(b) of the Sexual Offences Act 2003 (c.42), where anything that he was charged with having done took place);

(b) for the purposes of paragraph (b) or (c) of that subsection, where the offence of which the person has been convicted was committed; or

(c) for the purposes of paragraph (ba) or (bb) of that subsection, where anything that the person was charged with having done took place.

Subject to subsection (10), in the establishment and implementation of those arrangements, the responsible authorities must act in co-operation with such persons as the Scottish Ministers may, by order made by statutory instrument, specify.

Subject to subsection (10), it is the duty of—

(a) any persons specified under subsection (3) to co-operate; and

(b) the responsible authorities to co-operate with each other,
in the establishment and implementation of those arrangements; but only to the extent
that such co-operation is compatible with the exercise by those persons and authorities
of their functions under any other enactment.

(4A) In the area of each local authority the responsible authorities and the persons specified
under subsection (3) must together draw up a memorandum setting out the ways in
which they are to co-operate with each other.

(5) The Scottish Ministers may issue guidance to responsible authorities on the discharge of
the functions conferred on those authorities by this section and section 10.

(6) In this section and in section 10, the “responsible authorities” for the area of a local
authority are—

(a) the chief constable of a police force maintained for a police area (or combined
police area) any part of which is comprised within the area of the local authority;

(b) the local authority;

(ba) a Health Board or Special Health Board for an area any part of which is comprised
within the area of the local authority; and

(c) the Scottish Ministers.

(7) The Scottish Ministers may by order made by statutory instrument amend the definition
of the “responsible authorities” in subsection (6).

(8) A statutory instrument containing an order under—

(a) subsection (3) is subject to annulment in pursuance of a resolution of the
Parliament;

(b) subsection (7) is not made unless a draft of the instrument has been laid before,
and approved by resolution of, the Parliament.

(9) Different provision may be made under subsection (3) for different purposes and for
different areas.

(10) The functions and duties, under the preceding provisions of this section and under
section 10, of the responsible authorities mentioned in subsection (6)(ba) extend only to
the establishment, implementation and review of arrangements for the assessment and
management of—

(a) persons subject to an order under section 57(2)(b) of the Criminal Procedure
(Scotland) Act 1995 (c.46) (imposition of special restrictions in disposal of case
where accused found to be insane);

(b) those subject to a restriction order under section 59 of that Act (provision for
restrictions on discharge);

(c) those subject to a hospital direction under section 59A of that Act (direction
authorising removal to and detention in specified hospital); or

(d) those subject to a transfer for treatment direction under section 136 of the Mental
Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (transfer of prisoners
for treatment for mental disorder).

(11) But it is the duty of the responsible authorities mentioned in subsection (6)(ba) to co-
operate (to the extent mentioned in subsection (4)) with the other responsible authorities,
with each other and with any persons specified under subsection (3), in the
establishment and implementation of arrangements for the assessment and management
of persons other than those mentioned in paragraphs (a) to (d) of subsection (10).
(12) In subsection (6)(ba)—

“Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29); and

“Special Health Board” means a board so constituted under section 2(1)(b) of that Act.

(13) The reference in subsection (6)(c) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45).

10 Review of arrangements

(1) The responsible authorities must keep the arrangements established by them under section 9 under review for the purpose of monitoring the effectiveness of those arrangements and making any changes to them that appear necessary or expedient.

(2) As soon as practicable after the end of each period of 12 months beginning with 1st. April, the responsible authorities must—

(a) jointly prepare a report on the discharge by them during that period of the functions conferred by section 9;

(b) publish the report in the area of the local authority; and

(c) submit the report to the community justice authority within the area of which the area of the local authority is comprised.

(3) The report must include—

(a) details of the arrangements established by the responsible authorities; and

(b) information of such description as the Scottish Ministers have notified to the responsible authorities that they wish to be included in the report.

Probation progress review

10ZA Probation progress review

(1) The Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows.

(2) After section 229 insert—

“229A Probation progress review

(1) A court may, in making a probation order, provide for the order to be reviewed at a hearing held for the purpose by the court.

(2) The officer responsible for the probationer’s supervision is, before the hearing, to make a report in writing to the court on the probationer’s progress under the order.

(3) The probationer must, and that officer may, attend the hearing.

(4) The hearing may be held whether or not the prosecutor elects to attend.

(5) Where the probationer fails to attend the hearing the court may issue a warrant for his arrest.

(6) At the hearing the court, after considering the report made under subsection (2) above, may amend the probation order.
(7) But before amending the order the court is to explain to the probationer, in ordinary language, the effect of making the amendment; and may proceed to make it only if the probationer expresses his willingness to comply with the requirements of the order as amended.

(8) Sub-paragraph (2) of paragraph 3 of Schedule 6 to this Act applies to amending under subsection (6) above as that sub-paragraph applies to amending under sub-paragraph (1) of that paragraph.

(9) At the hearing the court may provide for the order to be reviewed again at a subsequent hearing held for the purpose by the court; and subsections (2) to (8) above and this subsection apply in relation to a review under this subsection as they apply in relation to a review under subsection (1) above.”.

(3) In section 232(2) (powers of court where satisfied that a probationer has failed to comply with a requirement of his probation order), after the words “subsection (1) above” insert “or of section 229A of this Act”.

10A Scheme of accreditation and procedure etc. of the Risk Management Authority

(1) The Criminal Justice (Scotland) Act 2003 (asp 7) is amended as follows.

(2) In section 11 (accreditation, education and training), after subsection (1) insert—

“(1A) The order may authorise—

(a) decisions as to cases arising in relation to a scheme of accreditation to be taken by a committee; and

(b) any appeal as to such a decision to be determined by a committee, in accordance with such procedure as may be prescribed; and without prejudice to the generality of this subsection the order may make provision as to the membership of the committees and as to any quorum.”.

(3) In paragraph 4 of schedule 2 (constitution etc. of the Risk Management Authority)—

(a) for sub-paragraph (1) substitute—

“(1) Subject to any order under subsection (1) of section 11 of this Act, the Authority may—

(a) make provision for the appointment and constitution of committees and sub-committees;

(b) make provision for the exercise of any of its functions by any of its committees, sub-committees, members or employees; and

(c) regulate its own procedure and the procedure of—

(i) any of its committees or sub-committees (including any such committee as is mentioned in paragraph (a) or (b) of subsection (1A) of that section); or

(ii) any member or employee to whom a function has been delegated under head (b) above.

(1A) Delegation under sub-paragraph (1)(b) is to be without prejudice to the power of the Authority itself to exercise the function in question.
(1B) Without prejudice to the generality of head (c) of sub-paragraph (1), regulation under that head may include provision as to any quorum.”; and
(b) in sub-paragraph (2), after “Authority” insert “or of any of its committees or sub-committees or of any of its members by whom functions are exercised by virtue of sub-paragraph (1)(b)”.

Orders after assessment of risk

10B Orders after assessment of risk

(1) The Criminal Procedure (Scotland) Act 1995 (c.46) is amended as follows.
(2) In section 210F(1) (making of order for lifelong restriction)—
(a) in paragraph (a), for the word “a” substitute “any”;
(b) for the words from “shall” to the end substitute “, in a case where it may make a compulsion order in respect of the convicted person under section 57A of this Act, either make such an order or make an order for lifelong restriction in respect of that person and in any other case make an order for lifelong restriction in respect of that person.”.
(3) The title of section 210F becomes “Order for lifelong restriction or compulsion order”.

Amendment of Prisoners and Criminal Proceedings (Scotland) Act 1993

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

(1) The 1993 Act is amended as follows.
(1A) In section 1(1) (release of short-term prisoners), after “short-term prisoner” insert “, not being a prisoner to whom section 1AA of this Act applies,”.
(1B) After section 1 insert—

“1AA Release of certain sexual offenders

(1) As soon as a prisoner to whom this section applies has served one-half of his sentence the Scottish Ministers are to release him on licence.
(2) This section applies to any short-term prisoner—
(a) sentenced to a term of 6 months or more, and
(b) who, by virtue of the conviction in respect of which that sentence was imposed, is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c.42).
(3) It is immaterial, for the purposes of subsections (1) and (2) above, when the offence of which the prisoner was convicted was committed.
(4) But this section does not apply to a prisoner who was released under section 1(1) of this Act in relation to the sentence mentioned in subsection (2)(a) above before the date on which section 11(1B) of the Management of Offenders etc. (Scotland) Act 2005 (asp 00) came into force (except that where the prisoner is serving terms which by virtue of section 27(5) of this Act fall to be treated as a single term, the reference in the preceding provisions of this subsection to his being released in relation to the sentence mentioned in subsection (2)(a) above is to be construed as a reference to his being released in relation to the single term).
(5) Section 17 of this Act applies to such short-term prisoners as are mentioned in subsection (2) above as that section applies to long-term prisoners.

(6) Where a prisoner is released on licence under this section, the licence (unless revoked) remains in force until the entire period specified in his sentence (reckoned from the commencement of the sentence) has elapsed; but this subsection is subject to subsections (7) and (8) below.

(7) Where the prisoner is serving terms which by virtue of section 27(5) of this Act fall to be treated as a single term the licence (unless revoked) remains in force until the relevant period (reckoned from the commencement of the single term) has elapsed.

(8) The “relevant period” mentioned in subsection (7) above is—

(a) the single term after deduction of half the number of days (if any) by which that term exceeds what it would be were there disregarded in determining it such terms (if any) as are imposed for a conviction other than one by virtue of which the prisoner is subject to the notification requirements mentioned in subsection (2)(b) above, or

(b) if to disregard such terms as are so imposed would have the consequence—

(i) that there would not remain two or more terms to treat as a single term, or

(ii) that though two or more terms would remain they would no longer be consecutive or wholly or partly concurrent,

the single term after deduction of half the number of days (if any) by which that term exceeds the term imposed for the conviction, or as the case may be the terms imposed for the convictions, by virtue of which the prisoner is subject to those requirements.”.

(2) In section 1A(1)(c) (release of persons serving more than one sentence to be on a single licence), after the word “Act” where it first occurs insert “, other than on licence under section 3AA”.

(3) After section 3 insert—

“3AA Further powers to release prisoners

(1) Subject to subsections (2) to (5) below, the Scottish Ministers may release on licence under this section—

(a) a short-term prisoner serving a sentence of imprisonment for a term of three months or more; or

(b) a long-term prisoner whose release on having served one-half of his sentence has been recommended by the Parole Board.

(2) The power in subsection (1) above is not to be exercised before the prisoner has served whichever is the greater of—

(a) one quarter of his sentence; and

(b) four weeks of his sentence.
Without prejudice to subsection (2) above, the power in subsection (1) above is to be exercised only during that period of 121 days which ends on the day 14 days before that on which the prisoner will have served one half of his sentence.

In exercising the power conferred by subsection (1) above, the Scottish Ministers must have regard to considerations of—

(a) protecting the public at large;
(b) preventing re-offending by the prisoner; and
(c) securing the successful re-integration of the prisoner into the community.

Subsection (1) above does not apply where—

(a) the prisoner’s sentence was imposed under section 210A of the 1995 Act;
(b) the prisoner is subject to a supervised release order made under section 209 of that Act;
(c) the prisoner is subject to a hospital direction imposed under section 59A of that Act or a transfer for treatment direction made under section 136(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);
(d) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c.42);
(e) the prisoner is liable to removal from the United Kingdom (within the meaning of section 9 of this Act);
(f) the prisoner has been released on licence under this Part of this Act or under the 1989 Act but—

(i) has been recalled to prison other than by virtue of section 17A(1)(b) of this Act; or
(ii) before the date on which he would but for his release have served his sentence in full, has received a further sentence of imprisonment; or
(g) the prisoner has been released (whether or not on licence) during the currency of his sentence but has been returned to custody under section 16(2) or (4) of this Act.

The Scottish Ministers may by order do any or all of the following—

(a) amend the number of months for the time being specified in subsection (1)(a) above;
(b) amend the number of weeks for the time being specified in subsection (2)(b) above;
(c) amend a number of days for the time being specified in subsection (3) above;
(d) amend any paragraph of subsection (5) above, add a further paragraph to that subsection or repeal any of its paragraphs.”.

In section 5(1) (fine defaulters and persons in contempt of court), after the words “except sections” insert “3AA.”."
(5) In section 9(3) (persons liable to removal from the United Kingdom)—
   (a) in paragraph (d), for the word “immigrant” there is substituted “entrant”; and
   (b) (the word “or” immediately preceding that paragraph being omitted) after that
      paragraph there is added “or
      (e) if he is liable to removal under section 10 of the Immigration and
          Asylum Act 1999 (c.33).”.

(6) In section 11 (duration of licence), after subsection (3) insert—
   “(3A) Subsections (1) to (3) above do not apply in relation to release on licence under
   section 3AA of this Act.
   (3B) A licence granted under section 3AA of this Act remains in force (unless it is
   revoked) until the date on which the released person would, but for his release
   under that section, fall to be released under section 1 of this Act.”.

(7) In section 12 (conditions in licence)—
   (a) after subsection (2) insert—
      “(2A) In its application to a licence granted under section 3AA of this Act, subsection
      (2) above is to be construed as if, for the words “shall include” there were
      substituted “may include””; and
   (b) after subsection (4) insert—
      “(4A) Subsection (3)(b) above does not apply in relation to a condition in a licence
      granted under section 3AA of this Act; but in exercising their powers under
      this section in relation to a long-term prisoner released on such a licence the
      Scottish Ministers must have regard to any recommendations which the Parole
      Board has made for the purposes of section 1(3) of this Act as to conditions to
      be included on release.”.

(8) After section 12 insert—
   “12AA Conditions for persons released on licence under section 3AA
   (1) Without prejudice to the generality of section 12(1) of this Act, any licence
       granted under section 3AA of this Act must include—
       (a) the standard conditions; and
       (b) a curfew condition complying with section 12AB of this Act.
   (2) Subsection (1) above is without prejudice to any power exercisable under
       section 12 of this Act.
   (3) In this section, “the standard conditions” means such conditions as may be
       prescribed as such for the purposes of this section.
   (4) In subsection (3) above, “prescribed” means prescribed by order by the
       Scottish Ministers.
   (5) Different standard conditions may be so prescribed for different classes of
       prisoner.
   (6) Subsection (4) of section 3AA of this Act applies in relation to—
       (a) the exercise of the power of prescription conferred by subsection (3)
       above; and
(b) the specification, variation or cancellation of conditions, other than the standard conditions, in a licence granted under section 3AA of this Act, as it applies in relation to the exercise of the power conferred by subsection (1) of that section.

12AB Curfew condition

(1) For the purposes of this Part, a curfew condition is a condition which—

(a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified; and

(b) may require him not to be in a place, or class of place, so specified at a time or during a period so specified.

(2) The curfew condition may specify different places, or different periods, for different days but a condition such as is mentioned in paragraph (a) of subsection (1) above may not specify periods which amount to less than nine hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).

(3) Section 245C of the 1995 Act (contractual and other arrangements for, and devices which may be used for the purposes of, remote monitoring) applies in relation to the imposition of, and compliance with, a condition specified by virtue of subsection (1) above as that section applies in relation to the making of, and compliance with, a restriction of liberty order.

(4) A curfew condition is to be monitored remotely and the Scottish Ministers must designate in the licence a person who is to be responsible for the remote monitoring and must, as soon as practicable after they do so, send that person a copy of the condition together with such information as they consider requisite to the fulfilment of the responsibility.

(5) Subject to subsection (6) below, the designated person’s responsibility—

(a) commences on that person’s receipt of the copy so sent;

(b) is suspended during any period in which the curfew condition is suspended; and

(c) ends when the licence is revoked or otherwise ceases to be in force.

(6) The Scottish Ministers may from time to time designate a person who, in place of the person designated under subsection (4) above (or last designated under this subsection), is to be responsible for the remote monitoring; and on the Scottish Ministers amending the licence in respect of the new designation, that subsection and subsection (5) above apply in relation to the person designated under this subsection as they apply in relation to the person replaced.

(7) If a designation under subsection (6) above is made, the Scottish Ministers must, in so far as it is practicable to do so, notify the person replaced accordingly.”.

(9) In section 12B (certain licences to be replaced by one), after subsection (3) insert—

“(4) References in this section to release on licence do not include release on licence under section 3AA of this Act.”.

(10) In section 17 (revocation of licence), at the end add—
“(7) References in this section to release on licence do not include release on licence under section 3AA of this Act.”.

(11) After section 17 insert—

“17A Recall of prisoners released under section 3AA

(1) If it appears to the Scottish Ministers as regards a prisoner released on licence under section 3AA of this Act that—

(a) he has failed to comply with any condition included in his licence; or

(b) his whereabouts can no longer be monitored remotely at the place for the time being specified in the curfew condition included in the licence,

they may revoke the licence and recall the person to prison under this section.

(2) A person whose licence is revoked under subsection (1) above—

(a) must, on his return to prison, be informed of the reasons for the revocation and of his right under paragraph (b) below; and

(b) may make representations in writing with respect to the revocation to the Scottish Ministers.

(2A) The Scottish Ministers are to refer to the Parole Board the case of any person who makes such representations.

(3) After considering the case the Parole Board may direct, or decline to direct, the Scottish Ministers to cancel the revocation.

(4) Where the revocation of a person’s licence is cancelled by virtue of subsection (3) above, the person is to be treated for the purposes of section 3AA of this Act as if he had not been recalled to prison under this section.

(5) On the revocation under this section of a person’s licence, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.”.

(12) In section 45 (making of rules and orders)—

(a) in subsection (2), after the word “Any” insert “order made under section 12AA(3) or”; and

(b) in subsection (3), after the word “section” insert “3AA(6),”.

11ZA Testing prisoners for drugs

In section 41B of the Prisons (Scotland) Act 1989 (c.45) (testing prisoners for drugs)—

(a) in subsection (1), after the word “urine” insert “or saliva”; and

(b) in subsection (2), at the end add “or saliva”; and

(c) in subsection (3)—

(i) in the definition of “intimate sample”, for the words from “blood” to the end substitute “—

(a) blood, semen or any other tissue fluid;

(b) pubic hair; or
(c) material from a body orifice other than the mouth;”;

(ii) the word “and” which immediately follows the definition of “drug” is repealed; and

(iii) at the end add “; and

“saliva” includes oral fluid”.

Miscellaneous

11A Notification requirements where sentence of imprisonment for public protection is imposed in England and Wales

(1) In the table in section 82(1) of the Sexual Offences Act 2003 (c.42) (notification period for persons convicted of sexual offences under requirement to notify the police about certain matters), in the entry relating to a person sentenced to imprisonment for life or for a term of 30 months or more, for the words “or for” substitute “, to imprisonment for public protection under section 225 of the Criminal Justice Act 2003 or to imprisonment for”.

(2) This section applies in relation to sentences passed before the date on which this section comes into force, as well as to those passed on or after that date.

12 Offender’s failure to comply with notification requirements: jurisdiction of Scottish courts

In section 91 of the Sexual Offences Act 2003 (c.42) (offences relating to the notification requirements of Part 2 of that Act), for subsection (4) substitute—

“(4) Proceedings for an offence under this section may be commenced in any court—

(a) having jurisdiction in any place where the accused—

(i) resides;

(ii) is last known to have resided; or

(iii) is found;

(b) which has convicted the accused of an offence if the accused is subject to the notification requirements of this Part by virtue of that conviction; or

(c) which has made an order under section 104(1)(b) in respect of the accused if the accused is subject to those requirements by virtue of that order.”.

12A Objection to content or finding of risk assessment report: conduct of proceedings

After section 210E of the Criminal Procedure (Scotland) Act 1995 (c.46) insert—

“210EA Application of certain sections of this Act to proceedings under section 210C(7)

(1) Sections 271 to 271M, 274 to 275C and 288C to 288F of this Act (in this section referred to as the “applied sections”) apply in relation to proceedings under section 210C(7) of this Act as they apply in relation to proceedings in or for the purposes of a trial, references in the applied sections to the “trial” and to the “trial diet” being construed accordingly.
(2) But for the purposes of this section the references—

(a) in sections 271(1)(a) and 271B(1)(b) to the date of commencement of the proceedings in which the trial is being held or is to be held; and

(b) in section 288E(2)(b) to the date of commencement of the proceedings,

are to be construed as references to the date of commencement of the proceedings in which the person was convicted of the offence in respect of which sentence falls to be imposed (such proceedings being in this section referred to as the “original proceedings”).

(3) And for the purposes of this section any reference in the applied sections to—

(a) an “accused” (or to a person charged with an offence) is to be construed as a reference to the convicted person except that the reference in section 271(2)(e)(iii) to an accused is to be disregarded;

(b) an “alleged” offence is to be construed as a reference to any or all of the following—

(i) the offence in respect of which sentence falls to be imposed;

(ii) any other offence of which the convicted person has been convicted;

(iii) any alleged criminal behaviour of the convicted person; and

(c) a “complainer” is to be construed as a reference to any or all of the following—

(i) the person who was the complainer in the original proceedings;

(ii) in the case of any such offence as is mentioned in paragraph (b)(ii) above, the person who was the complainer in the proceedings relating to that offence;

(iii) in the case of alleged criminal behaviour if it was alleged behaviour directed against a person, the person in question.

(4) Where—

(a) any person who is giving or is to give evidence at an examination under section 210C(7) of this Act gave evidence at the trial in the original proceedings; and

(b) a special measure or combination of special measures was used by virtue of section 271A, 271C or 271D of this Act for the purpose of taking the person’s evidence at that trial,

that special measure or, as the case may be, combination of special measures is to be treated as having been authorised, by virtue of the same section, to be used for the purpose of taking the person’s evidence at or for the purposes of the examination.

(5) Subsection (4) above does not affect the operation, by virtue of subsection (1) above, of section 271D of this Act.”
13 **Recovery of criminal injuries compensation from offenders**

(1) The Criminal Injuries Compensation Act 1995 (c.53) is amended as provided for in subsection (2) of section 57 of the Domestic Violence, Crime and Victims Act 2004 (c.28).

(2) But in the provision to be inserted, by virtue of subsection (1) (above), into that Act of 1995—

(a) as section 7A(1), for the words “Secretary of State” substitute “Scottish Ministers”;

(b) as section 7B(3), for the words “Secretary of State” substitute “Scottish Ministers”; and

(c) as section 7D, for subsection (4) substitute—

“(4) For the purposes of section 6(3) of the Prescription and Limitation (Scotland) Act 1973 (extinction of obligations by prescriptive periods of 5 years), the date when the obligation to pay that amount became enforceable shall be taken to be—

(a) the date on which the compensation was paid; or

(b) if later, the date on which the person from whom the amount is sought to be recovered was convicted of an offence to which the injury is directly attributable.”.

(3) In section 11 of that Act of 1995, after subsection (8) insert—

“(8A) No regulations under section 7A(1) or order under section 7B(3) shall be made unless a draft of the regulations or order has been laid before, and approved by a resolution of, the Scottish Parliament.”.

(4) In Schedule 1 to the Prescription and Limitation (Scotland) Act 1973 (c.52), in paragraph 1 (application of section 6 of that Act), after sub-paragraph (d) insert—

“(dd) to any obligation arising by virtue of section 7A(1) of the Criminal Injuries Compensation Act 1995 (recovery of compensation from offenders: general);”.

14 **Further amendments and repeal**

(1) In section 27 of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prisons etc.)—

(a) in subsection (1)—

(i) at the beginning insert “Subject to any order or determination under section 7 of the Management of Offenders etc. (Scotland) Act 2005 (asp 00),”;

(ii) after paragraph (ad) insert—

“(ae) making available to the Scottish Ministers such background and other reports as the Scottish Ministers may request in relation to the exercise of their functions under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9);”;

(b) after subsection (1B) insert—

“(1C) In paragraphs (ae) and (b)(i) and (ii) of subsection (1) above, “enactment” includes an Act of the Scottish Parliament.”.
(1D) The Scottish Ministers may by order amend subsection (1) above so as (any or all)—
(a) to add to the functions for the time being described;
(b) to omit any of those functions;
(c) to alter any of those functions.”; and
(c) in subsection (2), for the words “the foregoing subsection” substitute “subsection (1) above”.

(2) In section 27A of that Act (grants in respect of community service facilities)—
(a) for subsection (1) substitute—
“(1) The Scottish Ministers may (any or all)—
(a) pay to a community justice authority, for allocation under section 2(5)(e)(i) of the Management of Offenders etc. (Scotland) Act 2005 (asp 00) as grants to the local authorities within its area;
(b) make a grant to a local authority of;
(c) make a grant to a community justice authority, in respect of any function exercisable by that authority by virtue of section 7(2) or (3) of that Act of 2005, of,
such amount as the Scottish Ministers may determine in respect of expenditure incurred by, as the case may be, those local authorities, that local authority or that community justice authority, in providing a relevant service.

(1A) In subsection (1) above, a “relevant service” means a service—
(a) for the purposes mentioned in section 27(1) of this Act;
(b) for enabling those local authorities, that local authority or that community justice authority to comply with the area plan prepared by the community justice authority under section 2(5)(a)(i) of that Act of 2005; or
(c) for such other similar purposes as the Scottish Ministers may prescribe.

(1B) Any grant made under, or paid by virtue of, subsection (1) above is subject to such conditions as the Scottish Ministers may determine.”; and
(b) in subsection (2), for the words “(1)(b)” substitute “(1)(c)”.

(2A) In section 27B of that Act (grants in respect of hostel accommodation for persons under supervision)—
(a) for subsection (1) substitute—
“(1) The Scottish Ministers may (any or all)—
(a) pay to a community justice authority, for allocation under section 2(5)(e)(ii) of the Management of Offenders etc. (Scotland) Act 2005 (asp 00) as grants to the local authorities within its area;
(b) make a grant to a local authority of;
(c) make a grant to a community justice authority, in respect of any function exercisable by that authority by virtue of section 7(2) or (3) of that Act of 2005, of,
such amount as the Scottish Ministers may determine in respect of relevant expenditure.

(1A) In subsection (1) above, “relevant expenditure” means expenditure incurred by, as the case may be, those local authorities or that local authority in—

(a) providing; or

(b) contributing by way of grant under section 10(3) of this Act to the provision by a voluntary organisation of, residential accommodation wholly or mainly for the persons mentioned in subsection (2) below.

(1B) Any grant made under, or paid by virtue of, subsection (1) above is subject to such conditions as the Scottish Ministers may determine.”; and

(b) in subsection (2), for “subsection (1)” substitute “subsection (1A)”.

(3) In section 90 of that Act (orders, regulations etc.), after subsection (3) add—

“(4) A statutory instrument containing an order under section 27(1D) or 27A(1A)(c) of this Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

(4) In the Schedule to the Repatriation of Prisoners Act 1984 (c.47) (operation of certain enactments in relation to prisoner), in paragraph 2 as substituted by section 33(1)(b)(i) of the Criminal Justice (Scotland) Act 2003 (asp 7) (prisoners repatriated to Scotland)—

(a) in sub-paragraph (1), for the words “2(2) and (7)” substitute “1AA, 2(2) and (7), 3AA”; and

(b) in sub-paragraph (2), for the words “or 2(2) or (7)” substitute “, 2(2) or (7) or 3AA”.

(4A) In section 8(1) of the Prisons (Scotland) Act 1989 (c.45) (provision for constitution of visiting committees), for the words from “at” to the end, substitute—

“(a) by such—

(i) community justice authorities, or

(ii) councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994,

(b) at such times,

(c) in such manner, and

(d) for such periods,

as may be prescribed by the rules.”.

(4B) In section 27(4A) of the 1993 Act (construction of references in Part 1 of that Act to wholly concurrent or partly concurrent terms of imprisonment or detention), in sub-paragraph (i) of paragraph (a) and in each of sub-paragraphs (i) and (ii) of paragraph (b), for the words “is imposed” substitute “commences”.

(5) In Schedule 1 to the Crime (Sentences) Act 1997 (c.43) (transfer of prisoners within the British Isles)—

(a) in paragraph 10—

(i) in sub-paragraph (2)(a), for the words “1A, 3” substitute “1AA, 1A, 3, 3AA”; and
(ii) in sub-paragraph (5)(a), for the words “1A, 2(4)” substitute “1AA, 1A, 2(4), 3AA”;

(b) in paragraph 11(2)—

(i) for the word “or”, where it occurs for the second time, substitute “to”; and

(ii) in head (a), for the words “1A, 3” substitute “1AA, 1A, 3, 3AA”; and

(c) in paragraph 11(4)(a), for the words “1A” substitute “1AA, 1A, 3AA”.

(6) In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) (devolved public bodies), after the entry relating to the Common Services Agency for the Scottish Health Service, insert—

“A community justice authority”.

(7) In section 24(c) of the International Criminal Court (Scotland) Act 2001 (asp 13) (limited disapplication of certain provisions relating to sentences), for the words “1A, 2, 3” substitute “1AA, 1A, 2, 3, 3AA”.

(8) In part 2 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (asp 11) (persons liable to investigation: Scottish public authorities), after paragraph 21 insert—

“21A A community justice authority.”.

(9) In Part 7 of schedule 1 to the Freedom of Information (Scotland) Act 2002 (asp 13) (Scottish public authorities), after paragraph 62 insert—

“62A A community justice authority.”.

(10) In section 40(1) of the Criminal Justice (Scotland) Act 2003 (asp 7) (remote monitoring of released prisoners), the words from “but” to the end are repealed.

**General**

**Supplementary and consequential provision etc.**

(1) The Scottish Ministers may by order made by statutory instrument make—

(a) any supplementary, incidental or consequential provision;

(b) any transitory, transitional or saving provision,

which they consider necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) An order under subsection (1) may amend or repeal any enactment (including any provision of this Act).

(3) Subject to subsection (4), a statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Parliament.

(4) A statutory instrument containing an order made by virtue of subsection (2) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

**Interpretation**

In this Act—

“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9);
“community justice authority” means a body corporate established under section 2(1);
“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39); and
“relevant person” has the meaning given by section 1(2).

17 Commencement

(1) This section and sections 10A, 11A, 13, 15, 16, and 18 come into force on Royal Assent.

(2) The remaining provisions of this Act come into force in accordance with provision made by the Scottish Ministers by order made by statutory instrument.

(3) Different provision may be made under subsection (2) for different purposes and for different areas.

18 Short title

This Act may be cited as the Management of Offenders etc. (Scotland) Act 2005.
Management of Offenders etc. (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision for the establishment of community justice authorities; to make further provision for the supervision and care of persons put on probation or released from prison etc.; to make further provision as respects the procedures etc. of the Risk Management Authority; to make further provision as respects the powers of the High Court following the submission of a risk assessment report or of a report under section 210D of the Criminal Procedure (Scotland) Act 1995; to amend Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 so as to make further provision as respects the release of prisoners on licence; to make further provision for testing prisoners for drugs; to make further provision as respects the jurisdiction of the Scottish courts in proceedings for offences in relation to the notification requirements of Part 2 of the Sexual Offences Act 2003; to make further provision as respects proceedings in relation to an objection to the content of a risk assessment report; to make provision about the recovery of compensation from offenders; and for connected purposes.

Introduced by: Cathy Jamieson
On: 4 March 2005
Supported by: Hugh Henry
Bill type: Executive Bill